



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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November 10, 2010

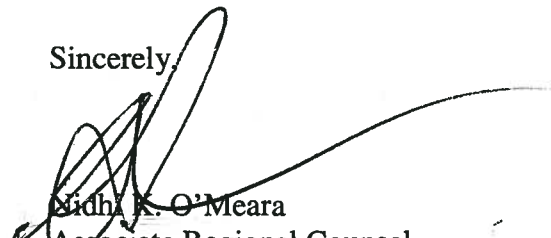
Honorable Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1099 14<sup>th</sup> Street, NW, Suite 350  
Washington, D.C. 20005

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

Dear Judge Gunning:

Please find enclosed a copy of Complainant's Rebuttal Prehearing Exchange, along with Complainant's Exhibits 116 through 129 which were filed on November 10, 2010, in the above referenced-matter.

Sincerely,



Nidhi K. O'Meara  
Associate Regional Counsel

Enclosures

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

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

In the Matter of: )  
)  
LIPHATECH, INC. )  
MILWAUKEE, WISCONSIN )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2010-0016

**COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE**

In accordance with the Prehearing Order issued by this Honorable Court on June 30, 2010, Complainant, the Director, Land and Chemical Division, Region 5, United States Environmental Protection Agency (U.S. EPA, Complainant or Agency), through his undersigned attorneys, hereby files this Complainant's Rebuttal Prehearing Exchange (Rebuttal PHX) pursuant to Section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. § 22.19.

**I. The names of additional expert or other witnesses that Complainant intends to call at the hearing, together with a brief narrative summary of each witness's expected testimony.**

**A. Fact Witnesses**

Complainant is not identifying any additional fact witnesses in this Rebuttal PHX.

**B. Expert Witnesses**

Complainant may call the following additional individuals to testify as expert witnesses or hybrid fact and expert witnesses.

1. **Mr. Brian Dyer**  
**Environmental Protection Specialist**  
**Pesticides and Tanks Enforcement Branch**  
**Waste and Chemical Enforcement Division**  
**Office of Enforcement and Compliance Assurance**  
**United States Environmental Protection Agency**

Mr. Brian Dyer is an Environmental Protection Specialist in the Pesticides and Tanks Enforcement Branch, Waste and Chemical Enforcement Division, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency. See CX 128.

Complainant may call Mr. Dyer as a rebuttal witness if Respondent presents testimony from its “expert” witness, Mr. Robert Fuhrman, or another “expert” regarding the application of the factors set forth in Section 14(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the FIFRA Enforcement Response Policy (ERP) to the facts of this case. Mr. Dyer’s testimony may include, but may not be limited to, the following:

Mr. Dyer may testify as to his educational background and his work experience with enforcement of the FIFRA, 7 U.S.C. § 136 *et seq.* Mr. Dyer may testify as to his role in the drafting and approval of the 2009 FIFRA ERP. Mr. Dyer may testify as to his opinion, as one of the authors of the 2009 FIFRA ERP, of Complainant’s penalty calculation in this matter. Mr. Dyer may respond to testimony by Mr. Fuhrman or another “expert” should the witness be allowed to testify.

Mr. Dyer may also testify to additional facts or opinions as necessary to respond to assertions or arguments raised by Respondent. To the extent deemed necessary by the Court, Mr. Dyer will provide testimony sufficient to authenticate the documents to which he refers to during his testimony at the hearing in this matter.

2. **Dr. Nimish B. Vyas**  
**Research Biologist**  
**United States Geological Survey**  
**Patuxent Wildlife Research Center, Beltsville Lab**

Dr. Nimish Vyas is a Research Biologist with the United States Geological Survey, Patuxent Wildlife Research Center. See CX 129. Dr. Vyas' testimony may include, but may not be limited to, the following:

Dr. Vyas may testify as to his educational background and his work experience including but not limited to his work experience relating to pesticide exposure and in particular characterization of avian hazards relating to the use of chlorophacinone, Rozol<sup>1</sup>, for the purpose of prairie dog control. He may testify as to his current duties at the United States Geological Survey.

