



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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December 13, 2010

REPLY TO THE ATTENTION OF:
C14-J

VIA UPS Overnight Delivery

Honorable Barbara A. Gunning
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

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

Dear Judge Gunning:

Enclosed please find a copy of *Complainant's Reply to Respondent's Response to Complainant's Motion for Accelerated Decision on Liability for Counts 2,141 through 2,183 of the Complaint*, which was filed on December 13, 2010, in the above-referenced matter.

Sincerely,

Gary E. Steinbauer
Assistant Regional Counsel

Enclosure

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

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

IN THE MATTER OF:)	
Liphatech, Inc.)	
Milwaukee, Wisconsin)	Docket No. FIFRA-05-2010-0016
)	
Respondent.)	Hon. Barbara A. Gunning
)	
)	
)	

Complainant’s Reply to Respondent’s Response to Complainant’s Motion for Accelerated Decision on Liability for Counts 2,141 through 2,183 of the Complaint

Pursuant to Rules 16(b) and 22.20 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.16(b) and 22.20, Complainant files the instant Reply, and respectfully requests that the Presiding Officer grant Complainant’s Motion for Accelerated Decision on Liability for Counts 2,141 through 2,183 of the Complaint.

I. Complainant correctly interprets the legal requirements of 12(a)(1)(B).

Respondent suggests that the United States Environmental Protection Agency (U.S. EPA or Complainant) incorrectly interprets the fifth element required to establish a violation of Section 12(a)(1)(B) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) despite the plain language of the statute, the clear case law and its own admissions. In this case, the fifth element Complainant must prove to establish a violation of Section 12(a)(1)(B) is that Respondent used claims for Rozol¹ as part of its distribution or sale that substantially differed from claims made for Rozol as part of the statement required in connection with its registration. (Compl.’s Br. at 4). As a preliminary matter, this issue is one of law, not fact. Therefore, it is

¹ For ease of reference, Complainant will use Rozol in this Reply to refer to “Rozol Pocket Gopher II” (Alternate name: “Rozol Pocket Gopher Burrow Builder Formula”), EPA Registration Number 7173-244.

ripe for accelerated decision.

A. The plain language in the Section 12(a)(1)(B) and Section 3 of FIFRA is clear.

Section 12(a)(1)(B) of FIFRA states that it is unlawful for any person in any State to distribute or sell to any person “any registered pesticides if any *claims* made for it as part of its distribution or sale substantially differ from any claims made for it *as part* of the statement required in connection with its registration under Section 3” of FIFRA. 7 U.S.C. § 136j(a)(1)(B) (emphasis added). Respondent erroneously argues that the “statement required,” as that term is used in Section 12(a)(1)(B) of FIFRA, encompasses the entire body of information a registrant decides to submit to U.S. EPA when it is registering its pesticide and that entire body of information constitutes claims that have been approved by the U.S. EPA for purposes of Section 12(a)(1)(B) of FIFRA. In support of this argument, Respondent points to Section 3(c)(1) of FIFRA, which outlines the procedure for registration. 7 U.S.C. § 136a(c)(1). More specifically, Respondent argues that data that an applicant for registration must submit under Section 3(c)(1)(F) of FIFRA, *id.* § 136a(c)(1)(F), must be considered when determining if a violation of Section 12(a)(1)(B) of FIFRA has occurred. Respondent’s contentions lack merit.

At the outset, Respondent’s interpretation of Sections 3(c) and 12(a)(1)(B) of FIFRA is contrary to congressional intent. Under Respondent’s tortured construction, a registrant could include any study, documents or data it desires, despite the relevancy or reliability, and then after the product is registered, make any claims based on such information in subsequent advertising. In other words, if Respondent’s interpretation governs, the mere submittal of data by an applicant for registration renders it approved by the U.S. EPA and gives the registrant *carte blanche* to pick and choose among the various data it submitted to use in its advertising materials. Not surprisingly, Respondent’s theory circumvents U.S. EPA review of the submissions and

effectively eliminates U.S. EPA's role in reviewing pesticide registrations. Clearly, this was not the intent of Congress when it granted U.S. EPA authority to oversee the pesticide registration process under FIFRA.

