

method of transfer and the method of payment. Receipt and distribution records were to be maintained at the registered location or at Larry Petit's daughter-in-law's, Tita Petit's, office, be readily retrievable and maintained for two (2) years after the transaction. Distribution of all List I chemical products were to be made under the name OTC.

Larry Petit further agreed to mail photocopies of receipt and distribution records of listed chemical products to DEA on a monthly basis and submit monthly reports to DEA of mail order sales of listed chemical products. OTC was not in compliance with the MOA because OTC failed to regularly provide the requisite purchase records to DEA for its listed chemical products. OTC also failed to provide DEA with monthly purchase records, although it did provide monthly sales records. Both were required by the MOA.

Respondent also agreed in the MOA that Larry Petit would personally review each sale by OTC of listed chemical products for suspicious orders, any and all of which were to be promptly reported to DEA. Although not required of List I chemical distributors by law, under the MOA, Respondent was obligated to take quarterly inventories of its List I chemical products, which would include the List I chemical's name, strength, form of packaging, amount in stock, date of inventory and a witnessed signature of the person taking the inventory.

OTC was also required to keep two forms of identification on file for all customers and maintain a separate file on each customer purchasing List I chemical products. For retail customers, the file should include a copy of the customer's business license and photographs of the establishment bearing the company name. If the company was a DEA registrant, that status was to be verified with the DEA Dallas Field Division. OTC was also to ensure the "ship to" address of retail customers matched the addresses on business licenses maintained in the customer files.

OTC's List I chemical products were to be received and stored only at 12617 Gaslite Drive, Dallas, Texas and DEA approval was required before OTC could use any other storage facility. OTC also agreed to provide advance notification to the Dallas Field Division of any planned ownership change in OTC and promptly notify DEA if OTC Distribution Co. discontinued business.

During a pre-registration investigation of Respondent's premises conducted July 28, 1999, DEA Investigators reviewed the terms of the proposed

MOA point by point with Larry Petit, who was permitted to ask questions and make comments on the terms of the agreement. Larry Petit did suggest some changes and DEA agreed to allow OTC's books to be kept at Tita Petit's residence, separate from OTC's registered location. Larry Petit was advised that he would have to very carefully and fully identify OTC's customers and comply with regulations stipulated in the Code of Federal Regulations. Copies of regulations and warning sheets, advising the DEA had seized combination ephedrine and pseudoephedrine at clandestine methamphetamine laboratories, were also provided. Larry Petit was instructed that OTC should have a photocopy of customer's applications or DEA licenses or of photographic identification or driver's licenses and should physically verify that the company existed.

The Acting Deputy Administrator agrees with the Administrative Law Judge that this MOA is a valid and binding agreement between DEA and Respondent.

On March 30, 2000, DEA Diversion Investigators went to Tita Petit's residence. Since August 1999, Tina Petit had worked for OTC, assisting Larry Petit in keeping the company's List I chemical product records, and the records were maintained at her residence. The Diversion Investigators asked for OTC's purchase and sales records, and Tita Petit produced hardcopy sale and purchase invoices which she confirmed were "all the records." The records were found to be incomplete in that they did not indicate when and if a product was actually received. Tita Petit indicated she and Larry Petit were trying to "work out the problem" and at that time there was no real way to tell when a shipment had been received. During this period they were working with OTC's main supplier of List I chemical products, OTC Brokerage, Inc. ("OTCB"), to match up invoices. In a May 10, 2000, letter to DEA, Larry Petit indicated OTCB had not provided OTC with complete purchase records.

The Diversion Investigators attempted to conduct an audit of the company's List I chemical products. The audit covered the period July 30, 1999, to March 30, 2000. In addition to the incomplete receiving records, the Diversion Investigators found inconsistencies in the sales records. The Investigators went to some of OTC's suppliers in an attempt to determine exactly how much product was received by OTC during the audit period. They were not able to obtain all the information they needed. The audit

disclosed shortages of several products including thousands of bottles of pseudoephedrine.

Diversion Investigators conducted another inspection on May 23, 2000. They inventoried approximately 1,500 bottles of List I chemical products on hand, a figure Larry Petit certified. Using Respondent's list of sales of the month of May 2000 and purchase and sales documents from OTC, and two of its suppliers for that month, DEA personnel determined that for the month of May 2000, OTC had additional shortages of 10,589 bottles of List I chemical products.

The Administrative Law Judge found that as a chemical registrant, OTC had an obligation to maintain records regarding List I chemical products and to keep purchasing records and sales records. Further, pursuant to paragraph 7 of the MOA, OTC was required to keep an inventory of all List I chemicals on a quarterly basis. Pursuant to the MOA, OTC was also required to keep sales invoices. The sales invoices DEA obtained March 30, 1999, were retained pursuant to that requirement, but those records were incomplete. More than half of the 179 invoices (98) did not denote the method of transfer, which should be recorded in accordance with DEA regulations. The MOA also required recordation of the method of payment, yet approximately 56 or 57 of the total invoices reviewed failed to note method of payment.

In the months following its pre-registration inspection, OTC provided DEA with sales records in accordance with the MOA, but not the required purchase records. The purchase records were, however, promptly produced in January or February 2000 after they were requested.

Between July 1999 and February 2000, Koehn Enterprises of Texarkana, Texas purchased 600 cases of pseudoephedrine product from OTC. On February 15, 2000, a DEA Diversion Investigator went to the location that OTC shipped to and found Koehn's registered location to be a day care center and that its List I chemical products were being stored at another unregistered address. Koehn also had been arrested on state charges for unlawful transfer of precursor chemicals. DEA was advised that Koehn made many shipments of List I chemicals to Las Vegas, Nevada to customers taken over from OTC. Koehn was unable to account for 97 cases of pseudoephedrine which it had received from OTC.

OTC was also receiving, processing and distributing orders containing List I chemical products at the AIT Freight