



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

June 24, 2004

EA-03-004

Mr. Peter Hoffman, President
SGL Carbon, LLC
P.O. Box 563960
Charlotte, NC 28256-3960

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION - OFFICE OF INVESTIGATION
ASSIST NOS. 2-2003-018F AND 2-2003-019F

Dear Mr. Hoffman:

This letter refers to enforcement matters which came to light as a result of various communications between representatives of SGL Carbon, LLC (SGL); Parker, Poe, Adams, & Bernstein, LLP; Berliner, Corcoran, & Rowe, LLP; and the U.S. Nuclear Regulatory Commission (NRC). Via a letter dated December 16, 2002, Parker, Poe, Adams, & Bernstein, LLP, documented SGL's voluntary self-disclosure of numerous large exports of bulk, non-fabricated, nuclear-grade graphite made without a specific license between 1998 and September 30, 2002. After reviewing the data provided in the December 16, 2002, letter, the NRC's Office of Enforcement requested additional information via a letter to Parker, Poe, Adams, & Bernstein, LLP, dated February 20, 2003. Parker, Poe, Adams, & Bernstein, LLP, replied on March 18, 2003. In order to obtain additional information, the NRC Office of Investigations (OI) also interviewed a representative from the NRC's Office of the General Counsel on April 4, 2003, and representatives from SGL and Parker, Poe, Adams, & Bernstein, LLP, on April 9, 2003. **(NOTE: These OI assists were tracked via OI Case Nos. 2-2003-018F and 2-2003-019F, respectively, and these matters are considered closed.)** A separate NRC letter requesting additional information was subsequently sent to SGL on June 19, 2003, and SGL responded on July 10, 2003. At SGL's request, representatives from Berliner, Corcoran, & Rowe, LLP; SGL; and the NRC also met at the NRC Headquarters Office in Rockville, MD, on October 23, 2003, to discuss SGL's licensing and enforcement concerns.

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 September 30, 2002, SGL exported bulk, non-fabricated, nuclear-grade graphite without a specific license in at least 746 individual shipments of more than 100 kilograms to 18 non-embargoed countries and in aggregate export amounts ranging from 2,053 to 512,607 kilograms to between 7 and 9 non-embargoed countries 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, SGL's numerous large exports of bulk, non-fabricated, nuclear-grade graphite made without a specific license between 1998 and September 30, 2002, 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 identified, 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

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* See previous concurrence

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DATE	06/10/04	06/16/04	06/16/04	06/24/04

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Nuclear-Grade Graphite Export Data Tables

SGL TABLE 1 - Number of Bulk, Non-Fabricated, Nuclear-Grade Graphite Exports in Individual Shipments of Greater Than 100 Kilograms Between 01/01/98 and 09/30/02 {i.e., Number of Individual Shipments in Violation of 10 CFR 110.25(a)}

Destination Country	1998	1999	2000	2001	2002 (through 09/30/02)	Total No. Shipments Overall
Argentina	6	--	1	--	--	7
Australia	2	2	2	--	--	6
Belgium	36	31	6	12	--	85
Brazil	26	34	38	22	2	122
Canada	10	55	40	53	68	226
Chile	--	2	6	4	2	14
Columbia	--	3	5	3	5	16
England	--	3	--	--	--	3
France	23	61	25	27	6	142
Germany	1	--	--	1	1	3
India	6	4	9	10	8	37
Italy	6	5	--	1	--	12
Japan	8	10	11	5	12	46
Mexico	--	--	--	--	1	1
Peru	1	1	--	1	15	18
Singapore	--	1	--	--	--	1
South Africa	1	--	--	--	--	1
Venezuela	--	3	3	--	--	6
TOTALS	126	215	146	139	120	746
	746					

SGL TABLE 2 - Number of Bulk, Non-Fabricated, Nuclear-Grade Graphite Exports in Individual Shipments of 100 Kilograms or Less Between 01/01/98 and 09/30/02

Destination Country	1998	1999	2000	2001	2002 (through 09/30/02)	Total No. Shipments Overall
Argentina	--	--	--	--	--	--
Australia	--	--	--	--	--	--
Belgium	2	2, 2	1	1	--	6, 2
Brazil	--	--	--	--	--	--
Canada	1	11, 1	24	7, 4	3, 1	46, 5, 1
Chile	--	--	--	1	--	1
Columbia	--	--	--	--	--	--
England	--	--	--	--	--	--
France	--	--	--	--	--	--
Germany	--	--	--	--	--	--
India	--	--	--	--	--	--
Italy	5	2	--	--	--	7
Japan	--	1	--	--	--	1
Mexico	--	--	--	--	--	--
Peru	--	--	--	--	--	--
Singapore	--	--	--	--	--	--
South Africa	--	--	--	--	--	--
Venezuela	--	--	--	--	--	--
TOTALS	8	16, 1, 2	25	8, 4, 1	3, 1	60, 5, 4
	60, 5, 4					

BLACK TEXT - Individual shipments reported to be between 0.5 kg and 100 kg

BLUE TEXT - Individual shipments indicated as "0 kg" (Weights reported to be <0.5 kg rounded down to 0 kg.)

RED TEXT - Individual shipments indicated as either "-" or "- kg" (Reported to be unknown weights because information used to calculate weight in kg was incomplete in the accounting system database. Piece dimensions were missing from the Prime shipments, and net weight in pounds was missing from the SAP shipments.) - **Possible violations of 10 CFR 110.25(a)**

SGL TABLE 3 - Aggregate Kilograms of Bulk, Non-Fabricated, Nuclear-Grade Graphite Exported to Individual Countries Per Year Between 01/01/98 and 09/30/02

Destination Country	1998	1999	2000	2001	2002 (through 09/30/02)
Argentina	4,982	--	1,818	--	--
Australia	733	1,293	782	--	--
Belgium	24,623	49,332	1,699	24,237	--
Brazil	43,926	151,568	104,783	108,132	4,091
Canada	53,517	138,926	45,714	66,036	90,957
Chile	--	1,176	4,870	4,055	2,983
Columbia	--	2,459	3,172	7,856	13,147
England	--	3,070	--	--	--
France	215030	512607	235429	316077	71,148
Germany	1,189	--	--	178	665
India	107,765	60,160	99,931	128,948	75,927
Italy	2,536	1,514	--	7,757	--
Japan	59,562	81,382	51,652	12,328	52,956
Mexico	--	--	--	--	498
Peru	138	196	--	153	8,070
Singapore	--	242	--	--	--
South Africa	689	--	--	--	--
Venezuela	--	2,053	913	--	--
W. Malaysia	47	--	--	--	--
OVERALL TOTALS	514,737	1,005,978	550,763	675,757	320,442
	3,067,677				

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

BLUE TEXT - Aggregate amounts less than or equal to 2,000 kilograms