



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
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CHICAGO, IL 60604-3590

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REPLY TO THE ATTENTION OF:

Via UPS Overnight Delivery

C-14J

August 2, 2011

Honorable Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1099 14th Street, NW, Suite 350
Franklin Court
Washington, D.C. 20005

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

Dear Chief Judge Biro:

Please find enclosed a copy of *Complainant's Unopposed Motion for Leave to File its Fourth Supplemental Prehearing Exchange*, together with Attachment A: Complainant's proposed *Fourth Supplemental Prehearing Exchange* and Complainant's Exhibit 147, copies of which were filed on August 2, 2011, in the above referenced-matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik H. Olson".

Erik H. Olson
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) Docket No. FIFRA-05-2010-0016
)
) Hon. Susan L. Biro
Respondent.)
_____)

**COMPLAINANT’S UNOPPOSED MOTION FOR LEAVE TO FILE ITS
FOURTH SUPPLEMENTAL PREHEARING EXCHANGE**

Complainant, the Director, Land and Chemicals Division, Region 5, United States Environmental Protection Agency (U.S. EPA, Complainant, or Agency), through its undersigned attorneys, hereby files this *Unopposed Motion for Leave to File its Fourth Supplemental Prehearing Exchange* pursuant to Section 22.19(f) 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(f). For the reasons set forth below, Complainant respectfully requests that the Presiding Officer grant its unopposed Motion and allow it to file the accompanying *Fourth Supplemental Prehearing Exchange*. A copy of Complainant’s proposed *Fourth Supplemental Prehearing Exchange*, along with exhibit 147, is attached as Attachment A.

On July 29, 2011, counsel for Complainant contacted counsel for Liphatech, Inc. (Respondent) to determine if Respondent has any objection to the relief sought in this Motion. On the same day, Respondent’s counsel indicated that Respondent does not oppose this motion.

Standard of Review

The Consolidated Rule governing supplementation of prehearing exchanges is found at 40 C.F.R. § 22.19(f), which provides in pertinent part as follows:

(f) Supplementing prior exchanges. A party who has made an information exchange under paragraph (a) of this section [22.19], ... shall promptly supplement or correct the exchange when the party learns that the information exchanged ... is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

Because Complainant submits this Motion more than 15 days prior to the hearing and prior to the date that all prehearing motions are to be filed (August 31, 2011), it need not demonstrate good cause for failing to supply the documents sooner. *See* 40 C.F.R. § 22.22(a)(1). Motions to supplement a prehearing exchange should be granted unless there is evidence of bad faith, delay tactics, or undue prejudice. *In re Service Oil, Inc.*, Docket No. CWA-08-2005-0010, 2006 EPA ALJ LEXIS 16, at*9 (April 12, 2006).

I. Complainant's Proposed Fourth Supplemental Prehearing Exchange

In its fourth supplemental prehearing exchange, Complainant proposes to substitute its expert witness or hybrid fact and expert witness, Dr. Thomas Bailey with Dr. Thomas Steeger. Complainant's proposed *Fourth Supplemental Prehearing Exchange* includes the following exhibit:

CX No.	Title of Document	Date of Document	Bates No.
147	Curriculum Vitae of Dr. Thomas Steeger	n/a	3556-3558

II. Discussion

On September 28, 2010, Complainant filed its *Initial Prehearing Exchange* listing Dr. Thomas A. Bailey of the Environmental Fate and Effects Division (EFED) as a proposed expert witness or hybrid fact and expert witness. Recently, Dr. Bailey retired from federal service. In the proposed *Fourth Supplemental Prehearing Exchange*, complainant seeks to substitute Dr. Bailey with Dr. Thomas Steeger, and includes Dr. Steeger's curriculum vitae as proposed Complainant's Exhibit 147.

Given that the hearing is scheduled for October 31, 2011, Respondent will have ample time to review the substitution of witness.

III. Conclusion

For the foregoing reasons, Complainant respectfully requests that the Presiding Officer grant it leave to file its *Fourth Supplemental Prehearing Exchange*.

Dated: August 2, 2011

Respectfully submitted,



Nidhi 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

Attachment A

Complainant's Fourth Supplemental Prehearing
Exchange and a copy of Exhibit 147

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

In the Matter of:)	
)	
Liphatech, Inc.)	Docket No. FIFRA-05-2010-0016
Milwaukee, Wisconsin)	
)	Hon. Susan L. Biro
Respondent.)	

COMPLAINANT’S FOURTH SUPPLEMENTAL PREHEARING EXCHANGE

Complainant, the U.S. Environmental Protection Agency, Region 5 (Complainant), hereby files the instant *Complainant’s Fourth Supplemental Prehearing Exchange* pursuant to Sections 22.16(a) and 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. §§ 22.16(a) and 22.19(f).

