

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

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In the Matter of: )  
)  
)  
Graco Inc. )  
88-11<sup>th</sup> Ave, N.E )  
Minneapolis, MN 55413 )  
)  
Respondent )  
\_\_\_\_\_

ORDER RELATING TO GRACO INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Graco Inc. (“Graco”), of its intention to initiate an administrative proceeding against Graco pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2007)) (the “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)) (the “Act”),<sup>2</sup> through issuance of a proposed charging letter to Graco that alleged that Graco committed 15 violations of the Regulations. Specifically, the charges are :

<sup>1</sup> The violations alleged to have been committed occurred between 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2007 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 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)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

**Charges 1-2                    15 C.F.R. §764.2(a) -Unauthorized Export of Diaphragm Pumps to India**

On two occasions, on or about June 20, 2001 and on or about October 30, 2001, Graco engaged in conduct prohibited by the Regulations when it exported diaphragm pumps, items classified under export control classification number ("ECCN") 2B350 to India without the export license required by Section 742.2(a)(3) of the Regulations. In so doing, Graco committed two violations of Section 764.2(a).

**Charges 3-4                    15 C.F.R §764.2(e)- Acting with Knowledge of a Violation**

On two occasions, on or about June 20, 2001 and on or about October 30, 2001, in connection with the transactions described in Charges 1-2 above, Graco sold items subject to the Regulations with knowledge that a violation of the Regulations would occur. Specifically, Graco knew that an export license was required to ship diaphragm pumps (ECCN 2B350) to India based on the Commodity Classification Review issued by the Bureau of Export Administration on December 16, 1999 and the internal Graco memos issued by Graco's Vice President and General Counsel, dated August 5, 1999 and August 18, 1999. By doing so, Graco committed two violations of Section 764.2(e).

**Charges 5-15                    15 C.F.R. §764.2(b) - Causing the Unauthorized Re-export of Diaphragm Pumps to Saudi Arabia and Taiwan**

On 11 occasions between on or about April 17, 2001 and on or about February 20, 2002, Graco caused the doing of an act prohibited by the Regulations. Specifically, Graco exported diaphragm pumps (ECCN 2B350), items subject to the Regulations, to overseas distributors, who re-exported the pumps to Saudi Arabia and Taiwan without the required license. More specifically, Graco exported the diaphragm pumps with knowledge that they would be further transferred and did not notify the distributor of the export license requirements, In doing so, Graco committed 11 violations of Section 764.2(b).

WHEREAS, BIS and Graco 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:

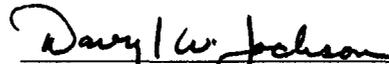
FIRST, that a civil penalty of \$97,000 is assessed against Graco, which shall be paid to the U.S. Department of Commerce within 60 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

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, Graco 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 Graco. Accordingly, if Graco should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Graco'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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Darryl W. Jackson  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 22<sup>nd</sup> day of June, 2007.

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

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Graco Inc. )  
88-11<sup>th</sup> Ave, N.E )  
Minneapolis, MN 55413 )  
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Respondent )  
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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Graco Inc. (“Graco”), 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 (2006)) (the “Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),<sup>2</sup>

<sup>1</sup> The violations alleged to have been committed occurred between 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 through 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2007 Regulations establish the procedures that apply to this matter.

<sup>2</sup> 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)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2006 (71 Fed. Reg. 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

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

WHEREAS, BIS has issued a proposed charging letter to Graco that alleged that Graco committed 15 violations of the Regulations, specifically:

**Charges 1-2            15 C.F.R. §764.2(a) -Unauthorized Export of Diaphragm Pumps to India**

On two occasions, on or about June 20, 2001 and on or about October 30, 2001, Graco engaged in conduct prohibited by the Regulations when it exported diaphragm pumps, items classified under export control classification number ("ECCN") 2B350 to India without the export license required by Section 742.2(a)(3) of the Regulations. In so doing, Graco committed two violations of Section 764.2(a).

**Charges 3-4            15 C.F.R §764.2(e)- Acting with Knowledge of a Violation**

On two occasions, on or about June 20, 2001 and on or about October 30, 2001, in connection with the transactions described in Charges 1-2 above, Graco sold items subject to the Regulations with knowledge that a violation of the Regulations would occur. Specifically, Graco knew that an export license was required to ship diaphragm pumps (ECCN 2B350) to India based on the Commodity Classification Review issued by the Bureau of Export Administration on December 16, 1999 and the internal Graco memos issued by Graco's Vice President and General Counsel, dated August 5, 1999 and August 18, 1999. By doing so, Graco committed two violations of Section 764.2(e).