Among other things, he may testify that he has conducted field work to determine hazards relating to the use of Rozol to control prairie dogs. See CX 127. He may testify as to the behavioral patterns of the animals he observed in his field work and based on his depth of experience gained over the years. He may offer his opinion based on this field research and his other work experience, as to the impacts of Rozol on non target species. He may testify in depth as to his observations and findings as a result of this field work relating the use of Rozol.

Dr. Vyas may also testify to additional facts or opinions as necessary to respond to assertions or arguments raised by Respondent. To the extent deemed necessary by the Court, Dr. Vyas will provide testimony sufficient to authenticate the documents to which he refers during his testimony at the hearing in this matter.

3. **Dr. Mark A. Kirms**  
**Senior Forensic Specialist (Chemistry)**

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<sup>1</sup> For ease of reference, Complainant will use Rozol here to refer to "Rozol Pocket Gopher Bait II" (Alternative name: "Rozol Pocket Gopher Burrow Builder Formula"), EPA Registration Number 7173-244.

**National Fish and Wildlife Forensics Laboratory  
United States Fish and Wildlife Service**

Dr. Mark A. Kirms is a Senior Forensic Specialist in Chemistry at the United States Fish and Wildlife Service's National Fish and Wildlife Forensics Laboratory. See CX 119. Dr. Kirms' testimony may include, but may not be limited to, the following:

Dr. Kirms may testify as to his educational background and his work experience with conducting analyses for poisons on specimens that come into the laboratory. He may testify that it is the regular practice of his office to record and retain examination observations and results, and that it is his regular practice to prepare a written report for each analysis he conducts.

Dr. Kirms may testify that on February 8, 2007, he received the liver tissue of an adult bald eagle from the United States Fish and Wildlife Service's National Fish and Wildlife Forensics Laboratory to analyze. He may describe how he analyzed the liver tissue for the presence of anticoagulants using high performance liquid chromatography/mass spectrometry, and determined that chlorophacinone was present in the tissue in a quantity of 0.30 µg/g (micrograms/gram) in the liver tissue of the adult bald eagle. Dr. Kirms may go on to testify that he finalized a Chemistry Examination Report on his findings on March 19, 2007, to document his conclusions relating to this bald eagle.

Dr. Kirms may testify that he has reviewed Exhibit 90b of Complainant's Initial Prehearing Exchange, and that Exhibit 90b includes complete copies of the final medical examination report, final chemistry examination report, photographs taken of the specimen and the chain of custody forms that were maintained by his laboratory for this adult bald eagle. He may further testify that the chemistry examination report included in CX 90b is true and accurate as to his findings.

Dr. Kirms may also testify to additional facts or opinions as necessary to respond to assertions or arguments raised by Respondent. To the extent deemed necessary by the Court, Dr. Kirms will provide testimony sufficient to authenticate the documents to which he refers during his testimony at the hearing in this matter.

4. **Ms. Bonnie C. Yates**  
**Supervisory Senior Forensic Scientist/Mammal Unit Coordinator**  
**National Fish and Wildlife Forensics Laboratory**  
**United States Fish and Wildlife Service**

Ms. Bonnie C. Yates is a Supervisory Senior Forensic Scientist and Mammal Unit Coordinator at the United States Fish and Wildlife Service's National Fish and Wildlife Forensics Laboratory. See CX 120. Ms. Yates' testimony may include, but may not be limited to, the following:

Ms. Yates may testify as to her educational background and her work experience with conducting examinations on specimens that come into the laboratory. She may testify that it is the regular practice of her office to record and retain examination observations and results, and her regular practice to prepare a written report for each examination she conducts.

Ms. Yates may testify that on September 2, 2009, she received two specimens, an owl and a hawk, from the Evidence Unit of the United States Fish and Wildlife Service's National Fish and Wildlife Forensics Laboratory to examine. She may describe how she examined the stomach contents of the two specimens. Ms. Yates may testify that she determined the stomach contents of the specimens included hairs from, respectively, rodents and/or insectivores and prairie dogs. Ms. Yates may go on to testify that she finalized a Morphology Examination Report on her findings on September 3, 2009, to document her conclusions relating to the owl and hawk.