A careful reading of Section 3 of FIFRA in its entirety reveals the universe of claims U.S. EPA reviews and approves in connection with a pesticide registration. Contrary to Respondent's contentions, the mere submission of data in support of a pesticide registration does not mean that, once registered, the registrant is given the right to make any claims that may be found in the data it submitted. Section 3(c)(1)(C) of FIFRA states that the applicant must submit "a statement of all claims to be made for it." 7 U.S.C. § 136a(c)(1)(C). Section 3(c)(1)(F) of FIFRA requires submittal of **all data to support the statement of claims** submitted in Section 3(c)(1)(C) of FIFRA. *Id.* § 136a(c)(1)(F). Section 3(c)(3)(A) of FIFRA states that the U.S. EPA shall review the data submitted by the registrant. *Id.* § 136a(c)(3)(A). Each of these sections, when read together, demonstrates that a registrant must submit any claims it wishes to make should its pesticide be registered and that such claims are separate from any data it submits. *See, e.g., Corley v. United States*, 129 S. Ct. 1558, 1566 (2009) ("[O]ne of the most basic interpretative canons, [is] that 'a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . .'" (citations and internal quotations omitted)).

Clearly, the intent of Congress when it created the registration process was not for U.S. EPA to be a mere receptacle of any data a registrant wishes to submit, which is then deemed to be approved by U.S. EPA by its mere submission during the registration process. Upon receipt of the registration application, U.S. EPA reviews, approves and registers pesticides based on, among other things, whether "the labeling and other material required to be submitted compl[ies]

with the requirements of” Section 3 of FIFRA. *See* 7 U.S.C. § 136a(c)(5) (“Approval of Registration”). Final registration of the product is conveyed to the registrant via a Notice of Pesticide Registration, which includes a letter, proposed changes to the label, possible approved marketing claims and the accepted label itself. (*See* CX 1; CX 92 and 93 (examples of Notices of Pesticide Registration which include approved marketing claims); *see also* CX 88, EPA 001572 (stating that “if a claim is not on the label or substantially differs from what appears on the label (or any part of its distribution or sale which for example appears on a broadcast), it cannot be made in advertising”). The Notice of Pesticide Registration essentially distills into one document all the claims approved by the Registration Division of U.S. EPA.

The data that a registrant submits are required to support the claims the registrant proposes in the statement of claims made for the pesticide pursuant to Section 3(c)(1)(C) of FIFRA. 7 U.S.C. §§ 136a(c)(1)(C), (F). In this case, there is no evidence that Respondent submitted labeling or a statement of claims to be made for Rozol at the time of registration that included any of the claims enumerated in paragraphs 146 through 212 of the Complaint or pages 7 through 10 of Complainant’s Motion for Accelerated Decision for Counts 2,141 through 2,183. The evidence shows that Respondent’s application for registration included “a complete copy of the labeling and directions for use.” Respondent’s application for registration, however, did not include a statement of claims to be made for the pesticide. (*See* CX 1-7). The fact is that the underlying violative claims associated with Counts 2,141 through 2,183 of the Complaint were never submitted nor approved by the U.S. EPA. Because Respondent did not submit any proposed marketing claims with its application for registration, the only claims Respondent was approved to use after Rozol was registered were those conveyed to Respondent in the Notice of Pesticide Registration and any subsequent additions or amendments to the Notice of Pesticide

Registration.

Respondent argues that the Lee and Hyngstrom study at RX 10 supports its “single application” claims, as well as other claims Respondent made in its advertising material. (*See* Respondent’s Response at 11; Schmit Decl. ¶¶ 5, 8 and 9). This assertion is problematic for several reasons. First, the Lee and Hyngstrom study, which is dated July 26, 2007, post dates the initial registration of Rozol, which was dated March 2, 2005. (*See* CX 1b). Second, the U.S. EPA’s review of this study is dated February 11, 2009, because it was reviewed for Rozol Prairie Dog Bait, EPA Reg. No. 7173-286, and not for Rozol, EPA Reg. No. 7173-244 (which is the subject of Counts 2,141 through 2,183). Finally, regardless of what the study says and whether U.S. EPA agreed with its methodology and conclusions, it is merely data submitted in support of any claims in Respondent’s registration application, not an approved claim or the basis upon which Respondent may make claims that were not submitted with its registration application. *See* 7 U.S.C. § 136a(c)(1)(F).

