



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

June 16, 2010

REPLY TO THE ATTENTION OF
E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: **Liphatech, Inc. (Milwaukee, Wisconsin)**
Docket No.: **FIFRA-05-2010-0016**
Complaint Date: **May 14, 2010**
Total Proposed Penalty: **\$2,941,456.00**

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to conduct this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in black ink that reads "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Michael H. Simpson
Attorney At Law
Reinhart Boerner, Van Deuren S.C.
1000 North Water Street, Suite 1700
(414) 298-1000

Nidhi K. O'Meara
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
Chicago, Illinois 60604-3590
(312) 886-0568

June 11, 2010

DELIVERED BY COURIER

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

RECEIVED
JUN 14 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

Dear Regional Hearing Clerk:

Re: *In the Matter of Liphatech, Inc.*
Docket No. FIFRA-05-2010-0016

On behalf of Respondent, Liphatech, Inc., I enclose for filing an original and two copies of Liphatech's Answer to the Complaint.

Please file-stamp one of the enclosed copies of the Answer and kindly return it to me in the enclosed postage prepaid envelope.

As shown on the enclosed Certificate of Service, by copy of this letter I also serve on the Complainant, through one of its authorized attorneys (Ms. Nidhi K. O'Meara), a copy of Liphatech's Answer.

Yours very truly,



Michael H. Simpson

REINHART\3776743MHS:BLU

Encs.

cc Ms. Nidhi K. O'Meara (C-14J) (w/enc.)
Mr. Carl Tanner (w/enc.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) **Docket No. FIFRA-05-2010-0016**
)
Liphatech, Inc.) **Proceeding to Assess a Civil Penalty**
Milwaukee, Wisconsin,) **Under Section 14(a) of the Federal**
) **Insecticide, Fungicide, and**
Respondent.) **Rodenticide Act, 7 U.S.C. § 136(a)**
)
)
_____)

Respondent, Liphatech, Inc., responds to the Complaint as follows by admitting,
denying and asserting:

Answer to Complaint

1. This is a legal conclusion to which no response is required.
2. This is a legal conclusion to which no response is required.
3. Admitted.

Statutory and Regulatory Background

4. This is a legal conclusion to which no response is required. Respondent asserts, however, that Section 3(c)(1), 7 U.S.C. § 136a(c)(1), provides that the statement required for registering a product contain the following information:

- (A) the name and address of the applicant and of any other person whose name will appear on the labeling;
- (B) the name of the pesticide;
- (C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;
- (D) the complete formula of the pesticide;
- (E) a request that the pesticide be classified for general use or for restricted use, or for both; and

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JUN 14 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

(F) except as otherwise provided in paragraph (2)(D), if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, or alternatively a citation to data that appear in the public literature or that previously had been submitted to the Administrator and that the Administrator may consider in accordance with the following provisions . . .

5. This is a legal conclusion to which no response is required.
6. This is a legal conclusion to which no response is required.
7. This is a legal conclusion to which no response is required.
8. This is a legal conclusion to which no response is required. Respondent asserts, however, that the requirement may be satisfied by including a statement of the terms of restrictions in advertising. See 40 CFR § 152.168(c). Respondent asserts that it is lawful to advertise a product by referring to the terms of restriction on the use of the product without referencing the term "restricted use pesticide."

9. This is a legal conclusion to which no response is required. Respondent asserts, however, that EPA has discretion to issue a notice of warning in lieu of a "stop sale, use, or removal" order (SSURO).

10. This is a legal conclusion to which no response is required.

11. This is a legal conclusion to which no response is required. Respondent asserts that all of Liphatech's advertising included either the words "Restricted Use Pesticide" or a statement of the terms of restriction as required by FIFRA.

12. This is a legal conclusion to which no response is required.

13. This is a legal conclusion to which no response is required.

14. This is a legal conclusion to which no response is required.

15. This is a legal conclusion to which no response is required.

16. This is a legal conclusion to which no response is required. Respondent asserts that because the advertising material that is the subject of the Complaint is not "labeling," the advertising material could not have caused the pesticide to be misbranded.

17. This is a legal conclusion to which no response is required. Respondent asserts, however, that section 2(p)(2), 7 U.S.C. § 136(p)(2) actually states the term "labeling," subject to several exceptions, means all labels and other written, printed or graphic matter –

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on the label or in literature accompanying the pesticide or device.

Respondent further asserts that the advertising material that is the subject of the Complaint is not "labeling" as defined by FIFRA because, among other reasons, it did not accompany the pesticide at any time and was never referenced on the pesticide label or in literature accompanying the pesticide or device.

