

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

In the Matter of:)
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Falmouth Scientific, Inc.)
1400 Route 28A)
Cataumet, MA 02534)
)
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)
)
Respondent)

ORDER RELATING TO FALMOUTH SCIENTIFIC, INC.

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Falmouth Scientific, Inc. (“Falmouth Scientific”), of its intention to initiate an administrative proceeding against Falmouth Scientific 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 Falmouth Scientific that alleged that Falmouth Scientific committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 C.F.R. § 764.2(g) – Misrepresentations of Fact to BIS

On or about February 27, 2003, Falmouth Scientific submitted a letter to BIS licensing officers, in the course of discussions initiated by Falmouth Scientific regarding the export control classification of an underwater navigation/tracking system that it intended to export from the United States to the People’s Republic of China (“China”), containing false or misleading representations or statements. Falmouth Scientific’s submission stated, *inter alia*, that the navigation/tracking system was designed for commercial use and that there were no military standards or specifications that the equipment was designed to meet. Prior to its submission to BIS, Falmouth Scientific knew or had reason to know that the system was not designed for commercial use, but instead had been designed to meet military

¹ The violation alleged to have been committed occurred in 2003. The Regulations governing the violation at issue are found in the 2003 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003)). The 2008 Regulations establish the procedures that apply to this matter.

² 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 July 23, 2008 (73 Fed. Reg. 43,606 (Jul 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

specifications, specifically, for the Chinese Navy. In so doing, Falmouth Scientific committed one violation of section 764.2(g) of the Regulations.

WHEREAS, BIS and Falmouth Scientific 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 \$50,000 is assessed against Falmouth Scientific. Falmouth Scientific shall pay \$25,000 to the U.S. Department of Commerce in six installments as follows: \$4,1666.70 due not later than May 1, 2009; \$4,1666.66 due not later than August 1, 2009; \$4,166.66 due not later than November 1, 2009; \$4,166.66 due not later than February 1, 2010; \$4,166.66 due not later than May 1, 2010 and \$4,166.66 due not later than August 1, 2010. Payment of the remaining \$25,000 shall be suspended for a period of time starting from the date of this Order through the date the last installment payment is due on August 1, 2010, and thereafter shall be waived, provided that during the period of suspension, Falmouth Scientific has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made the payment of \$25,000, in accordance with the payment plan described above. Payment shall be made in the manner specified in the attached instructions.

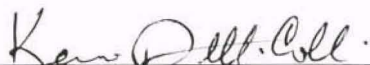
SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Falmouth Scientific will be assessed, 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 Falmouth Scientific. Accordingly, if Falmouth Scientific

should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Falmouth Scientific' 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.



Kevin Delli-Colli
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 7th day of April, 2009.

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

In the Matter of:)
)
Falmouth Scientific, Inc.)
1400 Route 28A)
Cataumet, MA 02534)
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Respondent)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Falmouth Scientific, Inc. (“Falmouth Scientific”) 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, BIS has notified Falmouth Scientific of its intention to initiate an administrative proceeding against Falmouth Scientific, pursuant to the Act and the Regulations;

¹ The violation alleged to have been committed occurred in 2003. The Regulations governing the violation at issue are found in the 2003 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003)). The 2008 Regulations establish 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 July 23, 2008 (73 Fed. Reg. 43,603 (Jul. 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.



WHEREAS, BIS has issued a proposed charging letter to Falmouth Scientific that alleged that Falmouth Scientific committed one violation of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(g) – Misrepresentations of Fact to BIS

On or about February 27, 2003, Falmouth Scientific submitted a letter to BIS licensing officers, in the course of discussions initiated by Falmouth Scientific regarding the export control classification of an underwater navigation/tracking system that it intended to export from the United States to the People's Republic of China ("China"), containing false or misleading representations or statements. Falmouth Scientific's submission stated, *inter alia*, that the navigation/tracking system was designed for commercial use and that there were no military standards or specifications that the equipment was designed to meet. Prior to its submission to BIS, Falmouth Scientific knew or had reason to know that the system was not designed for commercial use, but instead had been designed to meet military specifications, specifically, for the Chinese Navy. In so doing, Falmouth Scientific committed one violation of section 764.2(g) of the Regulations.