Respondent did not submit claims such as “provides the most control available in a single application,” (Complainant’s Motion at 8), “Rozol consistently controlled Prairie Dog populations using a single application,” (*id.* at 9), or any variation thereof in connection with its registration of Rozol. Therefore, despite any data that might have been submitted, the violative claims that form the basis of Counts 2,141 through 2,183 of the Complaint were never submitted for approval, much less approved by U.S. EPA as part of the registration of Rozol. This logic applies equally to the claims mentioned in paragraphs 8 and 9 of the Schmit Declaration. None of these claims were either submitted for approval or approved by U.S. EPA.

Similarly, Respondent argues that the Erickson and Urban publication (CX 38) supports its claim relating to the safety characteristics of Rozol, i.e., the claim that Rozol poses a low

primary poisoning potential for non-target organisms. This argument too is flawed for numerous reasons. First, the Erickson and Urban publication compares the toxicity of nine rodenticides and concludes that chlorophacinone has **lower** primary poisoning potential **in comparison to** some of the other rodenticides reviewed in the publication. (CX 38). In addition, at the time the publication was written, chlorophacinone (the active ingredient in Rozol) was not registered for use to control black-tailed prairie dogs and therefore was not evaluated for such use in the context of the publication. As a result, Respondent's reliance on this study to justify violative claims it makes in its advertising materials is unpersuasive, as it takes the publication out of context.

B. The case law regarding Section 12(a)(1)(B) is clear.

Contrary to Respondent's assertions, the case law lends further support for this reading of the law. In *In the Matter of Microban Products Company*, FIFRA-98-H-01, (Sept. 18, 1998), the Presiding Officer specifically stated that the "establishment of this violation 'involves holding up, on the one hand, the terms of the EPA's **registration approval** and then, per Section 136j(a)(1)(B), determining whether [the respondent] made any claims as part of its distribution or sale which substantially differ from those made in connection with its **registration approval**.'" 1998 EPA ALJ LEXIS 135, at*21. This exact method should be utilized in this case to determine whether Respondent's unapproved claims substantially differed from those that were approved by U.S. EPA.

Respondent also attempts to distinguish the line of cases cited by Complainant which interpret Section 12(a)(1)(B) of FIFRA, by stating that the Section 12(a)(1)(B) prohibition only applies to instances when the claims by the registrant are claims made for unapproved pests. (Respondent's Resp. at 6-7). Respondent's attempt to distinguish these cases misses the mark,

because it is unsupported by the plain language of FIFRA. The standard used to determine if a claim is violative under Section 12(a)(1)(B) of FIFRA is not whether the claim is one involving the types of pests the product allegedly controls but rather whether the claims made are **substantially different** than the claims approved by U.S. EPA. In fact, Judge McCallum of Environmental Appeals Board (“EAB”) endorsed this approach in his concurring opinion in *In re Roger Antikiewicz & Pest Elimination Products of America, Inc.*, FIFRA Appeal Nos. 97-11 & 97-12 (EAB, March 26, 1999). Judge McCallum defined what constitutes a claim in the context of Section 12(a)(1)(B) of FIFRA as follows:

In plain English, the term “claim” connotes an affirmative representation, whether express or implied, as to certain attributes, results, and so on. For example, the phrases “repel insects,” “safe for use on tomatoes,” “does not irritate skin,” “effective only if user allows 8 months to elapse after application before planting follow crops,” “kills mold and mildew on contact,” “for best results, use before first frost,” and “nontoxic to humans and pets” all constitute “claims” because they provide the reader with definitive, EPA-validated information about the product’s efficacy, safety, or other qualities.”

8 E.A.D. 218, 242-43. Based on this definition, there can be no dispute that the claims made by Respondent in its marketing and advertising materials for Rozol constitute claims in the context of Section 12(a)(1)(B) of FIFRA.

