

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

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In the Matter of: )  
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Reckitt Benckiser LLC, et al. )  
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EPA Reg. Nos. 3282-3, 3282-4, 3282-9, )  
3282-15, 3282-65, 3282-66, 3282-74, )  
3282-81, 3282-85, 3282-86, 3282-87, )  
and 3282-88; Application Nos. 3282-RNU )  
and 3282-RNL )  
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FIFRA Docket No. 661

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**RESPONDENT'S REBUTTAL PREHEARING EXCHANGE**

The Assistant Administrator for Chemical Safety and Pollution Prevention ("Respondent") respectfully submits, in response to the Administrative Law Judge's Prehearing Order dated February 10, 2014, its rebuttal prehearing exchange of primary discovery materials, supplementing its February 28, 2014 submission:

A. Rebuttal Witnesses and Expected Testimony

**Jonathan Boyar** is the principal of Ecologic Entomology, a pest management consulting and technical services company located in Boston, Massachusetts. Respondent intends to call Mr. Boyar as an expert witness. Mr. Boyar is an expert in the control and prevention of rodent infestations. He will provide rebuttal testimony relating to the efficacy of pest management products that will remain available to consumers following the cancellation of the affected pesticide products.

**Kenneth L. Gage** is the Chief of Flea-Borne Diseases Activity, Division of Vector-Borne Infectious Diseases, Centers for Disease Control (CDC). At CDC, Dr. Gage supervises surveillance, prevention, and control activities for plague and other vector-

borne infectious diseases associated with rodents. He also conducts research on the biology, epidemiology, and ecology of these diseases.

Respondent intends to call Dr. Gage as an expert witness. He is an expert in the control of vector-borne diseases associated with rodents. He will provide rebuttal testimony relating to whether consumer application of the affected pesticide products is currently suppressing the incidence of any vector-borne diseases in the United States, and whether the cancellation these products would foreseeably affect the future prevalence of any of these diseases in the United States.

**Paul L. Garbe** is Chief of the Air Pollution and Respiratory Health Branch, National Center for Environmental Health at the Centers for Disease Control and Prevention (CDC). He directs CDC's National Asthma Control Program, which supports 36 state and territorial health departments for comprehensive asthma control activities. Dr. Garbe also represents CDC on the Federal Asthma Disparities Working Group and works closely with the National Heart, Lung and Blood Institute, the Environmental Protection Agency and the Department of Housing and Urban Development to coordinate federal government asthma-related projects. He has been with CDC since 1982.

Respondent intends to call Dr. Garbe as an expert witness. He is an expert on the relationship between air pollution and respiratory health. Dr. Garbe will provide rebuttal testimony regarding the various environmental factors that have the potential to affect asthma rates. In light of these factors, he will further testify as to the scientific basis to make causal predictions about how the relative efficacy of various consumer rodenticide products could affect future asthma rates.

**Michael E. Herring** is an officer of the United States Public Health Service and he currently serves as a Senior Environmental Health Scientist with the Centers for Disease Control (CDC). Captain Herring is the Training and Technical Assistance Team Leader for the Environmental Health Services Branch of the CDC National Center for Environmental Health.

Respondent intends to call Capt. Herring as an expert witness. He is an expert on Integrated Pest Management (IPM) and the control of vector-borne diseases. He will provide rebuttal testimony to distinguish the benefits of rodenticides as applied: (1) by pest control officers and public health officials, (2) by residents as a component of an IPM program, and (3) by residents in the absence of other meaningful measures to control rodents' access to food, water, and harborage.

**Jeannette C. Martinez**, is a Biologist in the Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, EPA. Ms. Martinez is analyzing the potential for the cancellation of the affected pesticide products to cause or lead to an increase in the prevalence of anticoagulant resistance among rodent populations. She will provide rebuttal testimony relating to this issue.

