

chemical. DEA has previously held that "an applicant's request to distribute [PPA] constitutes a ground under factor five for denial" of an application. ANM Wholesale, 69 FR 11652, 11653 (2004); see also Shani Distributors, 68 FR 62324 (2003). In light of the FDA's advisory, Respondent's proposal to sell PPA raises a serious concern that the purchasers of these products would ultimately use them to manufacture methamphetamine.

Having considered all of the statutory factors, I conclude that granting the application would be inconsistent with the public interest. In particular, I find that Respondent's proposal to sell into the non-traditional market, his lack of experience in distributing List I chemicals, his evident lack of business knowledge, his provision of inadequate information regarding potential customers, and his proposal to sell PPA, greatly outweigh Respondent's lack of a criminal record and the finding that there is no evidence of non-compliance with applicable laws.

#### Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) and 0.104, I hereby order that the previously submitted application of John Vanags, d/b/a Distribution General, for a DEA Certificate of Registration as a distributor of List I chemicals be, and it hereby is, denied. This order is effective August 11, 2006.

Dated: July 5, 2006.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. E6-10924 Filed 7-11-06; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### David M. Starr Denial of Application

On February 4, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David M. Starr (Respondent), d/b/a Northern Starr Products. The Show Cause Order proposed to deny Respondent's application for a DEA Certificate of Registration as a distributor of List I chemicals on the ground that Respondent's registration would be inconsistent with the public interest. See 21 U.S.C. 823(h).

The Show Cause Order specifically alleged that Respondent was proposing to sell ephedrine and pseudoephedrine

products to gas stations and convenience stores in the Milwaukee, Wisconsin area, and that these retail outlets constitute the "gray market" for these products. The Show Cause Order alleged that there is a "high incidence of diversion" of ephedrine and pseudoephedrine products from this market into the illicit manufacture of methamphetamine and that methamphetamine availability "has been on the increase in the Western district of Wisconsin." See Show Cause Order at 2. Finally, the Show Cause Order alleged that Respondent had no experience in distributing List I chemicals and that granting Respondent's registration "would likely lead to increased diversion of List I chemicals." *Id.* at 4.

The Show Cause Order was served by certified mail, return receipt requested, and on February 16, 2005, Respondent acknowledged receipt. Since that time, neither Respondent, nor anyone purporting to represent him, has responded. Because (1) more than thirty days have passed since Respondent's receipt of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. See 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material in the investigative file and make the following findings.

#### Findings

Ephedrine and pseudoephedrine are List I chemicals that, while having therapeutic uses, are easily extracted from lawful products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance. See 21 U.S.C. 802(34); 21 CFR 1308.12(d). As noted in numerous prior DEA orders, "methamphetamine is an extremely potent central nervous system stimulant." A-1 Distribution Wholesale, 70 FR 28573 (2005). Methamphetamine abuse has destroyed lives and families, ravaged communities, and created serious environmental harms.

Respondent is the sole owner and operator of Northern Starr Products. Northern Starr distributes a variety of novelty items to gas stations and a few convenience stores in the Milwaukee area. The business is located at Respondent's residence in West Bend, Wisconsin.

On May 30, 2002, Respondent submitted to DEA an application for a registration as a distributor of the List I chemicals ephedrine and pseudoephedrine. On November 7, 2002, two DEA Diversion Investigators (DIs) met with Respondent to conduct a

pre-registration investigation. Respondent proposed to sell eleven different List I chemical products including two tablets packs of such over-the-counter products as Advil Cold and Sinus, Tylenol Allergy/Sinus, Nyquil & Dayquil. Respondent, however, also proposed to sell several products containing 25 mg of ephedrine in 60-count bottle sizes.

Respondent informed the DIs that he had no previous experience handling List I chemical products. Respondent further advised the DIs that the business was run out of the basement of his home and that he is the sole employee. The home is located in a residential development, which is surrounded by farmland and prairie land.

