

List of Attachments

Attachment A Declaration of Claudia Niess

Attachment B Proposed Findings of Facts and Conclusions of Law

Attachment A:

Declaration of Ms. Claudia Niess

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	
LIPHATECH, INC.)	
MILWAUKEE, WISCONSIN)	Docket No. FIFRA-05-2010-0016
)	
Respondent.)	
)	

DECLARATION OF MS. CLAUDIA NIESS

State of Illinois
County of Cook

I, Claudia Niess, declare and state as follows:

1. The statements made in this declaration (which consists of five pages) are based on my personal knowledge.
2. In 2005, I received a Bachelor of Science degree in Environmental Engineering from Northwestern University.
3. I am currently employed as an Environmental Engineer and I am credentialed as an Enforcement Officer with the Pesticides/Toxics Compliance Section of the Chemicals Management Branch, Land and Chemicals Division, U.S. EPA, Region 5. The Pesticides/Toxics Compliance Section was formerly known as the Pesticides & Toxics Enforcement Section. I have been employed as an Environmental Engineer and Enforcement Officer in this capacity since 2005.
4. As an Environmental Engineer and Enforcement Officer in the Pesticides/Toxics Compliance Section, my duties include conducting inspections and other investigative work to determine compliance with the Federal Insecticide, Fungicide

and Rodenticide Act (FIFRA), as well as other environmental statutes. I have conducted approximately 50 inspections under FIFRA.

5. My involvement with the case of *In the Matter of Liphatech, Inc.*, started in January 2008 when Region 7 contacted Region 5 to inform Region 5 of potential violations relating to a Liphatech, Inc. (Liphatech) product, “Rozol Pocket Gopher Bait II” (Alternate name: “Rozol Pocket Gopher Burrow Builder Formula”) (hereinafter Rozol), EPA Registration Number (EPA Reg. No.) 7173-244, to control black-tailed prairie dogs in the states of Kansas, Nebraska, Wyoming, Colorado, Texas and Oklahoma. See Complainant’s Initial Prehearing Exchange, CX 8.

6. Since at least 1988, U.S. EPA, Region 5 has entered into a continuing Cooperative Agreement with the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP), (as permitted under Section 23 of FIFRA), under which WDATCP conducts inspections and other investigations of suspected violations of FIFRA on behalf of U.S. EPA within the State of Wisconsin.

7. After Region 5 received this referral from Region 7, I was assigned to be the case officer for the Liphatech matter.

8. On April 15, 2008, Region 5, I requested WDATCP to conduct an inspection at the Liphatech facility located at 3600 West Elm Street, Milwaukee, Wisconsin. See Complainant’s Initial Prehearing Exchange, CX 13.

9. As a result of Region 5’s request, WDATCP conducted an inspection at the Liphatech facility on June 2 through 19, 2008. See Complainant’s Initial Prehearing Exchange, CX 14 and 14a.

10. I received an inspection report from WDATCP which documented the

results of WDATCP's inspection at Liphatech's facility on June 10 through 19, 2008. See Complainant's Initial Prehearing Exchange, CX 14 and 14a.

11. The WDATCP inspection report included documentation that WDATCP collected from Liphatech at the June 19, 2008 inspection.

12. This documentation included the actual copies of print advertisements that are the subject of Counts 2,118 through 2,140 of the Complaint, which included:

A. The October 2007 issue of *Cattle Guard*, See Complainant's Initial Prehearing Exchange, CX 14a, bates stamped numbers (#) 285-286;

B. The October 2007 issue of *Kansas Stockman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 290;

C. The November 2007 issue of *Kansas Stockman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 291;

D. The January 2008 issue of *Kansas Stockman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 292;

E. The February 2008 issue of *Kansas Stockman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 293;

F. The October 2007 issue of *Nebraska Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 295;

G. The November 2007 issue of *Nebraska Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 296;

H. The December 2007 issue of *Nebraska Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 297;

- I. The January 2008 issue of *Nebraska Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 298;
- J. The February 2008 issue of *Nebraska Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 299;
- K. The February 2008 issue of *Oklahoma Cowman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 300-301;
- L. The October 2007 issue of *The Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 303;
- M. The November 2007 issue of *The Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 304;
- N. The March 2008 issue of *The Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 305;
- O. The April 2008 issue of *The Cattleman*, See Complainant's Initial Prehearing Exchange, CX 14a, # 306;
- P. A copy of the print advertisement that appeared in the February 16, 2008 through April 5, 2008 weekly issues of *Wyoming Livestock Roundup*, See Complainant's Initial Prehearing Exchange, CX 14a, # 328-330.

See copies of each of these print advertisements attached to this declaration.

13. I reviewed each of these print advertisements.
14. Each of these print advertisements did not include the words "restricted use pesticide."
15. Each of these print advertisements did not include any language that resembled a term of restriction for the Rozol restricted use product such as "For retail

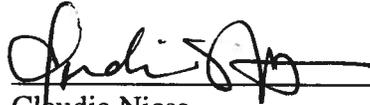
sale to and use only by Certified Applicators or persons under their direct supervision and only for those users covered by the Certified Applicator's Certification.”

