

New Jersey Enacts Stringent A-901 Licensing Requirements for Soil and Recycle Fill Providers to Protect Against "Dirty Dirt"

Client Alert

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In an effort to crack down on the unlawful dumping of contaminated soil and debris - often referred to as "dirty dirt" - New Jersey Governor Phil Murphy has signed a new law amending the state's A-901 solid waste licensing law to impose new registration, licensing, and extensive background check requirements on all individuals or businesses providing "soil and fill recycling services." Providers that already have an A-901 license for solid waste services can rely on that existing license for soil and recycled fill. Builders, developers, and homeowners in need of soil or recycled fill will be restricted to using suppliers who have passed a background check and obtained the necessary license from New Jersey's Department of Environmental Protection (DEP).

This amendment to the A-901 law, enacted on January 21, 2020, has its origin in a 2011 State Commission of Investigation report that found the unlawful dumping of contaminated soil and debris under the facade of recycled materials to be a regular practice. The intent is to root out bad actors engaged in soil and fill recycling services by subjecting them to the longstanding and comprehensive regulatory oversight registration program applicable to the solid waste industry.

Under the amended law, "soil and fill recycling services" is defined as "the collection, transportation, processing, brokering, storage, purchase, sale or disposition of soil and fill recyclable material." "Soil and fill recycling services materials" is defined as "non-putrescible aggregate substitutes," such as "broken or crushed brick, block, concrete, or other similar manufactured materials; soil or soil that may contain aggregate substitute or other debris or material, generated from land clearing, excavation, demolition, or redevelopment activities that would otherwise be managed as solid waste, and that may be returned to the economic mainstream in the form of raw materials for further processing or for use as fill material."

"Soil and fill recyclable materials" does not include: (1) Class A recyclable material; (2) Class B recyclable material, that is shipped to a Class B recycling center approved by the DEP for receipt, storage, processing, or transfer; (3)

beneficial use material for which the generator has obtained prior approval from the DEP to transport to an approved and designated destination, and (4) virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay and other mined products.

The amended A-901 law provides a set of **deadlines for complying** with the new registration and licensing requirements, as follows:

- All businesses or persons engaged in providing soil and fill recycling services must register with the DEP by **April 20, 2020** to obtain a temporary license. The DEP will issue a temporary registration, no later than 90 days after the submission of a registration application.
- By **October 17, 2020**, soil and fill recycling service providers must submit a comprehensive registration application seeking a permanent license.

It should also be noted that the amended A-901 law:

- prohibits a person or business from participating in the provision of soil and fill recycling services without a timely registration approval or a license
- prohibits the issuance of a license to anyone that has been debarred from providing services in other states or are otherwise deemed unsuitable, based upon their background checks (e.g. convicted felons)
- provides that the DEP, the Department of Treasury and the Attorney General shall enter into a memorandum of understanding to facilitate the exchange of information between each agency relating to the permitting and licensing process
- further requires the Attorney General to establish a “reciprocal information exchange” with the State of New York for the purposes of exchanging information relevant to the solid waste and soil and fill recycling industries
- expands the scope of the A-901 background requirements to expressly include sales persons, consultants and brokers that are involved in the provision of solid waste and soil and fill recycling services
- imposes criminal and civil penalties for violations and confers authority upon the DEP, local boards of health, and county health departments to conduct inspections of soil and fill recycling facilities to determine compliance with the requirements of the law

It is important that businesses and individuals providing "soil and fill recycling services" take steps to satisfy the temporary registration process by April 20, 2020 and otherwise familiarize themselves with the comprehensive requirements of the amended A-901 law. The changes outlined in this Alert have been long-awaited and we expect that they will be vigorously enforced. For additional information regarding the new registration and licensing requirements for soil and recycle fill providers, please contact the authors of this Alert, **Barbara J. Koonz** and **Daniel Flynn**.

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