In addition, Respondent’s suggestion that Section 2(ee) of FIFRA and 40 C.F.R. § 168.22(b)(5) are somehow relevant in this case is misplaced. Section 2(ee) and 40 C.F.R. § 168.22(b)(5) relate to the *use* of a product, which is not the basis of the violations set forth in Counts 2,141 through 2,183 of the Complaint. Therefore, Respondent’s discussion of these provisions is irrelevant.

In conclusory fashion, Respondent also argues that Complainant’s interpretation of Section 12(a)(1)(B) of FIFRA is a violation of its right to commercial free speech under the First

Amendment of the United States Constitution. Essentially, Respondent asserts that it should be free to make any claims for Rozol it wishes without U.S. EPA review, despite the fact that the Agency is charged with registering pesticides in accordance with Section 3 of FIFRA and regulating advertising for such registered pesticides as part of the sale and distribution of the pesticide. Respondent's apparent constitutional challenge to FIFRA is made without any citation to supporting authority. Furthermore, even if Respondent was able to muster support for its constitutional challenge, any such challenge cannot be made in this forum. As Chief Judge Biro stated in *In re 99 Cents Only Stores*, Docket No. FIFRA 09-2008-0027, 2010 EPA ALJ LEXIS 10, at*119 (June 24, 2010), "to the extent that Respondent's due process argument could be construed as a challenge to the constitutionality of FIFRA, this Tribunal has no jurisdiction to review it." The same is true for Respondent's commercial free speech argument.

Finally, Respondent argues that some of the claims it makes are not claims about its own product but claims regarding other registered pesticide products such as Kaput-D and zinc phosphide. It argues that since these claims do not refer to Rozol, they cannot violate Section 12(a)(1)(B) of FIFRA. Such an assertion is disingenuous at best. Respondent cannot reasonably contend that its comparisons of Rozol to its competitors' products were not intended to induce the sale of Rozol based on its alleged superiority to the compared products.

C. Respondent's potpourri of other arguments lack merit.

1. Respondent distributed Rozol to its employees.

Respondent also argues that it has not violated Section 12(a)(1)(B) of FIFRA with respect to Counts 2,144 and 2,178. In particular, it argues that because Mr. Knuth and Mr. Newman are employees of Respondent, a violation did not occur. Respondent is incorrect.

FIFRA defines "distribution and sale" very broadly. 7 U.S.C. § 136(gg). Contrary to

Respondent's contention, a registrant can violate Section 12(a)(1)(B) by distributing one of its products to a company representative at a different location. *Id.*; *see also id.* § 136a(a) (prohibiting the distribution or sale of any pesticide by a person in any State). Respondent's reliance on the exemption set forth in 40 C.F.R. § 152.30(a) is misplaced.² 40 C.F.R. § 152.30(a) is grounded in Section 3(b) of FIFRA. Section 3(b) of FIFRA creates an exemption that allows an unregistered pesticide to be transferred "from one **registered establishment** to another **registered establishment** operated by the same producer **solely for packaging at the second establishment...**" 7 U.S.C. § 136a(b)(1)(emphasis added). This exemption does not apply in this case for at least two reasons. First, Rozol is a registered pesticide. Second, even if Rozol or any constituent of Rozol was unregistered at the time of the distributions associated with Counts 2,144 and 2,178, the locations to which the products were distributed were not registered establishments. Attachment A, Niess Declaration ¶¶4-9. Therefore, Respondent's distributions or sales to Messrs. Knuth and Newman do not satisfy this exemption.

2. *U.S. EPA has demonstrated nexus between the violative advertisements and the distribution or sale of Rozol.*

In an attempt to argue that there is a genuine issue of material fact with respect to the nexus between Respondent's violative advertising materials and the distribution or sale of Rozol as alleged in Counts 2,141 through 2,183, Respondent makes a number of contradictory and unsupported statements.

In reference to the list of distributors that was provided to U.S. EPA, Respondent now asserts that "Complainant mistakenly asserts that this is a list of distributors that received the Direct Mail Packages when it is not." (Respondent's Response at 17). Yet, in a letter

² Respondent also relies on a case interpreting Mississippi conspiracy law to advance its argument that the distributions to Messrs. Knuth and Newman fall outside the ambit of FIFRA. (*See* Respondent's Response at 14 (citing *Saucier v. Coldwell Banker JME Realty*, 644 F. Supp. 2d 769, 784 (S.D. Miss. 2007)). This case clearly is distinguishable.