16. The assertions I make in this declaration are truthful, and, if called to testify as a witness, I am prepared to testify under oath to the accuracy of the observations and statements contained in this declaration, based on my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: September 27, 2010

By:



Claudia Niess
Environmental Engineer
Enforcement Officer

Print Advertisements Referenced in Paragraph 12 of

Ms. Claudia Niess' Declaration

Colorado Cattlemen's Association

8833 Ralston Road, Arvada, CO 80002
 Phone: (303) 431-6422
 E-mail: info@coloradocattle.org
 Web site: www.coloradocattle.org

Invoice

DATE	INVOICE #
10/9/2007	1-1046

of 6-14-08
431-7607
184

BILL TO

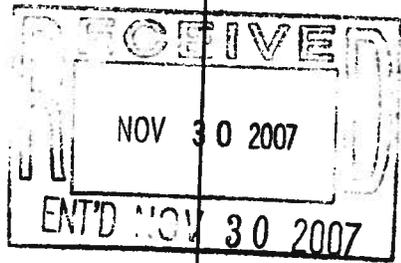
Liphatech
 Chuck Hathaway
 3600 W Elm St
 Milwaukee, WI 53209

91725

DUE DATE
10/9/2007

DESCRIPTION	QTY	RATE	AMOUNT
October 2007 Cattle Guard Advertising Full Page Color		600.00	600.00
Total			\$600.00

1-304-66010
11/30/07
EA



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Calendar

- October 2 - Gardiner Angus Ranch Fall Bull Sale, Ashland
- October 4 - Jamison Herefords Female & Quarter Horse Production Sale, Quinter
- October 6 - Birk Genetics Production Sale, Jackson, MO
- October 6 - Chain Land & Cattle Traditions Sale, Medicine Lodge
- October 6 - Harper Cattle, LLC Hereford/Angus Private Treaty Sale, Wagon Mound, NM
- October 7 - Michaelis Show Cattle Show Steer & Heifer Sale, Paxico
- October 13 - 21st Annual Mid Continent Farms Club Calf Sale, Washington
- October 13 - Eby Ranch Production Sale, Emporia
- October 13 - Harper Cattle, LLC Hereford/Angus Private Treaty Sale, Venus, TX
- October 13 - Buchman's Double B Ranch Annual Performance Foundation Quarter Horse Sale, Alta Vista
- October 20 - Sunflower Genetics Ladies of the Flint Hills Female Sale, Maple Hill
- October 20 - Post Rock Cattle Co. Genetic Harvest Gelbvich Female Sale, Barnard
- October 28 - Magness Land & Cattle Mature Spring Cowherd Dispersion, Miami, OK
- October 31 - Fink Beef Genetics Annual Bull Sale, Randolph
- November 2 - Downey Ranch & Kniebel Cattle Co. Angus & Red Angus Bull & Commercial Female Sale, Wamego
- November 3 - McCurry Angus Ranch Open House & Private Treaty Bull Sale, Burrtown
- November 3 - The Fall Gatherin' 07, Joplin, MO
- November 3 - J-7 Ranch 13th Annual Angus Bull Sale, Joplin, MO
- November 3 - A Bar Ranch Remuda & Colt Sale, Joplin, MO
- November 3 - The Herd Builder Braunvieh Sale, Marshall, MO
- November 5 - Hillcrest Genetics Fall Angus Production Sale & Cow Herd Dispersion, Havana
- November 5 - Hoffman Angus Production Sale, Aberdeen, SD
- November 12 - Lonker Herefords/Red Angus Fall Fantastica Sale VI, Medicine Lodge
- November 17 - Dalebanks Angus Annual Production Sale, Eureka
- November 24 - Moser Ranch 16th Annual Production Sale, Wheaton
- November 24 - Mid Continent Farms Top Cut Female Sale, Washington
- November 26 - 6th Annual Profit Proven Gardiner-Influenced Commercial Angus Replacement Female Sale, Pratt
- November 29-30 - KLA Convention & Trade Show, Wichita

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D&M Cattle wins state ranch rodeo title

A team of cowboys from D&M Cattle Company of Greeley won the Kansas Championship Ranch Rodeo, September 28-29 in Medicine Lodge. D&M placed in five of six events to win the title. Members of the winning team were Les McGhee, Lee Hart, Lance

Henderson and Travis Kopf.

Second place was won by the team from Bar Cross and Rolling Hills ranches of Lincoln and Brookville, including Clint and Bill Donley, Bruce Miller and John Kueser. Brenton/OV ranches of Florence and Rosalia took

third with the team of Tyson and Marty Brenton, Rusty Vannocker and Shawn Satterfield. Fourth was Arndt/Lilley ranches of Alma and Emporia. Team members were Ryan Arndt, Josh Lilley, Reid Green and Glen Collinge.

Individual winners were: bronc riding - Satterfield, Brenton/OV; cattle doctoring and team penning - Bar Cross/Rolling Hills; wild cow milking - Arndt/Lilley; calf branding - Brenton/OV; and double mugging - D&M.



The winning team from D&M was (L to R) Lee Hart, Les McGhee, Travis Kopf and Lance Henderson.

Hart was the all-around cowboy, with Scott Cook of Clawson/McCarty at Englewood as runner-up. The top horse was "Mighty Mouse," owned and ridden by Davy Cline from Mule Creek Ranch near Wilmore. "Ruby," owned and ridden by Cook, was the runner-up horse.

By winning the Kansas event, D&M qualified for this month's World Championship Ranch Rodeo in Amarillo. Other Kansas teams already qualified for the national event are Buck Creek/Scribner of El Dorado and Cottonwood Falls and Lazy B/Beachner of Fort Scott and St. Paul.

A ranch horse competition held in conjunction with the rodeo included two divisions. The senior division winner was 3J Colonel, ridden by Jamie Stover. Ranger Cookie, also ridden by Stover, won the junior division.

The winning women's ranch rodeo team at Medicine Lodge was Division Ranch of Strong City, with cowgirls Terri Lewis, Keisha Langvardt, D.D. Malmberg and Bobbie Pickrell. **ks**

