



**TOM GALLAGHER**  
CHIEF FINANCIAL OFFICER  
STATE FIRE MARSHAL  
STATE OF FLORIDA

**In re the Matter of**

**James Fletcher, d/b/a  
Perry Fire Extinguisher Company,  
Petitioner**

**Case No.: 83853-05-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 received on October 24, by the Department of Financial Services, hereinafter referred to as the Department, from James Fletcher, Perry Fire Extinguisher Company, 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 states:

A. Petitioner, with appropriate training and certification, was under contract to recharge and service fire extinguisher canisters provided to it by a certain business.

B. The business owned a piece of heavy equipment with a pre-installed/pre-engineered suppression system.

C. Petitioner did not have a written or verbal contract to service, repair, or otherwise maintain that suppression system.

D. Petitioner did not install or sell that suppression system.

E. Petitioner never came in contact with that suppression system.

F. Instead, a canister from the pre-installed/pre-engineered system was removed by employees of the business and provided to Petitioner for recharging.

G. Petitioner recharged the canister with suppressant, replaced its firing squib and returned it to the business.

- H. An employee of the business reconnected the canister to the system.
- I. A subsequent fire destroyed the piece of heavy equipment.
- J. Although the canister discharged the suppressant during the fire, it is alleged that the system itself did not work properly because it had not been properly serviced or maintained.

### **QUESTIONS**

- 5. Petitioner's questions are:
  - A. Did Petitioner, under Section 633.021, Florida Statutes, or Sections 69A-21.301, .302, or .304, have a duty to inform the business of the servicing and/or maintenance requirements of the pre-installed/pre-engineered suppression system absent any contract or agreement between the parties to do so?
  - B. Did Petitioner, under Section 633.021, Florida Statutes, or Sections 69A-21.301, .302, or .304, have a duty to inquire as to the training and/or qualification of the business's employees who provided Petitioner with the canister from the pre-installed/pre-engineered system?

### **DISCUSSION**

- 6. The owner of the system is responsible for the installation, maintenance, recharge, service and inspection of the system.
- 7. The owner is responsible to employ qualified individuals to perform the work they are hired to perform.
- 8. If the Petitioner was not hired to install, maintain, recharge, service or inspect the system the responsibility for proper maintenance of the system cannot be

transferred from the owner to the dealer because the dealer was hired to refill a system canister or cylinder.

9. The statute and code references in question, Section 633.021, Florida Statutes, or Sections 69A-21.301, 69A-21.302, or 69A-21.304, would relate to the work performed by a licensed fire equipment dealer when installing, maintaining, recharging or otherwise perform service on a pre-engineered system.

10. The dealer should have kept records in compliance with the rule to support any work conducted.

### **DECLARATORY STATEMENT**

WHEREFORE, the State Fire Marshal hereby responds to the questions presented as follows:

11.A. Question: Did Petitioner, under Section 633.021, Florida Statutes, or Sections 69A-21.301, .302, or .304, have a duty to inform the business of the servicing and/or maintenance requirements of the pre-installed/pre-engineered suppression system absent any contract or agreement between the parties to do so?

11.A. Response: Although it would have been prudent and in the public interest to inform the business of the servicing and/or maintenance requirements, and while the Division of State Fire Marshal cannot respond as to the duties and responsibilities of a contractual agreement, the only legal requirement is that the person recharging the canister must be properly licensed to do so. If the canister worked properly as alleged by Petitioner, and if Petitioner was properly licensed to recharge it, the Petitioner's legal duties have been fulfilled.

11.B. Question: Did Petitioner, under Section 633.021, Florida Statutes, or Sections 69A-21.301, .302, or .304, have a duty to inquire as to the training and/or qualification of the employees of the business who provided Petitioner with the canister from the pre-installed/pre-engineered system?

11.B. Response: No, for the same reasons stated in the previous response.

### **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 \_\_\_\_\_, 2006.

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Karen Chandler  
Deputy Chief Financial Officer

Copies furnished to:

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