

## PROPOSED CHARGING LETTER

Mr. Gary Darling  
President  
Darling Industries, Inc.  
3749 N. Romero Rd.  
Tucson, AZ 85705

Re: Alleged Violations of the Arms Export Control Act and the  
International Traffic in Arms Regulations by Darling Industries, Inc.

Dear Mr. Darling:

The Department of State (“Department”) proposes to charge Darling Industries, Inc., including its operating divisions, subsidiaries, and business units (“Respondent”) with violations of the Arms Export Control Act (AECA), 22 U.S.C. 2751 *et seq.*, and the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130, in connection with unauthorized exports of defense articles; the unauthorized furnishing of defense services; and failure to appoint qualified Empowered Official. A total of six (6) violations are alleged at this time.

The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend this proposed charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of Respondent. This proposed charging letter, pursuant to 22 CFR § 128.3, provides notice of our intent to impose debarment or civil penalties or both in accordance with 22 CFR § 127.10.

When determining the charges to pursue in this matter, the Department considered a number of mitigating factors. Most notably, the Respondent: (a) submitted voluntary disclosures pursuant to 22 CFR § 127.12 that acknowledged the charged conduct and other potential ITAR violations; (b) entered into an agreement with the Department’s Directorate of Defense Trade Controls (“DDTC”) tolling the statutory period; and (c) instituted a number of self-initiated compliance program improvements. However, Respondent also disclosed that it did not notify DDTC immediately after discovering a violation, in accordance with the guidance in 22 CFR § 127.12(c). Due in part to Respondent submitting its voluntary disclosure to DDTC twenty-two (22) months after discovery, the submission included conduct outside of the time for commencing proceedings, applicable to the AECA and the ITAR. *See* 28 U.S.C. § 2462. The Department

considered the delayed disclosure a countervailing factor and considered other adverse factors, including: (a) lack of an established documented compliance program; and (b) insufficient ITAR expertise and senior leadership oversight.

We note that had the Department not taken into consideration Respondent's significant mitigating factors, the Department may have charged Respondent with additional violations. In the absence of such action, charges against and penalties imposed upon Respondent would likely be more significant.

This proposed charging letter describes certain violations for the time period February 9, 2012 to March 3, 2014, which is the relevant period for the proposed charges.

### JURISDICTION

Respondent is a corporation organized under the laws of the State of Arizona and a U.S. person within the meaning of 22 CFR § 120.15. Respondent is subject to the jurisdiction of the United States.

Respondent, including through the activities of its wholly owned subsidiary R.E. Darling Co., Inc. ("R.E. Darling"), was engaged in the business of manufacturing and exporting defense articles and was registered as a manufacturer and exporter with DDTC, in accordance with 22 U.S.C. 2778(b) and 22 CFR § 122.1 during the period described herein.

Respondent's U.S. subsidiary R.E. Darling engaged in the conduct that led to the violations alleged herein.

The described violations relate to defense articles (including technical data) controlled under Categories IV and VIII of the United States Munitions List (USML), 22 CFR § 121.1, at the time the violations occurred.<sup>1</sup>

### BACKGROUND

Darling Industries, Inc. is the ultimate parent of R.E. Darling and is registered with DDTC as a manufacturer and exporter of defense articles. R.E. Darling manufactures specialty fabricated rubber and composite products such as:

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<sup>1</sup> 78 FR 22740 and 78 FR 22759 revised USML Category VIII, effective 10/15/2013. 79 FR 34 revised and 79 FR 36393 corrected USML Category IV, effective 07/01/14.

rocket motor insulation and exhaust components; oxygen breathing hose and related life support equipment; custom mixed rubber compounds; and compression molded rubber components. R.E. Darling primarily manufactures defense articles with the remaining business of R.E. Darling accounting for non-defense aerospace and industrial products. R.E. Darling engages in both domestic sales and foreign sales.

## VIOLATIONS

ITAR violations included in this proposed charging letter are derived from R.E. Darling's voluntary disclosures, most significantly, the results of a compliance program review conducted from August 20-21, 2014 by an outside consulting firm. The self-initiated compliance program review described decades of systematic, reoccurring violations involving R.E. Darling's manufacture and sale of ethylene propylene diene monomer compound ("EPDM"), a Kevlar filled, raw material used as a missile case insulator and missile motor insulator, controlled under USML IV(h) and breathing hoses, controlled under USML VIII(h).<sup>2</sup> EPDM is also designated on MTCR Annex, Category II- Item 3.

