

NATURAL RESOURCES DEFENSE COUNCIL

April 30, 2013

VIA OVERNIGHT DELIVERY

U.S. EPA Office of the Hearing Clerk
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave. NW
Washington, DC 20460

Re: *In re: Reckitt Benckiser LLC*, FIFRA Docket No. 661, Motion for Leave to Intervene

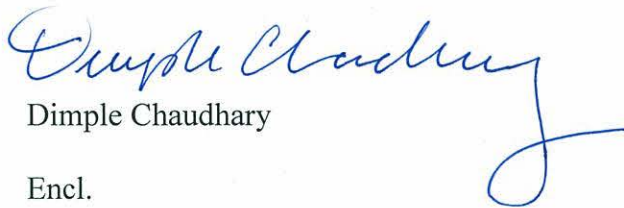
Dear Hearing Clerk,

Enclosed please find for filing the following materials:

- Natural Resources Defense Council and West Harlem Environmental Action's Motion for Leave to Intervene;
- Declaration of Aaron Colangelo in support of Motion for Leave to Intervene;
- Declaration of Linda Lopez in support of Motion for Leave to Intervene; and
- Declaration of Cecil Corbin-Mark in support of Motion for Leave to Intervene.

Thank you for your assistance.

Regards,


Dimple Chaudhary

Encl.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

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

**NATURAL RESOURCES DEFENSE COUNCIL
AND WEST HARLEM ENVIRONMENTAL ACTION'S
MOTION FOR LEAVE TO INTERVENE**

The Natural Resources Defense Council (NRDC) and West Harlem Environmental Action, Inc. (WE ACT) respectfully request permission, pursuant to 40 C.F.R. § 164.31, to intervene in the above-captioned proceeding and hearing referenced in EPA's notice of intent to cancel the registrations of and deny applications for certain rodenticide products registered by Reckitt Benckiser LLC (Reckitt). 78 Fed. Reg. 8123 (Feb. 5, 2013). NRDC and WE ACT have a significant interest in ensuring compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 *et seq.*, and removal from the market of rodenticides that pose an unreasonable health threat to children.¹

I. BACKGROUND

Approximately 60,000 young children are poisoned by chemical rodenticides every year, many requiring hospitalization and ongoing treatment. *See* Respondent EPA's Statement of

¹NRDC and WE ACT conferred with counsel for EPA and Reckitt prior to filing this motion. EPA does not oppose this motion. Reckitt indicated that it could not take a position without viewing a draft of this motion. NRDC and WE ACT also notified Louisville Apartment Association, Greater Cincinnati Northern Kentucky Apartment Association, and Do It Best Corp. of their intent to file this motion. The Greater Cincinnati Northern Kentucky Apartment Association does not oppose this motion. The remaining parties did not respond.

Reasons and Factual Basis for Notice of Intent to Cancel Registrations of, and Notice of Denial of Application for, Certain Rodenticide Bait Products at 30-31 (Jan. 29, 2013) (hereinafter “EPA Statement of Reasons”) (noting at least 15,000 reported rodenticide poisonings in children per year and estimating underreporting by a factor of four). EPA has long acknowledged the serious threat of unintentional child poisonings from rodenticide use. In 1994, EPA published a notice announcing that child poisonings from rodenticides constituted a serious problem, and requiring registrants to take certain steps to help prevent these poisonings. *See* EPA, Pesticide Registration (PR) Notice 94-7: Label Improvement Program for the Revision of Use Directions for Commensal Rodenticides and Statement of Agency’s Policies on the Use of Rodenticide Bait Stations (Sept. 16, 1994). In 1998, EPA further determined that the high number of accidental child exposure to rodenticides constitutes an unreasonable adverse health effect in violation of FIFRA. EPA Statement of Reasons at 6-7. EPA’s findings—including that young children experience “excessive” exposures to “acutely toxic” rodenticides—were set forth in a Reregistration Eligibility Decision (RED). *See* EPA, *Reregistration Eligibility Decision (RED) Rodenticide Cluster* at 55 (Jul. 1998). The RED stated that EPA would not approve or “reregister” rodenticides for continued use unless certain safety measures were included to protect children. *Id.* at 112; *see also* 7 U.S.C. § 136a-1(a)-(b).²

EPA declined to enforce the safety recommendations set forth in the RED until NRDC and WE ACT successfully filed suit against the agency in 2004. *See* EPA Statement of Facts at 7, *citing West Harlem Env’tl. Action v. EPA*, 380 F. Supp. 2d 289, 295 (S.D.N.Y. 2005) (EPA’s decision to revoke a child safety measure (use of a bittering agent) designed to mitigate risks

² FIFRA requires pesticides sold or distributed in the United States to be “registered” or “reregistered” (if first registered before November 1, 1984). 7 U.S.C. §§ 136a(a), 136a-1(a)-(b). Rodenticides, highly toxic mammalian poisons, are pesticides. *Id.* §§ 136(t), (u).

associated with certain rodenticides was arbitrary and capricious). In 2008, in response to the district court's remand order, EPA issued a Risk Mitigation Decision (RMD) for rodenticide bait products setting forth the agency's final requirements to protect children from accidental ingestion of and exposure to home-use rodenticides. EPA Statement of Reasons at 10; *see also* EPA, *Risk Mitigation Decision for Ten Rodenticides* at 1 (May 28, 2008). The RMD contained two key requirements: first, that rodenticides available for sale to consumers be housed in tamper-resistant bait stations, to prevent easy access by children; and second, that rodenticides be sold in solid block or paste form (rather than grains or pellets), to impede ingestion. RMD at 11-12; EPA Statement of Reasons at 9-10.