18. This is a legal conclusion to which no response is required.

19. This is a legal conclusion to which no response is required.

20. This is a legal conclusion to which no response is required.

21. This is a legal conclusion to which no response is required.

General Allegations

22. Admitted.

23. Admitted.

24. Admitted.

Calendar Years 2007 and 2008

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted. In addition to this admission, Respondent asserts that the sale or distribution of restricted use pesticides is subject to numerous state and federal statutes and regulations that require dealers and pesticide businesses to be licensed and to document the sale of restricted use pesticides. *See e.g.* Kan. Stat. Ann. § 2-2438 *et seq.*; Tex. Agric. Code Ann § 76.001 *et seq.* These statutes and regulations ensure that only knowledgeable and qualified businesses and individuals can purchase, distribute and use restricted use pesticides.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Respondent lacks knowledge or information sufficient to answer this allegation. Respondent asserts that EPA did not contact Respondent for six months, until June 2008, after EPA Region 7 apparently requested an investigation. According to EPA's SSURO, an official with the Kansas Department of Agriculture listened to Liphatech's radio advertisements and was aware of the alleged violations on November 21, 2007. Therefore, a delay of approximately seven months in contacting Respondent indicates the alleged violations were not of high gravity.

34. Admitted.

35. Admitted. Respondent asserts the SSURO was dated April 2008 but was not served on Respondent until June 2008. The authorities knew about Respondent's

alleged violations as early as November 2007 but EPA did not issue the SSURO until June 2008. Therefore, a delay of approximately seven months in contacting Respondent indicates the alleged violations were not of high gravity.

36. Admitted. Respondent asserts that its letters were sent to distributors, not distribution partners. Distributors are independent of Respondent and are not under or subject to Respondent's control. Even though Respondent believed it complied with FIFRA, Respondent followed EPA's direction that Liphatech send out the letters.

37. Admitted.

38. Admitted.

Advertisements without Identifying the Restricted Use Classification

Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Denied. Respondent asserts that all four versions of the radio advertisements stated: "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER."

Golden Plains AG Network

KXXX-AM Broadcast

44. Admitted.

45. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of each radio ad informed

listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

Western Kansas Broadcast

KBUF Broadcast

46. Admitted.

47. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

High Plains Radio

48. Admitted.

KICX-FM Broadcast

49. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KBRL-AM Broadcast

50. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KRKU-FM Broadcast

51. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed

listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KJBL-FM Broadcast

52. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KFNF-FM Broadcast

53. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KADL-FM Broadcast

54. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KSTH-FM Broadcast

55. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KGNC-AM and KXGL-FM

56. Admitted.

KGNC-AM Broadcast

57. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

KXGL-FM Broadcast

58. Denied. Respondent asserts that it contracted with the radio station but does not know what the radio station did. The written script of the radio ad informed listeners to "ALWAYS FOLLOW AND READ LABEL DIRECTIONS. SEE YOUR LOCAL AG CHEM DEALER." Therefore, Respondent complied with FIFRA.

Print Advertisements regarding "Rozol," EPA Reg. No. 7173-244

59. Admitted.

Cattle Guard Publication

60. Admitted.

61. Admitted.

62. Admitted.

63. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

Kansas Stockman Publication

64. Admitted.

65. Admitted.

66. Admitted.

67. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

68. Admitted.

69. Admitted.

70. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

71. Admitted.

72. Admitted.

73. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

74. Admitted.

75. Admitted.

76. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

Nebraska Cattleman Publication

77. Admitted.

78. Admitted.

79. Admitted.

80. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

81. Admitted.

82. Admitted.

83. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

84. Admitted.

85. Admitted.

86. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

87. Admitted.

88. Admitted.

89. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs,

you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

90. Admitted.

91. Admitted.

92. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

Oklahoma Cowman Publication

93. Admitted.

94. Admitted.

95. Admitted.

96. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

The Cattleman Publication

97. Admitted.

98. Admitted.

99. Admitted.

100. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

101. Admitted.

102. Admitted.

103. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

104. Admitted.

105. Admitted.

106. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

107. Admitted.

108. Admitted.

109. Denied. Respondent asserts, among other things, the advertisement told the reader that "in order to use this product for the control of Black Tailed Prairie Dogs, you must have a 24(c) Prairie Dog Bait label in your possession." Therefore, Respondent complied with FIFRA.

