

General Disclaimer for this Presentation:

The information within this presentation is intended to facilitate discussions on various existing and potential regulatory mechanisms. No final decision regarding this information is expressed or implied.



Stakeholder Meeting for P.L. 2019, c.397 (Dirty Dirt Law)

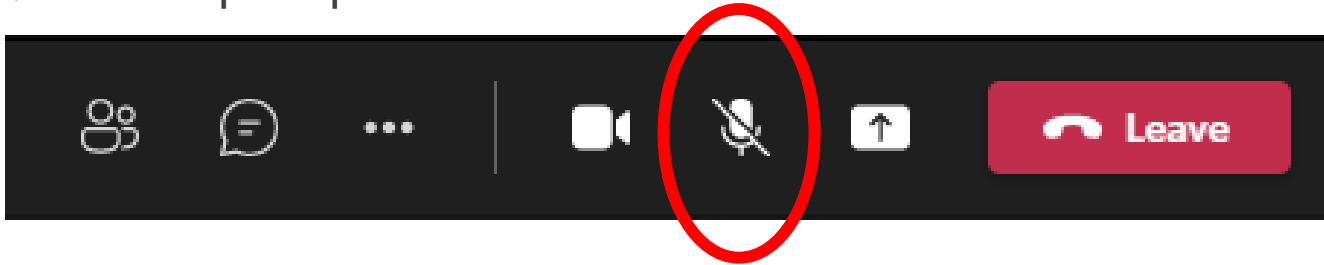
Today's Focus:

- Potential Distinction of Materials that May/May Not Be Considered applicable to the "Dirty Dirt" Law
- Potential Small Quantity Exemptions
- Broker/Consultant/Salesperson

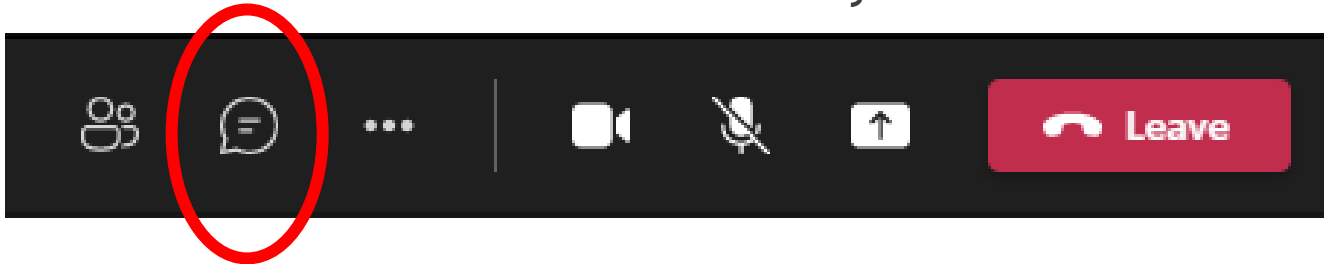
December 14, 2021

Meeting Etiquette Guidelines

- ▶ Please be sure that your microphone is muted
 - ▶ unless prompted to unmute for comments



- ▶ The chat feature will be used to only address technical meeting issues



- ▶ Should you wish to speak, raise your hand and wait to be called

Meet the Rule Team of the Department (NJDEP)

Assistant Commissioner's Office, Site Remediation & Waste Management, Division of Law

- ▶ **Regulatory Officer:** Judith Andrejko, Esq.
- ▶ **Rule Manager:** Anna Maria Peñaherrera
 - ▶ **Division of Solid and Hazardous Waste**
 - ▶ Deputy Director: Scott Brubaker
 - ▶ Bureau Chief: Seth Hackman
 - ▶ Section Chief: Jill Aspinwall
 - ▶ A-901 Supervisor: Roxanne Feasel
 - ▶ Environmental Engineer: Daniel Murray
 - ▶ **Division of Waste Enforcement**
 - ▶ Director: Michael Hastry
 - ▶ Bureau Chief: Robert Gomez
 - ▶ Bureau Chief: Thomas Farrell
 - ▶ Transportation Oversight Unit Supervisor: Lawrence Lewis
 - ▶ **Division of Law**
 - ▶ Deputy Attorney General: Dave Tuason
 - ▶ Deputy Attorney General: Jacob Umoke
 - ▶ Investigator/A-901 Administrator: Steven Hulse

- ▶ Seek feedback
- ▶ Input, recommendations, suggestions
- ▶ Encourage compliance with the Dirty Dirt Law
- ▶ Develop a rule that accomplishes legislative intent with clear and practical regulatory standards

Goals of this
Meeting (and
beyond!)

