

DEPARTMENT OF JUSTICE**Notice of Lodging of Consent Decree**

Notice is hereby given that on October 11, 2007, a proposed Consent Decree in *United States v. Maritime Logistics, Inc., et al.*, Civil Action No. C07-5172 JSW (N.D. Cal.), was lodged with the United States District Court for the Northern District of California. The proposed Consent Decree resolves claims arising from a January 31, 2005 incident in which the vessel P/C ALBION sank in the waters of the Monterey Bay National Marine Sanctuary and discharged oil. Under the Consent Decree, the defendants will pay \$1,207,064.00 to the Coast Guard's Oil Spill Liability Trust Fund for costs incurred, and \$392,936.00 to the National Oceanic and Atmospheric Administration for costs incurred and for damages. In exchange, the United States provides a covenant not to sue for claims pertaining to the incident under, *inter alia*, the Oil Pollution Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the National Marine Sanctuaries Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Maritime Logistics, Inc., et al.*, D.J. Ref. 90-5-1-1-09113.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 450 Golden Gate Avenue, San Francisco, California 94102. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the proposed Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation no. (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$4.75 (25 cents per page reproduction cost) payable to the "U.S. Treasury" or, if by e-mail or fax, forward a check in that

amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-5125 Filed 10-16-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Clean Water Act (CWA)

Notice is hereby given that on October 1, 2007, a proposed Consent Decree (Decree) in *United States et al. v. United States Steel Corp. et al.*, Civil Action No. 07-CV-4114-JAR was lodged with the United States District Court for the District of Kansas.

In this action the United States and the State of Kansas, in their capacities as natural resource trustees, sought recovery from U.S. Steel Corporation and Citibank Global Holdings for natural resource damages to the National Zinc Superfund Site (Site) in Cherryvale, Kansas and the surrounding area. The Complaint alleges that Defendants are liable as successors to owners or operators of a smelter, which was previously located and operated at the Site. The Decree would settle the government's claim for injuries to natural resources at the Site, in return for a total payment of \$495,750, including \$452,750 for restoration projects and \$43,000 for reimbursement of natural resource damage assessment costs incurred by the Federal and State trustees. As specified by the Decree, the joint recovery for restoration work would be deposited in the United States Department of Interior's Natural Resource Damage Assessment and Restoration Fund, and the Federal and State trustees would make joint decisions concerning future restoration expenditures in accordance with a restoration plan that they would prepare.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States et al. v. United States Steel Corp. et al.*, D.J. Ref. 90-11-3-08705.

The Decree may be examined at the Office of the United States Attorney, 1200 Epic Center, 301 N. Main, Wichita, Kansas 67202. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, to http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-5127 Filed 10-16-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Tim's Wholesale; Denial of Application**

On March 20, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Tim's Wholesale (Respondent) of Baton Rouge, Louisiana. The Show Cause Order proposed the denial of Respondent's application for a DEA Certificate of Registration as a distributor of list I chemicals, on the ground that granting it a registration would be "inconsistent with the public interest." Show Cause Order at 1.

More specifically, the Show Cause Order alleged that in December 2004, Respondent's President (Mr. Tim Tran) had applied for a registration to distribute pseudoephedrine, a list I chemical which is commonly diverted into the illicit manufacture of methamphetamine, a schedule II controlled substance. *Id.* at 1-2. The Show Cause Order alleged that during a pre-registration investigation, Mr. Tran stated to DEA Diversion Investigators (DIs) that his business distributes candy, snacks, cigarettes and novelties to "approximately 250 convenience stores." *Id.* at 2. The Show Cause Order further alleged that Mr. Tran stated to

investigators that “he was unaware that traditional cough and cold products contained pseudoephedrine,” and that they “could be used to make the controlled substance methamphetamine.” *Id.*

Next, the Show Cause Order alleged that after Mr. Tran finally provided a list of his proposed pseudoephedrine customers, the DIs conducted customer verifications. *Id.* The Show Cause Order alleged that of the seven customers contacted by the DIs, six of them stated that they had no intention of doing business with Respondent. The Show Cause Order also alleged that while Respondent did not have a DEA registration, the other customer informed the DIs that it was “currently purchasing listed chemical products from” Respondent. *Id.*

