

E600-1

UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230

BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE:
September 4, 1998
www.bxa.doc.gov

CONTACTS: Eugene Cottilli
Susan Hofer
(202) 482-2721

BOSTON CHEMICAL COMPANY SETTLES CHARGES OF ILLEGAL EXPORT

WASHINGTON -- The Commerce Department's Bureau of Export Administration today imposed a \$20,000 civil penalty on Herb Kimiatck and his company, Kimson Chemical Inc., of Boston, Mass., to settle charges that he shipped sodium cyanide from the United States to the Dominican Republic without obtaining the license he knew or had reason to know was required for the shipment, Commerce Assistant Secretary for Export Enforcement F. Amanda DeBusk announced.

Sodium cyanide is controlled for nonproliferation reasons because it can be used as a precursor for chemical weapons. Commerce's Boston Office of Export Enforcement investigated the case.

The Department of Commerce, through its Bureau of Export Administration, administers and enforces export controls for reasons of national security, foreign policy, nonproliferation and short supply. Criminal penalties, as well as administrative sanctions, can be imposed for violations of the Regulations.



FEB 19 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Herb Kimiatek
individually and doing business as
Kimson Chemical, Inc.
77 Summer Street
Boston, Massachusetts 02210

Dear Mr. Kimiatek:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described below, Herb Kimiatek, individually and doing business as Kimson Chemical, Inc. (hereinafter collectively referred to as Kimiatek), has violated the Export Administration Regulations (codified at 15 C.F.R. Parts 730-774 (1997)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the Act).

Facts constituting violations:

Charges 1-2

On or about December 7, 1995, Kimiatek exported sodium cyanide from the United States to the Dominican Republic without obtaining the validated license that Kimiatek knew or had reason to know was required by Section 772.1(b) of the former Regulations. BXA alleges that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation,

¹ The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations defined the conduct that BXA alleges was violated and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters set forth in this charging letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 Fed. Reg. 43629 (August 15, 1997)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act, (50 U.S.C.A. §§ 1701-1706 (1991 Supp. 1997)).



order, or license issued thereunder, Kimiatek violated Section 787.6 of the former Regulations. BXA also alleges that, by selling or transferring commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur, Kimiatek violated Section 787.4(a) of the former Regulations.

BXA alleges that Kimiatek committed one violation each of Sections 787.4(a) and 787.6, for a total of two violations of the former Regulations.

Accordingly, Kimiatek is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If Kimiatek fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

Kimiatek is further notified that he is entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with his answer, to be represented by counsel, and to seek a settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, Kimiatek's answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations.

In addition, a copy of Kimiatek's answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee
Acting Director
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

_____)	
In the Matter of:)	
)	
HERB KIMIATEK,)	
individually and doing business as)	
KIMSON CHEMICAL, INC.)	
77 Summer Street)	Docket No: 98-BXA-02
Boston, Massachusetts 02110,)	
)	
Respondent)	
_____)	

SETTLEMENT AGREEMENT

This Agreement is made by and between Herb Kimiatek, individually and doing business as Kimson Chemical, Inc. (Kimiatek), and the Bureau of Export Administration, United States Department of Commerce, pursuant to Section 766.18(b) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).²

¹ The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

Whereas, on February 19, 1998, the Office of Export Enforcement, Bureau of Export Administration (BXA), initiated an administrative proceeding against Kimiatek pursuant to the Act and the Regulations by issuing a Charging Letter alleging that, on or about December 7, 1995, Kimiatek exported sodium cyanide from the United States to the Dominican Republic without obtaining the validated license that he knew or had reason to know was required under Section 772.1(b) of the former Regulations, in violation of Sections 787.4(a) and 787.6 of the former Regulations;

Whereas, Kimiatek received notice of issuance of the Charging Letter on February 24, 1998;

Whereas, Kimiatek has reviewed the Charging Letter and is aware of the allegations made against him and the administrative sanctions which could be imposed against him if the allegations are found to be true; he fully understands the terms of this Settlement Agreement and the Order; he enters into this Settlement Agreement voluntarily and with full knowledge of his rights, and he states that no promises or representations have been made to him other than the agreements and considerations herein expressed;

Whereas, Kimiatek neither admits nor denies the allegations contained in the Charging Letter;

Whereas, Kimiatek wishes to settle and dispose of all matters alleged in the Charging Letter by entering into this Settlement Agreement; and

Whereas, Kimiatek agrees to be bound by an appropriate Order giving effect to the terms of this Settlement Agreement, when entered (appropriate Order);

Now Therefore, Kimiatek and BXA agree as follows:

1. BXA has jurisdiction over Kimiatek, under the Act and the Regulations, in connection with the matters alleged in the Charging Letter.