All rodenticide manufacturers except Reckitt have agreed to comply with EPA's risk mitigation measures. EPA Statement of Reasons at 11. As a result of Reckitt's non-compliance, EPA published final notice of its intent to cancel the registration of twelve of Reckitt's "d-CON" rodenticide products and deny registration for an additional two rodenticide products. 78 Fed. Reg. 8123 (Feb. 5, 2013); *see* 7 U.S.C. § 136d(b) (giving EPA authority to cancel the registration of any pesticide that, "when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment"), *id.* § 136(bb)(1) (defining "unreasonable adverse effects on the environment" to mean "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide").

Reckitt has filed objections to EPA's cancellation notice and requested a hearing on EPA's decision pursuant to FIFRA Sections 3(c)(6) and 6(b). 78 Fed. Reg. 22876 (Apr. 17, 2013); 7 U.S.C. §§ 136a(c)(6), 136d(b). In its objections, Reckitt disputes the factual and legal basis for EPA's conclusion that tamper-resistant bait stations sold in solid block formations will

protect children from exposure to rodenticides. Request for Hearing and Statement of Objections of Reckitt Benckiser LLC ¶¶ 1-4 (Mar. 6, 2013) (hereinafter “Reckitt Objections”). Reckitt has instead proposed alternative safety measures including “labeling amendments,” “enhance[d] directions,” and “an education program for product users.” *Id.* ¶¶ 2, 8. EPA intends to hold the cancellation hearing requested by Reckitt in accordance with the rules set forth at 40 C.F.R. Part 164.³ *See* 78 Fed. Reg. at 22876; *see also* EPA, *Pesticide News Story: EPA to Hold Pesticide Cancellation Hearing* (March 11, 2013), http://www.epa.gov/oppfead1/cb/csb_page/updates/2013/dcon-hearing.html.

II. LEGAL STANDARD

“Any person” may seek leave to intervene in a FIFRA cancellation hearing. 40 C.F.R. § 164.31(a). A motion for leave to intervene must set forth “the grounds for the proposed intervention, the position and interest of the movant in the proceeding and the documents proposed to be filed pursuant to either § 164.22 or § 164.24.” *Id.* Leave to intervene should be “freely granted...insofar as such leave raises matters which are pertinent to and do not unreasonably broaden the issues already presented.” *Id.* at § 164.31(c); *see also In the Matter of: Request to Reduce Pre-Harvest Interval for EBDC Fungicides on Potatoes*, EPA-HQ-OPP-2007-0181, 2007 WL 3311648 at *2 (E.P.A. Sept. 18, 2007) (granting the National Potato Council’s motion for leave to intervene in a hearing to modify a fungicide cancellation order pursuant to 40 C.F.R. § 164.31(c)). An application for intervention is timely when filed prior to the commencement of the first pretrial hearing. 40 C.F.R. § 164.31(b).

³ Requests for a hearing on EPA’s cancellation decision were also submitted by the Greater Cincinnati Northern Kentucky Apartment Association (March 5, 2013 Ltr. from M. Franks), the Do it Best Corp. (March 5, 2013 Ltr. from B. Taylor), and the Louisville Apartment Association (March 5, 2013 Ltr. from G. Lively).

III. ARGUMENT

NRDC and WE ACT seek leave to intervene in support of EPA's cancellation of Reckitt's non-compliant rodenticides. As set forth below, NRDC and WE ACT have compelling grounds to intervene in view of their long-standing interest in improving the regulation of pesticides and other toxic chemicals in general, and rodenticides in particular. NRDC and WE ACT also have an interest in ensuring the cancellation of rodenticides that pose an unreasonable health threat to children. NRDC and WE ACT, moreover, intend to raise issues pertinent to the proceedings; their participation will not broaden the scope of this action beyond the matters raised in EPA's Statement of Reasons and Reckitt's Objections.

A. NRDC and WE ACT Have Compelling Grounds to Intervene in Support of EPA's Cancellation Decision.

NRDC is a non-profit, environmental organization with more than 363,000 members nationwide. Declaration of Linda Lopez ¶¶ 3, 6. NRDC's membership and staff of lawyers, scientists, and other environmental specialists have a long-standing interest in improving the regulation of pesticides and other toxic chemicals, and ensuring that regulation is protective of public health and in compliance with applicable statutes. *Id.* ¶ 5. NRDC has litigated many cases seeking to enforce legal obligations to protect the public from the harmful health effects of pesticide exposure, and has participated in the development, enforcement, and reform of pesticide laws and regulations for over two decades. *Id.*; *see, e.g., Natural Res. Def. Council v. EPA*, 658 F.3d 200 (2d Cir. 2011); *Natural Res. Def. Council v. Johnson*, 488 F.3d 1002 (D.C. Cir. 2007); *Natural Res. Def. Council v. EPA*, 676 F. Supp. 2d 307 (S.D.N.Y. 2009); *Natural Res. Def. Council v. Whitman*, No. C-99-3701, 2001 WL 1221774 (N.D.Cal. 2001).

