

IN RE: Environmental Scientific Corp./John Travassos.
Freshwater Wetlands Application No. 90-0746F
(Tiverton Research and Development Park)

DECLARATORY RULING

TRAVEL: The Applicant (Petitioner) in this matter has standing to petition for Declaratory Rulemaking, although it has not, strictly speaking, done so in the manner prescribed by Rule 18.00 of this Department's Rules of Practice and Procedure, entitled, "Petition for Declaratory Ruling" which controls. As is its right, the Division of Freshwater Wetlands objected to the Applicant's February 17, 1992 petition in a memorandum dated March 11, 1992.

PETITION: The Petitioner requests a declaratory ruling regarding the interpretation of Section 5.03 of the Department's Freshwater Wetlands Regulations. It asserts, in this regard, "that the Department may not, under the guise of Section 5.03(c) of the Wetlands Regulations, deem a proposed wetlands alteration 'unnecessary,' simply due to the existence of upland property in the general vicinity of the wetland, regardless of the availability utilization or ownership of that property." (February 17 Petition, page 3)

Arguments in support of the Petitioner's assertion were articulated in its February 17 Petition and rebutted by the Division in its filing of March 11. Those arguments speak for themselves, and will not be characterized or summarized herein.

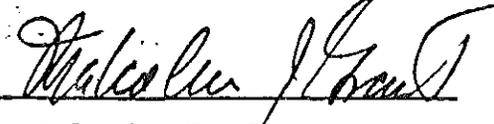
RULED that the Division of Freshwater Wetlands may find a proposed wetlands alteration "unnecessary," for any of a variety of reasons under the Freshwater Wetlands Act, and Regulations adopted pursuant thereto, most particularly, Rule 5.03, subsections (c)(1) through (7). These reasons may include, among others, the existence of upland alternatives to a proposed alteration.

Whether such alternatives, in fact, exist; are reasonable, practicable, feasible, suitable, or have any of the other characteristics which the Petitioner asserts do not apply to its application, can only be determined on the basis of competent evidence and testimony presented at the administrative hearing available to an applicant aggrieved by the Division of Freshwater Wetland's denial. Such determinations cannot be fairly, or reliably made solely on the basis of legal argument and assertion.

ENTERED AS A DECLARATORY RULING

on March 20, 1992.

BY



Malcolm J. Grant
In His Capacity As
Designated Director

CERTIFICATION

I hereby certify that I caused a true copy of the within Declaratory Ruling to be forwarded to Attorney Dennis H. Esposito, Adler Pollock and Sheehan, 2300 Hospital Trust Tower, Providence, R.I., 02903-2443; to Attorney Michael K. Maran, Two Charles Street, Providence, R.I. 02904-2269; both by regular mail, postage prepaid; and to Attorney Kathleen M. Lanphear by Inter-office mail; all this 23 day of March, 1992.

