

ASSEMBLY, No. 1171

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman COHEN

1 An Act concerning the licensing and regulation of the solid and
2 hazardous waste industries, and amending, supplementing and
3 repealing parts of the statutory law.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) Sections 1 through 8 inclusive of this amendatory
9 and supplementary act shall be known and may be cited as the "Solid
10 and Hazardous Waste Operator Registration Reform Act of 1995."

11

12 2. (New section) The Attorney General and the Department of
13 Environmental Protection shall, within 90 days of the effective date of
14 this act and pursuant to the "Administrative Procedure Act," P.L.1968,
15 c.410 (C.52:14B-1 et seq.), jointly publish in the New Jersey Register
16 a copy of all forms necessary to be filed with an applicant's or
17 permittee's request for a license, including a form prescribing the
18 contents and specific requirements of the disclosure statement to be
19 filed with the department and the Attorney General, and a form for
20 providing any additional or updated information that may be added to
21 the disclosure statement after it has been filed by the applicant,
22 permittee or licensee.

23

24 3. (New section) a. The department shall, within 120 days of the
25 filing of a completed application and disclosure statement, approve or
26 deny an application from an applicant for an initial license, unless the
27 time period is extended with the consent of the applicant.

28 b. If the department fails to render a decision on a completed
29 application and disclosure statement submitted by an applicant within
30 the time period specified in this section, the department shall issue a
31 temporary approval of registration to the applicant pending the
32 completion by the Attorney General and the department of the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 requirements of sections 3 and 8 of P.L.1983, c.392 (C.13:1E-128 and
2 13:1E-133).

3 c. A temporary approval of registration shall be given by the
4 department for an applicant pursuant to this section provided that the
5 applicant has been given a valid engineering design approval by the
6 department for the proposed solid waste or hazardous waste
7 treatment, storage, transfer or disposal operation.

8 d. If the department denies an application from an applicant for an
9 initial license after a temporary approval of registration has been given
10 by the department and the solid waste facility has commenced
11 operations, the applicant shall be entitled to continue operations at the
12 solid waste facility pending a decision following a hearing to be
13 conducted as a contested case pursuant to the "Administrative
14 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and the
15 exhaustion of all judicial relief.

16

17 4. (New section) a. Within 10 days of transmittal to the
18 department, the applicant, permittee or licensee shall be furnished with
19 a copy of the investigative report prepared by the Attorney General
20 pursuant to section 3 of P.L.1983, c.392 (C.13:1E-128) and copies of
21 any other reports on the applicant, permittee or licensee prepared by
22 the department, the State Police or other federal, State or local
23 agency.

24 b. If the Attorney General fails or refuses to provide copies of any
25 such reports to the applicant, permittee or licensee, as the case may be,
26 the reports may not be utilized in any manner whatsoever by the
27 Attorney General or the department in any decision or determination
28 on the application for initial licensing, renewal or revocation.

29 c. Within 30 days of receipt of an investigative report or other
30 report pertinent to an application for initial licensing, renewal or
31 revocation, the applicant, permittee or licensee may notify the
32 governmental agency that prepared the report of any information
33 contained therein, which is considered by the applicant, permittee or
34 licensee to be inaccurate or incomplete.

35 d. Access to and use of the investigative report prepared by the
36 Attorney General, or any other report on the applicant, permittee or
37 licensee prepared by the department, the State Police or other federal,
38 State or local agency, shall be restricted to the purpose for which the
39 report was prepared and shall not be disseminated to any other person
40 or federal, State or local agency without the written consent of the
41 applicant, permittee or licensee.

42

43 5. (New section) a. The department shall, by rule or regulation
44 adopted pursuant to the "Administrative Procedure Act," P.L.1968,
45 c.410 (C.52:14B-1 et seq.), establish and maintain a disqualification
46 list of all persons debarred or disqualified from doing business with

1 persons licensed pursuant to the provisions of P.L.1983, c.392
2 (C.13:1E-126 et seq.), P.L.1991, c.269 (C.13:1E-128.1 et al.) or
3 P.L.1996, c. (C)(pending in the Legislature as this bill). The list
4 shall be published in the New Jersey Register and shall include the
5 criteria and standards for exclusion. The department shall furnish all
6 licensees with copies of the list as updated. No applicant or permittee
7 may transact any new business with any person whose name is
8 contained on the disqualification list.

9 b. Whenever the department intends to place the name of any
10 person on the disqualification list pursuant to this section, the
11 department shall prepare a petition setting forth its allegations and
12 shall serve the petition on that person by personal service or by
13 certified mail at the last known address of that person.

14 c. Within 30 days after service of the petition in accordance with
15 subsection b. of this section, the person named for exclusion may
16 demand a hearing before the department. At any such hearing the
17 department shall have the affirmative obligation to demonstrate, by a
18 preponderance of the evidence, that the person named for exclusion
19 satisfies the criteria and standards for exclusion established pursuant
20 to this section. Failure to demand such a hearing within 30 days after
21 service shall be deemed an admission of all matters and facts alleged
22 in the department's petition and shall preclude a person from having an
23 administrative hearing, but shall in no way affect that person's right to
24 judicial review as provided herein.

25 d. The department may seek preliminary placement on the list of a
26 person named in a petition for exclusion pending completion of a
27 hearing on the petition. The hearing on the application for preliminary
28 placement shall be a limited proceeding at which the department shall
29 have the affirmative obligation to demonstrate that there is a
30 reasonable probability that the person so named satisfies the criteria
31 and standards for exclusion established pursuant to this section. If a
32 person has been placed on the list as a result of an application for
33 preliminary placement, unless otherwise agreed by the department and
34 the named person, a hearing on the petition for exclusion shall be
35 initiated within 30 days of the receipt of a demand for the hearing, or
36 the date of preliminary placement on the list, whichever is later.

37 e. If, upon completion of the hearing on the petition for exclusion,
38 the department determines that the person named therein does not
39 satisfy the criteria and standards for exclusion established pursuant to
40 this section, the department shall issue an order so stating. If the
41 person named in the petition for exclusion had been placed on the list
42 as a result of an application for preliminary placement, the department
43 shall notify all applicants, permittees and licensees of the person's
44 removal from the list.

45 f. If, upon completion of a hearing on the petition for exclusion,
46 the department determines that placement of the name of the person

1 on the disqualification list is appropriate, the department shall issue an
2 order to that effect, which shall be served on all applicants, permittees
3 and licensees. The order shall be subject only to judicial review by the
4 Superior Court as provided in the Rules of Court.

5

6 6. (New section) In all matters considered pursuant to the
7 provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), P.L.1991, c.269
8 (C.13:1E-128.1 et al.) or P.L.1996, c. (C.)(pending in the
9 Legislature as this bill) and heard as contested cases pursuant to the
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
11 seq.), the decision of the administrative law judge shall be reviewed by
12 the Commissioner of Environmental Protection upon issuance of the
13 initial decision of the administrative law judge. Any review of the
14 decision by the commissioner shall be limited to determining whether
15 the findings therein could reasonably have been reached on sufficient
16 credible evidence present in the record considering the proofs as a
17 whole, with due regard of the opportunity of the administrative law
18 judge to hear the witnesses and to judge their credibility.

19 The decision of the administrative law judge shall not be disturbed
20 if there is competent evidence in the record to support it, and if the
21 findings could reasonably have been reached on sufficient evidence
22 present in the record.

23

24 7. (New section) a. In all matters considered pursuant to the
25 provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), P.L.1991, c.269
26 (C.13:1E-128.1 et al.) or P.L.1996, c. (C.)(pending in the
27 Legislature as this bill), the application of this statutory scheme act
28 shall not be selectively applied or enforced.

29 b. The provisions of this amendatory and supplementary act shall
30 be applicable to any matters pending before any agency or judicial
31 tribunal as of the effective date of this amendatory and supplementary
32 act. Nothing herein contained shall be construed to prevent any
33 interested party from seeking relief under this amendatory and
34 supplementary act from any prior decision.

35

36 8. (New section) The Attorney General and the Department of
37 Environmental Protection shall, within 120 days of the effective date
38 of this amendatory and supplementary act and pursuant to the
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
40 seq.), adopt rules and regulations necessary to implement the
41 provisions of this amendatory and supplementary act.