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- March 8 - Birk Genetics 2nd Annual Spring Bull Sale, Jackson, MO
- March 9 - Mission Valley Ranch Annual Production Sale, Topeka
- March 10 - Rock'n R Angus Ranch Bull Sale, Plainville
- March 11 - Bar Arrow Cattle Company & Spring Valley, LTD 18th Annual Production Sale, Agra
- March 12 - Stucky Ranch Annual Production Sale, Kingman
- March 13 - Bar S Ranch Annual Bull & Female Production Sale, Paradise
- March 14 - Oliphant Angus 8th Annual Production Sale, Dodge City
- March 15 - Post Rock Cattle Company "The Cowman's Kind" Annual Bull Sale, Barnard
- March 15 - Molitor Angus 29th Annual Production Sale, Zenda
- March 16 - The Gold Bullion Sale, Clay Center
- March 16 - R&L Angus Annual Bull Sale, Westmoreland
- March 17 - Hinkle's Prime Cut Angus Production Sale, Nevada, MO
- March 17 - Hardy Angus Ranch "The Cattleman's Kind" 1st Annual Bull & Female Sale, Woodward, OK
- March 18 - Hinkson Angus Ranch Optimum Performance Bull Sale, Cottonwood Falls
- March 20 - Benoit Angus Ranch 19th Annual Bull Production Sale, Esbon
- March 21 - BJ Angus Genetics Production Sale, Manhattan
- March 22 - New Haven Angus 9th Annual Open House & Private Treaty Bull Sale, Leavenworth
- March 24 - Oleen Brothers Annual Production Sale, Dwight
- March 25 - Suhn Cattle Company Bull Sale, Eureka
- March 26 - Pelton Simmental/Red Angus 14th Annual Sale, LaCrosse
- March 27 - Mushrush-Beckton Joint Red Angus Sale, Elmdale
- March 28 - Larson Angus Ranch Annual Production Sale, Sharon Springs
- March 28 - Dickinson Ranch 36th Annual Production Sale, Gorham
- March 28 - Schurrtop Angus & Charolais Bull Sale, McCook, NE
- March 29 - H&M Angus Farms Mature Cow Dispersal & 42nd Annual Bull Sale,

Greeley

March 29 - Sandhill Farms 1st Annual Bull & Commercial Heifer Sale, Haviland

March 31 - Myron Runft & Associates Charolais Bull Sale, Belleville

April 1 - Hubert Charolais Ranch 29th Annual Polled Bull Sale, Monument

April 2 - Kansas Bull Test Sale, Beloit

April 4 - D Cross Genetics Red Angus & Ash Creek Acres/Alcove Cattle Co. Black Angus Double Feature Sale, Washington

April 5 - Gardiner Angus Ranch 29th Annual Production Sale, Ashland

April 7 - Green Garden Angus 49th Annual Production Sale, Ellsworth

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Producer-funded beef campaign underway

New advertising funded by the beef checkoff is building on the core characteristics consumers recognize and love about beef. Powerful "Beefscapes" is a fresh chapter in the long-running "Beef. It's What's For Dinner" campaign, which has become one of the

most recognizable tag lines in advertising history. About 88% of Americans instantly recognize the slogan.

The new promotion is bold and visually stunning. According to NCBA Vice President of Brand Strategy and Communications Kim Essex, it capi-

talizes on consumers' unique passion for beef and why they should feel good about eating it.

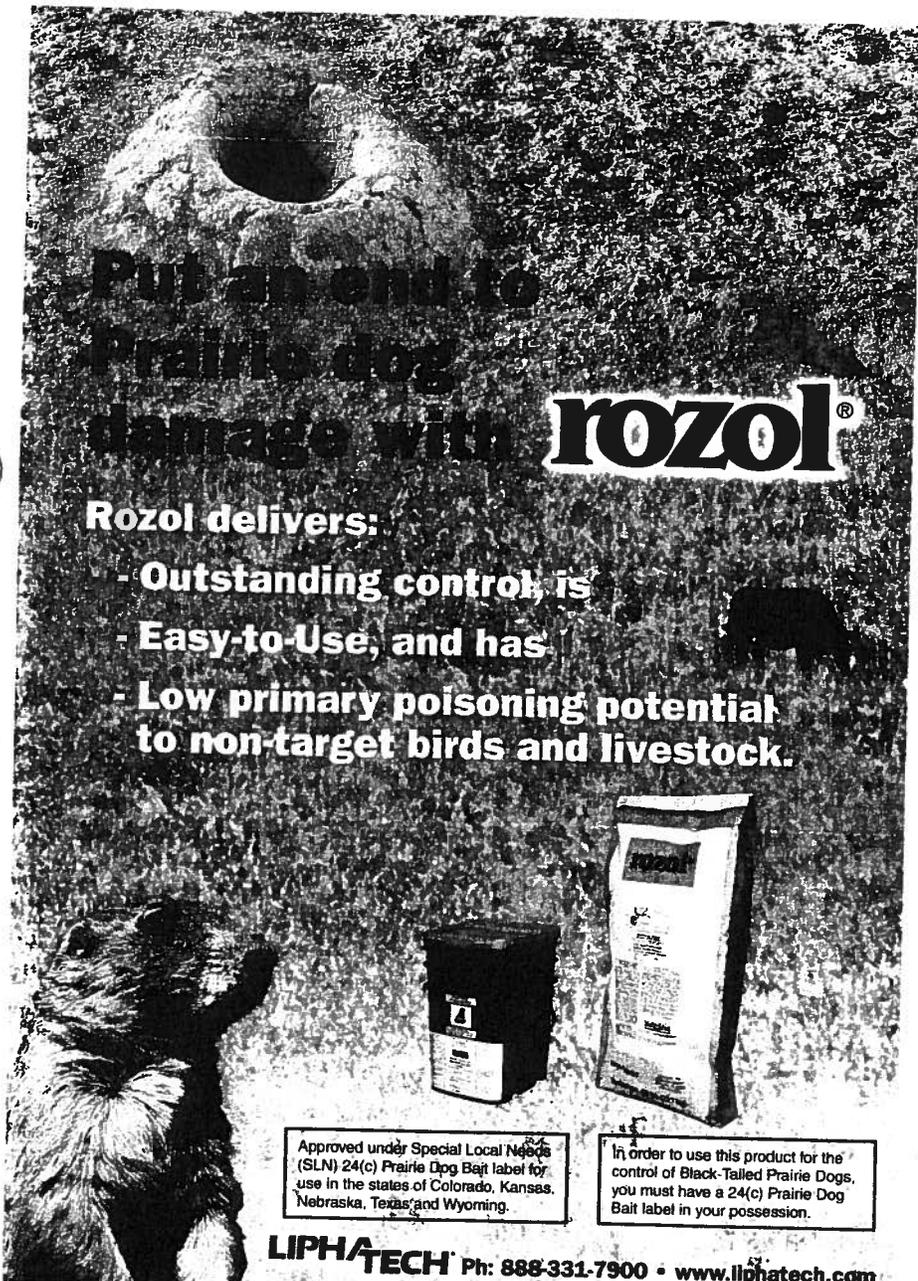
Previously, the checkoff split advertising resources between two separate targets, one focusing on beef's nutritional profile and the other on consumers' passion for beef. Surveys have shown consumers are looking for foods that satisfy both demands. Consumer research conducted with checkoff dollars indicated a single campaign can deliver the messages of a quality eating experience and how protein fuels the body.

