



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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REPLY TO THE ATTENTION OF

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C-14J

October 6, 2011

Honorable Susan L. Biro
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 Biro:

Enclosed please find a copy of the parties' *Joint Stipulations and Joint Motion to Admit Certain Exhibits Into Evidence*, which was filed on October 6, 2011, in the above-referenced matter.

Sincerely,

Gary E. Steinbauer
Assistant Regional Counsel

Enclosures

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

HEARINGS CLERK
U.S. EPA REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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

JOINT STIPULATIONS
AND JOINT MOTION TO ADMIT CERTAIN
EXHIBITS INTO EVIDENCE

Pursuant to the Chief Judge's June 10, 2011, *Order Scheduling Hearing* in the above referenced matter, and Rule 22.19(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. § 22.19(b)(2), Complainant, United States Environmental Protection Agency (U.S. EPA) and Respondent, Liphatech, Inc. (Liphatech) (collectively, the Parties), hereby file the instant *Joint Stipulations and Joint Motion to Admit Certain Exhibits Into Evidence*.

I. Joint Stipulation of Facts¹

On behalf of the Parties, the undersigned counsels of record for U.S. EPA and Liphatech hereby jointly stipulate to the following set of facts, which Respondent has largely admitted to in its Answer to Amended Complaint, filed February 1, 2011.

¹ Many of the stipulated facts correspond to a paragraph in the First Amended Complaint. For the purpose of convenience, the paragraph numbering has been retained for easy identification.

Paragraph # in First Amended Complaint	Joint Stipulated Fact
3	The Respondent, Liphatech, Inc. (Liphatech), located at 3600 West Elm Street, Milwaukee, Wisconsin 53209, is a corporation doing business in the State of Wisconsin.
22	At all times relevant to the First Amended Complaint, Respondent was a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
23	At all times relevant to the First Amended Complaint, Respondent owned a place of business at 3600 West Elm Street, Milwaukee, Wisconsin, 53209.
24	At all times relevant to the First Amended Complaint, Respondent was a "registrant" as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).
25	During calendar years 2007 and 2008, Respondent was the registrant of "Rozol Pocket Gopher Bait II" (Alternate name: "Rozol Pocket Gopher Bait Burrow Builder Formula") (hereinafter, "Rozol"), EPA Registration Number (EPA Reg. No.) 7173-244.
26	Upon registration of "Rozol," EPA Reg. No. 7173-244, and at all times relevant to the First Amended Complaint, "Rozol," EPA Reg. No. 7173-244, was classified as a restricted use product under Section 3(d), of FIFRA, 7 U.S.C. § 136a(d).
27	"Rozol," EPA Reg. No. 7173-244, was classified as a restricted use product under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), because of its potential secondary toxicity to nontarget organisms.
28	As a result of its classification as a restricted use product, "Rozol," EPA Reg. No. 7173-244, can only be sold to and be used by Certified Applicators or persons under the direct supervision of Certified Applicators and only for users covered by the Certified Applicator's certification.
29	During calendar years 2007 and 2008, "Rozol," EPA Reg. No. 7173-244, was also registered under the authority of Section 24(c) of FIFRA, 7 U.S.C. § 136v(c), to control black-tailed prairie dogs under "Special Local Needs" supplemental labels for the States of Kansas, Nebraska, Wyoming, Colorado, Texas and Oklahoma.
30	The use of "Rozol," EPA Reg. No. 7173-244, to control black-tailed prairie dogs was restricted to the following counties in Colorado: Adams, Arapahoe, Baca, Bent, Boulder, Broomfield, Cheyenne, Crowley, Denver, Douglas, El Paso, Elbert, Huerfano, Jefferson, Kiowa, Kit Carson, Larimer, Las Animas, Lincoln, Logan, Morgan, Otero, Phillips, Prowers, Pueblo, Sedgewick, Washington, Weld and Yuma.
31	The use of "Rozol," EPA Reg. No. 7173-244, to control black-tailed prairie dogs was restricted in Texas counties located 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	During calendar years 2007 and 2008, "Rozol," EPA Reg. No. 7173-244, was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

34	On June 2, 2008, an inspector employed by the State of Wisconsin, Bureau of Agrichemical Management, Compliance Section, and authorized to conduct inspections under FIFRA, conducted an inspection at Respondent's place of business located at 3600 West Elm Street in Milwaukee, Wisconsin.
35	The inspector issued a Federal SSURO pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), to Respondent regarding "Rozol," EPA Reg. No. 7173-244, during the June 2, 2008 inspection.
36	After the Federal SSURO was issued, Respondent sent out letters, entitled "EPA Literature Compliance-Rozol® Pocket Gopher Bait – Burrow Builder Formula / Prairie Dog Bait," to its distribution partners requesting that they each destroy any and all literature, flyers and advertisements entitled "Black-tailed Prairie Dog Control – Research Bulletin," dated October 17, 2007; "Livestock Weight Gain and Prairie Dogs: ESA Frontiers in Ecology & the Environment," November 2006 Reprint; and "True Cost of Black-tailed Prairie Dog Control (Whitepaper)," dated November 5, 2007.
37	On June 19, 2008, the inspector returned to Respondent's place of business located at 3600 West Elm Street, Milwaukee, Wisconsin, to collect documentary information from Respondent regarding "Rozol," EPA Reg. No. 7173-244.
38	On June 19, 2008, the inspector collected a written statement and documentary information regarding "Rozol," EPA Reg. No. 7173-244 from Respondent.
39	The documentary information collected by the inspector on June 19, 2008 included invoices showing the purchase of radio broadcast time by Respondent for the advertisement of its product, "Rozol," EPA Reg. No. 7173-244.
40	The documentary information collected by the inspector on June 19, 2008, also included the transcripts of the radio advertisements to be broadcast by each of the radio stations on behalf of Respondent.
41	The transcripts of the radio advertisements included four different versions of the advertisement to be broadcast regarding "Rozol," EPA Reg. No. 7173-244. <i>See Attachments A, B, C and D.</i>
42	All four versions of the radio advertisements to be broadcast regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
44	Respondent contracted with Golden Plains AG Network to broadcast radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, on the radio station, <i>KXXX-AM</i> in Colby, Kansas, on 120 occasions from on or about October 8, 2007 to on or about December 21, 2007 (<i>See Attachment E</i>).
46	Respondent contracted with Western Kansas Broadcast to broadcast radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, on the radio station, <i>KBUF</i> in Garden City, Kansas, on 229 occasions from on or about January 15, 2008 to on or about March 2, 2008 (<i>See Attachment F</i>).
48	Respondent contracted with High Plains Radio to broadcast radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, on the radio stations, <i>KICX-FM</i> , <i>KBRL-AM</i> , <i>KRKU-FM</i> and <i>KJBL-FM</i> all in McCook, Nebraska; <i>KFNF-FM</i> , in Oberlin, Nebraska; <i>KADL-FM</i> , in Imperial, Nebraska; and <i>KSTH-FM</i> , in Holyoke, Nebraska, on 1,521 occasions from on or about September 26, 2007 to on or about December 31, 2007 (<i>See Attachment G</i>).

