

**UNITED STATES DEPARTMENT OF STATE
BUREAU OF POLITICAL-MILITARY AFFAIRS
WASHINGTON, D.C. 20520**

In the Matter of:

Darling Industries, Inc.

An Arizona Corporation

Respondent

CONSENT AGREEMENT

WHEREAS, the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified Darling Industries, Inc., including its operating divisions, subsidiaries, and business units (collectively "Respondent") of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*), and its implementing regulations, the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130);

WHEREAS, Respondent has reviewed the Proposed Charging Letter and this Consent Agreement, fully understands these documents, and enters into this Consent Agreement voluntarily and with full knowledge of its rights;

WHEREAS, the Department acknowledges that Respondent described these matters in voluntary disclosures submitted to the Department, and cooperated with the Department's review of this matter;

WHEREAS, Respondent wishes to settle and dispose of all potential civil charges, penalties and sanctions arising from the Proposed Charging Letter, and the certain facts that Respondent has disclosed in writing to the Department identified in Paragraph 18 by entering into this Consent Agreement;

WHEREAS, Respondent agrees that this Consent Agreement will remain in effect for a period of eighteen (18) months, subject to the terms and conditions set forth

below;

WHEREAS, Respondent represents and assures that it will continue the remedial measures implemented as a result of this Consent Agreement, and self-implemented prior thereto, as reasonably warranted and amended, subsequent to the completion of the term of this Consent Agreement;

WHEREAS, Respondent agrees that if the Department finds that this Consent Agreement was negotiated based on Respondent's knowingly providing materially false or misleading information to the Department, the Department may revoke this Consent Agreement and the related administrative order ("Order"), and bring additional charges against Respondent. Additionally, Respondent understands that a violation of this Consent Agreement is considered a violation of the Order; and

WHEREAS, the Department and Respondent agree to be bound by this Consent Agreement and the Order to be entered by the Senior Bureau Official, exercising the authorities of the Assistant Secretary of State for Political-Military Affairs.

Now, WHEREFORE, the Department and Respondent agree as follows:

Parties

(1) The Parties to this Consent Agreement are the Department and Respondent and their assignees and successors, and in the event of reorganization or merger, the terms of this Consent Agreement will follow and apply to all affected entities or units.

Jurisdiction

(2) The Department has jurisdiction over Respondent under the AECA and the ITAR in connection with the matters identified in the Proposed Charging Letter.

General Remedial Measures

(3) Respondent, reflecting its commitment to conduct its business in full compliance with the AECA and the ITAR, and in order to ensure, in particular, that there are no unauthorized exports, reexports, retransfers, temporary imports or brokering of ITAR-controlled defense articles, or provision of defense services and that all transactions subject to the AECA and ITAR (collectively "AECA and ITAR-regulated activities") are conducted in compliance with the law, transparently, and without misrepresentation or omission, agrees to implement the following remedial measures and such additional measures as may be mutually agreed upon by Respondent and the Director, Office of Defense Trade Controls

Compliance (DTCC), and agrees further that these measures will remain in effect for eighteen (18) months, subject to the terms and conditions below, as part of this Consent Agreement entered into with the Department.

(4) Respondent agrees that these measures shall be incorporated into any of Respondent's future business acquisitions that are involved in AECA and ITAR-regulated activities, to include manufacturing, within six (6) months of that acquisition, unless the Director, DTCC approves an exception to this requirement.

(5) If Respondent sells any of its operating divisions, subsidiaries, or business units that are involved in AECA and ITAR-regulated activities, or is a party to a corporate merger or restructuring, or is acquired by another party, Respondent agrees to notify DTCC sixty (60) days prior to such event, and further agrees to notify the purchaser or responsible party in writing, and to require the purchaser or responsible party to acknowledge in writing, prior to the event that the purchaser or responsible party shall be bound by the terms and conditions of this Consent Agreement, unless the Director, DTCC approves an exception to this requirement.

(6) Respondent shall ensure that adequate resources are dedicated to ITAR compliance. Respondent shall establish policies and procedures for all of Respondent's employees with responsibility for AECA and ITAR compliance to address lines of authority, staffing levels, performance evaluations, and career paths.

