

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

In the Matter of:

GrafTech International Holdings Inc.
12900 Snow Road
Parma, Ohio 44130

Respondent

ORDER RELATING TO
GRAFTECH INTERNATIONAL HOLDINGS INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified GrafTech International Holdings Inc. (“GrafTech International”), of its intention to initiate an administrative proceeding against GrafTech International pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to GrafTech International that alleges that GrafTech International committed twelve violations of the Regulations. Specifically, the charges are:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violations occurred between 2007 and 2010. The Regulations governing the violations at issue are found in the 2007-2010 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2013 Regulations set forth 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)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49,107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 and Supp. IV (2010)).

**Charges 1-4 15 C.F.R. §764.2(a) –Export of Graphite Controlled for Missile
Technology Reasons to the People’s Republic of China
Without the Required Licenses**

On four occasions between on or about July 27, 2007, and on or about October 4, 2009, GrafTech International engaged in conduct prohibited by the Regulations when it exported CGW grade graphite, an item subject to the Regulations, classified under Export Control Classification Number 1C107.a and controlled for missile technology reasons, and valued at approximately \$276,000, from the United States to the People’s Republic of China without the Department of Commerce licenses required by Section 742.5 of the Regulations.

In so doing, GrafTech International committed four violations of Section 764.2(a) of the Regulations.

**Charges 5-12 15 C.F.R. §764.2(a) –Export of Graphite Controlled for
Missile Technology Reasons to India Without the Required
Licenses**

On eight occasions between on or about November 13, 2007, and on or about January 11, 2010, GrafTech International engaged in conduct prohibited by the Regulations when it exported CGW grade graphite, an item subject to the Regulations, classified under Export Control Classification Number 1C107.a and controlled for missile technology reasons, and valued at approximately \$248,000, from the United States to India without the Department of Commerce licenses required by Section 742.5 of the Regulations.

In so doing, GrafTech International committed eight violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and GrafTech International 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, GrafTech International shall be assessed a civil penalty in the amount of \$300,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

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, GrafTech International 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, GrafTech International shall complete an external audit of its export controls compliance program and the export compliance programs of three GrafTech International subsidiaries, GrafTech France S.N.C., GrafTech S.p.A. (Italy), and GrafTech South Africa (Pty.) Ltd. GrafTech International shall hire an unaffiliated third party consultant with expertise in U.S. export control laws to conduct the external audit of GrafTech International's compliance with U.S. export control laws (including compliance with license conditions and recordkeeping requirements), with respect to all exports or reexports of items that are on the Commerce Control List, Supp. 1 to Part 774 of the Regulations. The consultant shall also conduct an external audit of compliance by GrafTech France S.N.C., GrafTech S.p.A. (Italy), and GrafTech South Africa (Pty.) Ltd. with U.S. export control laws (including compliance with license conditions and recordkeeping requirements), with respect to all exports or reexports of items subject to the EAR. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, 381 Elden Street, Suite 1125, Herndon, Virginia 20170 ("BIS

Washington Field Office”). The audit shall cover the 12-month period beginning on the date of the Order, and the related report shall be due to the BIS Washington Field Office no later than eighteen (18) months from the date of the Order. Said audit shall be in substantial compliance with the EMS sample audit module, and shall include an assessment of GrafTech International’s compliance with the Regulations and compliance with the Regulations by GrafTech France S.N.C., GrafTech S.p.A (Italy), and GrafTech South Africa (Pty.) Limited. The EMS sample audit module is available on the BIS web site at http://www.bis.doc.gov/complianceand enforcement/ revised_emcp_audit.pdf. In addition, where said audit identifies actual or potential violations of the Regulations by any of these four entities, GrafTech International shall promptly provide copies of the pertinent air waybills and other export control documents and supporting documentation to the BIS Washington Field Office.

FOURTH, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above and the completion and submission of the audit as set forth above are 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 GrafTech International. Accordingly, if GrafTech International should fail to pay the civil penalty in a full and timely manner or complete and submit the audit as set forth above, the undersigned may issue an Order denying all of GrafTech International’s export privileges under the Regulations for a period of one year from the date of failure to make such payment or to complete and submit the audit as set forth above.

FIFTH, GrafTech shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect GrafTech’s testimonial obligations in

any proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

SIXTH, 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 25th day of October, 2013.

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

In the Matter of:

GrafTech International Holdings Inc.
12900 Snow Road
Parma, Ohio 44130

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between GrafTech International Holdings Inc., of Parma, Ohio ("GrafTech International"), 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 (the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (the "Act").²

WHEREAS, GrafTech International 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 Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violations occurred between 2007 and 2010. The Regulations governing the violations at issue are found in the 2007-2010 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2013 Regulations set forth 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)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49,107 (Aug. 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 and Supp. IV (2010)).

