

4/14/08

Hi, Kevin,

I appreciate your kind words regarding the last few years' efforts of myself and other pyrotechnics users in central and western New York to modify the NYS DOL position and attitude with regard to regulation of the NYS pyrotechnics industry.

It is evident that an impressive amount of time and effort has recently been expended by the ICR39 working group to correct problems in the onerous DOL departmental bill, S3911/A09006, which we have been blocking for the last 4 years. A major victory of the working group in its negotiations with the DOL has been the agency's admission, earlier this month in proposed modification of the Penal Law, that there should be no discrimination against private display activities by qualified pyrotechnic businesses and personnel. Having agreed in principle that this interpretation of legislative intent is correct, the DOL cannot backtrack to its former position.

However, NYSPC members and our expert attorney in explosives law, Doug Mawhorr, have determined that the proposed Penal Law language is incomplete, as it effectively prohibits non-permitted product evaluation, demos and other such activities on private land. The NYSPC members, who constitute a majority of licensed pyrotechnics users in New York State, have also noted that approximately 90% of the bill fixes that the NYSPC forwarded to the working group were rejected out of hand by the DOL. Because the current version of the DOL departmental bill significantly increases the regulatory and punitive burden for NYS pyrotechnic businesses and operators, especially smaller businesses, the NYSPC and its members do not support the departmental bill in its present form.

We will continue to support the industry bill, S7283, rather than the NYSDOL departmental bill until such time that the DOL corrects the obvious deficiencies in its proposed legislation.

Best regards,  
Curt

Curt Dunnam  
Legislative Coordinator  
NYSPC--New York State Pyrotechnics Coalition

cc's

Hello Everyone,

First off I want to thank all of you for your comments and suggestions, they are very helpful in our work representing you and the industry with the DOL. I also want to apologize for not getting this update out to all of you sooner. I have been busy since our return from Albany and just haven't had the time to sit down and write a proper update.

Our working group had a scheduled meeting with the DOL for 2:00pm on Wednesday April 2nd. Our original plan was to start crafting the new version of ICR 39. Our plan was for all of us to arrive in Albany Monday evening to be able to get a early fresh start on Tuesday morning to begin an all day work session. We had rented a conference room at the Hotel bringing computers printers etc... and converting this conference room into an office.

However before these regulatory changes could be made to ICR 39 there needed to be statute changes made through the legislature for the DOL to enact these proposed changes. These proposed statute changes were included in a labor law bill. This bill was an act to amend the labor law in relation to explosives and the labor general business law regarding penalties in violation to labor laws of explosives.

This bill is similar to the labor law bill that Curt Dunham has successfully stopped the DOL from passing repeatedly year after year. As a result of the input of the fireworks industry this bill is far better than the prior bills submitted by the DOL. Curts continuing effort in stopping the DOL and their unfavorable industry bills had put us into a new position of negotiating with the DOL. Thanks to Curts efforts the DOL now recognizes the importance of and the professionalism of the fireworks and pyrotechnic industry. Again thanks to Curts efforts we have now found a place at the DOL's legislative and regulatory table working together for mutual benefits.

The working group wishes to extend on behalf of the industry a heartfelt thank you to Curt for his years of tireless effort.

Our alternatives now are to work with or not to work with the DOL. If we don't work with them which would cause them in turn to not work with us. Which could cause more pressure from Homeland Security on us as well as the DOL and tougher more stringent security requirements. Or to work with them in crafting this bill to achieve mutual benefits and to continue past the bill with the re write of ICR 39. To us the working group there only seemed to be one clear choice to work together with the DOL for mutual benefits.

Our first requirement to the DOL before we would even consider working together with them was to amend the penal code 405 to allow the fireworks industry the right to perform private shows. They were reluctant on this issue since it was a penal law and not a labor law. We dug in our feet and held our position if they would not support us in our penal law battle. We would not support their labor law bill. Once they saw we would not sway on this issue, they called counsel to begin figuring out possible ways to address this issue. In past attempts to correct this public private issue has been based on definitions our intent was to totally remove the wording of public or private and simply replace with fireworks display.