Designated Official for Consent Agreement Compliance and Oversight

(7) Respondent shall appoint, in accordance with the provisions of this Consent Agreement and in consultation with and the approval of the Director, DTCC, a qualified individual to serve as an Internal Special Compliance Officer (ISCO)¹ for the entire term that the Consent Agreement is in force. The authorities, term, and responsibilities of the Designated Official are described below

(a) Appointment: Respondent shall appoint the Respondent's President to serve as ISCO within fifteen (15) days from the date of the Order

(b) Authorities: The ISCO will monitor, oversee, and promote Respondent's AECA and ITAR compliance with the terms of this Consent Agreement in a manner consistent with the purpose of this Consent Agreement and the Order,

¹ Internal Special Compliance Officer (ISCO): Any person nominated for the position of ISCO shall be currently employed by the Respondent and have been a full-time employee of the Respondent for a minimum of two (2) years prior to nomination, unless Director, DTCC grants an exception to such requirements.

its specific terms and conditions, and other activities subject to the ITAR and the AECA. The ISCO shall report directly to the Director, DTCC as set forth herein. The ISCO shall perform duties in consultation with DTCC.

(c) Term: The ISCO shall serve for the duration of the Consent Agreement. In the event of a change of ownership or a change in individual serving as President of Respondent, or if for any reason the ISCO is unable to serve the full period of the appointment, or temporarily is unable to carry out the responsibilities described herein for more than fifteen (15) days, or if the Director, DTCC decides that the ISCO shall be removed for failure to satisfactorily perform ISCO duties, Respondent's President at the time shall recommend a successor acceptable to the Director, DTCC. The Director, DTCC's acceptance of the replacement shall be confirmed in writing to Respondent. Such recommendation shall be made at least thirty (30) days in advance of a new appointment unless a shorter period is agreed to by the Director, DTCC. If a successor is not appointed within forty-five (45) days of the termination or removal of the appointed ISCO, this Consent Agreement shall be extended for the period of time equal to the period of time Respondent was without an approved and appointed ISCO. Respondent will not be without an ISCO for more than sixty (60) days unless the Director, DTCC grants an extension. If the ISCO for any reason is unable to carry out the responsibilities described herein on a temporary basis, not to exceed fifteen (15) days, then Respondent's Chief Financial Officer or designee as approved by DTCC shall assume the duties and authorities of the ISCO in the interim.

(d) Specific Duties and Responsibilities:

(1) The ISCO shall be the primary point of contact between the Department and Respondent for all ITAR-regulated activities conducted during the term of the Consent Agreement.

(2) The ISCO shall implement the compliance measures required by this Consent Agreement, or identified by Respondent during the term of the Consent Agreement. The ISCO may also be requested to perform additional AECA and ITAR-regulated activities oversight, monitoring and coordination of activities by mutual agreement of Respondent and the Director, DTCC.

(3) In fulfilling the responsibilities set forth in this Consent Agreement, the ISCO may, at his/her sole discretion, present any export compliance-

related issue directly to the Director, DTCC.

(e) With the understanding that nothing in this Consent Agreement shall be interpreted to compel waiver of applicable attorney client or work product protections, the ISCO shall have full and complete access to all personnel, books, records, documents, audits, reports, facilities, and technical information relating to this Consent Agreement, the Order, and Respondent's AECA and ITAR-regulated activities.

(f) Respondent shall cooperate with all reasonable requests of the ISCO and shall take no action to interfere with or impede the ability of the ISCO to monitor Respondent's compliance with this Consent Agreement, the Order, and the AECA and the ITAR, or to carry out other responsibilities of the ISCO set forth in this Consent Agreement. The ISCO shall notify DTCC whenever the ISCO encounters any difficulties in exercising the duties and responsibilities assigned under this Consent Agreement.

(g) The ISCO shall provide to the Director, DTCC reports on AECA and ITAR compliance program enhancements and their effect on or benefit to ensuring AECA and ITAR compliance, six (6) months from the execution of this Consent Agreement, and then semi-annually thereafter. These reports shall also include a description of all activities involving defense articles manufactured by Respondent during the period; information regarding Respondent's compliance with this Consent Agreement; findings, conclusions, and recommendations necessary to ensure AECA and ITAR compliance; allocation of resources toward AECA and ITAR compliance; and a summary of the recommendations from previous reports.

Classification Review

(8) Respondent shall, under the supervision of the ISCO, review and verify the export control jurisdiction of all items it manufactures within twelve (12) months after the execution of the Consent Agreement. Respondent shall submit the classification-review results to the Department in order to confirm its compliance with this requirement. During the term of this Consent Agreement, should the Department publish final amendments to the United States Munitions List after the classification review has been completed, Respondent agrees to review the export

control jurisdiction of all affected items within six (6) months from the effective date of the amendment.

Audit

(9) Respondent shall, under the supervision of the ISCO perform, one (1) audit during the term of the Consent Agreement. Respondent shall have the audit conducted by an outside counsel or consultant with expertise in AECA and ITAR matters. Respondent shall submit its proposed auditor to DTCC and shall not initiate the audit until the Director, DTCC has approved the auditor. The audit shall assess the overall effectiveness of Respondent's ITAR compliance program.

