



Enforcement of the “Dirty Dirt” Law (N.J.S.A. 13:1E-126 -135.6)

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What this Presentation Covers:



- **Scope of the Dirty Dirt Law – what does it require?**
- **Genesis/chemical constituents of most Dirty Dirt**
- **Why is the “Dirty Dirt” Law a misnomer?**
- **“Non-Restricted Soil and Fill Certification**
- **Prospective Exemptions to the Dirty Dirt Law**
- **Potential updates to Recycling Rules at N.J.A.C.**
- **Enforcement and Guidance**
- **Policy & Technical Differences of CSR&R & SWC&E Programs for investigation/corrective action**

DISCLAIMER

Because the rules for the Dirty Dirt Law have not yet been promulgated, all statements in this presentation may not be definitive regarding the actual requirements in place today. I will attempt to specify which requirements are in the Statute and which potential requirements and guidance are being reviewed for proposal. Please feel free to ask me to clarify same in the event that I fail to distinguish between the two. NOT ALL STATEMENTS HEREIN HAVE BEEN FULLY VETTED BY APPLICABLE NJDEP PROGRAMS AND SHOULD BE CONSIDERED ONLY AS THOUGHTS OF THE PRESENTER & NOT OFFICIAL NJDEP POLICY.

Intent of the Dirty Dirt Law

- ❑ To promote recycling of soil and fill in an environmentally sound manner.**
- ❑ To increase the number of vendors that can accept, process and market mildly contaminated soil and fill thereby decreasing the incidents of illegal dumping.**

Main Requirement of the Dirty Dirt Law

- ❑ **Ultimately to obtain an A-901 License, which requires one pass a criminal background check in order to be engaged in the Soil and Fill Recycling Industry which is defined as the business of the *collection, transportation, processing, brokering, storage, purchase, sale or disposition, or any combination thereof*, of soil and fill recyclable materials.**

Interim Authorization For non-A901 Entities:

- In the interim of obtaining an A-901 license, temporary authorization was offered to those who registered by **7/14/22** to allow them to provide Soil & Fill Recycling Services associated with **Soil & Fill Recyclable Materials**.
- If you have a Self-Generator Transporter Registration but not a full A-901 License, you still needed to register by 7/14/22 in order to haul Soil & Fill Recyclable Materials.
- There are 864 Soil & Fill Recyclable Material Registrants

Component of Definition of “Soil and Fill Recyclable 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 a solid waste.....”**

What is “Mildly Contaminated Soil and Fill”

- **In September of 2017, the definition of solid waste at N.J.A.C. 7:26-1.6(a)6 was revised to incorporate the then known Residential and Non-Residential Direct Contact Soil Remediation Standards at N.J.A.C. 7:26D. As such, soils with no visible solid wastes could still be considered as solid waste by exceeding whichever concentrations between these standards were more stringent.**

What is “Mildly Contaminated Soil & Fill” (continued)

- In May of 2021, N.J.A.C. 7:26D updates change reference from “Direct Contact” to “Ingestion-Dermal/Inhalation” (I-D/I) Soil Remediation Standards (SRS). Establish all Residential SRS are more stringent than the Non-Residential SRS. **Therefore, Soil & Fill with contaminant concentrations that exceed the RI-D/I SRS trigger the definition of solid waste at N.J.A.C. 7:26-1/6(a)6.**

Dirty Dirt Law Statutory Interpretation

- Since the Statute considers Soil & Fill Recyclable Materials **as those that otherwise would be solid waste if not recycled**, one could conceivably consider that recycled soils that chemically trigger the definition of solid waste should be incorporated in the materials a Registrant to obtain an A-901 License should be allowed to be engaged with even absent NJDEP re-use approvals such as a BUD. However, DEP has interpreted the intent of the Statute to not allow any temporary engagement in the solid waste industry and therefore created a new category of soil and fill known as “Non-Restricted Soil & Fill Recyclable Materials”. Accordingly, those who have registered to apply for an A-901 license are precluded from being engaged in the solid and hazardous waste industry until such A-901 license is issued.

Proposed Definition of Non-Restricted Soil & Fill Recyclable Material

- **Non-water-soluble, non-putrescible, non-decomposable, inert solid materials that are not mixed with solid waste as defined at N.J.A.C. 7:26-1.6, are not hazardous wastes pursuant to N.J.A.C. 7:26G, and do not contain concentrations of one or more contaminants that exceed the residential soil remediation standards for the ingestion-dermal pathway or inhalation exposure pathway, whichever are more stringent, as set forth at N.J.A.C. 7:26D, Remediation Standards. Such materials include, but are not limited to, rock, soil, sand, gravel, and source-separated recyclable materials, such as concrete, block, brick, glass and clay/ceramic products, **that have been broken, crushed or otherwise processed to be unrecognizable as a discrete manufactured product.****

