

by 21 U.S.C. 823 adn 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Performance Construction, Inc., as a manufacturer and/or distributor, be denied. This order is effective April 14, 2002.

Dated: February 22, 2002.

**Asa Hutchinson,**  
*Administrator.*

#### Certificate of Service

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Daniel V. Heleski, Performance Construction, Inc., 308 West Highland Drive, Lakeland, Florida 33813.

Karen C. Grant.

[FR Doc. 02-5226 Filed 3-4-02; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### State Petroleum Inc.; Denial of Application

On or about January 23, 2001, the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to State Petroleum, Inc. (State Petroleum), located in Dearborn, Michigan, notifying it of an opportunity to show cause as to why the DEA should not deny in application, dated June 17, 2000, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrin, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified State Petroleum that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received, as indicated by the signed postal return receipt, received by DEA February 12, 2001. Since that time, no further response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that State Petroleum is deemed to have waived its right to a

hearing. After considering relevant material from the investigate file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about June 17, 2001, an application was received by the DEA Chemical Operations Registration section on behalf of State Petroleum for DEA registration as a distributor of the two above-mentioned List I chemicals. The DEA pre-registration inspection on July 7, 2001, revealed that State Petroleum had no prior experience in distributing List I chemical products. A corporate representative stated to DEA investigators that State Petroleum was in the business of wholesaling automotive chemical and petroleum products. The DEA inspection revealed State Petroleum appeared unprepared to accept the responsibilities of a DEA registrant. The inspection noted deficiencies in State Petroleum's proposed recordkeeping system that clearly show the firm's ability to comply with DEA's recordkeeping requirements. The DEA investigation also revealed a number of State Petroleum's proposed supplier was out of business and a random sampling of proposed customers either were not interested in distributing List I chemical products, or were already receiving List I chemical products from other suppliers.

Pursuant to 21 U.S.C. § 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

- (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.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See, e.g. Energy Outlet* 64 FR 14,269 (1999). *See also Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

The Administrator finds factors one, four, and five relevant to this case.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate recordkeeping arrangements, in that State Petroleum intended to sell List I chemicals solely on a "cash and carry" basis, and there would be no computerized database with which to track sales to determine whether thresholds and recordkeeping requirements were being met. State Petroleum admitted that its proposed "cash and carry" plan for distribution of List I chemical products would be inadequate to meet DEA recordkeeping requirements.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that State Petroleum has no previous experience related to handling or distributing listed chemicals.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that State Petroleum is unprepared to successfully meet the requirements of a DEA List I chemical registrant. State Petroleum admitted its proposed recordkeeping system would be inadequate to comply with DEA requirements. State Petroleum further could not explain any planned controls against diversion.

In addition, State Petroleum's proposed supplier was out of business, and a random sampling of its proposed customers either had no interest in List I chemical products, or were already receiving their List I chemical products from other suppliers. Thus State Petroleum failed to provide DEA with information demonstrating it had a legitimate source for List I chemical

products; and further failed to provide DEA with information demonstrating it had a legitimate customer base for List I chemical products.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of State Petroleum.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by State Petroleum, Inc. be denied. This order is effective April 4, 2002.

Dated: February 22, 2002.

**Asa Hutchinson,**  
*Administrator.*

#### **Certificate of Service**

This is to certify that the undersigned, on February 25, 2002, placed a copy of the Final Order referenced in the enclosed letter in the interoffice mail addressed to Wayne Patrick, Esq., Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537; and caused a copy to be mailed, postage prepaid, registered return receipt to Mr. Mohammed Saghir, State Petroleum, Inc., 6200 Miller Road, Dearborn, Michigan 48126.

Karen C. Grant.

[FR Doc. 02-5225 Filed 3-4-02; 8:45 am]

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## **DEPARTMENT OF JUSTICE**

### **Drug Enforcement Administration**

#### **Transtar Distributors, Inc.; Revocation of Registration**

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Transtar Distributors, Inc. (Transtar), located in Orlando, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Transtar's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Transtar and its owner/president, Nabil Maswadeh (Maswadeh) of an opportunity to request a hearing to show

cause as to why the DEA should not revoke its DEA Certificate of Registration, 004662TIY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Transtar that, should no request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On August 16, 2000, the OTSC was returned to DEA, marked "Return To Sender—Unclaimed." No request for a hearing or any other response was received by DEA from Transtar or Maswadeh nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Transtar is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Administrator finds as follows. List I chemicals are chemicals that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine is a List I chemical that is commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A "regulated person" is a person who manufactures, distributes, imports, or exports inter alia a listed chemical. 21 U.S.C. 802(38). A "regulated transaction" is inter alia a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Administrator finds all parties mentioned herein to be regulated, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The DEA investigation shows that at the time of Transtar's pre-registration investigation on December 17, 1999, Maswadeh was personally served with the DEA notices informing him that ephedrine and pseudoephedrine are diverted for use in clandestine methamphetamine laboratories, as well as the notice of informing him that possession or distribution of a listed chemical knowing or having reasonable

cause to believe that the listed chemical will be used to manufacture a controlled substance is a violation of the Controlled Substances Act.

The DEA investigation shows that by March, 2000, Transtar was amassing a large quantity of pseudoephedrine. On March 20, 2000, DEA investigators observed 19 large boxes containing approximately 100 cases of pseudoephedrine being delivered to Transtar. The shipment was received by a business associate of Maswadeh, who used a fictitious name when signing for the shipment. Maswadeh was present when this shipment was received.

Between March 20 and March 24, 2000, DEA investigators observed Maswadeh and his associate remove numerous large cardboard boxes from Transtar and place them into a storage unit. On March 24, 2000, DEA investigators observed Maswadeh ship three large boxes to California. A subsequent search of the boxes revealed approximately 3,036 bottles of pseudoephedrine, each bottle containing 120 tablets, for a total of 364,320 dosage units. The manufacturer's lot numbers and expiration dates had been scraped off of the bottles. The shipping label bore fictitious names for both the shipper and receiver, and also bore a fictitious address for the shipper.

During this same time period, DEA investigators on several occasions observed Maswadeh and his associate place items in a dumpster located near Transtar. A search of the dumpster revealed 24 large cardboard boxes bearing inscriptions indicating that the boxes had contained pseudoephedrine. A subsequent search of the dumpster revealed numerous labels containing lot numbers that had been scraped off pseudoephedrine bottles. Additional items recovered from the dumpster included: receipts and shipping documents indicating Transtar was receiving large amounts of pseudoephedrine from numerous suppliers; five sealed bottles of ephedrine with their lot numbers and expiration dates removed; and a Federal Express Airbill indicating that a 90 pound shipment was sent to California on March 3, 2000. The Airbill showed address information consistent with the California address to which Maswadeh had sent shipments of pseudoephedrine. The Airbill bore a fictitious name and address for the shipper.

On March 25 and 26, 2000, DEA investigators observed Maswadeh removing boxes of pseudoephedrine from the above-referenced storage unit. Also during this time, Maswadeh was observed placing items into a common