Inspections, Compliance, Enforcement, and Criminal Investigations

Phoenix Bio-Tech Corporation 10/5/09

Department of Health and Human Services

Public Health Service
Food and Drug Administration
10903 New Hampshire Avenue
Building 66
Silver Spring, MD 20993

WARNING LETTER

VIA FEDERAL EXPRESS

OCT 5 2009

Aldo Covelli
President
Phoenix Bio-Tech Corporation
6810 Kitimat Road, Unit 1
Mississauga, Ontario, Canada L5N 5M2

Dear Mr. Covelli:

During an inspection of your firm located in Mississauga, Ontario, Canada on May 11 through May 14, 2009, investigator(s) from the United States Food and Drug Administration (FDA) determined that your firm manufactures the TREP-SURE Anti-Treponema EIA Screen and the TREP-CHEK Anti-Treponema EIA. Under section 201(h) of the Federal Food, Drug, and Cosmetic Act (the Act), 21 U.S.C. 321(h), these products are devices because they are intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or are intended to affect the structure or function of the body.

This inspection revealed that these devices are adulterated within the meaning of section 501(h) of the Act (21 U.S.C. § 351(h)), in that the methods used in, or the facilities or controls used for, their manufacture, packing, storage, or installation are not in conformity with the Current Good Manufacturing Practice (CGMP) requirements of the Quality System (QS) regulation found at Title 21, Code of Federal Regulations (C.F.R.), Part 820. We received responses from you dated May 20, 2009, and July 27, 2009, concerning our investigator's observations noted on the Form FDA 483, List of Inspectional Observations that was issued to you. We address these responses below, in relation to each of the noted violations. These violations include, but are not limited to, the following:

1. Failure to establish and maintain procedures to control the design of the device in order to ensure that specified design requirements are met, as required by 21 CFR 820.30(a)(1). For example:

a) When requested, no design control documentation was provided for the design of the TREP-CHEK Treponemal Antibody EIA.

b) **(b)(4)** dated February 2008 is inadequate. The procedure fails to adequately describe the process or mechanism for addressing incomplete, ambiguous, or conflicting requirements and does not explain how design inputs are documented, reviewed, and approved as required by 21 CFR 820.30(c); fails to ensure that design reviews include all of the functions and people involved with the stage under review and an independent individual and fails to ensure that the identification of the design, date, individuals performing the review, and action items will be recorded for the design history file, as required by 21 CFR 820.30(e); fails to describe the process that confirms the design outputs meet the design input requirements and the mechanism for resolving any discrepancies and fails to define the method of recorded design verification activities for the design history file which should include verification results, identification of the design, verification methods, dates of verifications, and individuals performing the verifications, as required by 21 CFR 820.30(f); fails to define the method for recorded design validation activities for the design history file which should include validation results, identification of the design, validation methods, dates of validation, and individuals performing the validation, as required by 21 CFR 820.30(g); and fails to explain how you will conduct the final review and approval of design and development activities in order to transfer the design to manufacturing, as required by 21 CFR 820.30(h).

We have reviewed your responses and have concluded that they are inadequate because you did not provide a revised copy of the procedures to control the design of the TREPSURE Anti-Treponema EIA Screen and the TREP-CHEK Anti-Treponema EIA and because you did not provide a copy of your proposed retrospective design analysis and formalized design documentation for the TREP-CHEK Treponemal Antibody EIA. You also have not addressed the fundamental deficiency or lack of proper design control

processes and procedures which should have been in place before these devices were placed into US interstate commerce.

2. Failure to establish and maintain procedures for the identification, documentation, validation or where appropriate verification, review and approval of design changes before their implementation, as required by 21 CFR 820.30(i).

For example the TREP-SURE Package Insert Revision Log shows that the labeling for the device had been revised **(b)(4)** times and the Anti-Treponema Enzyme Immunoassay Screen kit quality control certificate was revised on July 24, 2008 to change the validation criteria for the OD of Negative Control from **(b)(4)** When requested, no design change control documentation was provided for the control of these design changes.

We have reviewed your responses and have concluded that they are inadequate because a copy of the procedures for the identification, documentation, validation or where appropriate verification, review and approval of design changes for the TREP-SURE Anti-Treponema EIA Screen and the TREP-CHEK Anti-Treponema EIA were not provided and because evidence of the validation or verification of the design changes was not provided. You did not provided evidence of your retraining activities which should include the validation or, where appropriate, verification of this corrective action and evidence of proposed preventive action.