**Potential New Clause to the Definition of Solid Waste:
“Rendered unrecognizable”**



Limitations of Soil & Fill Recycling Services Registrants

What they currently **can** do:

- **Transport Non-Restricted Soil & Fill recyclable material.**
- **Process Non-Restricted Soil & Fill pursuant to an Exemption (ex. # 20).**
- **If no processing of fill necessary and if not self-generated, sell and distribute Non-Restricted Soil & Fill recyclable materials.**
- **Process and distribute soil that does not trigger the definition of solid waste.**

What they currently **can't** do:

- **Transport Soil & Fill Recyclable Material that triggers the definition of either solid or hazardous waste.**
- **Perform any activity that warrants a Class B Recycling Approval or Solid or Hazardous Waste Facility Permit.**



Major source of dirty dirt - Construction & demolition debris that typically contains:

- **PAHs from asphalt**
- **Lead from painted wood**
- **PCBs from window caulking**
- **Pesticides from historical applications**
- **Similar contaminants as above from historical fill**





Images from Wikipedia

Does the Dirty Dirt Law regulate contaminated soil & fill? Not Necessarily!



- This broad Statute regulates **Non-Restricted Soil & Fill Recyclable Materials**, which may or may not be subsequently found to meet the definition of clean fill at NJAC 7:26E-1.8

Soil & Fill Sources Exempt from Dirty Dirt Law

- Class B material.....**ONLY IF** shipped to a **Class B Recycling facility**. It is anticipated that the **DRAFT** regulations will propose soil as being a **Class B recyclable material** if shipped to a **Class B Recycling Facility**.
- Class A recyclable material
- Material from a BUD approval
- LSRP approved soil & fill for remediation of AOC
- Landfill cover per the landfill's Solid Waste Facility Permit
- Virgin Quarry Products
- Expecting to propose an Exemption for soil/fill from soil processors up to 5,000 CY

What does a Non-Restricted Soil & Fill Designation Provide?

- Eligibility for a De Minimis Exemption to an A-901 License associated with engagement in the Soil & Fill industry.
- Avoid A-901 licensing by certifying only engaged with Non-Restricted Soil & Fill provided never engaged with waste.
- Avoid solid waste designation provided material not discarded & does not contain visual solid waste at appreciable concentrations (typically must be < 1% visual solid waste by volume).

Think of Non-Restricted Soil & Fill as **“Waste Compliant Soil & Fill”** because **THERE CAN BE RESTRICTIONS ON THIS MATERIAL.**

Annual Certification to Avoid A-901 Licensing



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clean adjective



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Definition of *clean* (Entry 1 of 4)

- 1 a : free from dirt or pollution
// changed to *clean* clothes
// *clean* solar energy
- b : free from contamination or disease
// a *clean* wound

- Certifications of only dealing with what some in the regulated community refer to as “clean” soil & fill recyclable materials. DEP is proposing a new category called “Non-Restricted” soil & fill recyclable materials for which certifications for same are being accepted on a rolling basis with annual recertifications required.
- A COMPANY CANNOT MAKE SUCH CERTIFICATION IF THEY ALSO HANDLE WASTE.
- Certification forgoes the need to obtain an A-901 license. Here is the link to the form:
- [soil fill recyclable materials cert.pdf \(nj.gov\)](#)

CERTIFICATION DECISION MATRIX: Engagement with Only Non-Restricted Soil & Fill Recyclable Materials

Pros of Certification

- **May avoid the need to apply for an A-901 License thereby would not be necessary for background checks and fees.**
- **May facilitate successful marketing of products or services based upon a customer's perception.**

Cons of Certification

- **May subject the certifier to civil penalty and possible 3rd degree criminal charges if the soil and fill materials found not to be compliant with the definition of Non-Restricted Soil & Fill.**
- **May generate private sector legal action.**

Solid Waste is a Chameleon!



- Depending upon the use of a material, it can become a solid waste or a product & revert back and forth between a waste vs. material.
- For example, **Non-Restricted Soil and Fill** discarded in the woods can be a solid waste, however, if it is used as suitable fill, it is a product.

De Minimis Exemptions

De Minimis quantity exemptions applicable to only Non-Restricted soil & fill recyclable materials as follows (a person is not Exempt because of any one trigger if other triggers occur):

- **Generates < 15 cubic yards/day**
- **Transports via vehicles/trailers with a CAPACITY of < 15 cubic yards.**
- **If operating a processing yard, the aggregate volumes of such materials is < 100 cubic yards.**
- **Maintains appropriate records available to DEP upon request.**
- **Possesses all applicable licenses, including, but not limited to, those required by Division of Community Affairs.**

How Should I document the quality of the soil & fill recyclable materials I am engaged with?