WE ACT is a Northern Manhattan community-based organization building healthy communities by assuring that people of color and low-income individuals participate

meaningfully in the creation of sound and fair environmental health and protection policies and practices. Declaration of Cecil Corbin-Mark ¶ 3. WE ACT works to improve environmental quality and public health, and to secure environmental justice, in predominantly African-American and Latino communities in New York City. *Id.* WE ACT advances its mission through community organizing and training, community-based participatory research, advocacy campaigns, and litigation. *Id.* ¶ 4. For many years, WE ACT has been involved in efforts to address rat infestation in Northern Manhattan neighborhoods. *Id.* ¶ 5. WE ACT's work on this front includes characterizing and documenting indoor and outdoor exposures by residents, conducting training programs on integrated pest management, and organizing with residents to advocate for legislation that will reduce, identify, and prevent pesticide exposure. *Id.* As a grantee of EPA's Community Action for a Renewed Environment (CARE) program, WE ACT has also trained local businesses to institute integrated pest management strategies in their businesses. *Id.* ¶ 6.

NRDC and WE ACT have an interest in ensuring that EPA implements its statutory mandates in a manner that protects human health – especially children's health – from unsafe exposure to rodenticides. Should Reckitt avoid cancellation of its non-compliant products, thousands of children and their families will continue to be harmed by rodenticide poisonings. The health of NRDC and WE ACT's members and their children is placed at substantial risk if rodenticides such as those at issue in this hearing are used without adequate mitigation measures. Poisoned children can suffer from nosebleeds, bleeding gums, gastrointestinal bleeding, fever, dizziness, and tremors, and families are forced to bear the considerable costs of a child's exposure. *See, e.g.*, EPA Statement of Reasons at 27. Similarly, use of the rodenticides at issue in this hearing imposes disproportionate harms on African-American and Latino communities. In

New York State, for example, more than eighty percent of children hospitalized for rodenticide poisoning are African-American or Latino. *See* EPA, *Proposed Risk Mitigation Decision for Nine Rodenticides* at 13-14 (Jan. 17, 2007).

NRDC and WE ACT's interests in health-protective rodenticide use are evident in the history of this proceeding and EPA's efforts to mitigate rodenticide poisonings in children. As noted above, in 2004, NRDC and WEACT filed suit to compel EPA to impose child safety measures on rodenticides registered for residential use. *West Harlem Env'tl. Action*, 380 F. Supp. 2d at 289. As a result of the court's order in that case, EPA developed the requirements—use of tamper-resistant bait stations and bait block formations—at issue in this cancellation proceeding. EPA Statement of Reasons at 9-10; *see also* RMD at 4 (“The court's decision [in *West Harlem Environmental Action v. EPA*] gave focus to EPA's ongoing efforts to determine how best to reduce exposure and risks to children from rodenticide products.”). NRDC and WE ACT also participated in the public process to finalize those mitigation measures, submitting formal comments to EPA. *See* Declaration of Aaron Colangelo ¶ 3, Exh. A (May 16, 2007 Comments of NRDC and WE ACT in Response to EPA's Proposed Risk Mitigation Decision for Nine Rodenticides). NRDC and WE ACT have spent nearly a decade engaged in litigation and administrative advocacy to achieve the mitigation measures Reckitt now seeks to avoid. Accordingly, NRDC and WE ACT have a significant interest in this proceeding and, if granted leave to intervene, intend to take a position in support of EPA's cancellation decision.

B. NRDC and WE ACT Will Raise Pertinent Issues and Will Not Unreasonably Broaden the Matters Presented.

NRDC and WE ACT expect to raise issues pertinent to and within the scope of the issues presented by EPA's Statement of Facts and Reckitt's Objections. NRDC and WE ACT intend to limit their participation to the human health and environmental justice issues raised by the parties

as well as related matters that arise during the course of the proceeding.⁴ In particular, NRDC and WE ACT expect to address Reckitt's assertions that its proposed mitigation measures to protect children and adversely affected communities are adequate (*see, e.g.*, Reckitt Objections ¶¶ 89-95); that the EPA was incorrect in concluding that Reckitt's non-compliant products cause unreasonable harm to children (*id.* ¶¶ 49-66); and that EPA's cancellation action violates Executive Orders related to children's health and environmental justice (*id.* ¶¶ 106-109).⁵

C. This Application is Timely.

This motion for leave to intervene is timely because it has been filed prior to the commencement of the first prehearing conference. *See* 40 C.F.R. § 164.31(b).

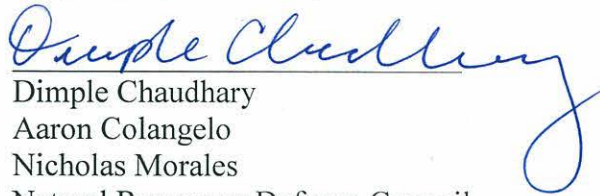
IV. CONCLUSION

For the reasons set forth above, NRDC and WE ACT respectfully request permission for leave to intervene in support of EPA's notice of intent to cancel the registrations of and deny applications for Reckitt's non-compliant rodenticide products.

