



**DRAFT**

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

EOTT Energy Operating  
Limited Partnership  
c/o EOTT Energy Corp.  
2000 West Sam Houston Parkway South, Suite 400  
Houston, TX 77042

Attn: *Dana Gibbs*  
*President and Chief Executive Officer*

Dear Mr. Gibbs:

The Bureau of Industry and Security, United States Department of Commerce ("BIS")<sup>1</sup> has reason to believe that EOTT Energy Operating Limited Partnership ("EOTT") violated the Export Administration Regulations (the "Regulations"),<sup>2</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act"),<sup>3</sup> on 60 occasions. Specifically, BIS charges that EOTT committed the following violations:

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<sup>1</sup> Effective April 18, 2002, the Bureau of Export Administration changed its name to the Bureau of Industry and Security. This name change does not affect any substantive issues in this case.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The violations charged occurred from 1997 through 1999. The Regulations governing the violations at issue are found in the 1997 through 1999 versions of the Code of Federal Regulations (1.5 C.F.R. Parts 730-774 (1997-1999)). The 1997 - 1999 Regulations are substantially the same as the 2002 version of the Regulations which govern the procedural aspects of this case.

<sup>3</sup> 50 U.S.C. app. 2401-2420 (1994 & Supp. V 1999). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (1994 & Supp. V 1999)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/BXA/>.



**Charges 1 - 2 (15 C.F.R. §764.2(a) - Exports Exceeding the Authorized Quantity on an Export License)**

On two separate occasions from January 1997 through February 1997, EOTT engaged in conduct prohibited by the Regulations by exporting or causing the export of crude petroleum from the United States to Canada in violation of the terms of BIS export licenses. On or about March 16, 1995, BIS issued an export license to EOTT that authorized EOTT, during the period of March 16, 1995 through March 31, 1997, to export a specified quantity of crude petroleum from the United States to Canada for consumption or use therein. Crude petroleum was an item subject to the Regulations and covered by export control classification number ("ECCN") 1C981. Sections 750.7(d) and 758.1(a) of the Regulations provide that the licensee is responsible for proper use of the license and for all terms and conditions of the license. In January 1997 and February 1997, EOTT violated the terms of the license by exporting or causing the export of crude petroleum from the United States to Canada under the license after EOTT had already exported or caused the export of the quantity authorized by the license. See Schedule A, which is enclosed herewith and incorporated herein by reference. In doing so, BIS alleges that EOTT committed two violations of Section 764.2(a) of the Regulations.

**Charges 3 -7 (15 C.F.R. §764.2(a) - Exports Exceeding the Authorized Quantity on an Export License)**

On five separate occasions from October 1997 through February 1998, EOTT engaged in conduct prohibited by the Regulations by exporting or causing the export of crude petroleum from the United States to Canada in violation of the terms of BIS export licenses. On or about February 15, 1997, BIS issued an export license to EOTT that authorized EOTT, during the period of February 15, 1997 through February 28, 1998, to export a specified quantity of crude petroleum from the United States to Canada for consumption or use therein. Crude petroleum was an item subject to the Regulations and covered by ECCN 1C981. Sections 750.7(d) and 758.1(a) of the Regulations provide that the licensee is responsible for proper use of the license and for all terms and conditions of the license. From on or about October 1997 through on or about February 1998, EOTT violated the terms of the license by exporting or causing the export of crude petroleum from the United States to Canada under that license after EOTT had already exported or caused the export of the quantity authorized by the license. See Schedule B, which is enclosed herewith and incorporated herein by reference. In doing so, BIS alleges that EOTT committed five violations of Section 764.2(a) of the Regulations.

**Charges 8 - 14 (15 C.F.R. §764.2(a) - Exports Exceeding the Authorized Quantity on an Export License)**

On seven separate occasions from August 1998 through February 1999, EOTT engaged in conduct prohibited by the Regulations by exporting or causing the export of crude petroleum from the United States to Canada in violation of the terms of BIS export licenses. On or about January 30, 1998, BIS issued an export license to EOTT that authorized EOTT, during the period of January 30, 1998 through January 31, 2000, to export a specified quantity of crude petroleum from the United States to Canada for consumption or use therein. Crude petroleum was an item subject to the Regulations and covered by ECCN 1C981. Sections 750.7(d) and 758.1(a) of the Regulations provide that the licensee is responsible for proper use of the license and for all terms and conditions of the license. From on or about August 1998 through on or about February 1999, EOTT, the licensee, violated the terms of the license by exporting or causing the export of crude petroleum from the United States to Canada under that license after EOTT had already exported or caused the export of the quantity authorized by the license. See Schedule C, which is enclosed herewith and incorporated herein by reference. In doing so, BIS alleges that EOTT committed seven violations of Section 764.2(a) of the Regulations.