Respondent sent to Complainant after the issuance June 2, 2008 SSURO (CX 15), Respondent provided a list of distributors that distribute Rozol. (CX 17). In this same letter, Respondent stated that it would be “advising our [*sic*] distributor companies that all advertisements and literature in their possession concerning Rozol Prairie Dog Bait must be destroy[ed], to be replaced with updated materials...”³ (*Id.*)

In reference to the direct mail packages it sent to its distributors, Respondent states that its CEO, “Mr. Carl Tanner testifies that **the direct mail packages that were sent to the distributors** were not sent to induce sales but to educate the distributors...” (Respondent’s Response at 17 (emphasis added)). This self-serving, conclusory statement is in direct contradiction to Respondent’s admission in paragraph 145 of the Answer, in which it admits that the Direct Mail Packages were sent to its distributors to advertise Rozol. (Answer ¶145). Despite all the evidence that the Direct Mail Packages were advertising materials designed to induce sales (*see* Complainant’s Motion at 13-16), Mr. Tanner would have this Court believe, they were merely tools for education. It is the motivation behind that “education” that is critical. In his Declaration, Mr. Tanner states that the “demand for the purchase of Rozol by the distributors is driven by the end users of the product.” (Tanner Decl. ¶6). Obviously, the distributor’s ability to educate the end consumer on the benefits of the product will boost sales. Therefore, the purpose of advertisements to the distributors is clear: it is to extol the virtues of the product to the distributor to pass down to the end consumer.

The efforts of the advertising and marketing material, including the radio, print and internet advertisements were to induce sales. To suggest otherwise is insincere. Indeed, the record evidence shows that Respondent’s advertisements were reaching the end consumer. (*See* CX 74 (advertising material for Rozol that was sent to the Kansas Department of Agriculture by

³ (*See also* Answer ¶ 145 (an admission that the Direct Mail Packages were sent to Respondent’s distributors)).

a citizen)).

Respondent also argues the product could have been bought for the purpose of pocket gopher bait rather than black-tailed prairie dog bait. This argument is flawed for numerous reasons. First, Respondent has already admitted in its Answer that the cover letters accompanying the direct mail packages were intended for both pocket gophers and black-tailed prairie dogs. (Answer ¶142). Second, it is irrelevant for the purposes of Counts 2,141 through 2,183, whether the product ultimately was purchased by the end consumer to control pocket gophers or black-tailed prairie dogs. The advertisements were made available to the distributors and the distributors purchased the Rozol product. The identity of the end consumer and the manner in which the end consumer used the Rozol have no bearing on Respondent's liability for Counts 2,141 through 2,183. This argument is a red herring.

In addition, Respondent argues that some of its product was sold after the approved use season, suggesting that there is an exemption in Section 12(a)(1)(B) of FIFRA that allows for violative claims if the pesticide is sold outside of the approved use season. No such exemption exists. Respondent sold the product and it is irrelevant if the sales took place outside the approved use season. One can easily imagine that distributors, agricultural chemical dealers and end users may stock the product in preparation for the coming season.

Finally, contrary to what is demonstrated in CX 92 and 93, which include Notices of Pesticide Registration in which the applicant submitted and U.S. EPA reviewed and approved some of the submitted marketing claims, Respondent argues that it could not have gotten marketing claims approved. If Respondent believed this to be the case, it should have been more cautious in the claims it made in its advertising.

II. Conclusion

Based on the current pleadings, admissions, and declarations on file, there is no genuine issue as to any material fact regarding Respondent's liability for the alleged violations in Counts 2,141 through 2,183. Complainant is therefore entitled to judgment as a matter of law as to liability for Counts 2,141 through 2,183 alleged in the Complaint. Complainant respectfully requests that this Court grant its Motion for Accelerated Decision on Liability for Counts 2,141 through 2,183.

