

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Ace and Hwang participated in the illegal diversion of pseudoephedrine having reasonable cause to believe it would be asked to manufacture methamphetamine. The DEA investigation showed Ace was distributing large quantities of pseudoephedrine to the Retail Outlet and other establishments that appeared far in excess of legitimate demand. In addition, Ace failed to follow recordkeeping requirements, as evidenced by its lack of records reflecting numerous regulated distributions to the Retail Outlet and its failure to account for 74,112 dosage units of pseudoephedrine during the August 9, 2000, inspection, in violation of 21 U.S.C. 842(a)(10); 830(a)(1); and 21 CFR 1310.03 (failure to keep required records); and the July 14 and July 28, 2000, 72 bottle distributions to the firm not registered with DEA to handle List I chemicals, in violation of 21 U.S.C. 842(a)(9); 830(a)(3); and 21 CFR 1310.07 (failure to obtain proof of identity). Therefore, the Administrator finds Ace and Hwang failed to maintain effective controls against the diversion of pseudoephedrine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that Ace significantly violated applicable Federal law pertaining to recordkeeping and identification of parties to regulated transactions, as set forth in factor one, above. In addition, Ace failed to make required reports of suspicious listed chemical transactions pursuant to 21 U.S.C. 830(b)(1)(A), in that it was distributing pseudoephedrine to convenience stores in quantities that appeared far in excess of legitimate demand.

Ace and Hwang were notified regarding the dangers of List I chemical diversion by DEA investigators both orally and *via* written official notices. Therefore, these series of excessive distributions also were in violation of 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)), since Ace and Hwang had reasonable cause to believe the pseudoephedrine would be diverted to the manufacture of methamphetamine.

The Administrator also finds the November 9, 2000, search of the convenience store revealed substantial evidence that Ace participated in falsifying documents in an attempt to conceal the frequency and quantity of pseudoephedrine it was distributing to the convenience store referenced above.

The post-dated Ace sales receipt and the falsified Ace sales invoice seized during the search are evidence of violations of 21 U.S.C. 843(a)(4)(A) and 830(a) and 21 CFR 1310.03.

Finally, the investigative file reflects that Hwang was arrested March 23, 2001 in Seattle, Washington, by the Federal Bureau of Investigation on charges involving the illegal distribution of pseudoephedrine and conspiracy to manufacture methamphetamine.

Regarding the third factor, any prior conviction record under Federal or State laws relating to controlled substances or chemicals, there is no evidence in the investigative file that Ace or Hwang has any record of convictions under Federal or State laws relating to controlled substances or chemicals.

Regarding the fourth factor, past experience in the manufacture and distribution of chemicals, the Administrator finds substantial evidence in the investigative file that Hwang failed to maintain adequate controls in handling and distributing the List I chemical pseudoephedrine, and actively participated in the illegal trafficking of pseudoephedrine, knowing that it was being diverted to the manufacture of methamphetamine, as set forth in the first and second factors, above.

Regarding the fifth factor, such other factors relevant to and consistent with the public safety, the Administrator finds the November 9, 2000, search of the convenience store revealed substantial evidence that Ace participated in falsifying documents in an attempt to conceal the frequency and quantity of pseudoephedrine it was distributing to the convenience store referenced above, in violation of 21 U.S.C. 843(a)(4)(A) and 830(a) and 21 CFR 1310.03. The Administrator finds this willingness to falsify records, taken together with Ace's and Hwang's demonstrated disregard of the statutory law and regulations concerning the distribution and recordkeeping requirements pertaining to List I chemicals, makes questionable Ace's and Hwang's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 FR 35459 (2001); Terrence E. Murphy, 61 FR 2841 (1996).

