

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

In the Matter of: )  
)  
Oyster Bay Pump Works, Inc. )  
78 Midland Avenue )  
P.O. Box 725 )  
Hicksville, New York 11802 )  
)  
Respondent )  
)

**ORDER RELATING TO OYSTER BAY PUMP WORKS, INC.**

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Oyster Bay Pump Works, Inc. (“Oyster Bay”), of its intention to initiate an administrative proceeding against it pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),<sup>2</sup> through the issuance of a Proposed Charging Letter to Oyster Bay that alleged that it committed six violations of the Regulations. Specifically, the charges are:

**Charge 1:                    15 C.F.R. § 764.2(a) – Exporting an Item to Cuba via Germany  
Without the Required License**

On or about November 17, 2003, Oyster Bay engaged in conduct prohibited by the Regulations by exporting a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99,<sup>3</sup> from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2010). The charged violations occurred between 2003-2006. The Regulations governing the violations at issue are found in the 2003 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2010 Regulations set forth the procedures that apply to this matter.

<sup>2</sup> 50 U.S.C. app. §§ 2401-2420 (2000). 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 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

<sup>3</sup> Under the Regulations, items designated as “EAR99” are items that are subject to the Regulations but which do not fall in any specific entry on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003; 2006).

Regulations. In so doing, Oyster Bay committed one violation of Section 764.2(a) of the Regulations.

**Charges 2-3: 15 C.F.R. § 764.2(e) – Selling Items for Export to Cuba via Germany with Knowledge of a Violation**

On or about February 24, 2006, and on or about June 30, 2006, Oyster Bay sold items for export from the United States to Cuba via Germany with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about February 24, 2006, Oyster Bay sold three power supply units, items subject to the Regulations and designated as EAR99, which Oyster Bay knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. On a second occasion, on or about June 30, 2006, Oyster Bay sold a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99, which Oyster Bay knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. Oyster Bay had knowledge that violations of the Regulations were occurring or were about and intended to occur because Oyster Bay knew of the U.S. embargo of Cuba and that licenses were required to export these items to Cuba. On at least two occasions in or around 2004 and in or around 2005, Oyster Bay staff researched export control laws and regulations and informed Patrick Gaillard, the owner and operator of Oyster Bay, that these items required a license to be exported to Cuba. Gaillard ordered Oyster Bay staff to export the items without obtaining the required licenses. In so doing, Oyster Bay committed two violations of Section 764.2(e) of the Regulations.

**Charge 4: 15 C.F.R. § 764.2(e) – Selling Items to Iran via the United Arab Emirates with Knowledge of a Violation**

On or about November 27, 2006, Oyster Bay sold items for export from the United States to Iran via the United Arab Emirates (“U.A.E.”) with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about November 27, 2006, Oyster Bay sold a Three Station Microplate Processing Conveyor System (MPCS-3) and Test Tube Conveyor System (TTCS), items subject to the Regulations and designated as EAR99, which Oyster Bay knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations (“ITR”) maintained by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”),<sup>4</sup> an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein. Oyster Bay had knowledge that violations of the Regulations were occurring or were about and intended to occur because Oyster Bay knew of the U.S. embargo of Iran and that the items could not be exported to Iran without U.S. Government

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<sup>4</sup> 31 CFR § 560 (2006).

authorization. In or around November 2005, a sales representative from an Iranian company approached Oyster Bay for the sale and export of the items described above to Iran. When Oyster Bay declined, citing the U.S. embargo of exports to Iran, the sales representative arranged with Oyster Bay to have the items exported to the Iranian company's trading arm in the U.A.E., from where the items would be transhipped to Iran. The U.S. Government confiscated the items before the intended export took place. In so doing, Oyster Bay committed one violation of Section 764.2(e) of the Regulations.

**Charge 5:                    15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records  
with Intent to Evade the Regulations**

In or around February 2006, Oyster Bay took actions with intent to evade the provisions of the Regulations. Specifically, in or around February 2006, Patrick Gaillard, owner and president of Oyster Bay, directed Oyster Bay staff to review files related to the transactions described in Charges 1-3 above involving exports from the United States to Cuba via Germany and to remove references to Cuba from those files and to destroy documents relating to exports to Cuba. In so doing, Oyster Bay committed one violation of Section 764.2(h) of the Regulations.