42

43 9. Section 1 of P.L.1983, c.392 (C.13:1E-126) is amended to read
44 as follows:

45 1. The Legislature hereby finds and declares to be the public policy
46 of this State:

1 [That the] The collection, transportation, treatment, storage, [and]
2 transfer or disposal of solid waste or hazardous waste are critical
3 components of the economic structure of this State and, when properly
4 controlled and regulated, make substantial contributions to the general
5 welfare, health and prosperity of the State and its inhabitants by
6 minimizing the serious health and environmental threats inherent in the
7 management of these wastes;

8 [That the] The regulatory provisions of [this act] P.L.1983, c.392
9 (C.13:1E-126 et seq.) and P.L.1991, c.269 (C.13:1E-128.1 et al.) are
10 designed to extend strict State regulation to those [persons]
11 individuals and entities involved in the operations of [these] licensed
12 activities [so as] to foster and justify the public confidence and trust
13 in the credibility and integrity of the conduct of these activities;

14 [That the] The solid and hazardous waste industries in New Jersey
15 can attain, maintain, and retain integrity, public confidence, and trust,
16 and promote the general public interest, only under a system of control
17 and regulation that precludes the participation therein of persons with
18 known criminal records, habits, or associations, and excludes or
19 removes from any position of authority or responsibility any person
20 known to be so deficient in reliability, expertise, or competence with
21 specific reference to the solid or hazardous waste industries that his
22 participation would create or enhance the dangers of unsound, unfair,
23 or illegal practices, methods, and activities in the conduct of the
24 business of these industries;

25 [That, notwithstanding the fact that the major percentage of
26 operators involved in these industries are respectable and responsible
27 and that there exists in New Jersey a substantial waste industry capable
28 of meeting the licensing standards, the solid and hazardous waste
29 industries remain vulnerable to corrupting influences; and]

30 [Therefore, that it is] It is therefore vital to the interests of the
31 State to prevent entry, direct or indirect, into the operations of the
32 solid or hazardous waste industries of persons who have pursued
33 economic gains in an occupational manner or context violative of the
34 criminal code [or civil public policies] of the State, and it is to the end
35 of excluding such persons that the regulatory and investigatory powers
36 and duties provided in this supplementary act shall be exercised to the
37 fullest extent consistent with law.

38 (cf: P.L.1983, c.392, s.1)

39

40 10. Section 2 of P.L.1983, c.392 (C.13:1E-127) is amended to
41 read as follows:

42 2. As used in the provisions of P.L.1983, c.392 (C.13:1E-126 et
43 seq.) [and], P.L.1991, c.269 (C.13:1E-128.1 et al.) and P.L.1996,
44 c. (C.)(pending in the Legislature as this bill):

45 a. "Applicant" means any business concern which has filed a
46 disclosure statement with the department and the Attorney General

1 and is seeking an initial license, provided that the business concern has
2 furnished the department and the Attorney General with any
3 information required pursuant to P.L.1991, c.296 (C.13:1E-128.1 et
4 al.).

5 b. "Application" means the forms and accompanying documents
6 filed in connection with an applicant's or permittee's request for a
7 license.

8 c. "Business concern" means any corporation, association, firm,
9 partnership, sole proprietorship, trust or other form of commercial
10 organization.

11 d. "Department" means the Department of Environmental
12 Protection.

13 e. "Disclosure statement" means a statement submitted to the
14 department and the Attorney General by an applicant or a permittee,
15 which statement shall include:

16 (1) The full name, business address and social security number of
17 the applicant or the permittee, as the case may be, and of any officers,
18 directors, partners, or key employees thereof and all persons holding
19 any equity in or debt liability of that business concern, or, if the
20 applicant or permittee is a publicly traded corporation, all persons
21 holding more than 5% of the equity in or the debt liability of that
22 business concern, except that where the debt liability is held by a
23 chartered lending institution, the applicant or permittee need only
24 supply the name and business address of the lending institution;

25 (2) The full name, business address and social security number of
26 all officers, directors, or partners of any business concern disclosed in
27 the disclosure statement and the names and addresses of all persons
28 holding any equity in or the debt liability of any business concern so
29 disclosed, or, if the business concern is a publicly traded corporation,
30 all persons holding more than 5% of the equity in or the debt liability
31 of that business concern, except that where the debt liability is held by
32 a chartered lending institution, the applicant or permittee need only
33 supply the name and business address of the lending institution;

34 (3) The full name and business address of any business concern
35 which collects, transports, treats, stores, transfers or disposes of solid
36 waste or hazardous waste in which the applicant or the permittee holds
37 an equity interest;

38 (4) A description of the experience and credentials in, including
39 any past or present licenses for, the collection, transportation,
40 treatment, storage, transfer or disposal of solid waste or hazardous
41 waste possessed by the applicant or the permittee, as the case may be,
42 and by the key employees, officers, directors, or partners thereof;

43 (5) A listing and explanation of any notices of violation or
44 prosecution, administrative orders or license revocations issued by this
45 State or any other state or federal authority, in the 10 years
46 immediately preceding the filing of the application or disclosure

1 statement, whichever is later, which are pending or have resulted in a
2 finding or a settlement of a violation of any law or rule and regulation
3 relating to the collection, transportation, treatment, storage, transfer
4 or disposal of solid waste or hazardous waste by the applicant or the
5 permittee, as the case may be, or by any key employee, officer,
6 director, or partner thereof;

7 (6) A listing and explanation of any judgment of liability or
8 conviction which was rendered, pursuant to the laws of this State, or
9 any other state or federal statute or local ordinance, against the
10 applicant or the permittee, as the case may be, or against any key
11 employee, officer, director, or partner thereof, except for any violation
12 of Title 39 of the Revised Statutes other than a violation of the
13 provisions of P.L.1983, c.102 (C.39:5B-18 et seq.), P.L.1983, c.401
14 (C.39:5B-25 et seq.) or P.L.1985, c.415 (C.39:5B-30 et seq.);

15 (7) A listing of all labor unions and trade and business associations
16 in which the applicant or the permittee was a member or with which
17 the applicant or the permittee had a collective bargaining agreement
18 during the 10 years preceding the date of the filing of the application
19 or disclosure statement, whichever is later;

20 (8) A listing of any agencies outside of New Jersey which had
21 regulatory responsibility over the applicant or the permittee, as the
22 case may be, in connection with the collection, transportation,
23 treatment, storage, transfer or disposal of solid waste or hazardous
24 waste; and

25 (9) Any other information the Attorney General or the department
26 may require that relates to the competency, reliability or integrity of
27 the applicant or the permittee.

28 The provisions of paragraphs (1) through (9) of this subsection to
29 the contrary notwithstanding, if an applicant or a permittee is a
30 secondary business activity corporation, "disclosure statement" means
31 a statement submitted to the department and the Attorney General by
32 an applicant or a permittee, which statement shall include:

33 (a) The full name, primary business activity, office or position held,
34 business address, home address, date of birth and federal employer
35 identification number of the applicant or the permittee, as the case may
36 be, and of all officers, directors, partners, or key employees of the
37 business concern; and of all persons holding more than 5% of the
38 equity in or debt liability of that business concern, except that where
39 the debt liability is held by a chartered lending institution, the applicant
40 or permittee need only supply the name and business address of the
41 lending institution. The Attorney General or the department may
42 request the social security number of any individual identified pursuant
43 to this paragraph;

44 (b) The full name, business address and federal employer
45 identification number of any business concern in any state, territory or
46 district of the United States, which collects, transports, treats, stores,

1 recycles, brokers, transfers or disposes of solid waste or hazardous
2 waste on a commercial basis, in which the applicant or the permittee
3 holds an equity interest of 25% or more, and the type, amount and
4 dates of the equity held in such business concern;

5 (c) A listing of every license, registration, permit, certificate of
6 public convenience and necessity, uniform tariff approval or equivalent
7 operating authorization held by the applicant or permittee within the
8 last five years under any name for the collection, transportation,
9 treatment, storage, recycling, processing, transfer or disposal of solid
10 waste or hazardous waste on a commercial basis in any state, territory
11 or district of the United States, and the name of every agency issuing
12 such operating authorization;

13 (d) If the applicant or the permittee is a subsidiary of a parent
14 corporation, or is the parent corporation of one or more subsidiaries,
15 or is part of a group of companies in common ownership, as the case
16 may be, a chart, or, if impractical or burdensome, a list showing the
17 names, federal employer identification numbers and relationships of all
18 parent, sister, subsidiary and affiliate corporations, or members of the
19 group;