"Consumers can feel good about choosing lean beef as part of a healthy lifestyle because it is an excellent or good source of nine essential vitamins and minerals, including protein, an essential nutrient that helps fuel strength and energy for the body," said NCBA Vice President of Nutrition Mary Young.

The campaign encourages Americans to "Discover the Power of Protein in the Land of Lean Beef." The combination of radio, billboards and consumer magazines carrying the messages will reach 86% of the target audience this year. Print ads appear in the February issues of *Fitness* magazine, *Cooking Light*, *People* and *Parents*.

National radio ads featuring a distinct signature voice and the traditional "Rodeo" music theme began airing in late January. Actor Matthew McConaughey replaces Sam Elliott, who helped deliver the beef message for 10 years. McConaughey has played roles in "The Wedding Planner," "A Time to Kill" and, most recently, "We are Marshall," the story of the ill-fated flight of the 1970 Marshall football team. His voice can be best described as "southern contemporary."

The majority of checkoff ads are targeted to reach consumers in highly populated areas. Producers can see the print ads and corresponding recipes, and hear the new radio ads at www.beefitswhatsfordinner.com. 



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↔ Cattlemen's Digest ↔

RED TROMPS BLACK

The Nebraska State Fair went against what has become the norm and selected a non-black animal as its market beef Champion. Sixteen-year-old Will Johnson and a 1,295-pound steer named Herbie — as in Herbie Husker — took champion honors at last month's Nebraska State Fair. Most of the calves that make it to the parade of champions each year as the winner are almost always black. Because of some Shorthorn breeding, Herbie is a home-grown reddish brown in color and tall. Herbie was born and raised at Triple J Club Calves, owned by Will's parents. Johnnie and Melinda Johnson make their own back their 4-H beef calves from the approximately 60 born at the Burt County beef operation each year. To his credit, Will seemed to be thinking less

about the cash prize (more than \$4,000) than about the feeling of accomplishment that comes from hard work. Reported by the *Lincoln Journal Star*. ✪

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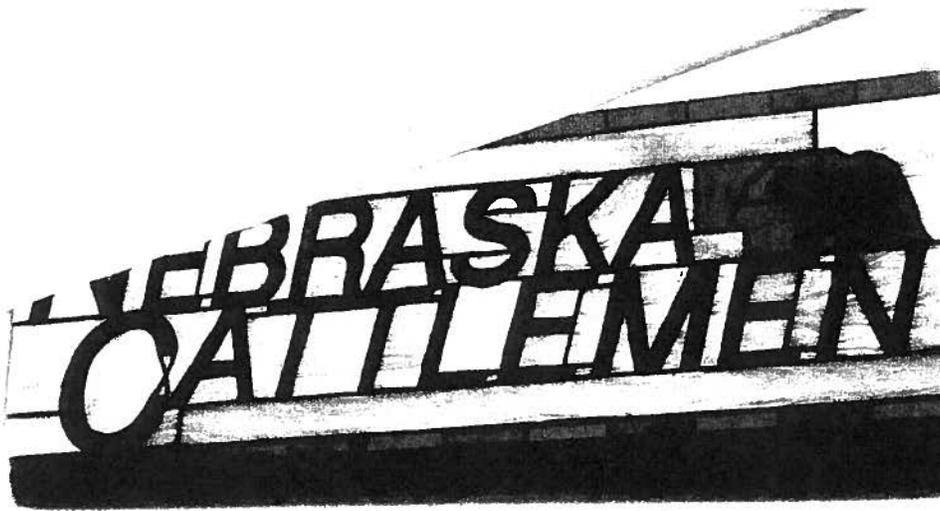
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RANCHER/GUARDSMAN HEADED BACK

On sleepless nights in Iraq, Dustin Seidler found solace in the dark desert sky. Gazing at the bright stars, he was transported back to his family's Sand Hills Ranch. "A little bit of home," he'd think. He would imagine riding his horse on the ranch and it helped him overcome the fear. Seidler lost count of how many times his platoon was attacked by roadside bombs and snipers. Escape for the Sand Hills cowboy came when his parents sent him his lasso. From scrap wood, Seidler fashioned a roping dummy behind his platoon's barracks. Roping gave him the dual satisfaction of clearing his mind and kept him sharp for branding time back on the ranch. While fellow soldiers used their combat pay to buy things, Seidler made payments on cattle. After a year in Iraq, Seidler, 25, came back to the ranch, one of 56 soldiers decorated for actively fighting the enemy. But the most homesick guy in Troop A soon longed for Army life again and when the chance came to return to Iraq, Seidler volunteered. He feels he has a purpose in life and on this next tour will be wearing the three stripes of a sergeant and commanding a Humvee. "I think the Army just fits me, or I fit the Army," says Seidler. "The military could become a career." Evenso, he hasn't sold his cattle. Reported by the *Omaha World Herald*. ✪



PAC^{3 of 6} Auction Benefits NC

With some spectacular items – like the NC stained glass pictured at left – up for auction at the annual banquet during the NC Convention in Kearney, the winning bidder is the beneficiary as are all NC members and supporters.

