

**STATE OF INDIANA
BEFORE THE ADMINISTRATIVE LAW JUDGE FOR
THE INDIANA DEPARTMENT OF HOMELAND SECURITY**

IN RE:) Administrative Cause No.
)
Jake's Fireworks Inc.)
Certificate #FWT28407)

**NOTICE OF PETITION FOR REVIEW AND REQUEST FOR STAY OF
DECISION ON "NEW" LICENSE ACTION**

Comes now Jake's Fireworks, Inc., by counsel, Law Offices of John H. Brooke, PC, and respectfully requests Administrative Review of the issuance of Certificate of Compliance FWT28407. In support of said Petition, Jakes Fireworks would show the as follows:

1. Jake's Fireworks operates a consumer fireworks store at 7720 Old Trails Road, Indianapolis, Indiana 46219 (hereinafter "Old Trails Road Store").
2. Jake's Fireworks has operated the Old Trails Road Store since 2008, but the structure has sold consumer fireworks prior to 2003 and has previously received ratings of "B1/Unlimited" for the sale of fireworks in Indiana.
3. As a retailer of consumer fireworks, Jake's Fireworks is subject to the provisions of Indiana Code § 22-11-14, Regulation of Fireworks by the Fire Marshal.
4. On July 2, 2015 an inspection was conducted the Old Trails Road Store based on an alleged complaint received the Fire Marshal's Office.

5. During the course of the inspection the alleged violation was not found to have occurred; however, it came to the inspector's attention that Jake's Fireworks had not renewed its Certificate of Compliance for 2015.
6. Pursuant to § 22-11-14-11 retailers of consumer fireworks are required to apply for and obtain a Certificate of Compliance prior to engaging in sales.
7. It was further discovered that Jake's Fireworks had failed to renew the Certificate in 2014 as well, although prior to 2014 Jake's Fireworks had applied for and obtained the appropriate Certificate for this location. Jake's Fireworks has other certificates of compliance for other locations in the State of Indiana and all of those locations were properly permitted. Additionally, Jake's Fireworks has reported all of its fireworks sales income and paid the public safety fee amounts to the Indiana Department of Revenue from the Old Trails Ave. location.
8. Jake's Fireworks immediately took steps to remedy this inconsistency, and Certificate Number FWT28407 was issued on July 2, 2015. Attached hereto as Exhibit 1 is a copy of Certificate FWT28407.
9. Certificate FWT28407 is for a "Retail Type: New" which restricts the total fireworks poundage of the store to 500#, pursuant to IC § 22-11-14 and the Indiana Building Code.

10. Prior to 2014 Jake's Fireworks had an "unlimited" license as described in IC § 22-11-14-4.5(b)(1), based on continuous use (hereinafter "(b)(1) License").

11. The requirements to maintain a (b)(1) License are:

(b) A retailer may sell consumer fireworks and items referenced in section 8(a) of this chapter from a Class 1 structure (as defined in IC 22-12-1-4) if the Class 1 structure meets the requirements of any of the following subdivisions:

(1) The structure complied with the rules for a B-2 or M building occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1:

(A) in which consumer fireworks were sold or stored on or before July 4, 2003; and

(B) in which no subsequent intervening nonfireworks sales or storage use has occurred.

IC § 22-11-14-4.5(b)(1)

12. Jakes has continuously utilized the Old Trails Road Store as required for the sale and storage of consumer fireworks.

13. There has been no intervening use which would affect the ability to sell consumer fireworks in this location and the building still meets the standards as a Class 1 structure, B2/M1 classification for occupancy pursuant to the building codes in existence prior to 2003 as per the statute.

14. There is no dispute with the Agency that the building and structure meets the requirements for a (b)(1) license and that the structure is eligible to continue to be used for the sale of consumer fireworks in the future.

15. Jake's Fireworks is seeking an appeal of the Agency decision to issue Certificate FWT28407 as a "new" Certificate for the property located at 720 Old Trails Road, Marion County, Indianapolis, IN, and instead issue the Certificate as an "B1/Unlimited" or (b)(1) License as previously held according to § 22-11-14-4.5(b)(1).
16. Jake's Fireworks has met the statutory requirements of § 22-11-14-4.5(b)(1) and is entitled to the license requested.
17. Jake's Fireworks further requests that a Stay of Enforcement pending the resolution of this administrative action.
18. A stay is required to return the parties to the last uncontested status which was the operation of the fireworks store to a status of "B1/Unlimited" in 2014.

WHEREFORE, Jake's Fireworks Inc., by counsel, respectfully an Administrative Appeal of the issuance of Certificate of Compliance FWT28407; a stay of enforcement of the order that the facility located at 7720 Old Trails Road, Marion County, Indianapolis, IN being a "New" status and limited to 500 lbs. in fireworks capacity and all other relief proper in the premises.

Respectfully submitted,
Law Offices of John H. Brooke, PC

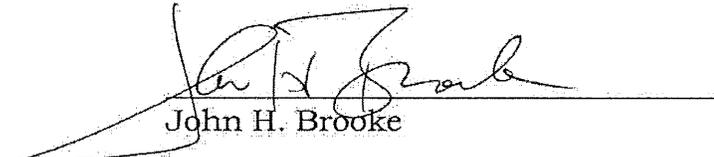


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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July, 2015, a copy of the *Notice of Petition for Review* was served upon the following persons via first-class, U.S. Mail, postage prepaid:

Indiana State Fire Marshal
Indiana Department of Homeland Security
302 West Washington Street
Indianapolis, Indiana 46204


John H. Brooke



Indiana Department of Homeland Security (IDHS)
Division of Fire and Building Safety

Certificate of Compliance for Retail Sale of Consumer Fireworks (as defined in IC 22-11-14-1)

Certificate Number:

FWT28407

Year:

2015

Retail Type:

New

Pursuant to IC 22-11-14-5, this **Certificate of Compliance for Retail Sale of Consumer Fireworks** is issued to the applicant listed below:

JAKES FIREWORKS INC
7720 OLD TRAILS ROAD
INDIANAPOLIS, IN 46219

This **Certificate of Compliance for Retail Sale of Consumer Fireworks** expires on December 31, 2015

This **Certificate of Compliance for Retail Sale of Consumer Fireworks** is not transferable except to a subsequent owner or operator of a fireworks business at the above location in accordance with the policies and guidelines of the State Fire Marshal.

This **Certificate of Compliance for Retail Sale of Consumer Fireworks** is valid only for a tent or a structure at the address listed above. A separate **Certificate of Compliance for Retail Sale of Consumer Fireworks** shall be obtained for each tent or structure in which consumer fireworks are sold.

James L. Greeson, Indiana State Fire Marshal

Date:

07/02/2015

JAKES FIREWORKS INC
PO Box 780604
Wichita, KS 67278