- ▶ Stakeholder process will facilitate the development of a regulatory proposal.
 - ▶ Subject to formal public comment in accordance with the Administrative Procedures Act once published in the New Jersey Register.
- ▶ NJDEP posted answers to Frequently Asked Questions (FAQs) in February 2020, and October 2021.
- ▶ Answers to these FAQs do not represent the final positions of NJDEP.

Disclaimers

Soil and Fill Concerns -Big Picture-

- ▶ DEP is working to ensure:
 - ▶ soil and fill materials are safe for recycling/reuse with regards to contamination and debris; and
 - ▶ that the entities engaged in businesses involved with these materials have the appropriate reliability, expertise and competency (REC).

Why the addition of Soil and Fill Recycling Industries?

New Jersey State Commission of Investigation (SCI)

➤ March 2017 REPORT - CORRUPT RECYCLING OF TAINTED DIRT AND DEBRIS

- “unscrupulous operators profit by covertly dumping contaminated soil and construction debris at inappropriate and unregulated sites that now pose serious environmental and public-health threats. Pending action on this broader reform measure, the SCI called for immediate enactment of some form of background check as a condition of entering the recycling industry”



Why the addition of Soil and Fill Recycling Industries? (cont.)

➤ **Follow up Report June 2019 - DIRTY DIRT II - Bogus Recycling of Tainted Soil and Debris**

- “Under current laws and regulations, New Jersey lacks the authority to properly oversee elements of its recycling industry. As the findings of this and previous inquiries have amply demonstrated, the consequences of this breach in the State’s regulatory framework are particularly serious... where unscrupulous individuals with criminal records and/or ties to organized crime have been able to gain a profitable foothold to the detriment of New Jersey’s health and environment and in ways that undermine the business interests of legitimate recycling enterprises that are trying to do the right thing.”

Other Background & NJDEP Efforts

Outreach and Assistance

- NJDEP Workgroup focused on Dirty Dirt
 - clarify and simply describe NJDEP's "**Requirements for soil and fill materials**" via easy read document (currently being amended)
 - **model ordinance** to encourage monitoring and enforcement at a local government level
 - increase **awareness** of the issue...
- Guard Your Backyard Information Campaign (Guardyourbackyard.nj.gov)
 - Community & industry examples, impacts, steps to take

Future Rulemaking

- Pursuing changes to the Solid Waste and Recycling Regulations
 - N.J.A.C. 7:26A - considering soil as a Class B recyclable material, QA/QC for incoming/outgoing materials, Regulation of soil blending/manufacturing facilities.

Definition of Soil and Fill Recyclable Materials

- ▶ Soil and fill recyclable materials means 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.

What is Exempt:

Class A recyclable material

- As defined by regulation adopted pursuant to section 4 of P.L.1989, c.268 (C.13:1E-99.43)

Class B recyclable material

- Shipped to a Class B recycling center approved by NJDEP for receipt, storage, processing, or transfer

Beneficial use material

- Generator obtained prior approval from NJDEP to transport to an approved and designated destination

Other material

- Virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay and other mined products

From our October 2021 FAQ

- ▶ NJDEP is interpreting the Law to also exclude from the requirement to obtain a Registration and subsequent A-901 License the management of:
 - ▶ clean, uncontaminated, undisturbed virgin soil that would not otherwise be considered solid waste,
 - ▶ if the person claiming such is able to demonstrate and provide documentation that such determination was made based on sufficient and appropriate analysis of and proof of the soil's physical and chemical properties supporting the exclusion

From our October 2021 FAQ (cont.)

- ▶ Business concerns dealing with excluded materials are and will be required to maintain proof that any soils or soil mixtures they haul or manage meet these criteria and do not contain concentrations of one or more contaminants that exceed the soil remediation standards for the inhalation exposure pathway and the ingestion-dermal exposure pathway, as set forth in the Remediation Standards, N.J.A.C. 7:26D. See 52 N.J.R. 566(a) at 569; 53 N.J.R. 775(b).

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Please raise your hand and wait to be called upon.

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Please remain muted until called upon.

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REMINDER:
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Should NJDEP include an exemption for businesses that deal with de minimis quantities?

If so, what should be the parameters for this exemption?

What documentation should NJDEP use or require for a material to avoid triggering the requirements of the Law?

1. For transportation of soil and fill recyclable materials, if a de minimis exemption was established, what should it be based on?

- a) Since the law does not specifically provide for such exemption, none should be established
- b) An exemption should apply to certain industries for which mismanagement of soil and fill recyclable materials has historically not been found and therefore there should be no need for a de minimis quantity for such entities
- c) Whatever the de minimis quantity is, it should be based on the actual amount of soil and fill recyclable materials transported and not the capacity of the vehicles/trailers hauling same
- d) A vehicle/trailer capacity combination not to exceed 15 cubic yards
- e) Other (please type in): _____

Poll Question

2. With regards to soils or soil-like materials, what should be acceptable documentation that such materials do not trigger the applicability of the Law?

