



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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REPLY TO THE ATTENTION OF:

C-14J

October 1, 2010

Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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

Dear Judge Gunning:

Enclosed, please find a copy of **COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE COMPLAINT** and **COMPLAINANT'S RESPONSE TO MOTION OF RESPONDENT TO PARTIALLY DISMISS THE COMPLAINT OR IN THE ALTERNATIVE FOR PARTIAL ACCELERATED DECISION ON AN ISSUE OF LIABILITY IN FAVOR OF RESPONDENT WITH RESPECT TO THE ALLEGED VIOLATIONS OF § 12(a)(1)(E) OF FIFRA**, filed on October 1, 2010, in the above referenced-matter.

Sincerely,

Gary E. Steinbauer
Assistant Regional Counsel

cc: Mr. Michael H. Simpson
Reinhart Boerner Van Deuren s.c
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
(via UPS)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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IN THE MATTER OF:)

Liphatech, Inc.)
Milwaukee, Wisconsin)

Respondent.)

) Docket No. FIFRA-05-2010-0016

) Hon. Barbara A. Gunning
)
)
)

COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

AND

**COMPLAINANT'S RESPONSE TO MOTION OF RESPONDENT TO
PARTIALLY DISMISS THE COMPLAINT OR IN THE ALTERNATIVE FOR
PARTIAL ACCELERATED DECISION ON AN ISSUE OF LIABILITY IN
FAVOR OF RESPONDENT WITH RESPECT TO THE ALLEGED
VIOLATIONS OF § 12(a)(1)(E) OF FIFRA**

I. **Introduction**

Complainant, the Director, Land and Chemical Division, Region 5, United States Environmental Protection Agency (U.S. EPA, Complainant or Agency), pursuant to 40 C.F.R. §§ 22.16(b) and 22.14(c) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules or Rules), files this Complainant's Motion for Leave to Amend the Complaint (Complainant's Motion) seeking to remove the paragraphs of the Complaint that allege violations of FIFRA Section 12(a)(1)(E), 7 U.S.C. 136j(a)(1)(E), and Complainant's Response to Motion of Respondent to Partially Dismiss the Complaint or in the Alternative for Partial Accelerated Decision on an Issue of Liability in Favor of Respondent with Respect to the Alleged Violations of § 12(a)(1)(E) of FIFRA (hereinafter Complainant's Response). For the reasons set forth below and in the interest of judicial economy, Complainant's motion should

be GRANTED and Respondent's motion should be DENIED AS MOOT.

II. Background

On May 14, 2010, the U.S. EPA filed a civil administrative complaint against Liphatech, Inc. (Respondent or Liphatech) in the above captioned matter. The Complaint alleges that Liphatech violated the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.* on 2,231 separate occasions. The Complaint alleges, *inter alia*, that on at least 91 separate occasions, Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B) and additionally or in the alternative Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).¹ On June 11, 2010, Respondent filed its Answer.

On September 16, 2010, Respondent filed two motions. In addition to the Motion of Respondent to Partially Dismiss the Complaint or in the Alternative for Partial Accelerated Decision on an Issue of Liability in Favor of Respondent with Respect to the Alleged Violations of § 12(a)(1)(E) of FIFRA (hereinafter Respondent's Motion), Respondent filed its Motion of Respondent for Partial Accelerated Decision on Issue of Liability in Favor of Respondent with Respect to the Alleged Violations of § 12(a)(2)(E) of FIFRA Set Forth in Counts 1-2,117 of the Complaint (hereinafter Respondent's Second Motion for Partial Accelerated Decision). Complainant will address Respondent's Second Motion for Partial Accelerated Decision in a separate document.

III. Complainant's Motion should be GRANTED for the Purpose of Judicial Economy

In counts 2,141 through 2,231 of the Complaint, Complainant alleges that Liphatech violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), on 91 separate occasions by the

¹ In addition to the allegations noted here, the Complaint alleges that the Respondent violated Section 12(a)(2)(E), 7 U.S.C. § 136j(a)(2)(E), on at least 2,140 separate occasions by advertising its restricted use product Rozol, EPA Reg. No. 7173-244, without providing in the advertisement the pesticide's classification. These violations are unaffected by the instant Motion and Response.

sale or distribution of a pesticide with claims made for the product as part of distribution or sale that substantially differed from the claims approved in the product's registration under Section 3 of FIFRA, 7 U.S.C. § 136a. The Complaint also alleges that the same sales or distributions "additionally or in the alternative," violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). This alternative pleading does not alter the number of counts alleged in the Complaint nor does it alter the penalty that was calculated in this enforcement matter. See Complainant's Initial Prehearing Exchange², Complainant's Exhibit 55a and 55b. Therefore, excising the paragraphs of the Complaint that reference 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), will have minimal impact on the overall enforcement case against Liphatech. It will, however, streamline the presentation of each parties' case at hearing.

Complainant understands that Respondent wishes to "simplify this case and conserve the resources of this tribunal and the parties." See Respondent's Motion at 18. Complainant agrees that when possible, the parties should streamline the issues at hand for the benefit of the Court and the parties. Therefore, Complainant is filing this Complainant's Motion to simplify the case as requested by Respondent. It should be noted, however, that Complainant's Motion should not in any way be construed to mean that Complainant agrees with the arguments made by Respondent in Respondent's Motion.

The Consolidated Rules provide that a Complaint may be amended after the Answer has been filed upon motion granted by the Presiding Officer. 40 C.F.R. §22.14(c). "While no standard is provided in the Rules for determining whether to grant an amendment, the general rule is that administrative pleadings are 'liberally construed and easily amended.'" *In re Scranton Prods., Inc., et al.*, Docket No. CAA-03-20080004, 2008 EPA ALI LEXIS 16, at *2 (ALI, April 3, 2006) (quoting *In re Port of Oakland and Great Lakes Dredge and Dock*

² Complainant filed its Initial Prehearing Exchange on September 28, 2010.

Co., 4 E.A.D. 170, 205 (EAB 1992)). Absent a showing that the proposed amendment is brought in bad faith or for dilatory purposes, results in undue delay or prejudice to the opposing party, or would be futile, leave to amend should be granted. *Id.* at *2-3 (citing *Foman v. Davis*, 371 U.S. 178, 18182 (1962)).

Because Complainant seeks leave to amend the Complaint to remove paragraphs of the Complaint that allege violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), there is no prejudice to Respondent. *See id.* at *3. Furthermore, Complainant's Motion is not the product of undue delay, bad faith, or dilatory motive.

