

**P.L. 2019, c.397 (“Dirty Dirt Law”)
Soil and Fill Recycling Registrations and Soil and Fill A-901 Applications
Updated Frequently Asked Questions (“FAQ”) - (October 7, 2021)**

If you require further guidance or assistance regarding an A-901 license and Soil and Fill Recycling or this FAQ document, please send a message, detailing your concerns to: soilandfill@dep.nj.gov.

As stated in the Dirty Dirt Law (Law)¹ and in the New Jersey Department of Environmental Protection’s (Department or DEP) previous FAQ document issued in February 2020, the original deadline to register for a Soil and Fill Recycling Registration was April 20, 2020. However, pursuant to Executive Order No. 136 (2020), certain timeframes were extended by the number of days of the Public Health Emergency (due to Covid-19) declared in Executive Order No. 103 (2020) plus an additional 60 days. These extended deadlines include those for businesses to submit a Registration form to DEP to continue to engage in Soil and Fill Recycling Services pursuant to N.J.S.A. 13:1E-127.1 if they did not possess an A-901 License but were engaged in Soil and Fill Recycling Services as of January 21, 2020, DEP’s time to review and issue such Registrations, the deadline after which a business may not engage in Soil and Fill Recycling Services without a valid Registration or A-901 License, and the timeframe for a Registrant to submit an administratively complete A-901 License application to the Office of the Attorney General.

On June 4, 2021, Governor Murphy signed Executive Order 244 (EO 244)² ending the Public Health Emergency, thus setting the expiration date of EO 136 to July 4, 2021. On September 17, 2021, Governor Murphy signed Executive Order 263 (EO 263)³ clarifying the deadlines for compliance with the milestones in the Dirty Dirt Law. This FAQ document reflects the established deadlines in accordance with EO 244 and EO 263.

The following Frequently Asked Questions represent the Department’s interpretation on the implementation of the Dirty Dirt Law, but persons engaged in potential Soil and Fill Recycling Services are encouraged to seek professional advice to make their own determination whether the changes to the A-901 statute affect them and require any necessary actions to comply with the Law. The Department is currently in the process of adopting regulations to fully implement the Law.

Q1: What are the new deadlines (established by EO’s 136, 244 and 263) by which an entity must submit the Soil and Fill Recycling Registration application, cease to engage in Soil and Fill Recycling Services without a valid Registration or A-901 License, and for a Registrant to file an A-901 License application?

¹ Link to complete Law https://www.nj.gov/dep/dshw/a901/pl_2019_c_397.pdf

² EO 244: <https://nj.gov/infobank/eo/056murphy/pdf/EO-244.pdf>

³ EO 263 <https://nj.gov/infobank/eo/056murphy/pdf/EO-263.pdf>

A: The Soil and Fill Recycling Registration application must be submitted to the Department by October 14, 2021.

Any business without a valid A-901 License or Registration must cease to engage in Soil and Fill recycling services after January 13, 2022; and

Registrants that require an A-901 License must file an administratively complete A-901 License application to the Office of the Attorney General no later than April 15, 2022.

Q2: What services may I provide after I receive my Soil and Fill Recycling Registration?

A: After you submit your Registration Form and receive your Soil and Fill Recycling Registration document, you are considered a ‘Registrant’ and may, only if you were engaging in Soil and Fill Recycling Services as defined in the Dirty Dirt Law as of January 21, 2020, continue such activities. Persons engaged in potential Soil and Fill Recycling Services are encouraged to make their own determination whether and how the changes to the A-901 statute affect them and require any necessary actions to comply with the Law including the filing of a Soil and Fill Recycling Registration by October 14, 2021 and an administratively complete A-901 License application to the Office of the Attorney General no later than April 15, 2022. To the extent appropriate, the Department may provide additional clarification as to the scope of licensure requirements as policy development continues but in no case shall lack of additional information by the Department be grounds for non-compliance with any provisions of the Law. Individual entities are encouraged to seek appropriate guidance outside of the Department and make a determination in the context of their business activities whether the Law requires them to obtain a Registration and an A-901 license.

