



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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REPLY TO THE ATTENTION OF
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 *Complainant's Reply In Support of Complainant's Motion for Leave to File Motion for Leave to Sixth Supplemental Prehearing Exchange Instanter*, 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
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(via UPS overnight delivery)

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

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

**COMPLAINANT’S REPLY IN SUPPORT OF MOTION FOR
LEAVE TO FILE MOTION FOR LEAVE TO FILE SIXTH
SUPPLEMENTAL PREHEARING EXCHANGE INSTANTER**

Complainant, the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency (Complainant), respectfully submits this *Reply In Support of Motion for Leave to File Motion for Leave to File Sixth Supplemental Prehearing Exchange Instanter* (Motion) pursuant to Sections 22.16, 22.19(f), and 22.22(a)(1) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. §§ 22.16, 22.19(f), and 22.22(a)(1).

In its opposition to the Motion, Respondent asserts that Complainant must show good cause for moving for leave to supplement its prehearing exchange in light of the motion cut-off date of August 31, 2011 in the Presiding Officer’s June 11, 2011 Order. Respondent cites a case that has no bearing on whether Complainant should be entitled to supplement its prehearing exchange. *See In re Jiffy Builders, Inc.*, 8 E.A.D. 315 (EAB 1999) (addressing an appeal of a default order entered when respondent failed to file its prehearing exchange on two separate occasions). Respondent’s attempt to graft a good cause requirement onto Complainant’s request to supplement its prehearing exchange more than fifteen (15) days prior to the hearing is contrary to the Consolidated Rules. *See* 40 C.F.R. § 22.22(a)(1).

Respondent also ignores the standard that is applicable to motions for leave to supplement prehearing exchanges. *In re Service Oil, Inc.*, Docket No. CWA-08-2005-0010, 2006 EPA ALJ LEXIS 16, at*9 (April 12, 2006) (describing the standard for supplementing prehearing exchanges and the reasons that the Presiding Officer requires motions to supplement). There is no evidence here that Complainant has engaged in bad faith, delay tactics, or undue prejudice. Respondent's suggestions to the contrary have no merit.

In sum, Complainant respectfully requests that the Presiding Officer grant its *Motion for Leave to File Motion for Leave to File Sixth Supplemental Prehearing Exchange Instantly*.

Respectfully submitted,



Nidhi K. O'Meara
Erik H. Olson
Associate Regional Counsels
Gary E. Steinbauer
Assistant Regional Counsel
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Attorneys for Complainant

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 copies of *Complainant's Reply In Support of Complainant's Motion for Leave to File Motion for Leave to Sixth Supplemental Prehearing Exchange Instanter* 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, Counsel for Respondent, Liphatech, Inc., (via UPS overnight delivery), at the following address:

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

on the date indicated below:

Dated in Chicago, Illinois, this 6 day of October, 2011.



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