Brownfield/Transitional Renewable Energy Certificates: New Jersey Appellate Court Addresses Challenge to Application Denial

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The Superior Court of New Jersey, Appellate Division ("Court"), considered in a December 29th Opinion an issue under New Jersey's Transition Incentive Program. *See Matter of Kober Solar Auto Parts, Inc.*, No. A-0424-24, 2025 WL 3749872 (N.J. Super. Ct. App. Div. Dec. 29, 2025).

The Court addressed the New Jersey's Board of Public Utilities ("BPU") denial of the solar developer's application for Transitional Renewable Energy Certificates ("TRECs").

CEP Renewables, LLC ("CEP") "develops, engineers, and constructs utility scale solar plants across North America." The company specializes in repurposing land classified as landfills or brownfields and developing the land into solar sites.

The question considered was whether the BPU acted arbitrarily, capriciously, or unreasonably in denying CEP's application for TREC eligibility under N.J.S.A 48:3-87(t).

CEP purchased the Kober Solar Farm ("Kober Site"). The company sought to be certified as a brownfield to be eligible to receive TRECs for a proposed solar project. The Kober Site has been operating as an auto junkyard and salvage yard since the 1950's. CEP registered with the Department of Environmental Protection ("DEP") as an auto recycler within the DEP's Solid Waste Program.

At the time of the application for TREC eligibility, the Kober Site had been tax assessed as farmland. Further, the prior owner had used a portion for the property as a "farm for animal feed."

CEP argued that the portion of the property used for agricultural purposes did not accurately reflect the "widespread industrial use of the junkyard auto recycling business." The company also noted that the "remaining soils do not support a sustainable agricultural crop due to the contamination and metal debris at the site."

The BPU received CEP's application for certification under New Jersey's Transition Incentive ("TI") Program on December 10, 2021. It was forwarded to the DEP. The DEP determined that the Kober Site was farmland not a brownfield.

The DEP based this determination on historical and aerial imagery. The land had been devoted to both agriculture and horticulture and taxed as such. The DEP consulted the State Agriculture Development

Committee and learned part of the property had been targeted for “Harmony’s Farmland Preservation Plan” which had been adopted in October of 2021.

The BPU denied CEP’s application on June 27, 2024. The Kober Site’s classification as farmland made it ineligible for TRECs under subsection (t). The BPU found that farmland controls. It determined the Kober Site should be evaluated under N.J.S.A 48:3-87(s). Subsection (s) takes into consideration property’s farmland status and imposes additional (and more stringent) requirements on solar projects proposed on farmland, even if the property might otherwise qualify as a brownfield under subsection (t).

CEP acknowledge the Kober Site was assessed as farmland for tax purposes. However, it argued the property’s status as a former auto junkyard and salvage yard since the 1950’s warranted classification as a brownfield. CEP claimed the “remaining soils do not support a sustainable agricultural crop due to the contamination and metal debris at the site.”

CEP sought reconsideration by the BPU which was denied.

CEP appealed to the Superior Court of New Jersey, Appellate Division on October 29, 2025. The Court upheld the BPU’s and DEP’s classification of the Kober Site as farmland and the use of subsection (s).

The Court affirmed the BPU’s decision, applying the deferential standard of review applicable to administrative agency determinations. It emphasized that BPU decisions are presumptively valid and will not be overturned unless they are arbitrary, capricious, unreasonable, or contrary to law.

BPU was deemed to have properly interpreted and harmonized subsections (s) and (t) of the Solar Act. Relying heavily on its prior decision in *In re Implementation of L. 2012, c. 24 (Millenium)*, the Court reiterated that farmland-based solar applications must be evaluated under subsection (s) if the property was assessed as farmland during the ten-year lookback period, regardless of whether the site may currently qualify as a brownfield.

The Court rejected CEP’s argument that subsection (t) should apply independently of subsection (s). Allowing an applicant to proceed under subsection (t) to avoid the additional requirements imposed on farmland under subsection (s), the court explained, would frustrate legislative intent, and render portions of the statute superfluous.

A copy of the Opinion can be found here.