Respectfully submitted,

DATED: 12/13/2010



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Attorneys for Complainant

ATTACHMENT A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	
Liphatech, Inc.)	Docket No. FIFRA-05-2010-0016
Milwaukee, Wisconsin)	
)	Hon. Barbara A. Gunning
Respondent.)	
)	
)	
)	

DECLARATION OF MS. CLAUDIA NIESS

State of Illinois
County of Cook

I, Claudia Niess, declare and state as follows:

1. The statements made in this declaration (which consists of four pages) are based on my personal knowledge.
2. I am currently employed as an Environmental Engineer and I am credentialed as an Enforcement Officer with the Pesticides/Toxics Compliance Section of the Chemicals Management Branch, Land and Chemicals Division, U.S. EPA, Region 5. The Pesticides/Toxics Compliance Section was formerly known as the Pesticides & Toxics Enforcement Section. I have been employed as an Environmental Engineer and Enforcement Officer in this capacity since 2005.
3. As an Environmental Engineer and Enforcement Officer in the Pesticides/Toxics Compliance Section, my duties include conducting inspections and other investigative work to determine compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as well as other environmental statutes. I have conducted approximately 50 inspections under FIFRA.

4. On December 9, 2010, I searched the Section Seven Tracking System (SSTS)¹ to determine whether the facilities located at the following addresses were registered pesticide producing establishments under Section 7 of FIFRA during calendar years 2007 and 2008:

A. 104 Applewood Court, Council Bluffs, Iowa 51503, and

B. 6702 Silverbell Lane, Amarillo, Texas 79124.

5. During calendar years 2007 and 2008, there was no registered pesticide producing establishment located at 104 Applewood Court, Council Bluffs, Iowa 51503.

6. During calendar years 2007 and 2008, there was no registered pesticide producing establishment located at 6702 Silverbell Lane, Amarillo, Texas 79124.

7. I next searched SSTS to locate all registered establishments operated by Liphatech, Inc during calendar years 2007 and 2008.

8. SSTS shows that during these calendar years, Liphatech, Inc. operated one pesticide producing establishment. This establishment is located at 3600 West Elm Street, Milwaukee, Wisconsin 53209 (Establishment Number 007173-WI-001).

9. Copies of the print outs² from SSTS showing the address of the single pesticide producing establishment operated by Liphatech, Inc. during calendar years 2007 and 2008 are attached to this declaration.

¹ SSTS is an automated system that EPA uses to track pesticide producing establishments and the amount of pesticides they produce. SSTS records the registration of new establishments and records pesticide production at each establishment.

² The SSTS print outs show one active establishment (Est. No. 007173-WI-001) and three inactive establishments (Est. Nos. 007173-WI-002, 007173-WI-003, and 007173-NY-001).

10. The assertions I make in this declaration are truthful, and, if called to testify as a witness, I am prepared to testify under oath to the accuracy of the observations and statements contained in this declaration, based on my personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: DECEMBER 9, 2010

By: 

Claudia Niess
Environmental Engineer
Enforcement Officer

Attachment A



Section Seven Tracking System

You are here: [OPP](#) [SSTS](#) Establishment Search

Establishment Search

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[New Establishment
\(Form 3540-8\)](#)

[Enter/Edit Production
Data \(Form 3540-16\)](#)

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Company
Establishment
Product](#)

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Establishment Search Results

Displaying 1 - 4 of 4

[Advanced Sort](#)

No.	▲	Name	Site Address	S	Reg	Co. Name	Prod.
007173-WI-003		LIPHATECH, INC.	3101 W. CUSTER AVE. MILWAUKEE, WI 53209 USA	I	05	LIPHATECH, INC	View
007173-WI-002		NITRAGIN, INC.	W 30000 HWY 18, ROUTE 1 WALES, WI 53183 USA	I	05	LIPHATECH, INC	View
007173-WI-001		LIPHATECH, INC.	3600 W ELM ST MILWAUKEE, WI 53209 USA	A	05	LIPHATECH, INC	View
007173-NY-001		LIPHA CHEMICALS, INC CHEMPAR PRODUCTS DIV	ROTTERDAM INDUSTRIAL PARK BLDG 3, BAY 4 SCHENECTADY, NY 12306 USA	I	02	LIPHATECH, INC	View

