

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Number 98-BXA-09]

**Action Affecting Export Privileges;
Export Materials, Inc.; Decision and
Order**

In the Matter of: Export Materials, Inc.,
3227 Greenbrier Drive, No. 108, Stafford,
Texas 77477, Respondent.

On August 12, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), issued a charging letter initiating an administrative proceeding against Export Materials, Inc. (hereinafter "Export Materials"). The charging letter alleged that Export Materials committed 112 violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (1999)) (hereinafter the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (hereinafter the "Act").²

Specifically, the charging letter alleged that, beginning in June 1994 and continuing through about July 1996, Export Materials conspired with Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, and TIC Ltd. to bring about acts that constituted violations of the Act, or any regulation, order, or license issued thereunder. The purpose of the conspiracy was for Export Materials and the others to export U.S.-origin commodities to Libya, a country subject to a comprehensive economic sanctions program. To accomplish their

purpose, the conspirators devised and employed a scheme to export U.S.-origin items from the United States through the United Kingdom to Libya, without applying for and obtaining the export authorizations that the conspirators knew or had reason to know were required under U.S. law, including the Regulations. See 15 CFR § 746.4, previously codified at 15 CFR § 785.7 of the former Regulations, and 15 CFR § 772.1 of the former Regulations. BXA alleged that, by conspiring or acting in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Act, or any regulation, order or license issued thereunder, Export Materials violated Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996) of the former Regulations.

BXA alleged that, in furtherance of the conspiracy described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, Export Materials, as a co-conspirator, exported polyurethane (isocyanate/polyol) and polyether polyurethane (hereinafter collectively referred to as "pipe coating materials") from the United States to Libya, without obtaining from the Department the validated export licenses that Export Materials knew or had reason to know were required under Section 772.1(b) (redesignated as Section 772A.1(b) on March 25, 1996) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act, or any regulation, order, or license issued thereunder, Export Materials, as a co-conspirator, violated Section 787.6 or Section 787A.6 of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials, as a co-conspirator, committed 32 violations of Section 787.6 and five violations of Section 787A.6 of the former Regulations, for a total of 37 violations.

BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order, or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the transactions, Export Materials, as a co-conspirator, violated Section 787.4(a) or Section 787A.4(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials committed 32 violations of Section 787.4(a) and five violations of Section 787A.4(a) of

the former Regulations, for a total of 37 violations.

Finally, BXA also alleged that, in furtherance of the conspiracy described above and to effect the 37 exports described above, on 37 separate occasions between on or about February 12, 1995 and on or about April 25, 1996, Export Materials used Shipper's Export Declarations or Bills of Lading, export control documents as defined in Section 770.2 (redesignated as Section 770A.2 on March 25, 1996) of the former Regulations, on which it represented that the commodities described thereon, pipe coating materials, were destined for ultimate end-use in the United Kingdom. In fact, the pipe coating materials were ultimately destined for Libya. BXA alleged that, by making false or misleading statements of material fact directly or indirectly to a United States agency in connection with the use of export control documents to effect exports from the United States, Export Materials, as a co-conspirator, violated Section 787.5(a) or Section 787A.5(a) of the former Regulations in connection with each shipment. Specifically, BXA alleged that Export Materials committed 32 violations of Section 787.5(a) and five violations of Section 787A.5(a)³ of the former Regulations, for a total of 37 violations.

Thus, BXA alleged that Export Materials committed one violation of Section 787.3(b) (redesignated as Section 787A.3(b) on March 25, 1996); 32 violations of Section 787.4(a), five violations of Section 787A.4(a), 32 violations of Section 787.5(a); five violations of Section 787A.5(a), 32 violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations.

BXA presented evidence that the charging letter was served on Export Materials in accordance with Section 766.3 of the Regulations but that Export Materials failed to answer it, as required by 766.7 of the Regulations, and is therefore in default. Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ALJ) find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

³ BXA noted in its motion that, because of a typographical error, the charging letter incorrectly cites to Section 785A.4(a) and requested that the ALJ authorize an amendment to the charging letter to provide the correct citation to the regulatory provision that spells out the false statement violation, Section 787A.5(a). The ALJ granted BXA's request and amended the charging letter to correct the citation to Section 787A.5(a).

¹ The alleged violations occurred during 1994, 1995, and 1996. The Regulations governing the violations at issue are found in the 1994, 1995 and 1996 versions of the Code of Federal Regulations (15 CFR Parts 786-799 (1994 and 1995) and 15 CFR Parts 768-799 (1996), as amended (61 FR 12714, March 25, 1996)) (hereinafter the "former Regulations"). The March 25, 1996 **Federal Register** publication redesignated, but did not republish, the existing Regulations as 15 CFR Parts 768A-799A. In addition, the March 25, 1996 **Federal Register** publication restructured and reorganized the Regulations, designating them as an interim rule at 15 CFR Parts 730-774, effective April 24, 1996. The former Regulations define the violations that BXA alleges occurred. The reorganized and restructured Regulations establish the procedures that apply to this matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 CFR., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR., 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR., 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR., 1997 Comp. 306 (1998)), and August 13, 1998 (3 CFR., 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constitute one violation of Section 787.3(b) (redesignated as Section 787A.3(b) March 25, 1996); 32 violations of Section 787.4(a); five violations of Section 787A.4(a); 32 violations of Section 787.5(a); five violations of Section 787A.5(a); violations of Section 787.6, and five violations of Section 787A.6, for a total of 112 violations of the former Regulations by Export Materials, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for that violation is a denial, for a period of 20 years, of all of Export Materials's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

Accordingly, it is therefore ordered,

First, that, for a period of 20 years from the date of this Order, Export Materials Inc., 3727 Greenbrier Drive, No. 108, Stafford, Texas 77477, and all of its successors or assigns, officers, representatives, agents, and employees when acting for or on behalf of Export Materials may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on Export Materials and on BXA, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: July 12, 1999.

William A. Reinsch,

Under Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 98-BXA-08]

Action Affecting Export Privileges; Nancy Ann Harvey; Decision and Order

In the Matter of: Nancy Ann Harvey, 4542 Indian Earth Court NE, Salem, Oregon 97305, Respondent.

On August 3, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating an administrative proceeding against Nancy Ann Harvey (formerly known as Nancy Ann Mahler (nee Reamer)) (Harvey). The charging letter alleged that Harvey committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (1999) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).²

Specifically, the charging letter alleged that, on or about August 4, 1993, Harvey exported U.S.-origin shotguns (with barrel lengths of 18 inches and over) and shotgun shells to the Republic of South Africa, concealing them in a 40 foot container and representing on a bill of lading that the items in the container were "used household goods and personal effect," without obtaining from BXA the validated export license Harvey knew or had reasons to know was required by Section 772.1(b) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation or contrary to the provisions of the Act or any regulation, order or

¹ The violations at issue occurred in 1993. The Regulations governing those violations are found in the 1993 version of the Code of Federal Regulations (15 CFR Parts 768-799 (1993)) and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to his matter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)) August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)) and August 13, 1998 (CFR, 1998 Comp. 294 (1999)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1999)).