56	Respondent contracted with <i>KGNC-AM</i> and <i>KXGL-FM</i> to broadcast these radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, on the radio stations, <i>KGNC-AM</i> and <i>KXGL-FM</i> in Amarillo, Texas, on 247 occasions from on or about November 12, 2007 to on or about April 26, 2008 (<i>See Attachment H</i>).
59	The documentary information collected by the inspector on June 19, 2008 included invoices showing the purchase of print advertising by Respondent for the advertisement of "Rozol," EPA Reg. No. 7173-244.
60	Respondent contracted with Colorado Cattlemen's Association to print an advertisement regarding "Rozol," EPA Reg. No. 7173-244, in its publication of <i>Cattle Guard</i> in October 2007.
61	The October 2007 issue of <i>Cattle Guard</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
62	The print advertisement in the October 2007 issue of <i>Cattle Guard</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
64	Respondent contracted with Kansas Livestock Association to print advertisements regarding "Rozol," EPA Reg. No. 7173-244, in its monthly publication of <i>Kansas Stockman</i> from October 2007 through February 2008.
65	The October 2007 issue of <i>Kansas Stockman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
66	The print advertisement in the October 2007 issue of <i>Kansas Stockman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
68	The November 2007 issue of <i>Kansas Stockman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
69	The print advertisement in the November 2007 issue of <i>Kansas Stockman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
71	The January 2008 issue of <i>Kansas Stockman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
72	The print advertisement in the January 2008 issue of <i>Kansas Stockman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
74	The February 2008 issue of <i>Kansas Stockman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
75	The print advertisement in the February 2008 issue of <i>Kansas Stockman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
77	Respondent contracted with Nebraska Cattlemen, Inc. to print advertisements regarding "Rozol," EPA Reg. No. 7173-244, in its monthly publication of <i>Nebraska Cattleman</i> from October 2007 through February 2008.
78	The October 2007 issue of <i>Nebraska Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
79	The print advertisement in the October 2007 issue of <i>Nebraska Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."

81	The November 2007 issue of <i>Nebraska Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
82	The print advertisement in the November 2007 issue of <i>Nebraska Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
84	The December 2007 issue of <i>Nebraska Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
85	The print advertisement in the December 2007 issue of <i>Nebraska Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
87	The January 2008 issue of <i>Nebraska Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
88	The print advertisement in the January 2008 issue of <i>Nebraska Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
90	The February 2008 issue of <i>Nebraska Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
91	The print advertisement in the February 2008 issue of <i>Nebraska Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
93	Respondent contracted with Oklahoma Cowman to print an advertisement regarding "Rozol," EPA Reg. No. 7173-244, in its publication <i>Oklahoma Cowman</i> in February 2008.
94	The February 2008 issue of <i>Oklahoma Cowman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
95	The print advertisement in the February 2008 issue of <i>Oklahoma Cowman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
97	Respondent contracted with The Cattleman to print advertisements regarding "Rozol," EPA Reg. No. 7173-244, in its monthly publication of <i>The Cattleman</i> in October 2007, November 2007, March 2008 and April 2008.
98	The October 2007 issue of <i>The Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
99	The print advertisement in the October 2007 issue of <i>The Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
101	The November 2007 issue of <i>The Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
102	The print advertisement in the November 2007 issue of <i>The Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
104	The March 2008 issue of <i>The Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
105	The print advertisement in the March 2008 issue of <i>The Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."

107	The April 2008 issue of <i>The Cattleman</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
108	The print advertisement in the April 2008 issue of <i>The Cattleman</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
110	Respondent contracted with Wyoming Livestock Roundup to print advertisements regarding "Rozol," EPA Reg. No. 7173-244, in its weekly publication of the <i>Wyoming Livestock Roundup</i> from February 16, 2008 through April 5, 2008.
111	The February 16, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
112	The print advertisement in the February 16, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
114	The February 23, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
115	The print advertisement in the February 23, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
117	The March 1, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
118	The print advertisement in the March 1, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
120	The March 8, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
121	The print advertisement in the March 8, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
123	The March 15, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
124	The print advertisement in the March 15, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
126	The March 22, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
127	The print advertisement in the March 22, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
129	The March 29, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.
130	The print advertisement in the March 29, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
132	The April 5, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.

133	The print advertisement in the April 5, 2008 weekly issue of <i>Wyoming Livestock Roundup</i> regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."
135	On or about March 2, 2005, Office of Pesticides Programs, Registration Division, accepted a label ("accepted label") regarding "Rozol," EPA Reg. No. 7173-244, that was submitted by Respondent.
140	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, Oklahoma, Texas and Wyoming.
141	The Direct Mail Packages included cover letters, dated October 31, 2007, that were entitled " <u>SUBJECT – ROZOL ® POCKET GOPHER BAIT.</u> "
142	The cover letters, dated October 31, 2007, stated "Rozol," EPA Reg. No. 7173-244, was intended both "For Black – Tailed Prairie Dog (BTPD) Control" and "For Control of Pocket Gophers."
143	The Direct Mail Packages also included sales literature regarding "Rozol," EPA Reg. No. 7173-244, entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin.</i> "
144	The date on the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin,</i> " regarding "Rozol," EPA Reg. No. 7173-244 was October 17, 2007.
145	Respondent sent the Direct Mail Packages to its distribution partners and/or customers to advertise "Rozol," EPA Reg. No. 7173-244.
146	During calendar years 2007 and 2008, the cover letters, dated October 31, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Provides the most control available in a <u>single application.</u> " (Emphasis in original.)
149	During calendar years 2007 and 2008, the cover letters, dated October 31, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: " <u>Poses low primary poisoning potential to birds and other non-targets.</u> " (Emphasis in original.)
152	During calendar years 2007 and 2008, the cover letters, dated October 31, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Both restricted-use and general-use Rozol products are formulated using proven anticoagulant chlorophacinone at 50 PPM (parts per million) - unlike other half-strength, diphacinone-based baits containing as low as 25PPM."
155	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Rozol consistently controlled Prairie Dog populations using a single application."
158	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: " <u>Conclusion:</u> Rozol delivers <u>proven</u> single application effectiveness." (Emphasis in original.)
161	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Secondary Hazard / Nearly all Prairie Dogs expired underground."

164	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: " <u>Conclusion</u> : Above-ground exposure risk to non-targets from Rozol is insignificant." (Emphasis in original.)
167	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Over all sites, 95% average population reduction was achieved as measured by the 'plugged burrow' census method."
170	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Over all sites, 94% average population reduction was achieved when measured by the 'visual count' census method."
173	During calendar years 2007 and 2008, the sales literature regarding "Rozol," EPA Reg. No. 7173-244 entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following statement: "Traditional control products such as zinc phosphide or Diphacinone-based anticoagulants have not proven to effectively prevent population recovery, leading to the need to costly re-treatment."
176	During calendar years 2007 and 2008, the sales literature regarding "Rozol," EPA Reg. No. 7173-244 entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following statement: "Kaput-D Prairie Dog Bait (25 PPM) achieved only 53% to 56% control."
179	During calendar years 2007 and 2008, the sales literature regarding "Rozol," EPA Reg. No. 7173-244 entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following statement: "Kaput-D Pocket Gopher Bait* (50 PPM) 2X the rate of active ingredient, achieved only 56% to 57% control. *Not labeled for Black-Tailed Prairie Dog." (Footnote found in original text).
182	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Comparative Toxicity Profile Overall Risk to Birds and Mammals / Rozol is ranked over 50% lower than zinc phosphide in the EPA's overall risk index and 1/3 lower than Diphacinone (Kaput-D)."
185	During calendar years 2007 and 2008, the sales literature regarding "Rozol," EPA Reg. No. 7173-244 entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following statement: "Rozol's active ingredient (chlorophacinone) is ten times (10X) less toxic to dogs as Kaput-D's (diphacinone)."
188	During calendar years 2007 and 2008, the sales literature regarding "Rozol," EPA Reg. No. 7173-244 entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following statement: "Chlorophacinone is over 100X more effective on mice than dipachinone."
191	During calendar years 2007 and 2008, the sales literature entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following claim regarding "Rozol," EPA Reg. No. 7173-244: " <u>Conclusion</u> : Rozol- the lowest risk profile among Black Tailed Prairie Dog bait alternatives... Why risk potential harm to employees, livestock, birds, pets or other non-targets?" (Emphasis in original.)

