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.	)	
	)	

PARTIES' JOINT MOTION TO CONFORM TRANSCRIPT

Pursuant to 40 C.F.R. §§ 22.16 and 22.25 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the "Consolidated Rules"), the Parties[1] jointly move to conform the transcript of the hearing in this matter to the actual testimony presented at the hearing by accepting and adopting the corrections listed in the attached errata sheets.[2]

In further support of this Motion, the Parties state as follows:

1. Consolidated Rule 22.25 provides, in pertinent part, that "[a]ny party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner." 40 C.F.R. § 22.25.

2. The hearing in this matter was held on February 7, 8, 9, and 10, 2012.

3. The transcript in this matter consists of 1,112 type-written pages of testimony.

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[1] When used in this Motion, the "Parties" shall collectively mean the Director, Land and Chemicals Division, Region 5, U.S. Environmental Protection Agency ("Complainant") and Liphatech, Inc. ("Respondent").

[2] The Parties regretfully were unable to consolidate the attached errata sheets into several sequential errata sheets within the time period set forth in 40 C.F.R. § 22.25. They will do so upon the Court's request.

4. The transcript contains typographical and transcription errors.

5. The transcript was received by the Regional Hearing Clerk on March 5, 2012.

6. Attached is a table listing by page and line the corrections to the transcript that will conform the transcript to the actual testimony presented at hearing. The Parties agree that making these corrections is necessary to ensure that the transcript is accurate.

7. This Joint Motion is timely filed in accordance with 40 C.F.R. § 22.25.

Because this Joint Motion is timely and because good cause exists, the Parties respectfully move for an order conforming the transcript of the hearing in this matter to the testimony presented at hearing by accepting and adopting the corrections in the attached errata sheets.

[Signature page follows.]

Respectfully submitted,

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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 the *Parties' Joint Motion to Conform Transcript* were filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on the date indicated below. True, accurate and complete copies also were sent to the persons listed and in the manner provided below on this date:

Sent via UPS overnight delivery:

Honorable Susan L. Biro
Administrative Law Judge
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

Sent via UPS overnight delivery:

Mr. Mark A. Cameli
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Dated in Chicago, Illinois, this 3 day of April, 2012.

Gary Steinbauer

ERRATA SHEETS

Parties' Joint Motion to Conform Transcript

Liphatech Inc., FIFRA-2010-05-0016

Errata of Transcript dated February 7, 2012

Witness: Claudia Niess

Page(s)	Line(s)	Existing Language:	Change to:
4	4	By Ms. O'Meara	By Mr. Steinbauer
14	3	by the registrar	by the registrant
16	9	that	the
16	20	penalties	penalty
19	5	it's application	its application
20	5	12(a)(1)(b)	12(a)(1)(B)
21	9	12(a)(1)(b)	12(a)(1)(B)
27	2	land and chemicals division	Land and Chemicals Division
27	4	land and chemicals division	Land and Chemicals Division
27	7 and 8	pesticides and toxics compliance section	Pesticides and Toxics Compliance Section
27	10	pesticides and toxics compliance section	Pesticides and Toxics Compliance Section
27	12	credential	credentialed
27	19	credential	credentialed
28	2	mention	mentioned
28	7	credential	credentialed
33	8	non-targeted	non-target
34	2	providing	provided
35	24	12(a)(1)(b)	12(a)(1)(B)
36	1	12(a)(1)(b)	12(a)(1)(B)
36	4	12(a)(1)(b)	12(a)(1)(B)
37	2	Sir,	Sure,
38	20	credential	credentialed
39	3	focus you attention	focus your attention
40	9	credential	credentialed
44	11	for the same.	for the same reason.
44	17	non-target	non-targets
45	8	Rozol, proven	Rozol for proven
46	15	implied	implies
48	5	12(a)(1)(b)	12(a)(1)(B)
49	18	12(a)(1)(b)	12(a)(1)(B)
50	10	12(a)(1)(b)	12(a)(1)(B)
50	23	on this	delete "on this"
52	2	diphacinone.	diphacinone."
52	15	non-target	non-targets
55	10	2222.	22.22.
56	12	a	delete "a"
59	3	7173-244.	7173-244."
59	14	pick lists.	picklists.
59	22	pick lists?	picklists?
59	25	pick list	picklist
60	5	Who this shipment	Does it say who this shipment
61	15	pick list	picklist

