

TESTIMONY**From Tom and Katie Bryant**

Wiscasset

May, 2021

Our names are Tom and Katie Bryant. We live in Wiscasset, and have had the unfortunate experience of having an unlicensed and illegal consumer fireworks storage facility right next to our home. We urge the Committee to pass LD 1307, banning the sale of consumer fireworks in Maine once again. Our reasons are many, including concern over injuries and deaths (that have occurred, and will likely recur) and noise at all hours, but our testimony concentrates on the storage issue. The following are some of the many problems that exist related to storage of consumer fireworks.

NO OFF-SITE STORAGE IS CURRENTLY AUTHORIZED BY STATE LAW. Nevertheless, the State Fire Marshal's Office (SFMO) has allowed off-site storage anyway, for years, with no oversight, no formal inspections, and no licensing.¹ This has resulted in an unfortunate situation in our case where a fireworks warehouse has been placed a mere 16 feet from our driveway, with the potential of blocking our egress in the event of a fire, or preventing access to our house by an ambulance or other emergency vehicle. The proposed bill to remedy the storage issues (LD 180) does not address many of the specific problems, including setback from a road (private or public) and situating a facility in a residential area. (There is a prohibition against storing consumer fireworks in a residential area, but the term "residential area" is not defined. Equating the term with "residential zone" makes no sense because you can have heavy residential use in any zone, and some towns don't even have zoning ordinances.) These problems have gone on for years in spite of our pleas to the SFMO for help.

NO SETBACK REQUIREMENT FROM A ROAD: Mr. McCarthy of the FMO stated in the 2/17/21 work session for LD 180 that there was a 50' setback requirement from a storage facility to a road. However, the only reference to a road setback in NFPA 1124 chapter 6 (the chapter on storage) is paragraph 6.7.2, which covers storage at *manufacturing facilities* – not distribution facilities². This lack of clarity is one more instance in which the Maine fireworks laws have failed. They have led to our being "boxed in" by fireworks, with the potential of NO EGRESS. Maine's consumer fireworks laws need to be repealed.

CONFLICTING DEFINITION: Even if road setback requirements were clearly stated, we're still faced with conflicting highway definitions. LD 180 references both NFPA 1124 and NFPA 495, which have conflicting highway definitions. (One includes private roads, and one doesn't.) Once again, neither the current law nor the proposed replacement adequately addresses these specific problems.

NO INSPECTIONS FOR STORAGE FACILITIES: As mentioned above, there have been no formal inspections of the Wiscasset off-site fireworks warehouse, and the proposed bill LD 180 makes no attempts to establish requirements for inspections. If a fireworks store requires annual inspections, why not a warehouse many times larger, filled with many times the tonnage of explosives, and even serviced with propane-fired forklifts? If the SFMO lacks the manpower to inspect fireworks storage facilities, then the facilities should not be permitted. LD 1307 would solve that problem.

¹ The Wiscasset activity was finally declared illegal in Superior Court Civil Action Docket no. AP-19-18, in May, 2020. Judge Murphy ruled that the State license for the retail store "does not also authorize the storage of fireworks in a separate location." Because the fireworks in the Wiscasset warehouse "are possessed with the intent to sell, the law requires ...a separate consumer fireworks retail license" for the warehouse location. Despite the ruling, a license for the Wiscasset warehouse has still not been obtained. The warehouse is still operating illegally.

² The paragraph that does cover distribution facilities is 6.7.1, but that makes no mention of road setback requirements.

SFMO STRETCHED TOO THIN: Obviously, inspecting a fireworks facility, whether retail or storage, would be an exacting and time-consuming process. Mistakes are made. For example, for years the Wiscasset retail fireworks store had a Conex box out back, storing fireworks, placed only about 40 feet from the Schooner Inn – an egregious violation – until we brought it to the SFMO’s attention. Even before that, the original placement of the Wiscasset store in 2012 was allowed by the SFMO to be less than 60’ from the neighboring oriental restaurant. Similarly, when SFMO inspector Fuller visited the storage facility in 2015 in response to our inquiries, his statement³ that “the nearest building is not less than 297 feet from the storage building,” he completely ignored residences much closer than ours, specifically a mobile home just 141’ from the warehouse, and another home just 186’ from the warehouse. His focus on our house resulted in an inaccuracy that could’ve been avoided. The same letter from Inspector Fuller incorrectly referenced chapter 6 of NFPA 1124, a chapter that was never adopted. The complexity of all these issues has apparently been a stumbling block for the SFMO—another reason for repealing the consumer fireworks laws.

HOME NO LONGER MORTGAGEABLE: Despite assertions by SFMO during work sessions for LD 180 that consumer fireworks are “not explosives,” and playing down their danger, there is actually enough fear of a large warehouse full of Division 1.4G explosives to have caused our bank to inform us, during a 2015 attempt to refinance, that none of the lenders they work with would touch the loan. To us, this means our property is essentially unsellable since a potential buyer – if one could be found – would have to pay cash. The problem is further demonstrated by the fact that we were unable to find anyone (knowing about the fireworks warehouse) willing to appraise the property. Indeed, since there are no “comparables” (other homes with fireworks warehouses next to their driveway) it is unlikely that any willing appraiser could ever be found.

INFRINGEMENT OF RIGHTS: Here is another complication. Given that a fireworks retail store must have a separation distance of at least 60’ to other buildings, placement of a fireworks store less than 60’ from a *property line* infringes on the rights of the neighbor. For example, Big Al’s Fireworks Outlet is situated only about 10’ from the property line with the neighboring oriental restaurant. How could the restaurant owner then expand his building, or place another structure, within the prohibited area? Placement of Big Al’s Fireworks Store on Route 1 has also caused the cancellation of the neighboring Taste of Orient restaurant’s insurance, followed by skyrocketing premiums. That is another infringement, one that costs his neighbor thousands of dollars. A fireworks vendor should not be profiting at the expense of his neighbors.

MORE DANGERS: On 5/27/2020, a young boy was seen standing alone outside the open door to the fireworks warehouse in Wiscasset. Not only did the minor have unsupervised access to the warehouse, but he was left alone for a period of time before a woman arrived by car and picked him up, locking the door at that time. State law requires that “a person under 21 years of age may not be admitted to the building unless accompanied by a parent or guardian.”⁴ But laws are broken. An incident of this sort can result in serious consequences. LD 1307 would put an end to that risk.

Another danger existing for years, despite our inquiries to the SFMO, is the storage of propane tanks in with the fireworks at the warehouse. A person cannot even walk an empty propane tank into the local hardware store, so storing full ones in a large building full of explosives seems absurd. This is ongoing and LD 180 will not stop it.

This nightmare of problems can be put to rest by passing LD 1307.

³ This statement was in a 2/24/15 letter to our lawyer, Jonathan Pottle.

⁴ 8 MRSA Section 223-A(4)(D).

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We submitted this testimony yesterday, but it appears that it may not have been received, so we're re-sending it.