Additional Sites not owned by the debtors will be discharged under the bankruptcy laws but will be liquidated and satisfied as general unsecured claims if and when the United States or the States undertake enforcement activities in the ordinary course. Finally, the Settlement Agreement provides the United States with an allowed claim of $1,176,000 for civil penalties for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, at an Eagle-Picher facility in Joplin, Missouri.

The Department of Justice will receive comments relating to the proposed Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Eagle-Picher Industries, Inc., et al.*, D.J. Ref. No. 90–11–3–747. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the Southern District of Ohio, U.S. Post Office & Courthouse, 5th & Walnut Streets, Room 220, Cincinnati, Ohio 45202; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Settlement Agreement without attachments, please enclose a check in the amount of $13.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of the Settlement Agreement with attachments, please enclose a check in the amount of $33.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

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

[FR Doc. 95–8484 Filed 4–5–95; 8:45 am]

**BILLING CODE 4410–01–M**

## Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Fort Morgan*, Civil Action No. 94–C–492, was lodged on March 21, 1995 in the United States District Court for the District of Colorado. The consent decree settles an action brought under the Clean Water Act (the ''Act''), 33 U.S.C. 1251 et seq. seeking an injunction and civil penalties for the City of Fort Morgan's violations of the Act and for violations of the General Pretreatment Regulations, 40 CFR Part 403. Pursuant to the consent decree, the City has agreed to pay a civil penalty of $268,000 and agreed to institute a comprehensive compliance program to bring the City into compliance with all requirements of the pretreatment regulations.

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 for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Fort Morgan*, DOJ Ref. #90–5–1–1–4041.

The proposed consent decree may be examined at the office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, Colorado 80294; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel Gross,**

*Acting Chief, Environmental Enforcement Section.*

[FR Doc. 95–8483 Filed 4–5–95; 8:45 am]

**BILLING CODE 4410–01–M**

## Antitrust Division

## Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum (''PERF'') Project No. 92–25

Notice is hereby given that, on December 16, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Conoco Inc., acting on behalf of the participants in the PERF Project No. 93–25, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Amoco Oil Co., Naperville, IL; BP Oil Co., Cleveland, OH; Conoco Inc., Houston, TX; Gas Research Institute, Chicago, IL; Oryx Energy, Dallas, TX; Texaco Inc., Port Arthur, TX; ANR Pipeline, Detroit, MI; Chevron Research & Technology, Richmond, CA; Exxon Research & Engineering Co., Florham Park, NJ; Mobil Inc., Princeton, NJ; Shell Development C., Houston, TX; and Union Oil Company of California, Brea, CA.

The nature and objectives of the research program performed in accordance with PERF Project No. 93–25 are to perform remediation studies of contaminated groundwater via air sparging, biosparging, or other innovative delivery systems.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 95–8485 Filed 4–5–95; 8:45 am]

**BILLING CODE 4410–01–M**

## Drug Enforcement Administration

**[Docket No. 93–51]**

## Frank's Corner Pharmacy; Revocation of Registration

On June 4, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Frank's Corner Pharmacy (Respondent), of Detroit, Michigan, proposing to revoke its DEA Certificate of Registration, BF1175466, and deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

On July 23, 1993, Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Detroit, Michigan on May 3 and 4, 1994. On August 29, 1994, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommended Ruling

recommending that Respondent's registration be suspended for a period not exceeding six months. The Government filed exceptions to Judge Tenney's opinion on September 19, 1994. Respondent filed its exceptions to Judge Tenney's opinion and its response to the Government's exceptions on September 30, 1994, and filed corrections to those exceptions on October 11, 1994.

On October 14, 1994, the administrative law judge transmitted the record of these proceedings, including the exceptions, to the Deputy Administrator. The Deputy Administrator has considered the record in its entirety and hereby issues his final order pursuant to 21 CFR 1316.67, based upon the findings of fact and conclusions of law as set forth herein.

