

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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In the Matter of:)

Liphatech, Inc.)
Milwaukee, Wisconsin)

) Docket No. FIFRA-05-2010-0016

) Hon. Susan L. Biro

Respondent.)
_____)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

**COMPLAINANT'S MOTION TO CONFORM TRANSCRIPT AND REQUEST
RELATED TO SCHEDULE FOR SUBMISSION OF POST-HEARING BRIEFS**

I. Complainant's Motion to Conform Transcript

Pursuant to 40 C.F.R. §§ 22.16 and 22.25 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the "Consolidated Rules"), the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency ("Complainant") respectfully moves for an order conforming the transcript of the hearing in this matter to the actual testimony presented at the hearing by accepting and adopting the five (5) corrections listed in **Exhibit 1**.

This Motion is being filed contemporaneously with the *Parties' Joint Motion to Conform Transcript*. Complainant's counsel contacted Respondent's counsel on March 8 and 29, 2012, requesting a stipulation as to the five (5) corrections listed in **Exhibit 1**. Complainant's counsel did not obtain concurrence for the five (5) corrections in **Exhibit 1**, necessitating the filing of this Motion.

In further support of this Motion, Complainant states as follows:

1. Consolidated Rule 22.25 provides, in pertinent part, that "[a]ny party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the

transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.” 40 C.F.R. § 22.25.

2. The hearing in this matter was held on February 7, 8, 9, and 10, 2012.
3. The transcript in this matter consists of 1,112 type-written pages of testimony.
4. The transcript contains typographical and transcription errors.
5. Attached as **Exhibit 1** is a table listing by page and line the corrections to the

transcript that will conform the transcript to the actual testimony presented at hearing. Making these corrections is necessary to ensure that the transcript is accurate.

6. The transcript was received by the Regional Hearing Clerk on March 5, 2012.

7. This Motion is timely filed in accordance with 40 C.F.R. § 22.25.

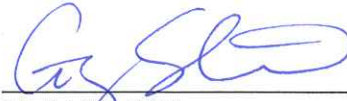
Because this Motion is timely and because good cause exists, Complainant respectfully moves for an order conforming the transcript of the hearing in this matter to the testimony presented at hearing by accepting and adopting the five (5) corrections in **Exhibit 1**.

II. Specific Requests Related to Schedule for Submission of Post-Hearing

In accordance with the email from Mr. Sarno on March 26, 2012, Complainant respectfully requests that it be given 60 days from the date that a scheduling order is entered to file and serve its initial post-hearing brief. This request is due to extenuating circumstances and the scheduling conflicts that have arisen as a result of these circumstances. If the Court would like more specific information on these extenuating circumstances, Complainant respectfully requests the opportunity to submit an explanation to the Court *in camera* and under seal.

[Signature page follows.]

Respectfully submitted,



Nidhi K. O'Meara

Erik H. Olson

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Attorneys for Complainant

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CERTIFICATE OF SERVICE

I hereby certify that the original and one true, accurate and complete copy of the *Complainant's Motion to Conform Transcript* were filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on the date indicated below. True, accurate and complete copies also were sent to the persons listed and in the manner provided below on this date:

Sent via UPS overnight delivery:

Honorable Susan L. Biro
Administrative Law Judge
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

Sent via UPS overnight delivery:

Mr. Mark A. Cameli
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Dated in Chicago, Illinois, this 3 day of April, 2012.



Gary Steinbauer

EXHIBIT 1

**Complainant's Motion to Conform
Transcript and Request Related to Schedule
for Submission of Post-Hearing Briefs**

Exhibit 1 – Complainant’s Motion to Conform Transcript and Request Related to Schedule for Submission of Post-Hearing Briefs

Liphatech Inc., FIFRA-2010-05-0016

Errata of Transcript dated February 7, 2012

Witness: Claudia Niess

Page(s)	Line(s)	Existing Language:	Change to:
108	4	would accurately	would not accurately

Errata of Transcript dated February 8, 2012

Witness: Dr. Thomas Steeger

Page(s)	Line(s)	Existing Language:	Change to:
104	23-24	to violate a claim in correspondence	to show a nexus
105	19	there’s	it’s
105	19-20	it right here	a red herring
105	24	it an assigned label of	on the label here