Accordingly, the 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 004652ALY, previously issued to Ace Wholesale & Trading company, be, and

it hereby is revoked; and any pending applications for renewal or modification of said registration be and hereby are, denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02-6568 Filed 3-18-02; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Aqui Enterprises; Denial of Application

On or about November 6, 2000, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Socorro Keenan, Aqui Enterprises (Aqui), of Las Vegas, Nevada, notifying her of an opportunity to show cause as to why the DEA should not deny her application, dated July 22, 1997, for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine and pseudoephedrine, and also deny her request for modification of her application, dated September 25, 1997, and also revoke her exemption to distribute such List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Aqui that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received by Aqui on or about November 21, 2000, and DEA received on December 12, 2000, a written response with attachments from Ms. Keenan dated November 21, 2000. This response contained various objections to the allegations set forth in the OTSC. The response neither requested nor waived Aqui's right to a hearing.

By letter dated December 19, 2000, an Administrative Law Judge (ALJ) sent a letter to Aqui requesting that it clarify whether or not it was exercising its right to a hearing, and granting until January 14, 2001, to respond.

On January 24, 2001, the ALJ issued an "Order Terminating Proceedings" indicating that Aqui had not responded to the December 19, 2000, letter and referring the matter to the Administrator for final decision without a hearing.

Therefore, the Administrator of the DEA, finding that no response having been received to the ALJ's December 19, 2000, letter, concludes that Aqui has 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. Aqui's letter and attachments received December 12, 2000, will be considered as "a written statement regarding [Aqui's] position on the matter of fact and law . . . and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein." 21 CFR 1316.49.

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.

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 persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The Administrator finds that during a preregistration inspection conducted by DEA investigators September 25, 1997, the investigators discovered that Aqui's proposed registered address was a mail box. When the investigators informed Ms. Socorro Keenan (Ms. Keenan), sole owner and operator of Aqui, that the proposed registered address would be insufficient to comply with DEA security requirements, Keenan submitted a written modification dated the same day requesting to change the proposed registered address on Aqui's application. An inspection of the modified proposed registered location by DEA investigators revealed that this location was a small office with no room for storage of listed chemical products and no adequate security as required by 21 CFR 1309.71. Ms. Keenan stated to investigators that she did not feel she needed secure storage, because she planned to distribute the List I chemical products immediately upon receipt.

During the September 25, 1997, preregistration inspection, DEA

investigators informed Ms. Keenan *via* both written and oral notice that pseudoephedrine is often diverted to the illicit manufacture of methamphetamine.

On or about October 10, 1997, Aqui sold approximately 60 cases of pseudoephedrine to an individual who paid cash and who took delivery of the chemical in a rented U-Haul truck. In addition, Aqui failed to keep required records of this regulated transaction.

On or about November 5, 1997, Aqui sold approximately 20 cases of pseudoephedrine to an individual who paid cash and who took delivery of the chemical in a rented U-Haul truck. Aqui failed to keep required records of this regulated transaction.

On or about November 11, 1997, Aqui purchased 20 cases of pseudoephedrine, and stored the chemical at an unregistered location with inadequate security.

On or about November 12, 1997, Aqui again purchased 20 cases of pseudoephedrine and attempted to store the chemical at an unregistered location without adequate security.

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 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.*, 54 FR 16422 (1989).

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

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the DEA pre-registration inspection documented inadequate security arrangements at the modified proposed registered location for the storage of listed chemical products, in that Aqui had no facility for storage of List I chemical products, and no security system. During the September 25, 1997, pre-registration inspection, in response to DEA investigator concerns about security, Ms. Keenan stated she had no need for storage, since she would distribute the chemicals immediately upon receipt. The Administrator finds this dubious proposition unacceptable, for obvious security concerns. Regardless of the feasibility of this scheme, Ms. Keenan had previously just told DEA investigators that Aqui had no customers.

