



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

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

**PREHEARING ORDER**

As you have been previously notified, the undersigned has been designated to preside over this proceeding. This proceeding is governed by the Rules of Practice Governing Hearings, under the Federal Insecticide, Fungicide, and Rodenticide Act, Arising from Refusals to Register, Cancellations of Registrations, Changes of Classifications, Suspensions of Registrations and Other Hearings Called Pursuant to Section 6 of the Act, 40 C.F.R. Part 164 (“Rules of Practice”). The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice.

**Settlement.** Agency policy strongly supports settlement and each party is reminded that pursuing this matter through a hearing and possible appeals will require the expenditure of significant amounts of time and financial resources. The parties should realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away.

With these considerations in mind, the parties are directed to engage in a settlement conference on or before **February 14, 2014**, and to attempt to reach an amicable resolution of this matter. Without mentioning any specific terms of settlement, Respondent shall file a Status Report regarding this conference and the status of settlement, on or before **February 19, 2014**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Headquarters Hearing Clerk no later than **February 28, 2014**, and a copy submitted to the undersigned.

Should a Consent Agreement not be finalized on or before the latter date, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order.

The mere pendency of settlement negotiations or even the existence of a settlement in principle does not constitute a basis for failing to strictly comply with the following prehearing exchange requirements. Only the filing with the Headquarters Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the judge, excuses noncompliance with filing deadlines.

**Primary Discovery.** This Order is issued pursuant to Section 164.50 of the Rules of Practice. Accordingly, it is directed that the following prehearing exchange of primary discovery materials take place between and among the parties:

1. Each party<sup>1</sup> shall file with the Headquarters Hearing Clerk, serve on all other parties, and serve on the Presiding Judge:

(A) a list of names of all expert and other witnesses it intends to call at hearing, identifying each as a fact witness or an expert witness, providing a brief narrative summary of each witnesses' expected testimony, and a curriculum vitae or resume for each identified expert witness, or a statement that no witnesses will be called;

(B) a list and copies of all documents and exhibits intended to be introduced into evidence, identified as "Respondent's Exhibit," "Petitioner (Name)'s Exhibit," "Intervenor (Name)'s Exhibit, as appropriate, and numbered sequentially with Arabic numerals (*e.g.*, "PRX 1" for "Petitioner Reckitt's Exhibit 1");

(C) a list of any matters of which the party requests official notice be taken;

(D) a statement explaining its views as to the appropriate place for the hearing and an estimate of the time needed to present its direct case. Also, state whether translation services are necessary in regard to the testimony of any witness(es), and, if so, state the language to be translated; and

(E) a statement of any intent to request the submission of one or more questions of scientific fact to a committee designated by the National Academy of Sciences.

2. The prehearing exchanges called for above shall be filed *in seriatim* fashion, pursuant to the following schedule:

<b>February 28, 2014</b>	Respondent's Initial Prehearing Exchange
<b>March 14, 2014</b>	All Petitioners' Initial Prehearing Exchanges
<b>March 21, 2014</b>	All Intervenors' Initial Prehearing Exchanges
<b>April 4, 2014</b>	All Parties' Rebuttal Prehearing Exchanges

Section 164.50(b) of the Rules of Practice provides that documents, exhibits and witness testimony not included in the prehearing exchanges may not be added or amended except upon **motion** granted. Therefore, each party should thoughtfully prepare its prehearing exchange.

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<sup>1</sup> The parties to this action are the Acting Assistant Administrator of the Office of Chemical Safety and Pollution Prevention of the U.S. Environmental Protection Agency ("Respondent"), Reckitt Benckiser LLC, the Louisville Apartment Association, the Greater Cincinnati Northern Kentucky Apartment Association, and Do it Best Corp. ("Petitioners"), and the American Bird Conservancy, Center for Biological Diversity, Defenders of Wildlife, Sierra Club, Natural Resources Defense Council, and West Harlem Environmental Action ("Intervenors"). 40 C.F.R. §§ 164.2(o), 164.2(s), 164.31(c).

Any motion requesting additional discovery as provided for in 40 C.F.R. § 164.51 shall be submitted within thirty (30) days of the completion of the primary discovery exchange process.