(10) Within two (2) months after the execution of this Consent Agreement, Respondent must submit a draft plan for the audit to the Director, DTCC, for review and approval. Within four (4) months after DTCC approves the plan, the audit shall be completed and a written report submitted to the Director, DTCC. The written report must provide the findings of the audit, recommendations where there were deficiencies, and plans to remediate the deficiencies. Respondent's written report shall also include a matrix of the findings, proposed actions, (including implementation plans and testing plans), and expected date of completion. Within six (6) months of issuing the report, no later than twelve (12) months, Respondent will submit a written report to the Director, DTCC confirming whether Respondent addressed the findings described in the written report and status of proposed actions. Respondent shall submit the report to the Director, DTCC along with Respondent's plan on how it will address any outstanding proposed actions.

Penalty

(11) Respondent agrees that it shall pay in fines and in remedial compliance measures an aggregate civil penalty of four hundred thousand dollars (\$400,000) in complete settlement of alleged civil violations pursuant to the AECA and the ITAR, as set forth in the Proposed Charging Letter. Respondent agrees to waive its rights to raise the defense of Statute of Limitations with regard to the collection of the civil penalty imposed by this Consent Agreement, and that the Statute of Limitations shall be tolled until the last payment is made. Respondent also agrees that such civil penalty shall be a nondischargeable debt in accordance with Section 523(a)(7) of the Federal Bankruptcy Code.

The civil penalty shall be payable as follows:

(a) Four hundred thousand dollars (\$400,000) shall be paid through installments as follows:

(1) One hundred thousand dollars (\$100,000) shall be paid within ten (10) days from the date of the Order.

(2) One hundred thousand dollars (\$100,000) shall be paid within eighteen (18) months from the date of the Order.

(3) The Department and Respondent agree that no interest shall accrue or be due on the unpaid portion of the civil penalty if timely payments are made as set forth in paragraphs (11)(a)(1) and (11)(a)(2) above.

(b) The remaining penalty of two hundred dollars (\$200,000) is hereby assessed for remedial compliance measures for the purpose of defraying a portion of the costs associated with such measures, but this amount shall be suspended on the condition that this amount, as determined by DTCC as set forth in paragraph (11)(c) below: (1) has been applied by Respondent to self-initiated, pre-Consent Agreement remedial compliance measures, and/or; (2) shall be applied to Consent Agreement-authorized costs of remedial compliance measures over the term of this Consent Agreement.

(c) Respondent's Chief of Financial Officer (CFO) or equivalent in consultation with the ISCO, shall conduct a review of Respondent's expenditures for the remedial compliance measures referenced in paragraph (11)(b), and certify the results of the review, no later than six (6) months from the date of the Order, to DTCC. DTCC shall determine from that review if the expenditures claimed by Respondent to date were spent for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs. To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs, that amount shall be credited against the suspended penalty amounts outlined in paragraph (11)(b).

(d) Respondent's CFO in consultation with the ISCO shall provide to DTCC no later than one year from the date of this Consent Agreement, and then semiannually thereafter, for verification and approval an itemized accounting, certified as correct by the CFO, of all Consent Agreement-authorized

remedial compliance costs, to include those expenditures claimed against suspended penalties, showing specifics of how money was used to strengthen compliance within the terms of the Consent Agreement. To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for Consent Agreement-authorized remedial compliance costs, that amount shall be credited against the suspended penalty amount outlined in paragraph (11)(b).

(e) Any remaining portion of the suspended penalty unutilized at the conclusion of the term of the Consent Agreement shall no longer be suspended and shall be paid within thirty (30) days.

(12) From the date of the Order, Respondent is precluded from applying any portion of the four hundred thousand dollar (\$400,000) penalty set forth in paragraph (11) as costs in any contract with any agency of the U.S. Government or any other contract where the result would be the application of any portion of the penalty as costs in any contract with any agency of the U.S. Government. Respondent agrees and shall certify in each written accounting report that the penalty, or any portion thereof: (a) shall be treated as expressly unallowable costs under the Federal Acquisition Regulations; (b) shall not be recovered or sought to be recovered as allowable costs, either directly or indirectly under any federal prime contract, grant or subcontract; and (c) shall not be taken as a federal tax deduction for any year following the date of the Order. In the event Respondent violates these prohibitions, the Department shall deem it a "failure to apply funds appropriately for the required purpose."