I. Substitution of Witness

Complaint substitutes the listed expert witness or hybrid fact and expert witness, Dr. Thomas A. Bailey, of the Environmental Fate and Effects Division (EFED) with Dr. Thomas Steeger of EFED. This substitution does not alter the description of proposed testimony submitted in *Complainant’s Initial Prehearing Exchange*.

II. Additional Exhibits

CX No.	Title of Document	Date of Document	Bates No.
147.	Curriculum Vitae of Dr. Thomas Steeger	n/a	3556-3558

III. 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 Tribunal and Respondent, or by order of the Presiding Officer, as allowed by the Consolidated Rules. Complainant further reserves the right to call any of the witnesses listed in and documents provided with its prehearing exchange in its case in chief and/or in any rebuttal.

Respectfully submitted,

DATED: August 2, 2011



Nidhi 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

EXHIBIT 147

Thomas Steeger
 U.S. Environmental Protection Agency (MC 7507P)
 Office of Pesticide Programs
 Potomac Yard One South (12825)
 2777 Crystal Drive
 Arlington, VA
 Mobile: 202 207-4027
 Day Phone: 703 305 5444
 Email: steeger.thomas@epa.gov

WORK EXPERIENCE U. S. Environmental Protection Agency 1/2007 - Present

Washington, DC US

Senior Science Advisor

Serve as interface between management and risk assessors within the Environmental Fate and Effects Division on issues related to both the science and policy. Develop and implement science policy within the division Participate in the development of new tools for conducting ecological risk assessments. Work within and across divisions within OPP and the Agency as a whole on developing science related to ecological risk assessment. Interact with state, federal and international government agencies on issues related to ecological risk assessment. Division representative to the OPP Science Policy Council. Areas of focus include Endocrine Disruptor Screening Program; terrestrial invertebrate risk assessment (pollinator protection); amphibian development/ aquatic ecology

U. S. Environmental Protection Agency 1/2002 - 2007

Washington, DC US

Senior Biologist

Task leader responsible for integrating environmental fate and ecological effect data to characterize the ecological risk associated with registration and reregistration of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Mentoring junior staff in ecological effect assessments and ecological risk characterizations. Participate in the development of new tools for conducting ecological risk assessments. Tool development efforts have included probabilistic risk assessment methods, population-level effect methods and bioaccumulation assessment methods. Secondary review of completed environmental fate and ecological risk assessments generated in branch. Organized and lead interagency effort to develop standard operating procedure for the use of pesticides. Co-chair Aquatic Biology Technical Team

U. S. Environmental Protection Agency 8/1997 - 1/2002

Washington, District of Columbia US

Biologist

Task leader responsible for integrating environmental fate and ecological effect data to characterize the ecological risk associated with registration and reregistration of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Co-chair of the Aquatic Biology Technical Team for two consecutive years. Mentor junior staff in ecological risk assessment techniques. Responsible for training technical staff in refined risk assessment using probabilistic risk assessment methodologies. Six-month detail as Risk Assessment Process Leader for Environmental Risk Branch 2 scheduling and monitoring chemical workloads of technical science staff. Performed final technical review of all branch technical staff output. 1999 EFED Division Performance Award

Fishery Information Management Systems 8/1989 - 7/1997

Auburn, Alabama US

Vice President

Executive officer of fishery consulting firm employing 10 employees. Writing and maintaining grant proposal. Project manager for recreation user survey, landowner valuation survey, and business operator survey on six reservoirs and their respective tailwaters in Alabama. Managed technical services contract with the Puerto Rican

Department of Natural Resources conducting quarterly workshops for Puerto Rican fishery biologists on current methods in fishery biology. Conducting on-site field surveys and evaluation of standardized fish population sampling techniques. Coordination of technical workshops presented to Departments of Natural Resources participating in the Southeastern technical services cooperative responsible for continuing education in fishery biology.

**Auburn University Department of Fisheries 3/1986 - 5/1995
and Allied Aquacultures
Auburn, Alabama US**

Research Assistant

Designed and implemented fish population assessments in mainstream impoundments. Designed and implemented largemouth bass (*Micropterus salmoides*) mortality studies assessing effect of live-release competitive bass tournaments. Determination of bacterial diseases of largemouth bass released after tournaments. Development of an *in vitro* assay utilizing hepatic vitellogenesis for determining the effects of environmental pollutants on catfish (*Ictalurus punctatus*). Isolated and characterized putative oocyte vitellogenin receptor from channel catfish.

