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October 21, 2011

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DELIVERED BY COURIER

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

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 Respondent's Reply In Support of Respondent's Motion for a Telephonic Preconference Hearing.

Please file-stamp one of the enclosed copies and kindly return it to me in the enclosed postage-prepaid envelope. Thank you for your assistance.

Respectfully submitted,

Lucas N. Roe

REINHART\7881330

Encs.

cc Honorable Susan L. Biro (w/encs., by courier)
Ms. Nidhi K. O'Meara (C-14J) (w/encs., by courier)

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OCT 24 2011

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No. FIFRA-05-2010-0016**
)
Liphatech, Inc.) **Hon. Susan Biro**
Milwaukee, Wisconsin,)
)
Respondent.)

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**RESPONDENT'S REPLY IN SUPPORT OF RESPONDENT'S MOTION
FOR A TELEPHONIC PRECONFERENCE HEARING**

Respondent agrees with Complainant that nothing in the Consolidated Rules requires the parties to provide the written order of witnesses to the Presiding Officer and other party, as requested by Respondent. Respondent made this request in order to facilitate the hearing by allowing the Presiding Officer and each party to know which witnesses the other side will call. It would also keep the hearing on track. Nothing nefarious is intended here.

While Complainant believes that this requested order would only help Respondent, Respondent contends that this order will help the Presiding Officer and both parties because everyone will have the same advance notice of which witnesses each side will call. The reason that Respondent does not agree with the simultaneous submission of lists of witnesses, including the other conditions requested by Complainant, is that Respondent does not know which witnesses it

will need to call to rebut testimony to be given by several potential witnesses of Complainant.¹

Therefore, if the Presiding Officer were to grant Complainant's conditions, Respondent would have to speculate as to which witnesses Complainant will call and on which topic and then identify which witnesses Respondent would intend to call to rebut that potential testimony. If the Complainant then does not call a witness or offer the suggested testimony, Respondent might then be required to call witnesses which could be, at that time in the hearing, simply irrelevant. Complainant provides for an exemption for unforeseen circumstances without elaborating what that means.

Complainant asserts that Respondent is attempting to secure a tactical advantage because Respondent has presumably expressed an intention to present one or more witnesses by proffering written testimony. This assumption by Complainant is a misunderstanding of Respondent's position during the prehearing conference. Respondent simply asked if the Presiding Officer would accept the proffer of written testimony in lieu of oral testimony on direct examination. Respondent has made no decision to proffer written testimony at this time but wanted to know the Presiding Officer's preferences on that point.

¹ Complainant listed multiple alternative witnesses in its pre-hearing exchange for a number of topics on which it may provide testimony and has not identified for the Presiding Officer and Respondent the specific identity of the persons who will actually give testimony.

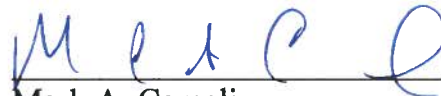
In conclusion, Respondent disagrees with Complainant's position and respectfully requests that the Presiding Officer issue an order granting Respondent's motion that the parties provide each other and the Presiding Officer a written notice of the order in which each party intends to present its witnesses at the hearing within three (3) days of such witness's testimony.

Dated this 21st day of October, 2011.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I, Lucas N. Roe, one of the attorneys for the Respondent, Liphatech, Inc., hereby certify that I delivered one copy of the foregoing by depositing it with a commercial delivery service, postage prepaid, at Milwaukee, Wisconsin, in envelopes addressed to:

Honorable Susan L. Biro
Office of the Administrative Law Judges
Franklin Court Building
1099 14th Street, NW, Suite 350
Washington, D.C. 20005; and

Ms. Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604



I further certify that I filed the original and one copy of the Respondent's Reply In Support of Respondent's Motion for a Telephonic Preconference Hearing and the original of this Certificate of Service in the Office of the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, by depositing them with a commercial delivery service, postage prepaid, at Milwaukee, Wisconsin, on the date below.

Dated this 21st day of October, 2011.

A handwritten signature in blue ink is written over a horizontal line. The signature appears to be "Lucas N. Roe".

Lucas N. Roe
One of the Attorneys for Respondent
Liphatech, Inc.