



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
Washington, D.C. 20230

JAN - 9 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

OSPECA Logistics Management  
4740 Coffee Port Road  
Brownsville, TX 78521

Attention: *Irwings Morales*  
*General Manager*

Dear Mr. Morales:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that OSPECA Logistics Management ("OSPECA"), violated the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act"),<sup>2</sup> on 24 occasions. Specifically, BIS charges that OSPECA committed the following violations:

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<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred in 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 and 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)).

<sup>2</sup> 50 U.S.C. app. 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000) (IEEPA). On November 13, 2000, the Act was reinstated by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. The Act expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003), continues the Regulations in effect under the IEEPA (50 U.S.C. §§ 1701-1706 (2000)). The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.



**Charges 1-12 (15 C.F.R. §764.2(a) - Engaging in Prohibited Conduct - Exportation without a License)**

On 12 occasions between on or about November 30, 2001 and on or about February 11, 2002, OSPECA caused the export of hydrogen fluoride, classified under Export Control Classification Number ("ECCN") 1C350d.7, to Mexico without the license from BIS required by Section 742.2 of the Regulations. See Schedule A, which is enclosed herewith and incorporated herein by reference. By making these shipments without proper authorization, OSPECA committed 12 violations of Section 764.2(a) of the Regulations.

**Charges 13-24 (15 C.F.R. §764.2(g) - Misrepresentation of Fact)**

With respect to the shipments described in charges 1-12 above, OSCPEA filed or caused to be filed Automated Export System records that represented that these exports did not require an export license. The representations were false because Section 742.2 required a license to export these items. By making these false representations to the U.S. Government in connection with an export activity subject to the Regulations, OSPECA committed 12 violations of Section 764.2(g) of the Regulations.

Accordingly, OSPECA is hereby notified that an administrative proceeding is instituted against it 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 up to \$11,000 per violation;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If OSPECA fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If OSPECA defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to OSPECA. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

OSPECA is further notified that it is entitled to an agency hearing on the record if OSPECA files a written demand for one with its answer. (Regulations, Section 766.6). OSPECA is also entitled

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<sup>3</sup> See 15 C.F.R. § 6.4(a)(2).

OSPECA Logistics Management  
Charging Letter  
Page 3

to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, OSPECA's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of OSPECA's answer must be served on BIS at the following address:

Office of Chief Counsel for Industry and Security  
Attention: Peter R. Klason  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Peter R. Klason is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,



Mark D. Menefee  
Director  
Office of Export Enforcement

Enclosure

## SCHEDULE A

CHARGE NUMBER	DATE OF VIOLATION	QUANTITY (IN POUNDS)	VALUE	VIOLATIONS
1, 13	November 30, 2001	162,500.00	\$63,611.00	15 CFR § 764.2(a), (g)
2, 14	January 7, 2002	163,650.00	\$62,517.00	15 CFR § 764.2(a), (g)
3, 15	January 7, 2002	161,450.00	\$61,677.00	15 CFR § 764.2(a), (g)
4, 16	January 10, 2002	162,150.00	\$61,945.00	15 CFR § 764.2(a), (g)
5, 17	January 15, 2002	159,200.00	\$60,818.00	15 CFR § 764.2(a), (g)
6, 18	January 22, 2002	160,600.00	\$61,352.00	15 CFR § 764.2(a), (g)
7, 19	January 28, 2002	160,150.00	\$61,181.00	15 CFR § 764.2(a), (g)
8, 20	January 28, 2002	162,050.00	\$61,907.00	15 CFR § 764.2(a), (g)
9, 21	January 30, 2002	161,900.00	\$61,849.00	15 CFR § 764.2(a), (g)
10, 22	February 1, 2002	162,300.00	\$62,002.00	15 CFR § 764.2(a), (g)
11, 23	February 11, 2002	160,500.00	\$61,314.00	15 CFR § 764.2(a), (g)
12, 24	February 11, 2002	161,900.00	\$61,849.00	15 CFR § 764.2(a), (g)

