

Summary of Issue:

Petitioner states that he is the technical advisor for a homeowners association, and asserts that some number of homes in the community constructed between 2019 and 2023 experienced "premature failures of swimming pool auto-fill valves," and that "toilet fill valves were failing and leaking." Petitioner further asserts that "[t]he cause of the fluctuations and of high pressures on the closed loop plumbing systems within the one hundred homes was in fact no thermal expansion control," and that "[t]he industry standard of maximum 80 psi regulation was overlooked by Collier County Inspections, the Builder, and the contracted Plumber."

Relevant Provisions:

Rule 28-105.001, Florida Administrative Code, states that "[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." (emphasis provided)

Petitioner's Question:

Petitioner presents the following questions:

1. Since the builder and plumber allowed the substitution of a thermal expansion tank required by the manufacturer to be substituted, using a relief valve, is this Code applicable in this situation?
2. Since the builder and plumber allowed the use of a pressure relief valve rated at 125 psi to be used as a substitution of a thermal expansion tank, is this Code section applicable in this situation?
3. Does the wording "a means for controlling increased pressure" [in Code Section P2903.4] allow for any means? As an example, could you use a hot water bottle plumbed into the system? Could you use a pressure cooker blow off valve to control pressure? Could you use a non-rated ASME Device to control increased pressure?
4. Can a Shutoff Valve be installed between any relief valve and the hot water heating device? [O]r worded differently, Can a relief valve be installed in front (upstream) of a shutoff valve and the hot water heater to control pressure created by the thermal expansion?

Staff's Suggested Answer:

Petitioner's first and second questions explicitly ask the Commission to opine on the past actions of other individuals. Pursuant to Rule 28-105.001, F.A.C., "[a] declaratory statement is not the appropriate means for determining the conduct of another person." Furthermore, the courts have stated that "a petition for a declaratory statement which seeks approval or disapproval of conduct which has already occurred is properly denied." *Novick v. Dep't of Health*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002) (citing *Chiles v. Dep't of State, Div. of Elections*, 711 So. 2d 151 (Fla. 1st

DCA 1998). The Commission is thus unable to render an opinion about the applicability of the Florida Building Code to the past actions of other individuals.

Petitioner's third and fourth questions face the same impediment, insofar as they appear to be presented in the context of critiquing the alleged deficiencies in the already-completed plumbing work described, rather than as requests for guidance for a prospective project. Furthermore, Petitioner states plainly that he feels the Florida Building Code itself should be changed to address the situations described in his petition:

This Code needs to be clarified by Definition and approved installation locations since this is a State Code. Local jurisdictions may apply unsafe procedures or allow procedures that conflict with appliance manufacturers instructions. The State of Florida would have no idea these jury rigged procedures were put in place by possibly retired plumbers in the Inspection Divisions who want to make it easier for the plumbing industry. The Florida Building Commission would have no control over this type of scenario since no one would ever report it. ... Plumbers and Contractors consistently take short cuts and when challenged they show the Florida Building Code is vague concerning 'How to control thermal expansion[.]' The Florida Building Commission needs to expand and create clarity in this situation." (original emphasis omitted)

The Commission welcomes and encourages public and stakeholder participation in the rulemaking process associated with developing and refining the Florida Building Code. Suggestions for improving the Code must be channeled through the appropriate rulemaking processes, however – the Commission cannot use declaratory statements in lieu of the procedures required by chapters 120 and 553, Florida Statutes, to effect changes to the Florida Building Code. *See Chiles v. Dep't of State, Div. of Elections*, 711 So. 2d 151,154 (Fla. 1st DCA 1998) ("A declaratory statement may not be employed in place of a rule to require compliance with general agency policy.")

Accordingly, for all of the foregoing reasons, the Commission declines to answer the petition.