

Department of Environment And Conservation

Petition for Declaratory Order

Notice of Hearing
(As required Under T.C.A. §4-5-224)

1. Petitioners' Name: Wright Brothers Construction Company, Inc.
2. Petitioner's Attorneys: William L. Penny
Address: Stites & Harbison, PLLC
Suite 800
401 Commerce Street
Nashville, TN 37219

Telephone Number: (615) 244-5200

3. Background:

On April 4, 2006, the Department of Environment Conservation received an application from the Tennessee Department of Transportation ("TDOT") for an Aquatic Resource Alteration Permit ("ARAP"). A public hearing was held on January 16, 2007. On March 28, 2007, the Department of Environment and Conservation issued a § 401 Water Quality Certification, permit No. NRS 06.094 – NRS 06.094H to TDOT, authorizing work at SR-28 (US127) Sawmill Ridge Road, North of Jamestown (Site Lat. 36.4918° Long. -84.9685°), Fentress County.

Wright Brothers Construction Company, Inc., TDOT's construction contractor, filed a Petition for Declaratory Order seeking a determination by the Board that five (5) of the waters of the state, identified as intermittent streams in the permits, are not "streams" within the definition of Tenn. Admin. Comp. Ch. 1200-4-7-.03(34), but are wet weather conveyances, as defined at Tenn. Admin. Comp. Ch. 1200-4-7-.03(40). The water bodies under review include Stream A (NRS06.094B), an unnamed tributary to Wolf River, Station 105 +65 Rt to Station 110 +50 Rt, Lat 36.4883° Long. -84.9667°; Stream B (NRS06.094C), unnamed tributary to Stream 1, Station 119 +60 Rt to Station 121 +90 Lt, Lat. 36.4904° Long. -84.9688°; Stream C (NRS06.094D), unnamed tributary to Stream 1, Station 121+60 Lt to Station 124 +20 Lt, Lat. 36.4910° Long. -84.9696°; Stream D (NRS06.094E), unnamed tributary to Stream 1, Station 123 +80 Rt to Station 125 +90 Lt, Lat 36.4918° Long. -84.9685°; and Stream E (NRS06.094G), unnamed tributary to groundwater, Station 157 +95 Lt to 162 +03, Lt, Lat. 36.5010° Long. -84.9675°.

4. Summary of the relief requested:

The Petitioner has requested a ruling from the Water Quality Control Board ("Board") declaring that a stream determination made pursuant to Board rules Tenn. Admin. Comp. Ch. 1200-4-7-.03(34) and (40) requires a finding that a channel be geologically below the "groundwater table," and that the water body must be capable of supporting classified uses for fish and aquatic life pursuant to Tenn. Admin. Comp. Ch. 1200-4-3. The Petitioner has also requested a ruling from the Board declaring that the five (5) water bodies determined by the Division of Water Pollution Control are not streams within the meaning of Tenn. Comp. Ch. 1200-4-7-.03(34).

The Board will convene a contested case hearing in this matter on July 15, 2008.

If you are interested in intervening or participating in this case in any way or think that you may be affected by the possible outcome of this case, you must file a Petition to Intervene, stating your specific interest(s) in the case and your legal position/argument regarding those interests.

Administrative Procedures

Docket Number:

04.30-098396A

Your petition must be filed with:

Honorable Lynn M. England
Tennessee Secretary of State
Administrative Procedures Division
312 8th Avenue, North
8th Floor, William R. Snodgrass Bldg.
Nashville, TN 37243

Copies must also go to:

Patrick N. Parker and
Emily H. Yao
Tennessee Dept. of Environment & Conservation
Office of General Counsel
20th Floor L&C Tower
401 Church Street
Nashville, TN 37243-1548