Respondent intends to call Ms. Martinez as an expert witness. She is an expert in issues involving resistance modeling and risk assessment on the basis of resistance modeling results. Ms. Martinez is currently preparing a report on the basis of her analysis. EPA respectfully notes that it anticipates, by future motion, requesting leave to supplement its pre-hearing exchange with the completed report as an additional exhibit.

**Elizabeth C. Matsui** is an Associate Professor of Pediatrics, Epidemiology, and Environmental Health Sciences at Johns Hopkins' School of Medicine and Bloomberg School of Public Health. Dr. Matsui is also the Director of the Data Management Core for the Children's Center for Asthma in the Urban Environment.

Dr. Matsui will provide rebuttal testimony relating to the scientific validity of the particular analytical methodology applied by petitioners, underlying their contention that cancelling the affected pesticide product would affect asthma rates. Respondent intends to call Dr. Matsui as an expert witness. She is an expert on the relationship between asthma and environmental exposure to rodent allergens.

**Lewis S. Nelson, M.D.** Dr. Nelson is a professor in the Department of Emergency Medicine at New York University (NYU) Medical School, and is the Associate Medical Director of the New York City Poison Control Center. Respondent intends to call Dr. Nelson as an expert witness to testify about the potential exposures of children to rodenticides used in homes, and about the appropriate medical response to such exposures.

**Megan T. Sandel** is an Associate Professor of Pediatrics and Public Health at Boston University's Schools of Medicine and Public Health. Dr. Sandel serves on the Executive Committee of New England's Asthma Regional Coordinating Council, served on the Steering Committee of the Boston Urban Asthma Coalition, and has been a pediatrician with the Boston Health Care for the Homeless Program.

Dr. Sandel will provide rebuttal testimony relating to the potential for integrated pest management to alleviate asthma in urban, high-density housing. She will also provide rebuttal testimony relating to whether the cancellation of the affected products will have a foreseeable impact on asthma rates, either in general or in particular housing environments currently lacking an integrated approach to pest management. Dr. Sandel will also provide rebuttal testimony regarding the burdens borne by low-income families seeking healthcare, and secondary costs to those families associated with rodenticide exposures, such as lost wages and lack of paid sick days.

Respondent intends to call Dr. Sandel as an expert witness. Her academic training is in medicine and public health, with a concentration in epidemiology and biostatistics. She is an expert on how housing conditions may affect public health, particularly with respect to children, low-income communities, and other vulnerable populations. For over a decade, she has investigated how home environmental exposures relate to asthma, and has authored numerous publications on the topic.

Respondent respectfully reserves the right to supplement its list of witnesses upon adequate notice to the other parties.

B. Exhibits

In addition to the documentary and physical exhibits identified in Respondent's February 28, 2014 prehearing exchange, Respondent intends to introduce into evidence the following exhibits:

- RX 136        Resume for Jonathan Boyar
- RX 137        Curriculum Vitae for Kenneth L. Gage
- RX 138        Curriculum Vitae for Paul L. Garbe
- RX 139        Curriculum Vitae for Michael E. Herring
- RX 140        Curriculum Vitae for Jeannette C. Martinez
- RX 141        Curriculum Vitae for Elizabeth C. Matsui
- RX 142        Curriculum Vitae for Lewis S. Nelson
- RX 143        Curriculum Vitae for Megan T. Sandel
- RX 144        California Department of Pesticide Regulation. Final Statement of Reasons and Public Report. Title 3, California Code of Regulations, Amend Sections 6000 and 6400, and Adopt Section 6471 Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone (Second Generation Anticoagulant Rodenticide Products) as Restricted Materials. 2014.
- RX 145        California Department of Pesticide Regulation. Attachment A to Final Statement of Reasons and Public Report. Title 3, California Code of Regulations, Amend Sections 6000 and 6400, and Adopt Section 6471 Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone (Second Generation Anticoagulant Rodenticide Products) as Restricted Materials. 2014.
- RX 146        California Department of Pesticide Regulation. Text of Final Regulations Amending Sections 6000 and 6400, and Adopting Section 6471. 2014
- RX 147        U.S. EPA. EFED Evaluation of "A Probabilistic Assessment of the Risk of Brodifacoum to Nontarget Predators and Scavengers," by The Cadmus Group, September 10, 2004. August 24, 2005.
- RX 148        Reckitt Benckiser Inc. "FAQ – Mouse Trap & Bait Questions & General Inquiries – d-CON" <http://www.d-conproducts.com/faq.php> 3/31/2014