Respondent told the DIs that he would store List I chemical products in a closed-off area of the basement. According to the investigative file, the home has door knob locks on the front and back doors. The investigative file contains no indication that Respondent's home has an alarm system.

Respondent also discussed with the DIs the record keeping requirements for List I chemicals; Respondent appeared to understand them. Respondent also provided the DIs with the name and address of his supplier, as well as the names and addresses of the customers who he expected would purchase List I chemical products. Respondent's proposed supplier has a valid DEA registration. Moreover, the investigative file contains no adverse information with respect to any of Respondent's proposed customers. Finally, the investigative file contains no adverse information with respect to Respondent's compliance with applicable laws or criminal history.

#### Discussion

Under 21 U.S.C. 823(h), an applicant to distribute List I chemicals is entitled to be registered unless I determine that the registration would be inconsistent with the public interest. In making that 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.*

“[T]hese factors are considered in the disjunctive.” Joy’s Ideas, 70 FR 33195, 33197 (2005). I “may rely on any one or combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked or an application for a registration be denied.” *Id.* See also Energy Outlet, 64 FR 14,269 (1999). In this case, I conclude that factors one, four, and five establish that Respondent’s application should be denied.

*Factor One—Maintenance of Effective Controls Against Diversion*

The investigative file does not establish that Respondent would fail to properly comply with DEA’s regulations pertaining to recordkeeping and reports. But “the adequacy [of an] applicant’s systems for monitoring the receipt, distribution, and disposition of List 1 chemicals,” 21 CFR 1309.71(b)(8), is only one part of the inquiry under factor one.

Determining whether an applicant will provide proper physical security of listed chemicals is also critical in evaluating the effectiveness of an applicant’s controls against diversion. See 21 CFR 1309.71(b). Here, the investigative file contains information indicating that Respondent would not provide proper physical security for List I chemical products. The investigative file indicates that Respondent proposed to store List I chemicals in the basement of his home. The home, however, has door knob locks and apparently nothing more. See *id.* at 1309.71(b)(3) (requiring consideration of “[t]he type of building construction comprising the facility and the general characteristics of the building or buildings”). Moreover, there is no evidence that Respondent has an alarm system in place at his residence. See *id.* at 1309.71(b)(4) (requiring consideration of “[t]he availability of electronic detection and alarm systems”). Finally, there is nothing in the investigative file indicating that Respondent was willing to upgrade the security of his proposed location to provide adequate protection against diversion through theft. Cf. Xtreme Enterprises, 67 FR 76195, 76197 (2002). This factor thus weighs heavily in favor of denying Respondent’s application. See Jay Enterprises, 70 FR 24620, 24621 (2005).

*Factors Two and Three—Compliance With Applicable Law and the Applicant’s Prior Record of Relevant Criminal Convictions*

The investigative file contains no evidence establishing that Respondent is not in compliance with applicable Federal, State, or local laws. Moreover, Respondent has never been convicted of a criminal offense involving controlled substances or chemicals under Federal or State law. Both factors thus weigh in favor of granting Respondent’s application.

*Factor Four—Past Experience in the Manufacture or Distribution of Controlled Substances*

Respondent acknowledged that he has no prior experience in the manufacture or distribution of List I chemicals. Because of the potential for diversion, DEA precedent holds that an applicant’s lack of experience in distributing List I chemicals is a factor which weighs heavily against granting an application for a registration. See Jay Enterprises, 70 FR at 24621; ANM Wholesale, 69 FR 11652, 11653 (2004); Cf. Xtreme Enterprises, 67 FR at 76197. Respondent’s lack of experience thus weighs against granting the application.

*Factor Five—Other Factors That Are Relevant to and Consistent With Public Health and Safety*

Numerous DEA cases recognize that the sale of certain 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 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 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 [gray 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”).