WHEREAS, BIS has notified GrafTech International of its intentions to initiate an administrative proceeding against GrafTech International, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to GrafTech International that alleges that GrafTech International committed twelve violations of the Regulations, specifically:

Charges 1-4 15 C.F.R. §764.2(a) –Export of Graphite Controlled for Missile Technology Reasons to the People’s Republic of China Without the Required Licenses

On four occasions between on or about July 27, 2007, and on or about October 4, 2009, GrafTech International engaged in conduct prohibited by the Regulations when it exported CGW grade graphite, an item subject to the Regulations, classified under Export Control Classification Number 1C107.a and controlled for missile technology reasons, and valued at approximately \$276,000, from the United States to the People’s Republic of China without the Department of Commerce licenses required by Section 742.5 of the Regulations.

In so doing, GrafTech International committed four violations of Section 764.2(a) of the Regulations.

Charges 5-12 15 C.F.R. §764.2(a) –Export of Graphite Controlled for Missile Technology Reasons to India Without the Required Licenses

On eight occasions between on or about November 13, 2007, and on or about January 11, 2010, GrafTech International engaged in conduct prohibited by the Regulations when it exported CGW grade graphite, an item subject to the Regulations, classified under Export Control Classification Number 1C107.a and controlled for missile technology reasons, and valued at approximately \$248,000, from the United States to India without the Department of Commerce licenses required by Section 742.5 of the Regulations.

In so doing, GrafTech International committed eight violations of Section 764.2(a) of the Regulations.

WHEREAS, GrafTech International has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, GrafTech International 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, GrafTech International enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

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

WHEREAS, GrafTech International neither admits nor denies the allegations contained in the Proposed Charging Letter; ∞

WHEREAS, GrafTech International wishes to settle and dispose of all matters alleged in the Proposed Charging Letter by entering into this Agreement; and

WHEREAS, GrafTech International agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

I. BIS has jurisdiction over GrafTech International, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanctions shall be imposed against GrafTech International in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter:

a. GrafTech International shall be assessed a civil penalty in the amount of \$300,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. GrafTech International shall complete an external audit of its export controls compliance program and the export compliance programs of three GrafTech International subsidiaries, GrafTech France S.N.C., GrafTech S.p.A. (Italy), and GrafTech South Africa (Pty.) Ltd. GrafTech International shall hire an unaffiliated third party consultant with expertise in U.S. export control laws to conduct the external audit of GrafTech International's compliance with U.S. export control laws (including compliance with license conditions and recordkeeping requirements), with respect to all exports or reexports of items that are on the Commerce Control List, Supp. 1 to Part 774 of the Regulations. The consultant shall also conduct an external audit of compliance by GrafTech France S.N.C., GrafTech S.p.A. (Italy), and GrafTech South Africa (Pty.) Ltd. with U.S. export control laws (including compliance with license conditions and recordkeeping requirements), with respect to all exports or reexports of items subject to the EAR. The results of the audit, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of

Export Enforcement, 381 Elden Street, Suite 1125, Herndon, Virginia 20170 ("BIS Washington Field Office"). The audit shall cover the 12-month period beginning on the date of the Order, and the related report shall be due to the BIS Washington Field Office no later than eighteen (18) months from the date of the Order. Said audit shall be in substantial compliance with the EMS sample audit module, and shall include an assessment of GrafTech International's compliance with the Regulations and compliance with the Regulations by GrafTech France S.N.C., GrafTech S.p.A (Italy), and GrafTech South Africa (Pty.) Limited. The EMS sample audit module is available on the BIS web site at http://www.bis.doc.gov/complianceand enforcement/ revised_emcp_audit.pdf. In addition, where said audit identifies actual or potential violations of the Regulations by any of these four entities, GrafTech International shall promptly provide copies of the pertinent air waybills and other export control documents and supporting documentation to the BIS Washington Field Office.

c. The full and timely payment of the civil penalty agreed to in Paragraph 2.a and the timely completion and submission of the audit in Paragraph 2.b are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to GrafTech International. Failure to make full and timely payment of the civil penalty as set forth above in Paragraph 2.a or to complete and submit the audit as set forth above in Paragraph 2.b may result in the denial of all of GrafTech International's export privileges under the Regulations for one year from the date of the failure to make such payment or to complete and submit the audit as set forth above.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, GrafTech International 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 any 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. GrafTech International also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the later of the date GrafTech International pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement or has completed and submitted the audit in Paragraph 2.b.