⁴ NRDC and WE ACT do not intend to address issues related to either wildlife impacts or the treatment of existing stocks of cancelled products.

⁵ A person seeking to intervene in a cancellation proceeding must also set forth "the documents proposed to be filed pursuant to either § 164.22 or § 164.24." 40 C.F.R. § 164.31(a). Section 164.24 provides that "any person wishing to participate in any proceeding commenced pursuant to a notice of [EPA] of intention to hold a hearing shall file . . . a written response to [EPA's] statement of issues." *Id.* § 164.24. To date, EPA has not published "notice[] of intention . . . to hold a hearing, together with a statement of issues . . ." *Id.* § 164.8. At such time as EPA publishes notice of its intent to hold a hearing, NRDC and WE ACT propose to file a written response to EPA's statement of issues "within the time set by [EPA] in the notice." *Id.* § 164.24. NRDC and WE ACT do not intend to file objections to EPA's notice of intent to cancel registration of Reckitt's non-compliant products pursuant to Section 164.22.

Respectfully submitted,



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Nicholas Morales

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Dated: April 30, 2013

CERTIFICATE OF SERVICE

I certify that the foregoing MOTION FOR LEAVE TO INTERVENE, dated April 30, 2013, was sent this day in the following manner to the addressees listed below:

By Overnight Mail

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Washington, DC 20460

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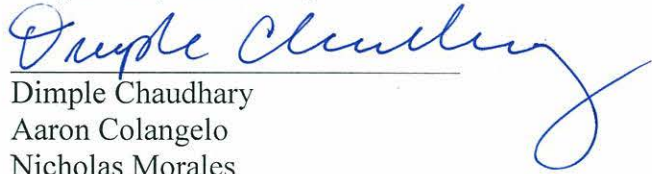
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Dated: April 30, 2013

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

**DECLARATION OF AARON COLANGELO
IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE**

I, Aaron Colangelo, declare the following:

1. I am a senior attorney at the Natural Resources Defense Council (NRDC).
2. I submit this declaration in support of NRDC and West Harlem Environmental Action's motion for leave to intervene in these proceedings.
3. Attached hereto as Exhibit A is a copy of Comments of NRDC and WE ACT in Response to EPA's Proposed Risk Mitigation Decision for Nine Rodenticides submitted on May 16, 2007.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of April, 2013 in Washington, D.C.



Aaron Colangelo

EXHIBIT A



May 16, 2007

VIA OVERNIGHT MAIL AND ELECTRONIC SUBMISSION

Office of Pesticide Programs
Regulatory Public Docket (7502P)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Rodenticides Risk Mitigation, EPA-HQ-OPP-2006-0955

These comments are being submitted on behalf of the Natural Resources Defense Council (NRDC) and West Harlem Environmental Action, Inc. (WE ACT) in response to EPA's Proposed Risk Mitigation Decision for Rodenticides, published at 72 Fed. Reg. 1992 (Jan. 17, 2007). NRDC and WE ACT support EPA's decision to mandate tamper-resistant bait stations and solid bait block formulations for all rodenticides approved for residential use. In light of the tens of thousands of annual child exposures to rodenticides, including as many as 1,500 symptomatic poisonings requiring hospitalization or treatment each year, EPA's proposed mitigation measures are required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

1. The Significant Number of Rodenticide Poisonings in Children Constitutes an Unreasonable Adverse Effect on Human Health.

EPA has long acknowledged the serious threat of unintentional child poisonings resulting from rodenticide use. In 1994, EPA published a notice announcing that child poisonings from rodenticides constituted a significant problem, and requiring registrants to take certain steps to help prevent these poisonings. EPA, PR Notice 94-7 at 1, 10 (Sept. 16, 1994). EPA documented thousands of rodenticide poisonings in children. *See id.* at 3 (noting thousands of annual rodenticide poisonings and referencing 1983 hearings conducted by EPA to promote safer use of rodenticides); Jerome Blondell, EPA, *Updated Review of Rodenticide Incident Reports Primarily Concerning Children*, at 11 (June 3, 1999) (estimating that 18,000 to 25,000 children sought treatment each year in a health care facility for rodenticide poisoning, based on 1993 to 1996 data).

In 1998, EPA concluded its reregistration of the rodenticides with the publication of two REDs – the rodenticide cluster RED and the zinc phosphide RED. In the REDs, EPA found that thousands of children under age six are poisoned by rodenticides every year. EPA relied on 1995 data, for example, showing that more than 14,000 cases of

rodenticide poisoning in children under six (out of more than 17,000 total human exposures) were reported to the American Association of Poison Control Centers. *See* Rodenticide Cluster RED at 56. More than 6,000 of the total exposures “were significant enough to result in treatment at a health care facility.” *Id.* According to EPA, the Poison Control Center data capture only a fraction of the number of actual poisonings, and “probably underestimate[] the true number of cases by a factor of four.” Jerome Blondell, EPA, *Updated Review of Rodenticide Incident Reports Primarily Concerning Children*, at 6 (June 3, 1999). Thus, the number of children exposed to the rodenticides in 1995 was likely closer to 50,000, and the number treated in health care facilities was also correspondingly higher. EPA also concluded that these data undercount the more serious poisonings that require emergency medical treatment. *See* Jerome Blondell, EPA, *Updated Review of Poison Control Center Data for Residential Exposures to Rodenticides, 1993-1996*, at 4 (March 22, 1999) (“Many poisoning cases seen in emergency rooms or by private physicians do not result in calls” to a poison control center).