20 (e) A listing and explanation of any notices of violation or
21 prosecution, administrative orders or license revocations issued by this
22 State or any other state or federal authority to the applicant or
23 permittee in the 10 years immediately preceding the filing of the
24 application or disclosure statement, whichever is later, which are
25 pending or have resulted in a finding or a settlement of a violation of
26 any law or rule or regulation relating to the collection, transportation,
27 treatment, storage, recycling, processing, transfer or disposal of solid
28 waste or hazardous waste by the applicant or permittee;

29 (f) A listing and explanation of any judgment, decree, settlement
30 or order, whether by consent or not, issued against the applicant or
31 permittee in the 10 years immediately preceding the filing of the
32 application, and of any pending civil complaints against the applicant
33 or permittee pertaining to a violation or alleged violation of federal or
34 state antitrust laws, trade regulations or securities regulations;

35 (g) A listing and explanation of any conviction issued against the
36 applicant or permittee for a felony resulting in a plea of nolo
37 contendere, or any conviction in the 10 years immediately preceding
38 the filing of the application, and of any pending indictment, accusation,
39 complaint or information for any felony issued to the applicant or the
40 permittee pursuant to any state or federal statute; and

41 (h) A completed personal history disclosure form shall be
42 submitted to the department and the Attorney General by every person
43 required to be listed in this disclosure statement, except for those
44 individuals who are exempt from the personal history disclosure
45 requirements pursuant to paragraph (5) of subsection a. of section 3
46 of P.L.1983, c.392 (C.13:1E-128).

1 f. "Key employee" means any individual employed by the applicant,
2 the permittee or the licensee in a supervisory capacity or empowered
3 to make discretionary decisions with respect to the solid waste or
4 hazardous waste operations of the business concern, which regulate
5 the management of the applicant, permittee or licensee, but shall not
6 include employees exclusively engaged in the physical or mechanical
7 collection, transportation, treatment, storage, transfer or disposal of
8 solid waste or hazardous waste including, but not limited to, drivers,
9 helpers, mechanics, foremen, dispatchers, salesmen or bookkeepers.

10 g. "License" means the initial approval and first renewal by the
11 department of any registration statement or engineering design
12 pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.) or P.L.1981, c.279
13 (C.13:1E-49 et seq.), for the collection, transportation, treatment,
14 storage, transfer or disposal of solid waste or hazardous waste in this
15 State.

16 A "license" shall not include any registration statement or
17 engineering design approved for:

18 (1) Any State department, division, agency, commission or
19 authority, or county, municipality or agency thereof;

20 (2) Any person solely for the collection, transportation, treatment,
21 storage or disposal of solid waste or hazardous waste generated by
22 that person;

23 (3) Any person for the operation of a hazardous waste facility, if
24 at least 75% of the total design capacity of that facility is utilized to
25 treat, store or dispose of hazardous waste generated by that person;

26 (4) Any person for the operation of a hazardous waste facility
27 which is considered as such solely as the result of the reclamation,
28 recycling or refining of hazardous wastes which are or contain any of
29 the following precious metals: gold, silver, osmium, platinum,
30 palladium, iridium, rhodium, ruthenium, or copper;

31 (5) Any person solely for the transportation of hazardous wastes
32 which are or contain precious metals to a hazardous waste facility
33 described in paragraph (4) of this subsection for the purposes of
34 reclamation.

35 A "license" shall include any registration statement approved for
36 any person who transports any other hazardous waste in addition to
37 hazardous wastes which are or contain precious metals;

38 (6) Any person solely for the collection, transportation, treatment,
39 storage or disposal of granular activated carbon used in the adsorption
40 of hazardous waste; or

41 (7) Any regulated medical waste generator for the treatment or
42 disposal of regulated medical waste at any noncommercial incinerator
43 or noncommercial facility in this State that accepts regulated medical
44 waste for disposal.

45 h. "Licensee" means any business concern which has completed the
46 requirements of section 3 of P.L.1983, c.392 (C.13:1E-128) and

1 whose application for the issuance or renewal of a license has been
2 approved by the department pursuant to section 8 of P.L.1983, c.392
3 (C.13:1E-133).

4 i. "Permittee" means and shall include:

5 (1) Any business concern which has filed a disclosure statement with
6 the department and the Attorney General and to which a valid
7 registration statement or engineering design approval for the
8 collection, transportation, treatment, storage, transfer or disposal of
9 solid waste or hazardous waste pursuant to P.L.1970, c.39 (C.13:1E-1
10 et seq.) or P.L.1981, c.279 (C.13:1E-49 et seq.) has been given by the
11 department prior to June 14, 1984;

12 (2) Any business concern which has filed a disclosure statement
13 with the department and the Attorney General and to which a valid
14 temporary license has been approved, issued or renewed by the
15 department pursuant to section 10 of P.L.1983, c.392 (C.13:1E-135),
16 but which has not otherwise completed the requirements of section 3
17 of P.L.1983, c.392 (C.13:1E-128) and whose application for a license
18 has not been approved by the department pursuant to section 8 of
19 P.L.1983, c.392 (C.13:1E-133), provided that the temporary license
20 remains valid, and provided further that the business concern has
21 furnished the department and the Attorney General with any
22 information required pursuant to P.L.1991, c.269 (C.13:1E-128 et al.);

23 (3) Any business concern which has filed a disclosure statement
24 with the department and the Attorney General and to which a valid
25 registration statement or engineering design approval for the
26 collection, transportation, treatment, storage, transfer or disposal of
27 solid waste or hazardous waste pursuant to P.L.1970, c.39 (C.13:1E-1
28 et seq.) or P.L.1981, c.279 (C.13:1E-49 et seq.) has been given by the
29 department between February 20, 1985 and January 23, 1986,
30 inclusive, provided that the registration statement or engineering
31 design approval remains valid, and provided further that the business
32 concern has furnished the department and the Attorney General with
33 any information required pursuant to P.L.1991, c.269 (C.13:1E-128
34 et al.); or

35 (4) Any business concern to which a temporary approval of
36 registration has been given by the department at any time after January
37 23, 1986 pursuant to statute or rule and regulation, provided that such
38 temporary approval of registration, statute, or rule and regulation
39 remains valid, and provided further that the business concern has
40 furnished the department and the Attorney General with any
41 information required pursuant to P.L.1991, c.269 (C.13:1E-128.1 et
42 al.) and filed a disclosure statement with the department and the
43 Attorney General.

44 j. "Person" means any individual or business concern.

45 k. "Secondary business activity corporation" means any business
46 concern which has derived less than 5% of its annual gross revenues

1 in each of the three years immediately preceding the one in which the
2 application for a license is being made from the collection,
3 transportation, treatment, storage, recycling, processing, transfer or
4 disposal of solid waste or hazardous waste, whether directly or
5 through other business concerns partially or wholly owned or
6 controlled by the applicant or the permittee, as the case may be, and
7 which (1) has one or more classes of security registered pursuant to
8 section 12 of the "Securities Exchange Act of 1934," as amended (15
9 U.S.C. §78l), or (2) is an issuer subject to subsection (d) of section 15
10 of the "Securities Exchange Act of 1934," as amended (15
11 U.S.C. §78o).

12 (cf: P.L.1995, c.72, s.1)

13

14 11. Section 3 of P.L.1983, c.392 (C.13:1E-128) is amended to
15 read as follows:

16 3. In addition to any other procedure, condition or information
17 required pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1981,
18 c.279 (C.13:1E-49 et seq.) or any other law:

19 a. (1) Every applicant and permittee shall file a disclosure
20 statement with the department and the Attorney General;

21 (2) Any person required to be listed in the disclosure statement
22 shall be fingerprinted for identification and investigation purposes in
23 accordance with procedures therefor established by the Attorney
24 General;

25 (3) The Attorney General shall, [upon] within 60 days of the
26 receipt of the disclosure statement from an applicant for an initial
27 license or from a permittee, prepare and transmit to the department an
28 investigative report on the applicant or the permittee, as the case may
29 be, based in part upon the disclosure statement. In preparing this
30 report, the Attorney General may request and receive criminal history
31 record information concerning any person required to be listed in the
32 disclosure statement from the New Jersey State Police, the State
33 Commission of Investigation or the Federal Bureau of Investigation.