Wyoming Livestock Publication

110. Admitted.

111. Admitted.

112. Admitted.

113. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the

pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

114. Admitted.

115. Admitted.

116. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

117. Admitted.

118. Admitted.

119. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

120. Admitted.

121. Admitted.

122. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

123. Admitted.

124. Admitted.

125. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

126. Admitted.

127. Admitted.

128. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

129. Admitted.

130. Admitted.

131. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

132. Admitted.

133. Admitted.

134. Denied. Respondent asserts, among other things, the advertisement referenced the website www.rodent-control.com which contains the label for the pesticide. The label states the product is a Restricted Use Pesticide. Therefore, Respondent complied with FIFRA.

Claims Differ/False and Misleading Claims

Direct Mail Packages regarding "Rozol," EPA Reg. No. 7173-244

135. Admitted.

136. This is a legal conclusion to which no answer is required. Respondent asserts, however, that the statement required in connection with registration of a pesticide product includes materials other than proposed labeling that are pertinent to these allegations.

137. This is a legal conclusion to which no answer is required.

138. This is a legal conclusion to which no answer is required. Respondent asserts, however, that any substantive changes made to the product label must be submitted and accepted by Office of Pesticide Programs, Registration Division prior to distribution or sale in commerce. Advertising does not have to be reviewed or approved by the Office of Pesticide Programs, Registration Division.

139. This is a legal conclusion to which no answer is required. Respondent asserts, however, that any substantive changes made to the product label must be submitted and accepted by Office of Pesticide Programs, Registration Division prior to distribution or sale in commerce. Advertising does not have to be reviewed or approved by the Office of Pesticide Programs, Registration Division.

140. Admitted.

141. Admitted.

142. Admitted.

143. Admitted.

144. Admitted. Respondent asserts, however, that the sales literature entitled "Black-tailed Prairie Dog Control – Research Bulletin" was not sent to distributors until October 31, 2007.

145. Admitted, except denied that Respondent sent the materials to any distribution partners. Respondent asserts that its distributors are independent of Respondent and are not under or subject to Respondent's control. Respondent further asserts that the sales literature entitled "Black-tailed Prairie Dog Control – Research Bulletin" was not sent to distributors until after October 31, 2007.

Claims in Cover Letters, dated October 31, 2007

146. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

147. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

148. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

149. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

150. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

151. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

152. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

153. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

154. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

Claims in "Black — Tailed Prairie Dog Control — Research Bulletin"

155. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

156. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

157. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

158. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

159. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

160. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

161. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

162. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

163. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

164. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

165. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

166. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

167. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

168. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

169. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

170. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

171. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

172. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

173. Respondent admits that the statement was made. Respondent denies that the statement is a claim for Rozol.

174. Denied.

175. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

176. Respondent admits that the statement was made. Respondent denies that the statement is a claim for Rozol.

177. Denied.

178. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

179. Respondent admits that the statement was made. Respondent denies that the statement is a claim for Rozol.

180. Denied.

181. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

182. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

183. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

184. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

185. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

186. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

187. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

188. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

189. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

190. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

191. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

192. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

193. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

194. Respondent admits the literature included the chart. Respondent denies the information in the chart are "claims" for Rozol under FIFRA.

195. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

196. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

197. This is a legal conclusion to which no response is required.

198. Denied.

Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244

199. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

200. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

201. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

202. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

203. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

204. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

205. This is a legal conclusion to which no response is required.

206. Denied.

Website Advertisements regarding "Rozol," EPA Reg. No. 7173-244

207. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

208. Denied.

209. This is a legal conclusion to which no response is required.

210. Denied.

211. Admitted.

212. Admitted. Respondent asserts that its letters were sent to distributors, not distribution partners. Distributors are independent of Respondent and are not under or subject to Respondent's control. Even though Respondent believes it had not violated FIFRA, Respondent followed EPA's direction that Liphatech send out the letters.

Distribution/Sale of "Rozol," EPA Reg. No. 7173-244

213. Admitted.

214. Admitted.

215. Admitted.

216. Denied. Respondent asserts Jim Knuth is a company representative. Therefore Rozol was not distributed or sold to Jim Knuth, as defined by FIFRA.

217. Admitted.

- 218. Admitted.
- 219. Admitted.
- 220. Admitted.
- 221. Admitted.
- 222. Admitted.
- 223. Admitted.
- 224. Admitted.
- 225. Admitted.
- 226. Admitted.
- 227. Admitted.
- 228. Admitted.
- 229. Admitted.
- 230. Admitted.
- 231. Admitted.
- 232. Admitted.
- 233. Admitted.
- 234. Admitted.
- 235. Admitted.
- 236. Admitted.
- 237. Admitted.
- 238. Admitted.
- 239. Admitted.
- 240. Admitted.