(13) Any failure to apply funds appropriately for the required purpose, or to provide a satisfactory accounting, shall result in a lifting of the suspension, in which case Respondent shall be required to pay immediately to the Department the amount of the suspended portion of the penalty, less any amounts the Department deems to have been properly applied and accounted for expenditures in compliance with this Consent Agreement.

Debarment

(14) Respondent has acknowledged the seriousness of the violations cited in the Proposed Charging Letter. Respondent has cooperated with the Department's review, expressed regret for these activities and taken steps to improve its compliance programs. It has also undertaken to make amends by paying a cash penalty, and agreeing to implement remedial compliance actions specified in this Consent Agreement. For these reasons, the Department has determined not to

impose an administrative debarment of Respondent based on the civil charges summarized in the Proposed Charging Letter and certain facts disclosed in writing to the Department identified in Paragraph 18. The Department reserves all rights to impose additional sanctions, including debarment under the ITAR, against Respondent if it does not fulfill the provisions of the Consent Agreement or is responsible for other compliance or law enforcement issues under the AECA, or under other statutes enumerated in § 120.27 of the ITAR.

On-site Reviews by the Department

(15) For the purpose of assessing compliance with the provisions of the AECA, the ITAR and future authorizations, Respondent agrees to arrange and facilitate, with minimum advance notice, on-site reviews by the Department while this Consent Agreement remains in effect.

Understandings

(16) No agreement, understanding, representation or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed in the Proposed Charging Letter. Respondent acknowledges and accepts that there is no understanding expressed or implied through this Consent Agreement with respect to a final decision by the Department concerning export licenses or other U.S. Government authorizations.

(17) Respondent acknowledges the nature and seriousness of the offenses charged in the Proposed Charging Letter, including the potential risk of harm to the security and foreign policy interests of the United States. If this Consent Agreement is not approved pursuant to an Order entered by the appropriate Department official, the Department and Respondent agree that they may not use this Consent Agreement in any administrative or judicial proceeding, and that the parties shall not be bound by the terms contained in this Consent Agreement.

(18) The Department agrees that, upon signing of the Order, this Consent Agreement resolves with respect to Respondent the civil penalties or administrative sanctions with respect to civil violations of the AECA or the ITAR arising from facts Respondent has disclosed in writing to the Department in its Voluntary Disclosures assigned DTCC Case Numbers: 14-0000885, 15-0001267, and 17-0000078.

Waiver

(19) Respondent waives, upon the signing of the Order, all rights to seek any further steps in this matter, including an administrative hearing pursuant to part 128 of the ITAR. Respondent also waives any such rights with respect to any additional monetary penalty assessed by the Director, DTCC in connection with an alleged material violation of this Consent Agreement (any such additional monetary penalty imposed shall be limited to one hundred dollars (\$100,000) except as follows: In the event that the Director, DTCC determines that Respondent has materially violated this Consent Agreement and imposes such additional monetary penalty, and Respondent disputes such determination, Respondent may appeal such determination to the Assistant Secretary for Political-Military Affairs, and the decision of the Assistant Secretary for Political-Military Affairs shall be the final determination in the matter, which may not be appealed. Respondents also agree that any such additional monetary penalty shall be nondischargeable under Section 523(a)(7) of the Federal Bankruptcy Code, and subject to the conditions of paragraph (11). Respondent also waives the right to contest the validity of this Consent Agreement or the Order, including in any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

Certification

(20) Within fifteen (15) months from the date of the Order, Respondent shall submit to the Director, DTCC a written certification as to whether: (1) Respondent has implemented all aspects of this Consent Agreement; (2) Respondent's export compliance program has been assessed via an outside audit; and (3) Respondent's export compliance program is adequate to identify, prevent, detect, correct and report AECA and ITAR violations. The Consent Agreement shall remain in force beyond the eighteen (18) month term until such certification is submitted and the Director, DTCC determines based on this certification and other factors that all terms set forth in this Consent Agreement have been implemented, and that Respondent's ITAR compliance program appears to be adequate to identify, prevent, detect, correct, and report violations of the AECA and the ITAR.

Documents to be made public

(21) Respondent understands that the Department shall make this Consent Agreement, the Proposed Charging Letter and the Order, when entered, available to the public.

When Order Becomes Effective

(22) This Consent Agreement shall become binding on the Department only when the appropriate Department official approves it by entering the Order, which shall have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

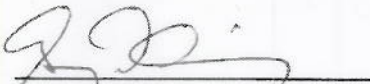
U.S. Department of State



Marik A. String
Deputy Assistant Secretary

2-26-2019
Date

Darling Industries, Inc.



Gary Darling
President

2/14/19
Date