Ms. Yates may testify that she has reviewed Exhibit 91b of Complainant's Initial Prehearing Exchange, and that Exhibit 91b includes complete copies of the final medical examination report, the California Animal Health & Food Safety Laboratory System final chemistry examination report, her Morphology Examination Report, photographs taken of the specimens and the chain of custody forms that were maintained by her laboratory for the owl (Lab-2) and hawk (Lab-3). She may further testify that the Morphology Examination Report included in CX 91b is true and accurate as to her findings.

Ms. Yates may also testify to additional facts or opinions as necessary to respond to assertions or arguments raised by Respondent. To the extent deemed necessary by the Court, Ms. Yates will provide testimony sufficient to authenticate the documents to which she refers to during her testimony at the hearing in this matter.

**II. Copies of additional documents and exhibits which the Complainant intends to introduce into evidence at hearing.**

Complainant expects to offer the following additional documents/exhibits into evidence either during or prior to the hearing. Complainant may also make reference to these documents in any motions, post hearing briefs or arguments. Copies of some portions of the exhibits may be presented at the time of hearing in enlarged poster size to allow for easy reference for the witness and the judge. The exhibits are numbered as CX 116 through CX 129:

CX No.	Title of Document	Date of Document	Bates No.
116.	Product Cancellation Order for Certain Pesticide Registrations, 75 Fed. Reg. 63178 (October 14, 2010)	October 14, 2010	2651-2652
117.	Ms. Claudia Niess, Declaration	September 27, 2010	2653-2657

118.	Ecological Risk Assessment and Effects Determination	September 30, 2010	2658-3027
119.	a. Curriculum Vitae of Dr. Mark Alan Kirms, Senior and Wildlife Forensics Laboratory Forensic Specialist, U.S. Fish & Wildlife, National Fish and Wildlife Forensics Laboratory	n/a	3028-3032
	b. Dr. Mark Alan Kirms, Declaration	October 26, 2010	
120.	a. Curriculum Vitae of Ms. Bonnie C. Yates, Senior Forensic Specialist, U.S. Fish & Wildlife, National Fish and Wildlife Forensics Laboratory, Mammal Unit, Morphology Section	n/a	3033-3049
	b. Ms. Bonnie C. Yates, Declaration	October 26, 2010	
121.	Ecological Effects Test Guidelines OPPTS 850.2500 Field Testing for Terrestrial Wildlife	April 1996	3050-3081
122.	Memorandum and accompanying review by EFED: Chlorophacinone and Diphacinone: Review of "Field Efficacy Studies Comparing 0.005% and 0.01% Diaphacinone and Chlorophacinone Baits for Controlling California Ground Squirrels ( <i>Spermophilus beecheyi</i> )"	April 8, 2004	3082-3096
123.	EFED review: Chlorophacinone: Mammalian Secondary Hazard and Target Species Residue Study with 0.005% ai Bait	October 22, 1996	3097-3100
124.	EFED review: Avian Secondary Hazard and Target Species Residue Study with 0.005% ai Bait	June 4, 1997	3101-3104
125.	Memorandum and accompanying review by EFED: Review of Chlorophacinone Wild Mammal Toxicity Study	November 6, 2008	3105-3118
126.	Memorandum and accompanying review by EFED: Chlorophacinone: Non-target exposure review of "Assessment of the Potential Impact of Chlorophacinone on Burying Beetles"	October 18, 2010	3119-3131



127.	Annual Report 2010: Characterization of Avian Hazards Following Chlorophacinone (Rozol®) Use for Prairie Dog Control, authored by Dr. Nimish B. Vyas, U.S. Geological Survey	October, 2010	3132-3170
128.	Curriculum Vitae of Mr. Brian Dyer, Environmental Protection Specialist	n/a	3171
129.	Curriculum Vitae of Dr. Nimish Vyas, U.S. Geological Survey, Patuxant Wildlife Research Center	n/a	3172-3181

**III. The proposed penalty.**

Respondent includes extensive arguments in its prehearing exchange as to why the penalty should be reduced or eliminated. Respondent goes so far as to list an “expert” witness, Mr. Robert Fuhrman, that will make legal arguments from the witness stand regarding the penalty. Complainant will not restate the basis for the penalty it included in its Initial Prehearing Exchange, filed on September 28, 2010, but offers the following rebuttal to Respondent’s Prehearing Information Exchange, in which Respondent presents its arguments for reducing/eliminating the penalty.