IV. Proposed First Amended Complaint

Complainant has attached a proposed First Amended Complaint (Attachment A) with the proposed following amendments:

A. Complainant proposes to amend the language of the following paragraphs: 7, 12, 16, 148, 151, 157, 160, 163, 166, 169, 172, 175, 178, 181, 184, 187, 190, 193, 196, 201, 204, 277, 280, 283, 286, 289, 292, 295, 298, 301, 304, 307, 310, 313, 316, 319, 322, 325, 328, 337, 473, 477, 481, 485, 489, 493, 497, 501, 505, 509, 513, 517, 521, 525, 529, 533, 537, 541, 545, 549, 553, 557, 561, 565, 569, 573, 577, 581, 585, 589, 593, 597, 601, 605, 609, 613, 617, 621, 625, 629, 633, 637, 641, 645, and 647.³ Complainant proposes to retain the paragraph numbers in the Amended Complaint because Respondent's Answer tracks the paragraphs listed in the original Complaint. To minimize confusion, Complainant proposes to simply amend each affected paragraph by replacing the language of each paragraph with the following language:

“PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.”

³ All of these paragraphs were listed by Respondent in Respondent's Motion, Exhibit A, Paragraph I. The only paragraph that Complainant does not move for leave to amend but that was listed by Respondent in its motion is paragraph 208 of the Complaint.

B. Complainant proposes to amend the language of the following paragraphs to remove the reference to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E): 474, 478, 482, 486, 490, 494, 498, 502, 506, 510, 514, 518, 522, 526, 530, 534, 538, 542, 546, 550, 554, 558, 562, 566, 570, 574, 578, 582, 586, 590, 594, 598, 602, 606, 610, 614, 618, 622, 626, 630, 634, 638, 642, 684.⁴ Complainant proposes to simply replace each listed original paragraph with the following language: "Respondent's violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a). [PORTION OF THE SENTENCE IN THE ORIGINAL COMPLAINT REMOVED IN THE AMENDED COMPLAINT.]"

On September 15, 2010, Complaint filed Complainant's Motion For Leave To Amend Complaint To Reduce Proposed Penalty. The attached proposed First Amended Complaint also proposes language in paragraph 649 to reduce the penalty, should the Court grant Complainant's Motion For Leave To Amend Complaint To Reduce Proposed Penalty as follows:

"Economic Benefit: REDUCED TO ZERO IN AMENDED COMPLAINT

Total proposed civil penalty\$2,891,200"

V. Respondent's Motion is MOOT

If the Court grants Complainant's Motion for Leave to Amend the Complaint as discussed above, the allegations that Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), will no longer be at issue in this matter. As this is substantively the relief that Respondent requested, Respondent's Motion should be DENIED AS MOOT.

⁴ All of these paragraphs were listed by Respondent in its Respondent's Motion, Exhibit A, Paragraph II.

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V. **Conclusion**

For all the reasons discussed above, Complainant respectfully requests that this honorable Court grant Complainant's Motion.

VI. **List of Attachments**

Attachment A: Proposed First Amended Complaint.

Respectfully submitted,

DATED: 10/1/2010



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ATTACHMENT A

Proposed First Amended Complaint

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.
)	
Liphatech, Inc.)	Proceeding to Assess a Civil Penalty
Milwaukee, Wisconsin,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

First Amended Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is Liphatech, Inc. (Liphatech), 3600 West Elm Street, Milwaukee, Wisconsin 53209, a corporation doing business in the State of Wisconsin.

Statutory and Regulatory Background

4. Section 3(c)(1)(C), 7 U.S.C. § 136a(c)(1)(C), states that each applicant for registration of a pesticide shall file with the Administrator a statement which includes a complete copy of the labeling of the pesticides, a statement of all claims to be made for it, and any directions for its use.
5. Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C), states the Administrator of EPA may classify a pesticide as “restricted use” if the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional

regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator. *See* also 40 C.F.R. §§ 152.170, 171 and 175.

6. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

7. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

8. Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), states that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under FIFRA for restricted use without giving the classification of the product assigned to it under Section 3 of FIFRA, 7 U.S.C. § 136a.

9. Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), states whenever any pesticide is found by the Administrator in any State and there is reason to believe on the basis of inspection that such pesticide is in violation of any of the provisions of FIFRA, or that such pesticide has been or is intended to be distributed or sold in violation of any provision of FIFRA, the Administrator may issue a written or printed “stop sale, use, or removal” order (SSURO) to any person who owns, controls, or has custody of such pesticide, and after receipt of such order no person shall sell, use, or remove the pesticide described in the order except in accordance with the provisions of the order.

10. Section 24(c) of FIFRA, 7 U.S.C. § 136v(c), states, in pertinent part, that a State may provide registration for additional uses of federally registered pesticides formulated for distribution and use within that State to meet special local needs in accord with the purposes of

FIFRA. Such registration shall be deemed registration under Section 3 of FIFRA, 7 U.S.C. § 136a, but shall authorize distribution and use only within such State. See also 40 C.F.R. § 162.153.

11. 40 C.F.R. § 152.168 states in pertinent part, as follows:

- (a) Any product classified for restricted use shall not be advertised unless the advertisement contains a statement of its restricted use classification.
- (b) The requirement in paragraph (a) applies to all advertisements of the product, including, but not limited, to:
 - (1) Brochures, pamphlets, circulars and similar material offered to purchasers at the point of sale or by direct mail.
 - (2) Newspapers, magazines, newsletters and other material in circulation or available to the public.
 - (3) Broadcast media such as radio and television.
 - (4) Telephone advertising.
 - (5) Billboards and posters.
- (c) The requirement may be satisfied for printed material by inclusion of the statement "Restricted Use Pesticide" or the terms of restriction, prominently in the advertisement. The requirement may be satisfied with respect to broadcast or telephone advertising by inclusion in the broadcast of the spoken words "Restricted use pesticide" or a statement of the terms of restriction.

12. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

13. 40 C.F.R. § 168.22 states, in pertinent part, that Section 12(a)(1)(A) and (B) of FIFRA makes it unlawful for any person to “offer for sale” any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA Section 3. EPA interprets this provision as extending to advertisements in any advertising medium to which pesticide users or the general public have access.

14. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

15. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3 as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

16. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

17. The term “labeling” is defined in Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), in pertinent part, as all labels and all other written, printed, or graphic matter.

18. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), in pertinent part, “as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism....” *See* also 40 C.F.R. §152.5(c).

19. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, in pertinent part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

20. The term “registrant” is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y), as a person who has registered any pesticide pursuant to the provisions of FIFRA.

21. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 through January 12, 2009 and up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

General Allegations

22. At all times relevant to the Complaint, Respondent was a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

23. At all times relevant to the Complaint, Respondent owned a place of business at 3600 West Elm Street, Milwaukee, Wisconsin, 53209.

24. At all times relevant to the Complaint, Respondent was a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

Calendar Years 2007 and 2008

25. During calendar years 2007 and 2008, Respondent was the registrant of “Rozol Pocket Gopher Bait II” (Alternate name: “Rozol Pocket Gopher Burrow Builder Formula”) (hereinafter, “Rozol”), EPA Registration Number (EPA Reg. No.) 7173-244.