The administrative law judge found that, in September 1986, Alvin Goldstein, R.Ph (Mr. Goldstein), a pharmacist licensed by the State of Michigan, became a 50% stockholder owner of Respondent, a pharmacy licensed and operated in the State of Michigan. From September 1987 onward, Respondent's principal stockholder and operator has been Mr. Goldstein.

On October 5, 1989, the Michigan Board of Pharmacy (the Board) filed an administrative complaint charging Respondent and Mr. Goldstein with violations of Michigan regulations pertaining to controlled substance recordkeeping and shortages of controlled substances based upon an audit conducted by the Board on June 29, 1988. The Board's initial order was appealed to the Michigan Circuit Court for the County of Oakland where it was affirmed in part, and reversed in part, on January 14, 1994. The circuit court affirmed the Board's order to the extent it found that Respondent and Mr. Goldstein: (1) Were responsible for shortages of controlled substances (including Darvocet, Tylenol with codeine #4, and Valium); (2) were negligent in the practice of pharmacy; (3) were incompetent under applicable Michigan State law based upon a 14% shortage of Darvocet; (4) failed to comply with a state administrative subpoena by not supplying the state investigators with records required to be kept pursuant to Michigan law; and (5) failed to produce drug utilization reports as required under Michigan law.

The circuit court remanded the case back to the Board which issued its Amended Final Order on Remand on April 22, 1994. The amended order suspended Respondent's controlled substances license for a period of three months. Mr. Goldstein was ordered to pay a $5,000 fine and placed on probation for one year and Respondent pharmacy also was placed on probation for one year.

On February 28, 1991, DEA conducted an audit of four controlled substances covering the period June 6, 1990 through February 28, 1991, following reports of excessive purchases of controlled substances by Respondent from local drug distributors. The audit revealed a shortage of 1,870 dosage units of Valium 10 milligram tablets.

Respondent's computer dispensing records for the period covering February 2, 1990 through February 7, 1991, revealed that 78 entries lacked corresponding paper prescriptions which should have been retained by Respondent. Mr. Goldstein subsequently found, and produced at the hearing, a number of prescriptions which he maintained had been accidentally placed at his home with other prescriptions for non-controlled substances. Judge Tenney found that Mr. Goldstein was responsible for the unaccounted prescriptions.

In addition, the investigation revealed that Respondent dispensed a combination of glutethimide (brand name ''Doriden'') and Tylenol #4, a combination known to have a high abuse potential and which typically is not prescribed for a legitimate medical purpose. Mr. Goldstein testified that he did not agree with manufacturers' guidelines with respect to glutethimide because new studies may refute those guidelines. He also testified that he did not receive any information from the State of Michigan, the DEA or any other source notifying him that glutethimide in combination with Tylenol #4 is dangerous or should not be prescribed in excess of seven dosage units.

Judge Tenney found that Mr. Goldstein knew or should have known of the dangers of combining the controlled substances and chose to ''shut his eyes'' while filling prescriptions. He further found that the prescriptions were not issued in the usual course of professional treatment.

On several occasions Respondent dispensed two prescriptions of the same or similar controlled substance to the same individual within days of dispensing the original prescription. The prescriptions in question typically were issued by different physicians. In one such example, a physician issued an individual a prescription for 30 dosage units of Tylenol #3 on January 24, 1990, which was dispensed by Respondent on January 25, 1990. On January 29, 1990, a second physician issued a 30 dosage unit prescription for Tylenol #4 to the same individual, which was dispensed by Respondent on the same date-four days after the initial prescription was dispensed.

This patter continued approximately every two months through February 1991, with the individual obtaining two or more prescriptions for Tylenol #3 and #4, from a combination of four physicians, which Respondent would subsequently dispense within days of each prescription. At the hearing on this matter, Mr. Goldstein testified that he had contacted each of the prescribing physicians who indicated that, although the individual was a drug addict, Mr. Goldstein should not be concerned about the prescriptions.

Prescriptins written for two other individuals were filled under similar circumstances. Respondent received a prescription issued to one individual for 30 dosage units of Tylenol #3 on June 4, 1990, which was dispensed the same day. Respondent then dispensed another prescription for Tylenol #3 written to the same person by a second physician on June 7, 1990. Under the instructions of the first prescription, this individual should not have finished the prescription for seven days. Respondent dispensed the second prescription only three days after the first.

