

this arrest, Linder states to DEA investigators that the listed chemical product seized from him by State law enforcement officers was for use in "artificial rock making."

Linder was previously arrested on or about October 28, 1999, in Laughlin, Nevada, for distribution of GHB and other charges. GBL and other chemicals were seized at that time of this arrest and during the subsequent search of a storage shed. Linder was also involved in the distribution of GHB kits (containing the ingredients for GHB and instructions for preparation) and other allegedly psychedelic substances.

During a June 29, 2000, conversation with a DEA investigator concerning his pending application, Linder stated concerning his 1975 felony drug conviction that he had "learned his lesson" and that he "has never done anything illegal since that time." The DEA investigation reveals, however, that Linder's law enforcement record includes, in addition to the 1975 Federal drug felony conviction, seven arrests and two convictions for various offenses, spanning the time period from 1994 up to the March 23, 2000, Bullhead City Police Department arrest for three State felony drug charges.

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 two, three, four, and five relevant to this application.

Regarding factor two, compliance by the applicant with applicable Federal, State, and local law, the Administrator finds substantial evidence in the DEA investigative file that Linder has violated applicable Federal and State law. First, Linder was convicted on May 16, 1975, of Distribution of a Controlled Substance and Sale of a Dangerous Drug, and sentenced to six years imprisonment. In addition, the DEA investigative file contains substantial evidence that Linder violated Nevada State law by manufacturing GBL, resulting in his related arrest on or about October 28, 1999. The DEA investigative file also contains substantial evidence that Linder violated Arizona State law in that he operated a clandestine laboratory for manufacturing GBL at his residence and also possessed a quantity of GBL that was seized by law enforcement officials, resulting in Linder's March 23, 2000, arrest by the Bullhead City, Arizona, Police Department for Dangerous Drug Manufacturing, a Dangerous Drug Violation, and a Drug paraphernalia Violation.

Regarding factor three, 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, the Administrator finds Linder was convicted May 16, 1975, in a Federal Court for Distribution of a Controlled Substance and Sale of a Dangerous Drug, and sentenced to six years imprisonment.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the DEA investigation revealed substantial evidence that Linder violated Nevada and Arizona State law related to his handling of listed chemicals, as set forth in factor two, above.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that during a June 29, 2000, conversation with a DEA investigator concerning his pending application, Linder stated concerning his 1975 felony drug conviction that he had "learned his lesson" and that he "has never done anything illegal since that time." The DEA investigation reveals, however, that Linder's record includes in addition to the 1975 Federal drug felony conviction, seven arrests and two convictions for various offenses, spanning the time period from 1994 up

to the March 23, 2000, Bullhead City, Arizona, Police Department arrest for three State felony drug charges. The Administrator finds this lack of candor, taken together with Linder's Federal controlled substance-related criminal conviction and his apparent disregard of Arizona and Nevada State laws regarding the handling of listed chemicals, makes questionable Linder's commitment to the DEA 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).

In addition, despite repeated requests from DEA investigators, Linder was unable or unwilling to supply a proposed customer list for distribution of GBL, and thus failed to provide any evidence purporting to show a legitimate market for his distribution of this product.

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

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 submitted by David W. Linder be denied. This order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Seaside Pharmaceutical Co.; Revocation of Registration

On July 29, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Seaside Pharmaceutical Company (Seaside), located in Fort Lauderdale, Florida, notifying it of a preliminary finding that, pursuant to evidence set forth therein, it was responsible for *inter alia* the diversion of large quantities of List I chemicals into other than legitimate channels. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Seaside's DEA Certificate of Registration, effective immediately, with

such suspension to remain in effect until a final determination is reached in these proceedings. The OTSC informed Seaside and its owner/president and sole employee Thomas Narog (Narog) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004422SMY, and deny any pending applications for renewal or modification of such registration, and further deny its application dated March 28, 2000, as an exporter of List I chemicals, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Seaside that, should not request for hearing be filed within 30 days, its right to a hearing would be considered waived.

