

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

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The New Jersey Department of Environmental Protection (NJDEP), in consideration of P.L. 2019, c. 397 (the Dirty Dirt law; enacted January 21, 2020), continues to interpret that the statute requires that any person engaged in the business of 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 its interpretation in a policy statement dated March 2, 2016, that licensed site remediation professionals (LSRPs; see N.J.S.A. 58:10C-1 et seq.) and certified Subsurface Evaluators (SSEs; see N.J.A.C. 7:14B), in providing overall management and oversight of a site remediation project, are not required to obtain an A-901 License and/or CPCN in order to handle the management of solid or hazardous waste from that site. Subsequent to the Dirty Dirt law, the NJDEP issues the following interpretation, which is consistent with the March 2, 2016 policy statement. 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 SSE; (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.

NJDEP interprets the language of the Dirty Dirt law as providing that the following activities do not require licensure under A-901 pursuant to N.J.S.A. 13:1E-126 through 135, or a Certificate of Public Convenience and Necessity pursuant to N.J.S.A. 48:13A in order to investigate, plan for, and arrange for the lawful transportation, disposition, reuse, or recycling of waste materials, including collection, transportation, processing, storage, purchase, sale, or disposition of “soil and fill recyclable materials,” as defined in the Dirty Dirt law from and to these projects to the extent that such materials are needed to remediate the site:

- Those activities on a contaminated site that are conducted by an LSRP retained pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) at N.J.A.C. 7:26C-2.3(a)1 to remediate that contaminated site; or
- Those activities on a site that are conducted by a certified SSE who has been hired to provide services associated with the remediation of a discharge(s) from an unregulated heating oil tank system(s) on that site pursuant to the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F.

**Policy Statement: A-901 and Certificate of Public Convenience and Necessity (CPCN)
Applicability for LSRPs and SSEs Overseeing Remediation (April 22, 2021)**

However, LSRPs and SSEs engaged as a “broker,” which is statutorily defined in N.J.S.A. 13:1E-126 et seq. 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” at sites at which they are not retained as an LSRP or hired as an SSE would require an A-901 License and CPCN as appropriate.

This A-901/CPCN exemption determination does not follow through to entities subcontracted by the LSRP and the SSE who engage in any of the aforementioned activities. LSRPs and certified SSEs remain obligated to hire an A-901 Licensed and certificated company utilizing appropriately licensed and registered haulers and vehicles for the transportation and/or disposition of these wastes or soil and fill recyclable materials.