On January 10, 1990, a third individual was issued a prescription for 30 dosage units of Tylenol #4 with one refill. This prescription was dispensed by Respondent on January 15, 1990. Two days later, Respondent dispensed a second prescription for 30 dosage units of Tylenol #4 to the individual based on the prescription of a different physician. Throughout 1990, this individual received two prescriptions for Tylenol # approximately every two months, from two different physicians. The prescriptions were dispensed by Respondent within days of each other. One physician informed Mr. Goldstein that this individual was a codeine addict.

The DEA investigator, who testified at the hearing, placed some reliance on the number of days set forth in Respondent's computer records as to the amount of days that should pass prior to refilling prescriptions. In response, Mr. Goldstein testified that his computer record of the number of days that should pass prior to refiling a prescription is an arbitrary number and does not represent the number of days that should pass before a prescription is refilled. Judge Tenney, while accepting Mr. Goldstein's explanation of the numbers, found that the practice of dispensing prescriptions for the same controlled substances to one patient, from several doctors, over an excessive

period of time to be in violation of 21 CFR 1306.04.

The computer printout of prescriptions from Respondent obtained through the audit revealed that one individual was dispensed 40 Tylenol #3 tablets two times on January 17, 1990, based on one prescription. On April 5, 1990, a ''double entry'' also was noted for a prescription for Valium to the same person. Mr. Goldstein testified that the individual required two separate identification numbers for insurance billing purposes, so that Respondent could bill the insurance carrier for the cost of the prescription and Medicaid for the co-payment. Mr. Goldstein offered the same explanation for the ''double dispensing' of Tylenol #3 to another individual on November 26, 1990.

The administrative law judge also found persuasive evidence of other recordkeeping and dispensing violations, including dispensing a prescription without a DEA registration number on the prescription; dispensing three refills of Tylenol #3 to an individual without authorization from the prescribing physician; and dispensing a prescription that was not signed by the issuing physician.

Judge Tenney noted several possible mitigating factors. First, Respondent is located in a low social economic area where many patients are Medicaid recipients. Second, Mr. Goldstein's contentions that he was not informed that glutethimide had been reclassified from a Schedule III to a Schedule II controlled substance, nor was he put on notice as to any potential danger concerning glutethimide. Third, Mr. Goldstein testified, as evidence toward his care in dispensing controlled substances, that he would confiscate prescriptions that he felt were not legitimate.

In determining whether Respondent's continued registration by DEA would be inconsistent with public interest, as that term is used under 21 U.S.C. 823 and 824, the Deputy Administrator considers the following factors set forth in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority;

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances;

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing, of controlled substances;

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances; and

(5) Such other conduct which may threaten public health and safety.

The Deputy Administrator is not required to make findings with respect to each of the above enumerated factors, but, instead, has the discretion to give each factor the weight he deems appropriate, depending on the facts and circumstances of each case. *See, Henry J. Schwartz, Jr., M.D.*, 54 16422 (1989).

The administrative law judge found that the Government had met its burden of proof with respect to factors (1), (2), (4), and (5) as set forth under 21 U.S.C. 823(f). Factor (1) was met based upon the Michigan Board of Pharmacy proceedings taken against Respondent and Mr. Goldstein. The ultimate findings established significant shortages for several controlled substances pursuant to an audit completed in 1989, and also encompassed other recordkeeping violations.

Judge Tenney found that the DEA had met its burden of proof with respect to Factor (2) based upon indications from Respondent's records that Respondent had dispensed unauthorized prescriptions as reflected in the fact that Respondent could not account for 19 paper copies of prescriptions. Additionally, Respondent, on numerous occasions, dispensed a prescription refill before the prior prescription could have been completely consumed by the patient, as determined by the prescribing physician's directions or based on the estimates Respondent had placed in its dispensing records, and that on many occasions the original and the refills were issued by different physicians. Judge Tenney noted that a pharmacy may be found in violation of the public interest where the pharmacy dispensed controlled substances before the prior expiration period had expired and based upon evidence that the pharmacy had accepted many prescriptions from various physicians for the same substance and patient. *See Ralph J. Bertolino's Pharmacy*, 55 FR 4729 (1990). Additionally, where Respondent knowingly dispensed these refills to individuals who were characterized by their physicians as ''addicts'', Respondent's actions pose a threat to public health and safety.

