

the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the United States Postal Service has been disrupted. Consequently, comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, and sent (1) c/o Patti Miller, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; and/or (2) by facsimile to (202) 353-0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, United States Department of Justice, 1425 New York Avenue, NW 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States v. Angus Macdonald, et al.*, DOJ # 90-11-3-06957.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, VA; and the Region III Office of the Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax number (202) 616-6584; phone confirmation (202) 514-1547. In requesting a copy, please forward the request and a check in the amount of \$9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury, referencing the DOJ Consent Decree Library, *United States v. Angus Macdonald, et al.*, DOJ # 90-11-3-06957, to the first-class mail address at EPA Region III or the overnight mail address at DOJ, 1425 New York Avenue, listed above.

Robert Brook,

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

[FR Doc. 02-6499 Filed 3-18-02; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—COVA Technologies Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), COVA Technologies Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are COVA Technologies, Inc., Colorado Springs, CO; and Celis Semiconductor Corporation, Colorado Springs, CO. The nature and objectives of the venture are to conduct research on ferroelectric nonvolatile memory technologies that will enable dense, ferroelectric memory products based on one-transistor ferroelectric memory cells.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02-6500 Filed 3-18-02; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ace Wholesale & Trading Co.; Revocation of Registration

On March 16, 2001, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) to Ace Wholesale & Trading Company (Ace), located in Lakewood, Washington, 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 Ace'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 Ace and its owner, Sung Won Hwang (Hwang) of an opportunity to request a hearing to show cause as to why the DEA should not revoke its DEA Certificate of Registration, 004652ALY, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(h). The OTSC also notified Ace that, should no request for hearing

be filed within 30 days, its right to a hearing would be considered waived.

On March 23, 2001, a copy of the OTSC was served upon Hwang as he was being processed for arrest for Federal offenses relating to the unlawful distribution of pseudoephedrine and conspiracy to manufacture methamphetamine. Since that time, no request for a hearing or any other response was received by DEA from Ace or Hwang 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 Ace 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 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 DEA investigation shows that at the time ACE became registered with the DEA on December 20, 1999, as a distributor of the List I chemicals pseudoephedrine and phenylpropanolamine, Hwang was personally served with the DEA notices informing him that pseudoephedrine and other List I chemicals are diverted for use in clandestine methamphetamine laboratories, and served as well with the notice informing him that possession or distribution of a listed chemical knowing or having reasonable cause to believe that the listed chemical will be used to

manufacture a controlled substance is a violation of the Controlled Substances Act. DEA investigators explained to Hwang the information contained in the notices, and Hwang indicated that he understood.

On or about October 21, 1998, DEA and the Pierce County Sheriff's Department, Lakewood, Washington, initiated an investigation of a retail outlet (Retail Outlet) located in Lakewood, Washington, selling drug-related paraphernalia and List I chemical products containing pseudoephedrine. As set forth below, Ace and Hwang on an unknown number of occasions distributed large quantities of pseudoephedrine products to the Retail Outlet. The DEA investigation revealed that Ace and Hwang consistently failed to keep records of these regulated transactions.

On May 19 and May 30, 2000, undercover DEA investigators purchased a total of 429 bottles of 120 count 60 mg. pseudoephedrine tablets (51,480 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. An August 9, 2000, administrative inspection of Ace conducted by DEA revealed this pseudoephedrine had originated from Ace. This same administrative inspection revealed Ace had no records indicating it had ever supplied pseudoephedrine to the Retail Outlet.

On July 1, 2000, the Evergreen State College Police Department of Olympia, Washington, discovered a clandestine methamphetamine laboratory dump site. Several empty bottles of 60 mg. pseudoephedrine recovered from the Dump site were traced back to Ace.

On July 21, 2000, DEA investigators made an undercover purchase of 494 boxes of 48 count 60 mg. pseudoephedrine (23,712 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. The August 9, 2000, administrative inspection revealed this pseudoephedrine also originated from Ace.

During the August 9, 2000, inspection, Hwang admitted that a portion of his List I chemical inventory was stored at his residence, because he did not have enough room to store it at his registered address. Hwang's residence is not a registered address, according to DEA's records.

Also during the August 9, 2000, inspection, a DEA investigator obtained Ace's purchase and sales records for a particular lot number of 60 mg. Pseudoephedrine product for the period from July 2000 through close of business on the date of the inspection. A closing inventory of Ace on August 9, 2000, revealed no pseudoephedrine on hand reflecting this lot number. Examination of Ace's records, however, revealed that there should have been an inventory under this lot number of ten cases and 104 boxes (74,112 dosage units) of pseudoephedrine. Thus, Ace could not account for the disposition of this pseudoephedrine. DEA's investigation, however, showed that the lot number of the unaccounted-for pseudoephedrine matched that of the above-referenced July 21, 2000, 494 box undercover purchase from the Retail Outlet.

On August 15, 2000, a clandestine methamphetamine laboratory was discovered in Eatonville, Washington. Empty pseudoephedrine bottles recovered from the site were traced back to Ace.

On September 29, 2000, undercover DEA investigators purchased 240 bottles of 120 count 60 mg. pseudoephedrine tablets (28,800 dosage units) from the Retail Outlet. DEA Confidential Source information revealed that the owner/operators of the Retail Outlet distributed the pseudoephedrine knowing it would be diverted to the illicit manufacture of methamphetamine. The DEA investigation revealed substantial evidence that this pseudoephedrine was provided by Ace.

The review of Ace's records by DEA investigators during the August 9, 2000, inspection showed no List I chemical sales by Ace during the period from December 20, 1999, to August 9, 2000. The DEA investigation revealed, however, at least four separate distributions of pseudoephedrine to a firm not registered with DEA to handle List I chemicals. On May 22, 2000, on June 22, 2000, on July 14, 2000, and on July 28, 2000, Ace distributed 72 bottles of 120 count 60 mg. pseudoephedrine tablets (totaling 288 bottles/34,560 dosage units). The two July distributions combine to exceed the monthly cumulative threshold for pseudoephedrine, and therefore are considered regulated transactions. 21 CFR 1310.04. Each of these distributions was made to a firm that was not registered with DEA to handle List I chemicals.

The DEA investigation revealed Ace was distributing quantities of pseudoephedrine to retail establishments far in excess of legitimate demand. For example, Ace

supplied a small retail convenience store with 144 boxes of 48 count 60 mg. pseudoephedrine tablets (6,912 dosage units) per month between July 1, 2000, and September 2, 2000. Thereafter, commencing October 1, 2000, Ace doubled the supply to the convenience store until a State criminal search warrant was served upon the convenience store November 9, 2000. While these do not appear to have been regulated transactions, they are indicative of Ace's excessive distribution practices. During the execution of this warrant, a post-dated sales receipt for pseudoephedrine from Ace was discovered, as well as a falsified Ace sales invoice.

Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Ace's DEA Certificate 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 Ace'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 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.

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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