Moreover, these seizures have frequently found high-strength, high count List I chemical products, thus indicating that these are the preferred products for illicit methamphetamine manufacturers. See OTC Distribution, 68 FR at 70541, MDI Pharmaceuticals, 68 FR at 4236. Respondent proposed to sell similar high strength, high count products. Moreover, all of Respondent’s proposed customers participate in the non-traditional market for ephedrine and pseudoephedrine products, and a significant portion of Respondent’s proposed business would violate recently enacted provisions of Wisconsin law.<sup>1</sup> See Joy’s Ideas, 70 FR 33195, 33199 (2005).

DEA final orders recognize 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, substantial and compelling”); Jay Enterprises, 70 FR at 24621 (noting “heightened risk of diversion” should application be granted); Cf. Xtreme Enterprises, 67 FR at 76197. 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.

Furthermore, DEA has repeatedly denied an application when an applicant proposed to sell into the non-traditional market and analysis of one of the other statutory factors supports the conclusion that granting the application would create an unacceptable risk of diversion. Thus, in Cf. Xtreme Enterprises, my predecessor denied an application observing that respondent’s “lack of criminal record, compliance

<sup>1</sup> The State of Wisconsin recently enacted legislation to prevent the diversion of List I chemical products from their legitimate uses into the illicit manufacture of methamphetamine. See 2005 Wis. Act 14. Under Wisconsin law, pseudoephedrine products are now classified as a Schedule V controlled substance unless they are sold in liquid form or as a liquid-filled gelcap. See Wis. Stat. § 961.01; § 961.22. As such, pseudoephedrine products “may be sold at retail only by a registered pharmacist or \* \* \* by a person who is working under the directions of a registered pharmacist when sold in a retail establishment.” *Id.* § 961.23.

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.” 67 FR at 76197. 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 Prachi Enterprises, 69 FR 69407, 69409 (2004).

Here, there are several factors which support the conclusion that granting the application would be inconsistent with the public interest. Respondent’s proposed security measures are plainly inadequate and are thus grounds alone to deny the application. Moreover, Respondent lacks experience in the distribution of List I chemicals and proposes to sell into the non-traditional market. I thus conclude that granting Respondent’s application would be “inconsistent with the public interest.” 21 U.S.C. 823(h).

#### Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) & 0.104, I hereby order that the previously submitted application of David M. Starr, d/b/a Northern Starr products, for a DEA Certificate of Registration as a distributor of List I chemicals be, and it hereby is, denied. This order is effective August 11, 2006.

Dated: July 5, 2006.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. E6-10925 Filed 7-11-06; 8:45 am]

BILLING CODE 4410-09-P

#### MISSISSIPPI RIVER COMMISSION

##### Sunshine Act; Notice of Meetings

###### AGENCY HOLDING THE MEETINGS:

Mississippi River Commission.

**TIME AND DATE:** 7 p.m., August 14, 2006.

**PLACE:** On board MISSISSIPPI V at Riverside Park Landing, La Crosse, WI.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District

Commander’s overview of current project issues within the St. Paul District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

**TIME AND DATE:** 6:30 p.m., August 15, 2006.

**PLACE:** On board MISSISSIPPI V at City Front, Dubuque, IA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander’s overview of current project issues within the Rock Island District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 a.m., August 18, 2006.

**PLACE:** On board MISSISSIPPI V at Melvin Price Lock & Dam, Alton, IL.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander’s overview of current project issues within the St. Louis District and; (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 a.m., August 21, 2006.

**PLACE:** On board MISSISSIPPI V at City Front, New Madrid, MO.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander’s overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

**TIME AND DATE:** 9 a.m., August 22, 2006.

**PLACE:** On board MISSISSIPPI V at Mud island, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander’s overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of engineers.

**TIME AND DATE:** 9 a.m., August 23, 2006.

**PLACE:** On board MISSISSIPPI V at City Front, Greenville, MS.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander’s overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of engineers.

**TIME AND DATE:** 9 a.m., August 25, 2004.

**PLACE:** On board MISSISSIPPI V at Cenac Towing Co. Dock, Houma, LA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander’s overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Gambrell, telephone 601-634-5766.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 06-6194 Filed 7-10-06; 1:21pm]

BILLING CODE 3710-GX-M