



Reinhart Boerner Van Deuren s.c.
P.O. Box 2965
Milwaukee, WI 53201-2965

1000 North Water Street
Suite 1700
Milwaukee, WI 53202

Telephone: 414-298-1000
Fax: 414-298-8097
Toll Free: 800-553-6215
reinhartlaw.com

October 3, 2011



Jeffrey P. Clark
Direct Dial: 414-298-8131
jclark@reinhartlaw.com

DELIVERED BY COURIER

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

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.

Dear Regional Hearing Clerk:

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

On behalf of Respondent, Liphatech, Inc., I enclose for filing an original and two copies of Respondent's Opposition to Complainant's Motion For Leave to File Motion For Leave To File Sixth Supplemental Prehearing Exchange.

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,

Jeffrey P. Clark

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Encs.

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. FIFRA-05-2010-0016
)
Liphatech, Inc.) Hon. Susan Biro
Milwaukee, Wisconsin,)
)
Respondent.)
)
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RESPONDENT'S OPPOSITION TO COMPLAINANT'S MOTION FOR LEAVE
TO FILE MOTION FOR LEAVE TO FILE SIXTH SUPPLEMENTAL
PREHEARING EXCHANGE

Respondent, Liphatech, Inc., through its undersigned attorneys, respectfully submits its Opposition to Complainant's Motion for Leave to File Motion for Leave To File Sixth Supplemental Prehearing Exchange Instanter (the "Motion") pursuant to Section 22.16 of the Consolidated Rules.

On September 29, 2011, Complainant filed the Motion. According to the Presiding Officer's Order Scheduling Hearing, dated June 10, 2011 (the "Order"), the Presiding Officer required the parties to file all pre-hearing motions, including motions to supplement the pre-hearing exchange, on or before August 31, 2011. Despite the Order, Complainant now attempts to supplement its pre-hearing exchange with documents that were, according to Complainant, printed from Respondent's website on February 25, 2010.

Accordingly, Complainant's proposed Exhibit 150 was in Complainant's possession when it filed its Initial Prehearing Exchange on September 28, 2010; its Rebuttal Prehearing Exchange on November 10, 2010; its First Supplemental

Prehearing Exchange on January 25, 2011; its Second Supplemental Prehearing Exchange on February 28, 2011; its Third and Fourth Supplemental Prehearing Exchanges on August 19, 2011; and its Fifth Supplemental Prehearing Exchange on August 30, 2011.


"Inadvertent oversight" is not enough to overcome non-compliance with the Order. *See Jiffy Builders, Inc.*, 8 E.A.D. 315, 320 n. 8 (EAB 1999) (the fact that failure to comply was not purposeful is not enough to show cause). Complainant was previously given, even after issuance of the Order on June 10, 2011 Order, sufficient time to supplement its pre-hearing exchange and has not shown justification for its failure to comply with the deadlines set forth in the Order. The Motion should be denied.

Dated this 3rd day of October, 2011.

Respectfully submitted,

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
Telephone: 414-298-1000
Facsimile: 414-298-8097

Mailing Address:
P.O. Box 2965
Milwaukee, WI 53201-2965



Michael H. Simpson
WI State Bar ID No. 1014363
msimpson@reinhartlaw.com
Jeffrey P. Clark
WI State Bar ID No. 1009316
jclark@reinhartlaw.com
Lucas N. Roe
WI State Bar ID No. 1069233
lroe@reinhartlaw.com
Attorneys for Respondent Liphatech, Inc.

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

CERTIFICATE OF SERVICE

I, Jeffrey P. Clark, one of the attorneys for the Respondent, Liphatech, Inc., hereby certify that I delivered one copy of the foregoing Respondent's Opposition To Complainant's Motion For Leave To File Sixth Supplemental Prehearing Exchange, to the persons designated below, by depositing it with a commercial delivery service, postage prepaid, at Milwaukee, Wisconsin, in envelopes addressed to:

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

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

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I further certify that I filed the original and one copy of the Respondent's Opposition to Complainant's Motion For Leave to File Sixth Supplemental Prehearing Exchange 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 3rd day of October, 2011.



Jeffrey P. Clark
One of the Attorneys for Respondent
Liphatech, Inc.