

A-901 and Certificate of Public Convenience and Necessity (CPCN) Applicability for Licensed Site Remediation Professionals and Certified Subsurface Evaluators

August 11, 2022 (replaces the April 22, 2021 policy)

P.L. 2019, c. 397 (the Dirty Dirt law; enacted January 21, 2020), requires that any person engaged in providing services related to collection, transportation, processing, brokering, storage, purchase, sale or disposition of solid waste, hazardous waste, or soil and fill recyclable materials in this State obtain a license pursuant to the provisions of N.J.S.A. 13:1E-126 et seq. (commonly referred to as an "A-901 License"), and, particular to solid waste, also obtain a Certificate of Public Convenience and Necessity ("CPCN") pursuant to N.J.S.A. 48:13A-1 et seq.

Prior to enactment of the Dirty Dirt law, NJDEP provided a policy statement dated March 2, 2016, and subsequent to passage of the Dirty Dirt law, NJDEP updated that statement on April 22, 2021. This statement dated August 11, 2022, is intended to provide clarification, based on recent discussions and questions from the regulated community.

Pursuant to the Dirty Dirt law, the following persons are not required to obtain an A-901 License, a CPCN, or both for handling the management of solid or hazardous waste or soil and fill recyclable materials provided they exclusively perform remediation as defined within the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) at sites for which they are retained or provide services associated with the remediation of discharges from unregulated heating oil tank systems pursuant to N.J.A.C. 7:26F:

- Licensed site remediation professionals (LSRPs; see N.J.S.A. 58:10C-1 et seq.);
- Certified Subsurface Evaluators (SSEs; see N.J.A.C. 7:14B and N.J.A.C. 7:26F);
- Any individuals at the same firm that are under the direction of an LSRP or working with the SSE; and
- The firm where the LSRP or SSE is employed.

However, consistent with the original policy statement, the person(s) (listed immediately above) engaged in solid or hazardous waste services, or soil and fill recycling services, or acting as a "broker," at sites at which that person is not retained as an LSRP or hired as an SSE, does require an A-901 License and CPCN. The Dirty Dirt law defines a "broker" as "a person who for direct or indirect compensation arranges agreements between a business concern and its customers for the collection, transportation, treatment, storage, processing, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services."

This policy statement is based on recognition of: (a) the education and experience requirements for a person to obtain a license and become an LSRP or obtain an SSE certification; (b) the Site Remediation Reform Act code of conduct requirements for LSRPs at N.J.S.A. 58:10C-16; and (c) the codified professional business practice obligations of SSEs in the Underground Storage Tanks rules at N.J.A.C. 7:14B-16 and the Heating Oil Tank System Remediation Rules at N.J.A.C. 7:26F-1.9.