On July 31, 2000, a DEA Special Agent served the OTSC upon Narog's attorney as Narog made his initial appearance before a U.S. Magistrate Judge in connection with charges related to his handling of List I chemicals. Since that time, no request for a hearing or any other response was received by DEA from Seaside or Narog nor anyone purporting to represent the registrant in this matter. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Seaside is deemed to have 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.

The Administrator finds as follows. List I chemicals are chemicals commonly used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.22(a). Pseudoephedrine, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance, or amphetamine, a Schedule III 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(3). The Administrator finds all parties

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

The DEA investigation revealed as follows. During an interview with DEA investigators April 17, 2000, Narog, in the presence of his then-counsel, stated that on four occasions since July, 1999, he shipped 60 mg. pseudoephedrine tablets to Israel. Per Narog, each of the four shipments contained at least 100,000 bottles of 60 count 60 mg. pseudoephedrine tablets. In response to questions from DEA investigators, Narog stated he had no domestic customers, and that all of his pseudoephedrine product "went out to Israel." Narog was informed that these exportations were illegal, and he was provided with official DEA notices concerning the dangers of diversion and statutes and regulations pertaining to the handling of List I chemicals. In addition, evidence obtained by DEA indicates that at least on one subsequent occasion, in or around July, 2002, a number of boxes containing pseudoephedrine shipped by Seaside to Israel were seized by the Israeli police. DEA records indicate Seaside never has been authorized by DEA to export pseudoephedrine.

On April 17, 2000, Narog stated to DEA investigators that Seaside had no domestic customers. Yet, on March 21, 2000, over 5,000 bottles of pseudoephedrine product manufactured exclusively for Seaside were seized from two individuals in California. Both individuals have been charged with criminal offenses related to the unlawful possession of pseudoephedrine.

Narog further stated to DEA investigators that Seaside had no domestic customers prior to June, 2000. Yet the DEA investigation revealed Narog made numerous shipments of pseudoephedrine to an individual located in Los Angeles, California. On several occasions in March and April, 2000, DEA investigators conducted surveillance at the Shurgard Storage Center (Shurgard) where Seaside maintained its DEA registered location. The investigators observed Narog and others load boxes of pseudoephedrine into U-Haul trucks. All of the pseudoephedrine was subsequently diverted to the illicit market.

On one occasion, DEA surveillance of Shurgard on March 27, 2000, showed Narog and a U-Haul truck arriving separately at warehouse unit 1352. Narog and two other individuals loaded boxes of pseudoephedrine into the back of the U-Haul truck. The U-Haul truck was driven to a Home Depot parking lot, where it met another truck, and both trucks then proceeded to another storage

facility, where the pseudoephedrine was unloaded into another storage unit. The next day, March 28, 2000, other individuals loaded several large, unmarked boxes from the storage unit into a vehicle that was eventually followed by surveillance to the Orlando International Airport. The boxes were then shipped to Los Angeles, California, listed as "grocery supplies." While at the airport, an undercover DEA agent posing as an employee of the shipping company met with the individual shipping the pseudoephedrine, who invited the agent to join him in the criminal trafficking of pseudoephedrine. Following continued surveillance, the pseudoephedrine was seized and a number of individuals arrested.

Also on March 28, 2000, DEA investigators observed Narog receive three pallets containing 480 boxes of pseudoephedrine at Shurgard. The shipment was packaged at 48 bottles per box, with 60 60mg. tablets per bottle, for a total of 1,382,000 dosage units of pseudoephedrine. On April 4, 2000, Narog and another individual were observed loading the 480 boxes of pseudoephedrine into a rented U-Haul truck. The truck was driven to another self storage facility and the pseudoephedrine was unloaded into a storage unit at that location. The next day, April 5, 2000, DEA investigators observed an individual load the 480 boxes of pseudoephedrine into another U-Haul truck, that was observed to deliver the pseudoephedrine to the Orlando International Airport. An undercover DEA agent, posing as a shipping company employee, spoke with the individual who was shipping this load of pseudoephedrine. This individual was the same individual who had shipped the March 28, 2000, shipment described above. The individual stated to the undercover DEA agent that he was worried that an arrest that had occurred in California was related to the individual's distribution of pseudoephedrine. The individual further stated that "the FDA, cops and FBI" had gone to his residence in California and seized \$20,000. When this shipment reached California, surveillance and investigation of the recipients resulted in seven arrests and the seizure of 2,200 pounds of pseudoephedrine and \$25,000.

