



ALEX SINK  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

In The Matter Of:

SPRING HILL FIRE RESCUE

Case No.: 88055-07-FM

Petition for Declaratory Statement  
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DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed on behalf of Spring Hill Fire Rescue (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on October 25, 2006. 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 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. The Petitioner is Spring Hill Fire Rescue, located in Spring Hill, Florida. The Petition is signed by William Davies, who was the acting Fire Chief at the time the Petition was filed, and was charged with enforcement of the statute and rules.

5. This Declaratory Statement was requested pursuant to the provisions of 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 (“the Code”), when requested by a local enforcing agency.

6. The subject of the Petition is the applicability of the Code, particularly Chapter 65, and NFPA 1124, Sec. 6.7.2.2. as referenced and adopted therein, and NFPA 30/1124 and Chapter 3.3.2.4, Definitions, to the Petitioner’s set of circumstances. In furtherance of its request, the Petitioner asserts that:

A. Petitioner received an application for a permit to sell fireworks in a vacant lot situated next door to a gasoline convenience station, which sells auto parts, and repairs automobile bodies. The property is located at 2107 Commercial Way, Spring Hill, Florida.

B. The fireworks will be sold from an open tent within 300 feet of an above ground 1,000 gallon LPG bulk storage tank used to transfer gas into smaller (portable twenty and thirty-five gallon) tanks.

7. Notice of receipt of the Petition herein was published in Volume 32, Number 46 of the *Florida Administrative Weekly*, on November 17, 2006.

#### QUESTION

8. Is the installation of a temporary tent to sell aerial launched fireworks within three hundred feet of an above-ground 1,000 gallon LPG tank a hazardous condition based upon the requirement of storage in general location to bulk storage of LPG [as set forth in the above rules]?

#### 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. The Florida Legislature directed the State Fire Marshal to adopt the Code by rule to contain or incorporate by reference all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures and facilities, and the enforcement of such firesafety laws and rules. The State Fire Marshal responded by adopting Rule 60A-60, *Florida Administrative Code*, which adopts by reference *National Fire Protection Association 1* (hereinafter “NFPA 1”), the “Uniform Fire Code,” 2003 edition.

11. Chapter 65 of NFPA 1, is entitled, “Explosives, Fireworks, and Model Rocketry.” Section 65.11 thereof, entitled, “Sale, Handling, and Storage of Consumer Fireworks,” states that the subject matter must comply with NFPA 1124 and Section 65.11, and specifically includes tents.<sup>1</sup>

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<sup>1</sup> NFPA 1, Paragraphs 65.11.7.3.1 and 65.11.7.3.2 and NFPA 1124 contain identical language.

12. NFPA 1124, paragraph 7.7.3.1, prohibits the location of a consumer fireworks retail sales facility within fifty (50) feet of a motor vehicle fuel-dispensing station dispenser, a retail propane-dispensing station dispenser, an aboveground storage tank for flammable or combustible liquid, flammable gas, or flammable liquefied gas, or a compressed natural gas dispensing facility. NFPA 1124, paragraph 7.7.3.2 prohibits the location of a consumer fireworks retail sales and storage facility within three hundred (300) feet of an aboveground bulk storage or bulk dispensing area for flammable or combustible liquid, flammable gas or flammable liquefied gas.<sup>2</sup>

13. The answer to the Petitioner's question hinges upon whether the above ground 1,000 gallon LPG tank constitutes an aboveground bulk storage or bulk dispensing area for flammable or combustible liquid, flammable gas or flammable liquefied gas, which cannot be located within *300 feet* of a consumer fireworks retail sales or storage area, or instead, an above ground storage tank for flammable or combustible liquid, flammable gas, or flammable liquefied gas, which cannot be located within *50 feet* of a consumer fireworks retail sales facility. The distinguishing words are "aboveground storage tank," and "aboveground bulk storage or bulk dispensing area." The difference between the term "tank" and the phrase "bulk storage or bulk dispensing area" is determinative of Petitioner's question.

14. Chapter 3 of NFPA 1, states that the definitions contained in the chapter apply to the terms used in the code, and where a term is not defined, common usage of the term applies. The Petition references definitions at paragraph 3.3.2.4 in NFPA 30/1124. NFPA 1124 does not contain

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<sup>2</sup> NFPA 1124, Paragraphs 6.7.2.1 and 6.7.2.2, cited in the Petition, relate to consumer fireworks storage or work buildings. The paragraphs contain the same requirements as those cited above, but do not apply to the storage of consumer fireworks at consumer fireworks retail sales facilities and stores. See Paragraphs 1.3.2.3.1 and 1.3.2.3.2 for explanation.

that particular paragraph, nor does NFPA 30.<sup>3</sup> The phrase “aboveground storage tank” is defined at NFPA 1, section 3.3.199.1 as “a horizontal or vertical tank that is listed and intended for fixed installation, without backfill, above or below grade and is used within the scope of its approval listing.” Neither NFPA 1 or NFPA 1124 define the phrase “aboveground bulk storage or bulk dispensing area.” The terms “bulk,” “bulk storage,” “bulk dispensing,” “bulk dispensing area,” or “area” are likewise not defined. However, *Webster’s II*, defines the term “area” as, “[A] flat piece of ground or open space.”<sup>4</sup> The term “bulk” is defined as “great size, mass or volume.”<sup>5</sup> Since the relevant Code provisions do not address tank volumes, mass, or size, the distinction necessarily relates to a place where a number of tanks or other storage containers are kept. The LP Gas Code, NFPA 58, 2001 edition, adopted in the Code, defines the phrase “bulk plant” as a “facility, the primary purpose of which is the storage and distribution of LP Gas, that receives LP Gas by cargo tank vehicle, railroad tank car, or piping, distributing this gas by portable container delivery, by cargo tank vehicles, or through gas piping.” The phrase, “dispensing station” is defined as “fixed equipment in which LP Gas is stored and dispensed into portable containers.”

15. The foregoing analysis is consistent with the understanding of staff liaison for the NFPA, who stated that “[T]he intended application for the separation distances in paragraph 7.7.3.1 was to service station or other similar consumer dispensing operations. . . . The separation distance found in paragraph 7.7.3.2 is greater . . . because this paragraph is applicable to bulk storage and bulk dispensing. The term bulk is intended to imply large capacity storage and dispensing of the type that

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<sup>3</sup> NFPA 30, paragraph 1.6.4.3.8, defines the term storage tank as “[A]ny vessel having a liquid capacity that exceeds 60 gal, . . . is intended for fixed installation and is not used for processing.” The purpose of NFPA 30 is to provide reasonable requirements for the safe storage and handling of flammable and combustible liquids, not the separation distance from retail fireworks sales, and NFPA 30 is not referenced in 1124. Therefore, the definition is of limited guidance in this inquiry.

<sup>4</sup> *Webster’s II New Riverside University Dictionary*, p.123(1984, 1988, Houghton Mifflin Company).

<sup>5</sup> *Id.* at p. 207.

occurs within an industrial facility (storage terminal, tank farm, truck or rail loading and offloading) and not to the consumer dispensing area.”

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

1. As a local enforcement agency, the Petitioner is entitled to the issuance of this Declaratory Statement pursuant to the provisions of Section 633.01(6), *Florida Statutes*.

2. The installation of a temporary tent to sell aerial launched fireworks within three hundred feet of an above-ground 1,000 gallon LPG tank as described in the Petition is not a hazardous condition based upon the requirement of storage in general location to bulk storage of LPG as set forth above. However, the above-described tank *is* subject to the 50 foot restriction set forth in NFPA 1, paragraph 7.7.3.1.

#### 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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