

USA); Kraft Foods, Inc. (On behalf of Ware Chemical); the Mennen Company, Inc.; Merck & Co., Inc.; Mine Safety Appliances Company; Minnesota Mining & Manufacturing Company; NL Industries, Inc.; National Starch and Chemical Company; Occidental Chemical Corporation (as successor to Diamond Shamrock Chemicals Inc.); The Perkin-Elmer Corporation; Pfizer Inc; Pitney Bowes, Inc.; Reichold Chemicals, Inc.; Revlon Consumer Products Corporation; Schenectady International, Inc.; E.R. Squibb & Sons, Inc.; Textron, Inc. (Patterson-Sargent); Union Carbide Corporation; The Upjohn Company; R.T. Vanderbilt Company, Inc.; and Wyeth Laboratories, Inc., are all generators of wastes containing hazardous substances which were disposed of at the Picillo Farm Superfund Site in Coventry, Rhode Island.

Under the terms of the proposed decree, defendants will perform and/or pay for certain remedial design/remedial action work involving soil source control and management of groundwater mitigation. The work to be undertaken and/or paid for by defendants is valued by the United States Environmental Protection Agency at \$15.9 million. The proposed decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9601 *et seq.*, and under Section 7003 of the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Allied Signal, Inc., et al.*, D.J. reference #90-11-2-985. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Rhode Island, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island; the Region I Office of the Environmental Protection Agency, 290 Canal Street, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. In

requesting a copy, please enclose a check in the amount of \$2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,
Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
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Drug Enforcement Administration

Maxicare Pharmacy, Revocation of Registration

On November 1, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Maxicare Pharmacy, (Respondent) of Houston, Texas, notifying it of an opportunity to show cause as to why DA should not revoke its DEA Certificate of Registration, BM3971644, under U.S.C. 824(a) (2) and (4), and deny any pending application under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged, among other things, that (1) on September 26, 1994, the Respondent's pharmacist and owner (Owner) provided falsified controlled substance records to DEA, allegedly documenting receipt of controlled substances from a local distributor, when subsequently it was determined that an employee of the distributor was unlawfully supplying controlled substances to the Respondent; (2) on January 12, 1995, the Owner and her husband were indicated on numerous counts of violating the Texas Health and Safety code related to the handling of controlled substances; (3) on July 25, 1995, the Owner was found guilty on nine counts of engaging in organized criminal activity related to theft of controlled substances by a public servant, and she was found guilty of fraud, theft and commercial violations of the controlled substances act, for which she was sentenced to ten years imprisonment and was ordered to pay a \$3,000.00 fine; and (4) the Owner's husband was found guilty of two counts of engaging in organized criminal activity related to theft of controlled substances, and he was sentenced to seven years imprisonment.

The Order was mailed in the U.S. Mail, and a signed receipt dated November 6, 1995, was returned to DEA. However, neither the Respondent nor anyone purporting to represent it has replied to the Order to Show Cause. More than thirty days have passed since the Order was served upon the Respondent. Therefore, pursuant to 21

CFR 1301.54(d), the Deputy Administrator finds that the Respondent has waived its opportunity for a hearing on the issues raised by the Order to Show Cause, and, after considering the investigative file, enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that the Respondent was issued DEA Certificate of Registration BM3971644 on April 22, 1994, as a retail pharmacy, owned by the Owner and her husband (Co-owner). A DEA investigation revealed that, as a result of a DEA audit, the Respondent had significant overages of clonazepam and alprazolam, both Schedule IV controlled substances pursuant to 21 C.F.R. 1308.14. Specifically, on September 20, 1994, pursuant to a federal administrative inspection warrant executed at the Respondent pharmacy, a DEA Diversion Investigator (Investigator) conducted an audit of four different controlled substances, to include clonazepam and alprazolam. The Investigator and the Owner, who was also the pharmacist-in-charge, counted the existing inventory of these substances, to include trade names and generic equivalents, and compared the number on hand with documents which noted the amounts purchased, dispensed, or loaned by the Respondent to other pharmacies. As a result of this audit, it was determined that on September 20, 1994, there were 1,000 more clonazepam tablets than could be accounted for by the Respondent's records, to include purchase invoices and filled prescriptions. Also, on that date, there were 1,400 more alprazolam tablets than could be accounted for by the Respondent's records, and a total variance for all four substances of 3,438 tablets.

During the inspection, the Investigator asked the Owner to provide the Respondent pharmacy's records for alprazolam and clonazepam. The Owner told the Investigator that some of her acquisition invoices were at home, but she agreed to deliver these documents to the Investigator. On September 26, 1994, the Owner delivered to the Investigator several invoices from Abbey Pharmaceutical which were dated between July 1, 1994, and September 2, 1994. The Owner also told the Investigator that a named employee (Employee) of Abbey Pharmaceutical had agreed to loan the Respondent pharmacy these controlled substances for up to one year, and at the end of that year, the Owner was either to replace the substances or to pay for them. However, when the Investigator

interviewed the Employee, he stated that he did not know the Owner or the Respondent pharmacy. The Investigator also interviewed other officials of Abbey Pharmaceuticals, who stated that the Respondent pharmacy was not a customer, and that Abbey Pharmaceutical had not sold, loaned, or shipped controlled substances to the Respondent.