4. GrafTech shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect GrafTech's testimonial obligations in any proceeding; nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a and completion and submission of the audit in Paragraph 2.b, BIS will not initiate any further administrative proceeding against GrafTech International in connection with any

violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

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. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

10. 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



Douglas R. Hassebrock
Director of Export Enforcement

Date: 10/23/13

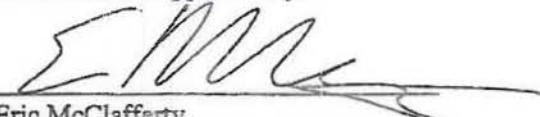
GRAFTECH INTERNATIONAL
HOLDINGS INC.



Craig S. Shular
Chairman, President, and Chief Executive
Officer

Date: 10/18/13

Reviewed and approved by:



Eric McClafferty
Counsel for GrafTech International Holdings,
Inc.
Kelley Drye & Warren LLP

Date: 10/18/13

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

GrafTech International Holdings Inc.
12900 Snow Road
Parma, Ohio 44130

Attention: Craig S. Shular
Chairman, President, and Chief Executive Officer

Dear Mr. Shular:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that GrafTech International Holdings Inc., of Parma, Ohio (“GrafTech International”), has committed twelve violations of the Export Administration Regulations (the “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that GrafTech International committed the following violations:

Charges 1-4 15 C.F.R. §764.2(a) –Export of Graphite Controlled for Missile Technology Reasons to the People’s Republic of China Without the Required Licenses

As described in greater detail in the attached Schedule of Violations, on four occasions between on or about July 27, 2007, and on or about October 4, 2009, GrafTech International engaged in conduct prohibited by the Regulations when it exported CGW grade graphite, an item subject to the Regulations, classified under Export Control Classification Number 1C107.a and controlled for missile technology reasons, and valued at approximately \$276,000, from the United States to the People’s Republic of China without the Department of Commerce licenses required by

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2013). The charged violations occurred between 2007 and 2010. The Regulations governing the violations at issue are found in the 2007-2010 version of the Code of Federal Regulations, as amended (15 C.F.R. Parts 730-774 (2007-2010)). The 2013 Regulations set forth 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)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 Fed. Reg. 49,107 (Aug. 12, 2013), as continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 and Supp. IV (2010)).

Section 742.5 of the Regulations. In so doing, GrafTech International committed four violations of Section 764.2(a) of the Regulations.

Charges 5-12

15 C.F.R. §764.2(a) –Export of Graphite Controlled for Missile Technology Reasons to India Without the Required Licenses

As described in greater detail in the attached Schedule of Violations, on eight occasions between on or about November 13, 2007, and on or about January 11, 2010, GrafTech International engaged in conduct prohibited by the Regulations when it exported CGW grade graphite, an item subject to the Regulations, classified under Export Control Classification Number 1C107.a and controlled for missile technology reasons, and valued at approximately \$248,000, from the United States to India without the Department of Commerce licenses required by Section 742.5 of the Regulations.

In so doing, GrafTech International committed eight violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, GrafTech International 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;³
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If GrafTech International 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 GrafTech International defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to GrafTech

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

International. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

GrafTech International 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. GrafTech International 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 GrafTech International have a proposal to settle this case, GrafTech International 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, GrafTech International'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 GrafTech International's answer must be served on BIS at the following address:

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

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

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement

Graftech International Holdings, Inc.

Schedule of Violations

Charge	Date	Item	ECCN	Value	Destination	Violation
1	7/27/2007	CGW grade graphite	1C107.a	\$70,350	PEOPLE'S REPUBLIC OF CHINA (PRC)	764.2(a)
2	10/20/2007	CGW grade graphite	1C107.a	\$70,350	PRC	764.2(a)
3	7/15/2009	CGW grade graphite	1C107.a	\$122,990	PRC	764.2(a)
4	10/4/2009	CGW grade graphite	1C107.a	\$12,500	PRC	764.2(a)
5	11/13/2007	CGW grade graphite	1C107.a	\$21,067	INDIA	764.2(a)
6	2/17/2008	CGW grade graphite	1C107.a	\$42,134	INDIA	764.2(a)
7	5/20/2008	CGW grade graphite	1C107.a	\$42,134	INDIA	764.2(a)
8	8/13/2008	CGW grade graphite	1C107.a	\$42,134	INDIA	764.2(a)
9	9/30/2008	CGW grade graphite	1C107.a	\$42,134	INDIA	764.2(a)
10	12/14/2008	CGW grade graphite	1C107.a	\$16,280	INDIA	764.2(a)
11	9/28/2009	CGW grade graphite	1C107.a	\$21,067	INDIA	764.2(a)
12	1/11/2010	CGW grade graphite	1C107.a	\$21,067	INDIA	764.2(a)
				\$524,207		