**Charges 5-15            15 C.F.R. §764.2(b) - Causing the Unauthorized Re-export of Diaphragm Pumps to Saudi Arabia and Taiwan**

On 11 occasions between on or about April 17, 2001 and on or about February 20, 2002, Graco caused the doing of an act prohibited by the Regulations. Specifically, Graco exported diaphragm pumps (ECCN 2B350), items subject to the Regulations, to overseas distributors, who re-exported the pumps to Saudi Arabia and Taiwan without the required license. More specifically, Graco exported the diaphragm pumps with knowledge that they would be further transferred and did not notify the distributor of the export license requirements, In doing so, Graco committed 11 violations of Section 764.2(b).

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Graco, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanction shall be imposed against Graco in complete settlement of the alleged violations of the Regulations relating to the transactions detailed in the proposed charging letter:
  - a. Graco shall be assessed a civil penalty in the amount of \$97,000, all of which shall be paid to the U.S. Department of Commerce within 60 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 Graco. Failure to make

timely payment of the civil penalty set forth above may result in the denial of all of Graco'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, Graco 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 \$97,000 civil penalty, BIS will not initiate any further administrative proceeding against Graco in connection with any violation of the Act or the Regulations arising out of the transactions identified 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.

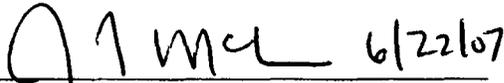
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any

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

 6/22/07

John McKenna  
Acting Director  
Office of Export Enforcement

Date: 6/22/07

GRACO INC.



Matthew West, Esq.  
Baker Botts LLP  
Attorney for Graco Inc.

Date: June 19, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Graco Inc.  
Corporate Headquarters  
88-11th Avenue NE  
Minneapolis, MN 55413

Attention: *Robert Mattison*  
*Vice President and General Counsel*

Dear Mr. Mattison:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Graco Incorporated (Graco) of Minneapolis, Minnesota, committed 15 violations of the Export Administration Regulations (the “Regulations”),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).<sup>2</sup> Specifically, BIS charges that Graco committed the following violations:

**Charges 1-2 15 C.F.R. §764.2(a) -Unauthorized Export of Diaphragm Pumps to India**

As described in greater detail in the attached Schedule A, which is incorporated herein, on two occasions on about June 20, 2001 and on or about October 30, 2001, Graco engaged in conduct prohibited by the Regulations when it exported diaphragm pumps, items classified under export control classification number (“ECCN”) 2B350 to India without the export license required by Section 742.2(a)(3) of the Regulations. In so doing, Graco committed two violations of Section 764.2(a).

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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 (2005). The violations charged occurred in 2001-2002. The Regulations governing the violations at issue are found in the 2001-2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2001-2002)). The 2005 Regulations govern the procedural aspects of this case.

<sup>2</sup> 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 August 2, 2005, (70 Fed. Reg. 45273 (August 5, 2005)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”).

**Charges 3-4 15 C.F.R §764.2(e)- Acting with Knowledge of a Violation**

As described in greater detail in the attached Schedule A, which is incorporated herein, on two occasions on or about June 20, 2001 and on or about October 30, 2001, in connection with the transactions described in Charges 1-2 above, Graco sold items subject to the Regulations with knowledge that a violation of the Regulations would occur. Specifically, Graco knew that an export license was required to ship diaphragm pumps (ECCN 2B350) to India based on the Commodity Classification Review issued by the Bureau of Export Administration on December 16, 1999 and the internal Graco memos issued by Graco's Vice President and General Counsel, dated August 5, 1999 and August 18, 1999. By doing so, Graco committed two violations of Section 764.2(e).

**Charges 5-15 15 C.F.R. §764.2(b) - Causing the Unauthorized Re-export of Diaphragm Pumps to Saudi Arabia and Taiwan**

As described in greater detail in the attached Schedule B, which is incorporated herein, on 11 occasions between on or about April 17, 2001 and on or about February 20, 2002, Graco caused the doing of an act prohibited by the Regulations. Specifically, Graco exported diaphragm pumps (ECCN 2B350), items subject to the Regulations, to overseas distributors, who re-exported the pumps to Saudi Arabia and Taiwan without the required license. More specifically, Graco exported the diaphragm pumps with knowledge that they would be further transferred and did not notify the distributor of the export license requirements, In doing so, Graco committed 11 violations of Section 764.2(b).

Accordingly, Graco 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 Graco 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 Graco defaults, the Administrative Law Judge may find the charges alleged in this

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

Graco Inc.  
Proposed Charging Letter  
Page 3

letter are true without a hearing or further notice to Graco. 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.

Graco is further notified that it is entitled to an agency hearing on the record if Graco files a written demand for one with its answer. (Regulations, Section 766.6). Graco is also entitled 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 Graco have a proposal to settle this case, Graco or its 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, Graco'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 Graco's answer must be served on BIS at the following address:

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

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

Sincerely,

Michael Turner  
Director  
Office of Export Enforcement

enclosure