



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

June 24, 2004

EA-03-150

Mr. Hiroshi Tanikawa, Corporate Secretary
Showa Denko Carbon, Inc.
P.O. Box 2947201
Ridgeville, SC 29472

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION

Dear Mr. Hiroshi Tanikawa:

This letter refers to enforcement matters which came to light as a result of various communications between representatives of Showa Denko Carbon, Inc. (Showa Denko) and the U.S. Nuclear Regulatory Commission (NRC). On May 9, 2003, the NRC Office of International Programs (OIP) sent letters to various graphite manufacturers in an effort to provide regulatory guidance for the export of nuclear-grade graphite to the manufacturers of graphite exported from the U.S. Although responses were not specifically required, these letters requested recipients to notify the NRC if their graphite exports met the definition of nuclear grade and if their graphite exports were shipped either (1) in excess of the general license limits specified in 10 CFR 110.25 or (2) to the embargoed or restricted countries listed in 10 CFR 110.28 and 110.29. Showa Denko responded to OIP's May 9, 2003, inquiry via a letter dated June 25, 2003. In this letter, Showa Denko reported that laboratory results in February 2003 showed that their products met the specifications for nuclear-grade graphite and that they had exported bulk, non-fabricated, nuclear-grade graphite (graphitized scrap, a byproduct of graphite electrode production) in excess of 2,000 kilograms per year to P.N.O. Trading S.A. in Switzerland, which would require an NRC license. After reviewing the data provided in the June 25, 2003, letter, the NRC's Office of Enforcement requested additional information via a letter dated September 3, 2003, and Showa Denko replied on September 16, 2003.

Exports of bulk, non-fabricated, nuclear-grade graphite are currently permitted under a general license by 10 CFR 110.25(a) as long as the exports are made in individual shipments of 100 kilograms or less to any country that is not embargoed and as long as the aggregate quantities exported are 2,000 kilograms or less per year to any 1 country. Otherwise, a specific NRC license is required. However, between 1998 and May 7, 2003, Showa Denko exported bulk, non-fabricated, nuclear-grade graphite without a specific license in 97 individual shipments of more than 100 kilograms to 1 non-embargoed country and in aggregate export amounts ranging from 484,311 to 5,659,883 kilograms to 1 non-embargoed country per year. (*Refer to the enclosed nuclear-grade graphite export data tables for additional details.*) These exports constitute a violation of 10 CFR 110.25(a).

Although these exports have significant regulatory concern because they were both numerous and large, these exports were neither intended for nuclear end use nor shipped to the embargoed export destinations listed in 10 CFR 110.28. Therefore, Showa Denko's numerous large exports of bulk, non-fabricated, nuclear-grade graphite made without a specific license

between 1998 and May 7, 2003, have been categorized as a Severity Level III violation. However, neither a civil penalty nor a Notice of Violation will be issued for the Severity Level III violation described above because the NRC has determined that the exercise of enforcement discretion is warranted in accordance with Section VII.B.6, "Violations Involving Special Circumstances," of the "General Statement on Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy) NUREG-1600 (*Enclosure 2*). Discretion is warranted in this case because the violations were self disclosed and corrected and because the NRC is in the process of pursuing rule changes that would permit the exports that were previously in violation (i.e., exports intended for non-nuclear end use).

If you contest the violation or significance, you should provide a response within 30 days of the date of this letter, with the basis for your denial, to the Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington D.C. 20555-0001, with a copies to the Director, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, and the Director, Office of Enforcement, at the same address.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, any response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA/

Frank J. Congel, Director
Office of Enforcement

Enclosures:

1. Nuclear-Grade Graphite Export Data Tables
2. Enforcement Policy

cc w/encl: Mr. Robin DeLaBarre
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* See previous concurrence

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DATE	06/10/04	06/16/04	06/16/04	06/22/04

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Nuclear-Grade Graphite Export Data Tables

SHOWA DENKO TABLE 1

**Number of Bulk, Non-Fabricated, Nuclear-Grade Graphite Exports
in Individual Shipments of Greater Than 100 Kilograms
Between 01/01/98 and 05/07/03**

{i.e., Number of Individual Shipments in Violation of 10 CFR 110.25(a)}

Destination Country	1998	1999	2000	2001	2002	2003 (through 05/07/03)	Total No. Shipments Overall
Switzerland (430 Process Graphite Scrap)	10	5	24	5	9	7	60
Switzerland (490/510 Process Graphite Scrap)	--	2	35	--	--	--	37
TOTALS	10	7	59	5	9	7	97
	97						

SHOWA DENKO TABLE 2

**Aggregate Kilograms of Bulk, Non-Fabricated, Nuclear-Grade Graphite
Exported to Individual Countries Per Year Between 01/01/98 and 05/07/03**

Destination Country	1998	1999	2000	2001	2002	2003 (through 05/07/03)
Switzerland (430 Process Graphite Scrap)	979,426	450,799	2,361,768	484,311	880,482	600,186
Switzerland (490/510 Process Graphite Scrap)	--	50,885	3,298,115	0	0	0
ANNUAL TOTALS	979,426	501,684	5,659,883	484,311	880,482	600,186
OVERALL TOTAL	9,105,972					

RED TEXT - Aggregate amounts greater than 2,000 kilograms per country per year
Violations of 10 CFR 110.25(a)