26. Upon registration of “Rozol,” EPA Reg. No. 7173-244, and at all times relevant to this Complaint, “Rozol,” EPA Reg. No. 7173-244, was classified as a restricted use product under Section 3(d), of FIFRA, 7 U.S.C. § 136a(d).

27. “Rozol,” EPA Reg. No. 7173-244, was classified as a restricted use product under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), because of its potential secondary toxicity to nontarget organisms.

28. As a result of its classification as a restricted use product, “Rozol,” EPA Reg. No. 7173-244, can only be sold to and be used by Certified Applicators or persons under the direct supervision of Certified Applicators and only for users covered by the Certified Applicator’s certification.

29. During calendar years 2007 and 2008, “Rozol,” EPA Reg. No. 7173-244, was also registered under the authority of Section 24(c) of FIFRA, 7 U.S.C. § 136v(c), to control black-tailed prairie dogs under “Special Local Needs” supplemental labels for the States of Kansas, Nebraska, Wyoming, Colorado, Texas and Oklahoma.

30. The use of “Rozol,” EPA Reg. No. 7173-244, to control black-tailed prairie dogs was restricted to the following counties in Colorado: Adams, Arapahoe, Baca, Bent, Boulder, Broomfield, Cheyenne, Crowley, Denver, Douglas, El Paso, Elbert, Huerfano, Jefferson, Kiowa, Kit Carson, Larimer, Las Animas, Lincoln, Logan, Morgan, Otero, Phillips, Prowers, Pueblo, Sedgewick, Washington, Weld and Yuma.

31. The use of “Rozol,” EPA Reg. No. 7173-244, to control black-tailed prairie dogs was restricted to the following counties in Texas: Baylor, Brewster, Coke, Crane, Crockett, Fisher, Jones, Nolan, Presidio, Reagan, Schleicher, Shackelford, Sutton, Terrell, Throckmorton, Tom Green, Upton and Wilbarger.

32. During calendar years 2007 and 2008, “Rozol,” EPA Reg. No. 7173-244, was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

33. In January of 2008, the Toxics and Pesticides Branch, EPA Region 7 requested that the Chemicals Management Branch, EPA Region 5, investigate potential violations of FIFRA regarding "Rozol," EPA Reg. No. 7173-244, at Respondent's establishment.

34. On June 2, 2008, an inspector employed by the State of Wisconsin, Bureau of Agrichemical Management, Compliance Section and authorized to conduct inspections under FIFRA, conducted an inspection at Respondent's place of business located at 3600 West Elm Street in Milwaukee, Wisconsin.

35. The inspector issued a Federal SSURO pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), to Respondent regarding "Rozol," EPA Reg. No. 7173-244, during the June 2, 2008 inspection.

36. After the Federal SSURO was issued, Respondent sent out letters, entitled "EPA Literature Compliance-Rozol® Pocket Gopher Bait – Burrow Builder Formula / Prairie Dog Bait," to its distribution partners requesting that they each destroy any and all literature, flyers and advertisements entitled "Black-tailed Prairie Dog Control – Research Bulletin," dated October 17, 2007; "Livestock Weight Gain and Prairie Dogs: ESA Frontiers in Ecology & the Environment," November 2006 Reprint; and "True Cost of Black-tailed Prairie Dog Control (Whitepaper)," dated November 5, 2007.

37. On June 19, 2008, the inspector returned to Respondent's place of business located at 3600 West Elm Street, Milwaukee, Wisconsin, to collect documentary information from Respondent regarding "Rozol," EPA Reg. No. 7173-244.

38. On June 19, 2008, the inspector collected a written statement and documentary information regarding "Rozol," EPA Reg. No. 7173-244, from Respondent.

Advertisements without Identifying the Restricted Use Classification

Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244

39. The documentary information collected by the inspector on June 19, 2008 included invoices showing the purchase of radio broadcast time by Respondent for the advertisement of its product, "Rozol," EPA Reg. No. 7173-244.

40. The documentary information collected by the inspector on June 19, 2008, also included the transcripts of the radio advertisements to be broadcast by each of the radio stations on behalf of Respondent.

41. The transcripts of the radio advertisements included four different versions of the advertisement to be broadcast regarding "Rozol," EPA Reg. No. 7173-244. *See Attachments A, B, C and D.*

42. All four versions of the radio advertisements to be broadcast regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."

43. All four versions of the radio advertisements to be broadcast regarding "Rozol," EPA Reg. No. 7173-244, failed to include any statements of the terms of restriction for the product.

Golden Plains AG Network

KXXX-AM Broadcast

44. Respondent contracted with Golden Plains AG Network to broadcast radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, on the radio station, *KXXX-AM* in Colby, Kansas, on 120 occasions from on or about October 8, 2007 to on or about December 21, 2007 (*See Attachment E*).

45. On 120 separate occasions (*See Attachment E*), from on or about October 8, 2007 to on or about December 21, 2007, *KXXX-AM* broadcast one of the four versions of the radio

advertisement (*See Attachments A through D*) regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

Western Kansas Broadcast

KBUF Broadcast

46. Respondent contracted with Western Kansas Broadcast to broadcast radio advertisements regarding “Rozol,” EPA Reg. No. 7173-244, on the radio station, *KBUF* in Garden City, Kansas, on 229 occasions from on or about January 15, 2008 to on or about March 2, 2008 (*See Attachment F*).

47. On 229 separate occasions (*See Attachment F*), from on or about January 15, 2008 to on or about March 2, 2008, *KBUF* broadcast one of the four versions of the radio advertisement (*See Attachments A through D*) regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

High Plains Radio

48. Respondent contracted with High Plains Radio to broadcast radio advertisements regarding “Rozol,” EPA Reg. No. 7173-244, on the radio stations, *KICX-FM*, *KBRL-AM*, *KRKU-FM*, and *KJBL-FM* all in McCook, Nebraska; *KFNF-FM*, in Oberlin, Nebraska; *KADL-FM*, in Imperial, Nebraska; and *KSTH-FM*, in Holyoke, Nebraska, on 1,521 occasions from on or about September 26, 2007 to on or about December 31, 2007 (*See Attachment G*).