**Charges 15 - 60 (15 C.F.R. §764.2(g) - Material Misrepresentations on Shipper's Export Declarations Concerning Authority to Export)**

On 46 separate occasions, from on or about January 16, 1997 through on or about February 24, 1999, EOTT filed or caused to be filed Shipper's Export Declarations<sup>4</sup> ("SED") that contained material misrepresentations of fact. Specifically, EOTT filed or caused to be filed 46 SEDs that stated that the crude petroleum that was the subject of the SEDs qualified for export under the export license numbers stated on the SEDs. These representations were false as EOTT had already exported the authorized amounts of crude petroleum under the export license numbers represented on the SEDs. In doing so, BIS alleges that EOTT committed 46 violations of Section 764.2(g) of the Regulations. See Attachment D, which is enclosed and incorporated herein by reference.

Accordingly, EOTT 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:

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<sup>4</sup> Shipper's Export Declarations are export control documents, as defined in Part 772 of the Regulations.

The maximum civil penalty allowed by law of \$11,000 per violation;<sup>5</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS

If EOTT 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. (Regulations, Sections 746.6 and 766.7). If EOTT defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to EOTT. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

EOTT is further notified that it is entitled to an agency hearing on the record if EOTT files a written demand for one with its answer. (Regulations, Section 766.6). EOTT is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through 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, EOTT's answer must be filed in accordance with the instructions 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 EOTT's answer must be served on BIS at the following address:

Chief Counsel for Export Administration  
Attention: Melissa B. Mannino  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N. W.  
Washington, D.C. 20230

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<sup>5</sup>Pursuant to the Federal Civil Penalties Adjustment Act of 1990 (28 U.S.C. §2461, note (1994 & supp. v 1999)), and 15 C.F.R. §6.4(a)(2), the maximum penalty for each violation committed after October 23, 1996 and before November 1, 2000 is \$11,000.

EOTF Energy Operating, L.P.  
Charging Letter  
Page 5

Melissa B. Mannino is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee  
Director  
Office of Export Enforcement

Enclosures

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

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In the Matter of: )  
)  
EOTT Energy Operating )  
Limited Partnership )  
c/o EOTT Energy Corp. )  
2000 West Sam Houston Parkway South, )  
Suite 400 )  
Houston, TX 77042, )  
)  
\_\_\_\_\_  
Respondent.

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between EOTT Energy Operating Limited Partnership (EOTT) and the Bureau of Industry and Security, United States Department of Commerce (BIS), pursuant to Section 766.1 S(a) of the Export Administration Regulations (15 C.F.R. Parts 730-774 (2002)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (Act),<sup>2</sup> and which are currently

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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 (2002). The violations alleged occurred from 1997 through 1999. The Regulations governing the violations at issue are found in the 1997 through 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1997-1999)). The 1997 through 1999 Regulations that define the various violations that BIS alleges occurred are substantially the same as the 2002 Regulations that establish the procedures that apply to this matter.

<sup>2</sup>From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701-1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 Fed. Reg. 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

maintained in force under the International Emergency Economic Powers Act (50 U.S.C. §§1701-1706 (1994 & Supp. V 1999)).

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

WHEREAS, BIS has issued a proposed charging letter to EOTT that alleged that EOTT committed 60 violations of the Regulations, specifically:

*1. 14 Violations of 15 C. F. R. § 764.2(a) - Exports Exceeding the Authorized Quantity on an Export License:* On 14 separate occasions from January 1997 through February 1999, EOTT engaged in conduct prohibited by the Regulations by violating the terms of BIS export licenses by continuing to export or causing the export of crude petroleum from the United States to Canada under the export licenses after EOTT had already exported or caused the export of the quantities of crude petroleum authorized by the export licenses.

*2. 46 Violations of 1.5 C.F.R. §764.2(g) - Material Misrepresentations on Shipper's Export Declarations Concerning Authority to Export:* On 46 separate occasions, from on or about January 16, 1997 through on or about February 24, 1999, EOTT filed or caused to be filed Shipper's Export Declarations<sup>3</sup> ("SED") that contained material misrepresentations concerning the authority to export as EOTT had already exported or caused the export of the quantities of crude petroleum authorized under the export license numbers represented on the SEDs.

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<sup>3</sup> Shipper's Export Declarations are export control documents, as defined in Part 772 of the Regulations.

WHEREAS, EOTT 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, EOTT fully understands the terms of this Agreement and the Order that will be issued to give effect to this Settlement Agreement (Order);

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

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

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

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

WHEREAS, EOTT agrees to be bound by the Order, when entered;

NOW THEREFORE, EOTT and BIS agree as follows:

1. BIS has jurisdiction over EOTT, under the Regulations, in connection with the matters alleged in the proposed charging letter.
2. BIS and EOTT agree that the following sanction shall be imposed against EOTT in complete settlement of the alleged violations of the Regulations set forth in the proposed charging letter:
  - a. EOTT shall be assessed a civil penalty in the amount of \$508,000. EOTT shall pay the civil penalty in five installments of \$101,600 each. The first payment of \$101,600 shall

be made to the U.S. Department of Commerce within 30 days from the date of entry of the Order. The four additional payments of \$101,600 each shall be made to the U.S. Department of Commerce no later than January 15, 2003, April 15, 2003, July 15, 2003, and October 15, 2003, respectively.

