

# Boeing Employees Model Rocket Club

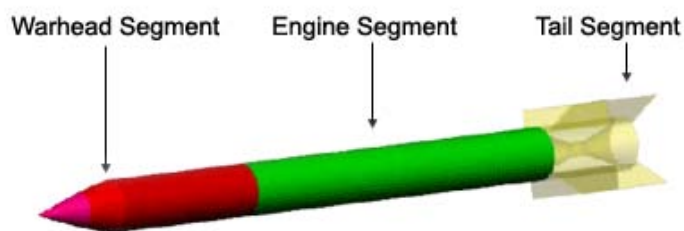
Sanctioned Section of the National Association of Rocketry (N.A.R.) Number 627

## Newsletter for December, 2004

Location: Kent Recreation Center  
 Time: 2nd Saturday of Every Month  
 at 10:00 a.m.

President: Bruce Johnson  
 Vice President: Dave Davis  
 Secretary / Treasurer: Bob Turner  
 Librarian: Mark Shelton  
 Web Site: [www.BEMRC.Org](http://www.BEMRC.Org)

News items and editorial comment in this publication do not necessarily reflect the views and opinions of the Boeing Company



Data	"Kassam 1"	"Kassam 2"	"Kassam 3"
General Width	79 cm	180 cm	200+ cm*
Diameter	60 mm*	150 mm*	170 mm*
General Weight	5.5 kg*	32 kg*	90 kg*
Weight of Explosive Press Material	0.5 kg	5 - 7 kg	10 - 20 kg
Maximum Range	3 km	8 km	10 km

\*Estimation



## Kassam Rocket Variants

\*\*\*\*\* **BEMRC Launch Schedule** \*\*\*\*\*

December 11 <sup>th</sup> (Saturday)	Kent, WA - W.S.S. First Build Session
January 8 <sup>th</sup> , 2005 (Saturday)	Kent, WA – W.S.S Second Build Session
February 12 <sup>th</sup> (Saturday)	Kent, WA – W.S.S. Third Build Session
March 6 <sup>th</sup> (Sunday)	Monroe, WA – Launch Session
March 12 <sup>th</sup> (Saturday)	Kent, WA – Fourth Build Session
March 26 <sup>th</sup> (Saturday)	Redmond, WA (60 Acres Park) – Launch Session
April 3 <sup>rd</sup> (Sunday)	Monroe, WA – Launch Session
April 9 <sup>th</sup> (Saturday)	Kent, WA – Launch Session
April 23 <sup>rd</sup> (Saturday) Session	Redmond, WA (60 Acres Park) – Launch
May 1 <sup>st</sup> (Sunday)	Monroe, WA – Launch Session
May 14 <sup>th</sup> (Saturday)	Kent, WA – Launch Session
May 28 <sup>th</sup> (Saturday)	Redmond, WA (60 Acres Park) – Launch Session

\*\*\*\*\* **On The Cover** \*\*\*\*\*

The Qassam is a simple steel rocket filled with explosives, developed by the Palestinian organization, Hamas. Three models have been used. All models lack an on-board guidance system and rely on basic fins for stability. Qassam rockets are named after the Izz ad-din al-Qassam Brigades, the military wing of Hamas. The Qassam rocket is attributed to Adnan al-Ghoul, known as the "Father of the Qassam," who was killed by the Israeli military in October 2004.

On October 3, 2004, Mahadi Mushtaha, a senior member of the Qassam production and development team in the Gaza Strip was killed by an Israeli targeted assassination. Mushtaha, a resident of the Jabalia refugee camp, was alleged to have been the manager of workshops and labs producing components of the Qassam rockets.

The rockets have been used to attack various civilian Israeli towns. In some areas, such as Sderot, in the Negev and settlements in Gaza, shelling occurs almost daily. However, they rarely cause any injuries, and they did not kill an Israeli until June 28, 2004. A particular concern for the Israelis is the development of longer range Qassam missiles that if fielded by Hamas in the West Bank, they would be used to strike at the cities in the country's coastal heartland.