KICX-FM Broadcast

49. On 322 separate occasions (*See Attachment G*), from on or about September 26, 2007 to on or about December 31, 2007, *KICX-FM*, in McCook, Nebraska, broadcast one of the

four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KBRL-AM Broadcast

50. On 322 separate occasions (*See Attachment G*), from on or about September 26, 2007 to on or about December 31, 2007, *KBRL-AM*, in McCook, Nebraska, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KRKU-FM Broadcast

51. On 60 separate occasions (*See Attachment G*), from on or about September 26, 2007 to on or about December 31, 2007, *KRKU-FM*, in McCook, Nebraska, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KJBL-FM Broadcast

52. On 296 separate occasions (*See Attachment G*), from on or about September 26, 2007 to on or about December 31, 2007, *KJBL-FM*, in McCook, Nebraska, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KFNF-FM Broadcast

53. On 139 separate occasions (*See Attachment G*), from on or about September 26, 2007 to on or about December 31, 2007, *KFNF-FM*, in Oberlin, Nebraska, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KADL-FM Broadcast

54. On 60 separate occasions (*See Attachment G*), from on or about October 15, 2007 to on or about December 31, 2007, *KADL-FM*, in Imperial, Nebraska, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KSTH-FM Broadcast

55. On 322 separate occasions (*See Attachment G*), from on or about September 26, 2007 to on or about December 31, 2007, *KSTH-FM*, in Holyoke, Nebraska, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KGNC-AM and KXGL-FM

56. Respondent contracted with *KGNC-AM* and *KXGL-FM* to broadcast these radio advertisements regarding “Rozol,” EPA Reg. No. 7173-244, on the radio stations, *KGNC-AM* and *KXGL-FM* in Amarillo, Texas, on 247 occasions from on or about November 12, 2007 to on or about April 26, 2008 (*See Attachment H*).

KGNC-AM Broadcast

57. On 188 separate occasions (*See Attachment H*), from on or about November 12, 2007 to on or about April 26, 2008, *KGNC-AM*, in Amarillo, Texas, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

KXGL-FM Broadcast

58. On 59 separate occasions (*See Attachment H*), from on or about November 27, 2007 to on or about April 26, 2008, *KXGL-FM*, in Amarillo, broadcast one of the four versions of the radio advertisement regarding “Rozol,” EPA Reg. No. 7173-244, on behalf of Respondent without the inclusion of the spoken words “restricted use pesticide” or a statement of the terms of restrictions for “Rozol,” EPA Reg. No. 7173-244.

Print Advertisements regarding “Rozol,” EPA Reg. No. 7173-244

59. The documentary information collected by the inspector on June 19, 2008 included invoices showing the purchase of print advertising by Respondent for the advertisement of “Rozol,” EPA Reg. No. 7173-244.

Cattle Guard Publication

60. Respondent contracted with Colorado Cattlemen's Association to print an advertisement regarding "Rozol," EPA Reg. No. 7173-244, in its publication of *Cattle Guard* in October 2007.

61. The October 2007 issue of *Cattle Guard* included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.

62. The print advertisement in the October 2007 issue of *Cattle Guard* regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."

63. The print advertisement in the October 2007 issue of *Cattle Guard* regarding "Rozol," EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of "Rozol," EPA Reg. No. 7173-244.

Kansas Stockman Publication

64. Respondent contracted with Kansas Livestock Association to print advertisements regarding "Rozol," EPA Reg. No. 7173-244, in its monthly publication of *Kansas Stockman* from October 2007 through February 2008.

65. The October 2007 issue of *Kansas Stockman* included an advertisement regarding "Rozol," EPA Reg. No. 7173-244.

66. The print advertisement in the October 2007 issue of *Kansas Stockman* regarding "Rozol," EPA Reg. No. 7173-244, failed to include the words "restricted use pesticide."

67. The print advertisement in the October 2007 issue of *Kansas Stockman* regarding "Rozol," EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of "Rozol," EPA Reg. No. 7173-244.

68. The November 2007 issue of *Kansas Stockman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.
69. The print advertisement in the November 2007 issue of *Kansas Stockman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”
70. The print advertisement in the November 2007 issue of *Kansas Stockman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.
71. The January 2008 issue of *Kansas Stockman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.
72. The print advertisement in the January 2008 issue of *Kansas Stockman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”
73. The print advertisement in the January 2008 issue of *Kansas Stockman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.
74. The February 2008 issue of *Kansas Stockman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.
75. The print advertisement in the February 2008 issue of *Kansas Stockman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”
76. The print advertisement in the February 2008 issue of *Kansas Stockman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

Nebraska Cattleman Publication

77. Respondent contracted with Nebraska Cattlemen, Inc., to print advertisements regarding “Rozol,” EPA Reg. No. 7173-244, in its monthly publication of *Nebraska Cattleman* from October 2007 through February 2008.

78. The October 2007 issue of *Nebraska Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

79. The print advertisement in the October 2007 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

80. The print advertisement in the October 2007 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

81. The November 2007 issue of *Nebraska Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

82. The print advertisement in the November 2007 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

83. The print advertisement in the November 2007 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

84. The December 2007 issue of *Nebraska Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

85. The print advertisement in the December 2007 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

86. The print advertisement in the December 2007 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

87. The January 2008 issue of *Nebraska Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

88. The print advertisement in the January 2008 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

89. The print advertisement in the January 2008 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

90. The February 2008 issue of *Nebraska Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

91. The print advertisement in the February 2008 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

92. The print advertisement in the February 2008 issue of *Nebraska Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

Oklahoma Cowman Publication

93. Respondent contracted with Oklahoma Cowman to print an advertisement regarding “Rozol,” EPA Reg. No. 7173-244, in its publication *Oklahoma Cowman* in February 2008.

94. The February 2008 issue of *Oklahoma Cowman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

95. The print advertisement in the February 2008 issue of *Oklahoma Cowman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

96. The print advertisement in the February 2008 issue of *Oklahoma Cowman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

The Cattleman Publication

97. Respondent contracted with The Cattleman to print advertisements regarding “Rozol,” EPA Reg. No. 7173-244, in its monthly publication of *The Cattleman* in October 2007, November 2007, March 2008 and April 2008.

98. The October 2007 issue of *The Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

99. The print advertisement in the October 2007 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

100. The print advertisement in the October 2007 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

101. The November 2007 issue of *The Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

102. The print advertisement in the November 2007 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

103. The print advertisement in the November 2007 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

104. The March 2008 issue of *The Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

105. The print advertisement in the March 2008 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

106. The print advertisement in the March 2008 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

107. The April 2008 issue of *The Cattleman* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

108. The print advertisement in the April 2008 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

109. The print advertisement in the April 2008 issue of *The Cattleman* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

Wyoming Livestock Publication

110. Respondent contracted with Wyoming Livestock Roundup, to print advertisements regarding “Rozol,” EPA Reg. No. 7173-244, in its weekly publication of the *Wyoming Livestock Roundup* from February 16, 2008 through April 5, 2008.

