

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

In the Matter of:)
)
Nalco Company)
1601 West Diehl Road)
Naperville, Illinois 60563)
)
Respondent)

ORDER RELATING TO NALCO COMPANY

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Nalco Company (“Nalco”), of its intention to initiate an administrative proceeding against Nalco pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a proposed charging letter to Nalco that alleged that Nalco committed 13 violations of the Regulations. Specifically, these charges are:

¹ The charged violations occurred from 2003 through 2006. The Regulations governing the violations at issue are found in the 2003 - 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2008 Regulations govern the procedural aspects of this case.

² Since August 21, 2001 the Act has been in lapse. However, the President, through 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 July 23, 2008 (73 Fed. Reg. 43603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Charges 1-13: 15 C.F.R. § 764.2(a) - Exports of Triethanolamine without the Required Licenses

As described in greater detail in the Schedule of Violations, which is enclosed herewith and incorporated herein by reference, on 13 occasions, from on or about April 24, 2003 through on or about September 11, 2006, Nalco engaged in conduct prohibited by the Regulations by exporting hardness test kits containing Triethanolamine ("TEA"), items subject to the EAR and classified under ECCN³ 1C395.b, and/or replacement solutions containing TEA, items subject to the EAR and classified under ECCN 1C350, from the United States to the Bahamas, Dominican Republic and Angola, without the Department of Commerce licenses required by Section 742.2 of the Regulations. In doing so, Nalco committed 13 violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Nalco 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 \$115,000 is assessed against Nalco, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry 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. §§ 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, Nalco 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 Nalco.

³ The term "ECCN" refers to "Export Control Classification Number." See Supp. 1 to 15 C.F.R. § 774.

Accordingly, if Nalco should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Nalco' 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.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 12th day of September, 2008.

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

In the Matter of:)
)
Nalco Company)
1601 West Diehl Road)
Naperville, Illinois 60563)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Nalco Company (“Nalco”) and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),²

WHEREAS, Nalco filed a voluntary self-disclosure with BIS’s Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

¹ The charged violations occurred from 2003 through 2006. The Regulations governing the violations at issue are found in the 2003 - 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2008 Regulations govern the procedural aspects of this case.

² Since August 21, 2001 the Act has been in lapse. However, the President, through 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 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

WHEREAS, BIS has notified Nalco of its intention to initiate an administrative proceeding against it, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Nalco that alleged that it committed 13 violations of the Regulations, specifically:

Charges 1-13: 15 C.F.R. § 764.2(a) - Exports of Triethanolamine without the Required Licenses

As described in greater detail in the Schedule of Violations, which is enclosed herewith and incorporated herein by reference, on 13 occasions, from on or about April 24, 2003 through on or about September 11, 2006, Nalco engaged in conduct prohibited by the Regulations by exporting hardness test kits containing Triethanolamine ("TEA"), items subject to the EAR and classified under ECCN³ 1C395.b, and/or replacement solutions containing TEA, items subject to the EAR and classified under ECCN 1C350, from the United States to the Bahamas, Dominican Republic and Angola, without the Department of Commerce licenses required by Section 742.2 of the Regulations. In doing so, Nalco committed 13 violations of Section 764.2(a) of the Regulations.

WHEREAS, Nalco has reviewed the proposed 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, Nalco fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

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

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

³ The term "ECCN" refers to "Export Control Classification Number." See Supp. 1 to 15 C.F.R. § 774.

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

2. The following sanction shall be imposed against Nalco in complete settlement of the alleged violations of the Regulations relating to the transactions detailed in the voluntary self-disclosure and the proposed charging letter:

a. Nalco shall be assessed a civil penalty in the amount of \$115,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

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, permission, or privilege granted, or to be granted, to Nalco. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Nalco's export 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, Nalco 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 any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) 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 \$115,000 civil penalty, BIS will not initiate any further administrative proceeding against Nalco in connection with any violation of the Act or the Regulations arising out of the transactions identified in the voluntary self-disclosure and 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.

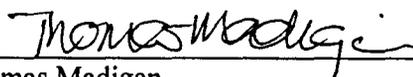
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. 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



Thomas Madigan
Director
Office of Export Enforcement

Date: 9/11/08

NALCO COMPANY



Stephen N. Landsman
Vice-President, General Counsel and
Secretary

Date: September 4, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nalco Company
1601 West Diehl Road
Naperville, Illinois 60563

Attn: J. Erik Fyrwald, Chairman, President and Chief Executive Officer

Dear Mr. Fyrwald:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Nalco Company of Naperville, Illinois ("Nalco") has committed 13 violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 as amended (the "Act").² Specifically, BIS charges that Nalco committed the following violations:

