



Compliance Advisory

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
#2022-04 Issued: 03/16/2022

“Dirty Dirt Law” (N.J.S.A. 13:1E-127.1 et seq.) Registration Responsibilities for Soil and Fill Recycling Services

Who is affected by this Advisory?

Businesses that are engaged or intend to engage in “soil and fill recycling services” including “the collection, transportation, processing, brokering, storage, purchase, sale or disposition, or any combination thereof, of soil and fill recyclable materials” as defined in the “Dirty Dirt Law” at N.J.S.A. 13:1E-127 (the Act).

Why is the Department issuing this Advisory?

Under the Act, businesses that are engaged or intend to engage in soil and fill recycling services must register with the Department and apply for a soil and fill recycling license (A-901 license). Due to the COVID-19 public health emergency and pursuant to Executive Order (EO) 136, the deadline to register was extended to October 14, 2021 and the deadline to file an A-901 application was extended to April 14, 2022. The Department recognizes, however, that confusion within the regulated community regarding the Act’s applicability in specific circumstances may have resulted in certain businesses not registering by the aforementioned dates and, as a result, these businesses may be at risk of operating in violation of the Act. The Department also recognizes that the appropriate method to provide clarity and definitive interpretation of the applicability of the Act is through the promulgation of necessary regulations and has begun an extensive and in-depth stakeholder and rule development process.

In the interim, the Department has a duty to ensure that the spirit and intent of the Act is followed and to provide clarity to the regulated community regarding its compliance responsibilities. Accordingly, the Department is issuing this advisory to advise regulated entities that: (1) under NJSA 13:1E-127.1d the Department requested on behalf of the regulated community a 90-day extension of the deadline to submit a valid and administratively complete application for an A-901 license, and the Attorney General has determined that good cause exists to extend the deadline by 90 days to July 14, 2022; (2) the Department will accept registrations until that same date, July 14, 2022; and (3) the Department has developed a Certification Program for businesses which exclusively handle “Non-Restricted Soil and Fill Recyclable Materials,” as defined below.

What is the Department Doing?

As the Department engages in the regulatory development process, the Department is taking two key actions consistent with the Act’s intent of ensuring oversight of soil and fill recycling services throughout the State while also ensuring that compliant businesses may continue to operate.

Ongoing Registration Acceptance

Due to the commencement of the Certification Program as well as necessary clarifications applicable to *de minimis* handlers of soil and fill materials as noted below, the Department will allow all business concerns to

Compliance Advisory

register their activities with the Department until July 14, 2022, which aligns with the extension for application submission granted by the Attorney General and will allow compliant businesses to continue operations while agency review of their registration and A-901 license is pending.

Any business engaging in soil and fill recycling services after July 14, 2022, that has not registered and submitted an A-901 License application must cease to engage in soil and fill recycling services and will be subject to enforcement.

Certification Program

To reduce unnecessary regulatory burdens while ensuring appropriate oversight, the Department has developed an annual Certification Program for businesses exclusively handling “Non-Restricted Soil and Fill Recyclable Materials.” Non-Restricted Soil and Fill Recyclable Materials means non-putrescible, non-water-soluble, non-decomposable, inert aggregate substitute, including rock, soil, broken or crushed brick, block, concrete, glass and/or clay or ceramic products, or any combination thereof, generated from land clearing, excavation, demolition, or redevelopment activities that are excluded from the definition of solid waste under the Solid Waste rules at N.J.A.C. 7:26-1.6(a)6.

Businesses validly completing this annual certification process will need to be registered but will not have to apply for an A-901 License. The certification form, which includes guidelines for the certification program and instructions for submission, is available at <https://www.nj.gov/dep/dshw/a901/a901frms.htm>.

In addition, businesses which handle specified low volumes (*de minimis* quantities) of soil and fill recyclable materials (such as landscapers, contractors, pool companies, home remodeling companies, plumbers, electricians, etc.), are not considered to be “engaged” in soil and fill recycling services provided that the soil and fill recyclable materials they handle are exclusively non-restricted soil and fill recyclable materials. Businesses that are engaged in handling *de minimis* quantities of non-restricted soil and fill recyclable material are not required to register, certify or apply for and possess an A-901 license, provided that they possess all other applicable licenses and authorizations including, but not limited to, a Division of Consumer Affairs Home Improvement Contractor license or other trade license as applicable.

To meet the *de minimis* quantity criteria, the business must determine that it will:

- Generate less than fifteen (15) cubic yards of non-restricted soil and fill recyclable materials each business day;
- Use a truck or trailer that has a loading capacity of less than fifteen (15) cubic yards for transport of non-restricted soil and fill recyclable materials;
- Maintain a storage yard containing less than 100 cubic yards of non-restricted soil and fill recyclable materials; and
- Maintain appropriate records and make these available to the Department or delegated agencies upon request to prove they meet the above criteria.

Any business that fails to meet the above criteria will be considered to be “engaged” in soil and fill recycling services and subject to enforcement for violation of the Act.

Compliance Advisory

For further information, please refer to the Department's "Soil and Fill Recycling Frequently Asked Questions" (<https://www.nj.gov/dep/dshw/a901/a901frms.htm>) which have been revised to reflect the Department's current policy.

Businesses should note that this compliance advisory and any associated guidance will be revoked and superseded by the adoption of regulations to implement the Law. Any business subject to the requirements of the adopted regulations will, as applicable, be required to obtain an A-901 license.

What should I do?

Businesses that are engaged in soil and fill recycling services should carefully review the Department's updated FAQ (Frequently Asked Questions) document and certification documents at <https://www.nj.gov/dep/dshw/a901/a901frms.htm>, and this compliance advisory to determine if they must obtain an A-901 license, are eligible for the certification program or engage in de minimis quantities of soil and fill recyclable materials.

Who should I contact with questions?

DEP - Division of Waste and UST Compliance & Enforcement (609) 943-3019
Transportation Oversight Unit

DEP - Division of Sustainable Waste Management (609) 984-4250
A-901 Unit soilandfill@dep.nj.gov

Office of the Attorney General - Division of Law (609) 376-3270
A-901 Unit

Where can I get more information?

The following website can be accessed for additional information:
<https://www.nj.gov/dep/dshw/a901/a901frms.htm>

The information provided herein and on the website is subject to current rulemaking and is therefore subject to change based on the promulgation of rule amendments related to Soil and Fill A-901 Applications.

Please note this advisory is intended to be a summary explanation of a DEP initiative. It does not include all potentially applicable requirements. If you have any questions related to compliance with this initiative, please contact the Enforcement number listed above.