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File #

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BUILDING COMMISSION**

DS 2012-038

Company: Pinch A Penny, Inc.
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Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

2010 Florida Building Code, Existing Building
Portions of Chapters 2, 4, 5 and 6

Background:

Pinch A Penny, Inc. is the franchisor of Florida's largest retail swimming pool and spa supply system. Of its 211 operating retail locations, more than 50% of its franchisee owners offer residential pool service repairs and installation of equipment (pumps, motors, filters, etc.). As the Franchisor and a leader in the pool and spa industry, Pinch A Penny, Inc. is seeking clarification on certain sections of the 2010 Florida Building Code, Existing Building, to ensure that its franchisee owners, whom are performing such work, are doing so in compliance with the intent of the new Code, and, further, to seek a uniform interpretation so that the work being performed by all Swimming Pool and Spa Contractors licensed under Chapter 489, F.S., is being uniformly interpreted and implemented to the consumer. Petitioner seeks these clarifications as a "substantially affected person" under the procedures set forth in Section 553.775, F.S. (2011).

Specifically, there are several definitions, scopes and applications set forth in Chapters 2, 4, 5 and 6 of the 2010 Florida Building Code, Existing Building, that require clarification as are more specifically outlined below.

Section 202 – General Definitions:

Alteration. Any construction or renovation to an existing structure other than a repair or addition. (emphasis added) Alterations are classified as Level 1, Level 2, and Level 3.

Repair. The patching, restoration and/or minor replacement of materials, elements, components, equipment and/or fixtures for the purposes of maintaining such materials, elements, components, equipment and/or fixtures in good or sound condition. (emphasis added)

Chapter 4 – Classification of Work

Section 402 Repairs

402.1 Scope. *Repairs*, as defined in Chapter 2, include the patching or restoration or replacement of damaged materials, elements, equipment or fixtures for the purpose of maintaining such components in good or sound condition with respect to existing loads or performance requirements.

402.2 Application. *Repairs* shall comply with the provisions of Chapter 5.

402.3 Related work. Work on nondamaged components that is necessary for the required *repair* of damaged components shall be considered part of the *repair* and shall not be subject to the provisions of Chapter 6,7,8 9 or 10. (emphasis added)

Section 403

Alteration—Level 1

403.1 Scope. Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment or fixtures that serve the same purpose. Level 1 alterations shall not include any removal, replacement or covering of existing materials, elements, equipment or fixtures undertaken for purpose of repair as defined in Chapter 2 and described in Section 402. (emphasis added)

403.2 Application. Level 1 *alterations* shall comply with the provisions of Chapter 6.

Chapter 5 – Repairs

Section 502

Building Elements and Materials

502.2 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs and alterations, provided no dangerous or unsafe condition, as defined in Chapter 2, is created. (emphasis added)

Chapter 6 - Alterations – Level 1
Section 613 – Residential Swimming Pools and Spas

613.2 Pool or Spa Suction Fittings. Pool or spa circulation systems or components undergoing alteration shall comply with Section 6, Existing Pools and Spas, of the ANSI/APSP-7 Standard references in Section R4101.6.1 of the *Florida Building Code, Residential*.

Swimming Pool Industry “Common Practice” definitions:

Pump: A complete piece of equipment that is used to move water. Pumps may be used in conjunction with filters or by themselves for fountains, therapy jets, or for other non-filtration purposes.

Motor: An integral component part of a pump that is used to operate the pump. Without such part, the pump is no longer a pump.

Question

Is the replacement of a broken/non-working pump-motor to render a pump operational again (when there is no change in horsepower/speed), a “repair” as defined in Sections 202 and 402.1 of the 2010 Florida Building Code, Existing Building; and by performing such repair no dangerous or unsafe condition is created (as outlined in Section 502.2), thereby excluding compliance with the provisions of Chapters 6, 7, 8, 9 or 10?

Summary

Petitioner respectfully believes the answer to the question outlined above is "YES." If the answer is "NO," then, by default, repairing a pump by replacing a broken motor would be a Level 1 Alteration as outlined in Section 403.1 and such repair would require compliance of Chapters 6, 7, 8, 9, and 10. Because there are three new 2010 Florida Building Codes that affect the residential swimming pool industry (Residential, Existing Building and Energy Conservation), which codes are additionally affected by various national ANSI/APSP standards, it is imperative that a clear and concise interpretation by the Commission be made as to the intent and application of the codes. Petitioner fully understands the extensive work of the Commission in developing the new codes for greater safety and improvement for the consumer, and likewise, it would seem reasonable to ensure that the codes are uniformly interpreted. Section 553.775(1), Florida Statutes (2011), states: "It is the intent of the Legislature that the Florida Building Code be interpreted by building officials, local enforcement agencies, and the commission in a manner that protects the public safety, health, and welfare at the most reasonable cost to the consumer by ensuring uniform interpretations throughout the state and by providing processes for resolving disputes regarding interpretations of the Florida Building Code which are just and expeditious."

Respectfully submitted,

PINCH A PENNY, INC.

By: _____
John C. Thomas
President/CEO