

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Reckitt Benckiser LLC, et al.) FIFRA Docket No. 661
)
Petitioners)

MOTION TO SUPPLEMENT
PETITIONER'S REPORT OF PREHEARING EXCHANGE

Pursuant to the Administrative Law Judge's Prehearing Order dated February 10, 2014 and Order on Joint Motion Concerning the Prehearing Exchange, dated February 25, 2014, Petitioner Reckitt Benckiser respectfully moves to supplement its March 14, 2014 Report on Prehearing Exchange to include an additional witness, a curriculum vitae for this witness, and other materials recently identified as exhibits.

Petitioner has consulted with the other parties. Counsel for Respondent and Counsel for Greater Cincinnati Northern Kentucky Apartment Association, Do It Best Corp., and Louisville Apartment Associate ("Retailers and Users") have indicated they do not object to this supplementation. Counsel for Intervenors Earthjustice ("Wildlife Advocates") and Counsel for Intervenors NRDC and WE ACT plan to object to this Motion. Specifically, Counsel for Intervenors have advised that they base their objection solely on their concern that Petitioner's proposed supplemental witness, Dr. Paul Reibach (the Director of Chemistry at Smithers Visient laboratory) will result in testimony that will be cumulative of the testimony of Petitioner's witness, Larry Brewer.

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The objection of the Intervenor is unfounded. Although both Dr. Reibach and Mr. Brewer will testify in connection with a study of the variation in the relative prevalence of brodifacoum, bromadiolone, and bromethalin in small mammals (“the Des Moines Study”), their roles and expertise are distinct. Mr. Brewer, who is trained as a wildlife biologist and ecotoxicologist, oversaw the development and implementation of the field portion of the Des Moines Study, which involved trapping small mammals. As Reckitt Benckiser’s March 14th Report of Prehearing Exchange states, Mr. Brewer will be called as a fact witness, and will testify about those aspects of the study, as well as about the methodology and implementation of unrelated studies. Dr. Reibach, who is an expert in analytical chemistry methodologies, supervised the portion of the Des Moines Study involving laboratory analysis. As described below, Dr. Reibach will be called as an expert and fact witness, both to validate the methodologies used in the laboratory analysis of small mammals trapped as part of the Des Moines study, and to provide his expert opinion concerning analytical chemistry methodologies for the rodenticides at issue in this matter. Thus, the testimony of Dr. Reibach and Mr. Brewer are not duplicative -- and even if their testimony were to overlap in some small degree, it will certainly be less duplicative than the testimony of Intervenor WE ACT and NRDC witnesses Taisey and Agurto, two Integrated Pest Management (“IPM”) witnesses whose testimony descriptions are largely indistinguishable.

Petitioner reserves the right to respond to any motion in opposition to Dr. Reibach’s inclusion among Reckitt’s witnesses pursuant to 40 C.F.R. § 164.60(b).

1. Supplemental Witness and Expected Testimony

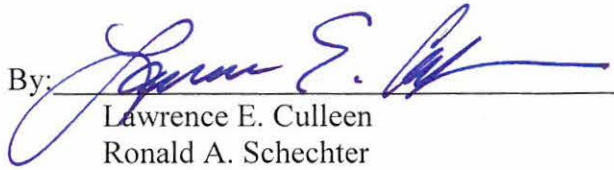
Paul Reibach, Ph.D. Dr. Reibach will be called as an expert and fact witness. He is the Director of Chemistry at Smithers Viscient in Wareham, Massachusetts, and has extensive expertise in analytical chemistry methodologies, including method development, method validation, method implementation, and quality assurance. He is expected to testify about matters within his expertise, and about the methodologies used in the Analytical Phase Report for Assessment of Potential Secondary Exposure of Urban Wildlife to Brodifacoum, Bromadiolone and Bromethalin in Residential, Commercial and Public Areas (PRX 528, submitted March 14, 2014).

2. Supplemental Exhibits

A supplemental list of documentary exhibits that at this time Petitioner intends to introduce is attached. In accordance with the February 25, 2014 Order on Joint Motion Concerning the Prehearing Exchange, electronic copies of all exhibits have been provided to all parties. Petitioner reserves the right to further supplement its witness list and list of exhibits upon adequate notice to the other parties.

Respectfully submitted,

Dated: 4.1.14

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CERTIFICATE OF SERVICE

I certify that the foregoing Motion to Supplement Petitioner's Report of Prehearing Exchange dated April 1, 2014, was served at the addresses listed below in the manner indicated.



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Dated: April 1, 2014

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Reckitt Benckiser's Supplemental Exhibit List
March 31, 2014

Exhibit Number	Document Description
PRX 568	Paul H. Reibach CV
PRX 569	Email communication from Bill Jacobs, USEPA, to Rose Kachadoorian, Oregon Dep't of Agric. (Feb. 15, 2007)
PRX 570	Email communication from Bill Jacobs, USEPA, to Larry Brewer, Smithers Viscient (Aug. 8, 2012)
PRX 571	Tables and charts compiled from published databases regarding registration status of second-generation anticoagulant rodenticide products.
PRX 572	EPA Memorandum from Angela L. Gonzales to Leonard Cole, re: Science Review in Support of PCC 38-DD, Containing 100% Powdered Corn Cobs (37% Cellulose) As Its Active Ingredient. October 3, 2012.
PRX 573	Correspondence from Eileen Moyer, Reckitt Benckiser, to Office of Pesticide Programs, EPA, re: Docket ID Number EPA-HQ-2006-0955, Reckitt Benckiser Comments on EPA Proposed Mitigation Decision for Nine Rodenticides. May 18, 2007.
PRX 574	Peter R. Batten, "Comments on 'Pharmacokinetics of eight anticoagulant rodenticides in mice after single oral administration' paper by V. Vandenbroucke et al.; J. Vet. Pharmacol. Therap., 31, 437-445, 2008." December 2, 2011.
PRX 575	Prescott, C.V., <i>Estimation of the bromadiolone resistance factor for male resistant House mice that are homozygous for the VKORC1 mutation of Tyr139Cys, by comparing the Effective Dose generated using the Blood Clotting Response (BCR) methodology with the published data for the susceptible strain</i> University of Reading, VPU/14/004 (2014).
PRX 576	Prescott, C.V., Buckle, A.P., Hussain, I. and Endepols, S., 2007. A standardised BCR resistance test for all anticoagulant rodenticides, <i>International Journal of Pest Management</i> , October - December 2007; 53(4): 265-272.
PRX 577	EPPO (1999). Guideline for the efficacy evaluation of rodenticides. Testing rodents for resistance to anticoagulant rodenticides. Revised 1999. European and Mediterranean Plant Protection Organization, Paris, France. PP1/198(1). 7 pp.