Note #2—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2010 is yet to be determined. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2010 BIA rate remains unchanged at $7.00/acre. The rates shown include the 2009 Reclamation rate and the 2010 BIA rate.

Note #3—The 2010 and 2011 rates were established by final notice published in the **Federal Register** on April 22, 2009 (Vol. 74, No. 76, page 18398).

[1] To be determined.

**Consultation and Coordination With Tribal Governments (Executive Order 13175)**

To fulfill its consultation responsibility to tribes and tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

**Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)**

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA-owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

**Regulatory Planning and Review (Executive Order 12866)**

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

**Unfunded Mandates Reform Act of 1995**

These rate adjustments do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. The rate adjustments do not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

**Takings (Executive Order 12630)**

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, State, or local governments of rights or property.

**Federalism (Executive Order 13132)**

The Department has determined that these rate adjustments do not have significant Federalism effects because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

**Civil Justice Reform (Executive Order 12988)**

In issuing this rule, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988.

**Paperwork Reduction Act of 1995**

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expired August 31, 2009; a request for renewal is pending with OMB. See 74 FR 44867 for more information on the renewal.

**National Environmental Policy Act**

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

**Information Quality Act**

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Dated: October 7, 2009.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E9–25540 Filed 10–22–09; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on October 19, 2009, a proposed Consent Decree in *United States* v. *BASF Corporation,* Civil Action No. 1:09 CV 0914, was lodged with the United States District Court for the Eastern District of Texas.

In this action, the United States sought injunctive relief and civil penalties for violations of the industrial refrigerant repair, record-keeping, and reporting regulations at 40 CFR 82.156 (Recycling and Emission Reduction) promulgated by the Environmental Protection Agency (''EPA'') under Subchapter VI of the Clean Air Act (Stratospheric Ozone Protection), 42 U.S.C. 7671–7671q, at five of BASF's facilities in the United States. The five facilities are located in Livonia, Michigan; South Brunswick and Washington, New Jersey; Greenville, Ohio; and Beaumont, Texas. In the proposed Consent Decree, BASF agrees to (1) retrofit or retire three of its industrial process refrigeration units at its Beaumont, Texas facility and (2) pay a $384,200 penalty to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the 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. *BASF Corporation,* D.J. Ref. 90–5–2–1–08255.

The Consent Decree may be examined at the Office of the United States Attorney, 350 Magnolia Avenue, Beaumont, TX 77701, and at U.S. EPA Region 6, 1445 Ross Avenue, Dallas TX 75202. During the public comment period, the Consent 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 Consent 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 $9.25 (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.

**Maureen Katz,**

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

[FR Doc. E9–25494 Filed 10–22–09; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 07–6]**

### Samuel H. Albert, M.D.; Dismissal of Proceeding

On October 25, 2006, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to Samuel H. Albert, M.D. (Respondent), of Fountain Valley, California. ALJ Ex. 1, at 1. The Show Cause Order proposed the denial of Respondent's ''pending application for a DEA Certificate of Registration'' as a practitioner on the grounds that on this application, which he submitted on March 24, 2006, as well as on multiple previous applications for renewal of his previous registration, Respondent had materially falsified his applications by failing to indicate that the Medical Board of California had imposed disciplinary sanctions on his state medical license, which included a revocation which was stayed, a thirty-day suspension, and the imposition of probationary terms. *Id.* at 1–2 (citing 21 U.S.C. 824(a)(1)). The Show Cause Order further alleged that Respondent's previous registration had expired on June 5, 2005, and that thereafter, Respondent had issued approximately 200 controlled substance prescriptions without being registered. *Id.* at 1–2. (citing 21 U.S.C. 822(a)(2), 841(a)(1), 843(a)(2)).

Respondent requested a hearing on the allegations and the matter was assigned to an Administrative Law Judge (ALJ), who conducted a hearing in Los Angeles, California. ALJ Dec. at 3. At the hearing, both parties elicited testimonial evidence and introduced documentary evidence. *Id.* at 3. Following the hearing, both parties filed briefs containing their proposed findings of fact, conclusion of law, and argument.

Thereafter, the ALJ issued her recommended decision. Neither party filed exceptions. The record was then forwarded to me for final agency action.

Upon reviewing the record, I noted that on May 16, 2006, more than five months prior to the issuance of the Order to Show Cause, Respondent submitted a letter to a DEA Field Office in which he requested to withdraw his application to renew his registration. *See* RX C. Under an Agency regulation, ''[a]n application may be amended or withdrawn *without permission* of the Administrator at any time before the date on which the applicant receives an order to show cause.'' 21 CFR 1301.16(a) (emphasis added). Because this regulation plainly did not require that Respondent obtain permission from the Agency for the withdrawal of his application to be effective and it thus appeared that Respondent did not have an application currently pending before the Agency, I ordered the parties to address whether this proceeding is ripe for adjudication.

Thereafter, only the Government filed a brief. Having considered the Government's arguments, I conclude that there is no application currently pending before the Agency and that this case is not ripe for adjudication. Accordingly, the Order to Show Cause must be dismissed.

### Findings

Prior to its expiration on June 30, 2005, Respondent held DEA Certificate of Registration, AA0017473, which authorized him to dispense controlled substances in schedules II through V as a practitioner. GX 7. Respondent did not file a renewal application prior to the expiration of his registration. Rather, on or about March 24, 2006, Respondent filed an application. GX 6. The actual application form is not, however, part of the record.[1]

On May 16, 2006, apparently after a conversation with a DEA Diversion Investigator (DI) regarding the application, Respondent submitted a letter to the DI. RX C. The letter's opening paragraph stated: ''The purpose of this letter is to request withdrawal of my recent attempt to obtain an extension and renewal of [my] DEA certificate.'' *Id.* at 1. Later in the letter, Respondent further wrote: ''I request that you permit me to withdraw the current application for renewal, so that I may in the future submit [a] new application for a different DEA certificate number.'' *Id.* at 2.

On October 25, 2006, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause which proposed the denial of Respondent's ''pending application.'' ALJ Ex. 1. On some date not later than November 22, 2006, Respondent received the Order to Show Cause. ALJ Ex. 2.

### Discussion

Under a DEA regulation, ''[a]n application may be amended or withdrawn *without permission of the Administrator* at any time before the date on which the applicant receives an order to show cause pursuant to § 1301.37.'' 21 CFR 1301.16(a) (emphasis added). The same regulation further provides that ''[a]n application may be amended or withdrawn with permission of the Administrator at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.'' *Id.*

As the regulation makes plain, an applicant's receipt of an Order to Show Cause is the operative event in determining whether he must obtain the Agency's permission to withdraw his application. When an applicant seeks to withdraw an application prior to his receipt of the Order to Show Cause, he is entitled to do so as a matter of right.

Respondent's May 2006 letter provides a clear and manifest expression of his intent to withdraw his application. Indeed, it is hard to imagine how Respondent could have made his intent to withdraw any clearer. *See* RX C, at 1 (''The purpose of this letter is to request withdrawal''); *id.* at 2 (''I request that you permit me to withdraw the current application for renewal''). Moreover, because at the time he requested to withdraw, Respondent had not been served with

[1] It appears that Respondent filed the form for a renewal application and not the form for a new application.