

investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337).

**FOR FURTHER INFORMATION CONTACT:**

Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on July 8, 2010, based on a complaint filed by Batesville Services, Inc. of Batesville, Indiana ("Batesville"). 75 FR 16837-38 (July 8, 2010). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain caskets by reason of infringement of certain claims of U.S. Patent Nos. 5,611,124; 5,727,291; 6,836,936; 6,976,294; and 7,340,810. The Commission's notice of investigation named Ataudes Aguilares as the lone respondent.

On August 12, 2010, Batesville moved, pursuant to Commission Rule 210.16(b) (19 CFR 210.16(b)), for an order to show cause why Ataudes Aguilares should not be found in default for failure to respond to the Complaint and Notice of Investigation and for a finding of default upon the failure to show cause. On August 19, 2010, the Commission investigative attorney ("IA") filed a response in support of the motion. The presiding administrative law judge ("ALJ") issued the requested order, instructing Ataudes Aguilares to show cause, no later than the close of business on September 21, 2010, why it should not be found in default. Order No. 4 (Aug. 31, 2010). No response to Order No. 4 was filed, and the ALJ subsequently issued an initial determination ("ID") finding Ataudes Aguilares in default. Order No. 5 (Sept.

24, 2010). The Commission determined not to review the ID and issued a Notice requesting briefing from interested parties on remedy, the public interest, and bonding. 75 FR 65379-80 (Oct. 22, 2010).

The IA and Batesville submitted briefing responsive to the Commission's request on November 3 and 4, 2010, respectively. Each proposed a limited exclusion order directed to Ataudes Aguilares's accused products and recommended allowing entry under a bond of 100 percent of the entered value during the period of Presidential review.

The Commission found that the statutory requirements of section 337(g)(1)(A)-(E) (19 U.S.C. 1337(g)(1)(A)-(E)) were met with respect to the defaulting respondent. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain caskets that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondent Aguilares by reason of infringement of claims 1, 13, 27, and 44-53 U.S. Patent No. 5,611,124; claims 1, 6, 8, 9, 16, 17, 19, and 21 of U.S. Patent No. 5,727,291; claims 1 and 2 of U.S. Patent No. 6,836,936; claims 1, 2, 5-8, 11, and 12 of U.S. Patent No. 6,976,294; and claims 1, 2, 4, and 5 of U.S. Patent No. 7,340,810. The Commission further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.41).

By order of the Commission.

Issued: December 13, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010-31647 Filed 12-15-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 10, 2010, a proposed Consent Decree (the "Decree") in *United States and Puget Sound Clean Air Agency v. U.S. Oil & Refining Co.*, Case No. 3:10-cv-05899, was lodged with the United States District Court for the Western District of Washington.

In a complaint filed on the same day, the United States alleged that U.S. Oil & Refining Co. ("U.S. Oil") was liable for violations at its refinery in Tacoma, Washington, pursuant to Section 113(b), 42 U.S.C. 7413(b). Specifically, the complaint alleges that U.S. Oil violated the National Emission Standards for Hazardous Air Pollutants for Benzene Waste Operations (the "Benzene NESHAP"), 40 CFR part 61, Subpart FF, the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries concerning leak detection and repair (the "LDAR regulations"), 40 CFR part 63, Subpart CC, and the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries concerning emissions from catalytic reforming units and sulfur recovery plants, 40 CFR part 63, Subpart UUU. The complaint also alleges violations of Title V of the Clean Air Act, 42 U.S.C. 7661-7661f.

Pursuant to the Decree, U.S. Oil will: (1) Pay a civil penalty of \$230,000; (2) implement at least \$746,000 in supplemental environmental projects; (3) enhance U.S. Oil's Benzene NESHAP compliance program; and (4) implement measures, in addition to compliance with the LDAR regulations, to minimize or eliminate fugitive emissions from components in the light liquid and gaseous service in its refinery.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.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 Puget Sound Clean Air*

*Agency v. U.S. Oil & Refining Co.*, D.J. Ref. 90–5–2–1–09514.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the 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](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$19.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

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

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**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 06–63]

#### **R & M Sales Company, Inc.; Revocation of Registration**

On June 1, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA, or “the Government”), issued an Order to Show Cause to R & M Sales Company, Inc. (Respondent), of Blountville, Tennessee. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration, 004413RAY, which authorizes it to distribute List I chemicals, as well as the denial of any pending application to renew its registration, on the ground that Respondent’s continued registration is “inconsistent with the public interest.” OTSC at 1 (citing 21 U.S.C. 823(h) & 824(a)(4)).

