

problems associated with pseudoephedrine diversion, and laws pertaining to listed chemicals, the firm had continually and consistently violated DEA laws pertaining listed chemicals, thus resulting in large quantities of pseudoephedrine being diverted to the illicit production of methamphetamine. Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of DEA issued an immediate suspension of MDI's DEA Certificate of Registration.

As noted above, on September 26, 2001, DEA Diversion Investigators served the Order to Show Cause and Immediate Suspension on Ms. DeLuce at her residence in Dillon, Montana. On that same date, Ms. DeLuce and Mr. Uzan were arrested by DEA Special Agents and charged with offenses related to the unlawful distribution and possession of listed chemicals. At the time of her arrest, Ms. DeLuce agreed to answer questions regarding her sale of listed chemicals and customers who purchased these products from MDI.

Ms. DeLuce informed DEA agents that she knew her products were being sold "on the street." She further admitted that she knew Samer and Suhail Issa, as well as Fehmi Awad (Mr. Awad) were probably abusing pseudoephedrine (*i.e.*, "selling too much"). Ms. DeLuce further stated that she knew Mr. Awad was picking up pseudoephedrine products at four different stores, and Samer Issa was selling the products to illicit methamphetamine manufacturers for about a year. She further admitted knowing that certain customer accounts in Utah and Colorado where MDI shipped pseudoephedrine products were fronts for Samer Issa. Samer Issa reportedly set these stores up in the name of his brother as well as in the names of others.

Ms. DeLuce further informed to DEA agents that she knew pseudoephedrine was a "hot item" in Las Vegas because of the methamphetamine problem, and that 97% of MDI's customers were in that area. She estimated that her company made a profit from the sale of pseudoephedrine of between \$700,000 to \$800,000 a year at approximately \$1,000 per case. Ms. DeLuce also disclosed that Samer Issa informed her that a case of pseudoephedrine sold for approximately \$4000.00 on the street. Despite suspicions that her customers were selling MDI pseudoephedrine products to illicit methamphetamine cooks, Ms. DeLuce said that she essentially closed her eyes and ignored the actions of her customers. She further admitted that it was hard to stop selling a product that sold for \$1,000 a case.

The Deputy Administrator's review of the investigative file reveals that on

October 10, 2001, a Federal Grand Jury in the District of Nevada issued a twenty-nine count indictment against Ms. DeLuce, Mr. Uzan, as well as Samer and Suhail Issa, Fehmi Awad, Mike Yako, and two additional individuals. Among the charged offenses were conspiracy to distribute a listed chemical with knowledge or reasonable cause to believe it would be used to manufacture a controlled substance in violation of 21 U.S.C. 846 and 841(c)(2); possession of a listed chemical in violation of 21 U.S.C. 841(c)(2) and 18 U.S.C. 2; and unlawful use of a communication facility, namely telephones and telephone wires, in causing and facilitating the commission of a conspiracy, in violation of 21 U.S.C. 843(b). These matters are currently pending resolution.

The Deputy Administrator finds that the above-cited evidence provides ample grounds for an immediate suspension pursuant to 21 U.S.C. 824(d). These grounds also provide the basis for the revocation of MDI's DEA Certificate of Registration.

Pursuant to 21 U.S.C. 824(a), the Deputy 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.

As with 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 Deputy Administrator may rely on any one or combination of factors 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, e.g.* Energy Outlet, 64 FR 14269 (1999). *See also* Henry J. Schwartz, Jr., M.D. 54 FR 16422 (1989).

With respect to factor one, maintenance of effective controls against diversion, the Deputy Administrator finds substantial evidence in the investigative file that MDI, through its owners Isabelle DeLuce and Michael Uzan, participated in the unlawful diversion of pseudoephedrine having reasonable cause to believe that it would be used to manufacture illicit methamphetamine. Ms. DeLuce and Mr. Uzan transported bottles of pseudoephedrine in the trunk of their automobile and distributed these products to gas stations, smoke shops, mini marts and other convenience stores in the vicinity of Las Vegas, Nevada, an area known for large numbers of seizures involving clandestine methamphetamine laboratories. DEA previously denied the application of a retail establishment that sought registration as a distributor of list I chemicals when it was found through "past DEA investigations and experience" that the primary source for diversion of listed chemicals in areas where the applicant sought to distribute, specifically in Las Vegas, Nevada, were mini marts and other types of convenience stores. Sinbad Distributing, 67 FR 10232, 10233 (2002). *See e.g.* K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine).

Factor one is also relevant to MDI's distribution of large quantities of pseudoephedrine products to numerous establishments associated with Mike Yako and Saher Issa, despite knowledge on the part of Ms. DeLuce and Mr. Uzan that these establishments were fronts for obtaining listed chemicals for use in the illicit manufacture of methamphetamine. On numerous occasions, MDI failed to report to DEA the sale of an extraordinary quantity of listed chemicals or verify the existence and validity of a business entity ordering listed chemicals, as required by 21 CFR 1310.05(a) and 1310.07. MDI failed to notify DEA that its customer was stopped by law enforcement authorities, and had cases of pseudoephedrine taken from the trunk of an automobile which was seized. In addition, MDI failed to notify DEA that it had shipped pseudoephedrine products to a customer with a fictitious address.

Regarding factor two, the investigative file reveals that MDI failed to comply with applicable Federal laws by not