

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TRIPOLI ROCKETRY ASSOCIATION, INC., and)
NATIONAL ASSOCIATION OF ROCKETRY,)
)
Plaintiffs,)
)
v.) Civil Action No. 00-273 (RBW)
)
UNITED STATES BUREAU OF ALCOHOL,)
TOBACCO, FIREARMS AND EXPLOSIVES,)
)
Defendant.)
_____)

**DEFENDANT’S RESPONSE TO PLAINTIFFS’ STATEMENT OF MATERIAL
FACTS NOT IN GENUINE DISPUTE**

Defendant Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) hereby submits this response to Plaintiffs’ Statement of Material Facts not in Genuine Dispute filed January 31, 2007.

1. Defendant does not dispute.
2. Defendant does not dispute.
3. Defendant does not dispute.
4. Defendant does not dispute that the first sentence is a general description of ammonium perchlorate composite propellant (APCP). Defendant does not dispute that APCP generally burns in a controlled fashion, but notes that APCP has been known to release its energy in an uncontrolled fashion over an extremely short period of time. See AR I at Tab 1, p.6. Defendant does not dispute that APCP is used for rocket motors and

has no other known common use, but notes that the agency is aware of situations where individuals removed APCP from rocket motors in constructing pipe bombs.

5. Defendant does not dispute that ATF classifies APCP in rocket propellants as an explosive pursuant to 18 U.S.C. § 841(d) subject to the controls of the Federal explosives laws. See Defendant's Answer to Plaintiffs' Third Amended Complaint ¶ 7.

6. Defendant does not dispute that the storage, use and transport of hobby rocket motors may be regulated in some manner by Federal, state or local entities. Deny plaintiffs' characterization that this somehow precludes or has any bearing on ATF's classification of APCP as an explosive.

7. Deny that ATF's determination that APCP is an explosive precludes possession of hobby rocket motors by hobby rocketeers; deny that plaintiffs have been injured by the lawful regulation of an explosive.

8. Defendant does not dispute.

9. Defendant does not dispute the first two sentences. Defendant does not dispute that the curriculum vitas of John Hawk and Robert J. Dinan of the Air Force Research Laboratory are not attached to the Hawk-Dinan Report. Defendant does deny the implication that Mr. Hawk and/or Mr. Dinan are unqualified to author the Report. Defendant further denies that the Report was not subject to peer review outside of the government, it was reviewed internally by supervisors at the Air Force Research Laboratory. See AR II at 115.

10. Defendant does not dispute, except for the use of the term “purportedly.”
11. Defendant does not dispute.
12. Defendant does not dispute that the sentence is accurately quoted.
13. Deny. See Shatzer Affidavit ¶¶ 10-11.
14. Deny. See Shatzer Affidavit ¶¶ 10-11.
15. Deny. See Shatzer Affidavit ¶ 12.
16. Deny. See Shatzer Affidavit ¶ 12.
17. Defendant does not deny that the burn rate of bond paper is from 4.2 to 55.8 mm/sec, but otherwise denies. See Shatzer Affidavit ¶ 11. Defendant further denies that the burn rate of bond paper is a material fact.
18. Defendant does not dispute that there are numerous kinds of safety fuses with varying burn rates. See Shatzer Affidavit ¶¶ 6-7.
19. Defendant does not dispute that there are different materials with both fuel and oxidizer and that not all of those materials meet the definition of explosive as set forth in 18 U.S.C. § 841(d).
20. Defendant does not dispute that certain substances may act as an oxidizer. Deny plaintiffs’ characterization of heavy paper as an explosive within the meaning of section 841(d) because of the addition of an oxidizer. See Shatzer Affidavit ¶ 16.

21. Defendant does not dispute the first sentence. Defendant does not dispute that ATF has taken the position that APCP is an explosive because its “deflagration reaction is *much faster* than the reaction achieved by what is more commonly associated with burning.” Tripoli Rocketry Ass’n v. ATF, 437 F.3d 75, 79 (D.C. Cir. 2006).

22. Defendant does not dispute that the Engineering Design Handbook of the U.S. Army Material Command, at AR II at 1247, states, “An explosive can be loosely defined as a substance capable of undergoing an explosion [or] more precisely ... a substance or mixture of substances capable of undergoing exothermic chemical reaction with the evolution of gaseous products at an extremely high rate.”

23. Defendant does not dispute.

24. Plaintiffs’ statement does not sufficiently reflect foundation for its overbroad assertion that no person has ever been injured in an incident involving APCP. See Fed. R. Civ. P. 56(e). Among other things, the affiant makes no claim that its members are required to report any incidents involving injuries of people using hobby model rockets. Moreover, ATF is aware of APCP’s potential use in pipe bombs. See 71 Fed. Reg. 46079, 46085 (Aug. 11, 2006) (ATF’s Final Rule on the 62.5 gram exemption) (“APCP can be used to make a very effective pipe bomb or other improvised explosive device that could be used for criminal or terrorist purposes.”); see also December 16, 2006 Memorandum Re Incidents Involving ammonium perchlorate (attached).

25. Defendant does not dispute the first sentence. Deny the remainder. See Shatzer Affidavit ¶ 15.

26. Defendant does not dispute the first and second sentences. Deny the remainder. See Shatzer Affidavit ¶¶ 8-9.

27. Defendant does not dispute.

Respectfully submitted,

JEFFREY A. TAYLOR, D.C. Bar # 498610
United States Attorney

/s/

RUDOLPH CONTRERAS, D.C. Bar # 434122
Assistant United States Attorney

/s/

JANE M. LYONS, D.C. Bar # 451737
Assistant United States Attorney
555 4th Street, N.W. – Room E4822
Washington, D.C. 20530
(202) 514-7161

Of Counsel:
Melissa Anderson Esq.
Bureau of Alcohol, Tobacco, Firearms and Explosives