

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN RE: Birchwood Realty, Inc.  
AAD No. 93-001/AHA

DECLARATORY RULING

The Town of Richmond has submitted a Petition for Declaratory Judgment requesting a ruling as to the applicability of the various Solid Waste Statutes and Regulations. The town has requested that such a ruling be made prior to the time evidence is presented in the adjudicatory hearing in progress at the Administrative Adjudication Division of the Department of Environmental Management. The Division of Waste Management has filed a Memorandum in support of the Town's Petition. Birchwood Realty, Inc. has represented in its memorandum in support of its objection to the petition that the same issues have been raised and briefed to the hearing officer in Memorandums of Law submitted by the parties. Moreover, Birchwood also represented that it filed a Motion in Limine prior to the time the within Petition was filed, which is also pending with the Hearing Officer. Having reviewed the memorandums submitted by the parties, it is my belief that it is inappropriate to issue a declaratory ruling where, as in this case, the issue was properly raised in an ongoing adjudicatory hearing and is clearly within the jurisdiction of the hearing officer.

As the parties are well aware, this case has a long and tortured history. In an effort to reduce any further delay in bringing this case to a final resolution, the ruling requested by the parties in both the Motion In Limine and the Petition for Declaratory Judgment on which Statutes and Regulations will apply to this application should constitute a Final Agency Decision. Therefore, I hereby direct the Hearing Officer to forward to me, in my capacity as Acting Director for this application his recommended decision as to which statutes and regulations apply so that the issues related to this determination may be reviewed by me immediately. Such review would normally be part of a Final Agency Decision forwarded to me at the conclusion of the hearing. However, in light of the protracted litigation in this case and in an effort to reduce costs and the expenditure of resources I will issue two Final Agency Decisions in this case. The first decision as above directed will determine which statutes and regulations will govern the application. The second decision will determine the merits of the application pursuant to these statutes and regulations. Either or both of these Final Agency Decisions may be reviewed by the Superior Court.

Therefore, the Petition For Declaratory Ruling is dismissed without prejudice.



MALCOLM J. GRANT, in his capacity as ACTING DIRECTOR

CERTIFICATION

I hereby certify that I caused a true copy of the within Declaratory Ruling to be forwarded to Attorney Joseph Baffoni, Hearing Officer, Department of Environmental Management, Administrative Adjudication Division, One Capitol Hill, Third Floor, Providence, RI 02908 and Attorney Claude A. Cote by hand-delivery this \_\_\_\_ day of January, 1994 and to Attorney Christopher Little, 20 Washington Place, Providence, RI 02903 and Attorney Dean N. Temkin, 10 Dorrance Street, Providence, RI 02903 regular mail, postage prepaid mail this 21 day of January, 1994.

