



REPRESENTING  
**ALEX SINK**  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

**FILED**

JUL 22 2009

Docketed by 

In The Matter Of:

PRIORITY FIRE COMPANY, INC.,

Case No.: 104012-09-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") filed by Priority Fire Company, Inc. (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on or about April 24, 2009. 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. The Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Rules 28.105, and 69A-60.007, *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 Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the State Fire Marshal to issue a Declaratory Statement when the Petition relates to the Florida Fire Prevention Code and the Life Safety Code (hereinafter the "Code").

5. Petitioner was contracted by Turner Construction (hereinafter "Turner") to install a fire sprinkler system within a parking garage located at 201 S. Biscayne Boulevard, Miami, Florida. Contract disputes arose between Petitioner and Turner regarding payment and change orders generated in response to deficiencies noted by the City of Miami Fire Department.

6. Petitioner ceased all operations on the premises due to lack of payment, and Turner called in Petitioner's permit inspection to the city of Miami, without Petitioner's knowledge or consent.

7. The City of Miami closed out Petitioner's permit and Turner's master permit without acquiring the Above Ground Material and Test Certificate required by National Fire Protection Association Standard 13 from Petitioner.

8. Petitioner notified the City of Miami of the error and Turner's master permit was reopened.

9. Turner hired another licensed fire protection contractor to complete Petitioner's work on the project. Petitioner was never paid the money it was owed from Turner.

10. If the City of Miami doesn't require an Above Ground Material and Test Certification from Petitioner, Petitioner will most likely not be paid.

11. Receipt of the Petition herein was published in Volume 35, Number 19 of the *Florida Administrative Weekly*, on May 15, 2009.

### QUESTIONS

12. The Petition poses the following questions:

A. Who is considered the installing contractor; the original licensed fire protection contractor who performed work on the fire sprinkler system, or the licensed fire protection contractor who is willing to accept the liability by certifying work performed by a prior installing contractor?

B. If another contractor can be hired to certify another contractor's work, what legal ramifications are implied with regard to the acceptance of liability for the original installing contractor if the replacement licensed fire protection contractor cannot verify that the insurance company is willing to accept this liability?

C. Is any contractor, fire protection or otherwise, allowed to complete the Above Ground Material and Test Certificate?

D. Is it acceptable for a general contractor to remove and replace the original installing contractor as a means for securing an Above Ground Material and Test Certificate for work performed in accordance with approved fire protection shop drawings and material data sheet?

E. Can a permit be closed out or a certificate of occupancy issued if the authority having jurisdiction does not require or has not issued the Above Ground Material and Test Certificate?

F. What type of extenuating circumstances would allow for the contractor other than the installing contractor to certify work performed on the fire sprinkler system?

G. Do the rules that apply to the Below Ground Material and Test Certificate apply the same way to the Above Ground Material and Test Certificate?

#### DISCUSSION

13. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue declaratory statements. The section provides that, “Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.” Rule 28-105.001, *Florida Administrative Code*, promulgated in furtherance of Section 120.565, *Florida Statutes*, provides that a declaratory statement is “a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.”

14. The Department is required to issue a declaratory statement pursuant to the provisions of Section 633.01(6), *Florida Statutes*, “when requested in writing by any substantially affected person or a local enforcing agency. . . relating to the Florida Fire Prevention Code and the Life Safety Code.”

15. The Florida Fire Prevention Code (hereinafter the “Code”) is adopted by rule of the Department, and the Department has final interpretive authority over its provisions; however, the Code is enforced by local authorities.

16. Section 633.539, *Florida Statutes*, addresses the requirements for installation, inspection, and maintenance of fire protection systems. Only certified contractors can perform the relevant

work. The equipment installed must be listed by a nationally recognized testing laboratory, installed in accordance with the applicable standards of the National Fire Protection Association (hereinafter "NFPA") and the manufacturer's specifications, and guaranteed for a period of one year against defects in material or operations. Operating instructions must be provided with the equipment and the equipment must be inspected, serviced, and maintained in accordance with the manufacturer's maintenance procedures and with applicable NFPA standards.

17. Section 633.539(3), *Florida Statutes*, provides:

For contracts written after June 30, 2005, the contractor who installs the underground piping from the point of service is responsible for completing the installation to the aboveground connection flange, which by definition in this chapter is no more than 1 foot above the finished floor, before completing the Contractor's Material and Test Certificate for Underground Piping document. Aboveground contractors may not complete the Contractor's Material and Test Certificate for Underground Piping document for underground piping or portions thereof which have been installed by others.

18. The 2002 edition of NFPA Standard 13 is adopted by reference in Rule 69A-3.012, *Florida Administrative Code*, as part of the Code. NFPA 13-3.3.21 defines the term sprinkler system as, "an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards. . . .The portion of the sprinkler system aboveground is a network of specially sized or hydraulically designed piping installed in a building, structure, or area, generally overhead and to which sprinklers are attached in a systematic pattern. The valve controlling each system riser is located in the system riser or its supply piping. Each sprinkler system riser includes a device for actuating an alarm when the system is in operation. The system is usually activated by heat from a fire and discharges water over the fire area."