\*\*\*\*\* **Quote(s) of the Month** \*\*\*\*\*

As I arrived home from work, I could hear the sounds of maniacal laughter and terrified goats coming from within the house. As I put my key in the door, I couldn't help but think, "Here we go again."

- Brad Osberg

"Oh the banks are made of marble  
With a guard at every door  
And the vaults are filled with silver  
That the miners sweated for!"

- Woody Guthrie:

\*\*\*\*\* 2004 / 2005 Winter Seminar Series Returns \*\*\*\*\*

After the success of last years build class, BEMRC will be hosting another Winter Seminar Series this year. BEMRC has been hosting winter classes annually since the 80's, and we're continuing the tradition. The first build class is scheduled for the second Saturday in December (12/11/04) at the Kent Recreation complex (7-226 Building at 22649 84<sup>th</sup> Avenue South), starting at 10:00 am. in Meeting Room "C".

This years series of classes runs from November 2004 to March 2005. Here's the schedule and the types of kits to be built.

November 13th, 2004 Kick-Off

December 11th - First Build Session - Estes Alpha III (**Note Change**)

January 8th, 2005 - Second Build Session - Custom Rocket Company Grab Bag

February 12th - Third Build Session - Multi Stager

March 12th - Edmonds Boost Glider

The classes are open to all past and present Boeing employees, their families, and to the general public. Costs to Boeing employees, is \$10 which includes 2005 membership dues with BEMRC. The class cost to the general public is \$40, which covers the cost of class materials. Class materials include the kits, plus motors, ignitors, and recovery wadding. Weather permitting, BEMRC will host launches after each class at our launch site at the south east corner of the Kent Space Center.

The Kick-Off in November when well, even though attendance was light. This means that there are still openings available. To sign up for the classes, contact any BEMRC BoD Member, or just show up for the December build class. Class size is limited to 12 builders and sign ups are on a first come basis. Precedence will be given to Boeing employees with any remaining openings available to the general public. Door prizes will be handed out during each class session.

Tools and building materials for the classes are often found around the house, or are available at any local hardware store, or hobby shop. The typical hobbyist uses a shoebox, or small fishing tackle box to store everything in.

Here's a good starting list:

- Five Minute Epoxy
- Testors Model car glue
- Ruler, or straight edge
- Pen, and Pencil
- Paper Towels
- Sandpaper (320, 400, and 600 grit wet/dry paper works best)
- Notepad
- Scissors
- 1/2" Masking Tape
- 3/4" Masking Tape
- Transparent Tape
- Hobby Knife (X-Acto, or similar)
- Mixing cups for epoxy
- Stir Sticks for Epoxy
- Disposable brushes to apply epoxy
- Paper Clips

\*\*\*\*\* **BEMRC 2005 Elections** \*\*\*\*\*

It's election time. If you are interested in holding a Board of Directors position for 2005, contact Bruce Johns, or any BoD member. There's no compensation, and it's a volunteer position. Open positions include President, Vice-President, Treasurer, and Librarian. We're also looking for a newsletter editor if anyone wants the gig. Elections will be held at the December meeting and will be posted in the January 2005 newsletter.

\*\*\*\*\* **BEMRC 2005 Dues** \*\*\*\*\*

BEMRC membership dues, is \$5 for 2005. If you're taking the build classes, your dues are included with the registration. Included with this months issue is a membership registration form. Just fill out the form, and send it off to Bob Turner. Make checks payable to BEMRC. The past couple of years, we haven't had a need to charge dues. However, activity is picking up and maintenance and repair costs on the GSE are increasing, as well as, costs of materials for holding the build classes. Please have your dues in by the end of January, as the membership list will be adjusted at that time to reflect paid memberships.

\*\*\*\*\* **NAR/TRA vs BATF Lawsuit Update** \*\*\*\*\*

Included in this months issue are two documents related to the lawsuit between NAR/TRA and the BATF from the October 15<sup>th</sup> status review hearing. NAR/TRA requested this hearing in order to have the BATF website Rocketry Q&A page taken down (included in previous BEMRC Newsletter), and for clarification that rocket motors were Propellant Actuated Devices (PADS) regardless of propellant mass. Well, the judge denied both requests, and based in the documentation provided by BATF, he was correct to do so.