194	During calendar years 2007 and 2008, the sales literature regarding "Rozol," EPA Reg. No. 7173-244 entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> " made the following statement: "Chart entitled "Compare the products for yourself - there are many differences."
199	Respondent's radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, that began broadcasting on or about September 26, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Rozol - proven single application effectiveness for the control of black-tailed prairie dogs."
202	Respondent's radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, that began broadcasting on or about September 26, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Proven in university studies on over 10,000 burrows to get 94% control with a single treatment."
211	During the June 2, 2008 inspection, the inspector issued a Federal SSURO, pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), to Respondent regarding "Rozol," EPA Reg. No. 7173-244.
212	After the June 2, 2008, Federal SSURO was issued, Respondent sent out letters, entitled " <i>EPA Literature Compliance-Rozol® Pocket Gopher Bait - Burrow Builder Formula / Prairie Dog Bait</i> ," to its distribution partners requesting that they each destroy any and all literature, flyers and advertisements entitled " <i>Black-tailed Prairie Dog Control - Research Bulletin</i> ," dated October 17, 2007; " <i>Livestock Weight Gain and Prairie Dogs: ESA Frontiers in Ecology & the Environment</i> ," November 2006 Reprint; and " <i>True Cost of Black-tailed Prairie Dog Control (Whitepaper)</i> ," dated November 5, 2007.
213	On or about October 1, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to United Suppliers Inc., located at 30473 260 th Street, Eldora, Iowa 50627.
214	On or about October 8, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Agrilience Service Center, located at East Highway 23 and 61, Grant, Nebraska 69341.
215	On or about October 19, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Agrilience Service Center, located at 1250 Rundell Road, Gering, Nebraska 69341.
217	On or about December 3, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, Inc., located at 11333 East 55 th Avenue, Unit C, Denver, Colorado 80239.
218	On or about December 4, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, (Shipper's No./Carrier's No. 012559) to Van Diest Supply, located at 1434 220 th Street, Webster City, Iowa 50595.
219	On or about December 4, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, (Shipper's No./Carrier's No. 012563) to Van Diest Supply, located at 1434 220 th Street, Webster City, Iowa 50595.
220	On or about December 6, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 1434 220 th Street, Webster City, Iowa 50595.

221	On or about December 7, 2007, Respondent distributed or sold 80 bags of "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at 425 Railroad Avenue, Bridgeport, Nebraska 69336.
222	On or about December 12, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Wilbur Ellis, located at 2765 FM 2397, Frionia, Texas 79035.
223	On or about December 19, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.
224	On or about January 18, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to UAP Distribution North, located at 2025 South Old Highway 83, Garden City, Kansas 67846.
225	On or about January 23, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Pro-Chem, located at 900 Ross Street, Amarillo, Texas 79404.
226	On or about January 24, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.
227	On or about January 25, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at 4302 Locust Street, Lubbock, Texas 79404.
228	On or about February 5, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Pro-Chem, located at 900 Ross Street, Amarillo, Texas 79404.
229	On or about February 8, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at Highway 183, Route 1, Box 431, Clinton, Oklahoma 73601.
230	On or about February 14, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.
231	On or about February 14, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Wilbur-Ellis, located at 1 Mile Southwest U.S. Highway 60, Hereford, Texas 79045.
232	On or about February 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed, located at 126 North 10 th Street, Broken Bow, Nebraska 68822.
233	On or about March 6, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest, located at 71703 US Highway 83, McCook, Nebraska 69001.
234	On or about March 6, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Heritage Seed, located at 324 Main Street, Crawford, Nebraska 69339.
235	On or about March 7, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 1434 220 th Street, Webster City, Iowa 50595.
236	On or about March 10, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Pro-Chem, located at 900 Ross Street, Amarillo, Texas 79404.

237	On or about March 13, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 71703 U.S. Highway 83, McCook, Nebraska 69001.
238	On or about March 13, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed Company, located at 126 North 10 th Street, Broken Bow, Nebraska 68822.
239	On or about March 14, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at 601 West 1 st Avenue, Holdrege, Nebraska 68949.
240	On or about March 17, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 71703 U.S. Highway 83, McCook, Nebraska 69001.
241	On or about March 18, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at 4302 Locust Street, Lubbock, Texas 79404.
242	On or about March 19, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Farmers Coop Grain, located at 102 West G Street, Trenton, Nebraska 69044.
243	On or about March 24, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed Company, located at 126 North 10 th Street, Broken Bow, Nebraska 68822.
244	On or about March 24, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to McCoy Farms, located at HC 72 Box 1, Crookston, Nebraska 69212.
245	On or about March 31, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.
246	On or about April 4, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed Company, located at 126 North 10 th Street, Broken Bow, Nebraska 68822.
247	On or about April 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Richard Robbins, located at 20500 County Road 52, Walsh, Colorado 81092.
248	On or about April 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.
249	On or about April 18, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 71703 U.S. Highway 83, McCook, Nebraska 69001.
251 ²	On or about April 25, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at Highway 183, Route 1, Box 431, Clinton, Oklahoma 73601.

² "April 2" has been changed to "April 25" in the stipulation to incorporate the change identified in the Amended Answer.

252	On or about May 1, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Bayne Seed & Supply, located at 3900 North Lamont Road, Hershey, Nebraska 69143.
253	On or about May 9, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at 4302 Locust Street, Lubbock, Texas 79404.
254	On or about May 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.
255	On or about May 30, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Gross Seed, located at Highway Contract Route 66 Box 13, Johnstown, Nebraska 69214.
256	On August 22, 2008, EPA amended the Federal SSURO, dated June 2, 2008 "Rozol," EPA Reg. No. 7173-244.
257 ³	The amended Federal SSURO prohibited Respondent from distributing the following marketing materials or labeling for "Rozol," EPA Registration Number 7173-244: (1) the handout titled "Black-tailed Prairie Dog Control Research Bulletin," (2) the handout titled "Understanding the True Cost of Treatment" by Ted Bruesch, National Technical Support Manager, Liphatech, (3) the booklet titled "Control Pocket Gophers & Black-Tailed Prairie Dogs," and (4) 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 U.S. EPA.
258	During calendar years 2009 and 2010, Respondent was the registrant of "Rozol," EPA Reg. No. 7173-244.
259	On or about May 13, 2009, Respondent registered "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.
260	Prior to the registration of "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on May 13, 2009, Respondent had registered "Rozol," EPA Reg. No. 7173-244, under the authority of Section 24(c) of FIFRA, 7 U.S.C. § 136v(c), to control black-tailed prairie dogs under "Special Local Needs" supplemental labels.
262	During calendar years 2009 and 2010, Respondent was the registrant of "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.
263	During calendar years 2009 and 2010, "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, was classified as a restricted use product under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).
264	"Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, was classified as a restricted use product under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), because of its potential secondary toxicity to nontarget organisms.
265	As a result of its classification as a restricted use product, "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, can only be sold to and be used by Certified Applicators or persons under the direct supervision of Certified Applicators and only for users covered by the Certified Applicator's certification.
266	During calendar years 2009 and 2010, "Rozol," EPA Reg. No. 7173-244, was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

³ This language now tracks the Amended SSURO. See EPA000436.

267	During calendar years 2009 and 2010, "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
268	On or about May 13, 2009, the Office of Pesticides Program, Registration Division accepted a label regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, that was submitted by Respondent.
269	The "accepted label" and any subsequent amendments are a part of the statement required by Respondent in connection with its registration "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.
270	The "accepted label" and any subsequent amendments identify the label language approved by EPA for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.
273	Respondent's website at www.liphatech.com advertised its pesticide products to the public.
274	Respondent's website at www.liphatech.com included a link entitled "Contact Us - Sales Ag/Animal Health," which included a list of sales managers throughout the country with each manager's corresponding contact information (including phone, mobile and e-mail information).
275	On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com : " Proven Single Application Effectiveness - When properly applied in all active burrows of a colony, control typically exceeds 85%, and can be as high as 100%." (Emphasis in original).
278	On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com : " Low cost per acre - Savings in time, labor and fuel exceed comparative total costs of other methods such as zinc phosphide, diphacinone, phos-toxin, and foam or propane-based systems." (Emphasis in original).
281	On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com : " Superior Weatherability - Rozol does not lose its effectiveness when wet. It outlasts Zinc Phosphide." (Emphasis in original).
284	On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com : " Provides control, regardless - With many alternative methods, if the target rodent is not in the burrow during application - success is reduced or control is lost altogether." (Emphasis in original).
287	On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com : " Best Bait Acceptance & Favorable Toxicity Profile - According to the EPA's overall risk assessment, Rozol offers lower overall risk than Zinc Phosphide or Diphacinone, And Prairie dogs will eat it in the burrow, so there is less risk to non-target wildlife." (Emphasis in original).