- a) Laboratory analyses indicating that contaminants do not exceed the Residential Ingestion-Dermal or Residential Inhalation soil remediation standards per NJAC 7:26D
- b) Generated from an undeveloped property outside of an urban area
- c) Generated from a virgin quarry
- d) Either a, b or c as applicable
- e) Other (please type in): _____

Poll Question

3. If documentation via laboratory analysis is applicable to support exclusion from the subject law, what should be the minimum analytical parameters employed?

- a) Target Analyte List and Target Compound List
- b) Target Analyte List and Target Compound List minus Volatile Organics if soil gas screening warrants such limitation
- c) Other (please type in): _____

Poll Question

4. When laboratory analyses is used to document an activity or material excluded from the subject law, what should the minimum requirements be to support the validity of such data?

- a) In accordance with N.J.A.C. 7:26E-2.1 Quality Assurance Requirements within the Technical Requirements for Site Remediation
- b) Whatever Quality Assurance requirements are in place for such laboratory within the state where the analyses are being performed
- c) Other (please type in):

Poll Question

5. When laboratory analyses is used to document exclusion from the subject law, what should the analytical frequency be to generate data that is representative of such materials?

- a) Consistent with the NJDEP Guidance Document: Fill Material Guidance for SRP Sites, October 2021
- b) One analyses for every twenty cubic yards of material
- c) Other (please type in):

Poll Question

6. What grain size in millimeters (mm) should non-soil materials be considered soil-like?

- a) 3 mm or less
 - b) 4 mm or less
 - c) 5 mm or less
 - d) 6 mm or less
 - e) 7 mm or less
 - f) 8 mm or less
 - g) Other (please type in):
-

Poll Question

7. With regards to fill materials that are not otherwise excluded from the subject law and are not considered soil-like, should laboratory analyses be required?

- a) No
- b) Yes
- c) If waste characterization indicates such fill is not a hazardous waste and volatile organics are not a concern as documented by soil gas readings taken in accordance with the most recent version of the NJDEP Field Sampling Procedures manual, a presumed approved Beneficial Use Determination if used as road base/parking lot/slab base that is sealed in place is appropriate.
- d) Other (please type in):

Poll Question

8. For non-LSRPs or LSRPs that are not retained to remediate the site where the soil and fill was generated nor for the destination site for such soil and fill material, should there be a de minimis quantity of soil and fill recyclable materials that does not trigger the need for an A-901 license for the generation of such materials during environmental due diligence or construction purposes?

- a) No, the law does not provide for such exemption
- b) Subsurface Evaluators should be afforded a de minimis exemption when such materials are generated on projects which require their certification as a Subsurface Evaluator
- c) Provided that the materials are appropriately sampled and analyzed and found not to trigger the definition of solid waste, an A-901 license should not be required regardless of the professional oversight, volume or source of the soil and fill materials
- d) Professional Geologists and Professional Engineers should be afforded a de minimis exemption
- e) Subsurface Evaluators, Professional Geologists and Professional Engineers should be afforded an outright A-901 exemption for projects that they are retained that generate or accept the soil and fill materials
- f) Other (please type in): _____

Poll Question

9. Should there be a de minimis quantity that exempts soil processors from having to obtain an A-901 license?

- a) No, the Law does not specifically provide for such exemption
- b) Provided sufficient sampling and analyses is performed that indicates the materials do not trigger the definition of solid waste, such facilities should be exempt from the Law
- c) Exempt facilities where the materials are stored or screened on site (no crushing or grinding) wherein the aggregate volume of separate piles of soils and separate piles of other recyclable materials or mixtures of such materials are less than 100 cubic yards at any given time
- d) Other (please type in): _____

Poll Question

10. If a de minimis exemption is established for the generation of soil and fill recyclable materials due to investigative techniques, what should such volume be?

- a) 15 cubic yards
- b) 20 cubic yards
- c) 1 cubic yard
- d) 5 cubic yards
- e) De minimis is not necessary if appropriate sampling and analyses indicates the definition of solid waste is not triggered
- f) Other (please type in): _____

Poll Question

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Please raise your hand and wait to be called upon.