Outside of any other applicable regulation, the Frequently Asked Questions (FAQs) document leaves it up to the responsible entity how to document the quality of soil & fill recyclable materials. However, updates to N.J.A.C. 7:26A are being drafted that, if promulgated, would require such determinations to be largely based upon laboratory analytical data.

Outside of any other applicable regulation, NJDEP offers General Fill Guidance documents that can be found here:

- <https://www.nj.gov/dep/guardyourbackyard/>
- <https://dep.nj.gov/wp-content/uploads/guardyourbackyard/docs/njdep-understanding-fill-requirements.pdf>
- It is anticipated that once updates to the recycling rules are promulgated, guidance for how recycling facilities should document the quality of their products will be provided.



Draft Revisions to NJAC 7:26A - Class B Testing?

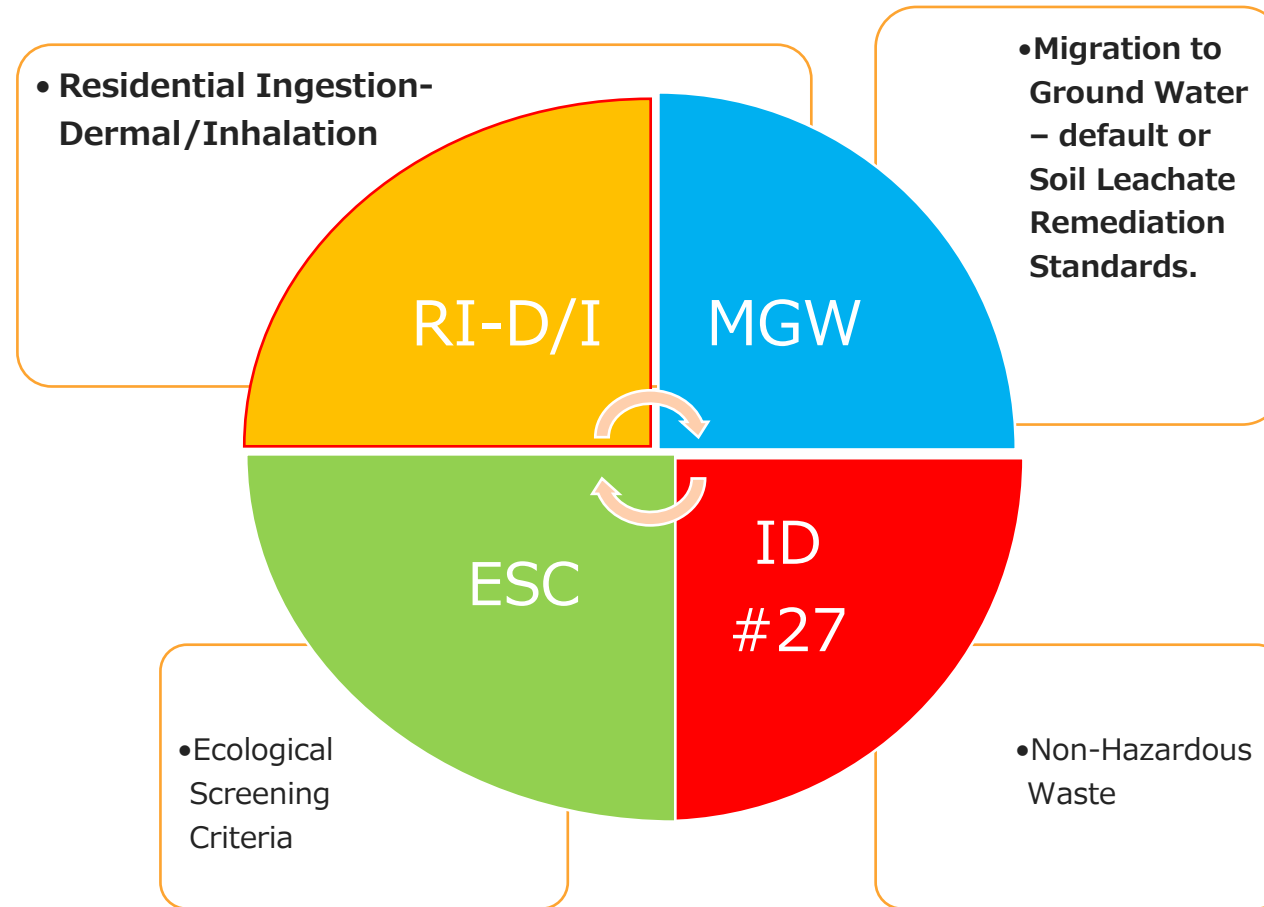
While hazardous waste is prohibited, N.J. Class B Recycling Approvals **currently do not** require any analytical testing of incoming or outgoing materials unless they are 1 of the 4 authorized to treat soils from petroleum discharges. Regulations are being drafted that, if promulgated, would clarify the need to document the soils were impacted by a discharge of a petroleum source other than simply by finding petroleum constituents in the soil and fill.