EPA’s recent analyses attached to the Proposed Risk Mitigation Decision confirm the continuing health risk. The Agency found:

The American Association of Poison Control Centers (AAPCC) data show more than 12,000 reported exposures per year in children less than six years old. Approximately 3% of reported exposures result in medical symptoms associated with rodenticide exposure (skin irritation, nausea, delayed blood clotting). However, it is likely that the total of rodenticide exposure incidents is greater than the number of cases reported to the AAPCC. EPA estimates that 25% of actual exposures are reported.

Angel Chiri & Jin Kim, EPA, *Impact Assessment for Proposed Rodenticide Mitigation*, at 4 (Sept. 20, 2006). According to this assessment, therefore, chemical rodenticides poison at least 1,440 children every year (3 percent of 48,000). NRDC and WE ACT believe that all 48,000 children “exposed” to rodenticides each year are properly considered poisoned, even if they are asymptomatic or their symptoms do not require hospital treatment. At the very least, however, by EPA’s calculation of symptomatic cases, approximately 1,500 children each year are poisoned by rodenticides.

EPA also states that the most common reported symptoms from rodenticide poisoning are diarrhea, vomiting, and skin rash. Monica Hawkins & Hans Allender, EPA, *Updated Review of Rodenticide Incident Reports Primarily Concerning Children*, at 2 (Jan. 9, 2006). Anticoagulant rodenticides can also cause nosebleeds, bleeding gums, bloody urine, gastrointestinal bleeding, bleeding into the skin, eyes and joints; internal bleeding into organs such as the spleen, lung, and liver; and anemia which can result in symptoms such as fatigue, pallor, and significant breathlessness in children. In an analysis of Poison Control Center data from 1999-2003, about 27 percent of reported exposures were seen at a health care facility. *Id.* at 4. Among the rodenticides, brodifacoum is implicated in the greatest number of child poisonings by far. *Id.* at 6-7.

Individual poisoning reports, which manufacturers are required to submit to EPA under 7 U.S.C. § 136d(a)(2), show a range of serious symptoms from rodenticide poisonings. *See* Attachment A at EPA 3061 (reporting “vomiting, burning blisters, hives/welts and rash” after exposure to brodifacoum); EPA 3064 (reporting “blood clots in urine, fatigue, abdominal pain” after exposure to bromadiolone); EPA 3077 (reporting “dizziness, ataxia [loss of coordination], vomiting, numbness, urinary retention, memory and speech difficulty” after exposure to bromethalin); EPA 3054 (“burning lungs,” “blood in urine”); EPA 3057 (“kidney failure/jaundice”); EPA 3058 (“burning eyes, stomach distress, breathing probs., decreased consciousness,” “swelling in face,” “swelling of tongue”); EPA 3062 (“rash, hives, blisters, dizziness,” “nausea, blackout”).

2. EPA’s Proposed Mitigation Measures Will Help Prevent Child Poisonings.

NRDC and WE ACT strongly support the mitigation measures proposed by EPA – bait block formulations and tamper-resistant bait stations – as necessary steps to protect children from rodenticide poisonings. The vast majority of incident reports in the FIFRA 6(a)(2) data refer to child ingestion of loose pellets of rodenticide bait inside the home. *See, e.g.,* Monica Hawkins & Hans Allender, EPA, *Updated Review of Rodenticide Incident Reports Primarily Concerning Children*, at 11-17 (Jan. 9, 2006). EPA’s two-part proposal – requiring bait blocks and tamper proof bait stations – will eliminate both the loose pellets and children’s easy access to the rodenticide baits.

The “product stewardship proposal” presented by the chemical industry through the Rodenticide Registrants Task Force is facially inadequate because it entirely fails to address the root cause of child poisonings: access to loose rodenticide pellets in and around homes. The industry product stewardship proposal would require only: (1) “label enhancements” that “emphasize the need to use products properly,” (2) an “education campaign” that would also emphasize “proper usage of products,” and (3) a voluntary option for companies to reduce the amount of loose pellets in each rodenticide place package. *See* Letter from the RRTF to Debra F. Edwards, *RRTF Product Stewardship Proposal*, at 2-4 (July 20, 2006).

Label changes and an education campaign are inadequate to prevent poisonings in children. As EPA notes, rodenticide labels already emphasize applying rodenticide bait products in areas inaccessible to children, yet there are thousands of reported poisonings each year, and the number of poisonings has stayed relatively constant for more than the past decade. EPA, *Proposed Risk Mitigation Decision for Nine Rodenticides*, at 8 (Jan. 17, 2007). And, as WE ACT noted in earlier comments on this proposed mitigation plan, a significant number of residents in low-income communities do not read, or do not read in English. The RRTF’s proposal provides no support at all to show that label changes would limit child poisonings. The additional RRTF proposal – that companies be given the option to explore voluntary reduction of the amount of loose pellets per place pack – is meaningless. This proposal is voluntary only, and, even if mandatory, it does nothing to address availability of loose rodenticide pellets inside homes.

