

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Stephen Midgley  
18 Wheel Way  
Danville, NH 03819

Dear Mr. Midgley:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has reason to believe that you, Stephen Midgley, acting as Production Manager for Elatec Technology Corporation ("Elatec") of Haverhill, MA, in your individual capacity ("Midgley") have committed one violation of 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> Specifically, BIS charges that Midgley committed the following violation:

**Charge 1      15 C.F.R. §764.2(g) - False Statement on Shipper's Export Declaration Concerning Authority to Export.**

On or about July 16, 1999, Midgley filed or caused to be filed with the U.S. Government a Shipper's Export Declaration that stated an industrial furnace, an item subject to the Regulations, exported by Elatec Technology Corporation to the Beijing Research Institute of Materials and Technology in China qualified for export from the United States as NLR ("No License Required"). This representation was false because Section 744.3 of the Regulations required a license for the export. Under Section 744.3 of the Regulations, a license is required when the exporter knows or has reason to know that the item will be used in the design, development, production, or use of missiles in or by China. In so doing, Midgley committed one violation of Section 764.2(g) of the Regulations.

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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 (2004). The violation charged occurred during 1999. The Regulations governing the violation at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2004 Regulations establish the procedures that apply to this matter.

<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 reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 *Fed. Reg.* 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

Accordingly, Midgley 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 \$11,000 per violation;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Midgley 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 Midgley defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without hearing or further notice to Midgley. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

Midgley is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. (Regulations, Section 766.6). Midgley is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Midgley have a proposal to settle this case, he or his representative should transmit the offer 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, Midgley'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

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<sup>3</sup> See 15 C.F.R. §6.4(a)(4) (2004).

Stephen Midgley  
Proposed Charging Letter  
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In addition, a copy of Midgley's answer must be served on BIS at the following address:

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

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

Sincerely,

Acting Director  
Office of Export Enforcement

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

\_\_\_\_\_  
In the Matter of: )  
 )  
Stephen Midgley )  
Iron Wheel Park, No. 89 )  
Danville, NH 03819 )  
 )  
Respondent. )  
\_\_\_\_\_ )

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Stephen Midgley (“Midgley”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) 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>

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<sup>1</sup> The violation charged occurred in 1999. The Regulations governing the violation at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2004 Regulations set forth 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 notified Midgley of its intention to initiate an administrative proceeding against Midgley, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Midgley that alleged that Midgley committed one violation of the Regulations, specifically:

1. *One Violation of 15 C.F.R. §764.2(g) - False Statement on Shipper's Export Declaration Concerning Authority to Export.* On or about July 16, 1999, Midgley filed or caused to be filed with the U.S. Government a Shipper's Export Declaration that stated an industrial furnace, an item subject to the Regulations, exported by Elatec Technology Corporation to the Beijing Research Institute of Materials and Technology in China qualified for export from the United States as NLR ("No License Required"). This representation was false because Section 744.3 of the Regulations required a license for the export. Under Section 744.3 of the Regulations, a license is required when the exporter knows or has reason to know that the item will be used in the design, development, production, or use of missiles in or by China.

WHEREAS, Midgley has reviewed the proposed 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;

WHEREAS, Midgley 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, Midgley enters into this Agreement voluntarily and with full knowledge of his rights;

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Midgley, under the Regulations, in connection with the matter alleged in the proposed charging letter.

2. The following sanction shall be imposed against Midgley in complete settlement of the violation of the Regulations relating to the transaction specifically detailed in the proposed charging letter:

- a. Midgley shall be assessed a civil penalty in the amount of \$5,000. Midgley shall pay \$1,000 to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment of the remaining \$4,000 shall be suspended for a period of one year from the date of entry of this Order and thereafter shall be waived, provided that during the period of suspension, Midgley has committed no

violation of the Act, or any regulation, order, or license issued thereunder and has made the payment of \$1,000 described above in a timely manner.

- 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 Midgley. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Midgley's export or reexport privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Midgley 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 proposed 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 \$1,000 civil penalty, BIS will not initiate any further administrative proceeding against Midgley in connection with any violation of the Act or the Regulations arising out of the transaction specifically detailed in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

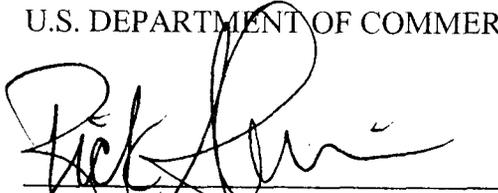
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial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

BUREAU OF INDUSTRY AND SECURITY,  
U.S. DEPARTMENT OF COMMERCE

  
\_\_\_\_\_  
Acting Director  
Office of Export Enforcement

STEPHEN MIDGLEY

  
\_\_\_\_\_  
Stephen Midgley

**JAN 31 2005**  
Date: \_\_\_\_\_

Date: January 26, 2005

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

In the Matter of: )  
)  
Stephen Midgley )  
Iron Wheel Park, No. 89 )  
Danville, NH 03819 )  
)  
Respondent. )  
)

ORDER RELATING TO STEPHEN MIDGLEY.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Stephen Midgley (“Midgley”) of its intention to initiate an administrative proceeding against Midgley 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> by issuing a proposed charging letter to Midgley that alleged that Midgley committed one violation of the Regulations. Specifically, the charge is:

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<sup>1</sup> The violation charged occurred in 1999. The Regulations governing the violation at issue are found in the 1999 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999)). The 2004 Regulations set forth 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. *One Violation of 15 C.F.R. §764.2(g) - False Statement on Shipper's Export Declaration Concerning Authority to Export.* On or about July 16, 1999, Midgley filed or caused to be filed with the U.S. Government a Shipper's Export Declaration that stated an industrial furnace, an item subject to the Regulations, exported by Elatec Technology Corporation to the Beijing Research Institute of Materials and Technology in China qualified for export from the United States as NLR ("No License Required"). This representation was false because Section 744.3 of the Regulations required a license for the export. Under Section 744.3 of the Regulations, a license is required when the exporter knows or has reason to know that the item will be used in the design, development, production, or use of missiles in or by China.

WHEREAS, BIS and Midgley have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$5,000 is assessed against Midgley. Midgley shall pay \$1,000 to the U.S. Department of Commerce within 30 days from the date of entry of the Order. Payment of the remaining \$4,000 shall be suspended for a period of one year from the date of entry of this Order and thereafter shall be waived, provided that during the period of suspension, Midgley has committed no violation of the Act, or any regulation, order, or license issued

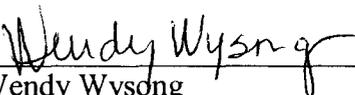
thereunder and has made the payment of \$1,000 described above in a timely manner. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 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, Midgley 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.

THIRD, 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 Midgley. Accordingly, if Midgley should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Midgley's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the 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.

  
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Wendy Wysong  
Acting Assistant Secretary of  
Commerce for Export Enforcement

Entered this 1st day of February 2005.