BEST MANAGEMENT PRACTICES FOR RECYCLABLE SOIL & FILL MATERIALS

- **Such guidance is being drafted with the understanding that recyclers cannot market their soil and fill as suitable for a site undergoing remediation without approval of the LSRP retained pursuant to NJAC 7:26C who is utilizing the subject soil and fill solely to the degree it is needed to remediate the Area of Concern at the site they are retained for.**

NJDEP Soil Standards and Criteria Associated with Soil & Fill



Draft Guidance for Class B Soil & Fill Categories

- **Recyclable Soil & Fill** – May exceed Residential Standards
- **Non-Restricted Soil & Fill**- Meets Residential Standards
- **Enhanced Non-Restricted Soil & Fill** - Addresses Migration to Groundwater Pathway
- **Clean Fill** – Meets all remediation standards and criteria and does not contain visible solid waste (DEP may place a <1% by volume allowance here)

Draft Guidance for Homogenization of Final Batches of Soil & Fill

- ❑ **Adjust the amount of construction and demolition debris screening to the category being marketed.**
- ❑ **After desired screening, utilize front end loader or other equipment to mix soil and fill as each load is deposited.**
- ❑ **If any layering observed in processed soil and fill, repeat the mixing process before performing “final batch” sampling.**

Draft Guidance for Testing Methodologies:

- **Analyses should be conducted as contained in the corresponding version of the EPA’s “Contract Laboratory Program Statement of Work for Organics and for Inorganics Analysis, Multi-Media, Multi- Concentration” in effect as of the date on which the laboratory is performing the analysis.**

Draft Guidance for Laboratory Certifications:

- **Laboratories or companies involved with any laboratory or field activity that provides data should have all applicable New Jersey certifications for specific tests/analytical parameters and, as applicable, categories for which certification exists pursuant to the “Regulations Governing the Certification of Laboratories and Environmental Measures, N.J.A.C.7:18.**

Draft Guidance for Laboratory Data Deliverables:

- **At a minimum, Tier 2 Reduced Laboratory Data Deliverables should be kept on electronic file.**

Draft Guidance Addressing Anticipated Proposed Rule for Non-Conformance Summary Interpretation:

- For all analyses representing outgoing soil/fill or soil/fill to be used for on-site facility improvements, the recycling facility should engage a professional capable of interpreting laboratory Non-Conformance Summaries who should flag any laboratory data deemed not to be reliable. A written statement representing such professional's opinion regarding the reliability of such data should accompany each laboratory report.**

Draft Guidance: Final Batch Data Ranges

- **Since soil and fill recyclable materials processed at a recycling facility have typically been disturbed several times, provided that a final batch has been appropriately homogenized, composite sampling is considered acceptable at a rate no more frequent than 5 composites per each sample to be analyzed. Further, the range of analytical results should be provided so that the purchaser can plan for the potential worse case scenario.**

Examples of Draft Final Batch Data Range Reporting:

- **Final Batch volume = 1,000 cubic yards**
- **Final Batch fill category = Recyclable Soil & Fill Material**
- **Recommended analytical frequency per Extremely Draft NJDEP Class B Guidance: 1 analysis per 500 CY**
- **Minimum analyses recommended = 2**
- **Maximum # of composite samples = 10**
- **Reportable concentrations of contaminants = ranges of the results of the 2 analyses should be presented.**

DRAFT Recommendations for Class B Soil & Fill Recyclable Materials Final Batch Testing*

Soil & Fill Category	Minimum Analytical Frequency	Analytes for Total Analyses	Analytes for Leachate Analyses	
Recyclable Soil & Fill - any amount of C & D	1/500 CY	TAL** and TCL***	Not Applicable	
Non-Restricted Soil & Fill from < 1% by volume C & D unprocessed material	1/300 CY	TAL** and TCL***	Not Applicable	
Non-Restricted Soil & Fill from > 1% by volume C & D unprocessed material	1/100 CY	TAL** and TCL***	Not Applicable	
Addition of SPLP Testing to Above Categories	3 per each batch of 100 CY or less	Not Applicable	Any analyte over default MGW standard for primary contaminant	
Clean Fill from < 1% by volume C & D unprocessed material	1/40 CY	TAL** and TCL***	Not Applicable	
Clean Fill from >1% by volume C & D unprocessed material	1/20 CY	TAL** and TCL***	Not Applicable	

* Assumes no reliance on previous analyses. Additional analytes may be appropriate to address updates to the remediation standards at N.J.A.C. 7:26D

**Regarding Cr, only analyses for hexavalent is germane. Current policy: in lieu of promulgated standard, hexavalent Cr over 20 ppm is actionable.

***The volatile organic fraction of the TCL analytes may be omitted if appropriate direct instrument screening does not exceed 10 ppm over background.