34 If criminal history record information is to be used to seek
35 disqualification of any applicant, permittee or licensee, the department
36 shall provide the applicant, permittee or licensee, as the case may be,
37 with an opportunity to complete or challenge the accuracy of any
38 information contained in the criminal history record. The applicant,
39 permittee or licensee shall be afforded a reasonable period of time to
40 complete or correct the criminal history record. No person required to
41 be listed in the disclosure statement shall be presumed guilty of any
42 Pending charge or arrest for which there is no final disposition
43 indicated on the criminal history record;

44 (4) In conducting a review of the application, the department shall
45 include a review of the disclosure statement [and], the investigative
46 report and, in the case of a permittee, the permittee's operating history;

1 (5) An applicant or permittee may file a limited disclosure
2 statement pursuant to the provisions of paragraphs (a) through (h) of
3 subsection e. of section 2 of P.L.1983, c.392 (C.13:1E-127); and a
4 person required to be listed in the disclosure statement is exempt from
5 the fingerprint and personal history disclosure requirements; if:

6 (a) The applicant or permittee is a secondary business activity
7 corporation; and

8 (b) The person required to be listed in the disclosure statement is
9 (i) a director or chief executive officer; or (ii) an individual who does
10 not have any responsibility for, or control of, the commercial solid
11 waste or hazardous waste operations of the applicant, permittee or
12 licensee conducted in New Jersey, and who will not exercise any such
13 responsibility or control upon the issuance of a license by the
14 department.

15 b. All applicants, permittees and licensees, including all officers,
16 directors, partners, or key employees of the business concern,
17 including all persons holding more than 5% of the equity in or debt
18 liability of the business concern, shall have the continuing duty to
19 provide any assistance or information requested by the department or
20 the Attorney General, and to cooperate in any inquiry or investigation
21 conducted by the Attorney General or the State Commission of
22 Investigation and any inquiry, investigation, or hearing conducted by
23 the department into the qualifications of the applicant, permittee or
24 licensee.

25 All requests for information by the Attorney General shall conform
26 to the standards set forth in subsections b., c. and d. of section 4 of
27 P.L.1983, c.392 (C.13:1E-129) and subsections b., c. and d. of section
28 5 of P.L.1983, c.392 (C.13:1E-130). Except as otherwise determined
29 by the Superior Court pursuant to subsection d. of this section, if,
30 upon issuance of a formal request to answer any inquiry or produce
31 information, evidence or testimony, any applicant, permittee or
32 licensee refuses to comply after having been ordered to do so by the
33 Attorney General pursuant to section 7 of P.L.1983, c.392
34 (C.13:1E-132), the application of the business concern for a license
35 may be denied, or the license of that business concern may be revoked
36 by the department.

37 c. If [any of the information] the identity of any person required to
38 be [included] listed in the disclosure statement changes, or if any
39 information provided concerning the applicability of an exemption
40 under subsection d. of this section changes, or if any additional
41 information concerning any person required to be listed in the
42 disclosure statement should be added to the disclosure statement after
43 it has been filed, the applicant, permittee or licensee shall provide that
44 information to the department and the Attorney General, in writing,
45 within 30 days of the change or addition. The disclosure statement
46 filed by every applicant, permittee or licensee shall be updated

1 annually.

2 d. The provisions of paragraph (5) of subsection a. of this section
3 to the contrary notwithstanding, the Attorney General may at any time
4 require any person required to be listed in the disclosure statement to
5 file a completed personal history disclosure form and a full disclosure
6 statement with the department and the Attorney General pursuant to
7 paragraphs (1) through (9) of subsection e. of section 2 of P.L.1983,
8 c.392 (C.13:1E-127), or to be fingerprinted for identification and
9 investigation purposes pursuant to paragraph (2) of subsection a. of
10 this section, if the Attorney General determines that there exists a
11 reasonable suspicion that the additional information is likely to lead to
12 information relevant to a determination regarding the approval of a
13 license pursuant to section 8 of P.L.1983, c.392 (C.13:1E-133), the
14 revocation of a license pursuant to section 9 of P.L.1983, c.392
15 (C.13:1E-134), or the severance of a disqualifying person pursuant to
16 section 10 of P.L.1983, c.392 (C.13:1E-135).

17 If the Attorney General requires any or all of this information, a
18 written request for the additional information shall be served upon the
19 applicant, permittee or licensee. Within 60 days of receipt of a written
20 request for additional information, the applicant, permittee or licensee
21 may seek review of the Attorney General's determination in the
22 Superior Court. If the applicant, permittee or licensee fails to provide
23 the additional information to the Attorney General within 60 days of
24 receipt of the written request, the Attorney General may file with the
25 Superior Court a petition for an order requiring the applicant,
26 permittee or licensee to provide the additional information. In a
27 proceeding brought by either party, the applicant, permittee or licensee
28 shall demonstrate that the additional information requested is not likely
29 to lead to information relevant to a determination regarding the
30 approval of a license pursuant to section 8 of P.L.1983, c.392
31 (C.13:1E-133), the revocation of a license pursuant to section 9 of
32 P.L.1983, c.392 (C.13:1E-134), or the severance of a disqualifying
33 person pursuant to section 10 of P.L.1983, c.392 (C.13:1E-135). For
34 good cause shown, the court may review in camera the submission of
35 the Attorney General or the applicant, permittee or licensee, or any
36 part thereof.

37 (cf: P.L.1995, c.72, s.2)

38

39 12. Section 3 of P.L.1991, c.269 (C.13:1E-128.1) is amended to
40 read as follows:

41 3. a. With respect to the preparation and transmittal to the
42 department of the investigative reports required pursuant to section 3
43 of P.L.1983, c.392 (C.13:1E-128), the [Attorney General] department
44 shall establish a priority schedule for their timely completion. The
45 priority schedule shall accord priority consideration to:

46 (1) Those permittees who own or operate a solid waste facility

1 pursuant to a temporary license or registration approved, issued or
2 renewed by the department[or whose temporary license or registration
3 is limited by the time constraints imposed pursuant to section 10 of
4 P.L.1983, c.392 (C.13:1E-135) or section 11 of P.L.1970, c.39
5 (C.13:1E-11)]; and

6 (2) Any applicant proposing to own or operate a resource recovery
7 facility or other solid waste facility approved by the department for the
8 long-term solid waste disposal requirements of a district or districts
9 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
10 (C.13:1E-1 et seq.).

11 b. With respect to the review of the investigative reports of
12 applicants or permittees transmitted by the Attorney General pursuant
13 to section 3 of P.L.1983, c.392 (C.13:1E-128), the [department]
14 Attorney General shall comply with the priority schedule established
15 by the [Attorney General] department pursuant to subsection a. of this
16 section.

17 c. Nothing in this section shall be construed to establish any
18 priority which would preclude or restrict the timing or discretion of
19 the Attorney General or the department regarding a decision to
20 institute and prosecute a revocation proceeding against a permittee or
21 licensee.

22 (cf: P.L.1991, c.269, s.3)

23

24 13. Section 4 of P.L.1983, c.392 (C.13:1E-129) is amended to
25 read as follows:

26 4. a. Whenever the Attorney General determines that there exists
27 a [reasonable suspicion] probable cause that any person may have
28 pertinent information relevant to an investigation of an applicant,
29 permittee or licensee, or be in possession, custody, or control of any
30 documentary materials relevant to an investigation of an applicant,
31 permittee or licensee conducted pursuant to this act, he may issue in
32 writing, and cause to be served upon that person an investigative
33 interrogatory requiring that person to answer questions under oath and
34 produce material for examination.

35 b. Each interrogatory shall:

36 (1) Identify the licensee, permittee or applicant who is the subject
37 of the investigation;

38 (2) Advise the person that he has the right to discuss the
39 interrogatory with legal counsel prior to returning it to the Attorney
40 General or prior to making material available, as provided in
41 subsection f. of this section, and that he has the right to file in Superior
42 Court a petition to modify or set aside the interrogatory, as provided
43 in subsection j. of this section;

44 (3) Describe the class or classes of documentary material to be
45 produced thereunder with sufficient particularity as to permit the
46 material to be reasonably identified;

1 (4) Prescribe a return date, which date shall provide a reasonable
2 period of time within which answers may be made and material so
3 demanded may be assembled and made available for inspection and
4 copying or reproduction, as provided in subsection f. of this section.