Unless otherwise directed in writing by the Department or Attorney General’s Office, failure of a Registrant to file an administratively complete A-901 License application by April 15, 2022 will void your authority to continue to provide Soil and Fill Recycling Services during the pendency of your A-901 License application review. Should such application be timely filed, you may continue to engage in Soil and Fill Recycling Services until a decision is made on your A-901 License application.

Q3: What does the Soil and Fill Recycling Registration allow my company to do?

A: The Soil and Fill Recycling Registration allows the Registrant to continue to engage in “soil and fill recycling services,” as applicable.

As defined by the Dirty Dirt Law Soil and Fill Recycling Services include the “collection, transportation, processing, brokering, storage, purchase, sale or disposition, or any combination thereof, of soils and fill recyclable materials. This definition explicitly excludes the operation of a solar electric power generation facility

at a properly closed sanitary landfill where soil and fill recyclable materials have been previously deposited for permanent disposal.

Soil and Fill Recyclable Materials are defined as 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. Soil and fill recyclable materials do not include: (1) Class A recyclable material; (2) Class B recyclable material that is shipped to a Class B recycling center approved by the Department for receipt, storage, processing, or transfer; (3) beneficial use material for which the generator has obtained prior approval from the department 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.

The Soil and Fill Recycling Registration is NOT a full A-901 License and does not give your company authority to operate beyond providing Soil and Fill Recycling Services as defined in the Dirty Dirt Law. The Soil and Fill Recycling Registration does not authorize your company to engage in the collection, transportation, treatment, processing, storage, brokering, transfer, or disposal of solid or hazardous wastes other than Soil and Fill Recyclable Materials. Solid and hazardous waste activities are only authorized if you have a current A-901 license to conduct those activities. A Registration does not provide the authority to manage solid or hazardous wastes other than Soil and Fill Recyclable Materials.

Q4: How and when does the Soil and Fill Recycling Registration become invalid?

A: The Soil and Fill Recycling Registration is non-transferable and shall automatically expire and become invalid upon either failure by the Registrant to submit a valid and administratively complete A-901 License application by April 15, 2022 or upon a final A-901 Licensure determination by the Department regarding the Registrant's A-901 Application.

Q5: To whom and where does the Registrant file the A-901 License Application?

A: The A-901 License Application can be found at <https://www.nj.gov/dep/dshw/a901/a901frms.htm> . The Registrant shall submit the A-901 License application to the Division of Law, Environmental Permitting and Counseling Section, A901 Unit, 25 Market Street, P.O. Box 093, Trenton, NJ 08625-0093, and contact (609) 376-3270 with any questions. The application is accepted via mail or email. It is recommended to send to the Division of Law via overnight mail or USPS priority.

Q6: Are landscapers, contractors, pool companies, home remodeling companies, and other similar low soil volume businesses required to Register and subsequently apply for an A-901 License pursuant to the Dirty Dirt Law?

A: Generally no, as long as the below conditions are met. Although the Dirty Dirt Law does not specify categorical exemptions, the Department interprets the intent of the statute as companies that deal with lower volumes of Soil and Fill Recyclable Materials do not “engage” in Soil and Fill Recycling Services as defined therein and therefore do not need to Register and apply for an A-901 license when the following apply:

1. Is utilizing trucks and trailers that, on their own, or in combination, do not have a loading capacity exceeding 15 cubic yards of soil and/or soil and fill recyclable materials at any given time; and
2. If applicable, owns, operates, or controls the storage of any Soil and Fill Recyclable Materials on a site 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 and provided that when construction and demolition debris is separated from these soils it is performed without any crushing or grinding of same onsite; and,
3. If required by applicable law, possess a Division of Consumer Affairs Home Improvement Contractor license or other similar license.

Based on the Department’s experience, landscapers, contractors, pool companies, home remodeling companies, plumbers, electricians, and similar entities generally do not exceed the aforementioned volume limitations. However, should the entity not meet these conditions, the entity must either hire an A-901 Licensed contractor, or shall itself possess a Registration (during the appropriate timeframe) or an A-901 License to manage the Soil and Fill Recyclable Materials.

Q7: Does everyone who Registers under the Law need to subsequently apply for and obtain an A-901 License?

