intention to bid on the sale of that fertilizer asset.

Paragraph C. of Section IV. enjoins the defendant from directly, indirectly, or through any joint venture, partnership, or other device, requesting, suggesting, urging, or advocating that any other person not bid on, or suggesting that it would not be profitable, desirable, or appropriate for any other person to bid on, the sale of any fertilizer asset located in the United States.

B. Compliance Program and Certification

The Final Judgment acknowledges that defendant currently is not engaged in the fertilizer business and, as a result, suspends all of defendant's compliance obligations under Section VII. of the Final Judgment until such time as defendant re-enters and engages in the fertilizer business during the term of the Final Judgment. If and when defendant re-enters the fertilizer business during the term of the Final Judgment, within thirty (30) days of re-entery defendant must establish and maintain for as long as it engages in the fertilizer business an antitrust compliance program which shall include designating an Antitrust Compliance Officer with responsibility for accomplishing the compliance program. The Antitrust Compliance Officer is required to, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that it is in compliance with the program. The Antitrust Compliance Officer is also required to (1) distribute a copy of the Final Judgment to all officers and directors, and any person who otherwise manages defendant with respect to the fertilizer business, (2) distribute in a timely manner copy of the Final Judgment to any person who succeeds to a position described in Section VII.B.1. of the Final Judgment, (3) brief annually defendant's officers and directors engaged in the fertilizer business on the meaning and requirements of the Final Judgment and the antitrust laws, and (4) obtain annually from each officer or employee designated in Section VII.B.1 and 2. of the Final Judgment a written certification that he or she: (a) Has read, understands, and agrees to abide by the terms of the Final Judgment; (b) understands that failure to comply with the Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer.

Moreover, defendant is required to distribute in a timely manner a copy of the Final Judgment to any person with whom the defendant enters into discussions or negotiations for the possible submission of a joint bid for the acquisition of any fertilizer asset and file with this Court and serve upon plaintiff, within ninety (90) days after the date of defendant's re-entry in the fertilizer business, an affidavit as to the fact and manner of its compliance with this Final Judgment. Defendant is also required to take appropriate action to terminate or modify any activities it uncovers that violate any provision of the Final Judgment.

V

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may being suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

VI

Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to John T. Orr, Chief, Atlanta Field Office, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia, 30303, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry.

VII

Alternative to the Proposed Final Judgment

The Department considered, as an alternative to the proposed Final Judgment, litigation seeking comparable equitable relief. In the view of the Department of Justice, a trial would involve substantial cost to the United States and is not warranted because the Proposed Judgment provides relief that will remedy the violations of the Sherman Act alleged in the Complaint of the United States.

VIII

Determinative Materials and Documents

No materials and documents described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were used in formulating the proposed Final Judgment.

Date: _____

Respectfully submitted,

Karen E. Sampson,

Belinda A. Barnett,

Attorneys for Plaintiff, U.S. Department of Justice, Antitrust Division, 75 Spring Street, S.W., Suite 1176, Atlanta, Georgia 30303, (404) 331–7100.

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BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Charles Milton Waller, D.D.S. Denial of Application

On February 25, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles Milton Waller, D.D.S., of Parkville, Missouri, notifying him of an opportunity to show cause as to why DEA should not deny his application, dated June 6, 1995, for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Missouri. The order also notified Dr. Waller that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received by Dr. Waller on March 4, 1997. No request for a hearing or any other reply was received by the DEA from Dr. Waller or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Waller is deemed to have waived his hearing right. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order

without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that on September 6, 1996, the Missouri Dental Board issued a Disciplinary Order revoking Dr. Waller's license to practice dentistry. The Acting Deputy Administrator finds that in light of the fact that Dr. Waller is not currently licensed to practice dentistry in the State of Missouri, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51, 104(1993).

Here it is clear that Dr. Waller is not currently authorized to handle controlled substances in the State of Missouri, where he has applied for registration with DEA. Therefore, Dr. Waller is not entitled to a DEA registration in that state.

Accordingly, the Acting 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 the application, submitted by Charles Milton Waller, D.D.S., on June 6, 1995, for a DEA Certificate of Registration, be, and it hereby is, denied. This order is effective July 25, 1997.

Dated: June 16, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–16558 Filed 6–24–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Clark Elkhorn Mining Company

[Docket No. M–97–58–C]

Clark Elkhorn Mining Company, P.O. Box 2805, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Sunset Mine No. 2 (I.D. No. 15–17849) located in Pike County, Kentucky. The petitioner proposes to use contactors to obtain undervoltage protection instead of using circuits breakers. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. B & B Anthracite Coal

[Docket No. M–97–59–C]

B & B Anthracite Coal, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Rock Ridge Slope (I.D. No. 36–07741) located in Schuylkill County, Pennsylvania.

The petitioner proposes to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. B & B Anthracite Coal

[Docket No. M–97–60–C]

B & B Anthracite Coal, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Rock Ridge Slope (I.D. No. 36–07741) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. B & B Anthracite Coal

[Docket No. M–97–61–C]

B & B Anthracite Coal, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1100 (quantity and location of firefighting equipment) to its Rock Ridge Slope (I.D. No. 36–07741) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. B & B Anthracite Coal

[Docket No. M–97–62–C]

B & B Anthracite Coal, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Rock Ridge Slope (I.D. No. 36–07741) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Ambrose Branch Coal Company, Inc.

[Docket No. M–97–63–C]

Ambrose Branch Coal Company, Inc., P.O. Box 806, Pound, Virginia 24279 has filed a petition to modify the application of 30 CFR 77.214 (refuse piles; general) to its Preparation Plant (I.D. No. 44–05265) located in Wise County, Virginia. The petitioner requests a modification of the standard to allow backfilling of the existing highwall with refuse in an area containing abandoned mine openings. The petitioner proposes to fill seven (7) drift openings with refuse material at the abandoned Fleetwood Energy, Inc., Mine No. 2 (I.D. No. 44–06470). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Consolidation Coal Company

[Docket No. M–97–64–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2)