



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

In the Matter of:)	
)	
Reckitt Benckiser LLC, et al.,¹)	FIFRA Docket No. 661
)	
Petitioners)	

**ORDER GRANTING LEAVE TO FILE AN AMICUS CURIAE BRIEF
AND TO FILE RESPONDENT’S RESPONSE**

On April 26, 2013, CropLife America (“CropLife”) filed an Unopposed Motion to File an Amicus Curiae Brief and Memorandum of Amicus CropLife America in Support of Reckitt Benckiser LLC Motion for an Expedited Determination (“Motion”). CropLife states therein that it is a “national not-for-profit trade association representing the companies that develop, manufacture, formulate and distribute crop protection chemicals and plant science solutions for agriculture and pest management in the United States.” Motion at 1. CropLife states further that it is concerned about efforts to abridge the right of a pesticide registrant to obtain a hearing on all of its objections, including objections to an adverse existing stocks determination, and that CropLife supports Petitioner Reckitt Benckiser LLC’s motion dated April 12, 2013. Motion at 2. The acceptance of its brief to the record is desirable, CropLife argues, because it brings to this Tribunal’s attention legislative history that otherwise might not be presented. Motion at 2-3. CropLife includes within its Motion its amicus brief, or memorandum (Motion at 3-8), and reports that Petitioner Reckitt Benckiser LLC consents to it being filed, as does Respondent, provided that Respondent may have the opportunity to reply.

The procedural rules that govern this proceeding, set forth at 40 C.F.R. Part 164, Subparts A and B, 40 C.F.R. §§ 164.1-164.111 (“Rules”), provide that any party may file an answer to a motion “[w]ithin 10 days after service of any motion filed pursuant to this part,” unless ordered otherwise. 40 C.F.R. § 164.60(b). On May 6, 2013, Respondent’s Conditional Opposition to CropLife America’s Motion to File an Amicus Curiae Brief Regarding Existing Stocks of Cancelled Products was filed (“Response”). Respondent states therein that it consents to the filing of CropLife’s amicus brief, provided Respondent may file a response. Response at 1. Respondent explains that, because it is unclear whether the Rules permit parties to respond to

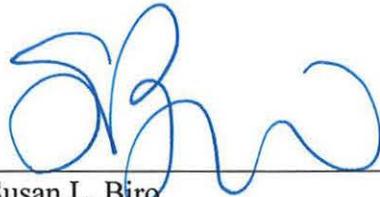
¹ The petitioners in this proceeding are Reckitt Benckiser LLC, Louisville Apartment Association, Greater Cincinnati Northern Kentucky Apartment Association, and Do it Best Corp.

amicus briefs as a matter of right, “in the event that the [ALJ] determines that part 164 does not allow the response presented,” its filed Response is, alternatively, an opposition to CropLife’s Motion. Response at 7. Respondent argues that “[i]t would not be fair if an amicus were allowed to make arguments on behalf of one party, and the opposing party were not permitted the opportunity to respond, as this would give amici a power beyond those enjoyed by full parties to the proceeding.” Response at 6-7. To date, no response to the Motion has been filed by, nor has the position been reported of the three Petitioners, Louisville Apartment Association, Greater Cincinnati Northern Kentucky Apartment Association, and Do it Best Corp.

The rule addressing amicus curiae briefs provides that a non-party may file a brief “by leave of the Administrative Law Judge” after identifying the applicant’s interest in the proceeding and stating why having the brief in the record is desirable. 40 C.F.R. § 164.31(d). Having set forth its interest in this proceeding and its argument as to why its brief should be part of the record, CropLife has satisfied the requirements set forth in 40 C.F.R. § 164.31(d). Therefore, its unopposed Motion is hereby **GRANTED**. CropLife America’s amicus brief set forth at pages 3-8 of the Motion, entitled “Memorandum in Support of Reckitt’s Motion,” is accepted into the record.

While the Rules do not explicitly address whether parties may respond to amicus briefs, the Rules do authorize the undersigned to “take actions and decisions in conformity with statute or in the interests of justice” and require that this matter proceed “in a fair and impartial manner.” 40 C.F.R. § 164.40(c), (d). In the interests of fairness and developing a full record, and because it does not appear to unduly prejudice any Petitioner, Respondent’s Response to CropLife America’s amicus brief is also accepted into the record.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: May 9, 2013
Washington, D.C.

In The Matter of Reckitt Benckiser LLC, et al., FIFRA Docket No. 661

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Leave To File An Amicus Curiae Brief and To File Respondent's Response**, dated May 9, 2013, was sent this day in following manner to the addresses listed below:



Sybil Anderson
Office of Administrative Law Judges
U.S. Environmental Protection Agency

Dated: **May 9, 2013**

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