Earlier this year, the judge ruled that APCP was an explosive and was Count 1 of the lawsuit. NAR/TRA has submitted a motion to the judge to remove this ruling from the suit, so that it can be appealed to a higher court. This appeal, if approved to proceed, will take another two years and several tens, of thousands of dollars. This, per NAR/TRA press release.

Based on these rulings from the judge, NAR/TRA keeps coming out on the short end of the stick. The BATF web site is still up, enforcement action against Al's Hobbies in Chicago is proceeding, assembled motors over 62.5 grams are still under BATF jurisdiction, and APCP is still classified as an explosive. Another review hearing is in the works for December and the results will be posted here accordingly.

\*\*\*\*\* **2005 BEMRC Launch Schedule** \*\*\*\*\*

The 2005 launch schedule is firming up with the launch schedule through May 2005, included in this months issue. The Monroe FAA waiver has been approved for 2005 and documentation submitted for the site. We have three launch sites to support next year. So, it looks like the 2005 flying season is going to be a busy one. Everyone keep their eyes open for candidate launch sites due to the fluid launch site situation. Sites can vanish rapidly here on the west side. So keeping on the look out for new sites is always to our benefit.

\*\*\*\*\* **Improved Qassam 2 (Kassam 2) Rocket Fielded In Gaza** \*\*\*\*\*

By: Alon Ben-David, Janes DefenseWeekly Correspondent, Tel Aviv - July 9, 2004

Insurgent forces have deployed an improved version of the indigenously produced Qassam 2 unguided surface-to-surface rocket, dubbed 'Nasser 3', in the Gaza Strip.

Israel Defence Force (IDF) sources believe that the Palestinian Islamic Resistance Movement (Hamas) manufactured the rocket.

A salvo of Nasser 3 rockets fired from the Gaza Strip towards the southern Israeli town of Sderot on 28 June killed two civilians: the first Israeli fatalities of a Palestinian rocket attack.

Since November 2001, some 350 Qassam rockets have been fired from the Gaza Strip at targets in Israel, causing few casualties and little damage. The Qassam rocket was initially perceived as an ineffective improvisation that had the potential to become a more significant threat.

Like its predecessor, the 2.2m (7'4") Nasser 3 is capable of carrying a 5kg (11 pound) warhead to a range of 9km (5.6 Miles). However, the Nasser 3 has a standard explosive warhead combined with metal fragments and a standard fuze. "The new warhead is much more powerful than that of the improvised Qassam 2," an IDF source told JDW.

"Equipped with a standard fuze, rather than an improvised one, the new warhead guarantees detonation on impact, overcoming the Qassam 2's main flaw."

The IDF believes that most of the Nasser 3's components are manufactured in the Gaza Strip. The rocket is cased in a 110-120mm-diameter steel water pipe (4.5"), containing some 20kg (44 pounds) of improvised solid propellant, usually manufactured from available potassium nitrate fertilizer and powdered sugar. "It appears there was some improvement in the propellant's mixture, which we cannot yet determine," an Israeli Police explosive ordnance disposal specialist told JDW.

The Nasser 3 has four stabilizing fins welded to the casing and is launched from rails mounted on a bipod. The rocket's engine is ignited by an electric fuse. Sometimes triggered by a timing mechanism. "It is hard to speak of the Qassam rocket in general, as there are many variants and different production lines," the specialist said. "The Palestinians are continuously experimenting with different propellant mixtures and warhead ingredients."

However, an IDF source added: "We believe that the Palestinians have received shipments of standard explosives and fuses, probably smuggled under the Egyptian border in Rafah, and that these enabled the Qassam's improvement. It seems that while Qassam 2 had many failures, both in launch and at impact, the Nasser 3 is much more effective."

To date, some 20 Nasser 3 rockets, painted in green and red, have been fired from Gaza; all are believed to have been manufactured by a single Hamas workshop. The IDF has repeatedly operated against suspected Qassam workshops in Gaza with both air strikes and ground operations. "It appears to be impossible to completely prevent the firing of Qassam rockets," said Brig Gen Shmuel Zakai, the IDF commander in Gaza.