As you can probably guess this dialog has been in the works with the DOL for a few weeks. I had purposely kept it out of the last updates to not build false hopes. I now how big of an issue losing the private displays has been to all of us. I didn't want to build up everyone's hopes on something that was not much more than an idea and

conversation.

Our plans were to meet Monday evening start our thought process go over the comments and suggestions you all had sent. Work all day Tuesday and Wednesday morning on licensing security and other issue that will be included in the new ICR 39. Meet with the DOL in the afternoon and work with them on ICR 39 rewrite.

Our plans changed, Friday night we (the working group) received a draft copy of the DOL bill for our review. The bill was an act to amend the labor law in relation to explosives, and to amend the labor law and general business law in relation to misdemeanor penalties, **and to amend the penal law in relation to fireworks permits**

We all spent our weekend studying this document by Monday when we all got together we each had a few issues over the proposed bill to discuss. Tuesday morning we started work dissecting the bill. Line by line we read and analyzed the wording. We (the working group) contacted and hired an attorney, at our own expense, to go over some of the language used. We worked through lunch took a short dinner break and basically worked a 15 hour day with many speaker phone conversations to our attorney. Tuesday morning was more of the same thing. We were able to spend some time discussing security and licensing but the majority of our time was spent on the labor law bill.

Tuesday afternoon we met with the DOL to go over the bill. Present at the meeting for the DOL were: Lance Lord, Dave Ruppert, Joe Gallagher, Maureen Cox, Pico Ben-Amotz and their consul Alyssa Talanker.

Present for the fireworks industry working group: Jim Young, Ron Sporyz, Bob Lapetro, Felix Grucci and myself Kevin Fritschler.

The meeting went well. It was a very long meeting we were there well after 8:00pm. We had multiple pages of listing changes we wanted to be made. We explained all of the issues we had with the bill. Some issues the DOL explained to us why they were worded in the way they were. A lot of there views and position made sense when they explained their position and why they were there. As I am sure they now understood some of our position. The DOL has little knowledge of the true mechanics and application of pyrotechnics and fireworks. They are not pyrotechnicians nor do they claim to be, they are however intelligent people and are willing to listen to our input.

After our meeting many changes were made to the bill and we received a rewrite of the bill. Its not a perfect bill but it does open the door back for private displays. There again is changes that we have requested to be made to the bill, some will be made the rest can be clarified in regulation wording of ICR 39. The biggest negative to this bill is it grants a lot of authority to the DOL. This can be a benefit when change is needed. Regulations can be changed much easier then laws. Our defense in giving the DOL this power is we have requested a pyrotechnics advisory board be formed to advise the DOL and to be a mediator between the DOL and the industry.

**To summarize our gains for the industry to date:**

1. Enact a Pyrotechnics Advisory Board to monitor the industry and the DOL, and advise the DOL and the industry.
2. Current law prohibits the angling of mortars except over a body of water. To achieve modern creativity this has been removed provided NFPA distances are met.
3. NFPA distance as per 1123 and 1126 will be adopted.
4. Currently no box can be opened in or within 50' of a magazine, Original containers must be used.  
(Through regulatory re-write of ICR 39 pyrotechnics will be exempt from this)
5. License fees are not yet established we are working on keeping the cost down and multiple year terms. There is language in the bill that grants the authority to the DOL to use the ATF OPQ background check since the background check is a large portion of the overall license cost this will help to keep the license fee's down.  
(See Note 1 Below)
6. Magazine security is still a big concern. The DOL has conceded to the industry argument that different classes of explosives require different levels of security.

As it appears now 1.4 shall require a little or no additional security, 1.3 will require stronger locks, daily inspections and some intermittent obstacles around

magazines to limit access. Type 1 and type 2 magazines containing product designated for those magazines shall have an intrusion detection system.

The costs of this added security should be minimal.

7. At the request of the industry the DOL is looking into a Homeland Security Grant. Which would help to cover or defray the costs of the new background check

(Which is the price that drives up license costs). (See Note 1 Below)

8. Insurance requirements for a display raised to accepted industry standards of (one million dollars).

9. Explosive weight as used by the ATF instead of full weight currently used by the DOL shall be adopted in the new regulation.

