

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

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In the Matter of: )  
 )  
FlowsERVE Australia Pty. Ltd. )  
14 Dalmore Drive )  
Scoresby, Victoria 3179 )  
Australia )  
 )  
Respondent )  
\_\_\_\_\_

ORDER RELATING TO FLOWSERVE AUSTRALIA PTY. LTD.

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

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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 (2011). The charged violation occurred in 2005. The Regulations governing the violation at issue are found in the 2005 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005)). The 2011 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 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 12, 2011 (76 Fed. Reg. 50,661 (Aug. 16, 2011)), continues the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

**Charge 1                    15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by  
Reexporting Valves and Valve Components Controlled for Chemical  
and Biological Weapons Proliferation Reasons to Indonesia without  
the Required Government Authorization**

On or about November 25, 2005, Flowserve Australia engaged in conduct prohibited by the Regulations by reexporting valves and valve components, items subject to the Regulations, classified under Export Control Classification Number 2B350, controlled for Chemical and Biological Weapons Proliferation reasons and valued at approximately \$20,700, from Australia to Indonesia without the Department of Commerce license required by Section 742.2(a) of the Regulations. In so doing, Flowserve Australia committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Flowserve Australia 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, Flowserve Australia shall be assessed a civil penalty in the amount of \$5,000, which shall be paid to the U.S. Department of Commerce within 30 days of the date 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, Flowserve Australia 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 in full 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 Flowserve Australia.

Accordingly, if Flowserve Australia should fail to pay the civil penalty in a timely manner, the undersigned may issue an Order denying all of Flowserve Australia's export privileges under the Regulations for a period of one year from the date the penalty payment is due.

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.

A handwritten signature in black ink, appearing to read 'D. W. Mills', written over a horizontal line.

David W. Mills  
Assistant Secretary of Commerce  
for Export Enforcement

Issued this 29 day of September, 2011.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
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Flowserve Australia Pty. Ltd. )  
14 Dalmore Drive )  
Scoresby, Victoria 3179 )  
Australia )  
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Respondent )  
\_\_\_\_\_

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Flowserve Australia Pty. Ltd. (“Flowserve Australia”) 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”),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).<sup>2</sup>

WHEREAS, BIS has notified Flowserve Australia of its intention to initiate an administrative proceeding against it, pursuant to the Act and the Regulations;

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2011). The charged violation occurred in 2005. The Regulations governing the violation at issue are found in the 2005 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005)). The 2011 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 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 12, 2011 (76 Fed. Reg. 50,661 (Aug. 16, 2011)), continues the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

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

**Charge 1 15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Reexporting Valves and Valve Components Controlled for Chemical and Biological Weapons Proliferation Reasons to Indonesia without the Required Government Authorization**

On or about November 25, 2005, Flowserve Australia engaged in conduct prohibited by the Regulations by reexporting valves and valve components, items subject to the Regulations, classified under Export Control Classification Number 2B350, controlled for Chemical and Biological Weapons Proliferation reasons and valued at approximately \$20,700, from Australia to Indonesia without the Department of Commerce license required by Section 742.2(a) of the Regulations. In so doing, Flowserve Australia committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, Flowserve Australia filed a voluntary self-disclosure with BIS's Office of Export Enforcement;

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

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

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

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

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

NOW THEREFORE, the Parties hereby agree as follows:

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

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

a. Flowserve Australia shall be assessed a civil penalty in the amount of \$5,000, 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, permission, or privilege granted, or to be granted, to Flowserve Australia. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Flowserve Australia's export privileges for a period of one year from the date the penalty payment is due.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Flowserve Australia 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 entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Flowsolve Australia also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled for the time period from the date of the Order, if issued, until the date Flowsolve Australia pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement, 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 the Agreement and Order, if issued.

4. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, BIS will not initiate any further administrative proceedings against Flowsolve Australia in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the voluntary self-disclosure and 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

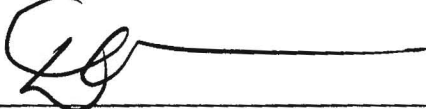
shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

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



Douglas R. Hassebrock  
Director  
Office of Export Enforcement

Date: 9/27/11

FLOWSERVE AUSTRALIA PTY. LTD.



Samuel Barrett  
Director and Vice-President

Date: 9-21-11



PROPOSED CHARGING LETTER

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Flowserve Australia Pty. Ltd.  
14 Dalmore Drive  
Scoresby, Victoria 3179  
Australia

*Attention: Samuel Barrett, Director and Vice-President*

Dear Mr. Barrett:

The Bureau of Industry and Security, United States Department of Commerce (“BIS”), has reason to believe that Flowserve Australia Pty. Ltd., of Scoresby, Australia (“Flowserve Australia”), committed one violation 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 Flowserve Australia committed the following violation:

**Charge 1                    15 C.F.R. § 764.2(a) - Engaging in Prohibited Conduct by Reexporting Valves and Valve Components Controlled for Chemical and Biological Weapons Proliferation Reasons to Indonesia without the Required Government Authorization**

On or about November 25, 2005, Flowserve Australia engaged in conduct prohibited by the Regulations by reexporting valves and valve components, items subject to the Regulations, classified under Export Control Classification Number 2B350, controlled for Chemical and Biological Weapons Proliferation reasons and valued at approximately \$20,700, from Australia to Indonesia without the Department of Commerce license required by Section 742.2(a) of the Regulations. In so doing, Flowserve Australia committed one violation of Section 764.2(a) of the Regulations.

\*       \*       \*       \*       \*       \*       \*

Accordingly, Flowserve Australia is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

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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 (2011). The charged violation occurred in 2005. The Regulations governing the violation at issue are found in the 2005 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005)). The 2011 Regulations establish 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 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 12, 2011 (76 Fed. Reg. 50,661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

- 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>3</sup>;
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Flowserve Australia 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 (2011). If Flowserve Australia defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Flowserve Australia. The Under Secretary for Industry and Security may then impose up to the maximum penalty on the charges in this letter.

Flowserve Australia 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 (2011). Flowserve Australia 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 (2011).

Flowserve Australia is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Flowserve Australia 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 (2011). Should Flowserve Australia have a proposal to settle this case, Flowserve Australia 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, Flowserve Australia's answer must be filed in accordance with the instructions set forth 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 Flowserve Australia's answer must be served on BIS at the following address:

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<sup>3</sup> International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

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

Greg Michelsen and Elias Wolfberg are the attorneys representing BIS in this case; any communications that Flowserve Australia may wish to have concerning this matter should occur through them. Mr. Michelsen and Mr. Wolfberg may be contacted by telephone at (202) 482-5301.

Sincerely,

Douglas R. Hassebrock  
Director  
Office of Export Enforcement

Enclosure