62	6	pick list	picklist
62	9	that	there an
63	5	pick list	picklist
63	25	pick list?	picklist?
64	6	pick list	picklist
64	22	pick list	picklist
65	3	Relabeling	relabeling
65	18	pick lists?	picklists?
65	22	2222	22.22
67	5	my	by
67	7	administration	administrative
67	14	Volitions of Section 12(a)(2)(e)	Violations of Section 12(a)(2)(E)
67	15	12(a)(1)(b)	12(a)(1)(B)
67	19	12(a)(1)(b)	12(a)(1)(B)
70	12	12(a)(1)(b)	12(a)(1)(B)
70	13	this	delete "this"
70	25	complaints	complaint
72	11	February 10,	February of
76	2	12(a)(1)(e)	12(a)(1)(B)
77	17	new	news
77	21	Knuth?	Knuth.
78	4	has	had
78	13	2222	22.22
82	2	to	delete "to"
84	2	12(a)(2)(e), FIFRA Section 12(a)(1)(e)	12(a)(2)(E), FIFRA Section 12(a)(1)(E)
84	3	Section 12(a)(1)(b)	Section 12(a)(1)(B)
84	13	report	order
84	14	undated	updated
89	10	notice?	noticed
90	10	MR. CAMILA:	MR. CAMELI:
91	1	Q.	A.
92	22	pick list	picklist
93	25	four of the	for the
95	17	employees	employers
98	19	credential	credentialed
102	12	12(a)(1)(e)	12(a)(1)(E)
102	21	first or 100 counts	strike "or"
104	9	Section 12(a)(1)(b)	Section 12(a)(1)(B)
106	7	Section 12(a)(1)(b)	Section 12(a)(1)(B)
107	23	pesticide	pesticide's
108	4	human health	harm to human health
123	3	Bait	Bait's
126	3	your	Your
129	11	Section 12(a)(1)(b) and Section 12(a)(2)(e)	Section 12(a)(1)(B) and Section 12(a)(2)(E)
135	15	materials,	material
144	20	Registry	Register
151	18	Section 12(a)(2)(e)	Section 12(a)(2)(E)
152	3	Section 12(a)(2)(e)	Section 12(a)(2)(E)
152	15	Section 12(a)(2)(e)	Section 12(a)(2)(E)

152	19	Section 12(a)(2)(e)	Section 12(a)(2)(E)
152	22	Section 12(a)(2)(e)	Section 12(a)(2)(E)
159	3	Sir,	Sure,
160	1	Section 12(a)(2)(e)	Section 12(a)(2)(E)
160	5	Section 12(a)(1)(b)	Section 12(a)(1)(B)
160	14	Section 12(a)(1)(b)	Section 12(a)(1)(B)
163	6	Section 12(a)(1)(b)	Section 12(a)(1)(B)
163	12	Section 12(a)(1)(b)	Section 12(a)(1)(B)
170	15	Section 12(a)(1)(b)	Section 12(a)(1)(B)
177	15	assumably	presumably
179	17	don't	didn't
186	5	Section 12(a)(1)(b)	Section 12(a)(1)(B)
189	1	Section 12(a)(1)(e)	Section 12(a)(1)(E)
189	23	aren't	are
190	6	12(a)(1)(b)	12(a)(1)(E)
206	13	consumer's	consumers'
210	24	Section 12(a)(2)(e)	Section 12(a)(2)(E)
212	5	Section 12(a)(2)(e)	Section 12(a)(2)(E)
212	6	Section 12(a)(1)(b)	Section 12(a)(1)(B)
215	18	draft an issue	draft and issue
215	19	action	actions
224	12	7173184	7173-184
225	18	Page 4296	Page 429
226	3	Section 12(a)(1)(b)?	Section 12(a)(1)(B)?
226	7	Section 12(a)(1)(b),	Section 12(a)(1)(B),
226	22 and 23	"EPA is a legend."	"EPA is alleging."
227	9	Section 12(a)(1)(b)	Section 12(a)(1)(B)
227	13	Section 12(a)(1)(b)	Section 12(a)(1)(B)
227	17	Section 12(a)(1)(e)	Section 12(a)(1)(E)
228	10	problems. But is	problems, but is
228	14	Fuentez-Ruiz	Fuentes-Ruiz
235	23	is	has
237	11	undo	undue
239	25	In a general	In general
241	21	used sprayed	used or sprayed