241. Admitted.

242. Admitted.

243. Admitted.

244. Admitted.

245. Admitted.

246. Admitted.

247. Admitted.

248. Admitted.

249. Admitted.

250. Denied. Respondent asserts that on or about April 17, 2008, Mark Newman, as a company representative, received the product. Therefore, Respondent did not distribute or sell the pesticide to Mark Newman, as defined by FIFRA.

251. Denied. Respondent asserts that it distributed or sold Rozol to Estes on April 25, 2008, not April 2, 2008.

252. Admitted.

253. Admitted.

254. Admitted.

255. Admitted.

256. Admitted.

257. Denied. The SSURO prohibited Respondent from distributing three specifically identified pieces of information on "Rozol," EPA Registration Number 7173-244, and "any other similar technical labeling for 'Rozol'," EPA Registration

Number 7173-244, that has not been subjected to a compliance review by U.S. EPA, until further notice from the U.S. EPA."

Calendar Year 2009 to present

258. Admitted.

259. Admitted.

260. Admitted.

261. This is a legal conclusion to which no answer is required.

262. Admitted.

263. Admitted.

264. Admitted.

265. Admitted. In addition to this admission, Respondent asserts that the sale or distribution of restricted use pesticides is subject to numerous state and federal statutes and regulations that require dealers and pesticide businesses to be licensed and to document the sale of restricted use pesticides. *See e.g.* Kan. Stat. Ann. § 2-2438 *et seq.*; Tex. Agric. Code Ann § 76.001 *et seq.* These statutes and regulations ensure that only knowledgeable and qualified businesses and individuals can purchase, distribute and use restricted use pesticides.

266. Admitted.

267. Admitted.

268. Admitted.

269. Admitted. Respondent asserts, however, that the statement required in connection with registration of a pesticide product includes materials other than proposed labeling that are pertinent to these allegations.

270. Admitted.

271. This is a legal conclusion to which no answer is required. Respondent asserts, however, that any substantive changes made to the product label must be submitted and accepted by Office of Pesticide Programs, Registration Division prior to use in commerce. Advertising does not have to be reviewed or approved by the Office of Pesticide Programs, Registration Division.

272. Respondent lacks knowledge or information sufficient to answer this allegation.

273. Admitted.

274. Admitted. Respondent asserts, however, that Respondent's passive website does not allow the purchase of products on the website.

***Claims in the Product Information Sheet
regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286,
on November 18, 2009***

275. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

276. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

277. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

278. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

279. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

280. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

281. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

282. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

283. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

284. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

285. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

286. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

287. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

288. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

289. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

290. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

291. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

292. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

***Claims in brochure entitled "Control Range Rodents"
regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286,
on November 18, 2009***

293. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

294. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

295. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

296. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

297. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

298. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

299. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

300. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

301. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

302. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

303. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

304. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

305. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

306. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

307. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

308. Respondent admits the inclusion of the phrase asserted by Complainant. Respondent denies that the phrase is a "claim" under FIFRA.

309. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

310. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

***Claims in brochure entitled "Control Range Rodents"
regarding "Rozol," EPA Reg. No. 7173-244,
on November 18, 2009***

311. Denied.

312. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

313. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

314. Denied.

315. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

316. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

317. Denied.

318. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

319. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

320. Denied.

321. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

322. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

323. Denied.

324. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

325. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

326. Denied.

327. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

328. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

329. Respondent lacks knowledge or information sufficient to admit or deny this allegation.

330. Respondent admits the information on the website was not modified.
Respondent denies that all of the information on the website is a claim under FIFRA.

331. Respondent lacks knowledge or information sufficient to admit or deny this allegation.

332. Respondent admits the information on the website was not modified.
Respondent denies that all of the information on the website is a claim under FIFRA.

333. Respondent lacks knowledge or information sufficient to admit or deny this allegation.

334. Respondent admits the information on the website was not modified.
Respondent denies that all of the information on the website is a claim under FIFRA.

***Claims in the Product Information Sheet
regarding "Rozol," EPA Reg. No. 7173-244
on February 23, 2010***

335. Denied.

336. Denied. Respondent asserts that any advertising claims for the registered product must be compared to all information required in connection with the registration of the product, not just the "accepted label" as asserted erroneously by the Complainant.

337. Denied. Respondent asserts that the advertising material that is the subject of this Complaint is not "labeling" under FIFRA and therefore can not cause the pesticide to be misbranded. See Answer, paragraphs 16 and 17.

