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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on June 16, 2009, a proposed Consent Decree (Decree) in the case of *United States* v. *American Laboratories, Inc.*, Civil Action No. 8:09–CV–00194, was lodged with the United States District Court for the District of Nebraska. Under this Consent Decree, the Settling Defendant is required to pay a total of $440,000 in civil penalty for alleged violations of the Clean Air Act, and recover and reuse at 93% of total isopropyl alcohol and implement best available control technology at its pharmaceutical manufacturing plant in Omaha, Nebraska.

For thirty (30) days after the date of this publication, the Department of Justice will receive 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. In either case, the comments should refer to *United States* v. *American Laboratories, Inc.*, D.J. Ref. No. 90–5–2–1–08313.

The Decree may be examined at the Office of the United States Attorney, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102. During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *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 (with attachments) or $8.00 (without attachments) (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–14]

CBS Wholesale Distributors; Grant of Renewal Application and Dismissal of Proceeding

On January 5, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to CBS Wholesale Distributors (Respondent), of Hephzibah, Georgia. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration which authorizes it to distribute List I chemicals, and the denial of any pending applications to renew or modify the registration, on the ground that his ''registration is inconsistent with the public interest.'' Show Cause Order at 1.

More specifically, the Show Cause Order alleged that Respondent is ''currently registered to distribute the List I chemicals pseudoephedrine and ephedrine,'' *id.* at 2, and that both chemicals are ''commonly used to illegally manufacture methamphetamine, a schedule II controlled substance.'' *Id.* at 1. The Show Cause Order alleged that ''there exists a 'gray market' in which certain pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion,'' and that these establishments ''continue to be the primary source for precursors to be diverted to illicit methamphetamine laboratory operations in many states.'' *Id.* at 1–2.

Next, the Show Cause Order alleged that DEA had retained ''an expert in the field of retail marketing and statistics to analyze national sales data for over-the-counter non-prescription drugs.'' *Id.* at 2. The Order alleged that the expert had determined that ''the average small store could expect to sell monthly only about $10.00 to $30.00 worth of pseudoephedrine products,'' and ''that the potential for sales of combination ephedrine products [was] only about one-fourth of those sales levels.'' *Id.*

The Show Cause Order further alleged that Respondent's list I customers ''are almost exclusively convenience stores and gas stations, which are part of the gray market for diversion'' of these products, *id.* at 2, and that Respondent's ''sales of combination ephedrine products are inconsistent with the known legitimate market and known end-user demand for products of this type.'' *Id.* at 3. The Order further alleged that Respondent is ''serving an illegitimate market and [that its] continued registration would likely lead to increased diversion of List I chemicals.'' *Id.*[1]

Respondent timely requested a hearing on the allegations. The matter was placed on the docket of the Agency's Administrative Law Judges (ALJ), and an ALJ conducted a hearing in Savannah, Georgia on December 4–5, 2007. At the hearing, both the Government and Respondent elicited the testimony of witnesses and submitted documentary evidence. Following the hearing, both parties filed briefs containing their proposed findings of fact, conclusions of law, and arguments.

On June 10, 2008, the ALJ issued her recommended decision (ALJ). In her decision, the ALJ found persuasive the expert testimony of the Agency's expert witness that the average monthly sale of ephedrine products to meet legitimate demand is $14.39 and that Respondent's customers were purchasing between five to eighty times this amount. ALJ at 33. The ALJ thus concluded that Respondent's sales of ephedrine products ''to gray market entities are so grossly excessive that there is a high probability that these products are being diverted for illicit purposes, and that this fact alone outweighs'' the evidence that Respondent provided adequate physical security for the products, maintained adequate records, and was selling only to customers who had obtained the required certification under the Combat Methamphetamine Epidemic Act. *Id.* at 34. The ALJ thus also concluded that ''Respondent's continued registration would be inconsistent with the public interest,'' *id.* at 36, and recommended that its registration be revoked and that any pending applications to renew or

[1] The Show Cause Order also alleged that Respondent had ''assisted * * * a former DEA registrant, in maintaining his customer base [of convenience stores and gas stations] for combination ephedrine products, after he surrendered his * * * registration for cause.'' Show Cause Order at 2. The Government, however, offered no evidence in support of this allegation.