Respondent continues to assert that this Honorable Court should interpret Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), in a manner that would frustrate the intent of the law. Respondent does so by arguing that the relevant “unit of violation” should be a mere subset of the number of times it illegally advertised the restricted use pesticide, Rozol. Under Respondent’s interpretation, a registrant could violate Section 12(a)(2)(E) millions of times by broadcasting an illegal advertisement over every radio station, every television station and every publication in the country with a maximum exposure of only \$7,500 for its repeated violation of the statute. Such an outcome is absurd and would essentially strip the law of any deterrent value. This emasculation would be at the expense of the consumer and the environment and to the

obvious benefit of Respondent. As previously discussed in Complainant's reply to Respondent's response to Complaint's Motion for Accelerated Decision for Counts 1 through 2,140 (Complainant's Reply), filed on October 21, 2010, such an interpretation is also inconsistent with previous decisions addressing what constitutes a "unit of violation" in FIFRA cases and with both the 1990 and 2009 ERPs.

Respondent also continues to attempt to blur the line between "unit of violation" and prosecutorial discretion. Respondent argues that the Complainant should not have proceeded on all 2,231 counts alleged in the Complaint because it yields too high a penalty under the FIFRA ERP. Instead it argues that Complainant should have exercised its prosecutorial discretion and reduced the number of violations to yield what it views to be a more "reasonable" penalty. Respondent essentially argues it is somehow **entitled** to prosecutorial discretion. See Respondent's Prehearing Exchange, 15. These arguments ignore the discretion that is afforded to the government. "[C]ourts have traditionally accorded governments a wide berth of prosecutorial discretion in deciding whether, and against whom, to undertake enforcement actions." *In re B&R Oil Co., Inc.*, 8 E.A.D. 39, 51, 1998 EPA App. LEXIS 106, at \*26 (EAB 1998). Further, the United States Supreme Court in *Wayte v. United States*, 470 U.S. 598, 608 (1985) stated that "[t]his broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake." Simply put, "[t]he fact that Respondent disagrees with EPA's exercise of its prosecutorial discretion is not relevant to the determination

of the appropriate penalty here.” *In the Matter of: Int’l Paper Co. Mansfield, La.*, 2000 EPA ALJ LEXIS 10, at \*28, fn 5 (ALJ, Jan. 19, 2000).

While on the one hand Respondent complains that Complainant did not exercise its prosecutorial discretion, it argues on the other hand that Complainant did not strictly apply the 2009 ERP. Such arguments are contradictory. Respondent argues that under the strict application of the ERP, the proposed penalty should have been in excess of \$13 million.<sup>2</sup> Respondent’s Prehearing Exchange, 18. In fact, by applying the graduated penalty tables set forth in the 2009 ERP, Complainant exercised its prosecutorial discretion, to arrive at the proposed penalty of \$2,891,200.<sup>3</sup> See CX 51, EPA 000958 and CX 55, EPA 001012.

Respondent also makes much of the fact that Complainant proposed a penalty of \$1,280,500<sup>4</sup> in its initial Notice of Intent to File an Administrative Complaint, dated September 18, 2009, and later updated its proposed penalty to \$2,941,456<sup>5</sup> in an Updated Notice of Intent to file an Administrative Complaint, dated April 1, 2010. CX 24, 33. It asserts that doing so was arbitrary and capricious, without providing any support for such an allegation. Respondent’s Prehearing Exchange, 49-50.

Complainant simply decided to proceed on all violations for which it had evidence and notified Respondent on numerous occasions that it intended to do so. For example, see CX 33. Additionally, Respondent is incorrect that Complainant’s use of the 2009 ERP yields a higher penalty. Respondent’s Prehearing Exchange, 9. An apple to apple comparison reveals that both penalty policies would generate the **exact same** penalty number for the 2,231 counts. By

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<sup>2</sup> This number is based on the first 2,140 counts.