The NC Political Action Committee (PAC) is a special fund established for the support of candidates for election to state and federal offices by Nebraska Cattlemen. In the next election, there will be 25 state legislative races, three congressional races and one U.S. Senate race – all with candidates that may or may not be supporters of NC policy and positions. Therefore, it becomes imperative that NC helps to elect officials that will adequately and accurately support production agriculture in Nebraska.

Up for auction this year is the beautiful stained glass creation above, handcrafted by Wes Petznick of Ft. Colhoun. The dimensions are approximately 25" x 9" and the stained glass will be framed and suitable for hanging.

Also being auctioned is the popular NC President Steak Feed. This annual item features a group steak BBQ to be hosted by the current NC president, usually held at his operation headquarters or home.

If you or your affiliate is in need of some membership help, bid on the membership recruitment services of NC president and NC executive vice president for a day! The winning bidder can put these leaders to work for a day in the membership trenches. Plans are also in the works to have an autographed volleyball from the Husker Women's Volleyball team. For the Husker sports fan, this is a must-have item!

The PAC auction will be held at the NC Convention Nov. 29 during the Annual Banquet. For more information, please contact Michael Kelsey at (402) 475-2333. ✧

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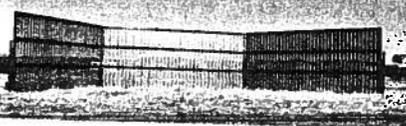
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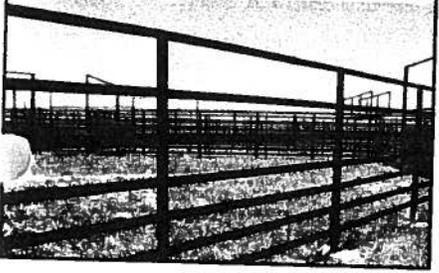
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INVOICE

Date	Invoice #
2/6/2008	12781

AF-6-14-08
431-7010
1/8

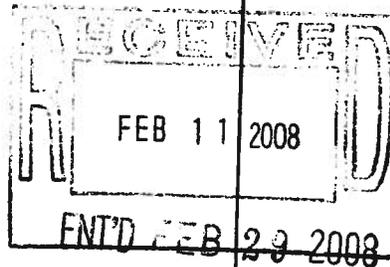
Bill To
LIPHATECH 3600 W. ELM ST. MILWAUKEE, WI 53209

96035

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
1	4C FEB ADV PG 59	850.00	850.00

ACCT. 1-304-66010
APPROVAL: [Signature]
DATE: 2-29-08



Thank you for your business.

Total \$850.00

6

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Allied Industry

Alltech Expands Operations in the Southwest

Due to increasing demand, global animal health company Alltech has begun drawing up plans for a new state-of-the-art sales office, warehouse and production facility on the company's recently purchased 240-acre site east of Clovis, N.M.

Previously home to Process Management Company Inc., the ethanol plant housed 10 buildings, each capable of producing 10 million gallons of ethanol per year.

The new Alltech facility will support local sales in New Mexico and West Texas and offer a local distribution site for its growing customer base. Alltech New Mexico will also produce its signature product Yea-Sacc^{®1026} Farm Pak 2X, a live yeast culture feed additive, at the facility.

Clovis, which sprang up as a result of the east-west railroad, was built in 1909 in the heart of a newly developing farming and ranching region in eastern New Mexico. New Mexico is home to 360,000 dairy cows and 45 percent of the dairy cows reside in Curry and Roosevelt counties. Across the state line, the Panhandle of Texas holds approximately 150,000 cows.

Since 1980, Alltech's presence has grown with offices and distributors in 85 countries and 1,800 employees around the world. For more information about Alltech, visit www.alltech.com.

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for the calf's weight, how much it grows and its composition of bone, muscle and fat.

For example, an animal with a feed efficiency GPD[®] of -3.0 will eat three pounds less feed per day than an animal with a feed efficiency GPD[®] of zero. Over a 150-day feeding period and with a ration cost of \$165 per ton, the animal with a -3.0 GPD[®] will cost \$37 less to feed without sacrificing growth performance or carcass quality.

(Continued on page 120)

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bits of leaves and grasses.

That is where the location of their feeding is revealed.

Eat and run

Dr. Dale Rollins, a wildlife specialist with the Texas Cooperative Extension Service in San Angelo, refers to what he calls the "eat and run lifestyle" of quail.

"Anytime they're out feeding, they're vulnerable to predators," he says. So naturally it is advantageous to minimize that amount of time as much as possible. With the crop, "they can fill up (with food) then digest later," says Rollins.

Anyone who's cleaned a quail has seen the crop bulging out at the base of the neck after removing the head. If not already visible, the contents can be pushed out for a closer look by working the bolus of food matter between your thumb and forefinger.

... **sighting** ... usually a
coincidence ... **not** a
reproducible **skill**.

For your first few attempts, it will pay off to carry a few sandwich baggies with you to bring home samples for more convenient identification. Rollins says he prefers an empty shotgun shell box or envelope; leaving the craw contents in a baggie causes them to mold pretty quickly, he points out.

From here, things get a little more challenging. The most rugged quail terrain in the driest year could still hold a multitude of plant diversity, so complete knowledge of available seeds is probably impractical for the average hunter.

In his book *Bobwhites in the Rio Grande of Texas*, Val Lehman lists more than 70 plant types found in a crop, or craw, survey completed on the King Ranch in the early 1950s.

The variety included small

the presence of mushrooms and frogs along the wattles. While dozing a trench in this type of soil would be a risk for increasing erosion; the wattle supported and protected the berm, allowing the highest moisture retention. 485

... wash down and
germinate along the
wattle ...

The wattles were successful in the establishment of vegetation within a one year period. The area will continue to be monitored to determine how long it takes the wattles to totally degrade and the vegetation bands to become self-sustaining.

Although much cheaper than using traditional wattles, the cost of the treatment with the burlap and gin trash wattles is more than \$100 per acre (most of this in labor).