5 c. No interrogatory shall:

6 (1) Contain any requirement which would be held to be
7 unreasonable or unenforceable if contained in a [subpena] subpoena
8 duces tecum issued in aid of a grand jury investigation; or

9 (2) Require the production of any documentary evidence which
10 would be otherwise privileged from disclosure if demanded by a
11 [subpena] subpoena duces tecum issued in aid of a grand jury
12 investigation.

13 d. Service of any interrogatory filed under this section may be
14 made upon any person by:

15 (1) Delivering a duly executed copy thereof to the person or any
16 partner, executive officer, managing agent, employee or general agent
17 thereof, or to any agent thereof authorized by appointment or by law
18 to receive service of process on behalf of the person; or

19 (2) Delivering a duly executed copy thereof to the principal office
20 or place of business of the person to be served; or

21 (3) Depositing a copy in the United States mail, by registered or
22 certified mail duly addressed to the person at his principal office or
23 place of business.

24 e. A verified return by the individual serving any interrogatory,
25 setting forth the manner of service, shall be prima facie proof of
26 service. In the case of service by registered or certified mail, the
27 return shall be accompanied by the return post office receipt of
28 delivery of the interrogatory.

29 f. Any person upon whom any interrogatory issued under this
30 section has been duly served which requires the production of
31 materials shall make the material available for inspection and copying
32 or reproduction to the Attorney General at the principal place of
33 business of that person in the State of New Jersey or at any other place
34 as the Attorney General and the person thereafter may agree and
35 prescribe in writing, on the return date specified in the interrogatory
36 or on a later date as the Attorney General may prescribe in writing.
37 Upon written agreement between the person and the Attorney General,
38 copies may be substituted for all or any part of the original materials.
39 The Attorney General may cause the preparation of any copies of
40 documentary material as may be required for official use by the
41 Attorney General.

42 No material produced pursuant to this section shall be available for
43 examination, without the consent of the person who produced the
44 material, by an individual other than the Attorney General or any
45 person retained by the Attorney General in connection with the
46 enforcement of this act. Under reasonable terms and conditions as the

1 Attorney General shall prescribe, documentary material while in his
2 possession shall be available for examination by the person who
3 produced the material or any of his duly authorized representatives.

4 [In any investigation conducted pursuant to this act, the Attorney
5 General may present before the department, court or grand jury any
6 documentary material in his possession pursuant to this section,
7 subject to any protective order deemed proper by the Superior Court.]

8 g. Upon completion of:

9 (1) The review and investigation for which any documentary
10 material was produced under this section, and

11 (2) Any case or proceeding arising from the investigation, the
12 Attorney General shall return to the person who produced the material
13 all the material, other than copies thereof made by the Attorney
14 General pursuant to this section, which has not passed into the control
15 of the department or any court or grand jury through the introduction
16 thereof into the record of the case or proceeding.

17 h. When any documentary material has been produced by any
18 person under this section for use in an investigation, and no case or
19 proceeding arising therefrom has been instituted within two years after
20 completion of the examination and analysis of all evidence assembled
21 in the course of the investigation, the person shall be entitled, upon
22 written demand made upon the Attorney General, to the return of all
23 documentary material, other than copies thereof made pursuant to this
24 section so produced by him.

25 i. Whenever any person fails to comply with any investigative
26 interrogatory duly served upon him under this section, or whenever
27 satisfactory copying or reproduction of any material cannot be done
28 and he refuses to surrender the material, the Attorney General may file
29 in the Superior Court a petition for an order of the court for the
30 enforcement of this section.

31 j. At any time before the return date specified in the interrogatory,
32 the person served with the interrogatory may file in the Superior Court
33 a petition for an order modifying or setting aside the interrogatory.
34 The time allowed for compliance with the interrogatory shall not run
35 during the pendency of this petition. The petition shall specify each
36 ground upon which the petition relies in seeking relief, and may be
37 based upon any failure of the interrogatory to comply with the
38 provisions of this section or upon any constitutional or other legal
39 right or privilege of the petitioner. In this proceeding, the Attorney
40 General shall establish the existence of an investigation pursuant to
41 this act and the nature and subject matter of the investigation.

42 (cf: P.L.1991, c.269, s.4)

43

44 14. Section 5 of P.L.1983, c.392 (C.13:1E-130) is amended to
45 read as follows:

46 5. a. Whenever the Attorney General determines that there exists

1 a [reasonable suspicion] probable cause that any person may have
2 information or knowledge relevant to an investigation conducted
3 pursuant to this act, he may issue in writing and cause to be served
4 upon that person a [subpena] subpoena to appear and be examined
5 under oath before the Attorney General.

6 b. The [subpena] subpoena shall:

7 (1) Identify the licensee, permittee or applicant who is the subject
8 of the investigation;

9 (2) Advise that person that he may have an attorney present when
10 he appears and testifies or otherwise responds to the [subpena]
11 subpoena, that he has a right, at any time before the return date of the
12 [subpena] subpoena, to file in Superior Court a petition to modify or
13 set aside the [subpena] subpoena, as provided in subsection f. of this
14 section;

15 (3) Prescribe a date and time at which that person must appear to
16 testify, under oath, provided that this date shall not be less than seven
17 days from the date of service of the [subpena] subpoena.

18 c. Except as otherwise provided in this section, no information
19 derived pursuant to the [subpena] subpoena shall be disclosed by the
20 Attorney General or the department without the consent of the person
21 testifying.

22 [In any investigation conducted pursuant to this act, the Attorney
23 General may present before the department, court or grand jury any
24 information disclosed pursuant to the subpena, subject to any
25 protective order deemed proper by the Superior Court.]

26 d. Service of a [subpena] subpoena pursuant to this section shall
27 be by any of those methods specified in the New Jersey Court Rules
28 for service of summons and complaint in a civil action.

29 e. Whenever any person fails to comply with any [subpena]
30 subpoena duly served upon him under this section, or whenever
31 satisfactory copying or reproduction of any material cannot be done
32 and he refuses to surrender the material, the Attorney General may file
33 in the Superior Court a petition for an order of the court for the
34 enforcement of the [subpena] subpoena.

35 f. At any time before the return date specified in the [subpena]
36 subpoena, the person who has been served with the [subpena]
37 subpoena may file in the Superior Court a petition for an order
38 modifying or setting aside the [subpena] subpoena. The time allowed
39 for compliance with the [subpena] subpoena shall not run during the
40 pendency of this petition. The petition shall specify each ground upon
41 which the petitioner relies in seeking relief, and may be based upon any
42 failure of the [subpena] subpoena to comply with the provisions of this
43 section or upon any constitutional or other legal right or privilege of
44 the petitioner. In this proceeding, the Attorney General shall establish
45 the existence of an investigation pursuant to this act and the nature
46 and subject matter of the investigation.

1 (cf: P.L.1991, c.269, s.5)

2

3 15. Section 6 of P.L.1983, c.392 (C.13:1E-131) is amended to
4 read as follows:

5 6. a. No person, public officer or employee shall disclose to any
6 other person, other than a Grand Jury, any information obtained
7 pursuant to this act, except that information obtained for the purpose
8 of making a licensing decision or determination, or in an administrative
9 proceeding involving the issuance, suspension or revocation of a
10 license, may be disclosed to the department.

11 b. Any person, public officer or employee who shall disclose to any
12 person[, other than the Attorney General or a person retained by the
13 Attorney General as herein provided, the name of any person who
14 receives an investigative interrogatory or a subpoena or] any
15 information obtained pursuant [thereto, except in proceedings
16 involving an alleged violation of] to this act [and], except as [so
17 directed by the Attorney General] otherwise provided in subsection a.
18 of this section, shall be guilty of a crime of the [fourth] third degree.

19 The court shall require restitution pursuant to the standards set
20 forth in the provisions of N.J.S.2C:44-2, notwithstanding the
21 provisions of any law granting immunity from civil liability to a person
22 convicted for having made an illegal disclosure of information obtained
23 pursuant to this act. Any order of restitution pursuant to this section
24 shall not operate as a bar to the seeking of civil recovery by the victim.