In a subsequent letter to EPA, the RRTF expanded its proposed mitigation proposal to include a bittering agent for consumer rodenticides. *See* Letter from the RRTF to Debra F. Edwards at 2 (Oct. 31, 2006). NRDC and WE ACT believe that EPA’s proposed mitigation measures, including solid bait blocks and tamper-proof bait stations, are more effective than a bittering agent at preventing child poisonings. Tamper-proof bait stations, in particular, limit children’s access to rodenticides in the first place, unlike a bittering agent. And solid bait blocks will limit the attractiveness of rodenticides to children and make it physically much harder for children to ingest rodenticides.

Finally, the RRTF insists that “mandating the use of bait stations would effectively preclude consumer rat control because there are no rat bait stations easily available to consumers for purchase.” Letter from the RRTF to James B. Gulliford at 1 (Dec. 20, 2006). This is incorrect. A quick search on the internet found readily available and affordable tamper-resistant rat bait stations. *See* Attachment H (online availability of Tomcat Rodent Bait Station, Neogen Corp. Multiplex Bait Station, Protecta Rat Bait Station, and Protecta Landscape Rat Bait Station). These tamper-proof rat bait stations are available online from numerous sellers at affordable prices, ranging from about \$10 to \$15 per bait station. *See id.* The bait stations are reusable – only the rodenticide bait blocks inside need to be replaced – so this \$10 to \$15 purchase is a one-time cost to consumers. *See id.* Consumers would not need to buy bait stations over and over again. Tamper-resistant bait stations are therefore widely available and affordable.

In fact, Bell Laboratories, a member of the RRTF, states that “Tamper-resistant bait stations are *now a mainstay in baiting programs, keeping bait away from children*, pets and non-target animals.” *See* <http://www.belllabs.com/manufact.html#bait> (Attachment I) (emphasis added). Bell Labs further states that: “Bait stations also keep bait fresh longer by protecting it from dust, dirt, moisture and other contaminants. Bell’s tamper-resistant bait stations are noted for durability, their unique locking devices, and bait securing rods which keep bait away from nontarget animals and children.” *See id.* Bell Labs’ own bait stations are available directly to consumers. *See* Attachment H. The RRTF’s assertion that bait stations are not available is therefore inaccurate.

3. EPA Should Promote Integrated Pest Management as an Effective Alternative to Chemical Rodenticides.

An additional alternative that merits further EPA promotion and support is integrated pest management (“IPM”), a strategy that controls rodents by removing their food and shelter and relies on chemical rodenticides only as a last resort. In 1996 amendments to FIFRA, Congress expressly endorsed IPM as a means of reducing pesticide use. 7 U.S.C. §§ 136a(c)(10)(B)(4); 136r(a); 136w-3(c). EPA has reviewed reports establishing that IPM successfully controls rodents and reduces rodenticide use simultaneously. *See* Letter from Terry Howard, City of Chicago Bureau of Rodent Control (Sept. 22, 1998) (noting that the City of Chicago achieved “long lasting rodent exclusion” with IPM techniques, and stating that “[c]ontinuous use of toxic rodenticides year after year is not, and never will be, the solution to control of urban rodent problems”); *see also* EPA, *Analysis of Rodenticide Bait Use* (Jan. 23, 2006).

Further evidence documents the effectiveness of IPM to control rodents. A study conducted in Boston demonstrated that IPM treatments could significantly reduce mouse infestations in urban homes. Megan Sandel, et al., *Can Integrated Pest Management Impact Urban Children with Asthma?* (2005), available at <http://www.healthyhousing.org/clearinghouse/docs/Article0334.pdf> (Attachment B at 13-15). The Centers for Disease Control and Prevention have cited successes in New York City, Philadelphia, and Marion County, Indiana as examples of IPM's effectiveness for controlling rodents. Centers for Disease Control and Prevention, *Webcast: Managing Rodents and Mosquitoes Through Integrated Pest Management* (2003), script available at <http://www2a.cdc.gov/phtn/webcast/ipm/IPM-Script.htm> (Attachment C at 17-23). In Bushwick, Brooklyn, a pilot IPM program increased the number of properties meeting inspection standards from less than one-third to more than half. Rodent Control Task Force, City of New York, *Rodent Control Task Force Report to the Mayor* (2003), available at http://www.nyc.gov/html/ops/downloads/pdf/rodent_taskforce/rodent_taskforce_report.pdf (Attachment D at 2); Sewell Chan, *In Epic Battle, the Rat Patrol Adjusts Its Aim and Digs In*, N.Y. Times, Dec. 5, 2006 (Attachment E at 3). Subsequent IPM programs in the southern Bronx and northern Manhattan caused "rat populations [to] dwindle[]." *Id.* at 3.

According to a 2002 report by the New York State Attorney General's Office, the major factor affecting the likelihood of pest outbreaks in large housing developments was poor building maintenance and garbage disposal and control procedures by facility managers. See Michael H. Surgan et al., *Pest Control in Public Housing, Schools, and Parks: Urban Children at Risk* at 52-62 (August 2002) (Attachment F). This report summarizes successful IPM programs in New York City, Chicago, and Toronto, *id.* at 61, and cites IPM as the first step that housing authorities should take to protect children from pesticide exposure, *id.* at 64.