338. This is a legal conclusion to which no response is required.

339. This is a legal conclusion to which no response is required.

340. This is a legal conclusion to which no response is required.

341. This is a legal conclusion to which no response is required.

342. Denied.

343. Denied.

344. Denied.

345. Denied.

346. Admitted that EPA issued a SSURO on March 4, 2010. Respondent lacks knowledge or information sufficient to answer the balance of these allegations.

347. Admitted.

348. Denied. Respondent asserts that the August 22, 2008 Amended Stop Sale, Use or Removal Order prohibited Respondent from distributing three specifically identified information pieces and "any other similar technical labeling for 'Rozol,' EPA Registration Number 7173-244, that has not been subject to a compliance review by U.S. EPA, until further notice from U.S. EPA."

349. Admitted. Respondent asserts that EPA was not required to approve or authorize these advertisements.

350. Admitted. Respondent asserts that EPA was not required to approve or authorize these advertisements.

351. Respondent admits that EPA did not approve the advertisements and asserts that EPA was not required to approve or authorize these advertisements. Respondent further asserts it does not have "distributor partners." Respondent denies that advertisements were distributed on the website.

352. Admitted. Respondent asserts that its letters were sent to distributors, not distribution partners. Distributors are independent of Respondent and are not under or subject to Respondent's control. Even though Respondent believed it complied with

FIFRA, Respondent followed EPA's direction that Liphatech send out the letters to its distributors.

353. Denied.

354. Denied.

355. Denied.

356. Denied.

Prefiling Notices

357. Admitted. Respondent asserts that the September 18, 2009 Notice to File an Administrative Complaint is attached hereto as Exhibit A.

358. Admitted. Respondent asserts that the April 1, 2010 Updated Notice of Intent to File an Administrative Complaint is attached hereto as Exhibit B.

359. The Updated Notice speaks for itself.

360. Admitted. Respondent asserts that if Respondent violated FIFRA, which it denies, the proposed penalty is not reasonable or appropriate.

361. The Updated Notice speaks for itself.

362. This fact is irrelevant to this proceeding and should be stricken from the Complaint as immaterial and unfairly prejudicial.

363. This fact is irrelevant to this proceeding and should be stricken from the Complaint as immaterial and unfairly prejudicial.

364. Respondent lacks knowledge or information sufficient to answer this allegation. Respondent asserts that information about DeSangosse is irrelevant to this proceeding and should be stricken from the Complaint as immaterial and unfairly prejudicial.

365. Respondent lacks knowledge or information sufficient to answer this allegation.

366. Denied. Respondent asserts that it submitted its actual profit and loss totals for the last three years to EPA. The Complainant apparently ignored Respondent's information in proposing a gargantuan penalty.

367. Respondent asserts that it lacks the financial ability to pay the proposed penalty of \$2,941,456 and would not be able to continue in business if it had to pay the proposed penalty. Until Respondent knows the amount of the final penalty, if any, to be assessed in this proceeding, Respondent does not know whether it would be able to pay a lower penalty and continue in business.

368. This paragraph should be stricken from the Complaint as immaterial and unfairly prejudicial. Liphatech, Inc. is the Respondent, not its parent company. Respondent asserts that the revenues of Respondent's corporate parent are irrelevant to this proceeding. FIFRA provides that the ability of a respondent to continue in business is a factor to be considered in assessing a penalty. The ability of a respondent's corporate parent to pay a penalty is irrelevant under FIFRA. Further, the policy concerning calculation of a penalty as set forth in EPA's *Enforcement Response Policy* is not legally binding in this proceeding and is entitled to no weight in determining those evidentiary factors that may be considered in calculating a penalty for any of the purported violations.

Counts 1 through 120

369. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 368 of this Answer.

370. Denied.

371. Denied.

Counts 121 through 349

372. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 371 of this Answer.

373. Denied.

374. Denied.

Counts 350 through 671

375. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 374 of this Answer.

376. Denied.

377. Denied.

Counts 672 through 993

378. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 377 of this Answer.

379. Denied.

380. Denied.

Counts 994 through 1053

381. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 380 of this Answer.

382. Denied.

383. Denied.

Counts 1054 through 1349

384. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 383 of this Answer.

385. Denied.

386. Denied.

Counts 1350 through 1488

387. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 386 of this Answer.

388. Denied.

389. Denied.

Counts 1489 through 1548

390. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 389 of this Answer.

391. Denied.

392. Denied.

Counts 1549 through 1870

393. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 392 of this Answer.

394. Denied.

395. Denied.

Counts 1871 through 2058

396. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 395 of this Answer.

397. Denied.

398. Denied.