

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.

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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

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