290	On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: " Lower Primary Poisoning Potential - Rozol's toxicity to birds is 20X (times) less than for ZP. Rozol less toxic to dogs than ZP or Diphacinone." (Emphasis in original).
293	On November 18, 2009, Respondent made the following claims in its brochure entitled " <i>Control Range Rodents</i> " regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: " Outstanding Single Application Effectiveness " (Emphasis in original).
296	On November 18, 2009, Respondent made the following claims in its brochure entitled " <i>Control Range Rodents</i> " regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: " Proven Reliability - In university trials on over 11,400 burrows to provide over 94% control in one treatment (when properly and thoroughly applied to all active burrows in a colony)." (Emphasis in original).
299	On November 18, 2009, Respondent made the following claims in its brochure entitled " <i>Control Range Rodents</i> " regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: " Highly Palatable - Food-grade winter wheat grain (10% protein) is a preferred feed source for field rodents and provides excellent acceptance and control" (Emphasis in original).
302	On November 18, 2009, Respondent made the following claims in its brochure entitled " <i>Control Range Rodents</i> " regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: " Superior Weatherability - Rozol does not lose its effectiveness when wet - it outlasts zinc phosphide and can be used under diverse weather conditions." (Emphasis in original).
305	On November 18, 2009, Respondent made the following claims in its brochure entitled " <i>Control Range Rodents</i> " regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: " Easy-to-Use/Less Work - No need to pre-treat and less repeat applications." (Emphasis in original).
308	On November 18, 2009, Respondent made the following claims in its brochure entitled " <i>Control Range Rodents</i> " regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on <u>www.liphatech.com</u> : " Lower Primary Poisoning Potential to Non-Target Birds and Livestock - Rozol's primary toxicity to birds is much less than that of acute toxicants." (Emphasis in original, footnote deleted).
330	On February 10, 2010, Respondent's website at www.liphatech.com made the same claims as it did on November 18, 2009.
332	On February 19, 2010, Respondent's website at www.liphatech.com made the same claims as it did on November 18, 2009.
334	On February 23, 2010, Respondent's website at www.liphatech.com made the same claims as it did on November 18, 2009.
346	On March 4, 2010, EPA issued another SSURO to Respondent regarding "Rozol," EPA Reg. No. 7173-244.
347	The March 4, 2010 SSURO also addressed "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

349	EPA did not approve nor authorize the advertisements that were found on Respondent's website, www.liphatech.com, on November 18, 2009, February 10, 2010, February 19, 2010, and February 23, 2010 regarding "Rozol," EPA Reg. No. 7173-244.
350	EPA did not approve nor authorize the advertisements that were found on Respondent's website, www.liphatech.com, on November 18, 2009, February 10, 2010, February 19, 2010, and February 23, 2010 regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.
351	EPA did not approve the distribution of any advertisements that were found on Respondent's website, www.liphatech.com, on November 18, 2009, February 10, 2010, February 19, 2010 and February 23, 2010 in the form of any literature, flyers, or advertisements to Respondent's distributor partners for either "Rozol," EPA Reg. No. 7173-244, nor "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.
352	After the March 4, 2010 Federal SSURO was issued, Respondent sent letters to 48 of its distribution partners (<i>See Attachment I</i>) requesting that they each destroy/disregard "any and all literature, flyers, advertisements" regarding "Rozol," EPA Reg. No. 7173-244, and "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, including brochures entitled " <i>Control Range Rodents</i> ," dated September 24, 2009 or older.
357	On September 18, 2009, Complainant issued a Notice of Intent to File an Administrative Complaint against Liphatech, Inc. to Respondent.
358	On April 1, 2010, Complainant issued an Updated Notice of Intent to File an Administrative Complaint (Updated Notice) against Liphatech, Inc. to Respondent.
360	The April 1, 2010 Updated Notice identified a proposed penalty of \$2,941,456, although the letter specified that the notice was not a demand to pay a penalty.
	On June 2, 2008, Arthur J. Fonk, Environmental Enforcement Specialist, Wisconsin Department of Agriculture, Trade and Consumer Protection ("WDATCP"), issued a Stop Sale, Use or Removal Order (SSURO) to Liphatech regarding Rozol Pocket Gopher Bait Burrow Builder Formula, EPA Reg. No. 7173-244, and the underlying 24(c) special local needs registrations for Rozol Prairie Dog Bait.
	Under the FIFRA Enforcement Response Policy, the assigned Gravity Adjustment Level for the "Compliance History" component is 0.
	Ms. Claudia Niess of U.S. EPA Region 5 reviewed the claims made on Liphatech's website on November 18, 2009, and on February 10, 19, and 23, 2010.
	During all times relevant to the Amended Complaint, Liphatech was the registrant of Rozol Pocket Gopher Bait, EPA Reg. No. 7173-184.
	Rozol Pocket Gopher Bait, EPA Reg. No. 7173-184, is a general use product.
	At all times relevant to the Amended Complaint, Liphatech's website did not allow Rozol, EPA Reg. No. 7173-244, or Rozol Prairie Dog Bait, EPA Reg. No. 7173-286, to be purchased on the website.
	At all times relevant to the Amended Complaint, Liphatech's website did not contain product pricing information for Rozol, EPA Reg. No. 7173-244, or Rozol Prairie Dog Bait, EPA Reg. No. 7173-286.

II. Stipulation Regarding Respondent's Ability to Pay and Size of Business

Consistent with Respondent's August 3, 2010, *Response of Liphatech, Inc. to Complainant's Request for Voluntary Production of Financial Information*, Respondent's October 28, 2010, *Prehearing Information Exchange*, and the Chief Judge's June 2, 2011, *Order of Complainant's Motion in Limine to Exclude Testimony and Evidence*,⁴ the undersigned counsel of record for Liphatech stipulates that it has already waived any challenge, argument or objection to the penalty based on or otherwise relating to the factors "the size of the business of the person charged" and "the effect on the person's ability to continue in business" set forth in Section 14(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a)(4), in the above matter.

The stipulations set forth above are limited to the issue of the appropriate penalty to assess under Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). This stipulation does not affect any of Respondent's defenses to its liability for the violations alleged in Counts 2,141 through 2,231 of the First Amended Complaint, and Respondent reserves the right to contest its alleged liability for such violations, if any. This stipulation does not affect any of Respondent's other defenses to the imposition of a penalty or to the amount of penalty proposed by Complainant for Counts 1 through 2,231 of the First Amended Complaint.

⁴ In its August 3, 2010, *Response of Liphatech, Inc. to Complainant's Request for Voluntary Production of Financial Information*, Respondent waived any claim that "it is unable to pay the proposed penalty or that payment will adversely affect its ability to continue in business." In its October 28, 2010, *Prehearing Information Exchange*, Respondent stated "Respondent does not contend that it is unable to pay the proposed penalty or that the payment will adversely affect its ability to continue in business. In addition, Respondent does not contest that its sales are greater than \$10 million per year." Resp's. PHX at 47. Finally, in Chief Judge Biro's June 2, 2011, *Order of Complainant's Motion in Limine to Exclude Testimony and Evidence*, she notes that "Respondent concedes that only the 'gravity' factor is at issue in this matter." Order at 12.