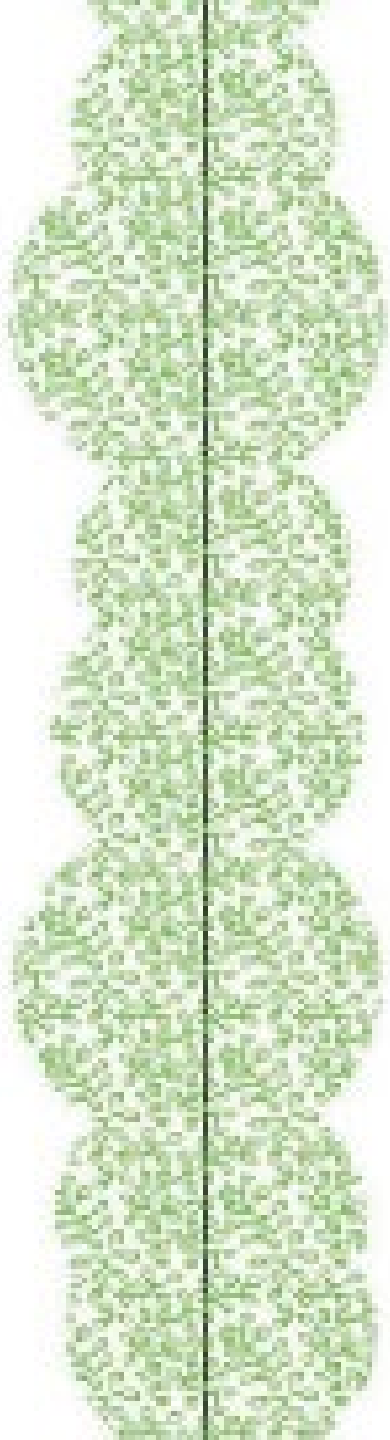
PFNA, PFOA, PFOS in Soil & Fill

- **NJDEP CERTIFIED LABORATORIES:**
- <https://njems.nj.gov/DataMiner/Search/SearchByCategory?isExternal=y&getCategory=y&catName=Certified+Laboratories>

INTERMIN SOIL REMEDIATION STANDARDS

Table of Interim Soil Remediation Standards for the Ingestion-Dermal Exposure Pathway

Contaminant	CAS No.	Non-Carcinogenic Health-Based Criterion (mg/kg)		Carcinogenic Health-Based Criterion (mg/kg)		Reporting Limit (mg/kg)	Interim Soil Remediation Standard (mg/kg)	
		Residential Criterion	Nonresidential Criterion	Residential Criterion	Nonresidential Criterion		Residential Standard	Nonresident Standard
Perfluorononanoic acid (PFNA)	375-95-1	0.047	0.67	NA	NA	0.001 ³	0.047	0.67
Perfluorooctanoic acid (PFOA)	335-67-1	0.13	1.8	NA ¹	NA ¹	0.001 ³	0.13	1.8
Perfluorooctane sulfonate (PFOS)	1763-23-1	0.11	1.6	NA ²	NA ²	0.001 ³	0.11	1.6