EPA should promote IPM – in addition to the safety measures presented in the January 2007 Proposed Risk Mitigation Decision – to control rodents, minimize child poisonings, and reduce chemical rodenticide use at the same time.

4. FIFRA Compels Effective Mitigation to Prevent Child Poisonings.

Under FIFRA, in assessing whether a pesticide causes "unreasonable adverse effects on the environment," EPA must determine whether it causes "any unreasonable risk to man or the environment, taking into account the economic, *social*, and environmental *costs* and benefits of the use of any pesticide." 7 U.S.C. § 136(bb) (emphasis added).

The record before EPA demonstrates a disproportionate burden of rodenticide poisonings in African-American and Latino children. In New York State, more than eighty percent of children hospitalized for rodenticide poisoning are African-American or Latino. EPA, *Proposed Risk Mitigation Decision for Nine Rodenticides*, at 13-14 (Jan. 17, 2007); see also Jerome Blondell, EPA, *Updated Review of Rodenticide Incident Reports Primarily Concerning Children*, at 11 (June 3, 1999). EPA found that African-American children are more than three times as likely to require hospitalization, and Latino children are

more than twice as likely to require hospitalization, because of serious rodenticide poisonings. *Id.* This disproportionate burden is a social cost that must be considered under FIFRA. 7 U.S.C. § 136(bb).

An Executive Order on environmental justice further establishes that this disparate impact is an important factor for EPA to consider in its rodenticide reregistration decision. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994) requires that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” EPA reiterated this policy in a subsequent agency memorandum. *See* EPA, 1996 Environmental Justice Implementation Plan at 2 (April 1996) (declaring EPA’s commitment to ensuring that “[n]o segment of the population, regardless of race, color, national origin, or income, as a result of EPA’s policies, programs, and activities, suffers disproportionately from adverse human health or environmental effects”) (available at http://www.epa.gov/Compliance/resources/policies/ej/implementation_plan_ej_1996.pdf) (Attachment G).¹

The environmental justice impact of EPA’s rodenticide reregistration and mitigation decision is therefore a relevant factor to be considered under FIFRA. Both the language of FIFRA (requiring EPA to consider “social cost”) and Executive Order 12,898 establish that environmental justice is an important aspect of rodenticide regulation. *See National Black Media Coalition v. FCC*, 822 F.2d 277, 281 (2d Cir. 1987) (agreeing that published FCC policy encouraging minority ownership of broadcast facilities was “an important factor to consider” in evaluating an FCC rule); *Humane Soc’y v. Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986) (state law prohibiting cruelty to animals indicated that animal safety was an important aspect of the problem at issue in reviewing a USDA rule).

Second, the emotional trauma that accompanies a poisoning constitutes a significant social cost. EPA states: “the Agency believes that the number of exposure incidents is unacceptably high because of the social costs associated with treating children who might have been exposed, and the emotional toll of suspected exposure incidents.” EPA, *Proposed Risk Mitigation Decision for Nine Rodenticides*, at 8 (Jan. 17, 2007). The

¹ Congress passed amendments to EPA’s appropriations bill in 2005 and 2006 directing the Agency to not spend any congressionally appropriated funds in a manner that contravenes the Executive Order or delays its implementation. The President signed the bill into law on August 2, 2005. *See* Public Law No. 109-054; *see also* § 202 of H.R. 2361, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (“None of the funds made available by this Act may be used in contravention of, or to delay the implementation of, Executive Order No. 12898 of February 11, 1994.”). A 2006 EPA Office of Inspector General Report documents EPA’s failure to comply with the requirements of the Executive Order. *See* EPA Office of Inspector General, *Evaluation Report: EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities* (Sept. 18, 2006) (Attachment J).

emotional impact of these exposures and poisonings is a social cost that must be considered under FIFRA.

FIFRA may grant EPA some latitude in weighing the various factors that Congress required it to consider in making reregistration decisions, but EPA does not have the latitude to ignore a factor entirely. *See National Coalition Against the Misuse of Pesticides v. Thomas*, 809 F.2d 875, 882 (D.C. Cir. 1987) (finding agency action unlawful because “EPA has failed entirely to take into account factors that [the relevant statute] clearly requires the agency to consider,” and “EPA fell into error by losing sight of the specific statutory factors” Congress required). FIFRA recognizes that the benefits of chemical pesticide use are often outweighed by the social costs and public health threats. *See Environmental Defense Fund v. EPA*, 510 F.2d 1292, 1302 (D.C. Cir. 1975). The social costs of rodenticide poisonings – including the disproportionate environmental justice impact and the emotional trauma associated with poisonings – further justify protective mitigation measures.

Thank you for the opportunity to provide these comments.