The IDF is using both ground and airborne observation platforms combined with Elbit's upgraded Raytheon-built TPQ-37 artillery-locating radar to detect and attack Qassam teams.

"The only solution to the Qassam threat is to have a presence at all launching grounds," a senior IDF source told JDW. "We have learned in our long years of fighting in Lebanon that no matter how much air superiority you have, the only thing that can suppress rocket attacks is to have control on the ground. "Qassam teams, very much like the Lebanese Hizbullah's Katyusha teams, either spend only seconds at the launch site or use a timing mechanism, and are very hard to detect."

\*\*\*\*\* **Ashkelon Still a “Big Leap” for Kassams** \*\*\*\*\*

By: Arie O’ Sullivan, Jerusalem Post – October 4, 2004

Members of the Hamas military wing, Izzadin Kassam, have proudly claimed they will soon deploy an improved Kassam rocket capable of hitting Ashkelon, some 20 km (12.4 miles) from Gaza City, thus making a mockery out of the 8 km. (5 mile) buffer zone the IDF (Israeli Defense Forces) has carved out of the northern Gaza Strip. Ideally, in fact, they'd like to be able to hit Prime Minister Ariel Sharon's ranch home at Shikma, also about 20 km away.

Israeli experts say such goals are not impossible to attain, but will require a high degree of expertise – expertise the army is determined to deny the Kassam manufacturers. Asked during a visit to the front Sunday what the army would do if the Palestinians start firing longer range Kassams, Chief of General Staff Lt.-Gen. Moshe Ya'alon answered curtly that, "We'll cross that bridge when we come to it."

But in truth, the IDF is trying to ensure that Hamas never does come to it. Backed by the Shin Bet, the IDF has embarked on a campaign to shatter the Kassam rocket industry in Gaza. On Saturday night, an attack helicopter fired a missile which killed Mehdi Mushtaha, who, the army said, had directed the manufacture of Kassam rockets and the operation of metal lathes. Last May, the IDF assassinated Wael Nasser, Hamas's chief rocket scientist. One senior IDF officer described the strategy as, "trying to cut the chain between the brains and metal worker and it's not simple."

The Palestinians have been steadily improving their rockets since the first primitive, homemade versions appeared in Gaza more than two years ago. And the IDF has been closely following the evolution of the unguided projectiles and noted its success.

Lt.-Col. Ofer, commander of a Givati battalion operating on the outskirts of the Jabalya refugee camp, said on Sunday that it was "only a matter of time until the missiles fall in Ashkelon." But rocket experts are less certain, noting that extending the rockets' range is not straightforward, and that the task is complicated by the IDF's focus on the "rocket scientists" and the metalworks.

"It's a big leap," said Dr. Azriel Lorber, a former missile designer in Israel's defense industry. "But it can be done, and done in Gaza. What's required is guts, luck, and missile expertise.

"The problem is not the metalwork, but the physics of the rocketry," Lorber elaborated. "If they [Hamas] got somebody who knew what he was doing, they could probably get around the conditions in Gaza."

According to an IDF officer closely involved in examining Kassams, "There is also an engineering problem in extending their range, as they have to deal with very high pressure on their metals from the solid fuel ignition."

Yiftah Shapir, an expert on missile technology from the Jaffee Center for Strategic Studies, explained that the greater the propulsion, the higher the quality of metal needed and the more accurate the casting of the fuel must be. Casting is the process of inserting the jelly-like fuel into the rocket. Once it hardens, the rocket can be fired. "When you cast the propulsion [fuel], it needs to be exact, otherwise it could dry with cracks. And every crack, even the most micro ones, can foul up the rocket and divert it from its flight path," Shapir said. "For something as primitive as the Kassam, this could cause it to go off into an entirely different direction or explode."

(continued on next page)

(Kassam 2 continued)

"The rockets need to be more sophisticated," he summed up. But this sophistication would make the previous "kitchen table technology" less covert and therefore more vulnerable to detection.

