



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED BY OALJ
2014 MAY 21 PM 4:13

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

**ORDER TO SUBMIT PROPOSED QUESTIONS OF SCIENTIFIC FACT AND
ORDER TO FILE PAPER COPIES OF PROPOSED EXHIBITS**

I. Order to Submit Proposed Questions of Scientific Fact

The Prehearing Order (“PHO”) issued in this matter directed the parties to inform this Tribunal whether they intend to propose certain questions of scientific fact for submission to a committee designated by the National Academy of Sciences (“NAS”), a process for which the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) and rules of practice governing this proceeding, set forth at 40 C.F.R. Part 164 (“Rules”), provide. PHO at 2; 7 U.S.C. § 136d(d); 40 C.F.R. § 164.50(e)(1).

In its Report of Prehearing Exchange (“Reckitt PHE”), Petitioner Reckitt Benckiser LLC (“Reckitt”) asserts its belief that there are questions of scientific fact associated with this proceeding that must be presented to a NAS committee. Reckitt PHE at 2. No other party has indicated an intention to propose questions at this time.

FIFRA provides as follows:

Upon the request of any party to a public hearing and when in the Hearing Examiner’s judgment it is necessary or desirable, the Hearing Examiner shall at any time before the hearing record is closed refer to a Committee of the National Academy of Sciences the relevant questions of scientific fact involved in the public hearing.

7 U.S.C. § 136d(d).

¹ The other Petitioners in this proceeding are Louisville Apartment Association and Greater Cincinnati Northern Kentucky Apartment Association. Former Petitioner Do it Best Corp. notified this Tribunal on May 15, 2014, that it was withdrawing from this proceeding.

The Rules provide that when the presiding judge determines there is an interest in submitting questions, the judge “shall direct all parties to file and serve, within a time period subject to his discretion, proposed questions of scientific fact accompanied by reasons supporting their submissions to said committee.” 40 C.F.R. § 164.50(e)(1)-(2). Within 10 days of service of the proposed questions, “any party may respond in writing to the proposed submission,” and thereafter, the presiding judge “shall determine whether or not a reference of questions . . . is necessary or desirable.” 40 C.F.R. § 164.50(e)(2). Questions for a NAS committee may be proposed “[a]t any time before the hearing is closed” if the presiding judge finds good cause and that it is necessary or desirable. 40 C.F.R. § 164.50(e)(4).

Therefore, Reckitt is directed to file and serve any proposed questions of scientific fact and its reasons in support of their submission to an NAS committee, in accordance with the Rules, on or before **Friday, June 20, 2014**.

Any other party may file and serve a response to Reckitt’s questions **within 10 days** of being served with them. 40 C.F.R. § 164.50(e)(2).

II. Order to File Paper Copies of Proposed Exhibits

On February 21, 2014, the parties filed a Joint Motion Concerning the Prehearing Exchange (“Joint Motion”), proposing therein at paragraph 3 that for purposes of meeting the filing deadlines set forth in the PHO, all parties could file electronic copies of their Prehearing Exchange materials, “with paper copies to be filed at such future date(s) as the Administrative Law Judge may order.” On February 25, 2014, the undersigned granted the Joint Motion, and the parties have since filed most of their proposed exhibits in electronic form.

The Rules require that the Hearing Clerk maintain a repository of all docket entries made in this proceeding, and that such documents are made available to the public for reasonable inspections. 40 C.F.R. § 164.4(b). So that that the Hearing Clerk maintains a complete paper record of this proceeding, and to aid in this Tribunal’s preparation for the hearing, the parties are hereby **ORDERED** to file paper copies of the exhibits they proposed in their Prehearing Exchanges, in accordance with the following directives and exceptions.

The parties may file double-sided copies of their proposed exhibits if they wish, and are encouraged to do so when exhibits are over 25 pages. The copies should be organized clearly with tabs or labels and pagination, and preferably should be arranged in binders.

