



In The Matter Of:

COLORALL TECHNOLOGIES
INTERNATIONAL, INC.

Case No.: 91600-07-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 (hereinafter “Petition”) from ColorAll Technologies International, Inc. (hereinafter “Petitioner”), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the “Department”), on August 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 party 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 question is being answered as purely hypothetical. 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 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 states that it is a long established national company that, through its franchise network, provides a comprehensive paint and light body repair service to automobile dealerships, car rental companies, government agencies and fleet vehicle operators. Petitioner currently operates in thirty-six states, including Hawaii, and Puerto Rico, and provides full-time employment for hundreds of technicians, managers and other support staff.

5. Petitioner alleges that its spray-application equipment is a state-of-the art HVLP/Airbrush turbine system, utilizing forced and heated air at a low pressure of less than three pounds per square inch at the gun tip. Paint colors are formulated and mixed, on site, in increments of sixty grams. Petitioner's philosophy is to work on the smallest possible repair area less than nine square feet, in conformance with prevailing air quality control standards and fire code regulations.

6. Many of Petitioner's technicians work from trucks, vans or trailers (in cases where a fixed location is not required), containing all necessary equipment and materials which are brought to the designated satellite repair center. The volume of volatile products in each trailer, according to Petitioner, is maintained at less than twenty gallons, to negate the need for hazardous materials transportation permits. Each unit is equipped with material safety data sheets for all products on board, fire extinguishers, and appropriate containment for used product, prior to disposal through its environmental partner, the Safety Kleen Corporation.

7. Petitioner states that Canyon State Environmental (CSE), a Phoenix based company, is also a strategic partner with Petitioner. Each franchisee is contracted with CSE, which provides a multi-faceted service to train and educate technicians in the required OSHA standards, as well as an understanding of, and compliance with, all environmental issues. This attention to detail, according to Petitioner, allows Petitioner to stand above its competition, when it comes to environmental awareness.

8. Having the ability to efficiently repair a vehicle at the commercial operators' premises or off site (near the facility) is of immeasurable benefit to the customer, according to Petitioner. The vehicle is out of service for a fraction of the time that it would be had the vehicle been transported to an off-site body shop. Therefore, the overall cost of repair to the vehicle owner is significantly reduced.

9. This Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Chapter 28.105, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory or rule provision as it applies to the Petitioner's particular set of circumstances.

10. The subject of the Petition is the applicability of NFPA 1.43.1.2.1 to Petitioner's operations.

11. Petitioner contends that the NFPA provision requires use of a spray booth, spray room or spray area. They believe their activity is exempt from the provision because their spray coating activity is conducted in open air. The authority having jurisdiction disagrees. Petitioner requested an appeal locally but was advised that there was no available appeals board in Tampa.

12. Notice of receipt of the Petition herein was published in Volume 33, Number 37 of the *Florida Administrative Weekly*, on September 14, 2007.

QUESTION

13. The Petition poses the following question: Is Petitioner exempt from NFPA 1.43.1.2.1 because its operations are conducted outdoors?

DISCUSSION

14. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements, and is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements relating to the Code, when requested by a substantially affected person or a local enforcing agency.

15. Rule Chapter 69A-60, *Florida Administrative Code*, entitled the “Florida Fire Prevention Code” (hereinafter the “Code”), applies to all buildings and structures throughout the state, including each building and structure located in each municipality, county, and special district with or without firesafety responsibilities, unless otherwise provided.¹ The Code adopts by reference National Fire Protection Association (hereinafter “NFPA”) 1, the “Uniform Fire Code”, Florida, 2003 edition.²

16. Chapter 43 of NFPA 1 addresses, “Spraying, Dipping, and Coating Using Flammable or Combustible Materials.” NFPA 1- 43.1.1 provides that the chapter applies to operations “involving the spray application of flammable and combustible materials” which must comply with NFPA 33, *Standards for Spray Application Using Flammable or Combustible Materials* and Section 43.1.” NFPA 1- 43.1.1.2 provides that “Section 43.1 shall not apply to the

¹ Rule 69A-60.002(1), *Florida Administrative Code*.

² Rule 69A-60.003(1), *Florida Administrative Code*.

following: (1) Spray application processes that are conducted outdoors.” NFPA 33-1.1.4 contains the same language.

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

1. The Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.

2. Question: Is Petitioner exempt from NFPA 1.43.1.2.1 because its operations are conducted outdoors?

Answer: Yes, NFPA 1.43.1.2.1 is not applicable to spray application operations that are conducted outdoors.

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, this ____ day of _____, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

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