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[New Establishment
\(Form 3540-8\)](#)

[Enter/Edit Production
Data \(Form 3540-16\)](#)

[Search
Company
Establishment
Product](#)

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Company Information

Company Number: **7173**
Company Status: **Active**
Telephone Number: **(414) 410-7230 x _____**
Company HQ Mailing Address:
**3600 W ELM ST
MILWAUKEE, WI 53209 USA**

Company Name: **LIPHATECH, INC**
Company Secondary Name: **LIPHATECH, INC.**
Region: **Region 5**

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Establishment Information

Establishment Number: **007173-WI -003**
Establishment Status: **Inactive**
New Status Reason:

Establishment Name: **LIPHATECH, INC.**
Current Status Reason: **Out of business**

[Production History](#)

[Establishment History](#)

Establishment Site Address

Copy Address From: [Update](#)

Street Line 1:
3101 W. CUSTER AVE.
Street Line 2:

City: **MILWAUKEE**
County: **MILWAUKEE**

State: **WI - WISCONSIN**
Country: **USA - UNITED STATES OF AMERICA**

Zip: **53209**

Establishment Mailing Address

Copy Address From: [Update](#)

Street Line 1:
3101 W. CUSTER AVE.
Street Line 2:

City: **MILWAUKEE**
County:

State: **WI - WISCONSIN**
Country: **USA - UNITED STATES OF AMERICA**

Zip: **53209**

Establishment Contact Information

Name: _____ Title: _____ Telephone: _____

Email: _____

Comments

PER LETTER DATED 2/21/2005

3540-8 Form Data

Date Postmarked: **03/04/1991**
Date Signed: **02/26/1991**
Created By: **XJC**
Last Updated By: **GSP**

Signing Officer Name:
Created Date: **04/26/1991**
Last Update Date: **04/21/2005**

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Establishment Information

- Home
- New Establishment (Form 3540-8)
- Enter/Edit Production Data (Form 3540-16)
- Search Company Establishment Product
- Reports
- Change Password
- Help
- Logout

Company Information

Company Number: **7173**
 Company Status: **Active**
 Telephone Number: **(414) 410-7230 x_____**
 Company HQ Mailing Address:
3600 W ELM ST
MILWAUKEE, WI 53209 USA

Company Name: **LIPHATECH, INC**
 Company Secondary Name: **LIPHATECH, INC.**
 Region: **Region 5**

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Establishment Information

Establishment Number: **007173-WI-002**
 Establishment Status: **Inactive**
 New Status Reason:

Establishment Name: **NITRAGIN, INC.**
 Current Status Reason: **No longer producing product**

[Production History](#)

[Establishment History](#)

Establishment Site Address

Copy Address From: [Update](#)

Street Line 1:
W 30000 HWY 18,ROUTE 1
 Street Line 2:

City: **WALES** State: **WI - WISCONSIN** Zip: **53183**
 County: **WAUKESHA** Country: **USA - UNITED STATES OF AMERICA**

Establishment Mailing Address

Copy Address From: [Update](#)

Street Line 1:
PO BOX 70
 Street Line 2:

City: **WALES** State: **WI - WISCONSIN** Zip: **53183**
 County: Country: **USA - UNITED STATES OF AMERICA**

Establishment Contact Information

Name: Title: Telephone:
 Email:

Comments

NAME WAS CHANGED WHEN COMPANY SOLD OFF SITES. SINCE THIS ISAND WAS INACTIVE IT WAS NOT GIVEN A NEW NUMBER JUST CHANGED THE NAME.