Finally, the Show Cause Order alleged that Respondent’s proposed customer base of convenience stores account for only a very small percentage of the legitimate commerce in over-the-counter drug products and that “convenience stores continue to be the primary source” of pseudoephedrine which is diverted into the illicit manufacture of methamphetamine. *Id.* at 3. The Show Cause Order thus concluded that because Respondent’s management has “insufficient experience,” lacks “knowledge of the diversion problems associated with handling listed chemicals,” and had “distributed listed chemicals without a registration, it is unlikely that they would be able to carry out the responsibilities of a registrant.” *Id.*

The Show Cause Order was served by certified mail, return receipt requested. While the return receipt card was not returned to the Agency, on June 22, 2006, a DEA Diversion Investigator contacted Respondent’s owner and confirmed that he had received the Show Cause Order approximately two months earlier. I therefore find that Respondent was properly served.

I further find that because: (1) more than thirty days have passed since service of the Show Cause Order, and (2) neither Respondent, nor anyone purporting to represent it, has responded, it has waived its right to a hearing. See 21 CFR 1309.53(c). I therefore enter this Decision and Final Order without a hearing based on relevant material contained in the investigative file and make the following findings.

Findings

On December 15, 2004, Respondent, a Louisiana corporation, applied for a DEA Certificate of Registration to distribute the list I chemical

pseudoephedrine. Respondent’s application was prepared and submitted by its President, Mr. Tim Tran, and proposed as its registered location its facility which is located at 8150 South Choctaw Drive, Baton Rouge, Louisiana. Respondent is a wholesale distributor of cigarettes, candy, snacks, grocery bags, and novelty items, and has approximately 250 customers which include convenience stores and restaurants in the Baton Rouge area. As noted in numerous agency orders, such establishments are not part of the traditional market for legitimate consumers of pseudoephedrine products. See *Holloway Distributing*, 72 FR 42118, 42119 (2007); *D & S Sales*, 71 FR 37607, 37608–09 (2006).

Pseudoephedrine is lawfully marketed under the Food, Drug and Cosmetic Act as a decongestant. See *Holloway Distributing*, 72 FR at 42119. Because pseudoephedrine is, however, easily extracted from non-prescription drug products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance, it is regulated as a list I chemical under the Controlled Substances Act (CSA). See 21 U.S.C. 802(34); 21 CFR 1308.12(d).

Methamphetamine is a powerful and addictive central nervous system stimulant. See *Gregg Brothers Wholesale Co., Inc.*, 71 FR 59830 (2006). The illegal manufacture and abuse of methamphetamine pose a grave threat to this country. Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. Moreover, because of the toxic nature of the chemicals used to make the drug, its manufacture causes serious environmental harms. *Id.*

On February 15, 2005, a DEA Diversion Investigator (DI) telephoned Mr. Tran to schedule an on-site inspection of Respondent. During the conversation, the DI informed Mr. Tran that he would need to compile a list of all the customers who would be purchasing pseudoephedrine products from his firm, as well as a list of the pseudoephedrine products that he intended to sell. According to the DI, Mr. Tran did not understand that pseudoephedrine is an active ingredient in various cold products. Moreover, during the conversation, Mr. Tran further stated that he was unaware that pseudoephedrine was used to manufacture methamphetamine, a statement which he repeated during the on-site inspection.

On February 18, 2005, the above DI (accompanied by another DI) visited Respondent at its proposed registered where they met Mr. Tran. Mr. Tran had not prepared a list of either his potential

customers or a list of the pseudoephedrine products he intended to sell. He also stated to investigators that he would dispose of out-of-date or damaged pseudoephedrine products in the garbage and did not know if his suppliers would take back such products. Mr. Tran further told investigators that he was unfamiliar with the purchase and sale of pseudoephedrine products. He also told investigators that he had been in the wholesale business for approximately four and a half months.

During the on-site inspection, Mr. Tran also told investigators that he had high employee turnover. Moreover, he did not know the last names of his two employees, one of whom had been on the job for a week, the other for two days. Even though both employees would have access to pseudoephedrine products, Mr. Tran stated that he had not performed background checks on either of them and did not know how to do so.