III. Joint Stipulated Exhibits

On behalf of the Parties, the undersigned counsels of record for U.S. EPA and Liphatech hereby jointly stipulate as follows with respect to the exhibits listed below:

a. Stipulation of Exhibits that are Admissible and Should be Moved into the Record

- (1) The exhibits are true, accurate and complete copies of the original documents;
- (2) The exhibits are genuine and authentic;
- (3) There are no circumstances that would make it unfair to rely on the exhibits, as duplicates of the original documents, in lieu of the originals and;
- (4) The Exhibits are admissible at the hearing in this matter without any further evidentiary foundation being laid;
- (5) The Parties waive any and all objections to the admissibility of the exhibits listed below in this section based on Part 22 of the Consolidated Rules;
- (6) The Parties are not stipulating to
 - (a) the truthfulness of any particular statements in any of the following exhibits,
 - (b) the credibility of the person(s) making any such statements in any of the exhibits,
 - (c) or the weight to be given to any of the exhibits.
- (7) The Parties may introduce admissible evidence at the time of hearing to explain and/or place into context the exhibits listed below in this section; and
- (8) The Parties respectfully move this Court to admit the following exhibits into evidence for the above captioned proceeding.

I. Complainant's Exhibits that the Parties Agree are Admissible⁵:

Complainant's Exhibit number	Complainant's Exhibits that are Admissible
1a through d	Packet for "Rozol Pocket Gopher Bait II," EPA Reg. No. 7173-244
2a through g	Kansas Special Local Needs Packet For Rozol Prairie Dog Bait
3a through g	Nebraska Special Local Needs Packet For Rozol Prairie Dog Bait
4a through g	Wyoming Special Local Needs Packet For Rozol Prairie Dog Bait
5a through e	Colorado Special Local Needs Packet For Rozol Prairie Dog Bait
6a through d	Texas Special Local Needs Packet For Rozol Prairie Dog Bait
7a through c	Oklahoma Special Local Needs Packet For Rozol Prairie Dog Bait
8 (RX 79)	Region 7 U.S. EPA referral to Region 5 U.S. EPA containing two Kansas Department of Agriculture investigations dated November 21, 2007 and November 28, 2007
9	CD-R collected by Kansas Department of Agriculture on the November 28, 2007 inspection
12 (RX 80)	Region 8 U.S. EPA referral to Region 5 U.S. EPA
13	Request from Region 5 to Wisconsin Department of Agriculture, Trade and Consumer Protection to inspect Liphatech and issue a Stop Sale, Use and Removal Order (SSURO)
14 and 14a (RX 81)	Inspection Packet from Wisconsin Department of Agriculture, Trade and Consumer Protection from June 2, 2008 through June 19, 2008 and three ring binder collected by Wisconsin Department of Agriculture, Trade and Consumer Protection on June 19, 2008
15	Federal SSURO, dated April 11, 2008
16	Record of conversation authored by Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section
17 (RX 82)	Letter from Thomas Schmit to Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section, re: the status of compliance with the June 2, 2008 SSURO
18 and 19 (RX 83)	Enforcement Case Review (ECR) request made by Region 5 U.S. EPA and ECR from Daniel Peacock of U.S. EPA's Insecticide-Rodenticide Branch of the Registration Division
20	Electronic mail between Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section, and Thomas Schmit regarding Liphatech's advertising claims
21	Amended Federal SSURO
22	Letter from Region 5 U.S. EPA to Liphatech
23	Letter from Liphatech responding to Region 5's January 6, 2009 letter
24 (RX37)	Prefiling letter from Region 5 U.S. EPA to Liphatech

⁵ For the purpose of convenience, the respective exhibits numbers for Complainant's Exhibits and Respondent's Exhibits have been retained for easy identification.

26	Referral from Region 8 U.S. EPA entitled "Misleading Claims- Rozol Internet Advertising"
27a and b	Notice of Pesticide Registration and Accepted Label for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286 and updated Accepted Label for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286
28	Information gathered from www.liphatech.com by Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section
29	Information gathered from www.liphatech.com by Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section
30	Information gathered from www.liphatech.com by Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section
31	Information gathered from www.liphatech.com by Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section
32	Federal SSURO
33 (RX 38)	Amended Prefiling letter
38 (RX 12)	Dr. William Erickson and Douglas Urban, U.S. EPA, Office of Pesticides Program, Environmental Fate and Effects Division, <i>Potential Risks of Nine Rodenticides to Birds and Nontarget Mammals: a Comparative Approach</i>
42	Attachment A of First Amended Complaint: Transcript of version 1 of Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244
43	Attachment B of First Amended Complaint: Transcript of version 2 of Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244
44	Attachment C of First Amended Complaint: Transcript of version 3 of Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244
45	Attachment D of First Amended Complaint: Transcript of version 4 of Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244
46	Attachment E of First Amended Complaint: List of dates that Golden Plains AC Network broadcast radio advertisements for Respondent regarding "Rozol," EPA Reg. No. 7173244
47	Attachment F of First Amended Complaint: List of dates that Western Kansas Broadcast broadcast radio advertisements for Respondent regarding "Rozol," EPA Reg. No. 7173-244
48	Attachment G of First Amended Complaint: List of dates that High Plain Radio broadcast radio advertisements for Respondent regarding "Rozol," EPA Reg. No. 7173-244
49	Attachment H of First Amended Complaint: List of dates that KGNC-AM and KXGL-FM in Texas broadcast radio advertisements for Respondent regarding "Rozol," EPA Reg. No. 7173-244
51 (RX33)	U.S. EPA FIFRA Enforcement Response Policy
52	Information gathered from www.liphatech.com by Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section,
55a and b	Penalty Documents
60 (RX 74)	Policy on Civil Penalties, U.S. EPA General Enforcement Policy #GM-21

61 (RX 75)	A Framework for Statute-Specific Approaches To Penalty Assessments: Implementing U.S. EPA's Policy On Civil Penalties, U.S. EPA General Enforcement Policy #GM-22
69	Declaration of Richard T. Westlund, U.S. EPA, Office of Environmental Information, Collection Strategies Division, Information Collection Request Team Leader
70	FIFRA Delegation No. 5-14
71	FIFRA Delegation No.5-14/15-A
72 (RX76)	Material Safety Data Sheet for Rozol Pocket Gopher Bait, EPA Reg. 7173-184 and Rozol Pocket Gopher Bait Borrow Builder Formula, EPA Reg. No. 7173-244
73 (RX 76)	Material Safety Data Sheet for Rozol Prairie Dog Bait, EPA Reg. No. 7173-286
75 (RX 27)	Rozol Pocket Gopher Bait for Prairie Dog Control in Nebraska and Wyoming SLN Review – U.S. EPA SLNs NE060001 and WY060004
76	SLN Review Conducted by U.S. EPA Environmental Fate and Effects Division (EFEDs) - KS 07-0003
77	SLN Review Conducted by U.S. EPA Environmental Fate and Effects Division (EFEDs) – WY07-0005
78	SLN Review Conducted by U.S. EPA Environmental Fate and Effects Division (EFEDs) – TX-070008
79	Ecological Risk Assessment Conducted by U.S. EPA Environmental Fate and Effects Division (EFEDs) Evaluating Expanded Uses of Rozol Black Tailed Prairie Dog Bait
80 (RX 29)	Institutional Review Board (IRB) Efficacy Review of Rozol Prairie Dog Bait
83	Labeling Requirements for Pesticides and Devices, 49 Fed. Reg. 37960 (Sept. 26, 1984)
84	Pesticide Advertising, 51 Fed. Reg. 24393 (July 3, 1986)
85	Advertising of Unregistered Pesticides, Unregistered Uses, of Registered Pesticides and FIFRA Section 24(c) Registrations, 54 Fed. Reg. 1122 (Jan. 11, 1989)
87	U.S. EPA Label Review Manual: Chapter 6: Use Classification
88	U.S. EPA Label Review Manual: Chapter 12: Labeling Claims
89	Daryl D. Fisher and Robert M. Timm, <i>Laboratory Trial of Chlorophacinone as a Prairie Dog Toxicant</i> , Internet Center for Wildlife Damage Management, Great Plains Wildlife Damage Control Workshop Proceedings
90a and b	Red Willow County (Nebraska) Bald Eagle Necropsy
91a and b	Logan County (Kansas) Raptor Deaths
95	Ecological Effects Branch (EEB) Review of Rozol Pocket Gopher Bait
96	U.S. EPA Overview of the Ecological Risk Assessment Process in the Office of Pesticides Programs – Endangered and Threatened Species Effects Determinations