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03

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Discussion of Presentation Thus Far

A-901 Law Amendment

▶ The A-901 Law (Then):

- ▶ The definition of “broker,” was not included in the original A-901 statute, however, was included in NJDEP rules
- ▶ “Consultant” and “sales person” were not defined prior to this amendment

▶ The A-901 Law (Now):

- ▶ “broker”, “consultant”, and “sales person”, are now defined with this amendment in the A-901 statute

Broker

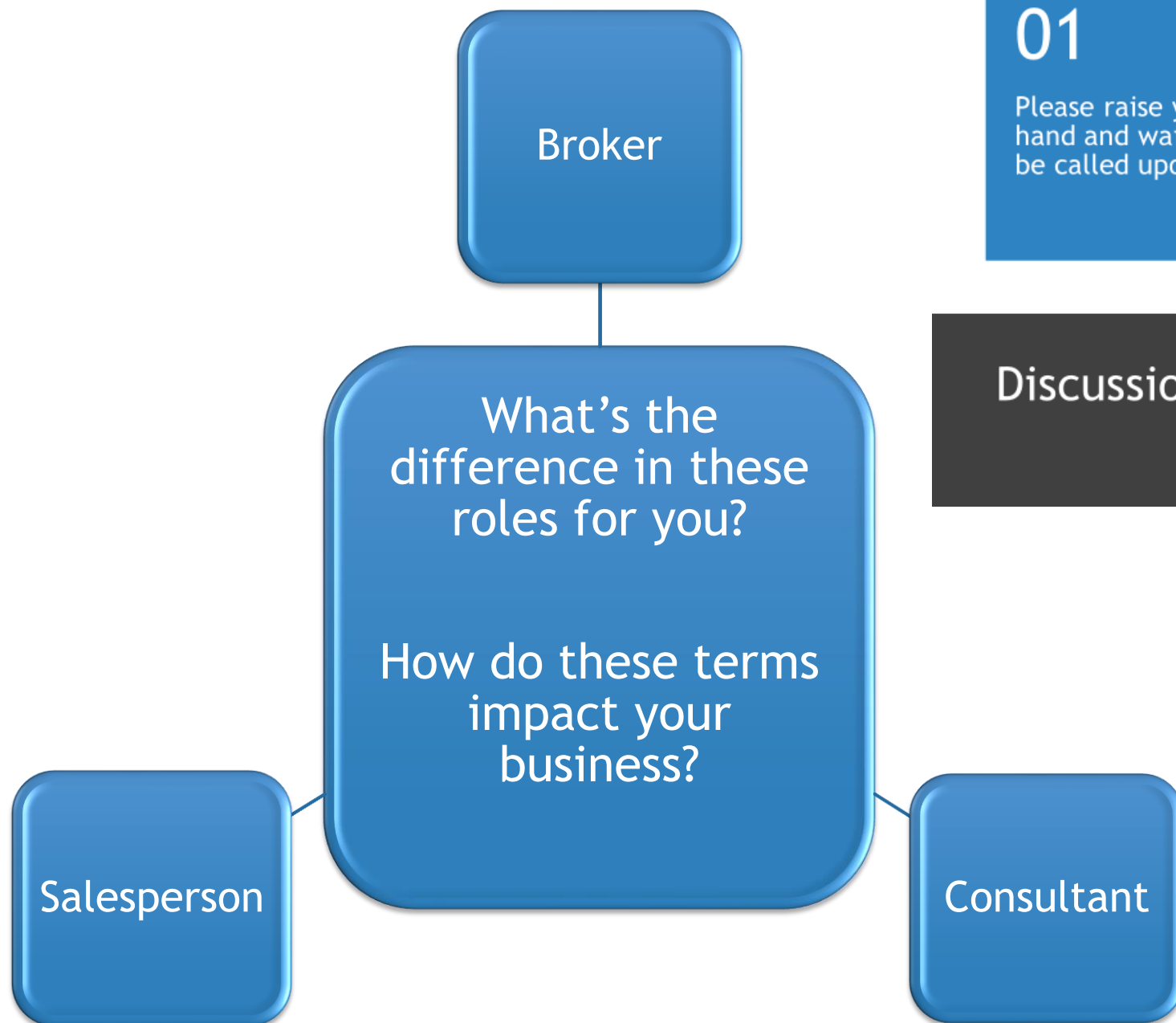
- Receives direct or indirect compensation
- Arranges agreements between business concern and customers

Consultant

- Performs functions for a business concern
- Shall not include person who performs functions for a business concern and holds a professional license from the State in order to perform those functions

Salesperson

- Person(s) that makes or arranges for sales for a business concern



01

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Discussion

► Thank you for your input!

- ❖ Summaries of the topics covered at the meeting and relevant information will be made available following the meetings at <https://www.nj.gov/dep/workgroups/index.html>

► Next Stakeholder meeting- Jan 25, 2022

- Please direct any additional feedback via email to: soilandfill@dep.nj.gov

Closing Remarks