<sup>3</sup> This number is based on all of the 2,231 counts, and reflects a penalty number that does not include economic benefit. Complainant’s motion filed on September 15, 2010 is pending on this issue. See Complainant’s September 15, 2010 Motion for Leave to Amend Complaint to Reduce Penalty.

<sup>4</sup> This number was based on a subset of the violations for which Complainant had evidence.

<sup>5</sup> Since that time, Complainant has asked for leave to amend the penalty to \$2,891,200.

exercising its prosecutorial discretion, Complainant graduated the penalty under the 2009 ERP, which resulted in a far lower proposed penalty than the 1990 ERP would have.<sup>6</sup>

Respondent also argues that the ERP “fails to properly take into account the **actual** gravity of the alleged violations.” Respondent’s Prehearing Exchange, 48. Respondent argues its violations did not cause **actual** harm to human health or the environment. Respondent fails to recognize that the 2009 ERP considers “[t]he relative severity of each violation consider[ing] the **actual** or **potential** harm to human health and the environment which could result from the violation.” CX 51, EPA 000951. In determining the gravity component for Respondent’s penalty calculations, Complainant did consider harm to the environment and assigned it a value of “3” rather than a “5.” CX 55, EPA Bates no. 001011. The 2009 ERP provides a gravity adjustment criteria chart which assists the enforcement staff in calculating the gravity for any given case. CX 51, EPA Bates no. 000967. Under “Environmental Harm,” the chart assigns a value of “3” if the violation in question could have caused harm that was either unknown or could have **potentially** caused serious or widespread harm to the environment, and a “5” if the violation **actually** caused serious or widespread harm to the environment. In this case, Complainant assigned the “Environmental Harm” component a value of “3” rather than a “5” because the harm resulting from the violation was unknown or could have potentially caused serious or widespread harm to the environment. Testimony at the hearing will support such a conclusion. Contrary to what Respondent argues, the Complainant does not have to demonstrate **actual** harm to the environment in order to show that environmental harm exists.

Respondent also argues that Complainant “ignores regulatory controls that prevent any harm to human health and the environment resulting from the alleged violations.” Respondent’s Prehearing Exchange, 51. Firstly, Respondent ignores the fact that different pieces of the statute

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<sup>6</sup> The 1990 ERP does not provide for graduated penalties.

are designed to work in conjunction with one another to create a complete regulatory scheme that, in its entirety, is protective. Where one piece of that scheme is bypassed, the scheme is weakened and is therefore less protective. In the case of restricted use pesticides, Section 12(a)(2)(E) is a critical component of the overall regulatory scheme.

Secondly, Respondent is incorrect in assuming that such regulatory controls guarantee that Rozol will not get in the wrong hands or be used improperly. Numerous factors in this case increase the **potential** of this happening.

Respondent's violations of Section 12(a)(1)(B) and 12(a)(2)(E) of FIFRA misinform the potential consumer. The radio and print advertisements that are the subject of Counts 1 through 2,140 fail to inform the potential consumer that Rozol is a restricted use pesticide. This increases the chance that the product will get into the hands of an uncertified applicator. It is not difficult to imagine any number of scenarios in which consumers that have been misinformed by radio or print advertisements about the restricted use status of Rozol, might improperly obtain and use Rozol. For example, after hearing the radio advertisement or obtaining a copy of the violative print material, a rancher could attempt to buy the product at its local agricultural chemical dealer. When questioned about his applicator license, the rancher could present the advertisement to the young clerk behind the counter to demonstrate that the product is not a restricted use product. At this point, the success of the "regulatory stop gap" hinges on the decision of the young clerk.

In one scenario, the clerk sells the product to the uncertified rancher. We know this is possible. See CX 102 and RX 73. (RX 73 references an affidavit in which the Respondent in CX 102 admitted that he purchased and applied the restricted use pesticide, Rozol, without being a certified applicator and without the supervision of a certified applicator.) Alternatively, the young clerk could offer to sell the rancher a Rozol product that is **not** a restricted use product

(See Rozol Pocket Gopher Bait, EPA Reg. No. 7173-184, at CX 107). This product contains the same exact ingredients as Rozol (EPA Reg. No. 7173-244) and Rozol Prairie Dog Bait (EPA Reg. No. 7173-286). The rancher could then use this unclassified Rozol product to control prairie dogs on his property in complete oblivion that he has done anything improper.