At this point, this is not a tool for large pastures, but it is a tool to restore small target areas that may be difficult to restore with any other method. This can also be used in sensitive areas, where a low impact technique is needed for revegetation.

... **mushrooms** and **frogs**
along the **wattles**.

Streamlining the construction and transportation process would greatly increase cost-effectiveness. This would make wattles a more competitive option for larger areas.

Construction materials could also be further studied. Different burlap weaves and chemical treatments to resist decay (copper-naphthalate) could be studied to increase longevity.

The study of wattles on different soil types could be very useful in determining their extent of applications. ■

Editor's Note: Will Juett is beginning his doctorate at Texas Tech, under Dr. David Wester, and in cooperation with Sul Ross State University, Dr. Bonnie Warlock, and Lykes Bros. Inc. hopes to further the study of these range wattles.

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attle.
 the Gulf Coast
 elenium and, says
 are not really satisfied
 amount of zinc going into
 ade in Texas." Beef cattle nutri-
 tionists, he says, are in agreement
 that a supplement with all the im-
 portant trace minerals — calcium,
 phosphorus, magnesium, manga-
 nese, copper, selenium and zinc —
 should be out in the pasture at all
 times.

The second step is to keep in-
 fectious agents out of your herd.

In addition to BVD, Wikse believes
 cattle should be tested for *Neospora*
caninum, which is also a chronic,
 lifetime infection.

Animals with *Neospora* anti-
 bodies in their blood are more like-
 ly to suffer an abortion, particularly
 on their first and second pregnan-
 cies. Only purchase animals from
 well-managed, reputable herds,
 and quarantine newly purchased
 animals for at least 30 days, with
 no nose-to-nose contact.

He recommends ranchers start
 their vaccination programs while

the animals are in quarantine, so
 they can get both a primary and
 a booster dose for the infectious
 agents before they enter the herd.

Step No. 3 is to implement
 management tactics to minimize
 the spread of infectious agents
 within your herd. One strategy is
 to eliminate vectors; for instance,
Neospora is spread by coyotes and
 foxes.

On the ranch in central Tex-
 as, he says, "The first time we put
 traps out, they got four foxes on
 that ranch...Identify and cull car-
 rier animals."

And No. 4, Wikse says, is to
 maintain a high level of specific re-
 sistance by vaccinating. He believes
 herds should be vaccinated against
 five infectious agents: *L. hardjo-*
bovis ("It's really widespread; we

... statewide averages in
Texas ... range from
2 to 4 percent.

have very favorable conditions in
 the South"), BVD, IBR, vibriosis,
 and trich when it's been identified
 in the herd, or in herds that are at
 high risk for infection.

That would include those that
 lease bulls, or commingle with
 other herds — for instance, Wikse
 says, in the Western states, "herds
 that use the BLM grazing in the
 summertime, or they let their cattle
 go to the mountains, they'll com-
 monly put about five herds togeth-
 er in this one region."

But the key to it all, he be-
 lieves, is good management, and
 the herd in central Texas is a case
 in point.

"I've been associated as an
 advisor — I'm not the main vet-
 erinarian for the herd — for five or
 six years," Wikse says, "and we're
 controlling abortions very nicely in
 that herd. It has excellent manage-
 ment, a biosecurity program; we're
 controlling the infectious reproduc-
 tive diseases, and they have a good
 nutritional program."

The good news is a properly
 implemented program to control
 abortions in beef herds wo^ls. ■

EPA00306

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EPA00328



**Wyoming
Livestock**

Roundup

547
Invoice

Bill To:

99037

Lipatech
Charles Hathaway
3600 W. Elm St.
Milwaukee, WI 53209

Date	2/16/2008
Invoice #	8768
Rep	

Account # HAT003

			Terms
			Due Upon Receipt
Quantity	Item Code	Description	Amount
	Classified	4 week Classified Ad 2/16-3/8 (Misc)	60.00
<p>ACCT. 1-304-66010</p> <p>APPROVAL: <u> ey </u></p> <p>IE: <u> 2-29-08 </u></p>			
<p><i>Make paying easy!</i></p> <p><i>We take Visa, Mastercard and Discover</i></p>			
Total			\$60.00

FEB 25 2008

ENT'D FEB 28 2008

THANK YOU! Please Pay from this invoice.

PO Box 850
Casper, WY 82602
www.wylr.net 307-234-2700

B

EPA00329

647
Invoice



Wyoming Livestock Roundup

Bill To:

Date	3/15/2008
Invoice #	8864
Rep	

Lipatech
Charles Hathaway
3600 W. Elm St.
Milwaukee, WI 53209

Account # HAT003

			Terms
			Due Upon Receipt
Quantity	Item Code	Description	Amount
	Classified	4 week Classified Ad 3/15-4/5 (Misc)	60.00
		<p>Test 1 304-000-66010 Date 3-25-08 Approval [Signature]</p> <p><i>Make paying easy! We take Visa, Mastercard and Discover</i></p>	
Total			\$60.00

THANK YOU! Please Pay from this invoice.

