

The Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Based on undisputed factual and legal matters, the Agency finds conclusive record evidence that: (1) Respondent lacks authority in Tennessee to dispense Schedule II controlled substances, and (2) the Government presented a *prima facie* case that Respondent is a felon convicted of an offense relating to a controlled substance. *Supra* section II.A. Accordingly, the Agency finds that: (1) Respondent is not eligible for a registration to dispense Schedule II controlled substances, and that (2) Respondent's registration, as to Schedules III through V, is subject to revocation due to his felony conviction relating to controlled substances. 21 U.S.C. 802(21), 823(g)(1); *see, e.g., Valerie Augustus, M.D.*, 88 FR 1099 (as to Schedule II eligibility); 21 U.S.C. 824(a)(2); *see, e.g., Johnny C. Benjamin, Jr., M.D.*, 86 FR 32280, 32282 (2021) (as to felony conviction).

#### IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that one or more grounds for revocation exists, the burden shifts to the Respondent to show why he can be entrusted with a registration.<sup>5</sup> *Garrett Howard Smith, M.D.*, 83 FR 18882 (2018). Moreover, as past performance is the best predictor of future performance, the Agency has required that a respondent must unequivocally accept responsibility for the unlawful acts for which he was convicted, and demonstrate that he will not engage in future misconduct.<sup>6</sup> *Id.* In addition, the

<sup>5</sup> Respondent describes himself as a "highly trained vitreoretinal surgeon" who "credibly explained" that "he developed an addiction to opioid pain killers" after a back injury that "he attempted to manage himself." Resp Posthearing, at 3. Although "it felt appropriate to him" at the time to manage himself, "he now acknowledges that behavior sounds 'crazy' to him." *Id.* Respondent's brief also states that he "candidly acknowledged he engaged in dishonest, inappropriate, and unlawful behaviors in pursuit of substances to sustain the addiction." *Id.*; *infra*. Respondent was not asked to address his listing of "cocaine" in the "drug(s) of choice" section of the Tennessee Medical Foundation contract. RX 5, at 8.

<sup>6</sup> Respondent argues that his ability to continue his medical work requires his maintenance of a registration. *See, e.g., Resp Posthearing*, at 11–12. After carefully reviewing his argument and the bases he posits for it, including RX 4 and RX 6, the Agency finds that the evidence Respondent, himself, offered belies this argument. Indeed, the record includes evidence that Respondent's skill, commitment to his sobriety, willingness to undergo extensive monitoring, and the apparent good will he has engendered have been sufficient for him to obtain and/or retain his current professional employment. *See, e.g., Resp Posthearing*, at 7–12, 14–15.

The Agency notes that Respondent's argument, even if proven, is irrelevant to whether Respondent

Agency has found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* The Agency has also considered the need to deter similar acts by applicants and by the community of registrants. *Id.*

The OSC that initiated this adjudication alleges that the registration of Respondent, who has been convicted of a felony relating to a controlled substance, should be revoked. *Supra* section I. As already discussed, the Agency is without authority to allow Respondent to maintain his registration to dispense Schedule II controlled substances. *Supra* section III. Accordingly, at a minimum, Respondent's authorization to dispense Schedule II controlled substances must now be revoked.

It is the Administrator's CSA-mandated exercise of discretion, however, that determines whether Respondent will continue to hold a registration to dispense Schedules III through V. 21 U.S.C. 824(a). The parties disagree about whether Respondent unequivocally accepted responsibility. *See, e.g., Resp Posthearing*, at 13–14; *Govt Posthearing* at 6–9. The certified record in this matter is not sufficiently developed to determine whether Respondent unequivocally accepted responsibility. However, based on the facts in the certified record that are well-developed and undisputed, the Agency concludes that whether Respondent unequivocally accepted responsibility would not impact a finding as to the appropriate sanction given the egregiousness of Respondent's conduct.

In this matter, the Agency found substantial record evidence that, regardless of the resulting harm his patients could suffer, Respondent prescribed controlled substances so that he could divert at least a portion of them to himself. *See, e.g., Resp Posthearing*, at 4–6, 13–14. These most egregious facts must result in the revocation of Respondent's registration. To allow Respondent to maintain any controlled substance prescribing authority in the face of the egregiousness of the found facts, the danger of his disregard for the CSA, and the safety of his patients would send a message to the current and prospective registrant community that compliance with the CSA is not a condition precedent to the issuance and retention of a registration. *Garrett Howard Smith, M.D.*, 83 FR 18910. Accordingly, the Agency shall order the sanction the

may be entrusted with a registration, the salient issue in this adjudication.

Government requested, without restricting Respondent from applying for a registration in the future.

#### Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1) and 824(a)(2), I hereby revoke DEA Certificate of Registration FK7432278 issued to Matthew S. Katz, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending application of Matthew S. Katz, M.D., to renew or modify this registration, as well as for any other pending application(s) of Matthew S. Katz, M.D., for registration in Tennessee. This Order is effective May 15, 2023.

