

UNITED STATES DEPARTMENT OF JUSTICE

DRUG ENFORCEMENT ADMINISTRATION

In the Matter of

Scheduling 2,5-Dimethoxy-4-chloroamphetamine and 2,5-Dimethoxy-4-iodoamphetamine

Docket No. 24-24

ADMINISTRATIVE LAW JUDGE

PAUL E. SOEFFING

GOVERNMENT’S MOTION TO STRIKE “PANACEA PLANT SCIENCES MOTION TO STAY” OR, IN THE ALTERNATIVE, OPPOSITION TO “PANACEA PLANT SCIENCES MOTION TO STAY”

The Government respectfully moves to strike “Panacea Plant Sciences Motion to Stay” submitted on January 20, 2025. In the alternative, the Government opposes the motion insofar as the motion is moot and thus without merit.

BACKGROUND

Panacea Plant Sciences (PPS) is one of three petitioners who challenged the rulemaking which is the subject of this above captioned matter. On November 12, 2024, PPS failed to appear at the hearing in this matter either in person or virtually. Though PPS claimed “David Heldreth has come down with an illness, that appears to be the flu” and as a result, “will not be able to attend the DEA ALJ hearing ... in person,” PPS failed to send a representative to the hearing or have a representative appear virtually.

On November 19, 2024, the hearing concluded without PPS making any appearance whatsoever. On that same date, the Administrative Law Judge (ALJ) set deadlines for parties to

submit proposed corrections to the record and to submit Post-Hearing Briefs. PPS did neither. Nor did PPS provide any good cause for its failures.

On January 20, 2024, PPS filed its “Motion to Stay,” citing an Executive Order prohibiting the issuance of “any rule in any manner ... until a department or agency head appointed or designated by the President after noon on January 20, 2025, reviews and approves the rule.” That same day, at 8:01 P.M., Assistant Attorney General for Administration Jolene Lauria “announced the appointment of Derek S. Maltz to serve as Acting Administrator of the U.S. Drug Enforcement Administration.”

ARGUMENT

A. PPS’s motion should be stricken because PPS has waived its right to a hearing

Pursuant to 21 C.F.R. § 1301.43(d), PPS has waived its right to further participate in these proceedings by failing to appear at the hearing in any capacity whatsoever. PPS is a company, not an individual. According to its own annual report, filed March 1, 2024, there are at least two people listed as Governors, *See* Government Attachment (Att.) 1. Moreover, David Heldreth has not claimed that he is the sole representative of PPS. In fact, the website LinkedIn.com lists at least one other PPS employee, Daniel Riddle, who is described as PPS’s “Chief Technical Officer.” *See* Att. 2. Because neither Robert Heldreth nor Daniel Riddle appeared at this hearing, either in person or virtually, and no attempt was made to have them appear on behalf of PPS as qualified representatives pursuant to 21 C.F.R. § 1316.50, there is insufficient good cause to excuse PPS’s failure to provide individuals who could arguably qualify as representatives pursuant 21 C.F.R. § 1316,50. Accordingly, PPS’s right to participate in these proceedings is waived.

Secondly, the evidence shows that PPS never intended to participate in this proceeding in good faith, but only to disrupt the proceedings. Though it filed a short, written statement of largely inadmissible hearsay and conjecture, it failed to file any proposed corrections to the record or file a Post-Hearing Brief. It also strains credulity to claim that Mr. Heldreth's illness prevented him from at least requesting permission to send a surrogate to preserve PPS's right to a hearing when, during that time, he was able to prepare his "Opening Statement and Testimony" and an "Emergency Motion for Emergency Injunction Pending New Presidential Administration and Appeal" in the United States District Court for the Western District of Washington.¹

Given that PPS failed to show sufficient good cause to excuse its wholesale failure to appear at the hearing, PPS should be deemed to have waived its right to a hearing and any submission filed on or after November 12, 2024, should be stricken.

B. PPS's motion is moot.

Citing the President's Executive Order, PPS argues that "the current rule-making process, including these hearings, on DOI and DOC must be frozen, and not continue" until a new DEA Administrator is confirmed. This is incorrect. First and foremost, the Executive Order unequivocally states that a "department or agency head *appointed or designated* by the President after noon on January 20, 2025," may review and approve any rule. (italics added). As stated above, Acting DEA Administrator Derek Maltz's *appointment* was announced at approximately 8:01 p.m. on January 20, 2025. Therefore, because the Acting Administrator may act on any rule presented to him, PPS's motion is rendered moot and therefore, lacks merit.

¹ Based on email traffic, it appears Mr. Heldreth previously provided this to the Tribunal.

CONCLUSION

For all these reasons, the Government respectfully requests that this Tribunal issue an Order removing PPS as a party to the above caption proceedings and strike PPS's "Motion to Stay," or in the alternative, deny PPS's motion as moot.

Dated: January 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2025, I electronically submitted the foregoing to the DEA Office of Administrative Law Judges via the DEA Judicial Mailbox, at [ECF-DEA@dea.gov](#), and simultaneously to the Objectors at:

- David Heldreth, CEO of Panacea Plant Sciences, via email at davidh@panaceaplantsciences.net.
- Brett Phelps, Esq., Counsel for Science Policy Council, Students for Sensible Drug Policy, via email at brett@brettphelpslaw.com.
- Robert T. Rush, Esq., Counsel for Dr. Paul A. Ramos, Amelia A. Furbish, PharmD, and Megan Francis, via email at rrush@rrushlaw.com.

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