25 Any order of restitution pursuant to this section is to be in addition
26 to any civil remedy which a victim may have available.

27 c. Should the Attorney General determine to disclose information
28 obtained pursuant to this act, the applicant, permittee or licensee, as
29 the case may be, and the person from whom the information was
30 obtained, shall be so notified at least 60 days prior to disclosure. The
31 disclosure of such information shall be subject to any protective order
32 deemed proper by the Superior Court.

33 (cf: P.L.1983, c.392, s.6)

34

35 16. Section 7 of P.L.1983, c.392 (C.13:1E-132) is amended to
36 read as follows:

37 7. a. If any person in attendance pursuant to the demand of the
38 Attorney General, a [subpena] subpoena or an interrogatory issued
39 pursuant to this act refuses to answer personally a question or produce
40 evidence of any kind, or make the required answers on the ground that
41 he may be incriminated thereby, and if the Attorney General, in a
42 writing directed to that person, orders that he answer the question or
43 produce the evidence, the person shall comply with the order. After
44 complying therewith and if, but for this section, he would have been
45 privileged to withhold the answer given or the evidence produced, that
46 answer, testimony or evidence or any evidence directly or indirectly

1 derived therefrom, may not be used against him in any prosecution for
2 a crime or offense concerning which he gave answer or produced
3 evidence; provided that the answer, testimony or evidence is
4 responsive to the question propounded. That person may, however,
5 be prosecuted or subject to penalty or forfeiture for any perjury, false
6 swearing or contempt committed in answering, or failing to answer, or
7 in producing evidence or failing to produce evidence or failing to do
8 so in accordance with the order.

9 b. If any person fails to obey the command of the [subpена]
10 subpoena after being ordered to do so by a court of competent
11 jurisdiction, he shall be guilty of a crime of the fourth degree. In the
12 alternative, if a person shall fail to obey the command of a [subpена]
13 subpoena after being ordered to do so by a court of competent
14 jurisdiction, the Attorney General may apply to that court to adjudge
15 the person in contempt and to commit him to jail until such time as he
16 purges himself of contempt by responsively answering, testifying or
17 producing evidence as ordered.

18 (cf: P.L.1983, c.392, s.7)

19

20 17. Section 8 of P.L.1983, c.392 (C.13:1E-133) is amended to
21 read as follows:

22 8. The provisions of any law to the contrary notwithstanding, no
23 license shall be approved by the department:

24 a. Unless the department finds that the applicant, or the permittee,
25 as the case may be, in any prior performance record in the collection,
26 transportation, treatment, storage, transfer or disposal of solid waste
27 or hazardous waste, has objectively exhibited [sufficient] the integrity,
28 reliability, expertise, and competency to engage in the collection or
29 transportation of solid waste or hazardous waste, or to operate the
30 solid waste facility or hazardous waste facility, given the potential
31 economic consequences for affected counties, municipalities and
32 ratepayers or significant adverse impacts upon human health and the
33 environment which could result from the irresponsible participation
34 therein or operation thereof, or if no prior record exists, that the
35 applicant or the permittee is likely to exhibit that integrity, reliability,
36 expertise and competence.

37 b. If any person required to be listed in the disclosure statement,
38 or otherwise shown to have a beneficial interest in the business of the
39 applicant, the permittee or the licensee, has been convicted of any of
40 the following crimes, except for paragraph (17) below, of a third
41 degree or higher under the laws of New Jersey or the equivalent
42 thereof under the laws of any other jurisdiction:

- 43 (1) Murder;
44 (2) Kidnapping;
45 (3) Gambling;
46 (4) Robbery;

1 (5) Bribery;
2 (6) Extortion;
3 (7) Criminal usury;
4 (8) Arson;
5 (9) Burglary;
6 (10) Theft and related crimes;
7 (11) Forgery and fraudulent practices;
8 (12) Fraud in the offering, sale or purchase of securities;
9 (13) Alteration of motor vehicle identification numbers;
10 (14) Unlawful manufacture, purchase, use or transfer of firearms;
11 (15) Unlawful possession or use of destructive devices or
12 explosives;
13 (16) Violation of N.J.S.2C:35-5, except possession of 84 grams or
14 less of marijuana, or of N.J.S.2C:35-10;
15 (17) Racketeering, P.L.1981, c.167 (C.2C:41-1 et seq.);
16 (18) Violation of criminal provisions of the "New Jersey Antitrust
17 Act," P.L.1970, c.73 (C.56:9-1 et seq.);
18 (19) Any purposeful or reckless violation of the criminal provisions
19 of any federal or state environmental protection laws, rules, or
20 regulations, including, but not limited to, solid waste or hazardous
21 waste management laws, rules, or regulations, which seriously
22 impaired or degraded the environment;
23 (20) Violation of N.J.S.2C:17-2; or
24 (21) Any offense specified in chapter 28 of Title 2C[; or
25 (22) Violation of the "Solid Waste Utility Control Act of 1970,"
26 P.L.1970, c.40 (C.48:13A-1 et seq.) or P.L.1981, c.221
27 (C.48:13A-6.1)].

28 The conviction of any person for any of the crimes enumerated in
29 this subsection, except for murder, kidnapping, bribery or extortion,
30 which would otherwise require disqualification, shall not apply to any
31 conviction which did not occur within the 10 years immediately
32 preceding the filing of the application or disclosure statement,
33 whichever is later, and any sentence, including a probationary term,
34 imposed as a result of such conviction, which has been completed at
35 the time of application for licensure.

36 c. If the [Attorney General] department determines [that there is
37 a reasonable suspicion to believe], by a preponderance of the evidence,
38 that a person required to be listed in the disclosure statement, or
39 otherwise shown to have a beneficial interest in the business of the
40 applicant, the permittee or the licensee, does not possess [a reputation
41 for] good character, honesty and integrity, and that person or the
42 applicant, the permittee or the licensee fails[, by clear and convincing
43 evidence, to establish] to demonstrate his [reputation for] good
44 character, honesty and integrity.

45 d. [With respect to the approval of an initial license, if there are
46 current prosecutions or pending charges in any jurisdiction against any

1 person required to be listed in the disclosure statement, or otherwise
2 shown to have a beneficial interest in the business of the applicant or
3 the permittee, for any of the crimes enumerated in subsection b. of this
4 section, provided, however, that at the request of the applicant,
5 permittee, or the person charged, the department shall defer decision
6 upon such application during the pendency of such charge.](Deleted
7 by amendment, P.L.1996, c.)(pending in the Legislature as this bill)

8 e. If any person required to be listed in the disclosure statement, or
9 otherwise shown to have a beneficial interest in the business of the
10 applicant, permittee or the licensee, has pursued economic gain in an
11 occupational manner or context which is in violation of the criminal or
12 civil public policies of this State, or is a career offender or member of
a career offender cartel, where such pursuit creates a reasonable belief
14 that the participation of that person in any activity required to be
15 licensed under this act would be inimical to the policies of this act. For
16 the purposes of this section, "occupational manner or context" means
17 the systematic planning, administration, management, or execution of
18 an activity for financial gain; "career offender" means any person
whose behavior is pursued in an occupational manner or context for
the purpose of economic gain, utilizing such methods as are deemed
21 criminal violations of the public policy of this State; and "career
offender cartel means any group of persons who operate together as
23 career offenders.

24 f. [If the Attorney General determines that any person required to
25 be listed in the disclosure statement, or otherwise shown to have a
26 beneficial interest in the business of the applicant, permittee or the
27 licensee, has been identified by the State Commission of Investigation
28 or the Federal Bureau of Investigation as a career offender or a
29 member of a career offender cartel or an associate of a career offender
30 or career offender cartel, where such identification, membership or
31 association creates a reasonable belief that the participation of that
32 person in any activity required to be licensed under this act would be
33 inimical to the policies of this act. For the purposes of this section,
34 "career offender" means any person whose behavior is pursued in an
35 occupational manner or context for the purpose of economic gain,
36 utilizing such methods as are deemed criminal violations of the public
37 policy of this State; and a "career offender cartel" means any group of
38 persons who operate together as career offenders.](Deleted by
39 amendment, P.L.1996, c.)(pending in the Legislature as this bill)

40 A license may be approved by the department for any applicant or
41 permittee if the information contained within the disclosure statement
42 and investigative report, including any [determination] report made by
43 the Attorney General concerning the character, honesty and integrity
44 of any person required to be listed in the disclosure statement, or
45 otherwise shown to have a beneficial interest in the business of the
46 applicant or permittee, would not require disqualification pursuant to

1 subsection a., b., c.[,]or e. [or f.]of this section.