The determination of whether a specific entity is engaged in Soil and Fill Recycling Services and thus needs to Register and apply for an A-901 license is a fact-specific inquiry that must be undertaken by the Registrant, including any necessary counsel from its legal representatives. The Department has, and will continue, as appropriate to provide pertinent guidance to aid in the inquiry, but in no case shall lack of additional information provided by the Department affect timely compliance with provisions of the Law.

Q8: Must a vehicle hauling only Soil and Fill Recyclable Material be registered with NJDEP as a Solid Waste transporter and have a current NJDEP decal?

A: No. A vehicle hauling only Soil and Fill Recyclable Material as defined in the Law is not required to be registered with NJDEP as a solid waste vehicle in New Jersey and does not require a current DEP decal.

However, it is anticipated that few entities will haul exclusively Soil and Fill Recyclable Material, therefore please be aware of the following circumstances which would require the vehicle to be registered with NJDEP as a solid waste vehicle in New Jersey and have a current NJDEP decal:

The material being hauled is from an industrial site and/or contains recognizable wood, metal, plastic, concrete, block or brick.

The material being hauled, unless being transported to an authorized Class B recycling center approved by the Department to accept the material, contains 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).

Be further advised that a Soil and Fill Recycling Registration only allows the transportation of Soil and Fill Recyclable Materials. An A-901 license and Certificate of Public Convenience and Necessity (if appropriate) and a solid waste transporter registration may also be required to transport solid waste.

Q9: Are Class B Recycling Facilities required to Register and subsequently apply for an A-901 License under the Dirty Dirt Law?

Class B recycling facilities that accept bulk soil separately from approved Class B materials are considered to be performing “Soil and Fill Recycling Services,” **and are required to obtain an A-901 License.** Class B recycling facilities that are in compliance with their Class B recycling center approvals that accept and process **only** Class B recyclable materials authorized by their NJDEP - issued Class B recycling center general approval, as defined by N.J.A.C. 7:26A-1.3, are not required to Register and obtain an A-901 License.

Under the Dirty Dirt Law, Soil and Fill Recyclable Materials shall not include:

“Class B recyclable material⁴, pursuant to section 4 of P.L.1989, c.268 (C.13:1E-99.43), that is shipped to a Class B recycling center approved by the department for receipt, storage, processing, or

⁴ Pursuant to the Dirty Dirt Law, the transportation of Class B recyclable materials to an approved Class B recycling center is exempt from regulation. The Department has interpreted this statutory exemption to include the subsequent processing, sale, and use of the Class B recyclable material if accomplished consistent with DEP approvals.

transfer in accordance with subsection b. of section 41 of P.L.1987, c.102 (C.13:1E-99.34).”

Q10: Are soil processing facilities, including Class B or Class C recycling facilities that also conduct a soil processing operation required to Register and subsequently apply for an A-901 License?

A: Generally yes. Under The Dirty Dirt Law, “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.”

The Department has interpreted the above definition of “Soil and Fill Recycling Services” to include soil blending and manufacturing facilities, “topsoil manufacturers,” or other soil processors because they are involved in the processing of soil as a raw material provided that any owner, operator, or person in control of such operations at such facilities or sites stores or processes more than 100 cubic yards of soil and fill on-site at any one time.

As indicated in the response to Q9, paragraph 1 above, Class B or Class C recycling centers that also conduct soil processing operations at the same site outside of the scope of their Department-issued general approvals, are considered to be performing “Soil and Fill Recycling Services,” **and are required to obtain a Registration and an A-901 License.**

“Soil Processing” for the purpose of this document means receipt, storage and/or treatment of soil to alter its volume, physical, and/or chemical characteristics, generally to meet specific end use requirements. Treatment may include, but not be limited to physical treatment such as screening; blending with other soil, virgin quarry products, or other materials; or various chemical or biological treatments, or any combination thereof, to manipulate the quality and/or quantity or potential use of the soil. The Department will further define this term in rulemaking.

Q11: Must a business concern Register and subsequently apply for an A-901 License under the Dirty Dirt Law if it only deals with “clean” soil or fill?

A. As per the Law, the definition of Soil and Fill Recyclable Materials excludes (1) Class A recyclable materials (2) Class B recyclable material that is shipped to a Class B recycling

center approved by the Department; (3) beneficial use material for which the generator has obtained prior approval from the Department to transport to an approved and designated destination (4) virgin quarry products including, but not limited to, rock, stone, gravel, sand, clay and other mined products. Therefore, business concerns that deal exclusively with these materials are exempt from the requirements of the Law.