**Charge 6:                    15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records  
with Intent to Evade the Regulations**

On or about November 28 or 29, 2006, Patrick Gaillard, owner and president of Oyster Bay, learned that the U.S. Government had confiscated the items described in Charge 4 above, that were intended for export from the United States to Iran via the U.A.E.. Gaillard directed Oyster Bay staff to review the pertinent Oyster Bay sales and export files and remove references and destroy documents relating to exports to Iran and the name of the Iranian company that was the true ultimate consignee.

WHEREAS, BIS and Oyster Bay 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, Oyster Bay Pump Works shall be assessed a civil penalty in the amount of \$300,000. Payment of the \$300,000 penalty shall be suspended for a period of one (1) year from the date of issuance of the Order and thereafter shall be waived, provided that during the period

of suspension, Oyster Bay has committed no violation of the Act, or any regulation, order, or license issued thereunder.

SECOND, Oyster Bay shall perform an audit of its internal export controls compliance program within 12 months of the date of entry of the Order. Said audit shall be in substantial compliance with the EMS sample audit module. The EMS sample audit module is available on the BIS web site at

[http://www.bis.doc.gov/complianceandenforcement/emcp.htm#emcp\\_assistance](http://www.bis.doc.gov/complianceandenforcement/emcp.htm#emcp_assistance). A copy of said audit shall be transmitted to the Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, NY, 10314, by no later than 12 months from the date of the Order.

THIRD, for a period of three (3) years from the date of this Order, Oyster Bay Pump Works 78 Midland Avenue, P.O. Box 725, Hicksville, New York 11802, its officers, representatives, assigns or agents (hereinafter collectively referred to as "Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

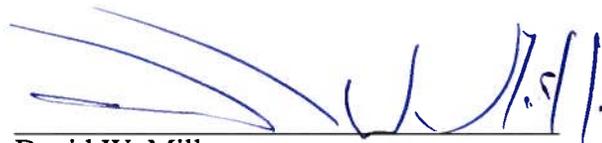
FIFTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Oyster Bay Pump Works by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that, as authorized by Section 766.18(c) of the Regulations, the denial period set forth above shall be suspended in its entirety for a period of three years from this Order, and shall thereafter be waived, provided that during the period of suspension Oyster Bay has committed no violation of the Act or any regulation, order or license issued thereunder.

EIGHTH, 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.



David W. Mills  
Assistant Secretary of Commerce  
for Export Enforcement

Issued this 21 day of Jan, 2010.

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

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P.O. Box 725 )  
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Respondent )  
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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Oyster Bay Pump Works, Inc. (“Oyster Bay”), 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 (“Regulations”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (“Act”),<sup>2</sup>

WHEREAS, BIS has notified Oyster Bay 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 Oyster Bay that alleged that Oyster Bay committed six violations of the Regulations, specifically:

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2010). The charged violation occurred between 2003 and 2006. The Regulations governing the violation at issue are found in the 2003 through 2006 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-2006)). The 2010 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)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 Fed. Reg. 41,625 (August 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq. (2000)).

**Charge 1: 15 C.F.R. § 764.2(a) – Exporting an Item to Cuba via Germany Without the Required License**

On or about November 17, 2003, Oyster Bay engaged in conduct prohibited by the Regulations by exporting a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99,<sup>3</sup> from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. In so doing, Oyster Bay committed one violation of Section 764.2(a) of the Regulations.