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:	)	
	)	
OSPECA Logistics Management	)	Docket No. 04-BIS-01
4740 Coffee Port Road	)	
Brownsville, TX 78521	)	
	)	
Respondent.	)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, OSPECA Logistics Management (“OSPECA”), and the Bureau of Industry and Security, United States Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(b) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (“Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup>

WHEREAS, BIS has initiated an administrative proceeding against OSPECA, pursuant to the Act and the Regulations;

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<sup>1</sup> The violations charged occurred between 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 and 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 Fed. Reg. 48763, August 10, 2004), has continued the Regulations in effect under the IEEPA.

WHEREAS, BIS has issued a charging letter to OSPECA that alleged that OSPECA committed 24 violations of the Regulations, specifically:

1. *12 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exportation without a License:* On 12 occasions between on or about November 30, 2001 and on or about February 11, 2002, OSPECA caused the export of hydrogen fluoride, classified under Export Control Classification Number (“ECCN”) 1C350d.7, to Mexico without the license from BIS required by Section 742.2 of the Regulations.
2. *12 Violations of 15 C.F.R. § 764.2(g) - Misrepresentation of Fact:* With respect to the shipments described in charges 1-12 above, OSPECA filed or caused to be filed Automated Export System records that represented that these exports did not require an export license. The representations were false because Section 742.2 required a license to export these items.

WHEREAS, OSPECA has reviewed the charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, OSPECA fully understands the terms of this Agreement and the Order (“Order”) that the Assistant Secretary of Commerce for Export Enforcement will issue if she approves this Agreement as the final resolution of this matter;

WHEREAS, OSPECA enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, OSPECA states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, OSPECA neither admits nor denies the allegations contained in the charging letter;

WHEREAS, OSPECA wishes to settle and dispose of all matters alleged in the charging letter by entering into this Agreement; and

WHEREAS, OSPECA agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over OSPECA, under the Regulations, in connection with the matters alleged in the charging letter.
2. The following sanction shall be imposed against OSPECA in complete settlement and final resolution of the violations of the Regulations set forth in the charging letter:
  - a. OSPECA shall be assessed a civil penalty in the amount of \$60,000, of which \$15,000 shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order, \$15,000 shall be paid to the U.S. Department of Commerce not later than March 10, 2005, and \$15,000 shall be paid to the U.S. Department of Commerce not later than September 6, 2005. Payment of the remaining \$15,000 shall be suspended for a period of one (1) year from the date of entry of the Order, and thereafter shall be waived, provided that during the period of suspension, OSPECA has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made the payment of \$45,000 described

above in a timely manner. Payment shall be made in the manner specified in the attached instructions.

- b. 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, License Exception, permission, or privilege granted, or to be granted, to OSPECA. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of OSPECA's export privileges for a period of one year from the date of imposition of the penalty.
- c. OSPECA shall perform an audit of its internal compliance program not less than 18 months from the date of entry of the Order and not more than 24 months from the date of entry of the Order. Said audit shall be in substantial compliance with the Export Management Systems audit module, which is available from the BIS web site at <http://www.bis.doc.gov/exportmanagementsystems/default.htm>, and of which a copy is attached as Attachment A to this Settlement Agreement and is incorporated by reference. A copy of said audit shall be transmitted to the Office of Export Enforcement, 525 South Griffin Street, Dallas, TX 75202, not later than October 11, 2006.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, OSPECA hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the charging letter; (b) request a

refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; (c) request any relief from the Order, if entered, including without limitation relief from the terms of a denial order under 15 C.F.R. § 764.3(a)(2); and (d) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order and timely payment of the \$45,000 civil penalty, BIS will not initiate any further administrative proceeding against OSPECA in connection with any violation of the Act or the Regulations arising out of the transactions identified in the charging letter.