U.S. Peace Corps

6/1983 - 12/1984

Rabat, Morocco Morocco

Volunteer

Inland Capture Fisheries Technician , 0401

Designed and implemented feasibility study for developing commercial fisheries on several of Morocco's inland impoundments. Study involved the assessment of stock structure and estimated affect of artisinal fishery for the U.S. Peace Corps and the Moroccan Ministry of Waters and Forests.

SRI International

6/1975 - 5/1983

Menlo Park, California US

Research Biologist

Planning and execution of *in vivo* pharmaco-kinetic and mammalian toxicity studies examining absorption, distribution, excretion and metabolism (ADEM) of drugs. Isolation, purification, and analysis of radio-labeled drug metabolites from biological samples using the techniques of extraction, chromatography and autoradiography. Experience in complying with 'Good Laboratory Practice (GLP)' protocol.

EDUCATION

Auburn University

Auburn, Alabama US

Ph.D. in Fishery Science 1996

Dissertation: "Vitellogenesis: An Assay for Determining the Effects of Environmental Pollutants in Fish"

Auburn University

Auburn, Alabama US

Master's Degree in Fishery Management 1989

Thesis: "An Assessment of Fish Populations in Two Mainstream Reservoirs: A Comparative Approach to Developing Appropriate Management Strategies"

University of San Francisco

San Francisco, California US

B.S. in Biology 1975

Foothill College

Los Altos, California US

AFFILIATIONS

Society of Environmental Toxicology and Chemistry Member

American Fisheries Society Member

HONORS

1999 EFED Division Performance Award

2001 OPP Honor Award for Scientific Excellence
 2004 OPPTS James Ackerman Award for Ecological Effects Risk Assessment.
 Recipient of 7 USEPA Bronze Medal Awards

PROFESSIONAL PUBLICATIONS

Steeger, T. M., R. A. Howd, and G. T. Pryor 1980. Inhibition of phencyclidine metabolism by chronic morphine treatment. *Research Communications in Substance Abuse* 1: 131-137.

Howd, R. A., L. R. Bingham, T. M. Steeger, C. S. Rebert, and G. T. Pryor 1982. Relation between schedules of exposure to hexane and plasma levels of 2,5-hexanedione. *Neurobehavioral Toxicology, Teratology* 4: 87-91.

Mitoma, C., T. Steeger, J. Rogers, D. Thomas, and J. H. Wedig 1982. Metabolic disposition of dipyrithione. *The Toxicologist* 2: 15

Mitoma, C., T. Steeger, S. E. Jackson, and H. A. Milman 1983. In vivo metabolism of chlorinated ethanes. *The Toxicologist* 3: 103

Mitoma, C., T. Steeger, J. Rogers, D. Thomas, and J. H. Wedig 1983. Metabolic disposition of pyrithiones. *Fundamental and Applied Toxicology* 3: 256.

Allen, L. M., R. M. Parkhurst, M. A. Leaffer, T. M. Steeger, and J. H. Peters 1984. Pharmacological disposition of nordihydroguaiaretic (NDGA) in the rat after intravenous (iv) and oral (po) administration. IUPHAR 9th International Congress of Pharmacology 19 July -- 3 August, London, England. Abstract No. 235.

Almquist, R. G., C. Jennings-White, W. R. Chao, T. Steeger, K. Wheeler, J. Rogers, and C. Mitoma 1985. Synthesis and biological activity of pentapeptide analogues of the potent angiotensin converting enzyme inhibitor 5(S)-benzamido-4-oxo-6-phenylhexanoyl-L-proline. *Journal of Medicinal Chemistry* 28: 1062.

Almquist, R. G., T. M. Steeger, S. Jackson, and C. Mitoma 1985. Absorption, metabolism and excretion studies of carbon 14- and tritium-labeled derivatives of ketomethylene containing tripeptide. *Life Science* Vol. 37: 299-305.

Mitoma, C., T. Steeger, S. E. Jackson, K. P. Wheeler, J. H. Rogers, and H. A. Millman 1985. Metabolic disposition study of chlorinated hydrocarbons in rats and mice. *Drug and Chemical Toxicology* 8(3): 183-194.

Technical reports on ecological risk assessments in support of registration and reregistration of pesticides available on request.

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 a true, accurate and complete copy of *Complainant's Unopposed Motion for Leave to File its Fourth Supplemental Prehearing Exchange*, together with true, accurate and complete copies of Attachment A: Complainant's proposed *Fourth Supplemental Prehearing Exchange* and Complainant's Exhibit 147 thereto, 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 Susan Biro, Administrative Law Judge (via UPS overnight delivery) at the following address:

Honorable Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1099 14th Street, NW, Suite 350
Franklin Court
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 2nd day of August, 2011.



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