

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

PETITION FOR DECLARATORY ORDER NOTICE OF HEARING

(As required under Tenn. Code Ann. § 4-5-224)

1. **Petitioner's Name:** Greg Davis
2. **Petitioner's Attorneys:** Sharon O. Jacobs
Shea T. Hasenauer
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, TN 37219
(615) 238-6300
3. **Intervenors:** 2121 Abbott Martin Partners, LLC, and
Bradford Realty Partners
4. **Intervenors' Attorneys:** William L. Penny
Garry K. Grooms
Burr and Forman LLP
222 Second Avenue South, Suite 2000
Nashville, TN 37201
(615) 724-3200
5. **Background:**

Petitioner filed a Petition for Declaratory Order to challenge the denial of funds from the Drycleaner Environmental Response Fund and to challenge a Brownfield Voluntary Agreement for the drycleaner site. The Petitioner is a former employee of 3-D Corporation, Inc. d/b/a Town & Country Cleaners ("Town & Country"). Town & Country is enrolled in the Drycleaners Environmental Response Program ("DCERP"); Petitioner applied for Town & Country's initial entry into the program. On June 15, 2018, 2121 Abbott Martin Partners, LLC and Bradford Realty Partners ("Intervenors") entered into a Brownfield Voluntary Agreement ("BVA") with the Tennessee Department of Environment and Conservation ("TDEC") to redevelop a site that includes the former Town & Country site. On August 24, 2018, Intervenors filed a federal CERCLA contribution claim in the United States District Court for the Middle District of Tennessee against Petitioner, among others. On June 27, 2019, Petitioner submitted a Notice of Third Party Claim to DCERP requesting the DCERP Fund indemnify Petitioner for all costs, including defense costs, related to the federal lawsuit. On July 30, 2019, the Department denied the reimbursement request.

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6. Summary of the relief requested:

The Petitioner seeks a declaratory ruling pursuant to Tennessee Code Annotated section 4-5-223 to determine the following:

- (1) Whether the Commissioner exceeded his delegated authority when TDEC failed to provide notice to Petitioner or Town & Country of the BVA or provide an opportunity for public input;
- (2) Whether the Commissioner exceeded his delegated authority when TDEC failed to require the Intervenors to provide notice to Petitioner or provide him an opportunity to submit public input;
- (3) Whether the Commissioner exceeded his delegated authority when DCERP failed to approve and pay the costs Petitioner has incurred and will incur related to the federal lawsuit;
- (4) Whether the Commissioner exceeded his delegated authority when TDEC failed to include apportionment of liability or reference to Town & Country's enrollment in the DCERP in the BVA;
- (5) Whether the BVA is invalid for failing to comply with Tennessee Code Annotated section 68-217-107(a); and
- (6) Whether the DCERP should pay all costs Petitioner undertakes in relation to the CERCLA lawsuit under Tennessee Code Annotated section 68-217-117(b).

7. The statutes and regulations at issue:

- (1) Brownfield Voluntary Agreements are governed by Tennessee Code Annotated section 68-212-224.
- (2) The Drycleaner's Environmental Response Program is governed by the Tennessee Drycleaner's Environmental Response Act, Tenn. Code Ann. §§ 68-217-101 to -113. Specifically, the authority to seek reimbursement from the fund is found in Tennessee Code Annotated section 68-217-107, and Tennessee Code Annotated section 68-217-111 discusses preemption and liability for drycleaning sites enrolled in the DCERP.
- (3) The DCERP regulations can be found at Tennessee Comprehensive Regulations and Rules Chapter 0400-15-03. DCERP fund eligibility, procedures, and payments are governed by Tennessee Comprehensive Regulations and Rules 0400-15-03-.08.

8. Hearing:

A contested case hearing will be conducted on behalf of the Commissioner by Administrative Law Judge D. Kim Summers at a date and time to be determined.

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.

Your petition must be filed with:

Tennessee Secretary of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
William R. Snodgrass Tennessee Tower, 8th Floor
Nashville, TN 37243

Copies must also go to:

Ellery R. Richardson
Tennessee Dept. of Environment and Conservation
Office of General Counsel
William R. Snodgrass Tennessee Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

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