97 (RX 31)	U.S. EPA Reregistration Eligibility Decision (RED) Rodenticide Cluster, EPA738-R-98-007
100	U.S. Fish and Wildlife Service Biological Opinion, <i>Effects of 16 Vertebrate Control Agents on Threatened and Endangered Species</i>
101 (RX 84)	U.S. EPA Pesticide Registration Notice 2002-1: List of Pests of Significant Public Health Importance
102 (Part of RX 73)	Final Order for In the Matter of Gary Withers, Kansas Department of Agriculture
107a through f	Packet for "Rozol Pocket Gopher Bait," EPA Reg. No. 7173-184
108	Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations, 75 Fed. Reg. 5318 (Feb. 2, 2010)
109	U.S. EPA Label Review Manual; Chapter 3: General Labeling Requirements
110	U.S. EPA Label Review Manual: Chapter 4: Types of Label Reviews
111	U.S. EPA Label Review Manual: Chapter 8: Environmental Hazards
116	Product Cancellation Order for Certain Pesticide Registrations, 75 Fed. Reg. 63178 (October 14, 2010)
125	Memorandum and accompanying review by EFED: Review of Chlorophacinone Wild Mammal Toxicity Study
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.
136	Printout of U.S. EPA website: <i>Pesticide Labeling Questions and Answers.</i>

2. Respondent's Exhibits that the Parties Agree are Admissible:

Respondent's Exhibit number	Respondent's Exhibits that are Admissible
1a-e, i, k	Packet For "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286
2a-h	Packet for "Rozol Pocket Gopher Bait II," EPA Reg. No 7173-244
3a-g	Packet for "Rozol Pocket Gopher Bait," EPA Reg. No. 7173-184
4a-b, d-j	Kansas Special Local Needs Registration Packet for Rozol Prairie Dog Bait
5a, g-i, k-n, q	Nebraska Special Local Needs Registration Packet for Rozol Prairie Dog Bait
6a-j, l, m	Wyoming Special Local Needs Packet For Rozol Prairie Dog Bait
7i-k,v-w	Colorado Special Local Needs Packet for Rozol Prairie Dog Bait
8g-h	Texas Special Local Needs Packet For Rozol Prairie Dog Bait
9d-f	Oklahoma Special Local Needs Packet For Rozol Prairie Dog Bait

10	Charles D. Lee and Scott E. Hygnstrom, Field Efficacy and Hazards of Rozol Bait for Controlling Black-Tailed Prairie Dogs
11	Charles D. Lee, In-burrow Application of Rozol to Manage Black-tailed Prairie Dogs
12	William Erickson and Douglas Urban, Potential Risks of None Rodenticides to Birds and Nontarget Mammals: A Comparative Approach
17	James Hobson, Ph.D., Chlorophacinone use to control prairie dogs: An environmental review with comparison to Zinc phosphide
27	W. Erickson, Ph.D, et al, Rozol Pocket Gopher Bait for Prairie Dog Control in Nebraska and Wyoming EPA SLNs NE060001 and WY060004
28	Liphatech's Response to Rozol Pocket Gopher Bait for Prairie Dog Control in Nebraska and Wyoming EPA SLNs NE060001 and WY060004
29	Institutional Review Board (IRB) Efficacy Review regarding Rozol Prairie Dog bait, EPA Reg. No. 7173-286
31	Reregistration Eligibility Decision (RED) Rodenticide Cluster
33	FIFRA Enforcement Response Policy
37	Notice of Intent To File An Administrative Complaint Against Liphatech, Inc.
38	Updated Notice of Intent to File An Administrative Complaint against Liphatech, Inc.
50a and b	Print Advertisement Circulation Information
59	E-Commerce Pesticides Statement Explaining Overall Intent of Label is to Manage Risks to Human Health and the Environment
60	53 Fed. Reg. 15951, 15962 (May 4, 1988)
73	<i>In re: Thomas Count Noxious Weed Department</i> , No. FIFRA 07-2010-0030, 2010 WL 2787715 (July 1, 2010); Final Order for In the Matter of Gary Withers, Kansas Department of Agriculture
74	Policy on Civil Penalties, EPA General Enforcement Policy #GM - 21
75	A Framework For Statute-Specific Approaches To Penalty Assessments: Implementing EPA's Policy On Civil Penalties #GM - 22
76	Material Safety Data Sheets for Rozol Pocket Gopher Bait, EPA Reg. No. 7173-184; Rozol Pocket Gopher Bait Burrow Builder Formula, EPA Reg. No. 7173-244; and Rozol Prairie Dog Bait, EPA Reg. No. 7173-286
79	Region 7 U.S. EPA Referral to Region 5 U.S. EPA, Including Report From November 21, 2007 Investigation
80	Region 8 Referral to Region 5 U.S. EPA
81	Inspection Packet from Wisconsin Department of Agriculture, Trade and Consumer Protection to Inspect Liphatech and Associated Correspondence From Liphatech
82	Letter From Thomas Schmit to Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section

83	Enforcement Case Review (ECR) Request and ECR Response from Daniel Peacock of U.S. EPA's Insecticide-Rodenticide Branch of Registration Division
84	U.S. EPA Pesticide Registration Notice 2002-1: List of Pests of Significant Public Health Importance
93	Authorized Distributor List

b. Stipulation of Exhibits Regarding Authenticity Only

- (1) The exhibits are true and accurate copies of the original documents;
- (2) The exhibits are genuine and authentic;
- (3) There are no circumstances that would make it unfair to rely on the exhibits, as duplicates of the original documents, in lieu of the originals and;
- (4) The Parties may introduce admissible evidence at the time of hearing to explain and/or place into context the exhibits listed below in this section.

The Parties are not stipulating to the relevance of, the proper evidentiary foundation for nor the admissibility of the exhibits listed below. Additionally, the parties are not stipulating to the truthfulness of any particular statements in any of the following exhibits, the credibility of the person(s) making any such statements in any of the exhibits, or the weight to be given to any of the exhibits.

Further, the Parties reserve the right to object to the admissibility of each of the following exhibits under Part 22 of the Consolidated Rules, including without limitation, objections on the grounds of relevance or materiality.

1. *Complainant's Exhibits that the parties agree are authentic only:*

Complainant's Exhibit number	Complainant's Exhibits that are authentic only
10	Statement by Claudia Niess regarding the duplication of the CD-R collected by Kansas Department of Agriculture on the November 28, 2007 inspection