Mr. Tran further stated that he sold to walk-in customers. When asked how he would verify whether these customers were legitimate, Mr. Tran stated that he knew most of them because he had lived in Baton Rouge for approximately twenty years and went to church with them.

Mr. Tran eventually marked on his customer list the names of eighteen stores that he expected would purchase pseudoephedrine from him. Subsequent to the on-site inspection, the DIs visited seven of the establishments. At three of the stores, the managers told the DIs that they had never done business with Respondent; at another, the cashier told the DIs that the store used a different supplier. At one store, the manager told the DIs that while he had used Respondent in the past, he no longer did business with it and did not intend to purchase pseudoephedrine products from it. At another establishment, the cashier stated that the store mostly bought cigarettes from Respondent and obtained cold products from other sources. At the final store, the manager told the DIs that he was currently purchasing cold products from Respondent. The record, however, does not establish what those products were and whether they contained a list I chemical.

Discussion

Section 303(h) of the Controlled Substances Act (CSA) provides that “[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.”

21 U.S.C. 823(h). In making this determination, Congress directed that I consider the following factors:

(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) compliance by the applicant with applicable Federal, State, and local law;

(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) such other factors as are relevant to and consistent with the public health and safety.

Id. § 823(h).

“These factors are considered in the disjunctive.” *Joy’s Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether an application for a registration should be denied. *See, e.g., David M. Starr*, 71 FR 39367, 39368 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am “not required to make findings as to all of the factors.” *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall v. DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case, I conclude that Factors One, Four, and Five establish that granting Respondent a registration would be “inconsistent with the public interest.” 21 U.S.C. 823(h). Respondent’s application will therefore be denied.

Factor One—The Maintenance of Effective Controls Against Diversion

In several respects, the investigative file establishes that Respondent would not maintain effective controls against diversion. First, the file establishes that Respondent intends to dispose of out-of-date or damaged pseudoephedrine products by throwing them in its trash. This is not a proper method of disposing of list I chemical products, which can still be used to manufacture methamphetamine even if they are out-of-date or damaged.

Second, Respondent told the DIs that he did not conduct background checks on his employees and, indeed, he did not even know their last names. Under DEA’s regulations, a “registrant shall exercise caution in the consideration of employment of persons who will have access to listed chemicals, who have been convicted of a felony offense relating to controlled substances or listed chemicals, or who have, at any time, had an application for registration with DEA denied, had a DEA registration revoked, or surrendered a DEA registration for cause.” 21 CFR

1309.72(a). Moreover, a “registrant should be aware of the circumstances regarding the action against the potential employee and the rehabilitative efforts following the action,” and a “registrant shall assess the risks involved in employing such persons.” *Id.* Conducting a background check on a potential employee is therefore essential to comply with the regulation and to make an accurate assessment of the risk posed by the person’s employment.

Finally, Respondent’s proposed method of determining the legitimacy of his walk-in customers is obviously inadequate. Mr. Tran stated that he knew most of his customers because he had lived in Baton Rouge, a city of sizable population, for twenty years, and went to church with them. Mr. Tran offered no explanation as to how he would verify the legitimacy of those walk-in customers he did not personally know.

Each of the above reasons provides an independent basis to conclude that Respondent would not maintain effective controls against diversion. Moreover, this finding provides reason alone to conclude that granting Respondent’s application would be “inconsistent with the public interest.” 21 U.S.C. 823(h).

Factor Four and Five—The Applicant’s Experience in Distributing List I Chemicals and Other Factors Relevant to and Consistent With Public Health and Safety

As I have previously held, “an applicant’s lack of experience in distributing list I chemicals creates a greater risk of diversion and thus weigh heavily against the granting of an application.” *Planet Trading, Inc.*, 72 FR 11055, 11057 (2007) (quoting *Tri-County Bait Distributors*, 71 FR 52160, 52163 (2006)). Moreover, “[d]istributors of list I chemicals are subject to a comprehensive and complex regulatory scheme.” *Id.* at 11058 (citing 21 CFR Pts. 1309 & 1310).