Liphatech Inc., FIFRA-2010-05-0016

Created by U.S. EPA, Region 5 Enforcement on March 8, 2012

Errata of Transcript dated February 7 and 8, 2012
Witness: John Hebert

Errata of Transcript dated February 7, 2012			
Page(s)	Line(s)	Existing Language:	Change to:
7	19	Environment	Environmental
8	1	registration	Registration
8	2	division	Division
9	12	special	Special
9	13	review and reregistration division	Review and Reregistration Division
17	17	statement formula	statement of formula
18	1	label	labeled
23	18	Drool	Rozol
31	22	LNN	SLN
32	19	registration division	Registration Division
36	20	registration	Registration
36	21	division	Division
38	23	fish personnel	strike "fish"
41	15	publically	publicly
43	14	Section 12(a)(1)(b)	Section 12(a)(1)(B)
46	1	Section 12(a)(1)(b)	Section 12(a)(1)(B)
46	7	registration division	Registration Division
47	2	Section 12(a)(1)(b)	Section 12(a)(1)(B)
47	7	Section 12(a)(1)(b)	Section 12(a)(1)(B)
47	8	Section 12(a)(1)(b)	Section 12(a)(1)(B)
47	11	sales	sale
48	19	Claimant's	Complainant's
52	15	pockets	pocket
54	14	discretions	directions
54	16	registrant registrants	strike "registrants"
54	18	a	the
54	18	registration	Registration
54	19	division	Division
56	2	or	for
59	25	224 1/2009	6/1/2007 to undetermined
62	2	un-active	inactive
62	13	registration division	Registration Division
67	18	greenery	green-up
68	22	retrievable	retrieval
70	19	717-286	7173-286
72	15	registration division	Registration Division
77	1	on	and
86	25	MR. O'MEARA:	MS. O'MEARA:
91	1	registration division	Registration Division
91	4	registration division	Registration Division

91	6	registration division	Registration Division
91	12	MR. CAMELI:	MS. O'MEARA:
93	8 and 9	the claim, "contradict or undermine anything"	strike comma and quotation marks (" ") around "contradict or undermine anything"
95	6	population	populations
96	11	consensus	census

Errata of Transcript dated February 8, 2012			
Page(s)	Line(s)	Existing Language:	Change to:
117	11-12	End quotes after different	End quotes after effectiveness
121	5	burrow/reopen technique burrow was 63.49 percent when	burrow/reopen technique was 63.49 percent when
140	9, 14	IRV reviews	IRB reviews
140	20	commensurable	commensal
165	21	James Eidella	James Aidala
167	10, 18, 25	Mr. Eidella	Mr. Aidala
168	7	Mr. Eidella's, Mr. Eidella	Mr. Aidala's, Mr. Aidala
194	19	toxicity, legal	toxicity, lethal
194	21	commensurable	commensal