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

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

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

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

WHEREAS, the Parties agree to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

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

2. The following sanction shall be imposed against Falmouth Scientific in complete settlement of the alleged violations of the Regulations relating to the transactions detailed in the proposed charging letter:

a. Falmouth Scientific shall be assessed a civil penalty in the amount of \$50,000.00. Falmouth Scientific shall pay \$25,000.00 to the U.S. Department of Commerce in six installments as follows: \$4,166.70 due not later than May 1, 2009; \$4,166.66 due not later than August 1, 2009; \$4,166.66 due not later than November 1, 2009; \$4,166.66 due not later than February 1, 2010; \$4,166.66 due not later than May 1, 2010 and \$4,166.66 due not later than August 1, 2010.

Payment of the remaining \$25,000 shall be suspended for a period of time starting from the date of entry of the Order through the date the last installment payment is due on August 1, 2010, and thereafter shall be waived, provided that during the period of suspension, Falmouth Scientific has committed no violation of the Act, or any regulation, order, or license issued thereunder and has made timely payments of the \$25,000 penalty, in accordance with the payment plan described above.

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 Falmouth

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Scientific. Failure to make timely payment of the civil penalty in accordance with the payment schedule set forth above may result in the denial of all of Falmouth Scientific's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Falmouth Scientific 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 \$25,000 civil penalty, BIS will not initiate any further administrative proceedings against Falmouth Scientific in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

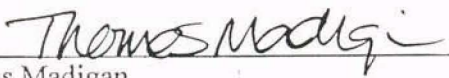
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7. No oral agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or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

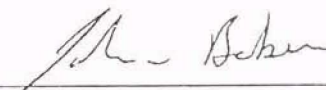
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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



Thomas Madigan
Director
Office of Export Enforcement

FALMOUTH SCIENTIFIC, INC.



John Baker
President and Chief Executive Officer
Falmouth Scientific, Inc.

Date: April 1, 2009

Date: April 1st 2009

PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Falmouth Scientific, Inc.
1400 Route 28A
Cataumet, MA 02534

Attn: Mr. John Baker
President and Chief Operating Officer

Dear Mr. Baker:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Falmouth Scientific, Inc., of Cataumet, Massachusetts (“Falmouth Scientific”), has committed one violation 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 Falmouth Scientific committed the following violation:

Charge 1 15 C.F.R. § 764.2(g) – Misrepresentations of Fact to BIS

On or about February 27, 2003, Falmouth Scientific submitted a letter to BIS licensing officers, in the course of discussions initiated by Falmouth Scientific regarding the export control classification of an underwater navigation/tracking system that it intended to export from the United States to the People’s Republic of China (“China”), containing false or misleading representations or statements. Falmouth Scientific’s submission stated, *inter alia*, that the navigation/tracking system was designed for commercial use and that there were no military standards or specifications that the equipment was designed to meet. Prior to its submission to BIS, Falmouth Scientific knew or had reason to know that the system was not designed for commercial use, but instead had been designed to meet military specifications, specifically, for the Chinese Navy. In so doing, Falmouth Scientific committed one violation of section 764.2(g) 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 violation occurred in 2003. The Regulations governing the violation at issue are found in the 2003 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003)). 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 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 July 23, 2008 (73 Fed. Reg. 43,606, Jul. 25 2008), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000) (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

Accordingly, Falmouth Scientific 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; and/or
- Exclusion from practice before BIS.

If Falmouth Scientific 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 (2008). If Falmouth Scientific defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Falmouth Scientific. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Falmouth Scientific 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 (2008). Falmouth Scientific 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 (2008).

Falmouth Scientific is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Falmouth Scientific 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 Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2008). Should Falmouth Scientific have a proposal to settle this case, Falmouth Scientific or its representative should transmit it to the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Falmouth Scientific's answer must be filed in accordance with the instructions in Section 766.5(a) (2008) of the Regulations with:

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

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

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

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

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

Sincerely,

Thomas Madigan
Director
Office of Export Enforcement