The Department 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, provided that a person claiming such exemption 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.

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).

Q12: Must retail stores that sell bagged or loose soil products register and subsequently apply for an A-901 license?

A: No, unless that retailer also provides Soil and Fill Recycling Services. Pursuant to the Dirty Dirt Law "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."

The materials sold in retail establishments do not meet the definition of Soil and Fill Recyclable Materials because they are not returning raw materials to the economic mainstream for further processing, and therefore their activities are not regulated under the Dirty Dirt Law.

Should a retail establishment also provide Soil and Fill Recycling Services as defined in the Dirty Dirt Law, they would require an A-901 license.

Q13: Is there a self-generator exemption for Soil and Fill Recyclable Materials?

A: No, the Department has interpreted that the Dirty Dirt Law does not include a self-generator exemption for Soil and Fill Recyclable Materials. While the self-generator exemption for solid and hazardous waste still exists and remains unchanged, the Department interprets the Dirty Dirt Law as not including a self-generator exemption for Soil and Fill Recyclable Materials.

Q14: Must an individual who falls under the definition of Consultant under the Dirty Dirt Law register and subsequently apply for an A-901 License?

A: No, unless that individual is also conducting activities consistent with the definition of “Soil and Fill Recycling Services” which states:

"Soil and fill recycling services" means the services provided by persons engaging in the business of the collection, transportation, processing, brokering, storage, purchase, sale or disposition, or any combination thereof, of soil and fill recyclable materials... .”

Thus, as long as the individual meets the definition of “Consultant” below, and is not collecting, transporting, processing, brokering, storing, purchasing, selling, or disposing Soil and Fill Recyclable Materials, that individual is not required to file an A-901 License application:

“Consultant means a person who performs functions for a business concern engaged in the collection, transportation, treatment, storage, processing, brokering, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services....”

However, every A-901 Licensed entity must file a Personal History Disclosure (PHD) form for each retained Consultant as a “key employee”, which is defined as:

“... any individual employed or otherwise engaged by the applicant, the permittee or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the business concern; any family member of an officer, director, partner, or key employee, employed or otherwise engaged by the applicant or permittee; or any broker, consultant or sales person employed or otherwise engaged by, or who do business with, the applicant, permittee, or licensee, with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the business concern; but shall not include (1) employees, who are not family members, exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling services; or (2) a sales person employed by a publicly traded corporation or a direct or indirect subsidiary of a publicly traded corporation.”

Thus, although not required, for practical purposes a Consultant who is retained by multiple A-901 Licensed companies may, in its discretion, choose to apply for their own A-901 License and avoid having to file a personal history disclosure statement under each A-901 Licensed company for which they are employed.

Q15: Must an individual who falls under the definition of a “Broker” under the Dirty Dirt Law register and subsequently apply for an A-901 License?

A: Yes. As indicated above, “brokering” is covered under the definition of “Soil and fill Recycling Services” and includes any “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.”

Q16: Must Licensed Site Remediation Professionals (LSRPs) or Certified Subsurface Evaluators (SSEs) register and subsequently apply for an A-901 License under the Dirty Dirt Law?

A: No, as long as a Licensed Site Remediation Professional (LSRP) or a Certified Subsurface Evaluator (SSE) is retained to provide overall management and oversight of a site remediation project that is being conducted pursuant to either the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, or the Heating Oil Tank System Remediation Rules, N.J.A.C. 7:26F, that LSRP or SSE does not need an A-901 license or Certificate of Public Convenience and Necessity to manage the solid and hazardous waste from that site.

However, if the LSRP or SSE is acting outside the scope of the above requirements or is conducting development of a site beyond NJDEP Site Remediation project approvals pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-5.2(c), or is acting as a ‘broker’ they will be required to either file for an A-901 License or file a PHD form as a Consultant, depending on the facts and circumstances as indicated above.

It should be noted that if another person is subcontracted to procure contaminated soil for or remove contaminated soil from a site remediation site, including a person employed by the same company as the LSRP or SSE, that person is required to either file for an A-901 License or file a PHD form as a Consultant, depending on the facts and circumstances.