On November 12, 1997, DEA investigators seized a total of 40 cases of pseudoephedrine from Ms. Keenan at a previously undisclosed storage unit in Las Vegas. She had already placed 20 cases of pseudoephedrine into the storage unit, and was in the act of unloading an additional 20 cases when the seizure occurred. The storage unit was not a DEA registered location, nor was it listed on Aqui's application. Moreover, the storage unit was not a secure location for the storage of List I chemicals. The DEA investigators noted that Ms. Keenan used counter-surveillance driving techniques when delivering the additional 20 cases of pseudoephedrine to the storage unit. When asked by DEA investigators what she intended to do with the 40 cases of pseudoephedrine, Ms. Keenan stated that, while she had no customers at the time, she was "building a supply." In response to further questioning, however, Ms. Keenan admitted the money for the purchase of the pseudoephedrine was provided by an individual to whom she had already sold at least 80 cases of pseudoephedrine, who paid cash and picked up the pseudoephedrine in a rented U-Haul truck. Ms. Keenan never properly verified the identity of this individual, but the DEA investigation revealed that the business address given by this individual was nothing but a mail drop. Ms. Keenan admitted she had never visited the purported business. DEA's investigation further revealed the address was the same as that of another business involved in a separate DEA investigation resulting in the seizure of 287 cases pseudoephedrine. DEA

investigators also discovered AQUI had an order pending with a chemical distributor for an additional 60 cases of pseudoephedrine.

Ms. Keenan stated to investigators that she met this individual at a trade show in August, 1997, and at that same show, she was approached by a friend of this individual, who gave her a cashier's check for \$7,000 for a future purchase of pseudoephedrine.

Information in the investigative file reveals that AQUI purchased at least 160 cases of pseudoephedrine in an approximately 14 week period, while Ms. Keenan stated to DEA investigators on several separate occasions that AQUI had no customers. The DEA investigation revealed AQUI failed to keep required records of these regulated transactions.

Based on this evidence, the Administrator finds AQUI and Ms. Keenan failed to maintain and exercise effective controls against the diversion of pseudoephedrine.

Regarding factor two, compliance by the applicant with applicable Federal, State, and local law, the Administrator finds AQUI and Ms. Keenan violated applicable Federal law in the following primary instances.

The DEA investigation revealed AQUI and Ms. Keenan failed to keep required records of regulated transactions, in violation of 21 U.S.C. 830(a) and 21 CFR 1310.03(a). The investigation showed that on at least eight occasions, AQUI had cumulatively purchased at least 160 cases of 60 mg. 60 count bottled pseudoephedrine tablets in twenty case increments between July 30 and November 12, 1997. One case contains 144 bottles for a dosage unit total of 8640 per case and 172,800 per 20 case order. Each purchase was a regulated transaction, for which AQUI and Ms. Keenan failed to keep required records.

AQUI and Ms. Keenan also violated 21 CFR 1310.07 by failing to properly identify other parties to regulated transactions. Ms. Keenan stated to DEA investigators she had sold 80 cases of pseudoephedrine to an individual she met at a trade show. She stated that he approached her and asked if she could obtain pseudoephedrine for him. He had no apparent interest in any other of the usual convenience store products. As previously set forth in the discussion of the first factor, above, this individual paid cash for his purchases and picked up the pseudoephedrine in a rented U-Haul truck. The local business address provided by this individual was only a mail drop, and, as set forth above, another purported business using this same address was involved in a DEA investigation that culminated in the

seizure of 287 cases of pseudoephedrine. Ms. Keenan admitted to investigators that she had never visited this purported business. In addition, at the same trade show a friend of this individual gave Ms. Keenan a \$7,000 cashier's check for a future purchase of pseudoephedrine.

The Administrator finds the circumstances surrounding the distributions set forth above to be extremely suspicious, and therefore concludes that Ms. Keenan and AQUI also violated 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1) by failing to report a suspicious method of payment and delivery.