In April, 2000, Narog provided DEA investigators with copies of purchase records for Seaside for the period from September 1, 1999, to March 22, 2000. The records revealed Seaside had received in excess of 17 million dosage units of 60 mg. pseudoephedrine. Narog had stated to DEA investigators that he had no domestic customers prior to

June, 2000, and Seaside never has been authorized to export List I chemicals.

During a July 13, 2000, interview with DEA investigators, Narog stated that the Shurgard unit 1352 at his DEA registered address was the only warehouse unit that he or Seaside leased at the time. The investigation revealed, however, that Narog also leased 206/207, which is a double unit measuring approximately 22 by 33 feet. DEA surveillance revealed thousands of pounds of pseudoephedrine being placed into 206/207. Narog further stated to investigators that, as the sole owner, president, director, and employee of Seaside, he was the only individual with access to unit 1352. DEA surveillance revealed, however, several different individuals accessing both 1352 and 206/207 without Narog, and removing pseudoephedrine that eventually was sent to California or seized in Florida.

The DEA investigation revealed that approximately 36,000 gross pounds of pseudoephedrine was delivered to Seaside's DEA registered address between September 8, 1999, and June 30, 2000.

On August 1, 2000, a seven count indictment was filed against Narog and others, alleging inter alia possession and distribution of the List I chemical pseudoephedrine, knowing and having reasonable cause to believe that the listed chemical would be used to manufacture methamphetamine, in violation of 21 U.S.C. 841(d)(2) and 846.

At the August 8, 2000, pre-detention hearing for Narog and another individual, both Narog and the other individual were denied bail because the judge found they both posed flight risks and were dangers to the community because of the large volume of drugs involved.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Seaside's DEA Certification of Registration. While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Seaside's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Administrator may revoke a registration to distribute List I chemicals upon a finding that the registrant has committed such acts as would render his registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience 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).

Regarding the first factor, maintenance of effective controls against diversion, the Administrator finds substantial evidence in the investigative file that Seaside and Narog actively participated in the illegal diversion of pseudoephedrine, knowing and having reasonable cause to believe it would be used to manufacture methamphetamine. Narog admitted to DEA investigators that he exported hundreds of thousands of bottles of pseudoephedrine to Israel, without being registered to do so. Moreover, Narog was storing thousands of pounds of pseudoephedrine in an unregistered storage unit location that he purposely attempted to conceal from DEA investigators. Narog stated to investigators that he had sole access to the DEA registered storage unit. The investigation revealed, however, that multiple individuals would access both Narog's DEA registered storage unit as well as his other, undisclosed storage unit. The investigation showed pseudoephedrine stored in both units was diverted to the illicit manufacture of methamphetamine.

Regarding the second factor, compliance with applicable Federal, State, and local law, the investigative file in this matter reveals that Seaside significantly violated applicable Federal law in the following primary instances. Narog and Seaside exported hundreds of thousands of bottles of List I chemicals to Israel without being registered to do so, in violation of 21 U.S.C. 843(a)(9);

957(a)(2); and 960(a)(1) and 21 CFR 1309.22.

In addition, although Narog stated to DEA investigators during an April 17, 2000, interview that he had no domestic customers, over 5,000 bottles of a List I chemical pseudoephedrine product manufactured exclusively for Seaside were seized on March 21, 2000, from two individuals in California, who were subsequently charged with criminal offenses relating to the unlawful possession of pseudoephedrine. DEA surveillance also revealed Narog and others were shipping large quantities of pseudoephedrine to individuals located in California, who were diverting the chemical to the illicit manufacture of methamphetamine. The Administrator finds this substantial evidence that Narog and Seaside violated 21 U.S.C. 841(d)(2) (since redesignated 841(c)(2)).

The investigation further revealed Narog was concealing thousands of pounds of pseudoephedrine product in an unregistered storage unit, and this pseudoephedrine was being directly diverted to the manufacture of methamphetamine, in violation of 21 CFR 1309.23.

