Attention New Jersey Soil or Recycle Fill Providers or Brokers: Don't Miss April 20, 2020 Deadline for A-901 License Registration

Client Alert

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Effective January 21, 2020, New Jersey expanded its A-901 licensing law, originally enacted to keep organized crime out of the state's solid waste business by requiring an A-901 license for businesses that collect, transport, process, broker, store, purchase, sell or dispose of "soil and fill recyclable material."

Businesses currently providing "soil and fill recycling services" may continue to provide those services while going through the licensing process but must register with the New Jersey Department of Environmental Protection (NJDEP) by April 20, 2020.

If this registration deadline is missed, the business is prohibited from continuing to provide soil and recycling services until it obtains its A-901 license, a process that usually takes at least six months once the fully completed application package has been submitted.

The range of businesses subject to the licensing requirement is potentially very broad. Soil and fill recyclable materials includes:

- 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, 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 certain Class A recyclable materials [source separated non-putrescible metal, glass, paper, plastic containers, and cardboard],Class B recyclable materials [source separated clean concrete, asphalt, unpainted and non-treated wood, tree and brush material, leaves, tires, roof shingles and

non-hazardous petroleum contaminated soil (<30,000ppm)] that is shipped to a NJDEP approved Class B recycling center r, beneficial use materials, and virgin quarry products.

Because the definition of "soil and fill recycling services" includes "brokering," a middleman in a transaction involving soil or recyclable fill must also obtain an A-901 license. Depending on the NJDEP's interpretation, the licensing requirement would not only apply to companies that collect and supply bulk soil and recyclable fill, but could also include remediation consultants, construction contractors, landscapers, and garden, hardware, home improvement, and grocery wholesale and retail stores that sell bulk or bagged soil.

NJDEP is currently drafting regulations to implement the new A-901 license requirement and guidance to explain it, but it is highly unlikely that NJDEP will complete that process before the April 20 deadline. NJDEP officials have informally advised that if someone is in doubt as to whether a business is covered by the new licensing requirement, it is best to go ahead and complete the registration by the April 20 deadline. If it turns out that the licensing requirement, as refined by the agency's regulations and guidance, does not apply, NJDEP will advise the registrant and nothing further is required. If it turns out that the licensing requirement, the business can continue to operate while it goes through the lengthy process to obtain the license. Of course, a business that already has an A-901 license would not have to register.

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