The Administrator finds also that AQUI and Ms. Keenan violated 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)) in that she distributed a listed chemical having reasonable cause to believe that the chemical would be used to manufacture a controlled substance, to wit, methamphetamine. Information in the investigative file reveals that, on at least three separate occasions, Ms. Keenan received a written official DEA notice warning of the dangers of diversion of pseudoephedrine to the illicit manufacture of methamphetamine. The first notice was provided at the time of the pre-registration inspection, September 25, 1997. At this time, DEA investigators also provided oral notice of the dangers of diversion, as well as a discussion of all recordkeeping and reporting requirements pertaining to listed chemical handlers, and Ms. Keenan stated at that time that she understood. A second written notice was provided by certified mail October 30, 1997. A third notice was provided at the time of the November 12, 1997, seizure of the 40 cases from the unregistered, undisclosed storage unit. The Administrator finds the suspicious circumstances concerning AQUI's distribution of pseudoephedrine set forth above provided Ms. Keenan reasonable cause to believe that the chemicals were being diverted to the illicit manufacture of methamphetamine.

The Administrator also finds that AQUI and Ms. Keenan violated 21 CFR 139.23 by storing pseudoephedrine in an unregistered location (and which location was not set forth in her application). On November 12, 1997, DEA investigators seized 40 cases of pseudoephedrine from a previously undisclosed storage unit, as set forth in factor one, above.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed that AQUI and Ms. Keenan have

violated applicable Federal law and regulations relating to the handling and distribution of listed chemicals, as set forth in factor two, above.

Regarding factor five, other factors relevant to and consistent with the public safety, the DEA investigators charged with investigating AQUI's application reported that Ms. Keenan was not cooperative in providing necessary information to properly investigate the application. For instance, despite repeated requests by the investigators, Ms. Keenan failed to provide customer and supplier lists. When she finally provided a customer list (in response to the November 12, 1997 seizure, in the opinion of the DEA investigators), a telephone call to one or two customers per every page of the 69-page list revealed that none of those called were in fact customers of AQUI, or had ever heard of AQUI or Ms. Keenan. Ms. Keenan also refused to provide the quantities of List I chemical products, she previously has purchased, and further refused to provide any information concerning the recipients of these chemicals.

Additionally, the Administrator finds substantial evidence that Ms. Keenan was not being candid with investigators concerning her handling and distribution of pseudoephedrine. On November 12, 1997, 40 cases of pseudoephedrine were seized from Ms. Keenan by DEA from a previously undisclosed storage unit. DEA investigators noted that Ms. Keenan used counter-surveillance driving techniques when delivering additional pseudoephedrine to the storage unit. At the time of this seizure, she repeated her earlier statements that she had no customers, and was just "building a supply." Yet, upon further questioning, Ms. Keenan admitted she already had distributed 80 cases of pseudoephedrine to the individual she met at the trade show, as set forth above. As previously stated, the Administrator finds the circumstances of these distributions extremely suspicious. Additionally, also at the time of this seizure, DEA investigators noted that the storage unit contained only pseudoephedrine and old furniture. Since Ms. Keenan described AQUI as a supplier of novelty items to convenience stores, the investigators queried Ms. Keenan regarding the whereabouts of her stock of convenience store items. Ms. Keenan stated that she had some samples, but had given them away. The Administrator finds Ms. Keenan's explanation suspicious, and furthermore finds scant evidence in the investigative file that AQUI did in fact supply convenience stores with novelty items.

Therefore, the Administrator finds substantial evidence in the investigative file that Ms. Keenan exhibited a lack of candor regarding her handling and distribution of the List I chemical pseudoephedrine. The Administrator finds this lack of candor, taken together with Aquí's and Ms. Keenan's demonstrated disregard of the statutory law and regulations concerning the distribution, reporting, and recordkeeping requirements of List I chemicals, makes questionable Aquí's and Ms. Keenan's commitment to the DEA statutory and regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. *Aseel Incorporated, Wholesale Division*, 66 FR 35459 (2001); *Terrence E. Murphy*, 61 FR 2841 (1996).