Further investigation revealed that the Owner was involved in a scheme with an employee of Abbey Pharmaceutical, whereby the Owner received clonazepam and alprazolam and blank invoices for her to complete to create a record justifying receipt of these controlled substances. Further, the Co-owner was also involved in a scheme resulting in the transfer of medications from a local hospital to his residence. On July 25, 1995, the Owner was found guilty of the felony offenses of engaging in organized criminal activity related to theft of controlled substances by a public servant, fraud, theft, and commercial violations of the controlled substances act, by the 228th District Court of Harris County, Texas. On September 21, 1995, the Owner was sentenced to serve ten years confinement and to pay a \$3,000.00 fine. The Co-owner was found guilty of engaging in organized criminal activity related to the theft of controlled substances, and he was sentenced to serve seven years in prison.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke the Respondent's DEA Certificate of Registration, and deny any pending renewal of that registration, if he determines that the continued registration would be inconsistent with the public interest. Further, 21 U.S.C. 824(a)(2) provides in relevant part that a registration may be revoked upon a finding that the registrant has been convicted, under State law, of a felony related to any controlled substance.

As to the Respondent's "conviction," the DEA has previously determined that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer, or key employee, or has some responsibility for the operation of the registrant's controlled substances business, has been convicted of a felony offense relating to controlled substances. See Robert Hozdish, d/b/a/ A.J. Meyer Pharmacy, 53 FR 13338 (1998) (revoking a pharmacy's registration on the basis of the pharmacist's and owner's controlled substance-related felony conviction); see also, Taneytown Pharmacy, 51 FR 45068 (1986) and cases cited therein. Here, the record clearly establishes that the

Owner, who also served as the pharmacist-in-charge, and the Co-owner of the Respondent were convicted in a Texas court of felony offenses involving controlled substances. Therefore, the Deputy Administrator concludes that a lawful basis exists for the revocation of the Respondent's DEA registration under 21 U.S.C. 824(a)(2).

As to the public interest in this matter, Section 823(f) provides that the following factors be considered:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
 - (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
 - (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
 - (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
 - (5) Such other conduct which may threaten the public health or safety.
- These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a 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 denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989). In this case, factors four and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest.

As to factor four, the Respondent's "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," the record shows that record-keeping violations were found during a DEA audit of the Respondent. As for recordkeeping requirements, pursuant to 21 U.S.C. 827(a)(3), "every registrant under this subchapter * * * dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each substance * * * received, sold, delivered, or otherwise disposed of by him," and 21 U.S.C. 827(b) provides that, "Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General."

Applicable federal recordkeeping regulations also exist, and 21 C.F.R. 1304.21 requires a registrant to "maintain on a current basis a complete and accurate record of each such substance * * * received, sold, delivered, * * * or otherwise disposed

of by him." Further, 21 C.F.R. 1304.24 requires dispensers to maintain records for each controlled substance reflecting, among other things, the number of commercial containers received, and "including the date of and number of containers in each receipt and the name, address, and registration number of the person from whom the containers were received," the number of units dispensed, with detailed information concerning the person to whom it was dispensed, and information concerning any other method of disposal of the substance.

Here, as a result of a DEA audit, the Respondent pharmacy's controlled substance records revealed significant overages of clonazepam and alprazolam, both Schedule IV controlled substances. Also, the Owner failed to provide accurate records or other documentary evidence to reconcile the amounts of controlled substances on hand with the legitimate acquisition and disposition of the medications as required by DEA regulations. Such unexplained overages were indicative of the Owner's violation of the regulated distribution system, which was established to protect the public interest by preventing diversion of such substances. DEA has previously found that a failure to maintain adequate records in a threat to the public interest and is a basis for revoking the Respondent's registration. See, generally, Taneytown Pharmacy, *supra*.

As to factor five, "[s]uch other conduct which may threaten the public health or safety," the Deputy Administrator finds it significant that, when the Owner was questioned concerning the audit results, she ultimately provided false receiving documents with the intention of deceiving the Investigator into believing that she had legitimately received the controlled substances from Abbey Pharmaceuticals. The Owner's willingness to falsify documents pertaining to controlled substances and to deceive a DEA investigator is further evidence of the Owner's lack of trustworthiness in handling controlled substances. As the owner and primary pharmacist for the Respondent, her conduct established such a threat to the public interest as to justify the revocation of the Respondent's DEA Certificate of Registration. Therefore, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's registration and by denying any pending renewal application.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the

authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BM3971644, previously issued to Maxicare Pharmacy, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and hereby are, denied. This order is effective July 1, 1996.

Dated: May 28, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96-13685 Filed 5-30-96; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in

5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume V

Oklahoma
OK960046 (May 31, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and

Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI960001 (March 15, 1996)

Volume II

Pennsylvania
PA960008 (March 15, 1996)
PA960009 (March 15, 1996)
PA960010 (March 15, 1996)
PA960014 (March 15, 1996)
PA960021 (March 15, 1996)
PA960024 (March 15, 1996)
PA960029 (March 15, 1996)
PA960040 (March 15, 1996)
PA960060 (March 15, 1996)

Volume III

Florida
FL960017 (March 15, 1996)
Tennessee
TN960005 (March 15, 1996)
TN960058 (March 15, 1996)

Volume IV

Indiana
IN960017 (March 15, 1996)

Volume V

Oklahoma
OK960014 (March 15, 1996)
Texas
TX960015 (March 15, 1996)

Volume VI

California
CA960006 (March 15, 1996)
CA960039 (March 15, 1996)
CA960047 (March 15, 1996)
CA960088 (April 12, 1996)
Colorado
CO960001 (March 15, 1996)
CO960006 (March 15, 1996)
CO960007 (March 15, 1996)
CO960008 (March 15, 1996)
CO960009 (March 15, 1996)
CO960010 (March 15, 1996)

General wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of