**Opportunity for a Hearing.** The Notice of Intent to Cancel (“NOIC”) in this matter gave Petitioners and Intervenors notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 554 *et seq* (“APA”). In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Thus, Petitioners and Intervenors have the right to defend against Respondent’s Notice of Intent to Cancel by way of direct evidence, rebuttal evidence or through cross-examination of witnesses. Petitioners/Intervenors are entitled to elect any or all three means to pursue its defenses. If any Petitioner or Intervenor intends to elect only to conduct cross-examination of Respondent’s witnesses and to forgo the presentation of direct and/or rebuttal evidence, the Petitioner or Intervenor shall serve a statement to that effect on or before the date for filing its prehearing exchange.

**Filing and Service** The original and one copy of any documents filed in this proceeding, including prehearing exchange information and motions, shall be filed with the Headquarters Hearing Clerk by mail, courier, or personal delivery at the following addresses:

If sent by regular mail via the United States Postal Service (USPS) :

Sybil Anderson, Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Mail Code 1900R  
Washington, DC 20460

If sent via a non-USPS courier, such as FedEx or UPS, or by hand-delivery:

Sybil Anderson, Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Ave., NW  
Washington, DC 20004

A document is considered “filed” when the Headquarters Hearing Clerk receives it. A document is “served” upon mailing or when placed in the custody of a reliable commercial delivery service. Additionally, the parties are encouraged to send a courtesy copy to the Office of Administrative Law Judges by email to [OALJfiling@epa.gov](mailto:OALJfiling@epa.gov), or by facsimile to (202) 565-

0044, followed by service of a hard copy of the document. All documents submitted for filing must be signed, accompanied by a certificate of service, and served on the Presiding Judge and on each party.

The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the Presiding Judge, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the Presiding Judge except those that are fully executed and filed with the Headquarters Hearing Clerk.

**Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure.**

The parties are cautioned that, all information filed with the court will be made publicly available, unless properly protected via redaction, seal and/or protective order, in accordance with applicable legal provisions in the Act, the Rules of Practice, and 40 C.F.R. Part 2.

When it is necessary to file Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records and personal financial information. The filing party shall file a non-confidential version of the document, wherein the filing party redacts the information claimed to be entitled to confidential treatment and replaces it with notes indicating the nature of the redacted information. The redacted document will be included in the public record. The filing party shall also file under seal an unredacted version of the document, clearly and prominently marked as confidential, which will be retained as part of the case file but not disclosed to the public. Both the redacted and unredacted documents shall be served on the undersigned and any party and non-party participant authorized to receive the given information.

To the extent that any person files or submits any un-redacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by OALJ, including posting on the Internet, of all such information they submit.

**Contact Information.** Contact may be made with the Presiding Judge’s legal assistant, Maria Whiting-Beale, at (202) 564-6259 or whiting-beale.maria@epa.gov to ask whether a document has been received or issued. For procedural questions, you may contact the Presiding Judge’s staff attorney, Adrienne Fortin, at (202) 564-7862 or fortin.adrienne@epa.gov. **Do not** telephone or e-mail the Presiding Judge directly.

**Courtesy Copies.** If any party wishes to receive, by e-mail or facsimile, an expedited courtesy copy of decisions and substantive orders issued in this proceeding, the party shall submit a request for such copies by letter addressed to Maria Whiting-Beale at one of the addresses above. The letter shall include the case docket number, the party’s e-mail address or facsimile number, and a statement as to whether the party requests expedited courtesy copies of (a) the initial decision and/or any orders on motion for accelerated decision or dismissal, or (b) all decisions

and substantive orders. The undersigned's office will endeavor to comply with such requests, but does not guarantee the party's receipt of expedited courtesy copies.

**Motions.** Prior to filing any motion, the moving party must contact the other party or parties to determine whether the other party has any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other party or parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response by the other party and/or the issuance of a ruling on the motion before any relevant deadline set by this or any subsequent order. Sections 164.60 and 164.6 of the Rules of Practice allow a 10-day response period for motions, with an additional 3 days added thereto if the document is served by mail. Motions not filed in a timely manner may not be considered. If either party intends to file any dispositive motion, such as a motion for accelerated decision, it shall be filed within thirty (30) days after the due date for the Parties' Rebuttal Prehearing Exchanges.

A party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. The requesting party shall propose an appropriate location for the argument. The Office of Administrative Law Judges has access to videoconferencing technology, and strongly encourages the parties to consider utilizing such technology for oral arguments on motions, so as to minimize the expenditure of time and monetary resources in connection with such arguments. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

**SO ORDERED.**

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Susan L. Biro  
Chief Administrative Law Judge

Dated: February 10, 2014  
Washington, D.C.