2 The department may waive any of the foregoing disqualification
3 criteria consistent with the public policy set forth in the provisions of
4 P.L.1996, c. (C.)(pending in the Legislature as this bill).

5 A license approved by the department for any applicant or permittee
6 pursuant to this section is non-transferable and shall be valid only for
7 the length of time for which it is given.

8 Any applicant or permittee who is denied [an initial] a license
9 pursuant to this section shall, upon a written request transmitted to the
10 department within 30 days of that denial, be afforded the opportunity
11 for a hearing thereon in the manner provided for contested cases
12 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
13 (C.52:14B-1 et seq.). In all contested cases the applicant or permittee
14 shall be afforded full discovery, including without limitation the right
15 to take depositions and to issue subpoenas and subpoenas duces
16 tecum to compel the attendance of witnesses and the production of
17 books, records, documents and papers of any person, without seeking
18 prior judicial approval.

19 Any summary disposition application shall not be determined until
20 discovery is completed.

21 Each party to a hearing shall have the right to call and examine
22 witnesses; to introduce exhibits relevant to the issues of the case,
23 including the transcript of any investigative hearing conducted by, or
24 on behalf of, the department; to cross examine witnesses in any
25 matters relevant to the issues of the case; to impeach any witness,
26 regardless of which party called that person to testify; and to offer
27 rebuttal evidence.

28 No permittee shall be denied the right to engage in the collection,
29 transportation, treatment, storage, transfer or disposal of solid waste
30 or hazardous waste in this State until there has been an adverse
31 decision rendered against that permittee following a hearing and
32 exhaustion of all judicial relief.

33 (cf: P.L.1991, c.269, s.6)

34

35 18. Section 7 of P.L.1991, c.269 (C.13:1E-133.1) is amended to
36 read as follows:

37 7. a. Notwithstanding the conviction within the 10 years
38 immediately preceding the filing of the application of any person
39 required to be listed in a disclosure statement, or otherwise shown to
40 have a beneficial interest in the business of an applicant, permittee or
41 licensee for any of the crimes enumerated in subsection b. of section
42 8 of P.L.1983, c.392 (C.13:1E-133), the department may issue or
43 renew a license to an applicant, permittee or licensee if the department
44 determines in a writing setting forth findings of fact that the convicted
45 person has affirmatively demonstrated rehabilitation by clear and
46 convincing evidence pursuant to the provisions of this section. If the

1 department determines that the nature and seriousness of the crime
2 creates a reasonable doubt that an applicant, permittee, or licensee will
3 engage in the activity for which a license is sought in a lawful and
4 responsible manner, the department shall make a determination in a
5 writing setting forth findings of fact that the convicted person cannot
6 affirmatively demonstrate rehabilitation.

7 b. In determining whether a convicted individual has affirmatively
8 demonstrated rehabilitation, the department shall request a
9 recommendation thereon from the Attorney General, which
10 recommendation shall be in writing and based upon a consideration of
11 at least the following factors:

12 (1) The nature and responsibilities of the position which a
13 convicted individual would hold;

14 (2) The nature and seriousness of the crime;

15 (3) The circumstances under which the crime was committed;

16 (4) The date of the crime;

17 (5) The age of the convicted individual when the crime was
18 committed;

19 (6) Whether the crime was an isolated or repeated act;

20 (7) Any evidence of good conduct in the community, counseling or
21 psychiatric treatment received, acquisition of additional academic or
22 vocational schooling, or the recommendation of persons who have
23 supervised the convicted individual since the conviction, except that
24 the failure to receive counseling or psychiatric treatment shall not be
25 deemed a reason to deny that a convicted individual has been
26 rehabilitated; [and]

27 (8) The full criminal record of the convicted individual, any record
28 of civil or regulatory violations or notices or any complaints alleging
29 any such civil or regulatory violations, or any other allegations of
30 wrongdoing;

31 (9) The regulatory compliance record of the permittee or licensee
32 since the date of conviction;

33 (10) The period of time since the crime was committed; and

34 (11) Relevancy of the crime to the license, permit or application.

35 Notwithstanding any other provision of this subsection, a convicted
36 individual shall have affirmatively demonstrated rehabilitation pursuant
37 to the provisions of this section if the convicted individual produces
38 evidence of a pardon issued by the Governor of this or any other state,
39 or evidence of the expungement of every conviction for any of the
40 crimes enumerated in subsection b. of section 8 of P.L.1983, c.392
41 (C.13:1E-133).

42 c. In determining whether a convicted business concern has
43 affirmatively demonstrated rehabilitation, the department shall request
44 a recommendation thereon from the Attorney General, which
45 recommendation shall be in writing and based upon a consideration of
46 at least the following factors:

1 (1) The nature and seriousness of the crime;
2 (2) The circumstances under which the crime was committed;
3 (3) The date of the crime;
4 (4) Whether the crime was an isolated or repeated act; [and]
5 (5) The full criminal record of the convicted business concern, any
6 record of civil or regulatory violations or notices or any complaints
7 alleging any such civil or regulatory violations, or any other allegations
8 of wrongdoing;

9 (6) The regulatory compliance record of the permittee or licensee
10 since the date of conviction:

11 (7) The period of time since the crime was committed; and
12 (8) Relevancy of the crime to the license, permit or application.

13 d. The Attorney General may [require] recommend, as a predicate
14 to a determination that a convicted business concern has affirmatively
15 demonstrated rehabilitation, that the convicted business concern agree,
16 in writing, to an investigation of the crime or crimes committed by the
17 convicted business concern which caused disqualification pursuant to
18 subsection b. of section 8 of P.L.1983, c.392 (C.13:1E-133), the
19 persons involved in the crime, and any corporate policies, procedures,
20 and organizational structure that may have led to the crime. At the
21 conclusion of this investigation a report shall be prepared identifying
22 the underlying conduct giving rise to any criminal convictions and any
23 steps that have subsequently been taken by the convicted business
24 concern to prevent a recurrence of the criminal activity, and
25 recommending any steps that may be deemed necessary to prevent a
26 recurrence of the criminal activity. The investigation shall be
27 conducted by, or on behalf of, the Attorney General, and the cost
28 thereof shall be borne by the convicted business concern.

29 The Attorney General may [require] recommend, on the basis of
30 this investigation [and as a condition of recommending that a
31 convicted business concern has affirmatively demonstrated
32 rehabilitation], that a convicted business concern comply, or agree in
33 writing to comply, with any of the following:

34 (1) reasonable changes in the convicted business concern's
35 organizational structure to reduce the opportunity and motivation of
36 individual employees to engage in criminal activity, including
37 procedures for informing employees of the requirements of relevant
38 state and federal law;

39 (2) reasonable changes in the convicted business concern's long and
40 short term planning to ensure that the convicted business concern
41 implements procedures and policies to prevent future violations of the
42 law;

43 (3) reasonable changes in the convicted business concern's legal,
44 accounting, or other internal or external control and monitoring
45 procedures to discourage or prevent future violations of state or
46 federal law;

1 (4) reasonable changes in the convicted business concern's
2 ownership, control, personnel, and personnel selection practices,
3 including the removal of any person, for a period of time, shown to
4 have a beneficial interest in the convicted business concern, and the
5 imposition of a reward or disincentive system in order to encourage
6 employees to comply with relevant state and federal law;

7 (5) reasonable post-licensing monitoring of the convicted business
8 concern's activities relating to any changes in policy, procedure, or
9 structure required by the Attorney General pursuant to this subsection,
10 the cost of such monitoring to be borne by the convicted business
11 concern; and

12 (6) any other reasonable requirements deemed necessary by the
13 Attorney General.

14 e. The department [shall not determine], as a condition of
15 determining that a convicted business concern has affirmatively
16 demonstrated rehabilitation [if], may require that the convicted
17 business concern [has not complied, or agreed] agree in writing to
18 comply[,]with [every requirement imposed by] any or all of the
19 recommendations of the Attorney General made pursuant to
20 subsection d. of this section.

