

UNITED STATES ENVIRONMENTAL PROTECTION AGEN



PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

REGIONAL HEARING CLERK U.S. ENVIRONMENTAL

IN THE MATTER OF)
LIPHATECH, INC.,	DOCKET NO. FIFRA-05-2010-0016
RESPONDENT.	

ORDER ON PARTIES' UNOPPOSED MOTIONS TO SUPPLEMENT

On August 26, 2011, Respondent filed its Motion for Leave to File Its Second Supplemental Prehearing Exchange ("Second PHE Motion"), in which it states that Complainant's counsel does not oppose Respondent's request to add Proposed Exhibits 91 - 97 and 103 to its prehearing exchange and Kelly Bornhofer and James V. Aidala to the proposed witness list. The Second PHE Motion further states that Complainant's counsel notified Respondent's counsel that time constraints prevented Complainant from reviewing Proposed Exhibits 98 - 102 prior to Respondent's submission of those documents. However, Complainant's counsel has since notified this Tribunal's office that Complainant will not file a response to the Second PHE Motion, thus leaving the motion unopposed. Respondent asserts that the proposed exhibits and additional witnesses are submitted now either because they were not available when Respondent filed its prior prehearing exchanges or because Respondent felt the additional information was necessary in response to this Tribunal's recent Order.

On September 1, 2011, Complainant filed its Motion for Leave to File Fifth Supplemental Prehearing Exchange Instanter ("Fifth PHE Motion"), in which it states that Respondent's counsel does not oppose this motion. Complainant asserts that Proposed Exhibit 149 is submitted now because it was not available when Complainant filed its prior prehearing exchanges and that Proposed Exhibit 148 is submitted now to provide the context for Respondent's submission of Exhibit 149 to the Agency on August 29, 2011.

This Tribunal notes that the hearing in this matter is scheduled to commence on October 31, 2011, giving both parties ample time to review the supplemental documents. There is no evidence before this Tribunal of any undue delay, bad faith, or undue prejudice. Pursuant to 40 C.F.R. § 22.19(f), Respondent's Second PHE Motion and Complainant's Fifth PHE Motion are hereby **GRANTED**.

Chief Administrative Law Judge

Dated: September 2, 2011

Washington, DC

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

CERTIFICATE OF SERVICE

I certify that the foregoing Order On Parties Unopposed Motions To Supplement, dated September 2, 2011, was sent this day in the following manner to the addressees listed below.

Staff Assistant

Dated: September 2, 2011

Original And One Copy By Pouch Mail To:

La Dawn Whitehead Regional Hearing Clerk U.S. EPA 77 West Jackson Boulevard, E-19J Chicago, IL 60604-3590

Copy By Pouch Mail To:

Nidhi K. O'Meara, Esquire Gary E. Steinbauer, Esquire Cynthia King, Esquire Office of Regional Counsel U.S. EPA 77 West Jackson Boulevard, C-14J Chicago, IL 60604-3590

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