19. Chapter 16 of NFPA 13 addresses fire sprinkler acceptance; it requires the installing contractor to perform all required acceptance tests and complete and sign the appropriate contractor's material and test certificate. The term "installing contractor" is not defined in NFPA

13, Chapter 633, *Florida Statutes*, or Rule Chapter 69A-46, *Florida Administrative Code*; therefore its ordinary everyday meaning as set forth in the dictionary pertains.<sup>1</sup> The term “install” as used in the instant context, is defined in Webster’s Seventh New Collegiate Dictionary as “to set up for use or service.”

20. Installation requirements for automatic sprinkler systems employing water as the extinguishing agent are set forth in Rule 69A-46.040, *Florida Administrative Code*. In addition to the statutory requirement pertaining to underground installation set forth above, the rule provides that “Fire protection system contractors installing an automatic sprinkler system employing water as the extinguishing agent shall supervise and be responsible for the complete system in accordance with the provisions of Section 633.539, F.S.” If separate contractors are used for the underground portion of the system and the aboveground portion of the system, “the Contractor installing the remaining portion shall be responsible for the system from the point of connection to the underground throughout the remainder of the system.” The rule further requires that upon completion of the final installation of the aboveground piping, “the contractor shall conduct the tests and sign and maintain on file the Contractor’s Material and Test Certificate for Aboveground Piping as specified in NFPA 13, as adopted in Rule 69A-46.035, F.A.C.” Furthermore, failure to complete and maintain the certificates “shall be grounds for disciplinary action as violations of Section 633.539, F.S.”

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

Question A. Who is considered the installing contractor; the original licensed fire protection contractor who performed work on the fire sprinkler system, or the licensed fire protection

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<sup>1</sup> *Zold v. Zold*, 911 So.2d, 1222 (Fla. 2005).

contractor who is willing to accept the liability by certifying work performed by a prior installing contractor?

Answer: Based on the facts set forth in the Petition, the original licensed fire protection contractor who performed work on the fire sprinkler system would be considered an installing contractor. Additionally, the contractor who performed work to complete the installation would also be considered an installing contractor.

Question B: If another contractor can be hired to certify another contractor's work, what legal ramifications are implied with regard to the acceptance of liability for the original installing contractor if the replacement licensed fire protection contractor cannot verify that the insurance company is willing to accept this liability?

Answer: Based on the facts set forth in the Petition, this question cannot be answered because it is a question of general applicability, and not one that calls for an interpretation of the Department's existing statutes and rules as applied to the Petitioner's particular set of circumstances.

Question C. Is any contractor, fire protection or otherwise, allowed to complete the Above Ground Material and Test Certificate?

Answer: No, only an installing contractor, certified pursuant to Section 633.539, *Florida Statute*, can complete the Above Ground Material and Test Certificate.

Question D: Is it acceptable for a general contractor to remove and replace the original installing contractor as a means for securing an Above Ground Material and Test Certificate for work performed in accordance with approved fire protection shop drawings and material data sheet?

Answer: Based on the facts set forth in the Petition, this question cannot be answered because it is one of generation applicability, asks the department to determine the appropriateness of the conduct of another person, and does not call for an interpretation of the Department's existing statutes and rules as applied to the Petitioner's particular set of circumstances.

Question E: Can a permit be closed out or a certificate of occupancy be issued if the authority having jurisdiction does not require or has not issued the Above Ground Material and Test Certificate?

Answer: Based on the facts set forth in the Petition, this question cannot be answered because it does not call for an interpretation of the Department's existing statutes and rules as applied to the Petitioner's particular set of circumstances.

Question F: What type of extenuating circumstances would allow for the contractor other than the installing contractor to certify work performed on the fire sprinkler system?

Answer: Based on the facts set forth in the Petition, this question cannot be answered because it is general in nature and does not call for an interpretation of the Department's existing statutes and rules as applied to the Petitioner's particular set of circumstances.

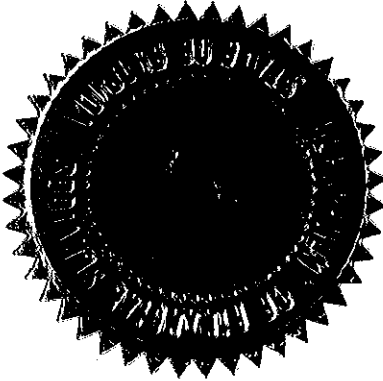
Question G: Do the rules that apply to the Below Ground Material and Test Certificate apply the same way to the Above Ground Material and Test Certificate?

Answer: Based on the facts set forth in the Petition, this question cannot be answered because it is general in nature and does not call for an interpretation of the Department's existing statutes and rules as applied to the Petitioner's particular set of circumstances.

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. Review proceedings must be instituted by filing a petition or notice of appeal with Tracey Beal, Agency Clerk, Florida Department of Financial Services, 200 E. Gaines Street, Tallahassee, Florida, 32399-0390, within thirty days of rendition of this Declaratory Statement. A copy of the notice of petition must also be filed with the appropriate district court of appeal.

ENTERED in the City of Tallahassee, Leon County, Florida, on July 22, 2009.



A handwritten signature in black ink, appearing to read "Brian London", is written over a horizontal line.

Brian London  
Deputy Chief Financial Officer

Copies furnished to:

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