More specifically, the Show Cause Order alleged that during an inspection for its initial registration, Respondent received copies of DEA notices and cites to the Code of Federal Regulations pertinent to listed chemical distributors. *Id.* Relatedly, the Order alleged that “Mr. Mitchell was further advised by DEA personnel on proper record-keeping procedures for a DEA registrant, including, but not limited to, the

requirement of maintaining records of the destruction of out of date listed chemical products.” *Id.*

Next, the Show Cause Order alleged that many of Respondent’s customers are convenience stores, gas stations and small independent grocers located in the Cumberland Plateau area of Tennessee, which is known for its problem with illicit methamphetamine production, and that Respondent distributes pseudoephedrine and ephedrine products in both tablet and gel-capsule form, which are precursor chemicals used in the illicit manufacture of methamphetamine. *Id.* at 2–3.

The Show Cause Order further alleged that on June 8 and 9, 2005, DEA Investigators (DIs) conducted an inspection of Respondent, during which they performed an accountability audit of its handling of two ephedrine products, MaxBrand 25 mg. ephedrine tablets (48-count bottles) and Ephedrine Multi-Action 25 mg. (also 48-count bottles), which revealed a shortage of each product. *Id.* at 3–4. The Order thus alleged that Respondent “failed to maintain complete and accurate records of a regulated transaction as required by 21 CFR 1310.06(a).” *Id.* at 4. The Order also alleged that Respondent “stores List I chemical products in its delivery trucks and/or trailers \* \* \* creat[ing] the potential for the diversion of List I chemicals.” *Id.* (citing 21 U.S.C. 823(h)(1) and 21 CFR 1309.71).

Next, the Show Cause Order alleged that based on its June 2005 inspection, DEA “developed additional information regarding [Respondent’s] sale of large quantities of ephedrine to various convenience stores and related establishments,” and that these “sales were vastly in excess of the amounts of this over-the-counter product needed to meet the medical and scientific needs of the community.” *Id.* The Order also alleged that Respondent engaged in 35 regulated transactions with seven different customers in which it distributed 24-count, 36-count, and 48-count bottles of ephedrine products, “knowing or having reason to believe that its product would be used in the illicit manufacture of controlled substances in violation of 21 U.S.C. 841(d)(2).”<sup>1</sup> *Id.*, at 4–6. In addition, the Order alleged that Respondent failed “to provide notification of ‘suspicious’ activity pursuant to 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1) with respect to” these 35 transactions. *Id.* Finally, the Order alleged that DEA “conducted [a] customer verification” at

the Fast Stop Covington, a convenience store located in Covington, Virginia, during which the owner informed a DI “that he purchased one case (144 bottles) of ephedrine products from [Respondent] every two to four weeks”; the Order then alleged that these purchases were “far in excess of legitimate demand for these products.” *Id.* at 6.

On June 26, 2006, Respondent requested a hearing in the matter. ALJ Ex. 2. The matter was assigned to a DEA Administrative Law Judge (ALJ), who conducted a hearing in Arlington, Virginia on May 15 and 16, 2007. During the hearing, both parties called witnesses to testify and introduced documentary evidence. Following the hearing, both parties submitted briefs containing proposed findings of fact, conclusions of law, and argument.

On February 13, 2009, the ALJ issued her recommended decision (ALJ), which concluded that Respondent’s continued registration would be inconsistent with the public interest. With respect to factor one—the maintenance of effective controls against diversion—the ALJ found that Respondent violated 21 CFR 1309.71(b) by storing listed chemicals in trucks away from its premises, that it sold “excessive quantities of listed chemicals to some customers and failed to report suspicious order[s] for these chemicals to DEA,” and that it “failed to ascertain whether [its] customers purchased listed chemicals from other distributors.” *Id.* at 36. She therefore concluded that “Respondent does not maintain adequate controls against the diversion of the listed chemicals it sells,” and that “this factor weighs in favor of a finding that Respondent’s continued registration would be inconsistent with the public interest.” *Id.*

With respect to factor two—Respondent’s compliance with applicable Federal, State and local law—the ALJ concluded that Respondent’s storage of chemicals away from its premises and its failure to report suspicious transactions constituted violations of Federal law and DEA regulations. *Id.* She also found that Respondent had failed to provide prior notification to DEA of mail shipments of listed chemical products, in violation of 21 CFR 1310.03(c), and that, having “sold excessive quantities of listed chemicals,” Respondent further violated 21 U.S.C. 841(c)(2) in that it “should have known that some of those chemicals were likely to be diverted to the illicit manufacture of the controlled substance methamphetamine.” *Id.* at 36–37. The ALJ thus concluded that this factor supported a finding that

<sup>1</sup> The correct statutory citation is actually 21 U.S.C. 841(c)(2).