111. The February 16, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

112. The print advertisement in the February 16, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

113. The print advertisement in the February 16, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

114. The February 23, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

115. The print advertisement in the February 23, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

116. The print advertisement in the February 23, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

117. The March 1, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

118. The print advertisement in the March 1, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

119. The print advertisement in the March 1, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

120. The March 8, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

121. The print advertisement in the March 8, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

122. The print advertisement in the March 8, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

123. The March 15, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

124. The print advertisement in the March 15, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

125. The print advertisement in the March 15, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

126. The March 22, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

127. The print advertisement in the March 22, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

128. The print advertisement in the March 22, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

129. The March 29, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

130. The print advertisement in the March 29, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

131. The print advertisement in the March 29, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

132. The April 5, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding “Rozol,” EPA Reg. No. 7173-244.

133. The print advertisement in the April 5, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include the words “restricted use pesticide.”

134. The print advertisement in the April 5, 2008 weekly issue of *Wyoming Livestock Roundup* regarding “Rozol,” EPA Reg. No. 7173-244, failed to include any statements of the terms of restrictions of “Rozol,” EPA Reg. No. 7173-244.

Claims Differ/False and Misleading Claims

Direct Mail Packages regarding "Rozol," EPA Reg. No. 7173-244

135. On or about March 2, 2005, Office of Pesticides Programs, Registration Division, accepted a label (“accepted label”) regarding “Rozol,” EPA Reg. No. 7173-244, that was submitted by Respondent.

136. The “accepted label” and any subsequent amendments are a part of the statement required by Respondent in connection with its registration of the product under Section 3 of FIFRA, 7 U.S.C. § 136a.

137. The “accepted label” and any subsequent amendments identify the label language approved by EPA for a particular registered pesticide product.

138. Any changes in labeling that differs in substance from the labeling accepted by the Office of Pesticides Program, Registration Division must be submitted to and accepted by Office of Pesticides Program, Registration Division prior to use in commerce.

139. Any changes in labeling that differs in substance from the labeling accepted by the Office of Pesticides Program, Registration Division on March 2, 2005 for “Rozol,” EPA Reg. No. 7173-244, must be submitted to and accepted by Office of Pesticides Program, Registration Division prior to use in commerce.

140. The documentary information collected by the inspector on June 19, 2008 included copies of Direct Mail Packages regarding “Rozol,” EPA Reg. No. 7173-244, for the States of Colorado, Kansas, Nebraska, Oklahoma, Texas and Wyoming.

141. The Direct Mail Packages included cover letters, dated October 31, 2007, that were entitled "*SUBJECT – ROZOL ® POCKET GOPHER BAIT-*"

142. The cover letters, dated October 31, 2007, stated "Rozol," EPA Reg. No. 7173-244, was intended both "For Black – Tailed Prairie Dog (BTPD) Control" and "For Control of Pocket Gophers."

143. The Direct Mail Packages also included sales literature regarding "Rozol," EPA Reg. No. 7173-244, entitled "*Black-tailed Prairie Dog Control - Research Bulletin.*"

144. The date on the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin,*" regarding "Rozol," EPA Reg. No. 7173-244 was October 17, 2007.

145. Respondent sent the Direct Mail Packages to its distribution partners and/or customers to advertise "Rozol," EPA Reg. No. 7173-244.

Claims in Cover Letters, dated October 31, 2007

146. During calendar years 2007 and 2008, the cover letters, dated October 31, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Provides the most control available in a single application." (Emphasis in original.)

147. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

148. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

149. During calendar years 2007 and 2008, the cover letters, dated October 31, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Poses low primary poisoning potential to birds and other non-targets." (Emphasis in original.)

150. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

151. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

152. During calendar years 2007 and 2008, the cover letters, dated October 31, 2007, made the following claim regarding “Rozol,” EPA Reg. No. 7173-244: “Both restricted-use and general-use Rozol products are formulated using proven anticoagulant chlorophacinone at 50 PPM (parts per million) - unlike other half-strength, diphacinone-based baits containing as low as 25PPM.”

153. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

154. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

Claims in “Black – Tailed Prairie Dog Control – Research Bulletin”

155. During calendar years 2007 and 2008, the sales literature entitled “*Black-tailed Prairie Dog Control - Research Bulletin*” made the following claim regarding “Rozol,” EPA Reg. No. 7173-244: “Rozol consistently controlled Prairie Dog populations using a single application.”

156. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

157. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

158. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Conclusion: Rozol delivers proven single application effectiveness." (Emphasis in original.)

159. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

160. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

161. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Secondary Hazard / Nearly all Prairie Dogs expired underground."

162. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

163. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

164. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Conclusion: Above-ground exposure risk to non-targets from Rozol is insignificant." (Emphasis in original.)

165. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

166. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

167. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Over all sites, 95% average population reduction was achieved as measured by the 'plugged burrow' census method."

168. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

169. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

170. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Over all sites, 94% average population reduction was achieved when measured by the 'visual count' census method."

171. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

172. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

173. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Traditional control products such as zinc phosphide or Diphacinone-based anticoagulants have not proven to effectively prevent population recovery, leading to the need to costly re-treatment."

174. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

175. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

176. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Kaput-D Prairie Dog Bait (25 PPM) achieved only 53% to 56% control."

177. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

178. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

179. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Kaput-D Pocket Gopher Bait* (50 PPM) 2X the rate of active ingredient, achieved only 56% to 57% control. *Not labeled for Black-Tailed Prairie Dog." (Footnote found in original text).

180. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

181. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

182. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Comparative Toxicity Profile Overall Risk to Birds and Mammals / Rozol is ranked over 50% lower than zinc phosphide in the EPA's overall risk index and 1/3 lower than Diphacinone (Kaput-D)."

183. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

184. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

185. During calendar years 2007 and 2008, the sales literature entitled “*Black-tailed Prairie Dog Control - Research Bulletin*” made the following claim regarding “Rozol,” EPA Reg. No. 7173-244: “Rozol’s active ingredient (chlorophacinone) is ten times (10X) less toxic to dogs as Kaput-D’s (diphacinone).”

186. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

187. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

188. During calendar years 2007 and 2008, the sales literature entitled “*Black-tailed Prairie Dog Control - Research Bulletin*” made the following claim regarding “Rozol,” EPA Reg. No. 7173-244: “Chlorophacinone is over 100X more effective on mice than dipachinone.”

189. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

190. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

191. During calendar years 2007 and 2008, the sales literature entitled “*Black-tailed Prairie Dog Control - Research Bulletin*” made the following claim regarding “Rozol,” EPA Reg. No. 7173-244: “Conclusion: Rozol- the lowest risk profile among Black Tailed Prairie Dog

bait alternatives... Why risk potential harm to employees, livestock, birds, pets or other non-targets?" (Emphasis in original.)

192. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

193. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

194. During calendar years 2007 and 2008, the sales literature entitled "*Black-tailed Prairie Dog Control - Research Bulletin*" made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Chart entitled "Compare the products for yourself - there are many differences."

195. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

196. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

197. The literature in the Direct Mail Packages are advertisements, subject to the requirements of 40 C.F.R. § 168.22.

198. The claims made in the Direct Mail Packages were made as a part of the distribution or sale of "Rozol," EPA Reg. No. 7173-244.

Radio Advertisements regarding "Rozol," EPA Reg. No. 7173-244

199. Respondent's radio advertisements regarding "Rozol," EPA Reg. No. 7173-244, that began broadcasting on or about September 26, 2007, made the following claim regarding "Rozol," EPA Reg. No. 7173-244: "Rozol - proven single application effectiveness for the control of black-tailed prairie dogs."

200. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

201. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

202. Respondent’s radio advertisements regarding “Rozol,” EPA Reg. No. 7173-244, that began broadcasting on or about September 26, 2007, made the following claim regarding “Rozol,” EPA Reg. No. 7173-244: “Proven in university studies on over 10,000 burrows to get 94% control with a single treatment.”

203. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

204. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

205. The radio advertisements that began broadcasting on or about September 26, 2007 are advertisements, subject to the requirements of 40 C.F.R. § 168.22.

206. The claims made in the radio advertisements that began broadcasting on or about September 26, 2007 were made as a part of the distribution or sale of “Rozol,” EPA Reg. No. 7173-244.

Website Advertisements regarding “Rozol,” EPA Reg. No. 7173-244

207. On or about January 22, 2008, Respondent’s website at www.liphatech.com also made claims that were substantially different than claims made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005, “accepted label.”

208. On or about January 22, 2008, Respondent’s website at www.liphatech.com also made claims that were false and misleading.

209. Respondent's website on January 22, 2008 is an advertisement, subject to the requirements of 40 C.F.R. § 168.22.

210. The claims made on Respondent's website on January 22, 2008, were made as a part of the distribution or sale of "Rozol," EPA Reg. No. 7173-244.

211. During the June 2, 2008 inspection, the inspector issued a Federal SSURO, pursuant to Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), to Respondent regarding "Rozol," EPA Reg. No. 7173-244.

212. After the June 2, 2008, Federal SSURO was issued, Respondent sent out letters, entitled "*EPA Literature Compliance-Rozol® Pocket Gopher Bait – Burrow Builder Formula / Prairie Dog Bait,*" to its distribution partners requesting that they each destroy any and all literature, flyers and advertisements entitled "*Black-tailed Prairie Dog Control – Research Bulletin,*" dated October 17, 2007; "*Livestock Weight Gain and Prairie Dogs: ESA Frontiers in Ecology & the Environment,*" November 2006 Reprint; and "*True Cost of Black-tailed Prairie Dog Control (Whitepaper),*" dated November 5, 2007.

Distribution/Sale of "Rozol," EPA Reg. No. 7173-244

213. On or about October 1, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to United Suppliers Inc., located at 30473 260th Street, Eldora, Iowa 50627.

214. On or about October 8, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Agriliance Service Center, located at East Highway 23 and 61, Grant, Nebraska 69341.

215. On or about October 19, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Agriliance Service Center, located at 1250 Rundell Road, Gering, Nebraska 69341.

216. On or about October 29, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Jim Knuth, located at 104 Applewood Court, Council Bluffs, Iowa 51503.

217. On or about December 3, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, Inc., located at 11333 East 55th Avenue, Unit C, Denver, Colorado 80239.

218. On or about December 4, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, (Shipper's No./Carrier's No. 012559) to Van Diest Supply, located at 1434 220th Street, Webster City, Iowa 50595.

219. On or about December 4, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, (Shipper's No./Carrier's No. 012563) to Van Diest Supply, located at 1434 220th Street, Webster City, Iowa 50595.

220. On or about December 6, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 1434 220th Street, Webster City, Iowa 50595.

221. On or about December 7, 2007, Respondent distributed or sold 80 bags of "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at 425 Railroad Avenue, Bridgeport, Nebraska 69336.

222. On or about December 12, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Wilbur Ellis, located at 2765 FM 2397, Frionia, Texas 79035.

223. On or about December 19, 2007, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.

224. On or about January 18, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to UAP Distribution North, located at 2025 South Old Highway 83, Garden City, Kansas 67846.

225. On or about January 23, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Pro-Chem, located at 900 Ross Street, Amarillo, Texas 79404.

226. On or about January 24, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.

227. On or about January 25, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at 4302 Locust Street, Lubbock, Texas 79404.

228. On or about February 5, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Pro-Chem, located at 900 Ross Street, Amarillo, Texas 79404.

229. On or about February 8, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at Highway 183, Route 1, Box 431, Clinton, Oklahoma 73601.

230. On or about February 14, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.

231. On or about February 14, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Wilbur-Ellis, located at 1 Mile Southwest U.S. Highway 60, Hereford, Texas 79045.

232. On or about February 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed, located at 126 North 10th Street, Broken Bow, Nebraska 68822.

233. On or about March 6, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest, located at 71703 US Highway 83, McCook, Nebraska 69001.

234. On or about March 6, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Heritage Seed, located at 324 Main Street, Crawford, Nebraska 69339.

235. On or about March 7, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 1434 220th Street, Webster City, Iowa 50595.

236. On or about March 10, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Pro-Chem, located at 900 Ross Street, Amarillo, Texas 79404.

237. On or about March 13, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 71703 U.S. Highway 83, McCook, Nebraska 69001.

238. On or about March 13, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed Company, located at 126 North 10th Street, Broken Bow, Nebraska 68822.

239. On or about March 14, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at 601 West 1st Avenue, Holdrege, Nebraska 68949.

240. On or about March 17, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 71703 U.S. Highway 83, McCook, Nebraska 69001.

241. On or about March 18, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at 4302 Locust Street, Lubbock, Texas 79404.

242. On or about March 19, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Farmers Coop Grain, located at 102 West G Street, Trenton, Nebraska 69044.

243. On or about March 24, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed Company, located at 126 North 10th Street, Broken Bow, Nebraska 68822.

244. On or about March 24, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to McCoy Farms, located at HC 72 Box 1, Crookston, Nebraska 69212.

245. On or about March 31, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.

246. On or about April 4, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Arrow Seed Company, located at 126 North 10th Street, Broken Bow, Nebraska 68822.

247. On or about April 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Richard Robbins, located at 20500 County Road 52, Walsh, Colorado 81092.

248. On or about April 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.

249. On or about April 18, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Van Diest Supply, located at 71703 U.S. Highway 83, McCook, Nebraska 69001.

250. On or about April 18, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Mark Newman, located at 6702 Silverbell Lane, Amarillo, Texas 79124.

251. On or about April 2 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at Highway 183, Route 1, Box 431, Clinton, Oklahoma 73601.

252. On or about May 1, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Bayne Seed & Supply, located at 3900 North Lamont Road, Hershey, Nebraska 69143.