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Created by U.S. EPA, Region 5 Enforcement on March 8, 2012

Errata of Transcript dated February 8, 2012
Witness: Dr. Nimish Vyas

Page(s)	Line(s)	Existing Language:	Change to:
10	4	you work at the EPA	you worked at the EPA
14	2-3	It went through a peer review process standard, which is for USGS documents	It went through a peer review process, which is standard for USGS documents
14	13	State of Santa Cruda	State of South Dakota
16	7	physical characterizations	physical characteristics
17	23	Santa Cruda	South Dakota
25	22	that are forging for food	that are foraging for food
26	14	when a preying animal	when a prey animal
33	11, 12, 23	"Nearkirk"	"near Kirk"
34	3	"Nearkirk"	"near Kirk"
34	12	number of homes that they	number of holes that they
34	25	perch in the pole, hoping	perch by the hole, hoping
35	18	"Nearkirk"	"near Kirk"
38	21-22	going to be treated in a pasture anyway	going to be treating the pasture anyway
44	3	that would be hot bed scavenged.	that would have been scavenged.

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Created by U.S. EPA, Region 5 Enforcement on March 8, 2012

Errata of Transcript dated February 8, 2012
Witness: Dr. Thomas Steeger

Page(s)	Line(s)	Existing Language:	Change to:
15	9	supply a sweep of	supply a suite of
21	19-20, 21	incidents data	incident data
21	22	incidents data	incident data
22	8	ground trooping our risk	ground truthing our risk
23	7	our compliant division	our compliance division
23	7-8	Risk Management Divisions	Risk Management Division
44	10	the number aside the	the number assigned the
44	13 through 18	Language is in quotations	Should not be in quotations
73	21	in the case of an endangered	in the take of an endangered
78	1	you're going	they're going
79	5	poisoning in misleading.	poisoning is misleading.
86	15	application include everything	application includes everything
89	5-6	your education experience and experience	your education and experience
92	11	that Nemish has done	that Nimish has done
92	12	intimate data	incident data
102	16	TIPA	TIFA
104	4	the IVP violation	The RUP violation
104	16	the EAD's	the EAB's
104	17	microban	Microban
104	18	chlorophacinone	Sporicidin
105	7	the TIPA argument	the TIFA argument
105	16	requires	required is
105	18	your	your opinion
106	3	determine what the statement required	determine what is the statement required
106	16	heavily	highly
107	24	discriminative	determinative
107	25	42 FR, Section 116	40 CFR, Section 168.22
108	4, 6, 10, 17	TIPA	TIFA
108	9, 13	EAD	EAB
108	15	requested	request
108	16	what 168232 is	what 168.22 is
108	24	There are price lists	There aren't price lists
109	19	TIPA	TIFA
111	6-9	...Complainant's reliance on a period based on reliability allegation of an accepted label is too	... "Complainant's reliance on a legal theory that bases allegations of liability on the 'accepted

		narrow a formulation to justify ruling in its favor as a matter of law.	label' is too narrow a formulation to justify ruling in its favor as a matter of law."
112	7	which is 214102183—the	which is 2141 - 2183—the
114	2	in	and
115	21 (twice)	16822	168 22
116	4,7	TIPA	TIFA
118	17,19	TIPA	TIFA

