

Exhibit B: Letter to Respondent's Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

October 2, 2009

REPLY TO THE ATTENTION OF:

C-14J

VIA U.S. MAIL

Jeffrey P. Clark, Esq.
Reinhart Boerner Van Deuren S.C.
P.O. Box 2965
Milwaukee, WI 53201-2965

Re: Liphatech, Inc., Milwaukee, WI

Dear Mr. Clark:

As I noted to you earlier this week, staff for the U.S. Environmental Protection Agency, Region 5 ("EPA") should be able to meet with you and other representatives for Liphatech, Inc. ("Liphatech") on any of the following dates: October 19, 20, 21, or 22, 2009. Please let me know which of these dates will suit you best.

Per your request, enclosed with this letter are materials summarizing the calculations that EPA made in reaching a proposed penalty of \$1,280,500. It is not EPA's typical practice to share such information in this manner before the filing of a complaint. However, we are doing so in this instance as a courtesy and with the hope that this will improve the parties' use of time during the upcoming conference.

The first document is the "FIFRA Civil Penalty Calculation Worksheet" prepared by Claudia Niess. This worksheet summarizes the base penalty of \$6,500 that EPA calculated for each count. EPA developed the per-count penalty amount using the *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)* ("FIFRA ERP"), dated July 2, 1990. The FIFRA ERP and other FIFRA guidances are available for review and downloading on EPA's website at <http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>. Please note that the figures in the FIFRA ERP have been recently increased to account for inflation.

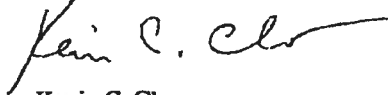
The second document is the "Summary of Proposed Penalty in the Matter of Liphatech, Inc.", prepared by me. This summarizes the violations and the number of counts (at \$6,500 per count) that amount to the \$1,280,500 proposed penalty.

The third enclosed document may already be in your possession. It is EPA's summary of its evaluation of a number of claims made in Liphatech's Research Bulletin. It was e-mailed by Claudia Niess to Tom Schmit of Liphatech on November 18, 2008. Most of the claims identified in the summary form the basis for the violations of FIFRA Section 12(a)(1)(B) being alleged by EPA.

In general, the information and documentation supporting the alleged violations were provided to EPA by Liphatech pursuant to various EPA information requests. This includes information pertaining to the content and airings of the radio advertisements, copies of the trade publications containing the print advertisements, a copy of the Research Bulletin, and copies of shipping documents for Liphatech's sales or distributions of the product. If they are not already in your possession, copies should be available from Liphatech staff.

We look forward to discussing this matter with you. Please contact me at (312) 353-6181 or chow.kevin@epa.gov to inform me of your preferred meeting date, and for any further questions or discussion.

Sincerely,



Kevin C. Chow
Associate Regional Counsel

Enclosures

cc: Claudia Niess (LC-8J) (w/enclosures)

FIFRA CIVIL PENALTY CALCULATION WORKSHEET

RESPONDENT LIDHATECH
 ADDRESS MILWAUKEE, WI

DOCKET NO. _____ PREPARED BY CLAUDIA NIESS
 DATE _____
 Counts: 1 - 132 count 1
 Radio Ad 133-141 count 2
 Print Ad 142-148 count 3
 Sale/Distribution 149-150 count 4

Appendix A.
 1. Statutory Violation

2. FWS Code

3. Violation Level

Table 2

4. Violator Category -
 §14(a) (1) or §14(a) (2)

5. Size of Business Category

Table 1

6. Base Penalty

Appendix B

7. Gravity Adjustments:

a. Pesticide Toxicity

b. Human Harm

c. Environmental Harm

d. Compliance History

e. Culpability

f. Total Gravity
 Adjustment Value
 (add items 7a - 7e)

Table 3

g. Percent Adjustment

h. Dollar Adjustment

8. Final Penalty*
 (item 7h from item 6)

9. Combined Total Penalty
 (total of all columns
 for line 8, above)

	Column 1	Column 2	Column 3	Column 4
1. Statutory Violation				
2. FWS Code				
3. Violation Level	2	2	2	
4. Violator Category	14(a)(1)	14(a)(1)	14(a)(1)	
5. Size of Business Category				
6. Base Penalty	\$500	\$500	\$500	
7a. Pesticide Toxicity	2	2	2	
7b. Human Harm	3	3	3	
7c. Environmental Harm	3	3	3	
7d. Compliance History	0	0	0	
7e. Culpability	0	0	0	
7f. Total Gravity Adjustment Value	5	5	5	
7g. Percent Adjustment	0	0	0	
7h. Dollar Adjustment	0	0	0	
8. Final Penalty*	\$500	\$500	\$500	
9. Combined Total Penalty				

* NOTE: The final penalty in each column of line 8 cannot exceed the statutory maximum.

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SUMMARY OF PROPOSED PENALTY
IN THE MATTER OF LIPHATECH, INC.
 (Product: Rozol, EPA Registration No. 7173-244)

FIFRA SECTION	TYPE OF VIOLATION	VIOLATION	# OF COUNTS	TOTAL PENALTY (\$6500/COUNT)
12(a)(2)(E)	Radio Ads that did not give Restricted Use designation	REDACTED		
	Print Ads that did not give Restricted Use Designation			
12(a)(1)(B)	Research Bulletin and Radio Ads containing claims that differ from Section 3 registration, made as part of sale or distribution of product (40 CFR 168.22(a))			
TOTAL				1,280,500

Prepared by Kevin Chow, EPA Region 5
 October 2, 2009