



# Department of Justice

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**TENNESSEE AND NEW YORK-BASED DEFENSE CONTRACTORS AGREE TO PAY \$8 MILLION TO SETTLE FALSE CLAIMS ACT ALLEGATIONS INVOLVING DEFECTIVE COUNTERMEASURE FLARES SOLD TO THE U.S. ARMY**

WASHINGTON – The Department of Justice announced today that Kilgore Flares Company and one of its subcontractors, ESM Group Inc., have agreed to pay a total of \$8 million to resolve allegations that they violated the False Claims Act by selling or conspiring to sell defective infrared countermeasure flares to the U.S. Army and, in the case of ESM, knowingly evading customs duties owed to the United States. Tennessee-based Kilgore Flares manufactures and sells electronics and energetic products, such as flares, to the U.S. military. ESM Group, located in New York, manufactures magnesium powder supplied to the chemical, welding and pyrotechnics industries. ESM imported magnesium powder used in the flares from the People’s Republic of China (PRC), which it sold to Kilgore Flares.

“The Department of Justice is committed to ensuring that contractors do not cut corners in manufacturing critical items sold to the U.S. military,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division. “These settlements also show that the department will aggressively pursue those who avoid paying duties to gain an unfair business advantage over competitors who abide by the rules.”

The U.S. military uses infrared countermeasure flares to divert enemy heat-seeking missiles away from U.S. military aircraft. A primary component of these flares is ultrafine magnesium powder, which combined with other materials, provides ignition and enables the flares to burn at high temperatures and at rates that mimic an aircraft’s engine. Kilgore’s contracts with the army prohibited the use of magnesium powder from foreign countries (except Canada) in order to maintain domestic manufacturing capability in the interest of national defense.

The United States alleged that from July 2003 through May 2005, ESM knowingly misrepresented the content of ultrafine magnesium powder imported from the PRC in order to avoid paying antidumping duties owed to the United States. Antidumping duties protect against foreign companies “dumping” products on the U.S. market at prices below cost. The U.S. Department of Commerce assesses and U.S. Customs and Border Protection (CBP) collects these duties to protect U.S. businesses and level the playing field for domestic products. At the time of the imports alleged in this case, ultrafine magnesium powder from the PRC was subject to a 305 percent antidumping duty.

The government further alleged that from March 2005 through August 2006, Kilgore used the illegally imported Chinese magnesium powder purchased from ESM in the countermeasure flares it sold to the U.S. Army. The Chinese magnesium powder allegedly violated both the requirement for domestically produced powder and engineering specifications required by the contracts.

Kilgore and ESM agreed to pay \$6 million and \$2 million, respectively, to resolve the government's allegations.

“Our warfighters— along with everyone who relies upon them, including their families — need to know that the equipment they use is of the highest quality and dependability,” said U.S. Attorney William J. Hochul Jr. of the Western District of New York. “In this case, the magnesium flares made by Kilgore were literally the last line of defense for our brave aviators. Because of today’s resolution, Kilgore will now ensure that similar incidents do not happen in the future.”

Prior to the civil settlements with Kilgore and ESM, five former employees and agents of ESM pleaded guilty to criminal offenses related to the magnesium importation scheme, including ESM’s former president, Charles Wright. The criminal defendants were ordered to pay more than \$14 million in restitution.

“These civil settlements demonstrate the continued commitment of the Defense Criminal Investigative Service (DCIS) and our partner agencies to pro-actively identify individuals and groups intent on providing substandard, substituted products to the U.S. military in exchange for unwarranted exorbitant profits,” said Special Agent in Charge Craig W. Rupert of the U.S. Department of Defense Inspector General, DCIS. “Such schemes, perpetrated by dishonest contractors and individuals, place the American Warfighter in danger, erode public confidence and undermine the mission of our military services. The DCIS and its law enforcement partners will continue to tirelessly pursue and investigate procurement fraud allegations in order to safeguard our military members and to shield America’s investment in national defense.”

“The components of U.S. military equipment are held to rigorous standards to ensure our military superiority and the safety of our warfighters,” said Special Agent in Charge James Spero of Homeland Security Investigations (HSI) Buffalo. “When short cuts are taken, lives are put at risk. This settlement ensures that the companies involved are held responsible for their actions and further emphasizes HSI’s commitment to ensuring that the sale and distribution of products used by our military is done with integrity.”

The settlement with ESM resolved a lawsuit filed under the whistleblower provisions of the False Claims Act. The act permits private parties to sue on behalf of the United States those who falsely claim federal funds or, as in this case, those who avoid paying funds owed to the government. The lawsuit was filed by Reade Manufacturing Company, a domestic manufacturer of magnesium powder. The act also allows the whistleblower to receive a share of any funds recovered through the lawsuit. Reade Manufacturing received \$400,000 as part of the settlement with ESM.

The settlements with Kilgore and ESM were the result of a coordinated effort among the Civil Division's Commercial Litigation Branch, the U.S. Attorney's Office for the Western District of New York, U.S. Army Criminal Investigation Command, Defense Contract Audit Agency, DCIS, U.S. Immigration and Customs Enforcement's HSI Buffalo and U.S. Customs and Border Protection. Additional technical support was provided by the Army Sustainment Command at Rock Island Arsenal, Ill. and the Army Research, Development and Engineering Command at Picatinny Arsenal, New Jersey.

The lawsuit against ESM is captioned *United States ex rel. Reade Manufacturing Co. v. ESM Group, Inc.*, Civ. No. 10 - CV - 504-S (W.D.N.Y.). The claims resolved by these settlements are allegations only; there has been no determination of liability except as admitted by the individual defendants in the criminal proceedings.

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