

The Deputy Administrator's review of the investigative file reveals that pseudoephedrine products distributed by MDI have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine. On February 20, 2001, the Las Vegas Metropolitan Police Department (LVMPD) arrested three individuals in an apartment complex in response to a small fire in their unit. At the time of the arrest, LVMPD officers discovered a methamphetamine laboratory inside the apartment. Numerous items associated with the illicit manufacture of methamphetamine were also recovered from the apartment, including three empty 120-count bottles of MDI brand 60mg. pseudoephedrine tablets.

On April 4, 2001, two individuals were arrested by the LVMPD when a search of a residence revealed items associated with the illicit manufacture of methamphetamine, including twenty 120-count bottles of MDI brand 60mg. pseudoephedrine tablets. The investigative file further reveals that from April 16 to August 8, 2001, there were approximately thirteen additional seizures of MDI brand pseudoephedrine products at various clandestine laboratory settings. These seizures occurred primarily in the Las Vegas area, as well as at locations in Colorado and California.

The Deputy Administrator finds that on February 22, 2001, the Federal Express office in St. George, Utah received six cases of pseudoephedrine which were shipped by MDI purportedly to six different business locations; however, all six cases were picked up by one person in a vehicle registered to Samar Issa. Business records for the city of St. George had no current information for three of the business entities. Business licenses for the other three businesses were issued to Marogy Marogy (later determined to be Samar Issa's brother-in-law), Mike Yako and a "Suhel Aesa."

On March 14, 2001, a DEA Task Force Officer (TFO) acting in an undercover capacity met with Mike Yako at a location in Las Vegas, Nevada to arrange the purchase of a half case of pseudoephedrine. After agreeing to a price for half a case of pseudoephedrine, Mr. Yako was observed by law enforcement officers going into a storage unit, where he later emerged carrying a brown box which he placed in the trunk of his car. Mr. Yako then removed from the car trunk a bottle of MDI brand pseudoephedrine, which he handed to

the TFO. Yako then stated to the TFO that MDI brand "is doing so well" his store put their own labels on the bottles. Mr. Yako then accepted from the undercover TFO \$2,000 cash for 72 bottles of MDI pseudoephedrine tablets. During an April 3, 2001 undercover operation, the TFO stated his intentions to purchase five cases of pseudoephedrine from Mr. Yako in the near future, to which Mr. Yako replied, "no problem."

On March 18, 2001, a Colorado State Trooper made a traffic stop of a vehicle driven by Suhail Issa, who was accompanied by Mike Yako. Mr. Yako informed the trooper that he was visiting Colorado to oversee "smoke shop" stores that he owned in the state. He further stated that the two were on their way to Las Vegas, and had planned a temporary stop in Fruita, Colorado, to purchase gasoline for the vehicle they were driving. After obtaining permission to search the vehicle, the trooper found three boxes of pseudoephedrine. Contained within the three boxes were Federal Express shipping labels dated April 16, 2001, and invoices from MDI to Special Smoke locations in Fruita, Grand Junction, and Delta, Colorado. Mike Yako explained that the three boxes were "stuff for my business." The trooper seized the three boxes, but did not arrest the two passengers.

On May 24, 2001, Diversion Investigators visited Ms. DeLuce and Mr. Uzan at their residence in Dillon, Montana. DEA personnel discussed with Ms. DeLuce and Mr. Uzan information regarding MDI pseudoephedrine products that were found at various clandestine methamphetamine settings. In response, Ms. DeLuce explained that she limits her customers to only two cases per month and that she sells pseudoephedrine in bottles rather than in blister packs because her customers prefer bottles. She also stated that she had 137 customers, most of who were located in Las Vegas.

DEA also discussed with Ms. DeLuce the above referenced traffic stop of Suhail Issa and Mile Yako by the Colorado State Police. Ms. DeLuce acknowledged that these individuals were customers of MDI, and that she had been informed of the traffic stop. Ms. DeLuce also stated that she thought the two customers fabricated the story about the seizure in order to obtain more pseudoephedrine from MDI. Ms. DeLuce further added that despite her suspicions regarding the circumstances of traffic stop and the fact that the two customers were transporting pseudoephedrine products in the trunk

of an automobile, she failed to report these matters to DEA as a suspicious transactions. Ms. DeLuce explained that she did not report the incident because she believed DEA was already aware of the seizure.

Despite her representations to DEA personnel, the Deputy Administrator finds that information previously communicated to Ms. DeLuce regarding the traffic stop of her customers, and their being found in possession of caseload quantities of pseudoephedrine which were later seized, should have raised red flags that these products were being diverted to illicit uses. Ms. DeLuce admitted that the circumstances surrounding the traffic stop were suspicious. As a registrant entrusted with securing a product that is frequently diverted to illicit uses, MDI was required to notify DEA of the suspicious circumstances surrounding the traffic stop of its customers pursuant to 21 CFR 1310.05(a).

The investigative file further reveals that Ms. DeLuce and Mr. Uzan informed DEA personnel that because of the traffic stop involving Mister Issa and Yako, MDI suspended all sales of its products to any establishment in which these customers were affiliated. They further indicated that the "smoke shop" stores operated by Issa and Yako in Colorado had closed. However, DEA subsequently obtained Federal Express records which showed that on at least thirty-nine separate occasions following the traffic stop by the Colorado State Police, MDI continued its shipment of caseload quantities of pseudoephedrine to business establishments operate by Suhail Issa and/or Mike Yako. Included among these transactions were numerous shipments of listed chemicals to "smoke shops" in Colorado. At least three of the transactions occurred after Ms. DeLuce assured DEA personnel that MDI no longer sold listed chemicals to these customers.

A further review of the investigative file reveals that MDI shipped pseudoephedrine products to a customer in St. George, Utah. Ms. DeLuce informed DEA personnel that MDI later determined that the customer was operating from a fictitious address. However, Ms. DeLuce admitted that MDI failed to report this suspicious transaction, as required by 21 CFR 1310.05(a)(1).

The Administrator of DEA made a preliminary finding that MDI has been responsible for the diversion of large quantities of pseudoephedrine into other than legitimate channels, in violation of 21 U.S.C. 830(b)(3) and 841(c)(2). The Administrator also found that despite MDI's awareness of