

CAUSE NO. 08-29 (Denial of Permit)

NAME: USA FIREWORKS

ADMINISTRATIVE LAW JUDGE: WILLIAM K. TEEGUARDEN

DATE: MAY 29, 2009

COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. The Indiana Department of Homeland Security and the Commission are agencies within the meaning of IC 4-21.5.
2. IC 4-21.5 and IC 22-11 apply to this proceeding.
3. The Commission is the ultimate authority within the meaning of IC 4-21.5 over permitting actions taken by the Agency.
4. The Agency is the State entity responsible for regulating the sale of fireworks in the State of Indiana.
5. At all time relevant to this proceeding, the Company was involved in the sale of consumer fireworks in Indiana.¹
6. Fireworks sales permits expire one year after issuance.
7. Thus new applications are required annually.
8. In 2004, the Company received permits on or about June 1, which allowed the retail sales of fireworks from tents at the locations in question.
9. This may or may not be true in 2005 for the locations.²
10. In March of 2006, the legislature passed P.L. 187-2006 which took effect on March 27, 2006 after the Governor signed it.
11. This was a significant, comprehensive change to the fireworks law and allowed very little lead in time to the fireworks permit application and approved process before the 2006 fireworks sale season began.
12. It is not an overstatement to say that the fireworks permitting process was somewhat chaotic during April and May, 2006, which is the time period that applications for tent permits are filed.³
13. The Agency placed forms and guidance documents about fireworks permits on line as quickly as possible.
14. The Company did not apply for permits to the two locations because it believed the Agency website required tents only to be erected on exactly the same spot of ground (or pavement) as it had used the previous year.⁴
15. IC 22-11-14-4.5 classifies any structure containing more than 500 lbs. of fireworks as an H (“hazardous”) occupancy, meaning among other things it must

1 Consumer Fireworks refers to fireworks of different types but all of which contain a limited amount of explosive or combustible material.

2 The only evidence in the records is the owner’s testimony that he had a number of tent locations in the state in 2005 where he had permits to sell fireworks.

3 Tent permits generally involve the placement of tents in shopping center or strip mall parking lots for 4-6 weeks.

4 The biggest problem for 2005 tent permits holders was that the 2006 law change contained significant set-back requirements which made it impossible to put fireworks tent near another structure.

- be protected by an automatic sprinkler system.
16. Thus unless covered by IC 22-11-14-4.5(a)(9), a grandfathering clause, a tent sales location will be considered an H occupancy unless the total weight is under 500 lbs. of product.
 17. This section of the 2006 statute allows any tent seller with a valid 2005 permit to continue operation in 2006 and following years.
 18. The Company contends it did not apply for permits in 2006 because it could not occupy the same exact place on the property as it did prior to 2006.
 19. Taking the evidence most favorable to the Company, it still has a problem.
 20. If this matter arose in connection with the 2007 fireworks permit, the doctrine of estoppel might very well require the issuance of a tent permit.⁵
 21. If the Company had been misled by the Agency in the short period of time between passage of the statute and the fireworks season, the Company might well be permitted to apply for a 2007 tent permit at those locations and receive then as if it had a 2006 permit.
 22. However, there is no evidence that by the 2007 season, the Agency website had not ironed out the “bugs” from the first hurried permitting process and there is no possible way to consider the 2008 application as being grandfathered.
 23. The decision of the Agency to deny the two permits should be affirmed.

NONFINAL ORDER

The decision of the Indiana Department of Homeland Security to deny fireworks Tent Applications to USA Fireworks at 8620 Purdue Road in Indianapolis and 2561 E. Main Street, Plainfield is hereby affirmed.

Date: May 29, 2009

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⁵ The testimony of Steven Graves, Executive Director of both the Indiana Fireworks Users Association and the Indiana Fireworks Distributor Association, was aware by March of 2007 that tents used in 2005 could be moved to conform to the minimum distance requirements.