Palestinian terrorists have fired more than 400 homemade rockets at Israeli communities since 2002; only a few have caused damage or injury, including a Kassam 2 that killed two small children in Sderot last Wednesday. The attacks started with the Kassam 1, a 60cm (24") rocket with a range of about 3,000 meters (10,000 feet) and a half-kilo (1.1 pound) warhead. The Kassam 2 is about twice as long, weighs in at 35 kg (77 pounds), and has a range of about 7,000 meters (4.3 miles). Its warhead is estimated to be five to seven kilos (15 pounds). Hamas is known to have been working on the Kassam 3 with an estimated range of about 10 km (6.2 miles) and a 10-kg. (22 pound) warhead. The experts noted that a Kassam that landed near Ashkelon's industrial zone last August was evidently fired from the northern edge of the Gaza Strip.

The Popular Resistance Committee, an umbrella group of Palestinian factions, has produced a smaller Kassam spin-off called the Nasser 3. The Al-Aksa Martyrs Brigades has a rocket called the Aksa 1, but it has caused no damage. Islamic Jihad manufactures the Saryia 1, which is also ineffective.

Military sources said that a large percentage of the Kassams are actually duds, which stray wildly off path or fail to explode on impact.

Lorber said the Kassam squads, as they seek to extend the range of their rockets, are not too bothered about the size of the warheads that could be carried. The Kassam, he noted, is an inherently inaccurate weapon meant to terrorize the civilian population rather than to destroy a specific target.

"It wouldn't matter if you fired a two-kilo or a 20-kilo warhead," Lorber said.

If the Kassam squads could reach the prime minister's farm, plainly, the symbolic impact would be far more important for them than any physical damage caused.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

TRIPOLI ROCKETRY ASSOCIATION, INC.,	)	
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF ROCKETRY,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 00-273 (RBW)
v.	)	
	)	<b>NEXT SCHEDULED EVENT:</b>
UNITED STATES BUREAU OF ALCOHOL,	)	Status Conference
TOBACCO AND FIREARMS,	)	October 15, 2004 at 9:15 a.m.
	)	
Defendant.	)	
	)	

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**DEFENDANT’S RESPONSE TO PLAINTIFFS’  
“URGENT MOTION FOR AN EARLY STATUS CONFERENCE”**

On September 30, 2004, plaintiffs requested a status conference in a motion which alleged that ATF has “recently . . . attempt[ed] an end-run around the law and this Court’s opinions and orders.” Pls.’ Urgent Motion, ¶ 3. More specifically, plaintiffs allege that, based on a document providing guidance to the public and to ATF personnel, “ATF inspectors [are] impos[ing] draconian new restrictions on motor dealers and [] tak[ing] enforcement action against them.” *Id.* ¶ 5. In support of these assertions, plaintiffs have submitted a declaration from a single individual describing a version of events relating, among other things, to storage of rocket motors.<sup>1</sup> As demonstrated below, plaintiffs’ fanciful accusations about new or draconian enforcement could not be further from the truth. Plaintiffs’ overly narrow description of the

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<sup>1</sup> Before the time for defendant to respond to plaintiffs’ motion had run, the Court granted the motion and scheduled a status conference for October 15, 2004 at 9:15 a.m.

circumstances is misleading, and their strained interpretation of the current state of the law based on the Court's rulings in this case is simply incorrect.

In any event, plaintiffs' supposed need for urgent attention from this Court is unexplained. As an initial matter, defendant observes that the only relief sought by plaintiffs in their recent motion – a status conference – has already been granted by the Court. Although it is not entirely clear what plaintiffs seek to achieve through a status conference, in the interests of providing the Court with a more complete record, defendant respectfully submits this response. As set forth below, ATF's recent activities with regard to a routine inspection of Al's Hobby Shop in Chicago, Illinois in connection with an application for renewal of a low explosives permit are unremarkable. Taken together, the facts demonstrate that the issues which have been before the Court in this action have nothing but a tangential relationship, at best, to the situation about which plaintiffs complain.