The Rules provide that parties filing a document with the Hearing Clerk must file an original and two copies of that document, and the Rules also provide that a copy of every document filed must be served on the other parties. 40 C.F.R. § 164.5(a), (c). Here, however, the parties are directed to file one “original” copy for the Hearing Clerk and one additional copy, for a total of two copies only. Second, the parties are excused from serving copies, physical or otherwise, of the exhibits they file in compliance with this Order; the procedures set forth in the February 21, 2014 Joint Motion shall still govern the parties’ exchanges between themselves of proposed exhibits and are not disturbed by this Order.

Nor does this Order disturb the April 2, 2014 Protective Order governing the treatment of Sealed Documents as defined in that Order. If a party has already filed paper copies of Sealed Documents, there is no need to file them again. However, parties should, to the extent possible, file two *redacted* paper copies of those proposed exhibits.

As to non-documentary physical evidence, such as samples of a registered product or a product's packaging, the parties are directed to file a concise description on paper and a photograph (or photocopy) of the proposed exhibit. Such procedure is substantially similar to that agreed upon by the parties for their Prehearing Exchanges in the February 19, 2014 Status Report, and which was authorized by the February 25, 2014 Order on Joint Motion Concerning the Prehearing Exchange.

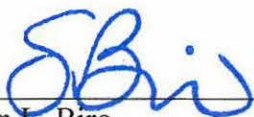
Also authorized by that February 25, 2014 Order was the exchange by URL citation of any documents available on the Internet. However, the parties are directed here to file printed versions of exhibits found online, unless the exhibit is over 150 pages, in which case the first page printed and the written URL will suffice.

Finally, any proposed exhibit that was not included in the parties' Initial and Rebuttal Prehearing Exchange materials (for example, the exhibits proposed by Reckitt in its April 1, 2014 Motion to Supplement Petitioner's Report of Prehearing Exchange), must be filed in paper form in accordance with this Order *if* a motion to supplement that exhibit is granted by order, within 14 days of that order.

Thus, the parties are directed to file two paper copies of their proposed exhibits in accordance with the following schedule²:

Respondent	June 26, 2014
Petitioner Reckitt	July 3, 2014
Other Petitioners	July 10, 2014
Intervenors	July 17, 2014

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

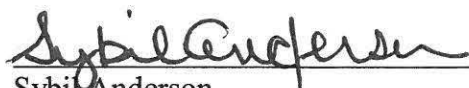
Dated: May 21, 2014
Washington, D.C.

² The schedule is staggered for administrative reasons.

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

CERTIFICATE OF SERVICE

I hereby certify that a letter offering **Order To Submit Proposed Questions Of Scientific Fact And Order To File Paper Copies of Proposed Exhibits**, dated May 21, 2014, was sent this day in following manner to the addresses listed below:



Sybil Anderson
Office of Administrative Law Judges
U.S. Environmental Protection Agency
(202)564-6261

Dated: **May 21, 2014**

By Regular Mail and E-mail To:

Robert G. Perlis
Scott B. Garrison
David N. Berol
U.S. Environmental Protection Agency
Office of General Counsel (2333A)
1200 Pennsylvania Ave., NW
Washington, DC 20460

Email: perlis.robert@epa.gov
garrison.scott@epa.gov
berol.david@epa.gov

Lawrence E. Culleen
Ronald A. Schechter
Jeremy C. Karpatkin
ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, DC 20004

Email: lawrence.culleen@aporter.com
ronald.schechter@aporter.com
jeremy.karpatkin@aporter.com

Katherine A. Ross
ARNOLD & PORTER LLP
370 Seventeenth Street
Denver, CO 80202

Email: katherine.ross@aporter.com

Steven Schatzow
Attorney at Law
2022 Columbia Road NW, Suite 601
Washington, DC 20009

Email: sschatzow@his.com

Gregory C. Loarie
Tamara Zakim
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111

Email: gloarie@earthjustice.org
tzakim@earthjustice.org

Dimple Chaudhary
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005

Email: dchaudhary@nrdc.org

Michael Wall
Natural Resources Defense Counsel
111 Sutter Street, 20th Floor
San Francisco, CA 94104

Email: mwall@nrdc.org

Margaret Hsieh
Natural Resources Defense Council
40 West 20th Street, 11th Floor
New York, NY 10011

Email: mhsieh@nrdc.org