**Charges 2-3: 15 C.F.R. § 764.2(e) – Selling Items for Export to Cuba via Germany with Knowledge of a Violation**

On or about February 24, 2006, and on or about June 30, 2006, Oyster Bay sold items for export from the United States to Cuba via Germany with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about February 24, 2006, Oyster Bay sold three power supply units, items subject to the Regulations and designated as EAR99, which Oyster Bay knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. On a second occasion, on or about June 30, 2006, Oyster Bay sold a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99, which Oyster Bay knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. Oyster Bay had knowledge that violations of the Regulations were occurring or were about and intended to occur because Oyster Bay knew of the U.S. embargo of Cuba and that licenses were required to export these items to Cuba. On at least two occasions in or around 2004 and in or around 2005, Oyster Bay staff researched export control laws and regulations and informed Patrick Gaillard, the owner and operator of Oyster Bay, that these items required a license to be exported to Cuba. Gaillard ordered Oyster Bay staff to export the items without obtaining the required licenses. In so doing, Oyster Bay committed two violations of Section 764.2(e) of the Regulations.

**Charge 4: 15 C.F.R. § 764.2(e) – Selling Items to Iran via the United Arab Emirates with Knowledge of a Violation**

On or about November 27, 2006, Oyster Bay sold items for export from the United States to Iran via the United Arab Emirates (“U.A.E.”) with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the

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<sup>3</sup> Under the Regulations, items designated as “EAR99” are items that are subject to the Regulations but which do not fall in any specific entry on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003; 2006).

items. Specifically, on or about November 27, 2006, Oyster Bay sold a Three Station Microplate Processing Conveyor System (MPCS-3) and Test Tube Conveyor System (TTCS), items subject to the Regulations and designated as EAR99, which Oyster Bay knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations (“ITR”) maintained by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”),<sup>4</sup> an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein. Oyster Bay had knowledge that violations of the Regulations were occurring or were about and intended to occur because Oyster Bay knew of the U.S. embargo of Iran and that the items could not be exported to Iran without U.S. Government authorization. In or around November 2005, a sales representative from an Iranian company approached Oyster Bay for the sale and export of the items described above to Iran. When Oyster Bay declined, citing the U.S. embargo of exports to Iran, the sales representative arranged with Oyster Bay to have the items exported to the Iranian company’s trading arm in the U.A.E., from where the items would be transshipped to Iran. The U.S. Government confiscated the items before the intended export took place. In so doing, Oyster Bay committed one violation of Section 764.2(e) of the Regulations.

**Charge 5:                    15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations**

In or around February 2006, Oyster Bay took actions with intent to evade the provisions of the Regulations. Specifically, in or around February 2006, Patrick Gaillard, owner and president of Oyster Bay, directed Oyster Bay staff to review files related to the transactions described in Charges 1-3 above involving exports from the United States to Cuba via Germany and to remove references to Cuba from those files and to destroy documents relating to exports to Cuba. In so doing, Oyster Bay committed one violation of Section 764.2(h) of the Regulations.

**Charge 6:                    15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations**

On or about November 28 or 29, 2006, Patrick Gaillard, owner and president of Oyster Bay, learned that the U.S. Government had confiscated the items described in Charge 4 above, that were intended for export from the United States to Iran via the U.A.E.. Gaillard directed Oyster Bay staff to review the pertinent Oyster Bay sales and export files and remove references and destroy documents relating to exports to Iran and the name of the Iranian company that was the true ultimate consignee.

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<sup>4</sup> 31 CFR § 560 (2006).

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

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

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

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

WHEREAS, Oyster Bay agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Oyster Bay, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. The following sanctions shall be imposed against Oyster Bay in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the proposed charging letter:
  - a. Oyster Bay shall be assessed a civil penalty in the amount of \$300,000.  
Payment of the \$300,000 shall be suspended for a period of one (1) year

from the date of issuance of the Order and thereafter shall be waived, provided that during the period of suspension, Oyster Bay has committed no violation of the Act, or any regulation, order, or license issued thereunder.