Liphatech Inc., FIFRA-2010-05-0016

Created by U.S. EPA, Region 5 Enforcement on March 8, 2012

Errata of Transcript dated February 9 and 10, 2012
Witness: Thomas Schmit

Errata of Transcript dated February 9, 2012			
Page(s)	**Line(s)**	**Existing Language:**	**Change to:**
9	13	specially	specifically
20	20	Because as was told me	Because as was told to me
21	9-10	...the use of prairie dogs, that he had been to the fields	...the use of Rozol to control prairie dogs, that he has been to the field
25	13	SLN's	SLNs
25	18	SLN's	SLNs
30	24	cross-examined	cross-examine
32	14	It	Strike "It"
42	6	is	Strike "is"
45	11	of	Strike "of"
50	14	forth	fourth
58	25	12(a)(1)(b)	12(a)(1)(B)
58	25	...of what statement of claim	...of what the statement of claims is
60	6	SLN's	SLNs
61	7	SLN's	SLNs
61	12	SLN's	SLNs
62	13	SLN's	SLNs
62	24	forth	fourth
63	3	SLN's	SLNs
67	15	cattleman's	cattlemen's
67	16	cattleman's	cattlemen's
77	3	research	Strike "research"
81	9	Court	Code
81	14	reenforces	reinforces
82	6	2114	2141
92	1	could	would
93	6	visibility	admissibility
107	9	verses	versus
112	14-15	My job is do	My job is to do
113	7	At	at
115	13-14	I don't think he qualifies to do that	I don't think he is qualified to do that
115	17	the testimony questioning previously	the testimony previously
142	12-14	In my assessment of the truthfulness of appropriateness of that	In my assessment of the truthfulness or appropriateness of that

		statement, I used my only knowledge...	statement, I used only my knowledge...
143	18	SLN's	SLNs
145	2	2,663	26 and 63
147	19	complaints	complaint
147	20	really know	really don't know
148	9	Until when	When
154	21	affective	effective
160	6	...places that case zinc phosphide bait	...places that zinc phosphide bait
162	5	affect	effect
180	21	base	basis
182	2	Complaints	Complainant's
194	16	SLN's	SLNs
194	24	SLN's	SLNs
222	12	lengths	links
224	5	SLN's	SLNs
224	18	adds	ads
244	11	SLN's	SLNs
244	15	SLN's	SLNs
251	12	Deposition	Hearing or Trial
251	23	does	is
258	15	12(a)(1)(e)	12(a)(1)(E)
258	16	12(a)(1)(b)	12(a)(1)(B)
269	11	SLN's	SLNs
269	11	SLN's	SLNs
270	1	SLN's	SLNs
272	1	SLN's	SLNs
273	21	SLN's	SLNs
277	6	12(a)(1)(b)	12(a)(1)(B)
278	1	12(a)(1)(b)	12(a)(1)(B)
290	4	Mr.	Dr.
292	9	...slow down my questions	...slow down with my questions
296	11	SLN's	SLNs
299	2	SLN's	SLNs
321	23	Probably	probably

Errata of Transcript dated February 10, 2012			
Page(s)	Line(s)	Existing Language:	Change to:
338	13	safety specs	fate and effects
368	1	he	you
379	15	closest	post
388	24	219	12-19
401	7	RX 12	RX 11
406	8	bait consumed	bait was consumed
406	8	four	twenty-four
414	17	"you" is missing	Add "you" between "are" and "involved"

415	23	comparing	compares
424	23	relay	rely
447	22	table 72	RX 72
452	12-13	the CRA ... risk	"the CRA ... risk"
452	14	it	Strike "it"
452	15	the;	Strike ";"
452	15	at large	largely
452	16	actual	active
452	17	This	"This
452	18	exposed	exposure
452	18	reasons	very reasons
467	6	of the issue of	of issuing a
469	18	heard	read

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Errata of Transcript Dated February 7, 2012
Witness: C. Niess

Page(s)	Line(s)	Existing Language:	Change to:
5	22 and 24	Schmidt	Schmit
21	18	what proffered	a proffer
23	18	EAB	the EAB
Intentionally Deleted			
24	1	come	delete
24	15	America's	EPA's
40	1	matters.	such matters.
41	2	there's	they are
72	22	controlled	control
72	22	exceeding	exceeds
81	11	however	whatever
84	19	facts	effect
87	22	intend	intended
94	22	You	Your
97	14	that	delete
114	24	float	flow
115	22	witness	witnesses
117	5	of risk	delete
125	25	in	delete
126	17	the	their
134	6	anyway	any way
134	16	moment	a moment

