

RECEIVED BY OAL  
2014 APR 21 PM 3:17

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

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

**RESPONDENT'S RESPONSE TO RESPONDENT-INTERVENORS'  
JOINT MOTION TO PRECLUDE CUMULATIVE TESTIMONY**

The Assistant Administrator for Chemical Safety and Pollution Prevention ("Respondent") respectfully submits the following response to the *Respondent-Intervenors' Joint Motion To Preclude Cumulative Testimony Of Reckitt Benckiser LLC's Proposed Witnesses* dated April 11, 2014.

Respondent wholeheartedly agrees with the general objective of the Respondent-Intervenors'<sup>1</sup> motion, that is, to preclude cumulative and redundant testimony. Respondent agrees with the Respondent-Intervenors that Reckitt Benckiser's proposed witnesses and testimonies appear redundant to a degree that raises legitimate concern. However, Respondent believes that it would be more practical to present objections to cumulative or redundant testimony during the evidentiary hearing, at the time when the offensive testimony is being elicited or offered, than on the basis of the information in Reckitt Benckiser's prehearing exchange.

It is possible that there may be instances where prehearing disclosure of witnesses and proposed testimony might reveal the training, experience, and proposed testimony of two or

<sup>1</sup> West Harlem Environmental Action, Natural Resources Defense Council, American Bird Conservancy, Center for Biological Diversity, Defenders of Wildlife, and Sierra Club.

more witnesses in sufficient detail that a reasonable person could conclude that their proposed testimony would be cumulative or redundant.<sup>2</sup> Given the information exchanged in this proceeding to date, such analysis could be both difficult and error-prone. Moreover, during the evidentiary hearing, the parties and the Administrative Law Judge share a responsibility to be vigilant against cumulative or redundant testimony from all witnesses, irrespective of their training and experience, or previous announcements of their expected testimony. In light of this continuing responsibility, Respondent would prefer not to expend resources parsing prehearing disclosures in what presently seems likely to be an inconclusive – and ultimately insufficient – effort to winnow cumulative and redundant testimony.

Inasmuch as Respondent believes that cumulative and redundant testimony can more effectively be excluded through objections raised at the time when specific cumulative or redundant testimony is being elicited or offered than it can at the present time and upon the present record, Respondent does not at this time support Respondent-Intervenors' requested order.

Respectfully submitted,

4/21/2014

Date



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

---

<sup>2</sup> And further, that those witnesses were not an isolated instance of witnesses listed in the alternative, where a party has legitimate reason to believe its first choice is likely to be unavailable.

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of *Respondent's Response To Respondent-Intervenors' Joint Motion To Preclude Cumulative Testimony* 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 Zakim  
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

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

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

4/21/2014  
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