- b. That Oyster Bay shall perform an audit of its internal export controls compliance program within 12 months of the date of the Order. Said audit shall be in substantial compliance with the EMS sample audit module. The EMS sample audit module is available on the BIS web site at [http://www.bis.doc.gov/complianceand enforcement/emcp.htm#emcp\\_assistance](http://www.bis.doc.gov/complianceand enforcement/emcp.htm#emcp_assistance). A copy of said audit shall be transmitted to the Office of Export Enforcement, 1200 South Avenue, Suite 104, Staten Island, NY, 10314, by no later than 12 months from the date of the Order.
- c. For a period of three years from the date of issuance of the Order, Oyster Bay and when acting for or on behalf of Oyster Bay, its officers, representatives, agents, assigns or employees, (hereinafter collectively referred to as the "Denied Person") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:
  - i. Applying for, obtaining, or using any license, License Exception, or export control document;

- ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
    - iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.
  - d. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the three year denial period set forth in paragraph 2.c above shall be suspended in its entirety, and shall thereafter be waived, provided that during the period of suspension Oyster Bay has committed no violation of the Act or any regulation, order or license issued thereunder.
3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Oyster Bay 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 issued), 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 issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued.
4. BIS agrees that, upon issuance of the Order, it will not initiate any further administrative proceeding against Oyster Bay 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 issued, 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 issued, 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 issuing 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

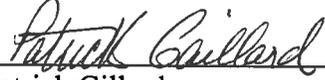


John Sonderman  
Acting Director  
Office of Export Enforcement

Date: \_\_\_\_\_

6/15/10

OYSTER BAY PUMP WORKS, INC.



Patrick Gillard  
Owner and President

Date: \_\_\_\_\_

6/7/10

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Oyster Bay Pump Works  
78 Midland Avenue  
P.O. Box 725  
Hicksville, New York 11802

*Attention:* Patrick Gaillard  
Owner and President

Dear Mr. Gaillard:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Oyster Bay Pump Works (“OBPW”), of Hicksville, New York, has committed five 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 OBPW committed the following violations, described in greater detail in the attached Schedule of Transactions, which is enclosed herewith and incorporated herein by reference:

**Charge 1:                    15 C.F.R. § 764.2(a) – Exporting an Item to Cuba via Germany  
Without the Required License**

As described in greater detail in the attached Schedule of Transactions, on or about November 17, 2003, OBPW engaged in conduct prohibited by the Regulations by exporting a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99,<sup>3</sup> from the United States to Cuba via Germany without the authorization

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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 (2008). The violations charged occurred during 2003 and 2006. The Regulations governing the violations at issue are found in the 2003 and 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.

<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 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)).

<sup>3</sup> Under the Regulations, items designated as “EAR99” are items that are subject to the Regulations but which do not fall in any specific entry on the Commerce Control List. 15 C.F.R. § 734.3(c) (2003; 2006).

from the Department of Commerce required by Section 746.2 of the Regulations. In so doing, OBPW committed one violation of Section 764.2(a) of the Regulations.

**Charges 2-3: 15 C.F.R. § 764.2(e) – Selling Items for Export to Cuba via Germany with Knowledge of a Violation**

As described in greater detail in the attached Schedule of Transactions, on or about February 24, 2006, and on or about June 30, 2006, OBPW sold items for export from the United States to Cuba via Germany with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about February 24, 2006, OBPW sold three power supply units, items subject to the Regulations and designated as EAR99, which OBPW knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. On a second occasion, on or about June 30, 2006, OBPW sold a Ten Station Microplate Processing Conveyor System (MPCS-10), an item subject to the Regulations and designated as EAR99, which OBPW knew would be exported from the United States to Cuba via Germany without the authorization from the Department of Commerce required by Section 746.2 of the Regulations. OBPW had knowledge that violations of the Regulations were occurring or were about and intended to occur because OBPW knew of the U.S. embargo of Cuba and that licenses were required to export these items to Cuba. On at least two occasions in or around 2004 and in or around 2005, OBPW staff researched export control laws and regulations and informed Patrick Gaillard, the owner and operator of OBPW, that these items required a license to be exported to Cuba. Gaillard ordered OBPW staff to export the items without obtaining the required licenses. In so doing, OBPW committed two violations of Section 764.2(e) of the Regulations.