Here, Mr. Tran has no experience in the distribution of list I chemicals and the fulfillment of the regulatory obligations imposed by the CSA. *See id.* Moreover, Mr. Tran did not understand that pseudoephedrine is the active ingredient in various cold products and was unfamiliar with the problem caused by the diversion of the chemical into the illicit manufacture of methamphetamine. *See id.* (rejecting application based on applicant’s lack of product knowledge). Mr. Tran’s lack of experience and knowledge does not bode well for his performance as a registrant who will prevent diversion.

Numerous DEA orders establish that the sale of list I chemical products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. *See, e.g., Joey Enterprises*, 70 FR 76866, 76867 (2005). As *Joey Enterprises* explains, “[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.” *Id.* *See also Rick’s Picks*, 72 FR 18279 (2007) (noting role of non-traditional retailers such as convenience stores and gas stations in supplying meth. cooks); *TNT Distributors*, 70 FR 12729, 12730 (2005) (special agent testified that “80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores”); *OTC Distribution Co.*, 68 FR 70538, 70541 (2003) (noting “over 20 different seizures of [non-traditional market distributor’s] pseudoephedrine product at clandestine sites,” and that in eight-month period, distributor’s product “was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.”); *MDI Pharmaceuticals*, 68 FR 4233, 4236 (2003) (finding that “pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine”).

DEA orders have thus found that there is a substantial risk of diversion of List I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See, e.g., Joy’s Ideas*, 70 FR at 33199 (finding that the risk of diversion was “real” and “substantial”); *Jay Enterprises*, 70 FR at 24621 (noting “heightened risk of diversion” should application be granted). Under DEA precedents, an applicant’s proposal to sell into the non-traditional market weighs heavily against the granting of a registration under factor five. So too here.

Because of the methamphetamine epidemic’s devastating impact on communities and families throughout the country, DEA has repeatedly denied an application when an applicant proposed to sell into the non-traditional market and the analysis of one of the

other statutory factors supports the conclusion that granting the application would create an unacceptable risk of diversion. Thus, in *Xtreme Enterprises*, 67 FR 76195, 76197 (2002), my predecessor denied an application observing that the respondent's "lack of a criminal record, compliance with the law and willingness to upgrade her security system are far outweighed by her lack of experience with selling List I chemicals and the fact that she intends to sell ephedrine almost exclusively in the gray market." More recently, I denied an application observing that the respondent's "lack of a criminal record and any intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market." *Jay Enterprises*, 70 FR at 24621. *Accord Planet Trading*, 72 FR at 11058; *Prachi Enterprises*, 69 FR 69407, 69409 (2004).

Here, the investigative file supports additional adverse findings beyond those which DEA has repeatedly held are sufficient to warrant the denial of an application to distribute list I chemicals. Respondent clearly lacks effective controls against diversion, has no experience in the licit wholesale distribution of List I chemical products, and yet intends to distribute these products to non-traditional retailers, a market in which the risk of diversion is substantial. See *Planet Trading*, 72 FR at 11058; *Taby Enterprises of Osceola, Inc.*, 71 FR 71557, 71559 (2006). Given these findings,¹ it is indisputable that granting Respondent's application would be "inconsistent with the public interest." 21 U.S.C. 823(h).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Tim's Wholesale, for a DEA Certificate of Registration as a distributor of list I chemicals be, and it hereby is, denied. This order is effective November 16, 2007.

Dated: October 9, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7-20443 Filed 10-16-07; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0114]

Office for Victims of Crime; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; Extension of a Currently Approved Collection; Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

The Department of Justice (DOJ), Office for Victims of Crime (OVC), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 72, Number 155, page 45270-45271 on month, day, year, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 16, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Victims of Crime Act, Victim Compensation Grant Program, State Performance Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: OJP ADMIN FORM 7390/6. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Government. The form is used by State Government to submit Annual Performance Report data about claims for victim compensation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 53 respondents will complete the form within 2 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 106 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 11, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E7-20456 Filed 10-16-07; 8:45 am]

BILLING CODE 4410-18-P

¹ Because these findings establish that granting Respondent's application would create an unacceptable risk of diversion, it is unnecessary to make any findings on the remaining factors.