



# New Jersey Expands Solid Waste Licensing Regime to Soil and Fill Recyclers

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**Update as of May 2, 2020:** *Through Executive Order 136, Governor Murphy has extended the deadlines applicable to soil and fill recycling registrations and licenses as recited in this blog post by the number of days of the Public Health Emergency declared in Executive Order No. 103 as a result of the COVID-19 pandemic plus an additional 60 days.*

New Jersey continues to crack down on illegal dumping of contaminated soil by increasing regulation of soil and fill recycling businesses. A law signed into effect by Governor Murphy on January 21, 2020, requires soil and fill recycling businesses to go through the A-901 solid waste licensing program, which was adopted many years ago in response to the infiltration of organized crime into the solid waste business, and ensures through an in-depth licensing regime that those engaged in the business of solid waste in New Jersey have the requisite integrity, reliability, expertise and competence.

The A-901 licensing program typically requires that businesses apply for and obtain an A-901 license before operating, but in order to avoid interfering with ongoing business operations, the new law sets out a two stage process to expand the A-901 licensing program to businesses that are already engaged in soil and fill recycling.

- Soil and fill recycling businesses first will need to register with the New Jersey Department of Environmental Protection by April 20, 2020; while the registration form has not yet been made available, the information that will need to be included on the form includes basic information, such as the name of the business and its address, although it is possible that complex issues will arise for certain businesses at this stage based on specific circumstances. Any business that submits the registration form will receive a registration from the State within 90 days. This registration is non-transferable and temporarily authorizes the registered business to continue operating its soil and fill recycling business while the business applies for a soil and fill recycling

license.

- Businesses then will need to submit an application for a soil and fill recycling license, which is akin to an A-901 license. If the business has a soil and fill registration and it submits the license application by October 17, 2020, it may continue operating until it receives a decision on the license, which is likely to take 12 months or more. If the business does not obtain a registration by April 20th, it will need to submit an application and obtain a license before it can operate or continue to operate. As with the registration form, the details of the application have not yet been released, but it is anticipated that the license application will be consistent with the current A-901 license application. The A-901 application is a detailed disclosure form with many questions that cover a wide variety of topics. As explained in our June 25, 2019 blog post titled “[Expanded A-901 Requirements Coming Soon? Sales Persons, Consultants and Soil Recyclers Should Prepare](#)”, it is important to answer all application questions thoroughly and completely, as the State will follow up on any incomplete questions, which could delay issuance of the license.

The soil and fill recycling businesses that must comply with these new requirements include, with certain exceptions, all businesses engaged in the collection, transportation, processing, brokering, storage, purchase, sale or disposition of soil and fill recyclable materials. Soil and fill recyclable materials are defined, in turn and again with certain exceptions, as “non-putrescible aggregate substitute, including, but not limited to, 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 . . . .”

The new law clarifies that the A-901 solid waste licensing program applies to brokers, and provides a new definition of a broker (i.e., a person who for direct or indirect compensation arranges for certain services involving solid waste, hazardous waste, or soil and fill recycling). According to an NJDEP Enforcement Alert from 2014 focusing on solid and hazardous waste: “A broker does not transport solid or hazardous waste and does not assume responsibility for its transport. Examples of brokers include shipping agents and management companies that coordinate cleaning and maintenance services for ships, apartments, condo associations and retail establishments.” This Enforcement Alert shows just how broadly NJDEP is likely to interpret the definition of a broker.

The new law also specifies that consultants are included within the A-901 licensing program if the consultant assists a business engaged in services relating to solid and hazardous waste or soil and fill recycling, unless the consulting services being provided require the consultant to hold another professional license from the State. For instance, a licensed site remediation professional assisting a soil and fill recycling business by conducting soil sampling should not be required to obtain an A-901 license.

These changes increase the burden on new applicants for soil and fill recycling licenses, and businesses that already have an A-901 license should prepare to include information regarding associated brokers and consultants in their next annual disclosure update. The New Jersey Department of Environmental Protection is likely to update its rules and regulations regarding solid waste licensing as a result of the new legislation; these regulatory updates, along with the forthcoming registration form and application will provide further clarity regarding the implementation of the new legislation.

For more information, please contact the author Matthew A. Karmel at [mkarmel@riker.com](mailto:mkarmel@riker.com) or any attorney in our [Environmental Practice Group](#).

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