Gravel

AOC 1

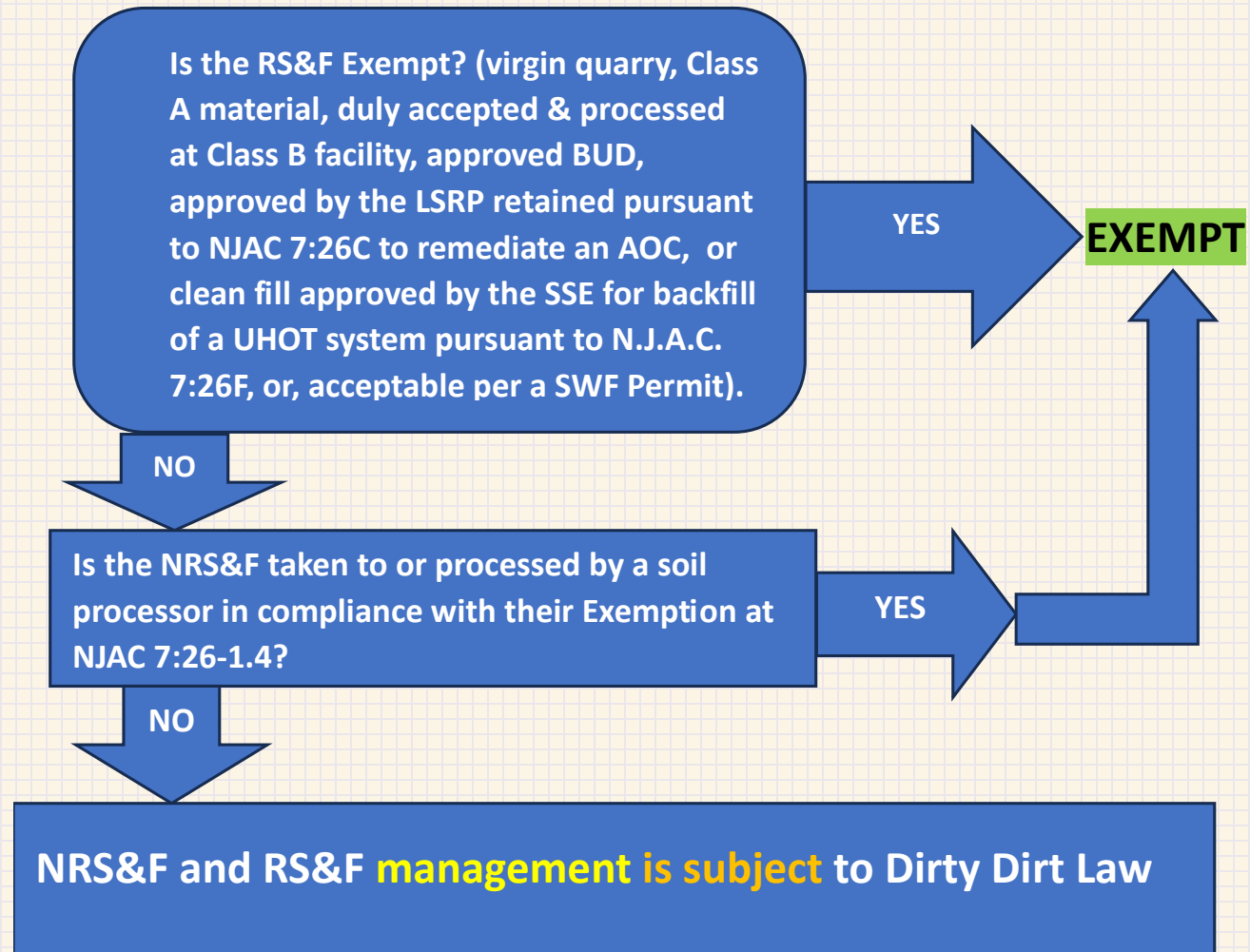


SB-1

LSRP and SSE Limited Exemption; PHD for Consultants

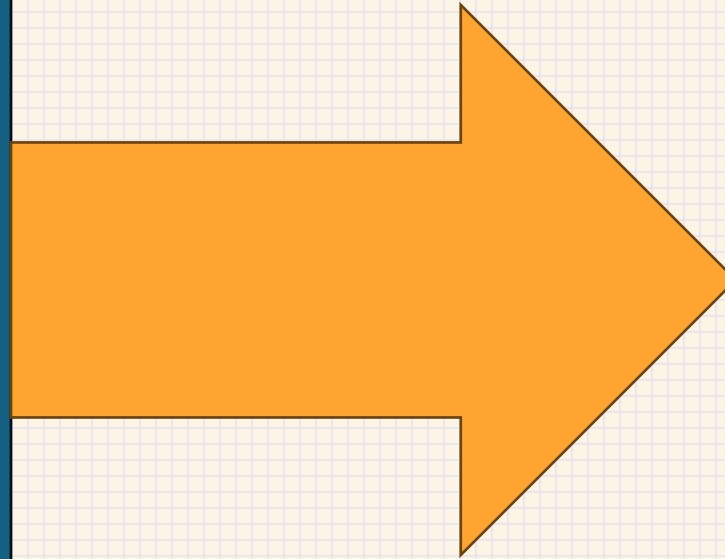
- 1. For non-exempted soil & fill, LSRP Exemption is only for the amount of soil & fill needed to remediate AOC(s). SSE are expected to only supply clean soil/fill.**
- 2. For Non-AOCs, A-901 needed if directly billing supply or transportation of non-exempted soil & fill to client.**
- 3. For Non-AOCs, may not need A-901 or PHD if not directly billing supply or transportation of non-exempted soil & fill to client (clarification pending).**

Exemptions to the Dirty Dirt Law addressing Non-Restricted Soil & Fill (NRS&F) and Recyclable Soil and Fill (RS&F) **management** by LSRPs, SSEs, Consultants and Brokers



Dirty Dirt Law as applied to “Consultants”

For **non-AOCs and non-exempted soil/fill**, evaluates laboratory analytical data or performs other due diligence to recommend suitable soil/fill and bills his customer for his time and/or laboratory analytical costs but not for supplying or transporting the soil & fill.



Possibly Acting as **Consultant** which requires **Personal History Disclosure (PHD)** – further clarification expected.

