

An Update on NJ's Dirty Dirt Law: DEP Issues New Compliance Advisory with Updated Registration and Licensing Deadlines for Providers of Soil and Fill Recycling Services

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On September 10, 2021, the New Jersey Department of Environmental Protection (DEP) issued a Compliance Advisory announcing updated deadlines and filing requirements for “business concerns” that are engaged in soil and fill transportation services. The Compliance Advisory applies to soil and fill transporters that are subject to new registration and licensing requirements established by the Dirty Dirt Law signed by Governor Phil Murphy on January 21, 2020, which is intended to reduce the practice of improperly classifying contaminated soil and debris as recyclable materials for purposes of collection, transportation and disposal.

Who is Impacted

The Dirty Dirt Law provides that any “business concern” that does not already have a solid waste A-901 license and engages in or otherwise provides “soil and fill recycling services” is required to register with the DEP and to obtain an A-901 license. A “business concern” is broadly defined to include any form of commercial organization. While governmental entities do not constitute a business concern, persons or entities doing work on behalf of governmental entities are business concerns subject to the licensing requirements.

The Dirty Dirt Law defines “soil and fill recycling services” as the collection, transportation, processing, brokering, storage, purchase, sale or disposition of soil and fill recyclable material. “Soil and fill recycling services materials” are defined as “non-putrescible aggregate substitutes” such as “broken or crushed brick, block, concrete, or other

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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: (1) Class A recyclable material; (2) Class B recyclable material that is shipped to a Class B recycling center approved by the DEP for receipt, storage, processing, or transfer; (3) beneficial use material for which the generator has obtained prior approval from the DEP to transport to an approved and designated destination, and (4) virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay and other mined products.

Significantly, the definition of soil **does not** exclude certified clean fill, unless that material is mined virgin quarry product. As a result, it appears that business concerns that engage in the transport, sale, purchase, disposition of certified clean fill will likely require registration and licensure.

New Deadlines for Compliance

When enacted, the Dirty Dirt Law required all businesses or persons engaged in providing soil and fill recycling services to register with the DEP by April 20, 2020, and to file a complete A-901 license application by October 17, 2020.

Due to the public health emergency from Covid-19, however, Governor Murphy issued an executive order suspending the timeframes for the filing of registration and license applications on May 2, 2020. On June 4, 2021, Governor Murphy signed Executive Order 244 (EO 244) ending the public health emergency.

Based on EO 244, the **new deadlines for compliance** with the Dirty Dirt Law are as follows:

- Business concerns engaged in soil and fill recycling services as of January 21, 2020, that do not already possess an A-901 license must submit a registration form by **October 14, 2021**;
- Business concerns without a valid A-901 license or soil and fill recycling registration must cease engaging in soil and fill recycling services after **January 13, 2022**; and
- To obtain an A-901 license, a registrant must submit a properly completed A-901 license application no later than **April 15, 2022**.

Registrants must submit a completed soil and fill recycling registration form that is available here. Within ninety (90) days of the receipt of a completed registration form, the DEP will issue a “Soil and Fill Recycling Registration” confirmation. Any person found to be providing soil and fill recycling services after January 13, 2022, without having received confirmation of registration, are subject to penalties. Further, persons that fail to submit a timely license application will be precluded from providing soil and fill recycling services.

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In the September 10 Compliance Advisory, the DEP recommends that if a company is uncertain whether it is subject to the law, it should proceed to register. The submission of a registration will ensure that a company can continue providing soil and fill recycling services past January 13, 2022, while it determines whether that business is subject to the Dirty Dirt Law's licensing requirements.

Next Steps & Recommendations

The DEP has indicated that it will be providing additional guidance regarding Dirty Dirt Law compliance through the issuance of an updated Frequently Asked Questions (FAQ) document. It is expected that the updated FAQ document will be issued within the next few days and will provide insight regarding the scope applicability of the Dirty Dirt Law.

Although there is some indication to the contrary, it is yet to be seen whether DEP will require licensees to obtain a certificate of public convenience and necessity (CPCN) to engage in soil and fill recycling services and whether vehicle decals will be required. These and other issues associated with the Dirty Dirt Law are likely to be addressed in the FAQ document, or in regulations to be issued to implement the law.

In the meantime, we recommend that soil and fill transportation providers embrace the DEP's Compliance Advisory and take steps now to register with the DEP by October 14, 2021, including in cases where there may be some uncertainty as to whether business operations are subject to the Dirty Dirt Law.

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