**Charge 4: 15 C.F.R. § 764.2(e) – Selling Items to Iran via the United Arab Emirates with Knowledge of a Violation**

As described in greater detail in the Schedule of Transactions, on or about November 27, 2006, OBPW sold items for export from the United States to Iran via the United Arab Emirates (“U.A.E.”) with knowledge that violations of the Regulations were occurring or were about and intended to occur in connection with the items. Specifically, on or about November 27, 2006, OBPW sold a Three Station Microplate Processing Conveyor System (MPCS-3) and Test Tube Conveyor System (TTCS), items subject to the Regulations and designated as EAR99, which OBPW knew would be exported to Iran via the U.A.E. without the required U.S. Government authorization. Pursuant to Section 560.204 of the Iranian Transactions Regulations (“ITR”) maintained by the Department of the Treasury’s Office of Foreign Assets Control (“OFAC”),<sup>4</sup> an export to a third country intended for transshipment to Iran is a transaction that requires OFAC authorization. Pursuant to Section 746.7 of the Regulations, no person may engage in

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<sup>4</sup> 31 CFR § 560 (2006).  
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the exportation of an item subject to both the Regulations and the ITR without authorization from OFAC. No OFAC authorization was sought or obtained for the transaction described herein. OBPW had knowledge that violations of the Regulations were occurring or were about and intended to occur because OBPW knew of the U.S. embargo of Iran and that the items could not be exported to Iran without U.S. Government authorization. In or around November 2005, a sales representative from an Iranian company approached OBPW for the sale and export of the items described above to Iran. When OBPW declined, citing the U.S. embargo of exports to Iran, the sales representative arranged with OBPW to have the items exported to the Iranian company's trading arm in the U.A.E., from where the items would be transshipped to Iran. The U.S. Government confiscated the items before the intended export took place. In so doing, OBPW committed one violation of Section 764.2(e) of the Regulations.

**Charge 5:                    15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations**

In or around February 2006, OBPW took actions with intent to evade the provisions of the Regulations. Specifically, in or around February 2006, Patrick Gaillard, owner and president of OBPW, directed OBPW staff to review files related to the transactions described in Charges 1-3 above involving exports from the United States to Cuba via Germany and to remove references to Cuba from those files and to destroy documents relating to exports to Cuba. In so doing, OBPW committed one violation of Section 764.2(h) of the Regulations.

**Charge 6:                    15 C.F.R. § 764.2(h) – Destroying Documents and Altering Records with Intent to Evade the Regulations**

On or about November 28 or 29, 2006, Patrick Gaillard, owner and president of OBPW, learned that the U.S. Government had confiscated the items described in Charge 4 above, that were intended for export from the United States to Iran via the U.A.E.. Gaillard directed OBPW staff to review the pertinent OBPW sales and export files and remove references and destroy documents relating to exports to Iran and the name of the Iranian company that was the true ultimate consignee.

\*           \*           \*           \*           \*

Accordingly, OBPW 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 the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation;<sup>5</sup>
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

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

OBPW 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. OBPW 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 OBPW have a proposal to settle this case, OBPW should transmit it to the attorney representing BIS named below.

OBPW is further notified that under the Small Business Regulatory Enforcement Flexibility Act, OBPW may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, OBPW'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>5</sup> International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).  
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In addition, a copy of OBPW'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 OBPW 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

Oyster Bay Pump Works  
Schedule of Transactions

Schedule of Transactions

Transaction	Export Date	Commodity	Quantity	Value	Country of Ult. Dest.	Invoice #	AWB Number	SED ITN
1	11/17/2003	MPCS-10	1	\$125,196.00	Cuba	5351	Unknown	20031118000058
2	2/24/2006	Power Supply Units	3	Unknown	Cuba	6326	Unknown - Documentation Unavailable	
3	6/30/2006	MPCS-10	1	\$128,857.00	Cuba	6468	300-504-124-8	20060629057121
4	Detained on 11/29/06	TTCS-3	1	\$179,741.00	Iran	6642	020JFK57365980	20061127022822
5	Detained on 11/29/06	MPCS-3	1	\$121,666.10	Iran	6641	020JFK57365976	20061127023774