



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
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REPLY TO THE ATTENTION OF:

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C-14J

January 25, 2011

Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1099 14th Street, NW, Suite 350
Franklin Court
Washington, D.C. 20005

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

Dear Judge Gunning:

Please find enclosed a copy of Complainant's First Supplemental Prehearing Exchange, along with Complainant's Exhibits 130 through 136 which were filed on January 25, 2010, in the above referenced-matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik H. Olson", with a long horizontal line extending to the right.

Erik H. Olson
Associate Regional Counsel

Enclosures

cc: Mr. Michael H. Simpson
Reinhart Boerner Van Deuren s.c
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(*via UPS overnight*)

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Liphatech, Inc.) Docket No. FIFRA-05-2010-0016
Milwaukee, Wisconsin)
) Hon. Barbara A. Gunning
)
)
Respondent.)

**COMPLAINANT'S FIRST SUPPLEMENTAL
PREHEARING EXCHANGE**

Complainant, the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency (U.S. EPA, Complainant, or Agency), through its undersigned attorneys, hereby files *Complainant's First Supplemental Prehearing Exchange* pursuant to Section 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), codified at 40 C.F.R. § 22.19(f).

I. Governing Legal Standard

The regulation governing supplementation of prehearing exchanges is found at 40 C.F.R. § 22.19(f), which provides as follows:

(f) Supplementing prior exchanges. A party who has made an information exchange under paragraph (a) of this section [22.19], ... shall promptly supplement or correct the exchange when the party learns that the information exchanged ... is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

The documentary evidence submitted in this *First Supplemental Prehearing Exchange* is necessary to update the information exchanged and to make the record in this proceeding complete and accurate. All of the evidence submitted in this *First Supplemental*

Prehearing Exchange was either not yet written or not in Complainant's possession at the time Complainant filed its *Initial Prehearing Exchange* and its *Rebuttal Prehearing Exchange* on September 28, 2010 and November 10, 2010, respectively.

II. Additional Exhibits

Complainant is hereby supplementing its Prehearing Exchange to add the following exhibits:

CX No.	Title of Document	Date of Document	Bates No.
130.	Photographs in .jpg format taken by Dr. Nimish Vyas and included in his report titled <i>Annual Report 2010: Characterization of Avian Hazards Following Chlorophacinone (Rozol®) Use for Prairie Dog Control</i> (see CX 127).	October, 2010	3182
131.	Witness description of Mr. Robert H. Fuhrman provided by Respondent in In Re: Rhee Bros., Inc., docket number FIFRA-03-2005-0028.	November 21, 2005	3183
132.	Claudia Niess, Declaration, with attached documentation showing the positions and responsibilities of Respondent's product distributors.	November 18, 2010	3184-3243
133.	Claudia Niess, Declaration, with attached documentation showing Respondent's registered pesticide establishments during calendar years 2007 and 2008.	December 9, 2010	3244-3257
134.	Letter from Respondent Liphatech, Inc. to the State of Kansas Department of Agriculture requesting "special local need" registration of Rozol, Reg. No. 7173-286.	December 6, 2010	3258-3260
135.	Letter from Lois Rossi, Director, Registration Division, EPA's Office of Pesticide Programs to Allen James, President of Responsible Industry for a Sound Environment.	May 15, 2009	3261-3262

136.	Printout of U.S. EPA website: <i>Pesticide Labeling Questions and Answers.</i>	January 13, 2011	3263-3311
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Conclusion

In accordance with the Consolidated Rules, Complainant submits this *First Supplemental Prehearing Exchange*. Complainant respectfully reserves the right to supplement its list of witnesses and/or its list of exhibits in accordance with the Consolidated Rules.

Respectfully submitted,



Nidhi K. O'Meara
Erik H. Olson
Associate Regional Counsels
Gary E. Steinbauer
Assistant Regional Counsel
United States EPA – ORC Region 5
77 W. Jackson Blvd. (C14-J)
Chicago, IL 60604
(312) 886-0568
Attorneys for Complainant

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

CERTIFICATE OF SERVICE

I hereby certify that the originals and true, accurate and complete copies of *Complainant's First Supplemental Prehearing Exchange*, together with true, accurate and complete copies of Complainant's Exhibits 130-136, were filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on the date indicated below. True, accurate and complete copies were sent to Honorable Barbara Gunning, Administrative Law Judge (via UPS overnight delivery) at the following address:

Honorable Barbara A. Gunning
 Office of Administrative Law Judges
 U.S. Environmental Protection Agency
 Mail Code 1900L
 1099 14th Street, NW, Suite 350
 Franklin Court
 Washington, D.C. 20005

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and to Mr. Michael H. Simpson, Counsel for Respondent, Liphatech, Inc., (via UPS overnight delivery), at the following address:

Mr. Michael H. Simpson
 Reinhart Boerner Van Deuren s.c
 1000 North Water Street, Suite 1700
 Milwaukee, WI 53202

on the date indicated below:

Dated in Chicago, Illinois, this 25 th day of January, 2011.



Patricia Jeffries-Harwell
 Legal Technician
 U.S. EPA, Region 5
 Mail Code C-14J
 77 West Jackson Blvd.
 Chicago, IL 60604
 (312) 353-7464