The outside consulting firm's compliance program review identified unauthorized exports in which R.E. Darling did not obtain or attempt to obtain the required license from the Department. According to this report, R.E. Darling did not have a documented export compliance program, including a mechanism to determine the export jurisdiction of its products. The review noted that R.E. Darling delegated export compliance responsibilities to staff who had not been provided export compliance training, and the staff relied on personal knowledge or on the customer to inform them that the products R.E. Darling manufactured and/or exported were ITAR controlled. Also, R.E. Darling's understanding of license requirements was largely driven by the advice of foreign customers. R.E. Darling acknowledges that its lack of qualified personnel, ITAR compliance training, classification system, and documented export compliance program, as identified by the compliance program review, resulted in violations.

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<sup>2</sup> 78 FR 22740 and 78 FR 22759 revised USML Category VIII, effective 10/15/2013. 79 FR 34 revised and 79 FR 36393 corrected USML Category IV, effective 07/01/14.

CJ-0210-18, dated July 5, 2018, determined the USML category for the EPDM was IV(h) from 1999 to March 2014. Revisions to the USML announced in 79 FR 36393 establish the jurisdiction of the EPDM from July 1, 2014 to present as IV(h)(21).

CJ-0212-18, dated June 25, 2018, determined the USML category for the breathing hoses was VIII(h) for September 15, 2009 to September 2013. Revisions to the USML announced in 78 FR 22759, established the jurisdiction and classification of the breathing hoses from October 15, 2013 to present as ECCN 9A610.x.

Following the consulting firm's compliance program review, R.E. Darling implemented procedures to stop unauthorized ITAR activities and implemented mechanisms to prevent and detect unauthorized activity.

I. Failure to Appoint Qualified Empowered Official

From February 9, 2012 through March 2014, R.E. Darling appointed an Empowered Official who did not meet the meaning of Empowered Official pursuant to 22 CFR § 120.25. R.E. Darling's Empowered Official was not in a position of having authority for policy or management within R.E. Darling's organization, as required in 22 CFR § 120.25(a)(1). Also, the Empowered Official did not understand the provisions and requirements of the various export statutes and regulations, as described in 22 CFR § 120.25(a)(3).

The Empowered Official prepared, signed, and submitted license applications that reflected a deficient understanding of the licensing process and the regulations. As a result, R.E. Darling consistently failed to comply with the terms and conditions of authorizations and the ITAR.

R.E. Darling did not provide the Empowered Official any ITAR training while in his role of Empowered Official.

II. Unauthorized Export of Defense Articles and Furnishing of Defense Services

R.E. Darling disclosed that from 1999 to 2014, it exported, without authorization, EPDM related technical data, and provided defense services to an integrated aerospace company in Canada for the production of Black Brant rocket motors used in the Black Brant X sounding rockets for end use by the National Aeronautics and Space Administration.

From April 4, 2012 to March 3, 2014, R.E. Darling exported 1,622 pounds of EPDM to Canada without authorization. R.E. Darling supported the Canadian company's production with ongoing troubleshooting guidance, in-person meetings, and exchange of technical documents. R.E. Darling shared technical information about the curing parameters relating to the EPDM. In one instance, in January 2014, the Canadian company's engineer visited R.E. Darling's EPDM manufacturing plant in Arizona. R.E. Darling without authorization provided defense services involving forming and curing EPDM for certain missile parts intended for Canada.

R.E. Darling did not attempt to obtain or obtain authorization for any of the activities described above. R.E. Darling's sales associate handling the activities with the above-referenced Canadian company believed that EPDM was commercial and did not require a license to Canada. R.E. Darling exported EPDM to Canada No License Required under the Export Administration Regulations.

During the same timeframe, a different sales associate of R.E. Darling obtained Department of State authorization to export EPDM to Norway and the United Kingdom. R.E. Darling later disclosed that only certain sales associates were aware that EPDM was controlled under the ITAR.

### III. Unauthorized Export of Breathing Hoses

R.E. Darling disclosed that from September 15, 2009 to September 16, 2013, it exported without authorization many breathing hoses and components, controlled under USML VIII(h), to the United Kingdom, Australia, Denmark, Germany, and Italy for end use on military aircraft.