253. On or about May 9, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Estes, located at 4302 Locust Street, Lubbock, Texas 79404.

254. On or about May 15, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Helena Chemical, located at North Highway 385/87, Hartley, Texas 79044.

255. On or about May 30, 2008, Respondent distributed or sold "Rozol," EPA Reg. No. 7173-244, to Gross Seed, located at Highway Contract Route 66 Box 13, Johnstown, Nebraska 69214.

256. On August 22, 2008, EPA amended the Federal SSURO, dated June 2, 2008 "Rozol," EPA Reg. No. 7173-244.

257. The August 22, 2008, amended Federal SSURO prohibited the Respondent from distributing any further advertisement literature "Rozol," EPA Reg. No. 7173-244 without further approval from EPA.

Calendar Year 2009 to present

258. During calendar years 2009 and 2010, Respondent was the registrant of "Rozol," EPA Reg. No. 7173-244.

259. On or about May 13, 2009, Respondent registered "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

260. Prior to the registration of "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on May 13, 2009, Respondent had registered "Rozol," EPA Reg. No. 7173-244, under the authority

of Section 24(c) of FIFRA, 7 U.S.C. § 136v(c), to control black - tailed prairie dogs under “Special Local Needs” supplemental labels.

261. Due to the fact that Respondent registered “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, to control black-tailed prairie dogs, “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, supersedes the Section 24(c) “Special Local Needs” registrations to control black - tailed prairie dogs under “Rozol,” EPA Reg. No. 7173-244.

262. During calendar years 2009 and 2010, Respondent was the registrant of “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286.

263. During calendar years 2009 and 2010, “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, was classified as a restricted use product under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

264. “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, was classified as a restricted use product under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), because of its potential secondary toxicity to nontarget organisms.

265. As a result of its classification as a restricted use product, “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, can only be sold to and be used by Certified Applicators or persons under the direct supervision of Certified Applicators and only for users covered by the Certified Applicator’s certification.

266. During calendar years 2009 and 2010, “Rozol,” EPA Reg. No. 7173-244, was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

267. During calendar years 2009 and 2010, “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

268. On or about May 13, 2009, the Office of Pesticides Program, Registration Division accepted a label regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, that was submitted by Respondent.

269. The "accepted label" and any subsequent amendments are a part of the statement required by Respondent in connection with its registration "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

270. The "accepted label" and any subsequent amendments identify the label language approved by EPA for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

271. Any changes in labeling that differs in substance from the labeling accepted by the Office of Pesticides Program, Registration Division on May 13, 2009, for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, must be submitted to and accepted by Office of Pesticides Program, Registration Division prior to use in commerce.

272. On November 18, 2009, an inspector employed by EPA and authorized to conduct inspections under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, conducted an internet search of www.liphatech.com.

273. Respondent's website at www.liphatech.com advertised its pesticide products to the public.

274. Respondent's website at www.liphatech.com included a link entitled "Contact Us - Sales Ag/Animal Health," which included a list of sales managers throughout the country with each manager's corresponding contact information (including phone, mobile and e-mail information).

*Claims in the Product Information Sheet
regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286,
on November 18, 2009*

275. On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: "**Proven Single Application Effectiveness** – When properly applied in all active burrows of a colony, control typically exceeds 85%, and can be as high as 100%." (Emphasis in original).

276. This claim is substantially different than any claim made for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, as part of its May 13, 2009 "accepted label."

277. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

278. On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: "**Low cost per acre** - Savings in time, labor and fuel exceed comparative total costs of other methods such as zinc phosphide, diphacinone, phos-toxin, and foam or propane-based systems." (Emphasis in original).

279. This claim is substantially different than any claim made for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, as part of its May 13, 2009 "accepted label."

280. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

281. On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on

www.liphatech.com: “**Superior Weatherability** - Rozol does not lose its effectiveness when wet. It outlasts Zinc Phosphide.” (Emphasis in original).

282. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

283. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

284. On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, on www.liphatech.com: “**Provides control, regardless** - With many alternative methods, if the target rodent is not in the burrow during application - success is reduced or control is lost altogether.”(Emphasis in original).

285. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

286. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

287. On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, on www.liphatech.com: “**Best Bait Acceptance & Favorable Toxicity Profile** - According to the EPA’s overall risk assessment, Rozol offers lower overall risk than Zinc Phosphide or Diphacinone, And Prairie dogs will eat it in the burrow, so there is less risk to non-target wildlife.” (Emphasis in original).

288. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

289. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

290. On November 18, 2009, Respondent made the following claims in the Product Information sheet regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, on www.liphatech.com: “**Lower Primary Poisoning Potential** - Rozol’s toxicity to birds is 20X (times) less than for ZP. Rozol less toxic to dogs than ZP or Diphacinone.” (Emphasis in original).

291. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

292. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

*Claims in brochure entitled “Control Range Rodents”
regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286,
on November 18, 2009*

293. On November 18, 2009, Respondent made the following claims in its brochure entitled “*Control Range Rodents*” regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, on www.liphatech.com: “**Outstanding Single Application Effectiveness**” (Emphasis in original).

294. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

295. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT

296. On November 18, 2009, Respondent made the following claims in its brochure entitled “*Control Range Rodents*” regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286,

on www.liphatech.com: “**Proven Reliability** - In university trials on over 11,400 burrows to provide over 94% control in one treatment (when properly and thoroughly applied to all active burrows in a colony).” (Emphasis in original).

297. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

298. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

299. On November 18, 2009, Respondent made the following claims in its brochure entitled “*Control Range Rodents*” regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, on www.liphatech.com: “**Highly Palatable** - Food-grade winter wheat grain (10% protein) is a preferred feed source for field rodents and provides excellent acceptance and control” (Emphasis in original).

300. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

301. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

302. On November 18, 2009, Respondent made the following claims in its brochure entitled “*Control Range Rodents*” regarding “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, on www.liphatech.com: “**Superior Weatherability** - Rozol does not lose its effectiveness when wet - it outlasts zinc phosphide and can be used under diverse weather conditions.” (Emphasis in original).

303. This claim is substantially different than any claim made for “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, as part of its May 13, 2009 “accepted label.”

304. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

305. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: "**Easy-to-Use/Less Work** - No need to pre-treat and less repeat applications." (Emphasis in original).

306. This claim is substantially different than any claim made for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, as part of its May 13, 2009 "accepted label."

307. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

308. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, on www.liphatech.com: "**Lower Primary Poisoning Potential to Non-Target Birds and Livestock** - Rozol's primary toxicity to birds is much less than that of acute toxicants." (Emphasis in original, footnote deleted).

309. This claim is substantially different than any claim made for "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, as part of its May 13, 2009 "accepted label."

310. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

*Claims in brochure entitled "Control Range Rodents"
regarding "Rozol," EPA Reg. No. 7173-244,
on November 18, 2009*

311. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol," EPA Reg. No. 7173-244, on www.liphatech.com: "**Outstanding Single Application Effectiveness**" (Emphasis in original).

312. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

313. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

314. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol," EPA Reg. No. 7173-244, on www.liphatech.com: "**Proven Reliability** - In university trials on over 11,400 burrows to provide over 94% control in one treatment (when properly and thoroughly applied to all active burrows in a colony)." (Emphasis in original).

315. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

316. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

317. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol," EPA Reg. No. 7173-244, on www.liphatech.com: "**Highly Palatable** - Food-grade winter wheat grain (10% protein) is a preferred feed source for field rodents and provides excellent acceptance and control" (Emphasis in original).

318. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

319. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

320. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol," EPA Reg. No. 7173-244, on www.liphatech.com: "**Superior Weatherability** - Rozol does not lose its effectiveness when wet - it outlasts zinc phosphide and can be used under diverse weather conditions." (Emphasis in original).

321. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

322. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

323. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol," EPA Reg. No. 7173-244, on www.liphatech.com: "**Easy-to-Use/Less Work** - No need to pre-treat and less repeat applications." (Emphasis in original).

324. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

325. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

326. On November 18, 2009, Respondent made the following claims in its brochure entitled "*Control Range Rodents*" regarding "Rozol," EPA Reg. No. 7173-244, on www.liphatech.com: "**Lower Primary Poisoning Potential to Non-Target Birds and**

Livestock - Rozol's primary toxicity to birds is much less than that of acute toxicants."

(Emphasis in original, footnote deleted).

327. This claim is substantially different than any claim made for "Rozol," EPA Reg. No. 7173-244, as part of its March 2, 2005 "accepted label."

328. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

329. On February 10, 2010, this inspector conducted another search of www.liphatech.com.

330. On February 10, 2010, Respondent's website at www.liphatech.com made the same claims as it did on November 18, 2009.

331. On February 19, 2010, this inspector conducted another search of www.liphatech.com.

332. On February 19, 2010, Respondent's website at www.liphatech.com made the same claims as it did on November 18, 2009.

333. On February 23, 2010, this inspector conducted another search of www.liphatech.com.

334. On February 23, 2010, Respondent's website at www.liphatech.com made the same claims as it did on November 18, 2009.

***Claims in the Product Information Sheet
regarding "Rozol," EPA Reg. No. 7173-244
on February 23, 2010***

335. On February 23, 2010, Respondent made the following claims in its Product Information sheet regarding "Rozol," EPA Reg. No. 7173-244, on www.liphatech.com: "More

readily available and less toxic than strychnine-treated millo products labeled for burrow-builder use.”

336. This claim is substantially different than any claim made for “Rozol,” EPA Reg. No. 7173-244, as part of its March 2, 2005 “accepted label.”

337. PARAGRAPH IN THE ORIGINAL COMPLAINT REMOVED IN AMENDED COMPLAINT.

338. The information on Respondent’s website at www.liphatech.com, on November 18, 2009, constitutes advertisements, subject to the requirements of 40 C.F.R. § 168.22.

339. The information on Respondent’s website at www.liphatech.com, on February 10, 2010, constitutes advertisements, subject to the requirements of 40 C.F.R. § 168.22.

340. The information on Respondent’s website at www.liphatech.com, on February 19, 2010, constitutes advertisements, subject to the requirements of 40 C.F.R. § 168.22.

341. The information on Respondent’s website at www.liphatech.com, on February 23, 2010, constitutes advertisements, subject to the requirements of 40 C.F.R. § 168.22.

342. On November 18, 2009 through February 23, 2010, Respondent’s website, www.liphatech.com, offered “Rozol,” EPA Reg. No. 7173-244, for distribution or sale as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3.

343. The claims made on Respondent’s website from November 18, 2009 through February 23, 2010, were made as a part of the distribution or sale of “Rozol,” EPA Reg. No. 7173-244.

344. On November 18, 2009 through February 23, 2010, Respondent’s website, www.liphatech.com, offered “Rozol Prairie Dog Bait,” EPA Reg. No. 7173-286, for distribution

or sale as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3.

345. The claims made on Respondent's website from November 18, 2009 through February 23, 2010, were made as a part of the distribution or sale of "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

346. On March 4, 2010, due to the claims Respondent was making on its website, www.liphatech.com, from November 18, 2009 through February 23, 2010, EPA issued another SSURO to Respondent regarding "Rozol," EPA Reg. No. 7173-244.

347. The March 4, 2010 SSURO also addressed "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.¹

348. Under the August 22, 2008 Amended SSURO, Respondent was prohibited from distributing marketing material or labeling regarding "Rozol," EPA Reg. No. 7173-244, until any such material was reviewed by EPA.

349. EPA did not approve nor authorize the advertisements that were found on Respondent's website, www.liphatech.com, on November 18, 2009, February 10, 2010, February 19, 2010, and February 23, 2010 regarding "Rozol," EPA Reg. No. 7173-244.

350. EPA did not approve nor authorize the advertisements that were found on Respondent's website, www.liphatech.com, on November 18, 2009, February 10, 2010, February 19, 2010, and February 23, 2010 regarding "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

351. EPA did not approve the distribution of any advertisements that were found on Respondent's website, www.liphatech.com, on November 18, 2009, February 10, 2010, February 19, 2010 and February 23, 2010 in the form of any literature, flyers, or advertisements to

¹ The March 4, 2010 SSURO also covered a third product, "Rozol Pocket Gopher Bait," EPA Reg. No. 7173-184.

Respondent's distributor partners for either "Rozol," EPA Reg. No. 7173-244, nor "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

352. After the March 4, 2010 Federal SSURO was issued, Respondent sent letters to 48 of its distribution partners (*See Attachment I*) requesting that they each destroy/disregard "any and all literature, flyers, advertisements" regarding "Rozol," EPA Reg. No. 7173-244, and "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, including brochures entitled "*Control Range Rodents*," dated September 24, 2009 or older.

353. The claims made to Respondent's 48 distribution partners through its advertisements, which included brochures entitled "*Control Range Rodents*," dated September 24, 2009 or older, were made as a part of the distribution or sale of "Rozol," EPA Reg. No. 7173-244.

354. The claims made to Respondent's 48 distribution partners through its advertisements, which included brochures entitled "*Control Range Rodents*," dated September 24, 2009 or older, were made as a part of the distribution or sale of "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286.

355. Between on or about September 24, 2009 and on or about February 23, 2010, Respondent offered for sale, "Rozol," EPA Reg. No. 7173-244, to 48 separate distributor partners (*See Attachment I*).

356. Between on or about September 24, 2009 and on or about February 23, 2010, Respondent offered for sale, "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, to 48 separate distributor partners (*See Attachment I*).