

# Ruling Boosts EPA Efforts to Ban D-Con Rodenticides

By

Over the past five years, the U.S. Environmental Protection Agency (EPA) and UK-based Reckitt Benckiser, a leading rodenticides manufacturing company, have been battling over the Agency's efforts to remove Reckitt's popular "D-Con" brand products from retail stores. In the latest twist in this ongoing fight, the U.S. Court of Appeals for the Tenth Circuit last month denied Reckitt's request for review of EPA's decision not to allow sales of existing inventory of the company's products on store shelves, assuming EPA prevails in a current cancellation proceeding against Reckitt's products. The Court ruled that it did not have jurisdiction to hear Reckitt's appeal because the cancellation proceeding is still ongoing.

The dispute between EPA and Reckitt resulted from a May 2008 decision in which the Agency concluded that most rodenticides then sold to homeowners posed unreasonable risks to children, pets and wildlife. EPA gave the industry three years to remove them from the market and introduce new products with lower risks (e.g., by employing bait stations or other safety features). Reckitt, whose D-Con products dominate the residential market, was the only manufacturer not to comply with the EPA directive.

In June 2010, Reckitt won an important victory in the U.S. Court of Appeals for the D.C. Circuit. That Court decided that EPA could not bring an enforcement action against Reckitt's products for "misbranding," but instead would need to institute a formal cancellation proceeding to remove them from the market. Earlier this year, EPA initiated such a cancellation proceeding - the first of its kind in more than 20 years - and in doing so declared that, if and when the Administrative Law Judge formally cancels Reckitt's products, retailers would not be permitted to sell out their existing stocks. Thus, retailers in Maryland and throughout the country could be stuck with large inventories of cancelled products.

In an effort to protect retailers - and maintain their own sales to same - Reckitt sought review of EPA's decision in the Tenth Circuit. That Court's denial of Reckitt's suit is a tactical victory for EPA and puts more pressure on retailers to drop D-Con products and switch to EPA-compliant rodent control alternatives.