The Department has amended its 2016 policy regarding LSRP’s and SSE’s A-901 Licensure requirements. Please visit:

https://www.state.nj.us/dep/srp/guidance/srra/l srp_sse_a901_policy_statement.pdf
for further clarification.

Q17: Are Federal and State agencies, county or municipal governments required to Register and subsequently apply for an A-901 License under the Dirty Dirt Law?

A: No. Under N.J.S.A. 13:1E-127(s), “Soil and Fill Recycling License” means:

an approval to operate a business concern engaged in soil and fill recycling services issued pursuant to section 8 of P.L.1983, c.392 (C.13:1E-133).

Under N.J.S.A. 13:1E-127(c), a “business concern” means:

any corporation, association, firm, partnership, sole proprietorship, trust, limited liability company, or other form of commercial organization.

Federal and State agencies, counties and municipalities do not fall under the definition of a business concern and thus do not need to apply for an A-901 License. Please note, however, if a county or municipality retains a contractor to engage in Soil and Fill Recycling Services, that contractor must have a valid A-901 License.

The following Frequently Asked Questions relate to changes made to the A-901 Application and Annual Update process under P.L. 2019, c.397.

Q18: Who must file a Personal History Disclosure statement under the Dirty Dirt Law?

A: Any “Key Employee” of the business concern applying for an A-901 License must file a PHD statement. A Key Employee is defined as:

Any individual employed or otherwise engaged by the applicant, the permittee or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the business concern; any family member of an officer, director, partner, or key employee, employed or otherwise engaged by the applicant or permittee; or any broker, consultant or sales person employed or otherwise engaged by, or who do business with, the applicant, permittee, or licensee, with respect to the solid waste, hazardous waste, or soil and fill recycling operations of the business concern; but shall not include (1) employees, who are not family members, exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste, or the provision of soil and fill recycling.

As indicated by the definition above, family members, consultants, and salespersons are Key Employees and must file PHD statements.

Q19: Must all salespersons file PHDs under the Dirty Dirt Law?

A: No, not all salespersons are required to file PHDs. The Department interprets the requirement to file a PHD as applying only to salespersons who are involved with waste or Soil and Fill Recyclable Materials generated in or delivered to the State of New Jersey. Thus, unless the employee is involved in sales relating to waste or Soil and Fill Recyclable Materials generated in or delivered within or to New Jersey, that salesperson is not required to file a PHD.

Q20: Are family members of an officer, director, partner, or key employee, employed or otherwise engaged by the company, even if as a driver required to file a PHD under the Dirty Dirt Law?

A: Yes, pursuant to the definition of a Key Employee, any family member of an officer, director, partner, or key employee, employed or otherwise engaged by the company must file a PHD. Family members with any involvement with the business concern, regardless of in what role they are employed or engaged by the company, including as a driver, are required to file a PHD statement as a Key Employee.

Q21: What criteria in the Dirty Dirt Law are used to determine which Consultants must file a PHD statement?

A: Under the Dirty Dirt Law, a Consultant is defined as “a person who performs ‘functions’ for a business concern” engaged in the waste or soil and fill recycling services. The “functions” must pertain to the company’s involvement in the solid waste, hazardous waste, or soil and fill recycling industries. Based on the Department’s experience, “functions” include but are not limited to, site management services, regulatory compliance practices, waste management services, waste audits, preparing A-901 Annual Updates, etc.

Q22: Are salespersons, family members and/or consultants with no decision-making authority or supervisory capacity required to file a PHD statement under the Dirty Dirt Law?

A: Yes. The Department interprets the definition of Key Employee to mean that salespersons, family members, or consultants are not required to be acting in a supervisory capacity or empowered to make decisions to be deemed Key Employees and thus need to file a PHD statement.

Q23: Are seasonal or part-time employees of a business concern required to file a PHD statement under the Dirty Dirt Law?

A: Generally, no, seasonal and part-time employees are usually not required to file PHD statements unless the employee is operating in a supervisory capacity and/or making discretionary decisions with respect to the Soil and Fill Recycling Service operations of the business concern and thus falls within the definition of Key Employee.