3540-8 Form Data

Date Postmarked:	12/09/1987	Signing Officer Name:	
Date Signed:	11/20/1987	Created Date:	12/21/1987
Created By:		Last Update Date:	12/19/2002
Last Updated By:	GSP		

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Logged in as CNISS

Establishment Information

Home

New Establishment
(Form 3540-8)

Enter/Edit Production
Data (Form 3540-16)

Search
Company
Establishment
Product

Reports

Change Password

Help

Logout

Company Information

Company Number: **7173**
 Company Status: **Active**
 Telephone Number: **(414) 410-7230 x_____**
 Company HQ Mailing Address:
3600 W ELM ST
MILWAUKEE, WI 53209 USA

Company Name: **LIPHATECH, INC**
 Company Secondary Name: **LIPHATECH, INC.**
 Region: **Region 5**

[View / Edit](#)

Establishment Information

Establishment Number: **007173-WI-001** Establishment Name: **LIPHATECH, INC.**
 Establishment Status: **Active** Current Status Reason: **Out of business**
 New Status Reason:

[Production History](#)

[Establishment History](#)

Establishment Site Address

Copy Address From: [Update](#)
 Street Line 1:
3600 W ELM ST
 Street Line 2:

City: **MILWAUKEE** State: **WI - WISCONSIN** Zip: **53209**
 County: **MILWAUKEE** Country: **USA - UNITED STATES OF AMERICA**

Establishment Mailing Address

Copy Address From: [Update](#)
 Street Line 1:
3600 W ELM ST
 Street Line 2:

City: **MILWAUKEE** State: **WI - WISCONSIN** Zip: **53209**
 County: Country: **USA - UNITED STATES OF AMERICA**

Establishment Contact Information

Name: **TOM SCHMIT** Title: **MANAGER OF REGULATORY AFF** Telephone: **(414) 410-7230 x_____**
 Email:

Comments

SUPPLEMENTAL REGISTRATION SEE FILES: 7173-17 (X1), -187(1), -188(X07)189(X2), -202(X2), -205(X1), -206(X1), -218(X2) REACTIVED 1/18/06-PRODUCTION YRS 03 AND 04 IN FILE

3540-8 Form Data

Date Postmarked: **01/18/2006** Signing Officer Name: **TOM SCHMIT**
 Date Signed: **01/18/2006** Created Date: **02/03/1987**
 Created By:

Last Updated By:

MSTEVEN1

Last Update Date:

11/04/2009

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(Form 3540-8)

Enter/Edit Production
Data (Form 3540-16)

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Company
Establishment
Product

Reports

Change Password

Help

Logout

Company Information

Company Number: **7173**

Company Status: **Active**

Telephone Number: **(414) 410-7230 x_____**

Company HQ Mailing Address:

**3600 W ELM ST
MILWAUKEE, WI 53209 USA**

Company Name: **LIPHATECH, INC**

Company Secondary Name: **LIPHATECH, INC.**

Region: **Region 5**

[View / Edit](#)

Establishment Information

Establishment Number: **007173-NY -001**

Establishment Status: **Inactive**

New Status Reason:

[Production History](#)

Establishment Name:

LIPHA CHEMICALS INC CHEMPAR PRODUCTS

Current Status Reason:

No Longer producing (prev

[Establishment History](#)

Establishment Site Address

Copy Address From:

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Street Line 1:

ROTTERDAM INDUSTRIAL PARK BLDG 3, BAY 4

Street Line 2:

City:

SCHENECTADY

State:

NY - NEW YORK

Zip:

12306

County:

SCHENECTADY

Country:

USA - UNITED STATES OF AMERICA

Establishment Mailing Address

Copy Address From:

[Update](#)

Street Line 1:

ROTTERDAM INDUSTRIAL PARK BLDG 3, BAY 4

Street Line 2:

City:

SCHENECTADY

State:

NY - NEW YORK

Zip:

12306

County:

Country:

USA - UNITED STATES OF AMERICA

Establishment Contact Information

Name:

Title:

Telephone:

Email:

Comments

3540-8 Form Data

Date Postmarked:

01/05/1982

Date Signed:

01/04/1982

Created By:

Signed Officer Name:

Created Date:

06/01/1988

Last Updated By:

Last Update Date:

06/01/1988

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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 Reply to Respondent's Response to Complainant's Motion for Accelerated Decision on Liability for Counts 2,141 through 2,183 of the Complaint* was filed with the Regional Hearing Clerk, U.S. EPA, Region 5, on the date indicated below. True, accurate and complete copies were also sent to the persons designated below on this date via UPS overnight delivery:

Honorable Barbara A. Gunning
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

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

Dated in Chicago, Illinois, this 13th day of December, 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