



TOM GALLAGHER  
CHIEF FINANCIAL OFFICER  
STATE FIRE MARSHAL  
STATE OF FLORIDA

In re the Matter of

BARRY BAKER,  
Fire Chief, Ormond Beach,  
Petitioner.

Case No.: 82765-05-FM

Petition for Declaratory Statement  
to the Florida Department of  
Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on August 2, 2005, by the Department of Financial Services, hereinafter referred to as the Department, from BARRY BAKER, Fire Chief, Ormond Beach, hereinafter referred to as Petitioner. 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 for Declaratory Statement. 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 question is being answered purely as a hypothetical one. If any of the facts asserted by the Petitioner are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition for Declaratory Statement 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 asserts that Ormond Beach wishes to allow comparable safety features to substitute for undergrounding (placing underground) or mounding-over (placing aboveground, but covering over with earth) the existing fuel storage tanks at the Ormond Beach Municipal Airport.

#### QUESTIONS:

5. Petitioner asks:
- A. Does National Fire Protection Association Standard 407 apply to fuel storage facilities at Ormond Beach Aviation and Sunrise Aviation at the addresses

recited in the petition?

B. Can the authority having jurisdiction require or allow comparable safety measures in place of referenced safety provisions in the code, specifically NFPA 407?

C. If violations are found at either of the above referenced fuel locations, is the state the enforcement arm to correct these violations or will they assist the authority having jurisdiction in enforcement?

## DISCUSSION

6. Section 633.025, Florida Statutes, states in pertinent part:

### **633.025 Minimum firesafety standards.--**

(1) The Florida Fire Prevention Code and the Life Safety Code adopted by the State Fire Marshal, which shall operate in conjunction with the Florida Building Code, shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities....

(2) Pursuant to subsection (1), each municipality, county, and special district with firesafety responsibilities shall enforce the Florida Fire Prevention Code and the Life Safety Code as the minimum firesafety code required by this section.

7. Section 69A-60.002, Florida Administrative Code, "Scope; Description of Florida Fire Prevention Code" provides:

(1) Except as provided in this section, this rule chapter applies to all buildings and structures throughout the state....

8. The following excerpts from NFPA 1, adopted in Rule 69A-60.003, F.A.C., provide for allowance of the use of alternatives at the discretion of the authority having jurisdiction who in this case is the municipal fire department having fire safety

responsibility for the site.

## **1.4 Equivalency.**

### **1.4.1**

Nothing in this code shall be intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, or safety over those prescribed by this code, provided that technical documentation is submitted to the authority having jurisdiction to demonstrate equivalency and the system, method, or device is approved for the intended purpose.

### **1.4.2**

The provisions of this code shall be permitted to be altered at the discretion of the authority having jurisdiction after consideration of special situations, such as topographical conditions of the site, presence or absence of protective features (e.g., barricades, walls, etc.), adequacy of building exits, the nature of the occupancy, proximity to buildings or adjoining property and the construction of such buildings, capacity and construction of proposed storage tanks and the nature of the liquids to be stored, the nature of the process, the degree to which private fire protection is provided, and the capabilities of the local fire department. Such alternate arrangements shall provide protection at least equivalent to that required by this code.

### **1.4.3**

The provisions of this code shall also be permitted to be altered at the discretion of the authority having jurisdiction in cases where other regulations, such as for environmental protection, impose requirements that are not anticipated by this code. Such alternate arrangements shall provide protection at least equivalent to that required by this code.

9. The Florida Fire Prevention Code in Rule 69A-60.005, F.A.C., requires that fuel storage tanks comply with NFPA 407, the *Standard for Aircraft Fuel Servicing*, 2001 edition.

10. Because the scope of NFPA 407 is limited to “during ground fuel servicing of aircraft,” subdivision 4.4.4.1 of NFPA 407 requires that storage tanks comply with NFPA 30, the *Flammable and Combustible Liquids Code*.

11. NFPA 407, 2001 edition, and NFPA 30, 2000 edition, have both been adopted in Rule 69A-60.005, F.A.C., as component documents of the Florida Fire Prevention Code and thus are applicable throughout the State of Florida without adoption at the local level.

12. The 2000 edition of NFPA 30 includes within its scope the storage of flammable and combustible liquids in aboveground and underground tanks.

13. The alternative language quoted above from NFPA 1 is also applicable to all of the codes and standards incorporated by NFPA 1 in subdivision 2.2, which have also been adopted in Section 69A-60.005, F.A.C.

#### DECLARATORY STATEMENT

WHEREFORE, it is the position of the State Fire Marshal that:

14.A. Question A: Does National Fire Protection Association Standard 407 apply to fuel storage facilities at Ormond Beach Aviation and Sunrise Aviation at the addresses recited in the petition?

Response to Question A: Yes. The Florida Fire Prevention Code is adopted under the authority of Sections 633.0215 and 633.025, Florida Statutes. Section 633.0215(1) states that the Florida Fire Prevention Code shall be applicable to all public and private buildings and facilities. The Florida Fire Prevention Code includes Rule

69A-60.002, F.A.C., which provides for its application to all buildings and structures throughout the state. Rule 69A-60.003, F.A.C., further adopts the National Fire Protection Association (NFPA) standard 1 as one of its base documents.

B. Question B: Can the authority having jurisdiction require or allow comparable safety measures in place of referenced safety provisions in the code (specifically NFPA 407)?

Response to Question B: The authority having jurisdiction can allow but not require the use of an alternative. The decision to request that the authority having jurisdiction permit the use of an alternative is that of the property owner. Therefore, in answer to the part of the question as to the authority having jurisdiction having the authority to require compliance with an alternative, the response is no, the authority having jurisdiction does not have the authority to require compliance with an alternative. The authority having jurisdiction can require only the adopted prescriptive provision.

If an alternative is proposed by the owner, it must then be approved by the authority having jurisdiction as an alternative to a prescriptive provision of the Florida Fire Prevention Code. If the authority having jurisdiction approves the use of the alternative, the authority having jurisdiction then enjoys the same enforcement authority over such alternative provision as it has over the prescriptive requirement.

C. Question C: If violations are found at either of the above referenced fuel locations, is the state the enforcement arm to correct these violations or, if not, will the state assist the authority having jurisdiction in enforcement?

Response to Question C: The state is not the primary enforcer of the Florida Fire Prevention Code. Section 633.025(2), Florida Statutes, requires that each municipality, county, and special district with firesafety responsibilities enforce the Florida Fire Prevention Code within each one's jurisdiction. However, the State Fire Marshal, even though not the primary enforcing agent for the Florida Fire Prevention Code may, under appropriate circumstances or if required by statute or rule, provide assistance to any jurisdiction seeking such assistance.

#### 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 at Tallahassee, Leon County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2005.

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Karen Chandler  
Deputy Chief Financial Officer

Copies furnished to:

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