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April 23, 2004

**Via Facsimile @ (202) 514-8780**  
**and First Class U.S. Mail**

Jane M. Lyons, Esq.  
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Washington, D.C. 20530

**RE: Tripoli Rocketry Association and National Association of Rocketry v. BATFE**  
**Civ. Action No. 00-273**

Dear Ms. Lyons:

At Judge Walton's request and your recommendation after yesterday's status conference, we are writing to clarify our understanding of the effect of the Court's dual orders and memoranda opinions in the above-captioned case. In the Court's March 19, 2004 Order, Judge Walton ruled that "the plaintiffs motion for summary judgment regarding the permissibility of the defendant's December 22, 2000 pronouncement that sport motor rockets do not fall under an exemption for a propellant actuated device ("PAD") is **GRANTED.**" (Emphasis in original). The order does not qualify the exemption in any manner.

The Memorandum Opinion accompanying the March 19, 2004 Order likewise made clear that

before ATF could [have] altered its earlier interpretation of the applicability of the PAD exemption, it was required to undertake notice-and-comment rulemaking as required by the APA and the OCCA. Because ATF failed to do so, the Court concludes that its [ATF's] December 22, 2000 pronouncement regarding the applicability of the PAD exemption to sport model rockets was not in compliance with the OCCA and the APA.

Memorandum at 20. Most significantly, in footnote number 7 of the Memorandum, the Court stated that because it had found that ATF's reversal violated applicable law, "it need not address

whether sport model rockets are in fact PADs." This certainly indicates to us that the Court intended no restrictions or qualifications on the exemption applicable to sport model rockets, or it would have been necessary to reach the statutory issue of PADs in relation to sport rocket motors.

At the hearing on Thursday, April 22, 2004, you stated to the Court that you believed the PAD exemption could possibly be qualified by the 62.5-gram limitation that was present in the April 20, 1994 ATF letter to Aerotech, which you apparently believe serves as the "rule" that reversal of ATF's December 22, 2000 pronouncement would revert back to. Accordingly, you apparently espoused the view that sport rocket motors were exempt as PADs, but only if they did not contain greater than 62.5 grams of propellant mass.

That interpretation, however, cannot be squared with Footnote 7 in Judge Walton's March 19, 2004 Memorandum. Indeed, since the statute contains no 62.5-gram limit attached to the PAD exemption, it *would* have been necessary for the Court to reach the merits of Plaintiffs' claim that the exemption applied to them by statute, since under your interpretation some sport rocket motors would in fact *not* qualify for the exemption Plaintiffs' say they are entitled to without qualification by statute.

Moreover, the Court explicitly found in its first Memorandum Opinion of June 21, 2002 that ATF's 62.5-gram limitation was a rule established in violation of the Explosives Control Act and was therefore invalid absent proper rulemaking.

It is the Court's conclusion that ATF's pronouncements concerning the non-exempt status of sport rocket motors that use more than 62.5 grams of ACP amounted to rulemaking under § 847 [of the Explosives Control Act]. ... Because § 847 does not exempt certain types of rules from its notice and comment command, these unqualified procedural prerequisites had to be employed before the rule was adopted. There being no claim that notice and opportunity for comment were afforded, ATF's motion to dismiss count four of the amended complaint must be denied.

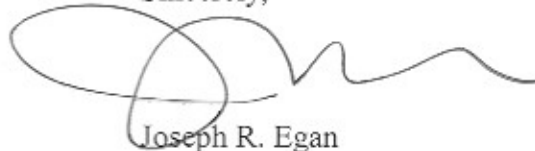
Memorandum at 20-21. Indeed, it was this ruling by the Court that caused ATF to initiate a formal rulemaking proceeding on the 62.5-gram limitation, which, as you are well aware, is far from complete. Therefore, the 62.5-gram limitation has no legal stature at this time. This limitation is not in the statute, it is not in any rules issued before 1994, and all rules with the limitation issued since 1994 were, according to the Court, unlawfully promulgated and, therefore, are not enforceable.

For all the above reasons, we are instructing our clients to notify their members and member-dealers that fully assembled sport rocket motors remain qualified as PADs, regardless of propellant mass, unless and until ATF determines otherwise in its putative new rulemaking, which we may challenge upon completion.

Jane M. Lyons, Esq.  
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If your client disagrees with this reading of the Judge's rulings, please notify me immediately so that we can seek prompt relief. In the interim, I would hope you would instruct your client not to take enforcement action against dealers or rocketeers who properly avail themselves of the Court's rulings. If that does occur, we will accept Judge Walton's invitation to seek prompt injunctive relief.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a wavy line extending to the right.

Joseph R. Egan

JRE/ec