



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

February 7, 2011

REPLY TO THE ATTENTION OF
E-19J

Honorable Barbara A. Gunning
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 Gunning:

Enclosed is a copy of the Respondent's Answer to First Amended Complaint.

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

Sincerely,

A handwritten signature in cursive script that reads "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Michael H. Simpson
Attorney At Law
Reinhart Boermer, Van Deuren S.C.
1000 North Water Street, Suite 1700
(414) 298-8124

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



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Toll Free: 800-553-6215
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February 1, 2011

Michael H. Simpson
Direct Dial: 414-298-8124
msimpson@reinhartlaw.com

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 Answer to First Amended Complaint.

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,

Michael H. Simpson

REINHART\5980400LNR:JES

Encs.

cc Honorable Barbara A. Gunning (w/encs., by courier)
Ms. Nidhi K. O'Meara (C-14J) (w/encs., by courier)
Mr. Carl Tanner (w/encs., by courier)



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

CERTIFICATE OF SERVICE

I, Michael H. Simpson, one of the attorneys for the Respondent, Liphatech, Inc., hereby certify that I delivered one copy of the foregoing Answer to First Amended Complaint, to the persons designated below, by depositing it with a commercial delivery service, postage prepaid, at Milwaukee, Wisconsin, in envelopes addressed to:

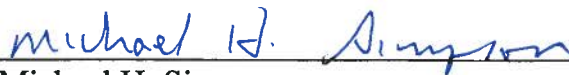
Honorable Barbara A. Gunning
Office of the Administrative Law Judges
Franklin Court Building
1099 14th Street, NW, Suite 350
Washington, D.C. 20005; and

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

RECEIVED
FEB - 4 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

I further certify that I filed the original and one copy of the Answer to First Amended Complaint 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 1st day of February, 2011.


Michael H. Simpson
One of the Attorneys for Respondent
Liphatech, Inc.

**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**
Respondent.) **Insecticide, Fungicide, and**
) **Rodenticide Act, 7 U.S.C. § 136(a)**

RECEIVED
FEB - 4 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

Respondent, Liphatech, Inc. ("Respondent" or "Liphatech"), responds to the First Amended Complaint as follows by admitting, denying and asserting:

Answer to First Amended Complaint

1. This is a legal conclusion to which no response is required, except that Respondent denies it is liable for any civil penalty.
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) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 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

(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 paragraph in the original Complaint was removed in the First

Amended Complaint. Therefore, no response is required.

8. This is a legal conclusion to which no response is required. Respondent asserts, however, that the requirement of FIFRA 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 pesticide 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 paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, 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 paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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 First Amended 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. Denied. According to the accepted supplemental label, the use of "Rozol," EPA Reg. No. 7173-244, to control black-tailed prairie dogs was restricted to counties north and west of a line including the counties of Baylor, Brewster, Coke, Crane, Crockett, Fisher, Jones, Nolan, Presidio, Reagan, Schleicher, Shackelford, Sutton, Terrell, Throckmorton, Tom Green, Upton and Wilbarger.

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 of FIFRA, if any, 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 of FIFRA 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 of EPA 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. Denied. The documentary information collected by the inspector on June 19, 2008 included copies of Direct Mail Packages regarding "Rozol," EPA Reg. No. 7173-244 for the states of Colorado, Kansas, Nebraska, Texas and Wyoming.

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 after 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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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

174. Denied.

175. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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

177. Denied.

178. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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

180. Denied.

181. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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 Complainant'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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

***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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

***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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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. This paragraph in the original Complaint was removed in the First Amended Complaint. Therefore, no response is required.

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 First Amended Complaint as immaterial and unfairly prejudicial.

363. This fact is irrelevant to this proceeding and should be stricken from the First Amended 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 First Amended 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. As stated in the response of Liphatech to Complainant's request for voluntary production of financial documentation dated August 3, 2010, Respondent does not intend to take the position that it is unable to pay the proposed penalty or that payment will adversely affects its ability to continue in business.

368. This paragraph should be stricken from the First Amended Complaint as immaterial and unfairly prejudicial. Liphatech is the Respondent, not its parent company. 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 statutory 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.

Counts 2959 through 2117

399. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 398 of this Answer.

400. Denied.

401. Denied.

Count 2118

402. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 401 of this Answer.

403. Denied.

404. Denied.

Count 2119

405. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 404 of this Answer.

406. Denied.

407. Denied.

Count 2120

408. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 407 of this Answer.

409. Denied.

410. Denied.

Count 2121

411. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 410 of this Answer.

412. Denied.

413. Denied.

Count 2122

414. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 413 of this Answer.

415. Denied.

416. Denied.

Count 2123

417. Respondent incorporates by reference the admissions, denials and assertions contained in paragraphs 1 through 416 of this Answer.

418. Denied.

419. Denied.