11	Transcript of Rozol Radio Advertisements made from CD-R collected by Kansas Department of Agriculture on the November 28, 2007 inspection, transcribed by Claudia Niess
25	Record of conversation authored by Claudia Niess, U.S. EPA, Region 5, Pesticides and Toxics Compliance Section
34	Curriculum Vitae of Mr. John Hebert, U.S. EPA, Office of Pesticides Programs, Registration Division
35	Curriculum Vitae of Mr. Daniel Peacock, U.S. EPA, Office of Pesticides Programs, Registration Division
36	Curriculum Vitae of Dr. William Jacobs, U.S. EPA, Office of Pesticides Programs, Registration Division
37	Curriculum Vitae of Dr. William Erickson, U.S. EPA, Office of Pesticides Programs, Environmental Fate and Effects Division
39	Curriculum Vitae of Ms. Meredith Laws, U.S. EPA, Office of Pesticides Programs, Registration Division
40	Curriculum Vitae of Mr. Andrew Shelby, U.S. EPA, Office of Pesticides Programs, Environmental Fate and Effects Division
41	Curriculum Vitae of Dr. Thomas Bailey, U.S. EPA, Office of Pesticides Programs, Environmental Fate and Effects Division
50	Attachment I of First Amended Complaint: List of forty-eight (48) distributor partners that were asked to destroy/disregard advertisements regarding "Rozol," EPA Reg. No. 7173-244 and "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286 after EPA issued a Federal SSURO on March 4, 2010, to the Respondent
53	Electronic mail from Liphatech providing a plan to respond to the March 4, 2010 Federal SSURO
54	Electronic mail from Liphatech providing U.S. EPA with a list of distributors that Liphatech planned to contact in an effort to comply with the March 4, 2010 SSURO
56	Curriculum Vitae of Gail Coad, Industrial Economics
58	Electronic mail from Gail Coad, Industrial Economics, entitled "Gross Profit for inorganic chemical producer"
59	Declaration of Gail Coad, Industrial Economics, re: Ability to Pay
62	U.S. EPA Guidance on Determining a Violator's Ability to Pay a Civil Penalty
63	Dun & Bradstreet, Inc., Corporate Leads Portal on Liphatech
64	Printout from www.liphatech.com entitled "About Us"
65a and b	Printout from www.desangosse.com
66	Corporate Records on Liphatech, Inc.
67	Property Recording Information from the Department of Neighborhood Services, 3600 W. Elm Street, Milwaukee, Wisconsin
68	Glossary of Statistical Terms – Turnover Definition
74	Copy of Bi-Fold Advertising Brochure for Rozol products given to Nebraska Department of Agriculture in early 2006

81	Chlorophacinone (067707): Non-target exposure review of "Field Efficacy and Hazards of Rozol Bait for Controlling Black-Tailed Prairie Dogs" Conducted by U.S. EPA Environmental Fate and Effects Division (EFEDs)
82	EFEDs Reply to Formal Response Concerning Use of Avian Reproduction Studies to Fulfill Notice of Registration Requirement for Chlorophacinone
86	Pesticide Regulation (PR) Notice 93-1: Statement of Restricted Use Classification
92	Example of an accepted label with optional marketing claims: Hawk Rodenticide Ag
93	Example of an accepted label with optional marketing claims: Saturn II (Bromehalin)
94	Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition to List the Black-Tailed Prairie Dog as Threatened or Endangered, 73 Fed. Reg. 73211 (Dec. 2, 2008)
98	Liphatech, Inc. Final Report: Assessment of the Potential Impact of Chlorophacinone on Burying Beetles
99	Liphatech, Inc. Secondary Hazard Study Using Chlorophacinone — Killed Laboratory Rats Fed to Domestic Ferrets
103	Shawn E. Rich, Kansas Department of Agriculture, Declaration for CX 8 and 9
104	Shawn Hackett, Kansas Department of Agriculture, Declaration for CX 8 and 9
105	Mark Klapperich, Colorado Department of Agriculture, Declaration for CX 12
106	Charles King, South Dakota Department of Agriculture, Declaration for CX 26
112	Memorandum from Arthur Fonk, Wisconsin Department of Agriculture, Trade and Consumer Protection to amend Exhibit 14
113	Advertising Cost Analysis prepared by Claudia Niess
114 (RX 86)	Thomas M. Primus, <i>et al.</i> , <u>Chlorophacinone Residues in Rangeland Rodents: An Assessment of the Potential Risk of Secondary Toxicity to Scavengers</u> , Internet Center for Wildlife Damage Management, USDA National Wildlife Research Center — Staff Publications
115	Summary Report of all active chlorophacinone registrations with the U.S. EPA
117	Ms. Claudia Niess, Declaration
118	Ecological Risk Assessment and Effects Determination
119 a-b	Curriculum Vitae of Dr. Mark Alan Kirms, Senior and Wildlife Forensics Laboratory Forensic Specialist, U.S. Fish & Wildlife, National Fish and Wildlife Forensics Laboratory and Dr. Mark Alan Kirms, Declaration

120 a-b	Curriculum Vitae of Ms. Bonnie C. Yates, Senior Forensic Specialist, U.S. Fish & Wildlife, National Fish and Wildlife Forensics Laboratory, Mammal Unit, Morphology Section and Ms. Bonnie C. Yates, Declaration
121	Ecological Effects Test Guidelines OPPTS 850.2500 Field Testing for Terrestrial Wildlife
122	Memorandum and accompanying review by EFED: Chlorophacinone and Diphacinone: Review of "Field Efficacy Studies Comparing 0.005% and 0.01% Diaphacinone and Chlorophacinone Baits for Controlling California Ground Squirrels (<i>Spermophilus beecheyi</i>)"
123	EFED review: Chlorophacinone: Mammalian Secondary Hazard and Target Species Residue Study with 0.005% ai Bait
124	EFED review: Avian Secondary Hazard and Target Species Residue Study with 0.005% ai Bait
126	Memorandum and accompanying review by EFED: Chlorophacinone: Non-target exposure review of "Assessment of the Potential Impact of Chlorophacinone on Burying Beetles"
127	Annual Report 2010: Characterization of Avian Hazards Following Chlorophacinone (Rozol®) Use for Prairie Dog Control, authored by Dr. Nimish B. Vyas, U.S. Geological Survey
128	Curriculum Vitae of Mr. Brian Dyer, Environmental Protection Specialist
129	Curriculum Vitae of Dr. Nimish Vyas, U.S. Geological Survey, Patuxant Wildlife Research Center
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).
131	Witness description of Mr. Robert H. Fuhrman provided by Respondent in In Re: Rhee Bros., Inc., docket number FIFRA-03-2005-0028.
132	Claudia Niess, Declaration, with attached documentation showing the positions and responsibilities of Respondent's product distributors.
133	Claudia Niess, Declaration, with attached documentation showing Respondent's registered pesticide establishments during calendar years 2007 and 2008.
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.
137	Declaration of Claudia Niess and copy of "Metarex 4% Slug and Snail Bait" accepted amended label, EPA Reg. No. 7173-257
138	Copy of "Metarex 4% Slug and Snail Bait" accepted amended label, EPA Reg. No. 7173-257, along with Efficacy Review and Respondent's request for amendment

139	Colorado SLN packet for 7173-286
140	Kansas SLN packet for 7173-286
141	Letter from J. Hebert to Kansas Department of Agriculture
142	Letter from Kansas Department of Agriculture to J. Hebert
143	Excerpts from www.liphatech.com (printed on July 12, 2011)
144	Excerpts from www.integreadvertising.com
145	Email forwarding to Claudia Niess the list of distributors who received the "destroy/destruct" letter from Liphatech, Inc.
146	PR Notice 93-11
147	Curriculum Vitae of Dr. Thomas Steeger
148	Order On Remedy entered by the U.S. District Court for the District of Columbia in <i>Defenders of Wildlife v. Lisa P. Jackson, et al.</i> , 1:09-cv-01814-ESH
149	Email correspondence sent by Thomas Schmit of Liphatech, Inc. attaching report submitted pursuant to Order on Remedy

2. Respondent's Exhibits that the parties agree are authentic only:

Respondent's Exhibit number	Respondent's Exhibits that are authentic only
1f-h, j	Packet For "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286
4c	Kansas Special Local Needs Registration Packet for Rozol Prairie Dog Bait
5b-f,j,o-p	Nebraska Special Local Needs Registration Packet for Rozol Prairie Dog Bait
6k	Wyoming Special Local Needs Packet For Rozol Prairie Dog Bait
7a-h,l-u,x	Colorado Special Local Needs Packet for Rozol Prairie Dog Bait
8a-f	Texas Special Local Needs Packet For Rozol Prairie Dog Bait
9a-c,g	Oklahoma Special Local Needs Packet For Rozol Prairie Dog Bait
13	John Baroch, Secondary Hazard Study Using Chlorophacinone-Killed Laboratory Rats Fed to Black-billed Magpies (<i>Pica pica</i>)