- b. The timely payment of the civil penalty agreed to in paragraph 2a. 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 EOTT. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of EOTT's export privileges for a period of one year from the date of imposition of the penalty.

3. EOTT agrees that, subject to the approval of this Agreement pursuant to paragraph 8 hereof, it hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, when entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in the proposed charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, when entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, when entered

4. BIS agrees that, upon entry of the Order, it will not initiate any administrative proceeding against EOTT in connection with any violation of the Act or the Regulations arising out the transactions identified in the proposed charging letter.

5. EOTT understands that BIS will make the proposed charging letter, this Agreement, and the Order, when entered, available to the public.

6. BIS and EOTT agree that 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 766.1 S(a) of the Regulations, BIS and EOTT agree that they may not use this Agreement in any administrative or judicial proceeding and that the parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

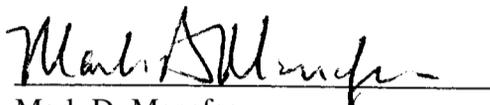
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, when entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on BIS only when 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

EOTT ENERGY OPERATING  
LIMITED PARTNERSHIP  
By: EOTT Energy Corp.,  
on behalf of its General Partner,  
EOTT Energy General Partner, L.L.C.

  
Mark D. Menefee  
Director  
Office of Export Enforcement

  
Dana Gibbs  
President and Chief Executive Officer

Date: 7/10/02

Date: July 8, 2002

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

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In the Matter of: )  
)  
EOTT Energy Operating )  
Limited Partnership )  
c/o EOTT Energy Corp. )  
2000 West Sam Houston Parkway South, )  
Suite 400 )  
Houston, TX 77042, )  
)  
Respondent. )

ORDER

The Bureau of Industry and Security, United States Department of Commerce (BIS), having notified EOTT Energy Operating Limited Partnership (EOTT), of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (1994 & Supp. V 1999)) (Act),<sup>1</sup> and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2001)) (Regulations),

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<sup>1</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations then in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (66 *Fed. Reg.* 44025 (August 22, 2001)), has continued the Regulations in effect under IEEPA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The violations alleged occurred from 1997 through 1999. The Regulations governing the violations at issue are found in the 1997 through 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1997-1999)). The 1997 through 1999 Regulations that define the various violations that BIS alleges occurred are substantially the same as the 2002 Regulations that establish the procedures that apply to this matter.

based on allegations in a proposed charging letter issued to EOTT that alleged that EOTT committed 60 violations of the Regulations. Specifically, the charges are:

*1. 14 Violations of 15 C.F.R. § 764.2(a) - Exports Exceeding the Authorized Quantity on an Export License:* On 14 separate occasions from January 1997 through February 1999, EOTT engaged in conduct prohibited by the Regulations by violating the terms of BIS export licenses by continuing to export or causing the export of crude petroleum from the United States to Canada under the export licenses after EOTT had already exported or caused the export of the quantities of crude petroleum authorized by the export licenses.

*2. 46 Violations of 15 C.F.R. § 764.2(g) - Material Misrepresentations on Shipper's Export Declarations Concerning Authority to Export:* On 46 separate occasions, from on or about January 16, 1997 through on or about February 24, 1999, EOTT filed or caused to be filed Shipper's Export Declarations<sup>3</sup> ("SED") that contained material misrepresentations concerning the authority to export as EOTT had already exported or caused the export of the quantities of crude petroleum authorized under the export license numbers represented on the SEDs.

BIS and EOTT having 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 the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

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<sup>3</sup> Shipper's Export Declarations are export control documents, as defined in Part 772 of the Regulations.

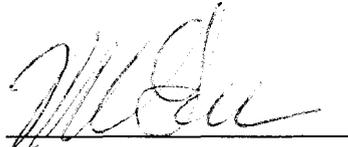
FIRST, that a civil penalty of \$508,000 is assessed against EOTT. EOTT shall pay the civil penalty in five installments of \$101,600 each. The first payment of \$101,600 shall be made to the U.S. Department of Commerce within 30 days from the date of entry of this Order. The four additional payments of \$101,600 each shall be made to the U.S. Department of Commerce no later than January 15, 2003, April 15, 2003, July 15, 2003, and October 15, 2003, respectively. 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 (1983 and Supp. 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, EOTT 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 EOTT. Accordingly, if EOTT should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of EOTT's 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.



Michael J. Garcia  
Assistant Secretary of Commerce  
for Export Enforcement

Entered this 5<sup>th</sup> day of July 2002.