2. BXA and Kimiatek agree that the following sanction shall be imposed against him in complete settlement of all alleged violations of the Act and the former Regulations set forth in the Charging Letter:

- (a) Kimiatek shall be assessed a civil penalty of \$20,000, \$8,000 of which shall be paid within 30 days from the date of entry of an appropriate Order and \$12,000 of which shall be paid within six months from the date of the entry of the appropriate Order;
- (b) As authorized by Section 11(d) of the Act, the timely payment of the civil penalty agreed to in paragraph 2(a) is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Kimiatek. Failure to make timely payment of the civil penalty shall result in the denial of all of Kimiatek's export privileges for a period of one year from the date of entry of the appropriate Order imposing the civil penalty.

3. Kimiatek agrees that, subject to the approval of this Settlement Agreement pursuant to paragraph 8 hereof, he hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the appropriate Order, when entered), including, without limitation, any right: (a) to an administrative hearing regarding the allegations in the Charging Letter; (b) to request a refund of the civil penalty imposed pursuant to this Settlement Agreement and the appropriate Order,

when entered; and (c) to seek judicial review or otherwise to contest the validity of this Settlement Agreement or the appropriate Order, when entered.

4. BXA agrees that, upon entry of an appropriate Order, it will not initiate any further administrative proceedings against Kimiatek in connection with any violations of the Act or the Regulations arising out of the transaction identified in the Charging Letter.

5. Kimiatek understands that BXA will make the Charging Letter, this Settlement Agreement and the appropriate Order, when entered, available to the public.

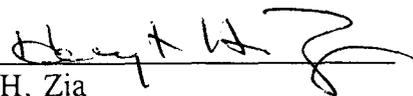
6. BXA and Kimiatek agree that this Settlement Agreement is for settlement purposes only. Therefore, if this Settlement Agreement is not accepted and an appropriate Order is not issued by the Assistant Secretary for Export Enforcement pursuant to Section 766.18(b) of the Regulations, BXA and Kimiatek agree that they may not use this Settlement Agreement in any administrative or judicial proceeding and that neither party shall be bound by the terms contained in this Settlement Agreement in any subsequent administrative or judicial proceeding.

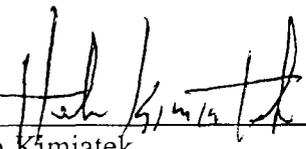
7. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Settlement Agreement shall become binding on BXA only when the Assistant Secretary for Export Enforcement approves it by entering an appropriate Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

BUREAU OF EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

HERB KIMIATEK, individually
and doing business as
KIMSON CHEMICAL, INC.

BY: 
Hoyt H. Zia
Chief Counsel
Office of the Chief Counsel
for Export Administration

BY: 
Herb Kimiatek
President

Date: 8/28/98

Date: 8-21-98

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
WASHINGTON, D.C. 20230

_____)	
In the Matter of:)	
)	
HERB KIMIATEK,)	
individually and doing business as)	
KIMSON CHEMICAL, INC.)	
77 Summer Street)	Docket No: 98-BXA-02
Boston, Massachusetts 02110,)	
)	
_____ Respondent _____)	

ORDER

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having initiated an administrative proceeding against Herb Kimiatek, individually and doing business as Kimson Chemical, Inc. (Kimiatek) pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act),¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (the Regulations),² based on allegations that, on or about December 7, 1995, Kimiatek exported sodium cyanide from the United States

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

² The alleged violations occurred in 1995. The Regulations governing the violations at issue are found in the 1995 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1995)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

to the Dominican Republic without obtaining the validated license that he knew or had reason to know was required under Section 772.1(b) of the former Regulations, in violation of Sections 787.4(a) and 787.6 of the former Regulations; and

BXA and Kimiatek having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$20,000 is assessed against Kimiatek, \$8,000 of which shall be paid within 30 days from the date of this Order, and \$12,000 of which shall be paid within six months from the date of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, Kimiatek will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

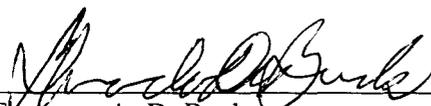
THIRD, that, as authorized by Section 11(d) of the Act, the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Kimiatek. Accordingly, if Kimiatek should fail to pay in a timely manner the civil penalty set forth above, the undersigned will enter an Order under the authority of Section 11(d) of the Act

denying all of Kimiatek's export privileges for a period of one year from the date of this Order.

FOURTH, that a copy of this Order shall be delivered to the Office of the Administrative Law Judge, United States Coast Guard, Coast Guard Island Bldg. 54C, Alameda, California, 94501-5100, notifying that Office that the case is withdrawn from adjudication, as provided by Section 766.18(b) of the Regulations.

FIFTH, that the Charging Letter, Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.


F. Amanda DeBusk
Assistant Secretary
for Export Enforcement

Entered this 4th day of September, 1998.