

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TRIPOLI ROCKETRY ASSOCIATION, INC.,)
)
and)
)
NATIONAL ASSOCIATION OF ROCKETRY,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES BUREAU OF ALCOHOL,)
TOBACCO AND FIREARMS,)
)
Defendant.)

Civil Action No. 00-273 (RBW)

**DEFENDANT'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE
IN SUPPORT OF RENEWED MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 7.1(h), defendant United States Bureau of Alcohol, Tobacco and Firearms, hereby submits this Statement of Material Facts Not in Genuine Dispute in support of Defendant's Motion for Partial Summary Judgment.

1. Plaintiffs are two national organizations whose members enjoy the hobby of high-power sport rocketry. Am. Complaint, ¶¶ 2-6.

2. Plaintiffs' members commonly use ammonium perchlorate composite propellant ("APCP") as fuel to power the sport rockets they launch as part of their hobby. Id. ¶¶ 2-3.

3. The term "explosives" means:

any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion. . . [and] includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.

18 U.S.C. § 841(d). Congress further granted ATF broad authority to include on its List of Explosive Materials “any additional explosives which [it] determines to be within the coverage of” 18 U.S.C. Chapter 40. Id.

4. For three decades, ATF has classified APCP as an “explosive” under the Federal explosives laws found at 18 U.S.C. Chapter 40. 36 Fed. Reg. 675 (January 15, 1971) (Admin. Record, Doc. 3); see, e.g., 40 Fed. Reg. 17602 (April 21, 1975); 50 Fed. Reg. 50378 (December 10, 1985); 60 Fed. Reg. 20553 (April 26, 1995); 64 Fed. Reg. 49840 (September 14, 1999).

5. ATF's classification of APCP as an explosive triggers certain requirements relating to the storage and interstate transportation and sale of APCP and rocket motors containing APCP. See Am. Complaint, ¶¶ 25-26.

6. When ignited, APCP burns very quickly; in other words, it deflagrates. Am. Complaint, ¶¶ 3, 7; see Seymour M. Kaye, Encyclopedia of Explosives and Related Items, Part 2700, Vol. 8 (Admin. Record, Doc. 10) at 409.

7. Materials which deflagrate are commonly considered to function by explosion. See ISEE Blasters Handbook, (17th ed., 1998), (Admin. Record, Doc. 13) at 694, 696, 701; National Fire Protection Association, Fire Protection Handbook (16th ed. 1986) (Admin. Record, Doc. 12) at 5-68, 5-69; Fedoroff & Sheffield, Encyclopedia of Explosives and Related Items, PATR 2700, Volume 4, (Picatinny Arsenal 1969)(Admin. Record Doc. 9) at D-218.

8. Congress included specific examples of deflagrating materials in the definition of “explosive” found at 18 U.S.C. § 841(d).

9. ATF was aware of the relevant scientific facts concerning the explosive nature of materials that deflagrate when it denied plaintiffs’ request to reconsider its classification of

APCP as an explosive. Admin. Record, Doc. 1. ATF's decision was based on that information.
Id.

10. ATF's denial of plaintiffs' request for reconsideration of ATF's inclusion of APCP on its *List of Explosives* was not arbitrary, capricious or contrary to law.

11. In implementing Title XI, ATF exempted from regulation propellant actuated devices. 27 C.F.R. § 55.1412(a)(8); see Am. Complaint, ¶ 19.

12. ATF defines "propellant actuated device" as "[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge." 27 C.F.R. § 55.11.

13. Plaintiffs admit that "[a] rocket motor serves but one and only one intended function—to expel gases through its nozzle from a burning propellant (typically black powder or APCP) for the purpose of generating the thrust necessary to launch the rocket skyward." See Admin. Record, Doc. 2 at 8, Am. Complaint, ¶¶ 46-47.

14. Sport rocket motors are not "propellant actuated devices" within the meaning of the ATF's regulation because they neither contain nor are actuated by a propellant. In addition sport rocket motors are not tools or special mechanized devices or gas generator systems within the ordinary meaning of those terms. See Admin. Record, Doc. 1 at 10-12.

