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ENVIRONMENTAL ALERT

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WASTE DISPOSAL: WHO MUST REGISTER?

In accordance with the new administration's aggressive environmental agenda, the New Jersey Department of Environmental Protection ("NJDEP") has begun issuing Notices of Violation to companies that broker or whose business involves the arrangement for the proper disposal of solid and hazardous waste if they are not registered with the State. Failure to have the proper registration could subject such parties to substantial penalties. NJDEP's regulations mandate that companies engaged merely in arranging for the transportation and disposal of solid or hazardous waste register with the State. The registration, commonly known as an "A-901" registration, involves the submission of detailed information about the company's background and the background of all owners, officers, directors and key employees of the company, and includes fingerprints and background checks.

NJDEP's initiative is targeted at waste disposal brokers and may potentially include contractors or consultants whose business involves the arrangement for transportation and/or disposal of solid or hazardous waste for its clients, even if such party only acts as the intermediary between the contracting parties and subcontractors who actually transport and/or dispose of the waste. The only exceptions recognized by NJDEP are where the broker sets up a one time transaction between the parties or where the transportation and/or disposal arrangement is incidental to the party's business.

Interestingly, while the A-901 regulations provide a definition of "broker," the regulations do not specifically state that the regulations apply to brokers. Instead, the State is characterizing brokers as "prime contractors," who are subject to the A-901 registration requirements. A "prime contractor" is defined as "any person who enters into an oral or written agreement with a generator to store, collect, process, transfer, treat, or dispose of solid waste in this State through the use, control or possession of any solid waste transport unit." The key to the NJDEP's broad interpretation and expansive application of this definition is a party's "use" and/or "control" of the transporter/disposer.

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If you are engaged in any of these activities in the State of New Jersey, you may need to apply for an A-901 permit to avoid the imposition of penalties. The application process takes approximately 9-12 months and includes the submission of the following documents: (1) a “Business Concern Disclosure Statement” (61 pages) that seeks detailed information about the applicant’s business; (2) a “Personal History Disclosure Statement” (43 pages) from all owners, officers, directors and key employees of the applicant that seeks detailed information about the background of these individuals; (3) a “Secondary Level Business Concern Disclosure Statement” seeking information on all other businesses in which the owner has an interest; and (4) applicable fees.

If you have any questions about the applicability of the requirements or the application process, feel free to contact either of the following attorneys within our Environmental Practice Group:

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