

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

In the Matter of:)
)
Andes Chemical Corporation)
11125 NW 29th Street)
Miami, Florida 33172)
)
Respondent)

ORDER RELATING TO ANDES CHEMICAL CORPORATION

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Andes Chemical Corporation (“Andes”), of its intention to initiate an administrative proceeding against Andes pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through issuance of a proposed charging letter to Andes that alleged that Andes committed eight violations of the Regulations. Specifically, these charges are:

¹ The violations alleged to have been committed occurred during 2003, 2004, 2006, and 2007. The Regulations governing the violations at issue are found in the 2003, 2004, 2006, and 2007 versions of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2003-2004; 2006-2007). The 2008 Regulations govern the procedural aspects of this case.

² 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 15, 2007 (72 Fed. Reg. 46,137, Aug. 16, 2007), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Charges 1-6 **15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Exporting Sodium Bifluoride to Jamaica Without the Required License**

On six occasions between on or about May 23, 2003, and on or about July 6, 2007, Andes Chemical engaged in conduct prohibited by the Regulations by exporting sodium bifluoride, an item classified under ECCN 1C350 and controlled for reasons of chemical and biological weapons proliferation, to Jamaica without the Department of Commerce license required by Section 742.2(a)(2) of the Regulations. In so doing, Andes Chemical committed six violations of Section 764.2(a) of the Regulations.

Charges 7-8 **15 C.F.R. § 764.2(a) - Failure to File Shipper's Export Declarations**

On two occasions on or about, respectively, January 16, 2004 and May 28, 2004, in connection with the transactions described in Charges 2-3 above, Andes Chemical refrained from engaging in conduct required by the Regulations when it failed to file Shipper's Export Declarations ("SEDs") or Automated Export System ("AES") records with the U.S. Government. Section 758.1(b)(2) of the Regulations required that SEDs or AES records be filed with the U.S. Government for all exports subject to the Regulations that require a license, regardless of value or destination. The exports described in Charges 2-3 required a license. In failing to file required SEDs or AES records, Andes Chemical committed two violations of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Andes 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 \$60,000 is assessed against Andes, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

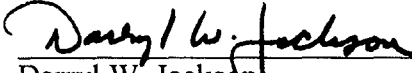
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Andes will be assessed, in addition 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 Andes. Accordingly, if Andes should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Andes' 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.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 5th day of June, 2008.

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

In the Matter of:)
)
Andes Chemical Corporation)
11125 NW 29th Street)
Miami, Florida 33172)
)
Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Andes Chemical Corporation (“Andes”) and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),²

WHEREAS, Andes 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 violations alleged to have been committed occurred during 2003, 2004, 2006, and 2007. The Regulations governing the violations at issue are found in the 2003, 2004, 2006, and 2007 versions of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2003-2004; 2006-2007). The 2008 Regulations govern the procedural aspects of this case.

² 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 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

WHEREAS, BIS has notified Andes 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 Andes that alleged that it committed eight violations of the Regulations, specifically:

Charges 1-6 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Exporting Sodium Bifluoride to Jamaica Without the Required License

On six occasions between on or about May 23, 2003, and on or about July 6, 2007, Andes Chemical engaged in conduct prohibited by the Regulations by exporting sodium bifluoride, an item classified under ECCN 1C350 and controlled for reasons of chemical and biological weapons proliferation, to Jamaica without the Department of Commerce license required by Section 742.2(a)(2) of the Regulations. In so doing, Andes Chemical committed six violations of Section 764.2(a) of the Regulations.

Charges 7-8 15 C.F.R. § 764.2(a) - Failure to File Shipper's Export Declarations

On two occasions on or about, respectively, January 16, 2004 and May 28, 2004, in connection with the transactions described in Charges 2-3 above, Andes Chemical refrained from engaging in conduct required by the Regulations when it failed to file Shipper's Export Declarations ("SEDs") or Automated Export System ("AES") records with the U.S. Government. Section 758.1(b)(2) of the Regulations required that SEDs or AES records be filed with the U.S. Government for all exports subject to the Regulations that require a license, regardless of value or destination. The exports described in Charges 2-3 required a license. In failing to file required SEDs or AES records, Andes Chemical committed two violations of Section 764.2(a) of the Regulations.