**Charges 1-13: 15 C.F.R. § 764.2(a) - Exports of Triethanolamine without the
 Required Licenses**

As described in greater detail in the Schedule of Violations, which is enclosed herewith and incorporated herein by reference, on 13 occasions, from on or about April 24, 2003 through on or about September 11, 2006, Nalco engaged in conduct prohibited by the Regulations by exporting hardness test kits containing Triethanolamine ("TEA"), items subject to the EAR and classified under ECCN³ 1C395.b, and/or replacement solutions containing TEA, items subject to the EAR and classified under ECCN 1C350, from the United States to the Bahamas, Dominican Republic and Angola, without the Department of Commerce licenses required by Section 742.2 of the Regulations. In doing so, Nalco committed 13 violations of Section 764.2(a) of the Regulations.

* * * *

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2006). The charged violations occurred from 2003 through 2006. The Regulations governing the violations at issue are found in the 2003 - 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2008 Regulations establish the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401- 2420 (2000). 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., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) ("IEEPA").

³ The term "ECCN" refers to "Export Control Classification Number." See Supp. 1 to 15 C.F.R. § 774.

Nalco Company
Proposed Charging Letter
Page 2 of 3

Accordingly, Nalco is hereby notified that an administrative proceeding is instituted against it pursuant to 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 the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;⁴

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Nalco 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. *See* 15 C.F.R. §§ 766.6 and 766.7. If Nalco defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Nalco. *See id.* The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter. *See id.*

Nalco is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Nalco is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Nalco have a proposal to settle this case, it or its 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, Nalco's answer must be filed in accordance with the instructions set forth in Section 766.5(a) of the Regulations with:

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

⁴ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Nalco Company
Proposed Charging Letter
Page 3 of 3

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

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

Glenn Kaminsky is the attorney representing BIS in this case. Any communications that Nalco may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301.

Sincerely,

Thomas Madigan
Acting Director
Office of Export Enforcement

Enclosure

| NALCO COMPANY - SCHEDULE OF VIOLATIONS | | | | | | |
|---|-------------------------------|--|------------------------|--------------------|--|--|
| | | DATES: 4/24/03-9/11/06 | | | | |
| TRANS - ACTION | EXPORT DATE (mm/dd/yy) | COMMODITY | QUANTITY (Each) | ECCN | PURCHASER / DESTINATION | COUNTRY OF ULTIMATE DESTINATION |
| 1 | 04/24/03 | Triethanolamine - Test Kit | 1 | 1C395b | SHERATON GRAND RESORT | Bahamas |
| 2 | 06/13/03 | Triethanolamine - Test Kit | 1 | 1C395b | HULL BLYTH ANGOLA LTD ESSO | Angola |
| 3 | 10/16/03 | Triethanolamine - Test Kit | 3 | 1C395b | HUTCHINSON LUCAYA LIMITED | Bahamas |
| 4 | 02/19/04 | Triethanolamine - Test Kit | 3 | 1C395b | CONSORCIO ENERGETICO PUNTA | Dominican Republic |
| 5 | 08/23/04 | Triethanolamine - Test Kit | 1 | 1C395b | HUTCHINSON LUCAYA LIMITED | Bahamas |
| 6 | 11/03/04 | Triethanolamine - Bottle | 6 | 1C350c.9 | HUTCHINSON LUCAYA LIMITED | Bahamas |
| 7 | 03/24/05 | Triethanolamine -Bottle Triethanolamine - Test Kit | 1 1 | 1C350c.9 1C395b | CONSORCIO ENERGETICO PUNTA | Dominican Republic |
| 8 | 08/19/05 | Triethanolamine - Bottle | 4 | 1C350c.9 | COMPANIA DE ELECTRICIDAD DE BAYAHIB | Dominican Republic |
| 9 | 12/01/05 | Triethanolamine - Test Kit | 1 | 1C395b | WARTSILA DOMINICANA C POR A SULTANA DEL ESTE | Dominican Republic |
| 10 | 02/13/06 | Triethanolamine - Test Kit | 1 | 1C395b | NESTLE DOMINICANA SA | Dominican Republic |
| 11 | 06/21/06 | Triethanolamine - Test Kit | 1 | 1C395b | LA ELECTRICIDAD DE SANTIAGO C | Dominican Republic |
| 12 | 07/25/06 | Triethanolamine - Bottle | 5 | 1C350c.9 | NESTLE DOMINICANA SA | Dominican Republic |
| 13 | 09/11/06 | Triethanolamine - Test Kit Triethanolamine - Bottle | 2 6 | 1C395b 1C350c.9 | GILDAN DOMINICAN REPUBLIC TEXTILE | Dominican Republic |
| | | | | | | |