**ATF's Routine Inspection of Al's Hobby Shop Certainly Does Not Warrant This Court's Attention**

In support of their "Urgent Motion," plaintiffs allege that the parties' differing understandings of the Opinion has precipitated a regulatory crisis because one of their members, Al's Hobby Shop, apparently has "decided that serious consideration need[s] to be given to discontinuing sales of model rocket motors." Affidavit of Kenneth Herrick, dated September 29, 2004 ("Herrick Affidavit") at ¶ 7 (attached to Pls.' Motion). Plaintiffs' hyperbole is rampant. Defendant is currently inspecting Al's Hobby Shop as part of a routine license renewal. See Declaration of Judith M. Bender ("Bender Dec."), ¶ 3.<sup>2</sup> According to Mr. Herrick's Affidavit,

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<sup>2</sup> Plaintiffs characterize the ATF inspection of having occurred "[w]ithout any prior notice . . . ." Herrick Affidavit at ¶ 3. However, applicable law clearly informs licensees that

the parties' differing views impact whether or not Al's Hobby Shop has exceeded the permissible capacity for its storage locker. *Id.* at ¶ 5. In fact, whether the model rocket motors are counted or not, ATF's license renewal inspection revealed that Al's Hobby Shop had significantly exceeded the 50-pound limit for its storage locker under either the plaintiffs' or ATF's interpretation of the Opinion. Bender Dec. ¶¶ 8, 11. Specifically, Al's Hobby Shop twice was recently found to have stored explosive materials well in excess of fifty (50) pounds in an indoor storage magazine in violation of 18 U.S.C. § 842(j) and 27 C.F.R. § 555.210(b)(1). *Id.* On the first occasion, September 2, 2004, ATF found that Al's Hobby Shop was storing 140 pounds of explosives, no part of which was attributable to rocket motors with disputed PAD status. *Id.* ¶ 8. The ATF Inspector advised Al's Hobby Shop that it was in violation and advised it to find alternative storage to bring itself into compliance. *Id.* ¶ 9. Eleven days later, Al's Hobby Shop was still out of compliance by having 64 pounds of explosives in its magazine. *Id.* ¶ 11. Of this amount, eleven (11) pounds were attributable to rocket motors with disputed PAD status. *Id.* Because the storage limit is fifty (50) pounds, the violation would have existed even without the rocket motors with disputed PAD status.

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they are subject to inspection. 18 U.S.C. § 843(f). If the plaintiffs (or Al's Hobby Shop) are complaining that ATF should have provided notice of the exact time and date of inspection, they are simply wrong. As the Supreme Court has recognized, giving advance notice of an inspection in many situations defeats the very purpose of the inspection, allowing violations to be quickly hidden. *New York v. Burger*, 482 U.S. 691, 710 (1987)("If inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential." (quoting *United States v. Biswell*, 406 U.S. 311, 316 (1972))).

Importantly, nowhere in plaintiffs' account of Al's Hobby Shop's interaction with ATF do they mention that Al's Hobby Shop was also cited by the ATF Inspector for nine other violations having nothing to do with excess storage or the rocket motors with disputed PAD status. See id. ¶12 & Report of Violations. Al's Hobby Shop has until November 7, 2004 to remedy these violations and ATF's final decision on its license renewal application will not be made until sometime after that. Id. ¶ 13. Thus, the parties differing views with respect to the Court's decisions, which are described more fully below, was of only minor relevance to the inspection, and had no effect whatsoever on the violations for which Al's Hobby shop was cited.<sup>3</sup> Id. ¶ 12.

Accordingly, any hesitation Al's Hobby Shop may have regarding its desire to continue stocking rocket motors is entirely its own concern. Based on the record, ATF's actions are entirely consistent with the Court's decisions and the agency's regulations.

### **Plaintiffs' Legal Analysis Is Flawed**

Quite apart from its supposed impact on the operators of Al's Hobby Shop, there is little doubt that the parties disagree about the impact of this Court's decisions on ATF's ongoing regulation of rocket motors used by those enjoying the hobby of high powered sport rocketry. Plaintiffs claim that all such rocket motors are exempt as propellant actuated devices ("PADs"). They are incorrect. In its March 19, 2004 Memorandum Opinion ("Opinion"), the Court faulted ATF for changing its position on exempting certain small rocket motors from regulation as

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<sup>3</sup> The government also notes that if ATF were to deny license renewal (an event that has not yet occurred), Al's Hobby Shop would be entitled to both administrative and judicial review of that denial and would be able to challenge ATF on any legal issues that it believes were decided improperly. 18 U.S.C. § 843(e). Far from being an urgent matter, the issues raised by the plaintiffs appear to be entirely routine, with legal review readily available.