The administrative law judge found factor (4) was met by evidence that Respondent dispensed a prescription without a physician's signature and dispensed another prescription without a DEA registration number in violation of 21 CFR 1306.04(a). Further, the shortages in Respondent's controlled substance inventory, as revealed by the DEA audit, constitute a violation of 21 U.S.C. 842(a)(5).

Finally, concerning factor (5), and with regard to Mr. Goldstein's testimony that the glutethimide and Tylenol prescriptions were ''legal'' and therefore he was not concerned about dispensing combinations of these drugs, Judge Tenney found that a pharmacy has a responsibility, with respect to controlled substances, to do more than merely fill prescriptions as written by a physician. A pharmacy is obligated to refuse to fill a prescription if it knows, or has reason to know that the prescription was not written for a legitimate medical purpose. *Medic-Aid Pharmacy*, 55 FR 30043 (1989). Indications that a prescription is not for legitimate medical use include filling prescriptions for customers who received controlled substances in quantities far exceeding those recommended by the Physician's Desk Reference, too frequently and for excessive periods of time. *Id.* Verification of the prescription with the prescribing doctor is not necessarily enough. *See United States* v. *Hayes*, 595 F. 2d 258, 260 (5th Cir. 1989). Judge Tenney found that Mr. Goldstein purposely ignored suspicious prescribing practices by dispensing prescriptions clearly not issued for a legitimate medical purpose by presuming that the prescriptions were legal because the physicians' signatures did not appear to be forged.

Judge Tenney recommended that Respondent's registration be suspended for a period not to exceed six months. He based this recommendation on the fact that the Michigan Board of Pharmacy previously had suspended Respondent's license for three months and had placed Mr. Goldstein on probation for a year and ordered payment of a fine of $5,000, and, therefore, had exacted ''full and fair retribution'' for Respondent's actions. *Charles A. Buscema, M.D.*, 59 FR 42857 (1994).

The Deputy Administrator has carefully reviewed the entire record and adopts all of the administrative law judge's findings of fact, with the exception of the following: (1) Mr. Goldstein's testimony concerning the arbitrary nature of his computer records pertaining to the number of days that should pass before a prescription is refilled; (2) Mr. Goldstein's testimony regarding instances of creating double computer entries for each dispensed prescription as his method of accounting for insurance billing purposes. The Deputy Administrator also concurs with Judge Tenney's conclusion that the Government has met its burden with respect to public

interest factors (1), (2), (4), and (5) under 21 U.S.C. 823(f).

The Deputy Administrator, concurring with the Government's exceptions, does not agree with Judge Tenney's finding that Respondent's location in a low socio-economic area constitutes a mitigating factor for Respondent's numerous violations of the laws and regulations relating to controlled substances. The Deputy Administrator similarly rejects as a mitigating factor, Respondent's plea of good faith ignorance in that he was not actually informed of the reclassification of glutethimide from a Schedule III to a Schedule II controlled substance.

The Deputy Administrator disagrees with, and declines to follow, Judge Tenney's proposed suspension of Respondent's registration. Judge Tenney's reliance on *Buscema* is not applicable to the facts in the instant case. In *Buscema,* Judge Tenney found that Respondent's actions in failing to account for the disposition of Schedule II controlled substances and his subsequent guilty plea to a felony charge of falsifying records concerning controlled substances, occurred over a limited period of time and was motivated by his desire to protect his wife, an employee of his office and a subsequently rehabilitated drug addict suspected of diverting the missing drugs for her own use. In finding that the State of New York had exacted ''full and fair'' retribution and recommending that Dr. Buscema's registration not be revoked, Judge Tenney found, and the Deputy Administrator concurred, that Dr. Buscema had served his probationary sentence, had been discharged from probation two and one-half years early and had accepted responsibility for his conduct and failures regarding his wife's chemical dependency.