From February 29, 2012 to September 16, 2013, Respondent without authorization exported 1,003 hoses to the United Kingdom for end use on the T-50, T-6 Texan II, Textron Scorpion, CT 156 Harvard II, and A-50 aircrafts; and 14 hoses to Italy for end use on the M-346 aircraft.

R.E. Darling's sales staff responsible for the exports were not aware that the products were ITAR controlled. The staff had no ITAR compliance training.

### RELEVANT ITAR REQUIREMENTS

The relevant period for the alleged conduct is February 9, 2012, through March 3, 2014. The regulations effective as of February 9, 2012 are described below. Any amendments to the regulations during the relevant period are identified in a footnote.

22 CFR § 120.9 for the entire period of the alleged conduct stated that defense service included the furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense

articles and the furnishing to foreign persons of any ITAR-controlled technical data, whether in the United States or abroad.

22 CFR § 120.25 for the entire period of the alleged conduct defined an empowered official as a U.S. person who: (1) is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; (2) is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; (3) understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the AECA and ITAR; and (4) has the independent authority to: (i) inquire into any aspect of a proposed export, temporary import, or brokering activity by the applicant; (ii) verify the legality of the transaction and the accuracy of the information to be submitted; and (iii) refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

22 CFR § 121.1 for the entire period of the alleged conduct identified the items that were defense articles, technical data, and defense services pursuant to section 38 of the AECA.

22 CFR § 127.1 stated that was unlawful to export, import, re-export or re-transfer any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from DDTC when the ITAR requires such written approval; to violate any of the terms or conditions of licenses or approvals granted pursuant to the ITAR; or to engage in the business of manufacturing, exporting, or brokering without complying with the registration requirements.<sup>3</sup>

### CHARGES

Respondent violated 22 CFR § 127.1(b)(1) one (1) time when Respondent appointed one (1) Empowered Official as defined by 120.25 who did not meet the requirements of Empowered Official described in ITAR Sections 120.25(a)(1) and 120.25(a)(3).

Respondent violated 22 CFR § 127.1(a)(1) three (3) times when it exported without authorization defense articles (including related technical data) and

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<sup>3</sup> Amendments to 22 CFR § 127.1(a) from February 9, 2012, through March 3, 2014: 77 FR 16592, dated March 21, 2012, implemented by 77 FR 33089, dated June 5, 2012, effective date April 13, 2012; and 78 FR 52680, dated August 26, 2013, effective October 25, 2013.

furnished defense services involving EPDM, USML IV(h) to Canada for the production of Black Brant rocket motors for which a license or written approval was required.

Respondent violated 22 CFR § 127.1(a)(1) two (2) times when it exported without authorization breathing hoses, USMLVIII(h) to the United Kingdom and Italy for which a license or written approval was required.

### ADMINISTRATIVE PROCEEDINGS

Pursuant to 22 CFR § 128.3(a), administrative proceedings against a respondent are instituted by means of a charging letter for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$ 1,134,602, per violation, may be imposed as well, in accordance with 22 U.S.C. 2778(e), 22 CFR § 127.10, and 83 Fed. Reg. 234 (Jan. 3, 2018).

A respondent has certain rights in such proceedings as described in 22 CFR Part 128. This is a proposed charging letter. In the event, however, that the Department serves Respondent with a charging letter, the company is advised of the following:

You are required to answer a charging letter within 30 days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges and you may be held in default. You are entitled to an oral hearing, if a written demand for one is filed with the answer, or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that the company is served with a charging letter, its answer, written demand for oral hearing (if any) and supporting evidence required by 22 CFR § 128.5(b), shall be in duplicate and mailed to the administrative law judge designated by the Department to hear the case at the following address:

USCG, Office of Administrative Law Judges G-CJ,  
2100 Second Street, SW  
Room 6302

Washington, DC 20593.

A copy shall be simultaneously mailed to the Deputy Assistant Secretary for Defense Trade Controls:

Deputy Assistant Secretary for Defense Trade Controls  
US Department of State  
PM/DDTC  
SA-1, 12<sup>th</sup> Floor,  
Washington, DC 20522-0112.

If a respondent does not demand an oral hearing, it must transmit within seven (7) days after the service of its answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue.

Please be advised also that charging letters may be amended upon reasonable notice. Furthermore, pursuant to 22 CFR § 128.11, cases may be settled through consent agreements, including after service of a proposed charging letter.

The U.S. government is free to pursue civil, administrative, and/or criminal enforcement for AECA and ITAR violations. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

Jae E. Shin  
Director