3. Failure to validate computer software for its intended use according to an established protocol when computers or automated data processing systems are used as part of production or the quality system, as required by 21 CFR 820.70(i).

For example, when requested, no validation information or protocols were provided for the **(b)(4)** software which is used for product complaints, CAPA requests/actions, preventive action request/actions, and creating quality logs.

We have reviewed your responses and have concluded that they are inadequate because a copy of your revised procedures and the Excel spreadsheet validation protocols/procedures and reports were not provided. It is unclear how you plan to document quality system records that were previously documented in the **(b)(4)** system.

Our inspection also revealed that your TREP-SURE Anti-Treponema EIA Screen and the TREP-CHEK Anti-Treponema EIA are misbranded under section 502(t)(2) of the Act 21 U.S.C. 352(t)(2), in that your firm failed or refused to furnish material or information respecting the device that is required by or under section 519 of the Act, 21 U.S.C. 360i, and 21 C.F.R. Part 803 - Medical Device Reporting (MDR) regulation. Significant deviations include, but are not limited to, the following:

Failure to develop, maintain, and implement written MDR procedures, as required by 21 CFR 803.17.

For example, when requested, no written MDR procedure was provided.

We have reviewed your response and have concluded that they are inadequate because **(b)(4)** effective 08/01/2009 does not meet the requirements of 21 CFR 803.17 as determined by Office of Surveillance and Biometrics. The procedure fails to contain a standardized review process for determining when an event meets the criteria for reporting events to FDA as required by 21 CFR 803.50; fails to describe a process that will be utilized when evaluating all events for MDR repeatability as required by 803.17; fails to provide for the timely submission of complete medical device reports and supplements as required by 21 CFR 803.50(a), 803.53, 803.56, and 803.52; fails to describe how the firm will establish MDR event files as required by 803.18; and fails to describe a process for conducting an investigation of each event and evaluating the cause of the event as required by 21 CFR 820.56. The Office of Surveillance and Biometrics has additional concerns about this procedure and recommends you contact them by email at RSMB@cdrh.fda.gov or by telephone at 301-796-6670.

You should take prompt action to correct the violation(s) addressed in this letter. Failure to promptly correct these violation(s) may result in regulatory action, which may include detaining your devices without physical examination upon entry into the United States until the corrections are completed. Section 801(a) of the Act (21 U.S.C. § 381(a)). Also, U.S. federal agencies are advised of the issuance of all Warning Letters about devices so that they may take this information into account when considering the award of contracts. Additionally, premarket approval applications for Class III devices to which the Quality System regulation deviations are reasonably related will not be approved until the violations have been corrected. Requests for Certificates to Foreign Governments will not be granted until the violations related to the subject devices have been corrected.

Please notify this office in writing within fifteen (15) working days from the date you receive this letter of the specific steps you have taken to correct the noted violations, including an explanation of how you plan to prevent these violation(s), or similar violation(s), from occurring again. Include documentation of the corrective action you have taken. If your planned corrections will occur over time, please include a timetable for implementation of those corrections. If corrective action cannot be completed within 15 working days, state the reason for the delay and the time within which the corrections will be completed. If the documentation is not in English, please provide a translation to facilitate our review.

If you have any questions about the content of this letter please contact: Ms. Tara Goldman at 301-796-6179 or by fax at 301-847-8512. Your response should be sent to:

James L. Woods
Deputy Director for Patient Safety and Product Quality
Office of In Vitro Diagnostic Device Evaluation and Safety
Center for Devices and Radiological Health
Food and Drug Administration
10903 New Hampshire Avenue
W066-5688
Silver Spring, MD 20993

Finally, you should know that this letter is not intended to be an all-inclusive list of the violation(s) at your facility. It is your responsibility to ensure compliance with applicable laws and regulations administered by FDA. The specific violation(s) noted in this letter and in the Inspectional Observations, Form FDA 483 (FDA 483), issued at the closeout of the inspection may be symptomatic of serious problems in your firm's manufacturing and quality assurance systems. You should investigate and determine the causes of the violation(s), and take prompt actions to correct the violation(s) and to bring your products into compliance.

Sincerely yours,

/S/

Alberto Gutierrez, Ph.D.

Director
Office of In Vitro Diagnostic Device
Evaluation and Safety
Center for Devices and Radiological Health