The Administrator further finds that Ms. Keenan's letter dated November 21, 2000, in response to the OTSC contained only unsupported allegations, and pursuant to 21 CFR 1309.53(b), the Administrator concludes that this evidence is entitled to little, if any, weight. The gist of the letter appeared to concern the November 12, 1997, seizure of the 40 cases of pseudoephedrine. Ms. Keenan requested DEA "to return the cash value in today's market for what was taken from the secured/locked location on November 12, 1997." She then referenced two DEA case and seizure numbers. Documentation in the investigative file indicates that the seized pseudoephedrine is undergoing forfeiture proceedings pursuant to 21 U.S.C. 881. The Administrator finds that the forfeiture proceedings will allow Ms. Keenan sufficient due process to assert whatever legitimate interest she may have in the seized pseudoephedrine, and furthermore, that such a determination is beyond the scope of this Final Order.

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

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 and also the request for modification of the application dated September 25, 1997, submitted by Aquí Enterprises, be denied; and furthermore that the exemption of Aquí Enterprises to distribute List I chemicals is hereby revoked. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,

Administrator.

[FR Doc. 02-6572 Filed 3-18-02; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David W. Linder; Denial of Application

On or about June 27, 2001, the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to David Linder (Linder), residing in Bullhead City, Arizona, notifying him of an opportunity to show cause as to why the DEA should not deny his application, dated May 14, 2000, for a DEA Certificate of Registration as a distributor of the List I chemical gamma-butyrolactone (GBL), pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified Linder that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was returned, marked "Unclaimed." The OTSC was re-mailed to Linder *via* first class mail. This letter was also returned to DEA, marked "Return to Sender—Attempted—Not Known—No Forwarding Address." 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 the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no request for a hearing having been received, concludes that Linder is deemed to have waived his 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). The List I chemical GBL has industrial uses as a solvent. GBL is also a precursor chemical and is readily synthesized into the Schedule I controlled substance GBH. Schedule I controlled substances have no accepted medical use, and are highly subject to abuse. 21 U.S.C. 812(b)(1).

The Administrator finds that during the June 29, 2000, pre-registration inspection, Linder stated to DEA investigators that he intended to distribute GBL to computer companies for use as an organic cleaner. Linder further stated he was engaged in pond construction. Linder failed to indicate that he had any knowledge of or experience in the manufacturing, handling, or distributing of listing chemicals. Linder also stated he desired the DEA registration in part because he wished to recover a quantity of GBL previously seized from him by the State of Arizona.

During a follow-up interview on August 3, 2000, Linder was unable to provide DEA investigators with a list of prospective customers, or any method of identifying potential customers. He also stated he was not sure what percentage of his business would involve GBL. Linder stated he used GBL to clean computer parts and in making artificial ponds.

Also at the August 3, 2000, interview, Linder stated he does not advertise and does not operate any Web sites. On August 31, 2000, a DEA investigator spoke with a Las Vegas, Nevada, Narcotics Detective, who stated Linder was arrested in Las Vegas for possession of 350 gallons of GBL and GHB. The Detective also stated Linder sells nationwide on the internet, and that Linder is linked to the overdose death of a girl in Long Beach, California. The Detective further stated that, at the arrest of a suspected GBH trafficker, some of Linder's chemicals were found in the arrestee's residence. DEA investigators subsequently learned that Linder does in fact maintain a web site, called "AE—Alternative Entropy" wherein he *inter alia* advertises as "novelty items" and "for research purposes only" various allegedly psychedelic and hallucinogenic substances.

The DEA investigative file further reveals that on May 16, 1975, Linder was convicted by a Federal Court of Distribution of a Controlled Substance and Sale of Dangerous Drugs, as the result of the illegal sale to an undercover DEA agent of approximately one ounce of MDMA and in excess of one pound of hashish. Linder was sentenced to six years imprisonment for his conviction.

In addition, on March 23, 2000, Linder was arrested by the Bullhead City, Arizona, Police Department on three State felony drug charges, including Dangerous Drug Manufacturing, a Dangerous Drug violation, and a Drug Paraphernalia violation. When questioned concerning