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over Andes, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Andes in complete settlement of the alleged violations of the Regulations relating to the transactions detailed in the voluntary self-disclosure and the proposed charging letter:

a. Andes shall be assessed a civil penalty in the amount of \$60,000, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Andes. Failure to make timely payment of the civil penalty set forth above may result in

the denial of all of Andes' 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, Andes 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 \$60,000 civil penalty, BIS will not initiate any further administrative proceeding against Andes in connection with any violation of the Act or the Regulations arising out of the transactions identified in the voluntary self-disclosure and 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.

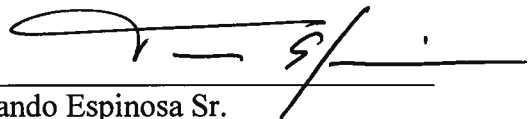
BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE



Thomas Madigan
Acting Director
Office of Export Enforcement

Date: May 29, 2008

ANDES CHEMICAL CORPORATION



Fernando Espinosa Sr.
Chief Executive Officer

Date: MAY - 23 - 2008

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Andes Chemical Corporation
11125 NW 29th Street
Miami, FL 33172

Attn: *Fernando Espinosa Sr.*
CEO

Dear Mr. Espinosa:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Andes Chemical Corporation (“Andes Chemical”), of Miami, Florida, has committed eight violations of the Export Administration Regulations (the Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Andes Chemical committed the following violations:

Charges 1-6 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Exporting Sodium Bifluoride to Jamaica Without the Required License

As described in greater detail in the attached Schedule of Violations, which is incorporated herein by reference, on six occasions between on or about May 23, 2003, and on or about July 6, 2007, Andes Chemical engaged in conduct prohibited by the Regulations by exporting sodium bifluoride, an item classified under ECCN 1C350 and controlled for reasons of chemical and biological weapons proliferation, to Jamaica without the Department of Commerce license required by Section 742.2(a)(2) of the Regulations.³ In so doing, Andes Chemical committed six violations of Section 764.2(a) of the Regulations.

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The charged violations occurred in 2003, 2004, 2006, and 2007. The Regulations governing the violations at issue are found in the 2003, 2004, 2006, and 2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003-04; 2006-07)). The 2008 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 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

³ “ECCN” refers to “Export Control Classification Number.” *See* 15 C.F.R. § 772.1.

Charges 7-8 15 C.F.R. § 764.2(a) - Failure to File Shipper's Export Declarations

On two occasions on or about, respectively, January 16, 2004 and May 28, 2004, in connection with the transactions described in Charges 2-3 above (including in pertinent part the attached Schedule of Violations, which is incorporated herein by reference), Andes Chemical refrained from engaging in conduct required by the Regulations when it failed to file Shipper's Export Declarations ("SEDs") or Automated Export System ("AES") records with the U.S. Government. Section 758.1(b)(2) of the Regulations required that SEDs or AES records be filed with the U.S. Government for all exports subject to the Regulations that require a license, regardless of value or destination. The exports described in Charges 2-3 required a license. In failing to file required SEDs or AES records, Andes Chemical committed two violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Andes Chemical 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;⁴
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

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

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

⁴ 50 U.S.C. § 1705(b) (2007).

Andes Chemical is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Andes Chemical 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, Andes Chemical'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 Andes Chemical's answer must be served on BIS at the following address:

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

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

Sincerely,

Thomas Madigan
Acting Director
Office of Export Enforcement

Andes Chemical Corporation
Proposed Charging Letter
Schedule of Violations

Charge	Date	Destination	Commodity	ECCN	Invoice No.	Amount (lbs.)	Value	Violation(s)
1	23-May-03	Jamaica	Sodium Bifluoride	1C350	18771	1000	\$1,235	15 C.F.R. § 764.2(a)
2, 7	16-Jan-04	Jamaica	Sodium Bifluoride	1C350	20145	1000	\$1,240	15 C.F.R. § 764.2(a)
3, 8	28-May-04	Jamaica	Sodium Bifluoride	1C350	20899	1000	\$1,230	15 C.F.R. § 764.2(a)
4	4-Dec-06	Jamaica	Sodium Bifluoride	1C350	26898	551.20	\$892.94	15 C.F.R. § 764.2(a)
5	20-Apr-07	Jamaica	Sodium Bifluoride	1C350	28037	992.16	\$1,607.30	15 C.F.R. § 764.2(a)
6	6-Jul-07	Jamaica	Sodium Bifluoride	1C350	28819	551.20	\$1,041.77	15 C.F.R. § 764.2(a)