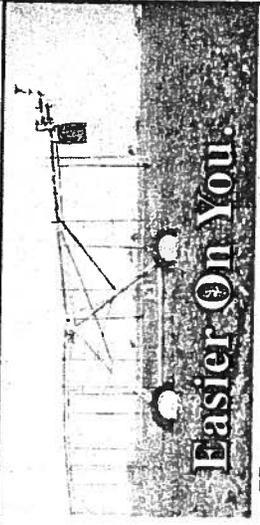
PO Box 850
Casper, WY 82602
www.wylr.net 307-234-2700

cc RM (phil)

March 01, 2008

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28. Property for Sale
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is to the Roundup
Property for Sale
ACRES, nine miles from Laramie, Wyoming off I-30. For more information call 307-399-8777. 3/1

CK REALTY, which specializes in Wyoming recreational and commercial real estate brokerage since 1978. Call for more information. Plus \$ A CASH BUYER

28. Property For Sale
28. Property For Sale

RICHARDSON'S GOOSEBERRY CREEK RANCH - Washakie County, Wyoming
1,240± acres deeded, 1,920± acres State lease, 64,000± acres BLM lease. Located 30± miles west of Worland with Gooseberry Creek flowing through the deeded and State lands. 200± acres of alfalfa-grass hay meadows are irrigated from Perkins Ditch with early 1900's water rights. Owner rated at 200± animal units. Building improvements include 2 newer modular homes (1550 sf and 1250 sf), all metal machine shop with concrete floor (1500 sf), livestock barn and good corrals. Several domestic and livestock water wells are located on deeded and leased lands. This property provides vital habitat for many species of Bighorn Basin wildlife and allows two mule deer and two antelope landowner hunting tags in Hunt Area 125. The Richardson family entered into a conservation easement with the Wyoming Stockgrowers Land Trust (WSGALT) for the purpose of maintaining the open spaces, ranching and scenic values, and the integrity of the wildlife habitat in the Gooseberry Creek watershed. Price: \$1,150,000.

RHOADES' GRASS RANCH - Chugwater, Wyoming

3,480± contiguous acres total of which 2,840± acres deeded. Highly productive grass ranch with excellent stock water development and excellent access. Three active stock wells servicing a buried pipeline and six stock tanks. Heavily sodded grass country with high livestock carrying capacity. Same owner for 49 years is now retiring. No building improvements. This is some of the best grass country in southeastern Wyoming. Price: \$1,420,000.

NORTH LARAMIE RIVER RANCH - Albany County, Wyoming

10,107 acres total of which 5,732 acres deeded, 360 acres private lease and 4,015 acres BLM lease. North Laramie River flows through ranch and is main water source to the ranch, which also owns 40% of Toltlec Reservoir shares. 7 miles gravity-fed water line and 30,000 gallon storage tank provide good stock water. Several seasonal springs, reservoirs and creeks. Owner rated at 250-300 animal units year around. Excellent elk hunting. Improvements include a new log home, shop, barn, corrals. About 697 acres irrigated meadows. This foothills mountain and plains ranch is very scenic. Price: \$4,873,000.

For more information, contact



John D. Pearson, Broker/Owner
Theo B. Hirschfeld, Assoc. Broker
Jerry Kaufmann, Sales Assoc.
Robert Turnbull, Sales Assoc.
Bill Welles, Sales Assoc.
Cheryl Summer, Sales Assoc.
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LONG HOLLOW CREEK RANCH
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32. Opportunities
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28. Property For Sale
28. Property For Sale

VERY FAIR PRICES PAID FOR OLD COIN COLLECTIONS!
Please Offer: I NEED Silver Dollars, old Type Coins, Numismatic Gold and early Proof sets and singles. 877-607-9673, toll free. **KEEP THIS AD!** 3/1

34. Miscellaneous

WANTED!! BRASS, COPPER, ALUMINUM, STAINLESS ANY NON-FERROUS METALS. We pay more than your local recycling center. In your area once a week 406-697-1069 or 406-697-3938. 3/1

STEEL BRIDGE AND BRIDGE BEAMS: Various lengths 307-851-7013 3/22

NEW AND USED COAL STOKERS: Parts, service and advice available for most makes. **THANK YOU!** 307-754-3757. www.peasefeedandcoal.com 3/1

PRAIRIE DOG PROBLEMS? Control them with a 12 volt light weight baiter easily mounted on your ATV. 1/4 cup treated grain dropped by the push of a button. 303-621-5967 or 785-821-0042. 3/15

PRAIRIE DOG OR POCKET Gopher PROBLEMS? Tired of having to do it over again with ineffective products? Protect your range and farmland from damage with Rozok! Made with food-grade winter wheat, a preferred food source, to ensure quick rodent acceptance and control. No pre-baiting required. Proven in university trials on over 11,000 burrows to provide over 94% control in a single application. Low primary poisoning risk to non-target wildlife. For info call: 800-351-1476 or visit www.rodent-control.com. 3/8

ALTERNATIVE ENERGY: SOLAR LAMP/INVERTER, SOLAR PUMP SYSTEMS, BATTERIES, INVERTERS, PROPANE APPLIANCES, GENERATORS

Attachment B:

Proposed Findings of Fact and
Conclusions of Law

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

Liphatech, Inc.
Milwaukee, Wisconsin

Respondent.

)
)
)
)
)
)
)

Docket No. FIFRA-05-2010-0016

Hon. Barbara A. Gunning

Proposed Findings of Facts and Conclusion of Law

A. Proposed Findings of Facts

1. At all times relevant to the Complaint, Respondent owned a place of business at 3600 West Elm Street, Milwaukee, Wisconsin, 53209.
2. 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.
3. 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).
4. 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.

5. 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.
6. 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.
7. 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.
8. On 120 separate occasions, 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 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.
9. 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.
10. On 229 separate occasions, from on or about January 15, 2008 to on or about March 2,

2008, *KBUF* broadcast one of the four versions of the radio 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.

11. 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.
12. On 1,521 separate occasions, from on or about September 26, 2007 to on or about December 31, 2007, *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, 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.
13. 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*).
14. On 247 separate occasions, from on or about November 12, 2007 to on or about April 26, 2008, *KGNC-AM* and *KXGL-FM* 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.

15. 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.
16. The October 2007 issue of *Cattle Guard* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
17. 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.”
18. 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.
19. 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.
20. The October 2007 issue of *Kansas Stockman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
21. 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.”
22. 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.
23. The November 2007 issue of *Kansas Stockman* included an advertisement regarding

- Rozol, EPA Reg. No. 7173-244.
24. 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.”
 25. 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.
 26. The January 2008 issue of *Kansas Stockman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
 27. 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.”
 28. 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.
 29. The February 2008 issue of *Kansas Stockman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
 30. 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.”
 31. 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.
 32. 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.

