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EPA REGION VIII  
HEARING CLERK

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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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IN THE MATTER OF:

RESPONSE TO PENALTY COMPLAINT  
and REQUEST FOR HEARING

DIATECT INTERNATIONAL CORP.,

Docket No.: FIFRA-08-2008-0029

RESPONDENT.

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Respondent, by and through counsel of record, hereby responds to the Penalty Complaint and Notice of Opportunity for Hearing as follows:

**REQUEST FOR HEARING**

Respondent requests a public hearing regarding the factual allegations of the complaint, the grounds for its defenses, and the facts that it disputes.

1. Respondent admits the allegations contained in ¶4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26, 30, 31, 32, 33, 35, 39, 40, 41, 42, 44, 48, 49, 50, 51, 53, 57, 58, 59, 60, 62, 66, 67, 68, 69, 71, 75, 76, 77, 78, 80, 84, 85, 86, 87, 89, 93, 95, 96, and 98 of the penalty complaint.

2. Respondent denies the allegations contained in ¶3, 19, 20, 25, 27, 28, 34, 36, 37, 43, 45, 46, 52, 54, 55, 61, 63, 64, 70, 72, 73, 79, 81, 82, 88, 90, 91, 97, 99, and 100 of the penalty complaint.

3. Respondent has insufficient knowledge upon which to admit or deny the allegations contained in ¶1 and 2 of the penalty complaint and therefore denies the same.

4. Regarding the allegations contained in paragraphs 7, Respondent understands the option of an informal settlement conference and indeed, and a representative of the Respondent met with

Mr. Quintana, which meeting was subsequently confirmed by email from Patrick Carr to Mr. Quintana on October 27, 2008, a copy of which is attached as Exhibit A.

5. Respondent denies each and every allegation not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

The EPA has failed to state a cause of action against Answering Respondent upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent that evidence may be discovered, Answering Respondent alleges that the EPA's claims are barred by the applicable statute of limitations.

WHEREFORE, having answered the penalty complaint, Respondent requests a public hearing regarding the factual allegations of the complaint, the grounds for its defenses, and the facts that it disputes, and that the penalty complaint be dismissed with prejudice.

DATED: November 6, 2008



Randy B. Birch, #4197  
BOSTWICK & PRICE, P.C.  
139 E. South Temple, #320  
Salt Lake City, UT 84111  
Telephone (801) 961-7400  
Facsimile (801) 961-7406  
Attorney for Diatect International, Inc.

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on November 6, 2008, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following persons:

Eduardo Quintana  
Senior Enforcement Attorney  
1595 Wynkoop Street  
Denver, CO 80202-1229

U.S. Mail	<u>X</u>
Email	<u>X</u>
Hand delivered	___
Overnight Mail	___

The written answer and one copy was sent to:

Regional Hearing Clerk  
1595 Wynkoop Street (8RC)  
Denver, CO 80202

U.S. Mail	___
Facsimile	___
Hand delivered	___
Priority Mail	<u>X</u>

  
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**Randy Birch**

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**From:** "Patrick Carr" <patrick@diatect.com>  
**To:** <quintana.eduardo@epa.gov>  
**Cc:** "Jon Ellsworth" <Jon@diatect.com>; <Randy@BostwickPrice.com>  
**Sent:** Monday, October 27, 2008 5:00 AM  
**Subject:** Diatect

Eduardo,

I want to thank you for the time you took for our meeting and your candor. I believe it was very productive and the start of a path forward. Jon and I came away with a better understanding of the "labeling" issue as it relates to the website, and we understand many of the issues the EPA identified and are in the process of making changes. Going into the meeting, I was hoping that it would give me enough understanding to interpret all the examples sighted in the complaint, but that still eludes me as I think was obvious in our meeting. Jon is or has contacted the compliance assistance group and perhaps that will help. The extremes of what is and is not acceptable are pretty clear, but where the line is in the grayer area in between is a challenge.

The attorney that Diatect uses is requesting a hearing as outline in the complaint, and I am now pulling together all the information to requests a decrease in the fine due to the company's financial condition. The hearing request will go in this week if it already hasn't, and the first of the financial information will be forward to you in the coming weeks. As I noted in our meeting some of the tax returns are still being filed.

Sincerely,

Patrick Carr  
Diatect International  
patrick@diatect.com  
direct 678-644-6670