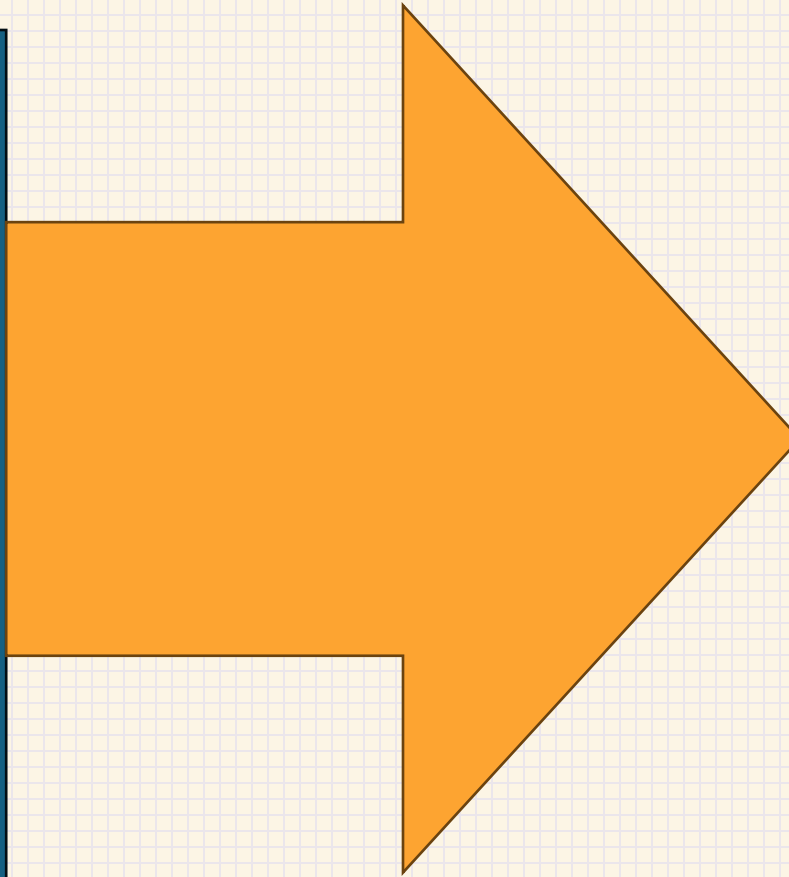
Dirty Dirt Law as applied to “Brokers”

Arranges for **non-exempted** soil/fill source to be delivered to customer and bills for the cost of the soil/fill and/or transportation.

- Unless LSRP/SSE Exemption appropriately applied, A-901 required as **Broker**.

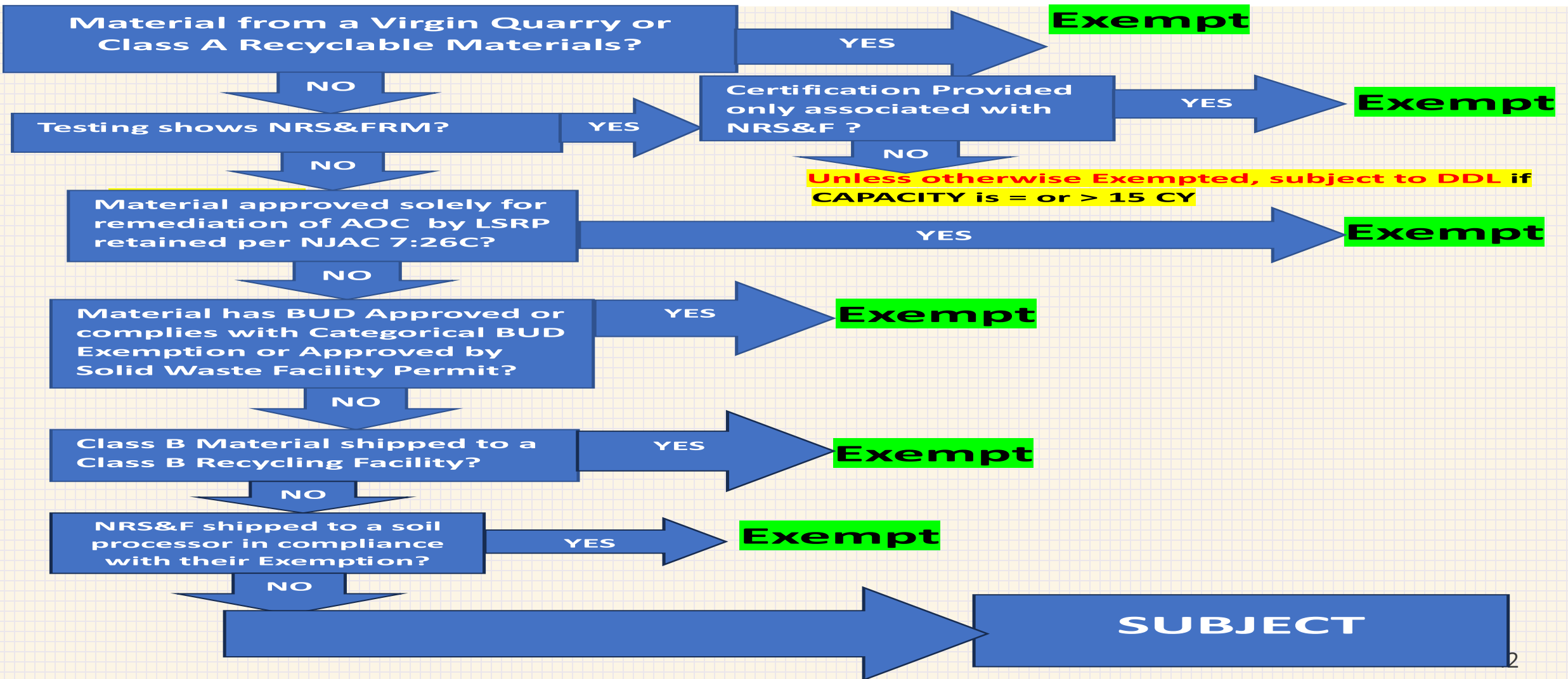
Are **Excavators** Exempt from the Dirty Dirt Law?

