

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

In the Matter of:

PhibroChem, Inc.
Glenpointe Centre East, 3rd Floor
300 Frank W. Burr Blvd., Suite 21
Teaneck, NJ 07666-6712

Respondent

ORDER RELATING TO
PHIBROCHEM, INC.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified PhibroChem, Inc., of Teaneck, New Jersey ("PhibroChem"), of its intention to initiate an administrative proceeding against PhibroChem 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 PhibroChem that alleges that PhibroChem committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(e) - Acting with Knowledge of a Violation

On or about January 15, 2008, PhibroChem sold sodium fluoride, an item subject to the Regulations that was to be exported from the United States to Mexico, with knowledge that a violation of the Regulations would occur, was about to occur or was intended to occur in connection with the item. The sodium fluoride was classified under ECCN 1C350, controlled for reasons of chemical and biological weapons proliferation, and valued at approximately \$14,000, and required a license for export to Mexico pursuant to Section 742.2 of the Regulations. PhibroChem was the U.S. principal party in interest in this transaction, and had knowledge that the export of sodium fluoride to Mexico required BIS authorization because it had previously received an export license from BIS to export sodium fluoride to the same end-user in Mexico. This license expired on December 23, 2007. No export license was obtained for the export at issue. In so doing, PhibroChem committed one violation

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violation occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 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 15, 2012 (77 Fed. Reg. 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

of Section 764.2(e) of the Regulations.

WHEREAS, BIS and PhibroChem 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, PhibroChem shall be assessed a civil penalty in the amount of \$31,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the 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, PhibroChem 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 full and timely payment of the civil penalty 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 PhibroChem. Accordingly, if PhibroChem should fail to pay the civil penalty in a full and timely manner the undersigned may issue an Order denying all of PhibroChem's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

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.



David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 28 day of September, 2012.

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

In the Matter of:

PhibroChem, Inc.
Glenpointe Centre East, 3rd Floor
300 Frank W. Burr Blvd., Suite 21
Teaneck, NJ 07666-6712

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between PhibroChem, Inc., of Teaneck, New Jersey ("PhibroChem"), 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, BIS has notified PhibroChem of its intentions to initiate an administrative proceeding against PhibroChem pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to PhibroChem that alleges that PhibroChem committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(e) - Acting with Knowledge of a Violation

On or about January 15, 2008, PhibroChem sold sodium fluoride, an item subject to the Regulations that was to be exported from the United States to Mexico, with knowledge that a violation of the Regulations would occur, was about to occur or was intended to occur in connection with the item. The sodium fluoride was classified under ECCN 1C350, controlled for reasons of chemical and biological weapons proliferation, and valued at approximately \$14,000, and required a license for export to Mexico pursuant to Section 742.2 of the Regulations. PhibroChem was the U.S. principal party in interest in this transaction, and had knowledge that the export of sodium fluoride to Mexico required BIS authorization because it had previously received an export license from BIS to export sodium fluoride to the same

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violation occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 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 15, 2012 (77 Fed. Reg. 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

end-user in Mexico. This license expired on December 23, 2007. No export license was obtained for the export at issue. In so doing, PhibroChem committed one violation of Section 764.2(c) of the Regulations.

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

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

WHEREAS, PhibroChem neither admits nor denies the allegations contained in the Proposed Charging Letter;

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

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

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

1. BIS has jurisdiction over PhibroChem, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against PhibroChem in complete and full settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:

- a. PhibroChem shall be assessed a civil penalty in the amount of \$31,000, 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. The full and 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, license exception, permission, or privilege granted, or to be granted, to PhibroChem. Failure to make full and timely payment of the civil penalty may result in the denial of all of PhibroChem's export privileges under the Regulations for one year from the date of the failure to make such payment.

3. Subject to the approval of this Agreement pursuant to Paragraph 7 hereof, PhibroChem 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. PhibroChem 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 PhibroChem pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against PhibroChem in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

5. 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.

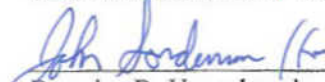
6. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

7. 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.

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

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.

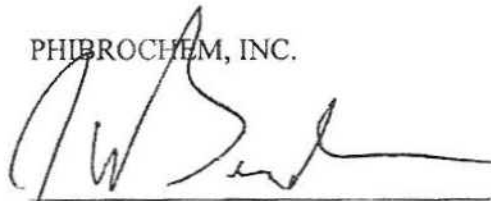
BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE



Douglas R. Hassebrock
Director of Export Enforcement

Date: 9/28/2012

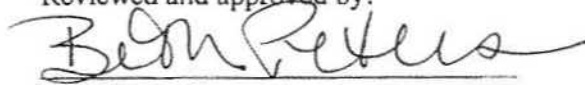
PHIBROCHEM, INC.



Jack Bendheim
President
PhibroChem, Inc.

Date: 9/27/12

Reviewed and approved by:



Beth Peters, Esq.
Ajay Kuntamukkala, Esq.
Hogan Lovells US LLP
Counsel for PhibroChem, Inc.

Date: 9/27/2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PhibroChem, Inc.
Glenpointe Centre East, 3rd Floor
300 Frank W. Burr Blvd., Suite 21
Teaneck, NJ 07666-6712

Attention: *Jack Bendheim*
President

Dear Mr. Bendheim:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that PhibroChem, Inc. of Teaneck, New Jersey ("PhibroChem"), has committed one violation of the Export Administration Regulations (the "Regulations"),¹ which issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that PhibroChem committed the following violation:

Charge 1 15 C.F.R. § 764.2(e) - Acting with Knowledge of a Violation

On or about January 15, 2008, PhibroChem sold sodium fluoride, an item subject to the Regulations that was to be exported from the United States to Mexico, with knowledge that a violation of the Regulations would occur, was about to occur or was intended to occur in connection with the item. The sodium fluoride was classified under ECCN 1C350, controlled for reasons of chemical and biological weapons proliferation, and valued at approximately \$14,000, and required a license for export to Mexico pursuant to Section 742.2 of the Regulations. PhibroChem was the U.S. principal party in interest in this transaction, and had knowledge that the export of sodium fluoride to Mexico required BIS authorization because it had previously received an export license from BIS to export sodium fluoride to the same end-user in Mexico. This license expired on December 23, 2007. No export license was obtained for the export at issue. In so doing, PhibroChem committed one violation of Section 764.2(e) of the Regulations.

* * *

Accordingly, PhibroChem 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

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The violation charged occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2008)). The 2012 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)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 Fed. Reg. 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

obtaining an order imposing administrative sanctions and any other liability sanction or penalty available under law, including, but not limited to 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; and/or
- Exclusion from practice before BIS.

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

PhibroChem 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. PhibroChem 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 PhibroChem have a proposal to settle this case, PhibroChem or its representative should transmit it to the attorney representing BIS named below.

PhibroChem is further notified that under the Small Business Regulatory Enforcement Flexibility Act, PhibroChem 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, PhibroChem's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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

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

Chief Counsel for Industry and
Security Attention: Gregory
Michelsen, Esq. Room H-3839

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

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 PhibroChem may wish to have concerning this matter should occur through him. Mr. Michelsen may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R.
Hassebrock Director
Office of Export Enforcement