UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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

ORDER GRANTING LEAVE TO INTERVENE AND TO FILE AN AMICUS CURIAE BRIEF

On April 29, 2013, the American Bird Conservancy ("the ABC"), the Center for Biological Diversity ("the Center"), Defenders of Wildlife ("Defenders"), and Sierra Club filed a Motion to Intervene in this matter ("ABC Motion"). The ABC Motion is supported by declarations made by Cynthia Palmer of the ABC, Gregory C. Loarie, counsel to the ABC, Jonathan Evans of the Center, Jason C. Rylander of Defenders, and Andrew Christie of Sierra Club.

On May 1, 2013, the Natural Resources Defense Council ("NRDC") and West Harlem Environmental Action ("WE ACT") filed a Motion to Intervene in this matter ("NRDC Motion"). The NRDC Motion is supported by declarations made by Aaron Colangelo and Linda Lopez of NRDC, and Cecil Corbin-Mark of WE ACT.

On May 22, 2013, a Motion to File an Amicus Brief and Memorandum of the American Chemistry Council Biocides Panel in Support of Reckitt Benckiser LLC's Motion for an Expedited Determination ("Motion to File Amicus Brief") was filed. The American Chemistry Council Biocides Panel ("the Panel") acknowledges therein that the issue of scope raised by the April 12, 2013 motion filed by Petitioner Reckitt Benckiser LLC ("Petitioner Reckitt") "has already been thoroughly briefed." Motion to File Amicus Brief at 2. The Panel states, however, that "[b]ecause of its broad membership," consisting of "more than fifty (50) companies that manufacture and formulate antimicrobial pesticides," including manufacturers of end use products for public health applications, etc., "the Panel is in a unique position to understand EPA's decision . . . and its potential impacts." *Id.* at 1-2. The Panel argues further that if existing stocks determinations are not a part of cancellation proceedings, "there is a high probability that these decisions will be made without the benefit of important information on risk and benefit" and may have "serious economic impacts on companies throughout the supply

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

chain." *Id.* at 3. On May 22, 2013, Respondent filed a response, stating therein that it does not oppose the Panel's Motion to File Amicus Brief, provided that Respondent is provided an opportunity to respond to the amicus brief. Respondent also states that counsel for the Panel and all Petitioners indicated to Respondent that the Panel and Petitioners do not oppose a timely response brief from Respondent.

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 answers to motions may be filed within 10 days of service of the motion unless ordered otherwise. 40 C.F.R. § 164.60(b). No responses to the ABC Motion or the NRDC Motion having been filed, they are deemed unopposed.

The rules addressing intervention provide that any person intending to intervene in the proceeding may file a motion setting 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." 40 C.F.R. § 164.31(a). Section 164.31(c) of the Rules provides that leave to intervene will be "freely granted but only insofar as such leave raises matters which are pertinent to and do not unreasonably broaden the issues already presented." The ABC, the Center, Defenders, Sierra Club, NRDC, and WE ACT, though not restated here, have each set forth in detail the grounds for their request to intervene, their position, and their interests in this cancellation proceeding in the motions and supporting declarations filed. Regarding the "documents proposed to be filed" requirement of Section 164.31(a), all movants correctly note that such requirement is directed towards those seeking to intervene to support objections to a cancellation action, which is not the position of movants here. ABC Motion at 9; NRDC Motion at 8 n.5. Finally, no movant appears to raise matters that would not be pertinent to this matter or unreasonably broaden the issues presented. ABC Motion at 10; NRDC Motion at 7-8. Therefore, having satisfied the requirements for intervention set forth in Section 164.31, and without opposition, the ABC Motion and the NRDC Motion are hereby **GRANTED**.

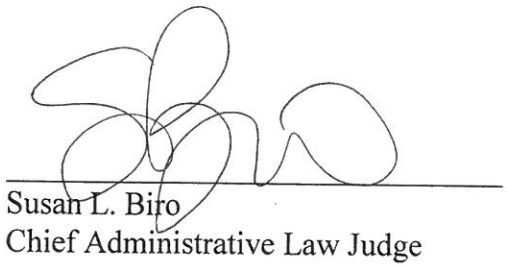
The American Bird Conservancy, the Center for Biological Diversity, Defenders of Wildlife, Sierra Club, Natural Resources Defense Council, and West Harlem Environmental Action, are hereby made Intervenors in this action and are parties "with the full status of the original parties to the proceedings." 40 C.F.R. § 164.31(c).

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 interests in this proceeding and its arguments as to why its brief should be part of the record, the Panel has satisfied the requirements set forth in 40 C.F.R. § 164.31(d). Therefore, its unopposed Motion to File Amicus Brief is hereby **GRANTED**.

The Brief of the American Chemistry Council Biocides Panel set forth at pages 3-6 of the Motion to File Amicus Brief, entitled "Memorandum in Support of Reckitt's Motion," is

accepted into the record. Respondent's unopposed request to file a response to the Panel's Brief is also hereby **GRANTED**. Respondent shall file a response to the Brief on or before **June 7, 2013**.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: May 28, 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 Intervene And File An Amicus Curiae Brief**, dated May 28, 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
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Dated: **May 28, 2013**

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