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Maureen Katz,

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DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree and Proposed Order on Consent Under The Clean Water Act

Notice is hereby given that, on May 12, 2010, a proposed Consent Decree in *United States and State of New York v. City of Oswego, New York*, Civil Action No. 5:10-cv-554, was lodged with the United States District Court for the Northern District of New York.

The proposed Consent Decree will settle the United States' claims on behalf of the U.S. Environmental Protection Agency ("EPA") for violations of Section 301(a) of the CWA, 33 U.S.C. 1311(a), in connection with unpermitted discharges from the City's west side sewer system and failure to comply with a National Pollutant Discharge Elimination System ("NPDES") permit. The State of New York joined the United States as co-plaintiff, pursuant to Section 309(e) of the CWA, 33 U.S.C. 1319(e), and the New York State Environmental Conservation Law ("ECL"), Sections 17-0701 and 17-0803. The Consent Decree resolves all claims in the Complaint, in return for payment by the City of a civil penalty of \$99,000, to be split evenly between the United States and the State, and performance by the City of corrective actions valued at \$87 million.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments on the Consent Decree should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcommentees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States and State of New York v. City of Oswego, New York*, Civil Action No. 5:10-cv-554 (N.D.N.Y.), D.J. Ref. No. 90-5-1-1-08609.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of

New York, 100 South Clinton Street, Syracuse, New York 13261, and at EPA, Region 2, 290 Broadway, New York, New York 10007-1866. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the proposed 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 number (202) 514-0097, phone number (202) 514-1547. If requesting a copy by mail from the Consent Decree Library, please enclose a check in the amount of \$18.50 (\$0.25 per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward the check in that amount to the Consent Decree Library at the address stated above. If requesting a copy exclusive of appendices, please enclose a check in the amount of \$16.00 (\$0.25 per page reproduction cost) payable to the United States Treasury.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06-55]

M & N Distributors; Dismissal of Proceeding

On March 16, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to M & N Distributors (Respondent), of Springfield, Tennessee. The Order to Show Cause proposed the revocation of Respondent's DEA Certificate of Registration as a distributor of list I chemicals on the ground that its continued registration "is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(h)." Order to Show Cause at 1.

More specifically, the Show Cause Order made three major allegations against Respondent. First, it alleged that on November 22, 2005, Agency Investigators performed an accountability audit of Respondent's handling of three listed-chemical products and found an overage of "732

bottles (more than five cases) of one 36-count combination ephedrine product." *Id.* at 2. Next, the Show Cause Order alleged that in June 2003, Respondent "reported a loss of a case of 144 bottles of ephedrine, which [Respondent] indicated fell out the back door of his truck" and that "this product was never recovered." *Id.*

Finally, the Show Cause Order alleged that between 2001 and 2005, DEA retained an expert "in the field of retail marketing and statistics" "to analyze national sales data for over-the-counter non-prescription drugs" and that based on his "study of hundreds of Tennessee retailers," the expert had concluded "that these retail stores had made purchases of listed chemical products far in excess of amounts of product that could be reasonably sold for legitimate purposes in stores of these [sic] kind in Tennessee." *Id.* at 3. The Order further alleged that "DEA has observed that many smaller or non-traditional stores, such as * * * gas stations [] and some small markets, purchase inordinate amounts of these products and become conduits for the diversion of listed chemical[s] into illicit drug manufacturing." *Id.* Because Respondent's owner "told investigators that he had approximately 120 convenience store and gas station customers located in Tennessee and Kentucky," *id.* at 2, the Order implied, without ever expressly alleging, that Respondent sold listed chemical products "far in excess of amounts of product that could be reasonably sold for legitimate purposes." *Id.* at 3.¹

On April 5, 2006, Respondent's owner, Charles Ramsey, requested a hearing on the allegations and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJ). ALJ Ex. 2. Thereafter, on June 5, 2006, Counsel for Respondent entered his appearance, ALJ Ex. 3, and following pre-hearing procedures, a hearing was held before an ALJ in Nashville, Tennessee on August 23 and 24, 2006. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed briefs containing their proposed findings, conclusions of law, and argument.

On December 16, 2008, the ALJ issued her Recommended Decision. Therein, the ALJ concluded that the Government had not proved that the continuation of

¹ In her Decision, the Administrative Law Judge (ALJ) formulated the issue as "whether the Respondent sold quantities of listed chemical product which it knew, or should have known, exceeded quantities that could be sold by its customers for legitimate use." ALJ at 31 (citing Gov't Br. at 9).