

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Firestorm Pyrotechnics, Inc. v. Dettelbach

61 F.4th 768 (10th Cir. 2023) · No. 21-9572 · Decided March 1, 2023

SUMMARY

The Tenth Circuit denied Firestorm Pyrotechnics, Inc.’s petition for review of the Bureau of Alcohol, Tobacco, Firearms and Explosives’ revocation of its explosives license. The court held that the agency correctly interpreted and applied the regulatory willfulness standard, which includes plain indifference to or purposeful disregard of a known legal duty. The court also concluded that substantial evidence supported the revocation decision.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Judge Rossman; Judge Carson; Judge Lucero
JURISDICTION	Federal
DECIDED	March 1, 2023
DOCKET	21-9572
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for review of the ATF Director's order revoking Firestorm's federal explosives license.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the court reviews whether the agency acted within its statutory authority and whether its action was arbitrary, capricious, procedurally defective, or unsupported by substantial evidence. The court applies Kisor v. Wilkie when reviewing an agency's interpretation of its own regulation and reviews the agency's factual conclusions for substantial evidence.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Firestorm Pyrotechnics, Inc. v. Steven M. Dettelbach, in his official capacity as Director, Bureau of Alcohol, Tobacco, Firearms and Explosives, Bureau of Alcohol, Tobacco, Firearms and Explosives

TOPICS

judicial review of agency action

administrative law

statutory interpretation

standard of review

agency adjudication

PRACTICE AREAS

administrative law

appellate procedure

explosives licensing

statutory interpretation

QUESTIONS PRESENTED

1. Whether the ATF Director misapplied the regulatory definition of willfulness in revoking Firestorm's explosives license.
2. Whether substantial evidence supported the Director's determination that Firestorm willfully violated the explosives-storage requirements of 27 C.F.R. § 555.29.

HOLDINGS

1. The regulatory definition of willfulness is unambiguous and requires plain indifference to, or purposeful disregard of, a known legal duty; the Director correctly applied that standard to Firestorm's repeated violations.
2. A licensee's efforts to comply with federal regulations do not legally negate a finding that prior violations were willful.
3. Substantial evidence supported the Director's determination that Firestorm willfully violated 27 C.F.R. § 555.29, and one willful violation is sufficient to sustain revocation.

KEY QUOTATIONS

"Accordingly, "willful," as defined in 27 C.F.R. § 771.5 and used in 27 C.F.R. § 771.42, is unambiguous—it "just means what it means."" (61 F.4th at 773)

"What willfulness does require is indifference to, or disregard of, a known legal duty; and willfulness "may be demonstrated by, but does not require, repeat violations of a known legal duty."" (61 F.4th at 776)

"We agree with the ATF. The plain language of 18 U.S.C. § 843(d) permits revocation if the agency finds a willful violation of "any rule or regulation,"" (61 F.4th at 779)

FACTUAL BACKGROUND

Firestorm is a Utah fireworks distribution and display company required to maintain a federal explosives license. ATF inspections in 2012 and 2016 identified repeated deficiencies, including inaccurate inventories, improper storage, recordkeeping failures, and unauthorized transfers; Firestorm repeatedly acknowledged its obligations under federal explosives regulations. A 2018 inspection again found, among other violations, unsecured and improperly stored explosive materials, after which ATF revoked Firestorm's license based on fifteen alleged willful violations.

PROCEDURAL HISTORY

The ATF conducted inspections in 2012, 2016, and 2018 and identified repeated violations of federal explosives regulations. After a 2018 Notice of Revocation, an ALJ held a hearing and concluded that Firestorm had willfully violated federal explosives regulations. The Director of Industry Operations confirmed the revocation, the ATF Director affirmed it in August 2021, and Firestorm petitioned the Tenth Circuit for review.

DISPOSITION

writ_denied

CASES CITED

- Sinclair Wyoming Refining Co. v. EPA, 887 F.3d 986 (10th Cir. 2018)
- Vineland Fireworks Co. v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 544 F.3d 509 (3d Cir. 2008)
- Maier v. EPA, 114 F.3d 1032 (10th Cir. 1997)
- U.S. Magnesium, LLC v. EPA, 690 F.3d 1157 (10th Cir. 2012)
- Kisor v. Wilkie, 139 S. Ct. 2400 (2019)
- CEW Properties v. U.S. Department of Justice, 979 F.3d 1271 (10th Cir. 2020)
- Borchardt Rifle Corp. v. Cook, 684 F.3d 1037 (10th Cir. 2012)
- DCV Imports v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 838 F.3d 914 (7th Cir. 2016)
- Jim's Pawn Shop, Inc. v. Bowers, No. 7:05-cv-142, 2008 WL 11380095 (E.D.N.C. Jan. 2, 2008)
- Blanca Telephone Co. v. FCC, 991 F.3d 1097 (10th Cir. 2021)
- Olenhouse v. Commodity Credit Corp., 42 F.3d 1560 (10th Cir. 1994)
- Wiransane v. Ashcroft, 366 F.3d 889 (10th Cir. 2004)
- U.S. Cellular Telephone of Greater Tulsa, LLC v. City of Broken Arrow, 340 F.3d 1122 (10th Cir. 2003)