

February 11, 2008

Kevin Kerwin
New York State Dept. of Labor
W. Averell Harriman State Office Campus
Bldg. 12 Room 509
Albany, NY 12240

Re: S3911/A09006 and S4816B/A7539B (2005-2006 session)

Dear Mr. Kerwin:

As the New York Legislature ramps up its business this season, it appears that the above referenced bills will be part of the Legislature's agenda. In the meanwhile, the NYS DOL ("DOL") has announced its intent of implementing significant licensing and storage regulations changes, and is holding a February 20 informational meeting for interested Fireworks Industry and Explosive Industry persons to describe the proposed regulatory amendments. These revisions will ultimately be defined by the passage of either of above-referenced bills. So, in anticipation of the pending Legislature activities and the DOL informational meeting, I want to provide to you in written form the New York Fireworks and Pyrotechnic Industry's response to your May 8, 2007 letter ("Letter").

In your Letter, you outlined 3 areas of the NYS pyrotechnic industry's bill, S4816B/A7539B, with which the DOL was concerned. The three as outlined by your Letter dealt with: 1) Page 1, lines 19-22 and Page 2, lines 1-2 that exempted individuals issued a BATFE license and/or permit to be exempt from the DOL's regulation; 2) Page 2, lines 2-5 wherein individuals that have been issued a BATFE license and/or permit would have unrestricted access to consumer fireworks; and, 3) Page 3, lines 13-31 that added language to the Labor Law to regulate public and private displays of fireworks that your claim is regulated currently by Penal Law 207 (*sic*) and 405. Although several of these issues were addressed and seemingly resolved in the May 25, 2005 meeting of DOL representatives, Industry business owners and Senate staff, each issue is addressed separately below.

You do not indicate how public safety is compromised by the exemption of individuals issued BATFE licenses or permits from DOL regulation. In order for any individual to be issued a BATFE license or permit, an extensive application and review process is conducted by the BATFE. In addition, the applicant must provide two sets of fingerprints, personal references and be personally interviewed by a BATFE investigator. Finally, the applicant must have the appropriate storage facility for the type of explosives for the license or permit for which is being applied. Not only does the investigator interview the applicant, but also inspects the storage magazine. This process is continued for the duration of the license. Further, BATFE regulations require that the applicant be compliant with local regulations and laws. What the Fireworks industry is attempting to do by this exemption of DOL regulation, is to eliminate duplication between the ATFE requirements and DOL requirements. Lastly, the DOL's concern that New York would be opened up to "out-of-state" pyrotechnicians is unfounded and sounds of protectionism and restraint of trade. While the BATFE permit and license holders would be exempt from the DOL Explosives Permit, it would not exempt the requirement that "out-of-state" pyrotechnicians first obtain a Display Permit and meet BATFE requirements. In any event, there is no aspect of DOL explosives licensing, current or proposed in the above-referenced departmental bill, S3911/A09006, that would or legally could prevent competition from out-of-state entities.

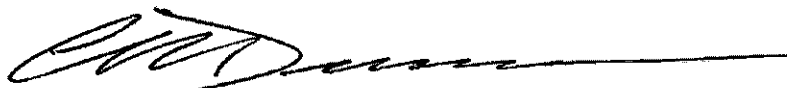
In sum, language proposed by the Fireworks Industry in its markup of the current departmental explosives labor law bill does not increase any risk or danger to the public, but instead eliminates expensive and unnecessary duplicative bureaucracy.

Regarding 1.4g explosives, the DOL does not explain how or why BATFE licensed or permitted individuals having the ability to possess, store and use consumer fireworks is a serious public safety concern. As mentioned earlier, in order for a person to obtain a BATFE license or permit, a rigorous application process must be completed. Additionally, the applicant is personally interviewed, and a proper storage magazine is required and regularly inspected. The application process is neither simple, easy nor quick and not everyone who applies obtains a license or permit. The BATF has the same goals as the DOL, to protect the public safety in regard to explosive items. If an individual is deemed appropriate to handle, store, transport and use 1.3g explosives (display fireworks) then why would it be unsafe for the same individual to possess, store and use 1.4g explosives (consumer fireworks)? This is a question that the DOL representatives were not able to answer during the 2005 meeting, eventually conceding at that time that a ban on the professional use of consumer fireworks was an unlikely intent of the Penal Code.

The final concern of the DOL revolves around the definitions that make a distinction between a "public display" and "private display" of fireworks. Your Letter stated that these matters were addressed by Penal Laws 207 (*sic*) and 405. I believe you meant to state Penal Law 270 and not 207. As there is no Penal Law 207 and Penal Law 270 involves Unlawful Dealing with Fireworks and Dangerous Fireworks, I am assuming you meant Penal Law 270. Nowhere within Penal Law 270 and 405 will you find any distinction between a "private" or "public" display of fireworks. The language only addresses a public display of fireworks. Yet, there is a need for a distinction that will permit and allow for private professional displays of fireworks, as is the case for every other state in the U.S. A 2007 New York State Attorney General opinion makes the need for legislatively recognized and sanctioned private display of fireworks imperative. An informal NY Attorney General Opinion, NY OP 3-2007, addressed the issue of private vs. public fireworks displays. The crux of the Opinion states that NY law does not allow for private fireworks displays. Thus, as stated in the findings of the Opinion, a private wedding celebration could not be issued a public display of fireworks permit as such a display is not public but rather private. If you expand upon this concept of public versus private and the inability to have private fireworks displays, then the following type of firework displays are not in compliance with NY law: fireworks used at outdoor concerts, fireworks used at outdoor sporting events, fireworks used for any celebration (birthday, wedding, anniversary, etc.), or fireworks used at any event which was not specifically open to and intended to be viewed by any and all persons who wish to view the display. By modifying the statutes to recognize and allow private fireworks displays, there would be no diminution in current, historically-established opportunities for the NYS Professional Fireworks Industry to conduct such displays and earn income.

The concerns that the DOL has with regard to the above-referenced bills supported by the Fireworks Industry do not seem to be of a nature that are insuperable. The Fireworks Industry has the same goals as the DOL; *i.e.*, to maintain workplace and public safety. This can be accomplished by the DOL and the Fireworks Industry working together in a cooperative manner as opposed to the adversarial manner that has dominated the interaction of the parties to date. It would be beneficial to the Fireworks Industry if the DOL explained how public safety is compromised by the legislation promulgated by the New York State Fireworks Industry. Perhaps after the DOL is able to better explain its safety concerns, a reasonable dialogue can be achieved.

Respectfully,



Curt Dunnam

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