15. A sport rocket motor is essentially propellant in a casing, incapable of performing its intended function until fully installed (along with an ignition system) within a sport rocket. Admin. Record, Doc. 1 at 11.

16. ATF's rejection of plaintiffs' request that sport rocket motors be classified as PADs was informed by its technical expertise with respect to propellant explosives and with its

interpretation of its own regulation defining propellant actuated devices. Admin. Record, Doc. 1, at 10-12.

17. ATF's interpretation of its regulation defining PADs to exclude sport rocket motors was neither arbitrary, capricious, nor contrary to law.

18. ATF exempts from regulation sport rocket motors containing no more than 62.5 grams of APCP or other propellant and also exempts from regulation rocket-motor "reload kits" that enable hobbyists to assemble rocket motors containing no more than 62.5 grams of propellant. Admin. Record, Doc. 1 at 13-16.

19. In 1981, ATF added an exemption from regulation for "toy propellant devices," referencing a description of that term contained in regulations promulgated by U.S. Department of Transportation ("DOT"). See 27 C.F.R. § 55.141(a)(7) (1982). Prior to implementation, the DOT's regulatory exemption was subjected to "notice-and-comment" rulemaking pursuant to the Administrative Procedure Act. 59 Fed. Reg. 36488 (July 18, 1994) and 59 Fed. Reg. 67390 (Dec. 29, 1994). DOT subsequently revised its regulation. See 60 Fed. Reg. 26796 (May 18, 1995).

20. By letters issued in 1994, ATF apprised AeroTech, Inc. that sport rocket motors containing up to 62.5 grams of propellant were exempt from regulation. See Admin. Record, Docs. 20, 21.

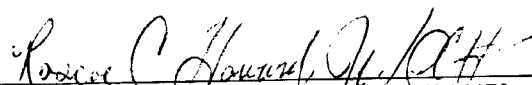
21. In 1995, DOT implemented regulations placing a maximum propellant weight of 62.5 grams upon the items it had previously classified as "toy propellant devices" and indicating that these items would now be designated by DOT as "model rocket motors." See 49 C.F.R. §§ 172.101, 172.102 (special provision number 51); Admin. Record Docs. 23, 24.

22. Although ATF subsequently amended its regulations at 27 C.F.R. § 55.141(a)(7) without specifically cross-referencing the new DOT regulations, ATF continues to exempt sport rocket motors containing up to 62.5 grams of propellant (and rocket motor reload kits that enable the assembly of motors containing no more than 62.5 grams of propellant) in keeping with its longstanding practice. See December 22, 2000 letter from John Malone to plaintiffs' counsel (Admin. Record, Doc. 1) at 13 et seq.

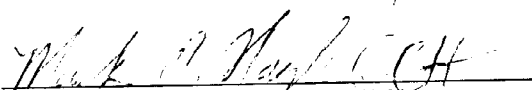
23. ATF's determination to set the exemption threshold at 62.5 grams and its classification decision with respect to certain "Easy Access-type" reload kits represented reasonable constructions of the Bureau's duly promulgated regulatory provision exempting toy propellant devices containing a "small charge of propellant powder." This regulatory provision, itself, represented an appropriate construction of the Bureau's "competing" Congressional mandates to reduce hazards arising from misuse and unsafe or insecure storage of explosive materials while also not placing undue or unnecessary restrictions on law-abiding citizens.

Dated: September 3, 2002.

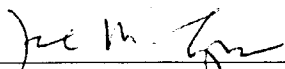
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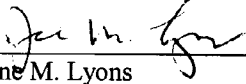
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2002, a copy of the foregoing Defendant's Motion for Summary Judgment, Defendant's Memorandum of Points and Authorities in Support of Motion for Summary Judgment, Defendant's Statement of Material Facts Not in Genuine Dispute, and draft order were served by placing them in the first class United States mail, postage prepaid, marked for delivery to:

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