RX 149 Reckitt Benckiser Inc. "Ready Mixed Baitbits - Mouse And Rat Poison Bait Trays – d-CON" <http://www.d-conproducts.com/ready-mixed-baitbits.php> 3/31/2014

RX 150 Stafford, J.M., Smithers Viscient, Comparative Efficacy of Brodifacoum and Bromethalin Baits with and without Bait Stations against Norway Rats (*Rattus norvegicus*). September 11, 2013.

In accordance with the February 25, 2014 Order On Joint Motion Concerning The Prehearing Exchange, electronic copies of the exhibits listed above are being provided to all parties on CD ROM.

Respondent respectfully reserves the right to supplement the list of exhibits upon adequate notice to the other parties. Respondent also reserves the right to introduce into evidence documents identified in other parties' prehearing exchanges.

Respectfully submitted,

4/4/2014  
Date

Scott B Garrison

Robert G. Perlis  
Scott B. Garrison  
David N. Berol  
U.S. Environmental Protection Agency  
Office of General Counsel (2333A)  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
perlis.robert@epa.gov; 202-564-5636  
garrison.scott@epa.gov; 202-564-4047  
berol.david@epa.gov; 202-564-6873

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of Respondent's Rebuttal Prehearing Exchange were filed with the Headquarters Hearing Clerk, and a copy hand delivered to the office of:

The Honorable Susan L. Biro  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1300 Pennsylvania Ave., N.W.  
Washington, DC 20460

I further certify that true and correct copies were sent by first class mail and e-mail to:

Lawrence E. Culleen  
Jeremy C. Karpatkin  
Ronald A. Schechter  
Arnold & Porter LLP  
555 Twelfth Street, N.W.  
Washington, D.C. 20004  
Lawrence.Culleen@aporter.com  
Jeremy.Karpatkin@aporter.com  
Ronald.Schechter@aporter.com

Gregory C. Loarie  
Irene V. Gutierrez  
Tamara Zakin  
Earthjustice  
50 California St., Suite 500  
San Francisco, CA 94111  
gloarie@earthjustice.org  
igutierrez@earthjustice.org  
tzakim@earthjustice.org

Steven Schatzow  
2022 Columbia Road, NW  
Suite 601  
Washington, DC 20009  
sschatzow@his.com

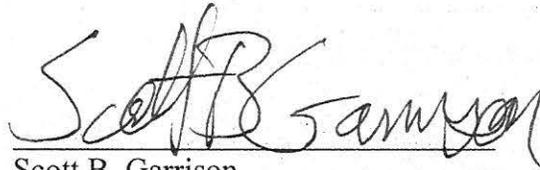
Dimple Chaudhary  
Natural Resources Defense Council  
1152 15th St. NW, Suite 300  
Washington DC 20005  
[dchaudhary@nrdc.org](mailto:dchaudhary@nrdc.org)

I further certify that true and correct copies were sent by e-mail to:

Michael Wall  
Natural Resources Defense Council  
111 Sutter St., 20<sup>th</sup> Floor  
San Francisco, CA 94104  
[mwall@nrdc.org](mailto:mwall@nrdc.org)

Margaret Hsieh  
Natural Resources Defense Council  
40 West 20<sup>th</sup> St., 11<sup>th</sup> Floor  
New York, NY 10011  
[mhsieh@nrdc.org](mailto:mhsieh@nrdc.org)

4/4/2014  
Date

  
Scott B. Garrison  
U.S. Environmental Protection Agency  
Office of General Counsel (2333A)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460