142	17	manufacturer	manufacture
145	15	1.2805	$1.2805
149	20	now	how
152	7	It's	Its
155	16	some	someone
159	18	2,142	2,140
161	8	2,142 -- 2,142	2,140 --2,140
162	21	the	be
163	14	2(a)(1)(b),(sic)	12(a)(1)(B)
163	24	were	delete
164	22	to	delete
173	13	to	no
175	20-21	the law violating the law	that they are all violating the law
177	18	without	with
179	5	know	to know
185	8, 18	Complaint's	Complainant's
190	25	suffer	suffered
197	22	relating	relevant
200	24	Gopher Bait	Gopher Bait Burrow Builder Formula
206	4	the product	from the product
217	5	I'm'	I'm
240	8	interprets	interpret

Liphatech, Inc., FIFRA-05-2010-0016

Errata of Transcript Dated February 7-8, 2012
Witness: John Hebert

Page(s)	Line(s)	Existing Language:	Change to:
5	25	Borrow	Burrow
10	9	vertebrae	vertebrate
25	6	do advertising	do with advertising
58	7	7173-186	7173-184
91	11	claim	complaint
95	23	Overall	Over all
96	9	Overall	Over all

February 8, 2012

Page(s)	Line(s)	Existing Language:	Change to:
107	20	PTBD	BTPD
108	16	PTBD	BTPD
112	11	MR. ROWE	MR. ROE
113	13	proposed hearing	post-hearing
114	6	controlled	control
136	25	7173-224	7173-244
157	20	research	research bulletin
Intentionally Deleted			
159	4	FIFRA 1281(e)	FIFRA 12(a)(1)(E)
159	15	plans	claims
160	17	claim	label
174	20	premise	Primus

Liphatech, Inc., FIFRA-05-2010-0016

Errata of Transcript Dated February 8, 2012
Witness: Nimish Vyas

Page(s)	Line(s)	Existing Language:	Change to:
50	4	different claim	differing claim

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Errata of Transcript Dated February 8, 2012
Witness: Thomas Steeger

Page(s)	Line(s)	Existing Language:	Change to:
4	24	under that situation	substantially
73	10	black-footed prairie dogs	black tailed prairie dogs
74	16	can	can't
76	14	brief	briefed
86	10	consistent	inconsistent
102	1	were	we're
104	9	2224 (a)	22.24(a)
107	3	2,331	2,231
116	15	Tim Knud	Jim Knuth
117	22	Tim Knud	Jim Knuth

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Errata of Transcript Dated February 9-10, 2012
Witness: Thomas Schmit

Page(s)	Line(s)	Existing Language:	Change to:
12	14	maybe people	maybe 20 people
18	25	systemically	systematically
19	2	stamp	stamped
24	16	all	delete "all"
25	16	?	replace "?" with "."
26	1	those four states were --	those four states were -- Kansas, Nebraska, Colorado and Wyoming
27	5	America	American
29	14	this	the
34	18	America	American
48	15	that was it was	that it was
56	25	Complaint's	Complainant's
74	5	disproved	disapproved
93	6	visibility	admissibility
97	7	claim	complaint
103	22	I	he
104	11	that for this purpose	this for that purpose
108	25	plug	plugged
113	8	on	delete "on"
117	15	lability	liability
126	9	was	were

153	22	plug	plugged
170	5	Breutsch	Breusch
176	16	former	foam
177	17	Complainant	Complaint
178	22	claim	Complaint
178	25	that	if
225	1	know	now
233	13	exhibition	examination
233	19	During	Doing
280	18	dated	data
288	15	questions	cameras
289	22	sets	sites
293	17	affective	effective

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Page(s)	Line(s)	Existing Language:	Change to:
347	2	state	space
417	12	can't that	can't answer that
417	14	don't what	don't know what