



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

APR 1 2010

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL  
Receipt No. 7001 0320 0005 8920 0180

Mr. Carl Tanner  
Chief Executive Officer  
Liphatech, Inc.  
3600 West Elm Street  
Milwaukee, Wisconsin 53209

Re: Updated Notice of Intent to File an Administrative Complaint against Liphatech, Inc.

Dear Mr. Tanner:

This is an updated Notice of Intent to File an Administrative Complaint against Liphatech, Inc. This updated Notice supersedes the Notice of Intent dated September 18, 2009. The U.S. Environmental Protection Agency, Region 5 plans to file an administrative complaint for civil penalties against Liphatech, Inc. (you). We will allege that you violated the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as follows:

(a) Liphatech distributed or sold the registered pesticides "Rozol Pocket Gopher Bait Burrow Builder Formula," EPA Reg. No. 7173-244, and "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, with claims made for them as part of their distribution or sale that substantially differed from claims made for them as part of the statements required in connection with their registrations under Section 3 of FIFRA in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B);

(b) Liphatech distributed or sold "Rozol Pocket Gopher Bait Burrow Builder Formula," EPA Reg. No. 7173-244, and "Rozol Prairie Dog Bait," EPA Reg. No. 7173-286, which were misbranded in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E); and

(c) Liphatech advertised "Rozol Pocket Gopher Bait Burrow Builder Formula," EPA Reg. No. 7173-244, a product registered under FIFRA for restricted use without giving the classification of the product assigned to it under Section 3 of FIFRA in violation of Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E).

Based on information currently available to us, we plan to propose a penalty of \$2,941,456 in the Complaint.



FIFRA governs the regulation of pesticides in the United States. Under FIFRA, all pesticides must be registered by EPA before they may be sold or distributed in commerce. FIFRA sets an overall risk/benefit standard for pesticide registration, requiring that pesticides perform their intended function, when used according to labeling directions, without posing unreasonable risks of adverse effects on human health or the environment. In making pesticide registration decisions, EPA is required by law to take into account the economic, social, and environmental costs and benefits of pesticide uses.

This letter is not a demand to pay a penalty. We will not ask you to pay a penalty until we file the complaint or a final order. Before filing the complaint, we are giving you the opportunity to present any information that you believe we should consider. Relevant information might include evidence that you did not violate the law; evidence that you relied on compliance assistance from EPA or a state agency; evidence that we identified the wrong party; or financial data bearing on your ability to pay a penalty.

If you believe that you will be unable to pay a \$2,941,456 penalty because of financial reasons, please send us audited or certified complete financial statements including balance sheets, income statements and all notes to the financial statements, and your company's signed income tax returns with all schedules and amendments for the last three years. You should send this financial information for Liphatech, Inc., as well as for all parent corporations up to the ultimate parent of the corporate family. In addition, please provide any other financial information or documentation that you feel would inform the government's understanding of the company's financial situation. Once our financial analysts have reviewed this initial information, they may require additional financial information to complete the financial review.

You may assert a claim of business confidentiality under 40 C.F.R. part 2, subpart B, for any portion of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. part 2, subpart B. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it.

We may use any information you submit in support of an administrative, civil, or criminal action.

Within ten calendar days after you receive this letter, please send your response to:

Nidhi K. O'Meara (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

We plan to file the complaint against you after you receive this letter unless you give us information that the complaint is not substantially justified.

If you have any questions, please telephone Mrs. O'Meara at (312) 886-0568.

Thank you for your prompt attention to this matter.

Sincerely,

*Tony Martign, acting for M. Klevs*

Mardi Klevs

Chief

Chemicals Management Branch

Land and Chemicals Division

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