14	Md. Sayed Ahmed, Ph.D., et al., Secondary Hazard Study Using Chlorophacinone-Killed Laboratory Rats Fed to Domestic Ferrets (<i>Mustela putorius furo</i>)
15	Ronald L. Baron, Ph.D., Secondary Hazard Evaluation of Chlorophacinone in Raptors and Chlorophacinone Residue Levels in Hawk, Owl and Vole Tissues from Pullman, Washington
16	Eric M. Silberhorn, et al., Ecological Risk Assessment for Grain-Based Field-Use Anticoagulant Rodenticides Registered by the California Department of Food and Agriculture for Special Local Needs
18	Christi A. Yoder, Ph.D., Acute Oral Toxicity (LD ₅₀) of Chlorophacinone in Black-Tailed Prairie Dogs (<i>Cynomys ludovicianus</i>)
19	David J. Horn and George Keeney, Assessment of the Potential Impact of Chlorophacinone on Burying Beetles
20	Melissa L. Zobel, Odor Determination of Rozol Gopher Bait
21	Robert M. Parker, Ph.D., Dermal Limit Study of Rozol Paraffinized Pellets Administered to New Zealand White Rabbits
22	R. C. Meyers and S. M. Christopher, Rozol Pellets: Ocular Irritancy Testing Using the Rabbit
23	R. C. Meyers and S. M. Christopher, Rozol Pellets: Cutaneous Irritancy Testing Using the Rabbit
24	R. C. Meyers and S. M. Christopher, Rozol Pellets: Dermal Sensitization Study in the Guinea Pig Using the Buehler Technique
25	Thomas M. Primus, Determination of Chlorophacinone Residues in Prairie Dog Whole Body and Liver Tissues
26	Shay Boatman, Efficacy of Several Rodenticide Baits for Controlling Black-Tailed Prairie Dogs (<i>Cynomys Ludovicianus</i>)
30	R.E.D. Facts, Rodenticide Cluster, prepared by U.S. EPA
32	Enforcement Response Policy For the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
34	Chapter Nineteen of the FIFRA Inspection Manual – Restricted-Use Pesticides: Dealer and Applicator Records Inspections
35a through f	State Pesticide Laws
36	40 C.F.R. Part 171 – Certification of Pesticide Applicators
39	Letter from U.S. EPA to Jeffrey Clark, Esq.
40 a-b	Robert H. Fuhrman
42	Civil Penalty Analysis Re: Docket No. FIFRA-05- 2010-0016 By Robert H. Fuhrman
43a through i	Charles D. Lee
44	Curriculum Vitae Of Dr. James Hobson, MorningStar Consulting, Inc.
45	Curriculum Vitae of Henry M. Jacoby, MS, The Acta Group, L.L.C.
46	Example Pesticide Advertising
47	Rozol Vole Bait, EPA Reg. No. 7173-242 Label and Registration Material
48	Pesticide Toxicity Categories
49	Radio Station Coverage Maps

50c and d	Print Advertisement Circulation Information
51	Open Records Request Submitted to Nebraska Department of Agriculture Regarding Rozol Prairie Dog Bait and Cover Letter of Response Thereto
52	Public Records Request Submitted to Wyoming Department of Agriculture Regarding Rozol Prairie Dog Bait and Cover Letter of Response Thereto
53	Public Records Request Submitted to Colorado Department of Agriculture and Cover Letter of Response Thereto
54	Public Records Request Submitted to Texas Department of Agriculture and Cover Letter of Response Thereto
55	Public Records Request Submitted to Oklahoma Department of Agriculture and Cover Letter of Response Thereto
56	Open Records Request Submitted to Wisconsin Department of Agriculture, Trade and Consumer Protection and Cover Letter of Response Thereto
57	Open Records Request Submitted to Kansas Department of Agriculture and Cover Letter of Response Thereto
58	Open Records Request Submitted to U.S. EPA and Email Cover Sheet of Response Thereto
61	75 Fed. Reg. 31775 <i>et seq.</i> (June 4, 2010)
62	Excerpts From U.S. EPA's 2010 NPDES Pesticides General Permit Fact Sheet
63	Charles D. Lee and Jeff LeFlore, Efficacy of 3 In-Burrow Treatments to Control Black-Tailed Prairie Dogs
64	AP Ag Oats Label, EPA Reg. No. 12455-102-3240
65	Prozap Zinc Phosphide Oat Bait Label, EPA Reg. No. 61282-14
66	Kaput-D Prairie Dog Bait, EPA SLN No. Tx-070004
67	Kaput-D Prairie Dog Bait, EPA SLN No. CO-060010
68	Kaput-D Prairie Dog Bait, EPA SLN No. TX-070015
69	Star Of the West Milling Co. Food Grade Wheat Information Sheet
70	Strychnine Reregistration Eligibility Decision (RED) prepared by U.S. EPA
71	Scott E. Hygnstrom and Kurt C. VerCauteren, Cost-effectiveness of five burrow fumigants for managing black-tailed prairie dogs
72	William W. Jacobs, IRB Branch Review-TSS
77	Material Safety Data Sheet for Prozap Zinc Phosphide Oat Bait, EPA Reg. No. 61282-14
78	Environmental Protection Agency (EPA) Office of the General Counsel Memorandum, 1973 WL 21961 (July 1973)
85	Pesticides and Public Health
86	Thomas M. Primus, et al., Chlorophacinone Residues in Rangeland Rodents: An Assessment of the Potential Risk of Secondary Toxicity to Scavengers

87	Jeff J. Mach, Field Efficacy of Rozol Pocket Gopher Bait (0.005% Chlorophacinone) for the Control of the Plains Pocket Gopher (<i>Geomys bursarius</i>)
88	Curriculum vitae of Dennis Estenson
89	Letter to Martha Kauffman, Managing Director, Northern Great Plains Program, World Wildlife Fund regarding World Wildlife Fund Petition to the U.S. Environmental Protection Agency for Suspension of Rozol Prairie Dog Bait dated June 5, 2009
90	Memorandum by Arnet Jones and Timothy Kiely, Benefits Assessment for Chlorophacinone (Rozol©) Use to Control Black-Tailed Prairie Dogs, DP 374422 (Note: pg. 11 missing in original)
91	Rozol Terms and Conditions of Sale
92	Liphatech, Inc. Work Instruction Procedure
94	W-2 Statements of Mark Newman (Business Confidential)
95	W-2 Statements of Jim Knuth (Business Confidential)
96	Chlorophacinone Registration Summary Report
97	Excerpt From EPA Label Review Manual
98	Certified Copy of Kansas Special Local Needs Registration Packet for Rozol Prairie Dog Bait
99	Certified Copy of Nebraska Special Local Needs Registration packet for Rozol Prairie Dog Bait
100	Certified Copy of Wyoming Special Local Needs Packet for Rozol Prairie Dog Bait
101	Certified Copy of Colorado Special Local Needs Packet for Rozol Prairie Dog Bait
102	Certified Copy of Texas Special Local Needs Packet for Rozol Prairie Dog Bait
103	Curriculum Vitae of James V. Aidala

Dated this 5th day of October, 2011.

Respectfully submitted,



Nadhi K. O'Meara

Erik H. Olson

Associate Regional Counsels

Gary E. Steinbauer

Assistant Regional Counsel

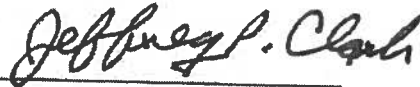
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In the Matter of Liphatech, Inc.
Docket No. FIFRA-05-2010-0016

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CERTIFICATE OF SERVICE

I hereby certify that the original and a true, accurate and complete copy of the parties' *Joint Stipulations and Joint Motion to Admit Certain Exhibits Into Evidence* 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 the Honorable Susan Biro, Chief Administrative Law Judge (via UPS overnight delivery) at the following address:

Honorable Susan L. Biro
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

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

Mr. Michael H. Simpson
Mr. Jeffrey P. Clark
jclark@reinhartlaw.com
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 6 day of October, 2011.



Patricia Jeffries - Harwell
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