33. The October 2007 issue of *Nebraska Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
34. 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.”
35. 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.
36. The November 2007 issue of *Nebraska Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
37. 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.”
38. 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.
39. The December 2007 issue of *Nebraska Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
40. 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.”
41. 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.
42. The January 2008 issue of *Nebraska Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.

43. 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.”
44. 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.
45. The February 2008 issue of *Nebraska Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
46. 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.”
47. 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.
48. Respondent contracted with Oklahoma Cowman to print an advertisement regarding Rozol, EPA Reg. No. 7173-244, in its publication *Oklahoma Cowman* in February 2008.
49. The February 2008 issue of *Oklahoma Cowman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
50. 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.”
51. 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.
52. 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.

53. The October 2007 issue of *The Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
54. 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.”
55. 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.
56. The November 2007 issue of *The Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
57. 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.”
58. 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.
59. The March 2008 issue of *The Cattleman* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
60. 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.”
61. 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.
62. The April 2008 issue of *The Cattleman* included an advertisement regarding Rozol, EPA

Reg. No. 7173-244.

63. 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.”
64. 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.
65. 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.
66. The February 16, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
67. 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.”
68. 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.
69. The February 23, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
70. 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.”
71. 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.

72. The March 1, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
73. 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.”
74. 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.
75. The March 8, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
76. 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.”
77. 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.
78. The March 15, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
79. 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.”

80. 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.
81. The March 22, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
82. 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.”
83. 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.
84. The March 29, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
85. 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.”
86. 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.
87. The April 5, 2008 weekly issue of *Wyoming Livestock Roundup* included an advertisement regarding Rozol, EPA Reg. No. 7173-244.
88. 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.”

89. 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.

B. Proposed Conclusions of Law

1. 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).
2. 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).
3. On or about October 8, 2007 to on or about December 21, 2007, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 120 separate occasions by broadcasting 120 separate radio advertisements on *KXXX-AM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
4. On or about January 15, 2008 to on or about March 2, 2008, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 229 separate occasions by broadcasting 229 separate radio advertisements on *KBUF* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
5. On or about September 26, 2007 to on or about December 31, 2007, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 322 separate occasions by broadcasting 322 separate radio advertisements on *KICX-AM* regarding Rozol, EPA Reg.

No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

6. On or about September 26, 2007 to on or about December 31, 2007, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 322 separate occasions by broadcasting 322 separate radio advertisements on *KBRL-AM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
7. On or about September 26, 2007 to on or about December 31, 2007, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 60 separate occasions by broadcasting 60 separate radio advertisements on *KRKU-FM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
8. On or about September 26, 2007 to on or about December 31, 2007, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 296 separate occasions by broadcasting 296 separate radio advertisements on *KJBL-FM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction. On or about September 26, 2007 to on or about December 31, 2007, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 139 separate occasions by broadcasting 139 separate radio advertisements on *KFNF-FM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
9. On or about September 26, 2007 to on or about December 31, 2007, Respondent violated

Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 60 separate occasions by broadcasting 60 separate radio advertisements on *KADL-FM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

10. On or about September 26, 2007 to on or about December 31, 2007, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 322 separate occasions by broadcasting 322 separate radio advertisements on *KSTH-FM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

11. On or about November 20, 2007 to on or about April 26, 2008, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 188 separate occasions by broadcasting 188 separate radio advertisements on *KGNC-AM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

12. On or about November 20, 2007 to on or about April 26, 2008, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on 59 separate occasions by broadcasting 59 separate radio advertisements on *KXGL-FM* regarding Rozol, EPA Reg. No. 7173-244, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

13. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the October 2007 issue of *Cattle Guard*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the

terms of restriction.

14. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the October 2007 issue of *Kansas Stockman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
15. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the November 2007 issue of *Kansas Stockman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
16. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the January 2008 issue of *Kansas Stockman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
17. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the February 2008 issue of *Kansas Stockman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
18. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the October 2007 issue of *Nebraska Cattleman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
19. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the November 2007 issue of *Nebraska*

Cattleman, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

20. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the December 2007 issue of *Nebraska Cattleman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
21. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the January 2008 issue of *Nebraska Cattleman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
22. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the February 2008 issue of *Nebraska Cattleman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
23. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the February 2008 issue of *Oklahoma Cowman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
24. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the October 2007 issue of *The Cattleman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
25. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by

advertising Rozol, EPA Reg. No. 7173-244, in the November 2007 issue of *The Cattleman* which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

26. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the March 2008 issue of *The Cattleman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
27. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the April 2008 issue of *The Cattleman*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
28. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the February 16, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
29. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the February 23, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
30. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the March 1, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

31. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the March 8, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
32. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the March 15, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
33. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the March 22, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
34. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the March 29, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.
35. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by advertising Rozol, EPA Reg. No. 7173-244, in the April 5, 2008, weekly issue of *Wyoming Livestock Roundup*, which did not include either a statement “Restricted Use Pesticide” nor a statement of the terms of restriction.

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

CERTIFICATE OF SERVICE

I hereby certify that the original and one true, accurate and complete copy of Complainant's Combined Motion for Accelerated Decision as to Counts 1 through 2,140 of the Complaint and Response in Opposition to Motion of Respondent for Partial Accelerated Decision on an 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 through 2,117 of the Complaint and Memorandum of Law in Support of Complainant's Motion and Response, together with a true, accurate and complete copy of the Declaration of Claudia Niess, were filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on the date indicated below, and that true, accurate and complete copies were sent to the Honorable Barbara Gunning, Administrative Law Judge, via Pouch Mail, and Mr. Michael H. Simpson, Counsel for Respondent, Liphatech, Inc., via UPS overnight delivery, on the date indicated below:

Dated in Chicago, Illinois, this 10th day of October, 2010.



Gary E. Steinbauer
U.S. EPA, Region 5
Mail Code C-14J
77 West Jackson Blvd.
Chicago, IL 60604
(312) 886-4306