5. BIS will make the charging letter, this Agreement, the Order, if entered, and the record of the case as defined in Section 766.20 of the Regulations available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(b) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

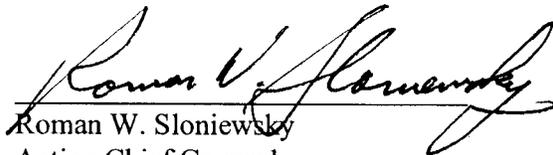
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department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

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

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

OFFICE OF CHIEF COUNSEL FOR  
INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE

OSPECA LOGISTICS MANAGEMENT

  
\_\_\_\_\_  
Roman W. Sloniewsky  
Acting Chief Counsel

  
\_\_\_\_\_  
Carlos Saenz  
Vice President

Date: 10/15/04

Date: 10-5-04

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:	)	
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OSPECA Logistics Management	)	Docket No. 04-BIS-01
4740 Coffee Port Road	)	
Brownsville, TX 78521	)	
	)	
Respondent.	)	
	)	

ORDER

The Bureau of Industry and Security, United States Department of Commerce (“BIS”) having initiated an administrative proceeding against OSPECA Logistics Management (“OSPECA”) pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004) (“Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”),<sup>2</sup> based on the charging letter issued to OSPECA that alleged that OSPECA committed 24 violations of the Regulations. Specifically, the charges are:

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<sup>1</sup> The violations charged occurred between 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 and 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2004 Regulations establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), has continued the Regulations in effect under the IEEPA.

1. *12 Violations of 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct - Exportation without a License:* On 12 occasions between on or about November 30, 2001 and on or about February 11, 2002, OSPECA caused the export of hydrogen fluoride, classified under Export Control Classification Number (“ECCN”) 1C350d.7, to Mexico without the license from BIS required by Section 742.2 of the Regulations.
2. *12 Violations of 15 C.F.R. § 764.2(g) - Misrepresentation of Fact:* With respect to the shipments described in charges 1-12 above, OSCPEA filed or caused to be filed Automated Export System records that represented that these exports did not require an export license. The representations were false because Section 742.2 required a license to export these items.

BIS and OSPECA 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 \$60,000 is assessed against OSPECA of which \$15,000 shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order, \$15,000 shall be paid to the U.S. Department of Commerce not later than March 10, 2005, and the remaining \$15,000 shall be paid to the U.S. Department of Commerce not later than September 6, 2005. Payment of the remaining \$15,000 shall be suspended for a period of one (1) year from the date of entry of the Order, and thereafter shall be waived, provided that during the period of suspension, OSPECA has committed no violation of the Act, or any regulation, order,

or license issued thereunder and has made the payment of \$45,000 described above in a timely manner. Payment shall be made in the manner specified in the attached instructions.

SECOND, that OSPECA perform an audit of its internal compliance program not less than 18 months from the date of entry of the Order and not more than 24 months from the date of entry of the Order. Said audit shall be in substantial compliance with the Export Management Systems audit module, which is available from the BIS web site at <http://www.bis.doc.gov/exportmanagementsystems/default.htm>, and of which a copy was attached as Attachment A to the Settlement Agreement and is incorporated into said Settlement Agreement by reference. A copy of said audit shall be transmitted to the Office of Export Enforcement, 525 South Griffin Street, Dallas, TX 75202, by not later than October 11, 2006.

THIRD, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), 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, OSPECA will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, that 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, license exception, permission, or privilege granted, or to be granted, to OSPECA. Accordingly, if OSPECA should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of OSPECA's export privileges for a period of one year from the date of entry of this Order.

FIFTH, that a copy of this Order shall be delivered to the Honorable Peter A. Fitzpatrick, US Coast Guard, Norfolk Federal Office Building, 200 Granby Street, Room 602, Norfolk, VA

23510-1888; and the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202-4022, notifying them that this case is withdrawn from adjudication, as provided by Section 766.18 of the Regulations.

SIXTH, that the charging letter, the Settlement Agreement, this Order, and the record of this case as defined in Section 766.20 of the Regulations shall be made available to the public.

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

  
Julie L. Myers  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 27<sup>th</sup> day of October 2004.