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New Jersey State Commission of Investigation takes aim at solid waste and recycling industries and recommends overhaul of A-901 Program

By David C. Apy

Citing 30 examples of organized crime infiltration, New Jersey's State Commission of Investigation recently released a sweeping report alleging severe deficiencies in the state's Solid Waste Licensing (A-901) Program and recommending changes designed to broaden its scope in an effort to combat corruption in the solid waste and recycling industries. While the intent of the proposed changes is laudable, they will inevitably make the already cumbersome process of obtaining and maintaining a license even more so for legitimate business concerns.

"The State Commission of Investigation, which first uncovered significant criminal intrusion into solid waste as far back as the late 1960s, has found that the industry today remains open to manipulation and abuse by criminal elements that circumvent the State's existing regulatory and oversight system" by hiding behind seemingly legitimate businesses. According to the Commission, "Of particular concern is the vulnerability to corruption of certain activities, such as the recycling and disposal of contaminated soil and demolition debris that pose serious potential environmental and public health consequences."

After providing examples of failings of the A-901 Program to prevent criminal infiltration into the solid waste and recycling industries due to a flawed regulatory structure and inadequate funding of the A-901 Program, the Commission has recommended seven specific changes to provide "for greater scrutiny of individuals who are engaged, whether directly or indirectly, in the State's solid waste" and recycling industries.

1. Strengthen and Expand Solid Waste Licensing Requirements

"The statutory underpinning of New Jersey's solid waste licensing program, the A-901 Law should be amended to require that a wider circle of individuals and entities who participate in the State's solid waste industry be subject to scrutiny prior to any action bearing upon the issuance and/or retention of a license."

2. Require Licensing for Individuals and Businesses Engaged in Recycling

“Licensing requirements applicable to participants in New Jersey’s solid waste collection and disposal industry – i.e., garbage carting – should be extended to cover those engaged in all forms of recycling as well.”

3. Restructure and Enhance Funding for Stronger Enforcement

Provide the Office of the Attorney General “with sufficient resources to do the job effectively, and a primary means to that end lies in collecting full reimbursement for the expense for background integrity checks.”

4. Prohibit Debarred Individuals, Convicted Felons and Others of Questionable Character from Holding an Indirect, Non-Licensed Stake in the Industry

Provide “a broad and explicit definition of what constitutes an indirect ‘beneficial interest’ in a licensed solid waste and/or recycling entity. The holder of that interest would then be subject to all proper and appropriate disclosure and background integrity-check requirements.”

5. Centralize and Streamline State Oversight and Enforcement

Responsibility for all A-901 licensing matters should be “consolidated within the Office of the Attorney General and administered by one leadership team with a dedicated in-house staff of attorneys, investigators and personnel knowledgeable about solid waste management and recycling.”

6. Require Effective Sharing of Information with Neighboring Jurisdictions

A “system of solid waste ‘information reciprocity’ should become uniform among all jurisdictions throughout the region, patterned after post-9/11 homeland security intelligence- and information-sharing protocols.”

7. Centralize Debarment Lists

“[R]ules should be established to ensure that debarment information is forwarded to the Treasurer for inclusion in the central debarment list so that the status of persons and businesses deemed unfit to work under one agency’s purview is made known across-the-board.”

Saul Ewing LLP will continue to monitor all responses to the Commission’s sweeping report, including any administrative and legislative actions designed to broaden and strengthen the A-901 Program.

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