Finally, Narog was charged in an August 1, 2000, seven count indictment, each count charging Narog with violations of 21 U.S.C. 841(d)(2) (since redesignated as 841(c)(2)) relating to the distribution of pseudoephedrine knowing or having reasonable cause to believe the chemical would be used to illicitly 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 Seaside or Narog 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 Narog failed to maintain adequate controls in 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 substantial evidence in the investigative file that Narog cannot be trusted with the responsibilities of a DEA registrant. Narog stated during the July 13, 2000, interview with DEA investigators that the Shurgard unit

1352 at his DEA registered address was the only warehouse unit that he or Seaside leased at the time. The investigation revealed, however, that Narog also leased an additional storage unit 206/207. Narog intentionally concealed the existence of this additional storage until from DEA investigators. DEA surveillance revealed thousands of pounds of pseudoephedrine being placed into 206/207. Narog further stated to investigators that, as the sole owner, president, director, and employee of Seaside, he was the only individual with access to unit 1352. DEA surveillance revealed, however, several different individuals accessing both 1352 and 206/207 without Narog, and removing pseudoephedrine that eventually was diverted to California or seized in Florida.

The Administrator finds this lack of candor, taken together with Seaside's and Narog's demonstrated cavalier disregard of the statutory law and regulations concerning the distribution, handling, and exportation requirements pertaining to List I chemicals, makes questionable Seaside's and Narog'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 Fed. Reg. 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 1.014, hereby order that DEA Certificate of Registration 004422SMY, previously issued to Seaside Pharmaceutical Company, be, and it hereby is, revoked; and any pending applications for renewal or modification of said registration, be, and hereby are, denied. Furthermore, the application of Seaside Pharmaceutical Company dated March 28, 2000, for registration as an exporter of List I chemicals is also hereby denied.

The order is effective April 18, 2002.

Dated: March 11, 2002.

Asa Hutchinson,
Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Southern Illinois Wholesale, Inc.; Denial of Application

On or about June 27, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Southern Illinois Wholesale, Inc. (SIW), located in Dongola, Illinois, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated December 3, 2000, for a DEA Certificate of Registration as a distributor of the List 1 chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified SIW that, should no request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received July 16, 2001, as indicated by the signed postal return receipt. 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 receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that SIW is deemed to have 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.

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, ephedrine, and phenylpropanolamine are List I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance, or amphetamine, a Schedule III controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Administrator finds that on or about December 3, 2000, an application was submitted by and on behalf of SIW, by George W. Howard (Howard) for DEA registration as a distributor of the above-referenced List I chemicals.

During the February 23, 2001, pre-registration inspection, Howard

informed DEA investigators that he proposed to sell various products from his parent's home, including List I chemical products. Howard states he had started out two years before, operating bubble gum vending machines, and had recently arranged through an internet consulting company to sell novelty items to retailers. He further stated that some small retail stores in the Southern Illinois and Cape Girardeau, Missouri, area would buy his other products only if he could provide List I chemical products. Howard alleged to DEA investigators that retailers in general would only do business with him if he could provide listed chemical products. He stated he wished to compete in the market that Four Seasons and Heartland held. Both of these distributors previously held DEA registrations that were surrendered during DEA actions against the companies. The DEA investigations into those companies revealed the markets they served had histories of ordering listed chemical products in quantities far greater than legitimate demand would require. DEA took action against the registrations of those two companies because the investigations showed a substantial amount of this pseudoephedrine was being diverted to the illicit manufacture of methamphetamine.

During the pre-registration inspection, Howard was unclear regarding what licenses he needed to conduct business in either Illinois or Missouri. He further stated he was using his parent's basement for storage of his products. DEA investigators noted that Howard had a tendency to delete telephone messages left for him before listening to the entire message; this resulted in a number of miscommunications between Howard and the local DEA office. In addition, at the preregistration inspection Howard was unable to locate information previously sent to him by DEA investigators concerning the responsibilities of a listed chemical registrant. He admitted that he had not been taking the registration process very seriously. Howard stated he wanted to handle List I chemical products because his competition does; and also because he wanted to recoup the cost of obtaining a DEA registration.

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 he considered:

(1) Maintenance by the applicant of effective controls against diversion of