

March 5, 2025

A901 Proposed Rules

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New Jersey businesses need to be aware of new rules proposed by the New Jersey Department of Environmental Protection (“NJDEP”) that could significantly impact a wide variety of industries from redevelopment, to hauling, remediation and even real estate sales. An already complex regulatory scheme affecting these businesses could become even more difficult to navigate and, of course, more expensive.

Just weeks ago, the NJDEP finally published proposed significant amendments to the Solid and Hazardous Waste Licensing and Revocation rules, (N.J.A.C. 7:26-16), which already required individuals and entities involved in hauling certain types of waste to obtain an “A-901 license,” which was often a lengthy, complicated and expensive process. In 2020, the “Dirty Dirt Law” was enacted which expanded A-901 licensing requirements to entities involved in soil and fill recycling services.

NJDEP’s proposed rules further complicate an already complex waste and recycling regulatory program, requiring additional layers of oversight, while concurrently expanding its scope.

The amendments could broaden the definition of “soil and fill recycling services” to encompass not just waste haulers but also businesses involved in the sale, brokerage, and processing of soil, potentially requiring a wider range of companies to obtain an A-901 license than ever has been required to do so. In particular, the rules broaden the definition of a “broker” in waste management, meaning more businesses could be considered brokers and require an A-901 license to facilitate waste transactions.

The A-901 licensing process, which already mandates comprehensive background checks and disclosure obligations, may now require expanded background checks for individuals involved in

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waste management activities, including brokers, consultants, and salespersons. Contractors and developers utilizing soil remediation or fill materials may now face delays due to the need to verify the A-901 license status of involved companies.

The potential impacts of the rules don't stop there. The proposed amendments introduce additional regulatory requirements and an increased compliance burden for businesses in the soil and fill recycling sector, potentially impacting both operations and compliance strategies. Businesses will need to submit additional paperwork, maintain detailed records, and comply with new reporting requirements under the amendments. Businesses newly subject to A-901 licensing will need to invest in application fees, background checks, and ongoing compliance measures.

The NJDEP's proposed rules could have a significant impact on commercial real estate transactions, particularly affecting financing, due diligence compliance, and transactional agreements. Lenders will be enticed to tighten loan restrictions due to increased environmental risks. Buyers and sellers could now face greater reporting obligations, increasing the both the cost and complexity of their transactions. Lastly, the amendments will call for adjustments in negotiation strategies to accommodate these new regulations.

Currently, NJDEP is reviewing comments (due March 22, 2025) and considering revisions before finalizing the new amendments. New Jersey businesses would be wise to stay abreast of these developments and, where applicable, consult counsel to assist them in navigating these already stormy waters.

For further information or to discuss. Please contact Heidi Minuskin, Esq. at hsm@spsk.com.

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