

## Environmental Law & Litigation

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### **Dirty Dirt Law Update: In a Boon for Environmental Consultants (and Others), Amendment Clarifies the Law's Reach to 'Brokers'**

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On Jan. 20, just ahead of Gov. Mikie Sherrill's inauguration, now former Gov. Phil Murphy signed a slew of legislation into law, including an amendment (Amendment) that clarifies and narrows the definition of "broker" under New Jersey's Dirty Dirt Law, N.J.S.A. 13:1E-127.1 et seq. The Amendment can be viewed [here](#).

The Dirty Dirt Law, passed in 2020, expanded New Jersey's A-901 licensing program to require certain entities performing soil fill and recycling services<sup>1</sup> to go through a rigorous licensing application process and background check. The Amendment, which comes as a relief to many environmental consultants across the state, will now limit the New Jersey Department of Environmental Protection's (NJDEP) ability to require certain entities to obtain an A-901 license to perform soil and fill recycling services, and it will provide increased certainty on the licensing obligations of property owners that wish to solicit such services.

To provide this increased certainty, the Amendment adds language to the statutory definition of "broker" that specifically excludes two entity types: (1) persons acting on their own behalf who hire businesses to perform soil and fill recycling services at properties they own or control; and (2) entities whose subcontractors perform soil and fill recycling services, so long as the subcontractors are licensed with NJDEP. Under the Amendment, neither of those entities will require an A-901 license. While it had long been the regulated community's position that neither of these entities was covered by the Dirty Dirt Law, the Amendment resolves any ambiguity by specifically carving them out.

For businesses that may involve the performance of soil and fill recycling services, the Amendment reinforces the importance of maintaining NJDEP registrations and licenses and ensuring that any subcontractors engaged in such services are also registered and licensed, which will minimize regulatory exposure to themselves, upstream clients, and contracting entities. For property owners, this clarification should ease concerns about being treated as brokers under the Dirty Dirt Law when hiring soil and fill recycling service providers, although vetting New Jersey license compliance should nonetheless be included as part of routine diligence to avoid unnecessary exposure.

The push-pull between NJDEP and the regulated community on the scope of the Dirty Dirt Law will likely continue. But for now, the Amendment provides some much-needed legislative relief.

If you have any questions about the Dirty Dirt Law or the Amendment, please contact the authors of this article.

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<sup>1</sup> "Soil and fill recycling services" is defined by the Dirty Dirt Law to mean "the services provided by persons engaging in the business of collection, transportation, processing, brokering, storage, purchase, sale or disposition, or any combination thereof, of soil and fill recyclable materials." N.J.S.A. 13:1E-127(t).

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