The Deputy Administrator finds that the leniency exercised in *Buscema* should not similarly be extended to Respondent in this proceeding. Respondent's numerous recordkeeping violations have resulted in the diversion of large quantities of controlled substances to a number of individuals, including drug addicts. Further, these violations were ongoing while previous violations by the State of Michigan were being appealed, and, therefore, the State of Michigan cannot be found to have exacted its ''retribution'' against Respondent for violations which it never had the opportunity to address. Additionally, as noted in Judge Tenney's thorough Findings of Fact, even aside from the numerous recordkeeping violations, Respondent also diverted large amounts of Tylenol with codeine and glutethimide for no legitimate medical purpose. Finally, contrary to Dr. Buscema's acceptance of responsibility for his actions, Mr. Goldstein, owner of Respondent pharmacy, continues to deny any misconduct, including those State violations upheld on appeal.

The Deputy Administrator finds merit in all of the Government's exceptions, and further finds that Respondent's ongoing violations of Federal and State controlled substance rules and regulations strongly indicate that his continued registration with DEA would not be consistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BF1175466, issued to Frank's Corner Pharmacy, be and it hereby is, revoked, and that any pending applications for registration be denied.

This order is effective May 8, 1995.

Dated: March 30, 1995.

**Stephen H. Greene,**

*Deputy Administrator.*

[FR Doc. 95–8402 Filed 4–5–95; 8:45 am]

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**[Docket No. 93–46]**

## Ellis Turk, M.D.; Revocation of Registration

On April 15, 1993, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ellis Turk, M.D. (Respondent), of Baltimore, Maryland, proposing to revoke his DEA Certificate of Registration, AT2444711, and deny any pending applications for renewal of such registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On November 11, 1993, Respondent voluntarily discharged his counsel and continued *pro se.*

Following prehearing procedures, a hearing was held before Judge Bittner in Arlington, Virginia on November 22, 1993. On February 16, 1994, after the Government submitted its post-hearing brief, Respondent filed Response of Ellis Turk, M.D. to Government's Proposed Findings of Fact, Conclusions of Law and Argument (the ''Respondent's Response''). The Government filed a Motion to Strike Respondent's Response on February 18, 1994, on the grounds that the rules governing DEA administrative hearings (specifically 21 CFR 1316.64) do not permit such a responsive pleading. The Respondent filed a Response to Motion to Strike Respondent's Response on March 9, 1994.

On June 7, 1994, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision recommending that Respondent's DEA registration be revoked and any pending applications be denied. As part of the opinion, Judge Bittner allowed the Government's motion and struck Respondent's Response. Additionally, she allowed the Government's motion to strike specific exhibits filed by Respondent with his post-hearing brief. No exceptions to the Opinion were filed by either party even after an extension of time to ensure service of the opinion on the Respondent.

On July 8, 1994, the administrative law judge transmitted the record to the Deputy Administrator, including the Respondent's Response and the exhibits struck by Judge Bittner. On September 28, 1994, Respondent, through newly retained counsel, filed a Motion to Remand and Open the Record to Hear New Evidence with the Deputy Administrator of the DEA. The Government filed its opposition to Respondent's motion on October 13, 1994.

The Deputy Administrator has considered the record in its entirety, and, enters his final order in this matter pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein. The Deputy Administrator, concurring with the administrative law judge in her decision to strike Respondent's Response and exhibits filed post-hearing, did not consider those documents in rendering his final order.

The administrative law judge found that, in 1987, DEA received approximately ten reports from drug distributors that Respondent had purchased excessive quantities of the controlled substances phentermine and phendimetrazine. On two occasions in December 1988, DEA and Maryland State drug inspectors, pursuant to an administrative inspection warrant, conducted an accountability audit of controlled substances at Respondent's office, covering the period from