#### Signing Authority

This document of the Drug Enforcement Administration was signed on April 10, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

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#### DEPARTMENT OF JUSTICE

#### Notice of Proposed Settlement Agreement Under The Federal Debt Collection Procedures Act, The Comprehensive Environmental Response, Compensation, and Liability Act, and The Resource Conservation and Recovery Act

On April 7, 2023, the Maxus Liquidating Trust ("Trust") filed a motion with the United States Bankruptcy Court for the District of Delaware seeking approval of a Settlement and Release (the "Main Agreement") entered into by the Trust and YPF S.A., YPF International S.A. (f/k/a YPF International Ltd.), YPF Holdings, Inc., and YCLH Holdings, Inc. (f/k/a CLH Holdings, Inc.), Repsol, S.A., Repsol Exploración, S.A., Repsol USA Holdings LLC, Repsol E&P USA LLC,

Repsol Offshore E&P USA Inc., Perenco Trinidad & Tobago (Holdings) ETVE SLU (f/k/a Repsol E&P T&T Limited), and Repsol Services Company (the “Private Parties”). The motion was filed as document number 883 in *Maxus Liquidating Trust v. YPF S.A. et al.*, Adv. Pro. No. 18–50489(CTG) (Bankr. D. Del.) (the “Adversary Proceeding”), which is part of the bankruptcy case of Maxus Energy Corporation and certain of its affiliates (collectively “Debtors”), *In re Maxus Energy Corporation, et al.*, No. 16–11501(CTG) (Bankr. D. Del.), in the same court (the “Bankruptcy Case”). The Main Agreement is Exhibit B of the Motion, document number 883–2. Attached as Exhibit 2 at to the Main Agreement, at page 93 of 161, is a proposed Settlement and Covenant Not to Sue (the “Government Agreement”), which has been agreed to, subject to public comment, by the United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), the U.S. Department of the Interior (“DOI”), the U.S. National Oceanic and Atmospheric Administration (“NOAA”), the State of Ohio, the State of Wisconsin, and the Private Parties.

Under the Amended Plan of Liquidation (“Plan”) in the Bankruptcy Case, approved by the Delaware Bankruptcy Court on May 22, 2017, the Trust was established to pursue claims, on behalf of the Debtors, against the Private Parties, who were direct or indirect parents of the Debtors, asserting alter ego liability, fraudulent transfer claims, and related claims. Bankruptcy Case Doc. No. 1460–1. Under the Plan, any monies recovered by the Trust are to be distributed to various creditors and the Environmental Response/Restoration Trust (“ERRT”), pursuant to a distribution formula set forth in the Plan. The ERRT was established to fund remedial and restoration activities at the Diamond Alkali Superfund Site in Newark, New Jersey (“Diamond Alkali Site”). On June 14, 2018, the Trust filed its complaint. The Main Agreement, agreed to by the Trust and the Private Parties, is a settlement of the Trust’s claims. The Main Agreement requires the YPF Private Parties to make a payment to the Trust in the amount of \$287,500,000 (less certain deductions of \$2,000,000), plus interest, and the Repsol Private Parties to make a payment to the Trust in the amount of \$287,500,000, plus interest, for a total of \$573,000,000, plus interest. With respect to the United States, approximately \$80 million of this recovery will be distributed by the Trust to EPA in connection with the Diamond Alkali Site, approximately \$80 million

will be distributed to DOI and NOAA related to their natural resource damages claims in connection with the Diamond Alkali Site, and approximately \$470,000 will be distributed to EPA in connection with the Milwaukee Solvay Coke & Gas Superfund Site, located in Milwaukee, Wisconsin. In addition, approximately \$25 million will be distributed to the ERRT.

The Government Agreement provides that, in consideration of the payments that the Private Parties will make to the Trust under the Main Agreement, approximately \$160 million of which will in turn be paid to the United States and approximately \$25 million of which will be paid to the ERRT, the United States, on behalf of EPA, DOI, and NOAA, covenants not to sue the Private Parties and certain of their affiliates/employees (“Related Private Parties”) for: (a) any common law civil claims or causes of action that are Trust Derivative Claims, as defined in the Government Agreement, related to (i) the Covered Sites, including response actions and natural resource damages at the Covered Sites, (ii) the United States’ proofs of claim filed in the Bankruptcy Case on behalf of EPA, DOI and NOAA, (iii) the Bankruptcy Case, or (iv) the Adversary Action; (b) any claim or cause of action under Subchapter D of the Federal Debt Collection Procedures Act (28 U.S.C. 3301–3308) to recover on a debt that is an environmental liability at a Covered Site where such claim or cause of action arises from the transactions at issue in the Adversary Proceeding; and (c) any civil claims or causes of action pursuant to Sections 106 or 107 of CERCLA (42 U.S.C. 9606 and 9607) or Section 7003 of RCRA (42 U.S.C. 6973) with respect to the Covered Sites. Trust Derivative Claims are defined in the Government Agreement as claims that were or could have been asserted by the Debtors and/or the Trust against the Related Private Parties seeking relief or recovery arising from harm to any Debtor or any Debtor’s estate based on any legal theory including, for example, that such party was the corporate alter ego of any Debtor or wrongfully took or otherwise appropriated assets of any Debtor. Covered Sites are defined in the Government Agreement to include: (a) the Diamond Alkali Superfund Site; (b) the Milwaukee Solvay Superfund Site; (c) the Diamond Shamrock Kearny Plant Site at 1015 Belleville Turnpike, Kearny, New Jersey; (d) the St. Johnsbury Trucking Site at O'Brien St. and Sellers St. in Kearny, New Jersey; (e) certain real property related to the former Diamond Shamrock Painesville

Works Site in Painesville, Ohio; and (f) the Maxus Agricultural Chemicals facility at 5421 Reichhold Rd., Tuscaloosa, Alabama. The covenants provided by the United States are subject to a reservation of rights that reserves the right of the United States to bring certain claims, including claims for any liability that a Related Private Party might have that does not arise from or through a liability of a Debtor.

The publication of this notice opens a period for public comment on the Government Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *Maxus Liquidating Trust v. YPF S.A. et al.*, Adv. Pro. No. 18–50489(CTG) (Bankr. D. Del.), D.J. Ref. No. 90–11–3–07683/11. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of the RCRA, a member of the public may request, during the 30-day public comment period, a public meeting concerning the proposed Agreement.

During the public comment period, the Government Agreement may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. The Department of Justice will provide a paper copy of the Government Agreement upon written request. Please email your request to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mail your request to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

**Henry Friedman,**

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