10. We have established a level of trust and a working relationship with the DOL that can benefit the industry and the DOL

11. Lifting the ban on private shows - Since one of the most important concepts of this arrangement with the DOL is the amendment to the penal code and the ability to perform private shows the new wording to the penal code shall read:

Permits for fireworks displays. Notwithstanding the provisions of 270.00, the permit authority of a state park, county park, city, village or town may grant a permit for the display of fireworks to municipalities, fair associations, amusement parks, persons or organization of individuals that submit an application in writing. The application for such permit shall set forth the following:

A.) The name of the party sponsoring the display, and the names of the persons actually to be in charge of firing the display who shall possess a valid certificate of competence as a pyrotechnician as required under the general business law and article 16 of the labor law. The permit application shall further contain a verified statement from the applicant identifying the individuals who are authorized to fire the display including their certificate numbers and that such

individuals possess a valid certificate of competence as a pyrotechnician.

B.) The date and time of day at which the display is to be held.

C.) The exact location planned for the display.

D.) The number and kind of fireworks to be discharged.

E.) The manner and place of storage of such fireworks prior to the display.

F.) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the locations of all buildings, highways and other lines of communications, the lines behind which the audience will be restrained and the location of all trees, telegraph or telephone lines or other overhead obstructions.

G.) Such other information that the permit authority may deem necessary to protect person or property.

H.) All application for a display of fireworks shall be made a least five days in advance of the date of the display and the permit shall contain provisions that the actual point at which the fireworks are to be fired be in accordance with the rules promulgated by the commissioner of labor pursuant to section 462 of the labor law (This refers to the table of distance of NFPA) and that all persons in charge of firing the fireworks shall be over the age of eighteen years, comitent and physically fit for the task, that vthere shall be two such operators constently on duty durring the discharge and at least two approved type fire extinguishers shall be kept at widely seperated points as possiible withen the actual area of the display. The legislative body of a state park, county park, city, village or town may provide for approval of such permit by the head of the police or fire department or both where there are such departments. No permit granted and issued hereunder shall be transferable. After such permit has been granted, sales, possession, use and distribution for such display shall be lawful solely therefore.

I.) Bonds. Before granting and issuing a permit for a display of fireworks as heron provided, the permit authority require an adequate bond from the applicant therefore, unless it is a state park, county park, city, village or town in a sum fixed by the permit authority, which shall not be less then one million dollars, condition for the payment of all damages, which may be caused to a person or persons or to property by reason of the display so permitted and arising from the acts of the permittee, his agents, employees, contractors or sub

contractors. Such bond shall run to the state park, county park, city village or town in which the permit is granted and issued and shall be for the use and benefit of any person or persons or any owner or owners of any property so injured or damaged, and such person or persons or such owner or owners are hereby authorized to maintain an action thereon, which right of action also shall accrue to the heirs, executors, administrators, successors or assigns of such person or persons or owner or owners. The permit authority may accept in lieu of such bond, an indemnity insurance policy with liability coverage indemnity protection equivalent to the terms and conditions upon which such bonds are predicated and for the purposes here provided.

**NOTE 1.** Many people have asked why the need for an additional background check duplicating the ATF OPQ. The current check as in the ATF OPQ only looks at an individual at the time of the check and is good for three years. This person could check out fine, and commit a felony days after the check and still have clearance for the remainder of the three years. The new proposed DOL system will be continually monitor all background checked individuals. Once your name is in there system if you commit a crime any where in the USA the computer will notify the DOL almost immediately.

This system is one of the ways that the DOL will consider longer license terms. This system would save time and expense to both the industry and the DOL.

For all the reasons stated above in this e-mail it is important that the entire industry including companies and individuals to come together in support of this bill written by the DOL and the fireworks industry.

Right now we do not have our next meeting scheduled the working group still continues to meet via conference calls and e-mail. So please continue with your comment and suggestion. I look forward to hearing from all of you. Please send your questions comments to <mailto:kevin@americanfireworksmfg.com>kevin@americanfireworksmfg.com

Kevin

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