DEPARTMENT OF JUSTICE

Notice of Lodging of First Addendum to Consent Decree Under the Emergency Planning and Community Right-To-Know Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Safe Drinking Water Act, and the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on August 25, 2011, a proposed First Addendum to Consent Decree in *United States, et, al.* v. *INVISTA, S.à r.l,* Civil Action Number 1:2009-cv-00244, was lodged with the United States District Court for the District of Delaware.

The Consent Decree in this matter was entered on July 28, 2009. The Consent Decree resolves claims against INVISTA S.à r.l. (''INVISTA'') brought by the United States on behalf of the U.S. Environmental Protection Agency (''EPA'') under the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11001 to 11050; the Clean Water Act (CWA), 42 U.S.C. 1251 to 1387; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6992k; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 to 136y; Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 to 9675; the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f to 300j–26; and the Clean Air Act (CAA), 42 U.S.C. 7401 to 7671q (hereinafter ''Environmental Requirements''). The Consent Decree also resolves the claims against INVISTA brought by the State of Delaware Department of Natural Resources and Environmental Control, the State of South Carolina Department of Health and Environmental Control, and the Chattanooga-Hamilton County Air Pollution Control Board.

The First Addendum to Consent Decree modifies deadlines for benzene waste NESHAP program enhancements at two INVISTA facilities in Orange and Victoria, Texas. The First Addendum extends the time for INVISTA to elect between two options for further benzene emission reductions and extends the time to implement the selected option. INVISTA will continue to comply with the benzene NESHAP throughout this period.

The Department of Justice will receive, for a period of 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, and either e-mailed to *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 et al.* v. *INVISTA, S.a.r.l,* DOJ Ref. No. 90–5–2–1–08892.

The proposed First Addendum to Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may 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*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $2.00 (.25 cents per page reproduction costs), payable to the U.S. Treasury.

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[FR Doc. 2011–22121 Filed 8–29–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–33]

Richard A. Herbert, M.D.; Decision and Order

On June 15, 2010, Administrative Law Judge (ALJ) Mary Ellen Bittner issued the attached recommended decision. Thereafter, Respondent filed Exceptions to the ALJ's decision.

Having reviewed the entire record including Respondent's Exceptions, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order except as expressly set forth below.[1]

In his Exceptions, Respondent raises several issues. First, Respondent argues that he ''was irreparably harmed'' because he was forced to represent himself ''pro se'' after the ALJ granted his previous attorney's motion to withdraw but did not grant his motion for a continuance of the hearing to allow him to obtain new counsel.[2] Exc. at 6–7. Respondent argues that his previous attorney had requested that he ''be given leave of 21 days to obtain new counsel,'' and that ''[t]he ALJ mistakenly assumed that the attorney and Respondent were not asking for a delay of the hearing'' and did not grant a continuance in her October 13, 2009 order. *Id.* at 7. Respondent further asserts that the ALJ ''unfairly denied a continuance'' and that he ''must be given a fair hearing with representation for a proper outcome in this matter.'' *Id.* at 10.

The record establishes that on October 9, 2009, Respondent's prior counsel filed a motion for leave to withdraw; in his motion, Respondent's prior counsel ''further requested that Respondent be given leave of twenty-one (21) days to secure new counsel.'' ALJ Ex. 5. On October 13, 2009, the ALJ granted the motion to withdraw. *Id.* However, the ALJ found ''it unnecessary to provide leave of twenty-one (21) days for Respondent to secure new counsel * * * as Respondent is free to retain counsel at any time.'' *Id.* The ALJ further ordered that ''the hearing in this matter, scheduled to begin on November 3, 2009, shall proceed as scheduled.'' *Id.* A copy of this ruling was served on Respondent by Federal Express. *Id.* In addition, the following day, the ALJ's law clerk wrote Respondent noting that it appeared that he was no longer represented by counsel and calling his attention to his ''right to be represented by an attorney''; the letter also included verbatim the language of 21 CFR 1316.50, which addresses a party's right to representation. ALJ Ex. 6. The letter further advised Respondent that he could contact the ALJ's law clerk if he had any questions. *Id.*

At the hearing, Respondent argued that his prior counsel had sought a continuance of twenty-one days. Tr. 11. However, the ALJ noted that Respondent's prior attorney ''did not ask for a postponement of the hearing'' and that he had simply requested that Respondent ''be given leave of 21 days to secure new counsel.'' *Id.* at 12–13. Respondent replied that his prior lawyer's intent was ''to get [him] time'' because ''we have blocked out four days'' for the hearing, and no ''major league attorney is going to have four days [open] on his calendar,'' having been notified approximately three weeks before the hearing date. *Id.* at 13. The ALJ responded that she did not

[1] Pursuant to 5 U.S.C. 552(a)(2), the ALJ's recommended decision has been edited to eliminate the names of various persons who were either witnesses or were referred to in the proceeding. All citations to the ALJ's decision are to the slip opinion attached to this Decision and Order.

[2] Respondent does not, however, contend that the ALJ erred in granting the motion to withdraw. *See* Resp. Exc. at 6–10.