covered by the exemption for PADs without engaging in notice and comment rulemaking. Opinion at 18-20. As a result, because the Court invalidated the position ATF took in its December 22, 2000 letter, until it engages in the required administrative procedures, ATF is required to adhere to the position articulated in its 1994 letters. Id. at 20. The 1994 letters provide that rocket motors containing no more than 62.5 grams of propellant, and producing less than 80 newton-seconds (17.92 pound seconds) of total impulse with thrust duration not less than 0.050 seconds are exempt. See id. at 15-16. This, of course, means that rocket motors not meeting those criteria are not exempt.

Notably, the Court explicitly set out the controlling 1994 ATF statement on the applicability of the PAD exemption in its Opinion:

Of particular significance to the plaintiffs, is the statement in the April 20 Letter that

[t]he exemption at 27 CFR Part 55, section 141(a)(8) includes propellant-actuated 'devices.' The term 'device' is interpreted to mean a contrivance manufactured for a specific purpose. Under this definition, a fully assembled rocket motor would be exempt. However, the propellant, prior to assembly, would not be exempt.

Id. (emphasis added). The ATF went on to state that

[t]he AeroTech products which have been classified by the Department of Transportation as a flammable solid 4.1 or as explosives 1.4c, which are within the 62.5 grams limit contained in NFPA 1122 and conform to the requirements of model rocket motors set forth in 16 CFR section 1500.85(a)(8)(ii), would meet ATF requirements for exemption under 27 CFR Part 55, section 141(a)(8).

Id.

Opinion at 15.

On the other hand, plaintiffs contend that the regulatory PAD exemption applies to all rocket motors regardless of weight or other specification. Plaintiffs' argument makes no sense. They maintain that "ATF's imposition of a 62.5-gram weight limit on APCP rocket motors was likewise the result of invalid rulemaking." Pls.' "Urgent Motion" at ¶ 2. But plaintiffs ignore the fact that the 62.5-gram rule is an exemption from regulation. Thus, to the extent that the 62.5 gram rule is, as plaintiffs posit, invalid, the logical result is that there would be no exemption for rocket motors of any weight, not (as the plaintiffs contend) an exemption for all rocket motors, regardless of weight. The plaintiffs cannot have it both ways, nor can they pick and choose between those parts of the 1994 letter of which they approve and those that they do not. Having sought to bind ATF to its 1994 position, plaintiffs are bound by that result.

The Government respectfully submits that this Court's Opinion in this matter is clear. Absent notice-and-comment rulemaking, ATF must conform its regulation of sport rocket motors to the position articulated by the Bureau in 1994. In other words, pursuant to the binding 1994 ATF position, the PAD exemption applies to fully assembled rocket motors containing no more than 62.5 grams of propellant, and producing less than 80 newton-seconds (17.92 pound seconds) of total impulse with thrust duration not less than 0.050 seconds.<sup>4</sup>

### **The Court Should Not Alter Its Current Course**

ATF respectfully submits that the matters raised in plaintiffs' motion are, among other things, unripe and so remote from the issues remaining before the Court that no further

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<sup>4</sup> Significantly, this Court also relied in part on a second 1994 letter in which ATF, responding to a request for clarification of its position, explained that the PAD exemption applies "only those items that meet all of the requirements we listed in our letter to you dated April 20, 1994." Opinion at 16 (emphasis added).

consideration of them is warranted. While plaintiffs may wish otherwise, nothing in this Court's decisions relieves them of the ordinary burdens associated with conforming with the law and body regulations governing explosives. Plaintiffs' members voluntarily undertake those burdens and are not being subjected to anything other than ATF's ongoing regulatory process at a time in history when particular concern surrounds explosives generally.

### CONCLUSION

For all of the foregoing reasons, defendant respectfully submits that the Court should decline to become embroiled in any aspect of defendant's inspection of Al's Hobby Shop in Chicago and otherwise should continue this case in the same manner.

Dated: October 14, 2004.

