



ALEX SINK  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

In The Matter Of:

FLORIDA FIRE MARSHALS AND  
INSPECTORS ASSOCIATION,

Case No.: 89193-07-FM

Petition for Declaratory Statement  
To the Florida Department of  
Financial Services.

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### DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed by the Florida Fire Marshals and Inspectors Association (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on January 24, 2007. Upon consideration thereof, and being duly advised, the Chief Financial Officer, as State Fire Marshal, finds as follows:

1. The Chief Financial Officer, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.

2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's questions are being answered as purely hypothetical. If any of the facts asserted by Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

#### BACKGROUND AND FACTS ASSERTED

4. Petitioner is the Florida Fire Marshals and Inspectors Association, Inc., a Florida non-profit corporation chartered on September 2, 1982. The Petition was signed by Kari Hebrank, as governmental consultant for the Association.

5. This Declaratory Statement was requested pursuant to the provisions of Section 120.565, *Florida Statutes*, and Rule 28.105, *Florida Administrative Code*, which authorize the Department to issue a Declaratory Statement when requested by a substantially affected person, and Section 633.01(6), *Florida Statutes*, which requires the State Fire Marshal to issue declaratory statements relating to the Florida Fire Prevention Code and the Life Safety Code, when requested by a substantially affected person or a local enforcing agency.

6. The subject of the Petition is the applicability of the Chapters 64 and 60, NFPA 1, 2003 edition, as adopted in Rule 69A-60, *Florida Administrative Code*, to Petitioner's set of circumstances. In furtherance of its request, Petitioner asserts that:

A. The Florida Fire Marshals and Inspectors Association is a statewide organization comprised of individuals responsible for fire prevention through building inspection, code enforcement, public education, and fire investigation.

B. Petitioner seeks clarification relating to the outdoor storage of liquid chlorine storage tanks at a swimming pool supply company.

C. Fire department inspectors have different interpretations of the requirements; therefore, enforcement is not consistent throughout the State of Florida.

7. Notice of receipt of the Petition herein was published in Volume 33, Number 13, of the *Florida Administrative Weekly*, on March 30, 2007.

### QUESTIONS

8. A. Is the 50 gallon<sup>1</sup> maximum allowable quantity limit shown in Table 60.2.2.1(b) modified by the provisions contained in Section 64.2, Outdoor Storage, if the provisions of Section 64.2.1 or Section 64.2.2 have been satisfied?

B. If the answer is “yes”, does meeting either the requirements of Section 64.2.1 or Section 64.2.2 allow for an increase above the 500 gallon maximum allowable quantity limit as specified in Table 60.2.2.1(b)?

### DISCUSSION

9. The Department of Financial Services, Division of State Fire Marshal, is authorized pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements, and is required to issue a Declaratory Statement relating to the Code, when requested by a local enforcement agency, pursuant to the provisions of Section 633.01(6), *Florida Statutes*.

10. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt by rule the Florida Fire Prevention Code (hereinafter “FFPC”) which shall contain or incorporate by reference the National Fire Protection Association (hereinafter “NFPA”) Standard 1, “Uniform Fire Prevention Code.” Pursuant thereto, the State Fire Marshal adopted 69A-60, “The Florida Fire Protection Code,” and adopted NFPA 1, 2003 edition, by reference in Rule 69A-60.003, *Florida Administrative Code*.

11. Chapter 60 of NFPA 1, 2003 edition, is entitled, “Hazardous Materials.”

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<sup>1</sup> It is presumed that the Petitioner mistakenly referenced a 500 *gallon* maximum allowable quantity, as Chapter 60 references 50 gallon or 500 pound limitation relative to allowable quantities of liquid corrosive.

12. Subsection 60.2.2, NFPA 1, 2003 edition, entitled “Maximum Allowable Quantities per Control Area”, references Table 60.2.2.1(a) and (b) as controlling. Subsection (b) of Table 60.2.2.1 lists the maximum allowable quantity of liquid corrosive per outdoor control area as 500 pounds or 50 gallons.

13. Chapter 64 of NFPA 1, 2003 edition, is entitled “Corrosive Solids and Liquids.” Section 64.1 provides that the storage, use, and handling of corrosive solids and liquids must comply with the requirements of Chapter 60; amounts exceeding the maximum allowable in control areas set forth in Chapter 60 must comply with the requirements of Chapter 64.

14. The amounts of liquid corrosive set forth above, 500 gallons, greatly exceeds the amounts allowable set forth in Chapter 60; therefore, the requirements of Chapter 64 must be met.

15. Section 64.2, entitled “Outdoor Storage,” provides at Subsection 64.2.1, that, “Outdoor storage of corrosive solids and liquids shall not be within 20 ft (6.1 m) of property lines, streets, alleys, public ways, means of egress to a public way, or buildings not used exclusively for the storage, distribution, or manufacturing of such materials, except as provided in 64.2.2,” which provides that an “unpierced 2-hour fire-resistive wall extending not less than 30 in. (76 cm) above and to the side of the storage area shall be permitted in lieu of the distance specified in 64.2.1.”

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. Petitioner is entitled to the issuance of this Declaratory Statement.
2. The answer is “no”. The maximum quantity of liquid corrosive allowable per outdoor control area is 500 pounds or 50 gallons, with certain exceptions set forth in Chapter 60. Nothing in Subsection 60.2.2, NFPA 1, 2003 edition, references Chapter 64, NFPA 1, 2003 edition; therefore, Chapter 60 is not modified by Chapter 64.

3. The answer is “yes”. The storage, use, and handling of corrosive liquids in amounts exceeding the maximum allowable quantities permitted in control areas set forth in Chapter 60, NFPA 1, 2003 edition, must comply with Chapter 64, NFPA 1, 2003 edition; otherwise, the storage, use, and handling of corrosive liquids in the control area is not permitted.

#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, *Florida Statutes*, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, *Florida Statutes*. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Eric W. Miller  
Deputy Chief Financial Officer

Copies furnished to:

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