The advertisements that are the subject to Counts 2,141 through 2,231 misinform the potential customer about how efficacious or safe the product is. This increases the chance that the product will not be used in accordance with the label directions.

In sum, Respondent opines about warning notices it should have gotten, lower penalties, penalties collected in other cases, EPA's failure to contact Liphatech earlier and the alleged arbitrary and capricious application of the 2009 ERP. Not once does it support its assertions with any authority and not once does it take responsibility for its own actions. Respondent continues to engage in "selective" analysis of the statute and ERP to argue its points through "experts" when such arguments should be reserved for arguments in its closing arguments and briefs.

**IV. Respondent's ability to pay and size of business.**

In Respondent's Prehearing Exchange, Respondent reiterates that ability to pay and size of business are not being contested in this litigation. See Respondent's Prehearing Exchange, at 12 and 47. Because Respondent has clearly stated that neither of these penalty factors are at issue in this case, Complainant will not file a motion regarding these issues as it previously stated it would in its Complainant's Prehearing Exchange.

**IV. Designation of Respondent's representative for hearing.**

In designating a representative that should be allowed to remain in the court room for the duration of the hearing, Respondent seeks to name four individuals as representatives, creating

some sort of revolving door during the proceedings. Further, each of the four potential company representatives are also listed as potential witnesses.

Federal Rule of Evidence 615 provides as follows:

*Rule 615. Exclusion of Witnesses*

*At the request of a party, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause, or (4) a person authorized by statute to be present.*

(emphasis added). On its face, Rule 615 does not allow for the designation of more than one officer or employee to accommodate the schedules of such persons. The whole purpose of sequestration of witnesses is to advance the truth seeking process. To allow the rotation of potential witnesses at the will of Respondent does not advance this purpose. Such a rotation potentially contaminates the testimony by allowing a fact witness not currently on the stand to be the designated representative during the testimony of another fact witness. Rotation of the designated representative also disrupts the court room proceedings. Complainant respectfully requests that the Court exercise its discretion and require Respondent to designate *one* company representative that can devote his or her time to the entirety of these proceedings.

**IX. Reservation of rights.**

Complainant respectfully reserves the right to supplement its list of witnesses and/or its list of exhibits upon reasonable notice to the Court and Respondent, or by order of this Honorable Court. Complainant further reserves the right to call any of the witnesses listed in the initial prehearing exchange and the rebuttal as witnesses in its case in chief and/or in Complainant's rebuttal.

DATED: November 10, 2010

Respectfully submitted,

  
Nishi K. O'Meara

Erik H. Olson

Associate Regional Counsels

Gary E. Steinbauer

Assistant Regional Counsel

United States EPA – ORC Region 5

77 W. Jackson Blvd. (C14-J)

Chicago, IL 60604

(312) 886-0568

*Attorneys for Complainant*



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

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CERTIFICATE OF SERVICE

I hereby certify that the original and one true, accurate and complete copy of Complainant's Rebuttal Prehearing Exchange, together with true, accurate and complete copies of Complainant's Exhibits 116 through 129 were filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on the date indicated below. True, accurate and complete copies were sent to Honorable Barbara Gunning, Administrative Law Judge (via UPS overnight delivery) at the following address:

Honorable Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1099 14<sup>th</sup> Street, NW, Suite 350  
Washington, D.C. 20005

and to Mr. Michael H. Simpson, Counsel for Respondent, Liphatech, Inc., (via UPS overnight delivery), at the following address:

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

on the date indicated below:

Dated in Chicago, Illinois, this 10 day of November, 2010.



Patricia Jeffries Harwell  
Legal Technician  
U.S. EPA, Region 5  
Mail Code C-14J  
77 West Jackson Blvd.  
Chicago, IL 60604  
(312) 353-7464