Excavates **non-exempted** soil/fill, while on-site, loads and unloads truck/trailer or, while on-site, spreads soil/fill provided by transporter.



- **Dirty Dirt Law should not apply as long as not brokering or billing for the transportation/disposal /recycling of the materials/wastes.**

Dirty Dirt Law compliance for transporters of Soil & Fill Recyclable Materials (S&FRM) and Non-Restricted S&FRM (NRS&FRM)



What happens if a **non-exempted** person is found to be engaged in the soil & fill recycling industry who has not registered for same by 7/14/22 or who does not already hold an A-901 license?

- Engagement in the soil & fill recycling industry must cease until they receive their A-901 license.
- Brokering of soil & fill recycling services is considered engagement in such industry. If a person is required to cease such operations during an on-going project, the person must advise their client that they can no longer perform **or subcontract** the work. The client would have to either hire such services directly, or, hire a broker that either has an A-901 license, or has registered by July 14, 2022 to apply for one.
- A Civil Penalty Assessment may be issued.

For **non-exempted** soil & fill recyclable materials, what happens if a company registers to provide Non-Restricted Soil & Fill Recycling Services and it is subsequently found that such materials are contaminated over the RID/ISRS?

Prior to or during the A-90I application review process – enforcement would ensue. The subject materials could not be moved by any entity that does not possess an A-90I license, CPCN, Solid Waste Registration and, current solid waste decals.

Technical Nuances Between SWC&E and CSR&R for Site Investigation and Corrective Action

- **LSRP authority is not recognized by SWC&E when a solid waste matter is being addressed. Plans to investigate/correct a solid waste issue require SWC&E review and approval.**
- **Remediation standards at N.J.A.C. 7:26 D denote a soil remediation standard for Extractable Petroleum Hydrocarbons (EPH) only if the contamination is known to be a discharge from # 2 Fuel Oil/Diesel. Because the majority of illegal dumping cases or complaints from residents of poor quality “free fill” from social media ads does not produce information on the source of contamination, SWC&E typically does not require/make decisions on EPH data.**
- **Because imported fill is typically re-worked several times before it is deposited, SWC&E accepts negative soil gas screening with a properly calibrated direct reading instrument to eliminate the majority of VOC analyses. Otherwise, analyses is typically required for TAL/TCL.**
- **Since there are no standards in N.J.A.C. 7:26D for TICs, SWC&E does not require library searches.**

Policy Boundaries Between NJDEP SWC&E and CSR&R Programs

- **In September of 2017, the definition of solid waste within the regulations implementing the Solid Waste Management Act at N.J.A.C. 7:26-1.6(a)6 were revised to incorporate the then known Residential and Non-Residential Direct Contact Soil Remediation Standards at N.J.A.C. 7:26D. As such, soils with no visible solid wastes could still be considered as solid waste by exceeding whichever concentrations between these standards were more stringent.**
- **In May of 2021, N.J.A.C. 7:26D was updated to change the reference to the Direct Contact Soil Remediation Standards to Residential and Non-Residential Ingestion-Dermal and Inhalation Soil Remediation Standards while also establishing that all Residential Soil Remediation Standards are more stringent than the Non-Residential Soil Remediation Standards.**
- **SWC&E and CSR&R have agreed that, outside of regional historical fill, sites that have imported solid waste, whether that be based upon visual or chemical evidence, first address the solid waste issue while CSR&R processes should be followed to address any residual contamination that emanated from the solid waste. When a solid waste issue is corrected, SWC&E never states a site has been remediated, only that compliance with the solid waste violation has been achieved.**

Compliance Versus Remediation

- **SWC&E's requirements do not preclude a LSRP from performing additional sampling or analyses to support an RAO.**

THANK YOU!

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