Respectfully submitted,

/s/  
\_\_\_\_\_  
KENNETH L. WAINSTEIN, D.C. BAR # 451058  
United States Attorney

/s/  
\_\_\_\_\_  
R. CRAIG LAWRENCE, D.C. BAR # 171538  
Assistant United States Attorney

/s/  
\_\_\_\_\_  
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Washington, D.C. 20530  
(202) 514-7161

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
TRIPOLI ROCKETRY ASSOCIATION,	)	
INC., <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 00-273 (RBW)
	)	
UNITED STATES BUREAU OF	)	
ALCOHOL, TOBACCO, FIREARMS,	)	
AND EXPLOSIVES,	)	
	)	
Defendant.	)	
_____	)	

**ORDER**

In March 2004, this Court issued a Memorandum Opinion which concluded that a December 22, 2000 pronouncement by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) that sport motor rockets do not fall under an exemption for a propellant actuated devise (“PAD”) was invalid because the ATF failed to comply with notice-and-comment rulemaking. Tripoli Rocketry Ass’n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives, 2004 WL 2094749 \*11-12 (D.D.C. March 19, 2004). The parties concede that by invalidating the December 2000 pronouncement, the Court left in place the regulatory scheme set forth in a 1994 pronouncement by the ATF.

Upon consideration of the plaintiffs’ Urgent Motion for Early Status Conference, the parties appeared before the Court on October 15, 2004. Currently before the Court is the plaintiffs’ allegation that the ATF is violating the Orders issued by this Court in June 2002 and

March 2004, by posting on the ATF's website representations concerning the regulation of sport rocket motors. During the status conference, the plaintiffs requested that this Court (1) order the ATF to recognize sport rocket motors as propellant actuated devices and (2) order that the Question and Answer sheet currently posted on the ATF's website either be removed or revised to reflect prior rulings of this Court.<sup>1</sup> In response, the defendant contends that it was not violating this Court's prior orders, but is merely correctly applying the 1994 pronouncement.

After reviewing the pleadings submitted to this Court and upon consideration of the representations made by the parties during the status conference, it is clear that the plaintiffs are now seeking to challenge the ATF's application of the 1994 pronouncement. However, this challenge is not properly before the Court.<sup>2</sup> Accordingly, it is hereby this 19th day of October, 2004,

**ORDERED**, that the plaintiffs' requests for the Court to (1) order the ATF to recognize sport rocket motors as propellant actuated devices and to (2) order that the Question and Answer sheet currently posted on the ATF website either be removed or revised are **DENIED**. It is further

**ORDERED**, that the parties shall proceed with the litigation of this case as previously scheduled by the Court.

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<sup>1</sup> The plaintiffs also asked this Court to enter a final judgment as to Count I of the complaint pursuant to Federal Rule of Civil Procedure 54(b), so that the plaintiffs can immediately appeal this Court's March 19, 2004 order granting summary judgment in favor of the defendant on that Count. The plaintiffs later withdrew this request, stating that they would file a motion seeking such relief.

<sup>2</sup> The plaintiffs' efforts to challenge to the 1994 ATF pronouncement requires the initiation of a new lawsuit, as the only ATF regulations at issue in the present lawsuit are those pronouncements that occurred after the issuance of the 1994 pronouncement. See, e.g., Moore v. West, 991 F. Supp. 11, 12 n.1 (D.D.C. 1998) ("These claims are not properly before the Court, as plaintiff never amended his complaint to include them.")

**SO ORDERED.**

REGGIE B. WALTON  
United States District Judge

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# 2005 Boeing Employees Model Rocket Club (B.E.M.R.C.) Membership Form

Date \_\_\_\_\_

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ M.I. \_\_\_\_

Boeing Mail Stop/Mail Code \_\_\_\_\_

Boeing Phone Number (     ) \_\_\_\_\_

## Optional:

Home Address \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

Home Telephone Number (     ) \_\_\_\_\_

Names of Family Members likely to participate in club activities:

Spouse \_\_\_\_\_

Children \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

Membership dues are \$5.00 per year per family. Completed forms and checks can be sent to Bob Turner, M/S 8J-49. Checks are payable to BEMRC.

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