

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

In the Matter of:)	
)	
Thomas J. Diener)	08-BIS-16
Director)	
Ameri-Source, Inc.)	
5372 Enterprise Boulevard)	
Bethel Park, PA 15102)	
)	
Respondent)	

ORDER RELATING TO THOMAS J. DIENER

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has initiated an administrative proceeding against Thomas J. Diener, in his individual capacity, (“Diener”), of its intention to initiate an administrative proceeding against Diener pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (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 charging letter to Diener that alleged that Diener committed one violation of the Regulations. Specifically:

¹ The violations alleged to have been committed occurred in 2003. The Regulations governing the violations at issue are found in the 2003 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003)). 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. 783 (2002)), as extended most recently by the Notice of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

Charge 1: 15 C.F.R. § 764.2(b) – Causing, Aiding or Abetting

On or about December 2, 2003, Diener caused, aided, abetted, and permitted the doing of an act prohibited by the Regulations, by causing, aiding, abetting and permitting the making of a false representation or statement to the U.S. Government in connection with the preparation and submission of a Shipper's Export Declaration (SED), an export control document. The SED falsely represented and stated that the item being exported from the United States was "UCAR-GRAPHITE." In fact, Diener, who is the director of the wholesale distributor of the item (Ameri-Source), and others created a forged mill certificate falsely indicating that the item was "UCAR" graphite. The forged certificate was then submitted to a freight forwarder. Based on this false information, the freight forwarder prepared and filed an SED falsely stating that the item was "UCAR-GRAPHITE." In so doing, Diener committed one violation of Section 764.2(b) of the Regulations.

WHEREAS, BIS and Diener have 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

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

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$11,500 is assessed against Diener, 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, Diener 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 Diener.

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



Kevin Delli-Colli
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 6th day of February, 2009.

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

In the Matter of:)
)
Thomas J. Diener) 08-BIS-16
Director)
Ameri-Source, Inc.)
5372 Enterprise Boulevard)
Bethel Park, PA 15102)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by Thomas J. Diener, in his individual capacity, (“Diener”), 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

¹ The violations alleged to have been committed occurred in 2003. The Regulations governing the violations at issue are found in the 2003 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003)). 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. 783 (2002)), as extended most recently by the Notice of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).

WHEREAS, BIS has initiated an administrative proceeding against Diener, case number 08-BIS-16, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a charging letter to Diener that alleged that Diener is liable for one violation of the Regulations, specifically:

Charge 1: 15 C.F.R. § 764.2(b) – Causing, Aiding or Abetting

On or about December 2, 2003, Diener caused, aided, abetted, and permitted the submission of false and misleading representations and statements to the U.S. Government in connection with the preparation and submission of a Shipper's Export Declaration (SED), an export control document. The SED falsely represented and stated that the item being exported was "UCAR-GRAPHITE." In fact, Diener and others created a forged mill certificate to indicate that the item was GrafTech graphite, or "UCAR" graphite. As director of the wholesale distributor of the item, Diener knew that the item was not GrafTech graphite. The forged certificate was then submitted to a freight forwarder. The freight forwarder then unwittingly filed a SED falsely stating that the item was "UCAR-GRAPHITE." In so doing, Diener committed one violation of Section 764.2(b) of the Regulations.

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

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Diener, under the Regulations, in connection with the matters alleged in the charging letter.
2. The following sanction shall be imposed against Diener in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the charging letter:
 - a. Diener shall be assessed a civil penalty in the amount of \$11,500, all of 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 Diener. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Diener'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, Diener 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 \$11,500 civil penalty, BIS will not initiate any further administrative proceeding against Diener 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, and the Order, if entered, available to the public.

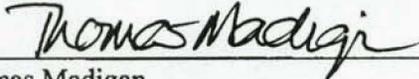
6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial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

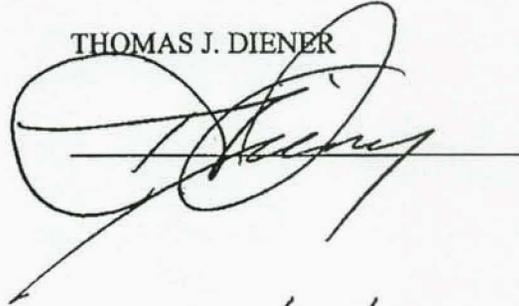
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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



Thomas Madigan
Director
Office of Export Enforcement

THOMAS J. DIENER



Date: 2/4/09

Date: 2/3/09

COPY



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

CHARGING LETTER

DEC - 2 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas J. Diener
Director
Ameri-Source, Inc.
5372 Enterprise Boulevard
Bethel Park, PA 15102

RECEIVED
ALJ DOCKETING CENTER
2008 DEC - 3 A 10: 48
BALTIMORE, MD

Dear Mr. Diener:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that you, Thomas J. Diener ("Diener") of Bethel Park, Pennsylvania, in your individual capacity, have committed one (1) violation 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 Diener committed the following violation:

Charge 1: 15 C.F.R. § 764.2(b) – Causing, Aiding or Abetting

On or about December 2, 2003, Diener caused, aided, abetted, and permitted the doing of an act prohibited by the Regulations, by causing, aiding, abetting and permitting the making of a false representation or statement to the U.S. Government in connection with the preparation and submission of a Shipper's Export Declaration (SED), an export control document. The SED falsely represented and stated that the item being exported from the United States was "UCAR-GRAPHITE." In fact, Diener, who is the director of the wholesale distributor of the item (Ameri-Source), and others created a forged mill certificate falsely indicating that the item was

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

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. 783 (2002)), as extended most recently by the Notice of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)).



“UCAR” graphite. The forged certificate was then submitted to a freight forwarder. Based on this false information, the freight forwarder prepared and filed an SED falsely stating that the item was “UCAR-GRAPHITE.” In so doing, Diener committed one violation of Section 764.2(b) of the Regulations.

* * * *

Accordingly, Diener 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 \$250,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

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

Diener 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. *See* 15 C.F.R. § 766.6. Diener is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. *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 Diener have a proposal to settle this case, Diener or his representative should transmit it to 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, Diener’s answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

³ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

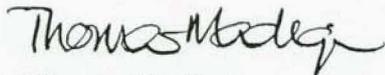
U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

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

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

Adrienne Frazier is the attorney representing BIS in this case; any communications that Diener may wish to have concerning this matter should occur through her. Ms. Frazier may be contacted by telephone at (202) 482-5301.

Sincerely,



Thomas Madigan
Director
Office of Export Enforcement