Respectfully submitted,



Aaron Colangelo, NRDC

Anhthu Hoang, General Counsel, WE ACT for Environmental Justice

cc: Kelly Sherman (sherman.kelly@epa.gov)
Laura Parsons (parsons.laura@epa.gov)

CERTIFICATE OF SERVICE

I certify that the foregoing DECLARATION OF AARON COLANGELO IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE, dated April 29, 2013, was sent this day in the following manner to the addressees listed below:

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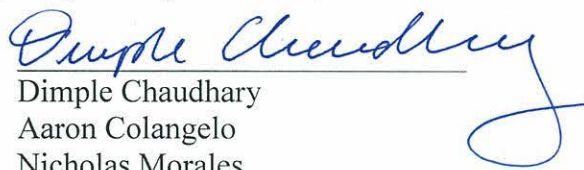
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Dated: April 30, 2013

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

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

**DECLARATION OF LINDA LOPEZ
IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE**

I, Linda Lopez, declare as follows:

1. I am the director of membership and public education at the Natural Resources Defense Council, Inc. (“NRDC”). I have been the director of membership and public education for 25 years.

2. My duties include supervising the preparation of materials that NRDC distributes to members and prospective members. Those materials describe NRDC and identify its mission.

3. NRDC is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

4. NRDC’s mission statement declares that “The Natural Resources Defense Council’s purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends.” The mission statement further states that NRDC seeks “to break down the pattern of disproportionate environmental burdens borne by people of color and others who face social or economic inequities.”

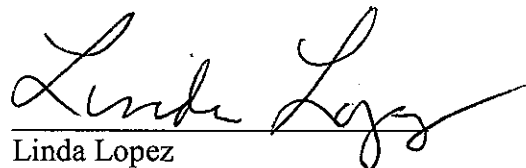
5. NRDC’s membership and staff of lawyers, scientists, and other environmental specialists have a long-standing interest in improving the regulation of pesticides and other toxic chemicals. NRDC seeks to ensure that pesticide regulation is protective of public health and in

compliance with governing statutes and regulations. NRDC has litigated many cases seeking to enforce legal obligations to protect the public from pesticides, and has participated in the development, enforcement, and reform of pesticide laws and pesticide regulation for over two decades.

6. NRDC currently has more than 363,000 members nationwide. There are NRDC members residing in each of the fifty United States and in the District of Columbia.

7. The health of NRDC's members and their children is placed at substantial risk of harm if rodenticides such as those at issue in this hearing are used without adequate mitigation measures.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of April, 2013 in Washington, D.C.


Linda Lopez

CERTIFICATE OF SERVICE

I certify that the foregoing DECLARATION OF LINDA LOPEZ IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE, dated April 29, 2013, was sent this day in the following manner to the addressees listed below:

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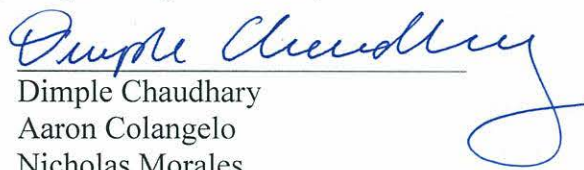
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Respectfully submitted,



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Dated: April 30, 2013

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

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

**DECLARATION OF CECIL CORBIN-MARK
IN SUPPORT OF MOTION TO INTERVENE**

I, Cecil Corbin-Mark, declare the following:

1. I am the Deputy Director and Director of Policy Initiatives for West Harlem Environmental Action (WE ACT).
2. I submit this declaration in support of the Natural Resources Defense Council and WE ACT's motion for leave to intervene in these proceedings.
3. WE ACT is a Northern Manhattan community-based organization building healthy communities by assuring that people of color and/or low-income individuals participate meaningfully in the creation of sound and fair environmental health and protection policies and practices. WE ACT works to improve environmental quality and public health, and to secure environmental justice, in predominantly African-American and Latino communities in New York City.
4. WE ACT advances its mission through community organizing and training, community-based participatory research, advocacy campaigns, and litigation.
5. For many years, WE ACT has been involved in efforts to address rat infestation in Northern Manhattan neighborhoods. WE ACT's work on this front includes characterizing and documenting indoor and outdoor exposures by residents, conducting training programs on

integrated pest management, and organizing with residents to advocate for legislation that will reduce, identify, and prevent pesticide exposure. WE ACT has also engaged in a public education campaign on the dangers of rodenticides to its constituent communities, including by dispatching community organizers to public housing complexes.

6. As a grantee of EPA's Community Action for a Renewed Environment (CARE) program, WE ACT has trained local businesses to institute integrated pest management strategies in their businesses.

7. WE ACT has an interest in requiring EPA to implement its statutory duties in a manner that protects human health, particularly because rodenticide poisonings have a disproportionate impact on the communities and children served by WE ACT.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of April, 2013 in New York, New York.



Cecil Corbin-Mark

CERTIFICATE OF SERVICE

I certify that the foregoing DECLARATION OF CECIL CORBIN-MARK IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE, dated April 30, 2013, was sent this day in the following manner to the addressees listed below:

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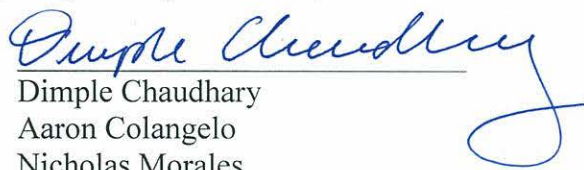
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Dated: April 30, 2013