21 (cf: P.L.1991, c.269, s.7)

22

23 19. Section 9 of P.L.1983, c.392 (C.13:1E-134) is amended to
24 read as follows:

25 9. [Any] A license may be revoked or suspended by the department
26 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
27 (C.52:14B-1 et seq.).

28 a. The department may revoke or suspend the license of a business
29 concern for any of the following causes:

30 [a.](1) Any cause which would require disqualification, pursuant
31 to subsection a., b., c.[,] or e. [or f.]of section 8 of P.L.1983, c.392
32 (C.13:1E-133), from receiving a license upon [original] initial
33 application;

34 [b.](2) Fraud, deceit or misrepresentation of a material fact in
35 securing the license, or in the conduct of the licensed activity;

36 [c.](3) Offering, conferring or agreeing to confer any benefit to
37 induce any other person to violate the provisions of P.L.1983, c.392
38 (C.13:1E-126 et seq.), or of any other law relating to the collection,
39 transportation, treatment, storage, transfer or disposal of solid waste
40 or hazardous waste, or of any rule or regulation adopted pursuant
41 thereto;

42 [d.](4) Coercion of a customer by violence or economic reprisal or
43 the threat thereof to utilize the services of any permittee or licensee;
44 or

45 [e.](5) Preventing, without authorization of the department, any
46 permittee or licensee from disposing of solid waste or hazardous waste

1 at a licensed, authorized or approved treatment, storage, transfer or
2 disposal facility.

3 b. A determination by the department to suspend or revoke the
4 license of any business concern shall constitute a contested case under
5 the "Administrative Procedure Act." P.L.1968, c.410 (C.52:14B-1 et
6 seq.), and any such business concern shall have the opportunity to
7 contest the determination in an administrative hearing.

8 The provisions of the "Administrative Procedure Act" to the
9 contrary notwithstanding, and consistent with the public policy set
10 forth in the provisions of P.L.1996, c. (C.) (pending in the
11 Legislature as this bill), at the administrative hearing, or any
12 administrative hearing at which a license may be revoked or
13 suspended, the administrative law judge shall have the duties, powers
14 and responsibilities set forth in subsections c., d. and e. of this section.

15 c. At the administrative hearing, or any administrative hearing at
16 which a license may be revoked or suspended, the administrative law
17 judge shall weigh and consider the following aggravating
18 circumstances prior to suspending or revoking the license:

19 (1) the nature and circumstances of the violation;

20 (2) the seriousness and severity of the violation;

21 (3) the date of the violation and the time period over which the
22 violation occurred;

23 (4) the age of the person committing the violation, if applicable;

24 (5) the number of violations occurring within the time period
25 described in paragraph (3) above;

26 (6) whether the violation was a repeated act;

27 (7) the person's record of prior similar civil regulatory violations;

28 (8) the person's record of prior different civil regulatory violations;

29 (9) the proximity in time of the violations to those violations
30 described in paragraphs (7) and (8) above;

31 (10) the person is involved in organized criminal activity;

32 (11) the failure to revoke the license will cause any other form of
33 penalty to be a mere cost of doing business;

34 (12) the risk of future violations;

35 (13) the need for deterring the person and others from violating the
36 law;

37 (14) any economic benefit derived by the person from the violation;

38 (15) the operational history of the solid waste facility, if applicable;

39 (16) conviction of any crime under the laws of New Jersey or the
40 equivalent thereof under the laws of any other jurisdiction, as set forth
41 in subsection b. of section 8 of P.L.1983, c.392 (C.13:1E-133);

42 (17) any unusual or extraordinary costs directly or indirectly
43 imposed on the public by the violation other than costs recoverable
44 pursuant to paragraph (3) or (4) of subsection d. of section 9 of
45 P.L.1970, c.39 (C.13:1E-9);

46 (18) the harm to public health or the substantial degradation of the

1 environment resulting from the violation;

2 (19) any other pertinent factors that the department determines
3 measure the seriousness or frequency of the violation or conduct of the
4 violator.

5 The administrative law judge shall make findings of fact to support
6 any and all aggravating circumstances.

7 d. At the administrative hearing, or any administrative hearing at
8 which a license may be revoked or an individual suspended, the
9 administrative law judge shall weigh and consider the following
10 mitigating circumstances prior to suspending the individual or
11 revoking the license:

12 (1) evidence of good conduct in the community;
13 (2) whether the violation was an isolated act;
14 (3) history of similar prior civil regulatory violations;
15 (4) history of different prior civil regulatory violations;
16 (5) measures taken to mitigate or prevent further violations;
17 (6) whether the person's conduct was the result of circumstances
18 unlikely to reoccur;

19 (7) whether the violation was minor;
20 (8) minor risk of similar violations in the future;
21 (9) the opportunity of the violator to avoid the violation;
22 (10) precautions taken to prevent future violations;
23 (11) the degree of cooperation or recalcitrance of the violator in
24 remedying the violation;

25 (12) the existence of other viable, more appropriate alternatives to
26 penalize violator, including, but not limited to, those enumerated in
27 subsection f. below;

28 (13) hardship which would result from suspension or revocation;
29 (14) employee error or mistake;
30 (15) reliance upon governmental agency representations, policies,
31 or statements.

32 The administrative law judge shall make findings of fact to support
33 any and all mitigating circumstances.

34 e. Only upon a finding, by a preponderance of the evidence, that
35 the aggravating factors far outweigh the mitigating factors, and that
36 there exists no other viable, more appropriate alternatives to penalize
37 the violator, may the administrative law judge revoke a license or
38 suspend an individual.

39 Upon a finding that there exists other viable, more appropriate
40 alternatives to penalize the violator, the administrative law judge shall
41 set forth alternatives and findings on the record. At the administrative
42 law judge's discretion, the administrative law judge may deny the
43 revocation of the license or suspension of the individual and, if
44 appropriate and applicable, may instead order the following, or any
45 other relief as may be provided by any other law, rule or regulation,
46 including, but not limited to:

1 (1) penalties against the violator;
2 (2) community service;
3 (3) payment of reasonable compensatory damages and other actual
4 damages;
5 (4) payment of reasonable costs of investigation, inspection and
6 monitoring;
7 (5) payment of reasonable fees and costs of preparing and litigating
8 the case;
9 (6) changes in organizational structure to reduce opportunity and
10 motive to violate laws;
11 (7) change in long and short-term planning to insure prevention of
12 future violations, and implementation of procedures and policies;
13 (8) change in legal, accounting, internal or external control and
14 monitoring procedures;
15 (9) change in ownership, control, personnel and personnel election
16 process and imposition of reward or disincentive system;
17 (10) monitoring of business;
18 (11) forfeiture or suspension of usage of conveyances used for
19 willful discharge in violation of section 9 of P.L.1970, c.39
20 (C.13:1E-9);
21 (12) appointment of a receiver to handle daily operations of the
22 violator's business concern until further order of the court; or
23 (13) any other reasonable conditions.
24 Any final determination of revocation or suspension of an individual
25 may not be utilized in any other proceeding against a different business
26 concern or licensee.
27 The administrative law judge may suspend an individual and order
28 any of the relief set forth in paragraphs (1) through (13) of this
29 subsection. The provisions of subsections b., c., d. and e. of this
30 section shall apply to any monitor or receiver, including any of their
31 employees, agents, servants or independent contractors.
32 Prior to appointing a monitor or receiver, the administrative law
33 judge shall determine that the monitor or receiver is independent,
34 qualified, impartial and has no conflict of interest with respect to the
35 violating business concern. The attorney representing the business
36 concern shall have the right to be heard with respect to the
37 appointment of any monitor or receiver.
38 (cf: P.L.1991, c.269, s.9)

39

40 20. Section 10 of P.L.1983, c.392 (C.13:1E-135) is amended to
41 read as follows:

42 10. [a. (1)]Notwithstanding the disqualification of the applicant or
43 permittee pursuant to subsection a., b., c.[,]or e. [or f.]of section 8 of
44 P.L.1983, c.392 (C.13:1E-133), the department may issue or renew a
45 license if the applicant or permittee severs the interest of or affiliation
46 with the person who would otherwise cause that disqualification.

1 Severance of any such interest may be by purchase on reasonable
2 commercial terms.

3 [(2) The department may issue or renew a temporary license to any
4 applicant or permittee for periods not to exceed six months if the
5 department determines that the issuance or renewal of a temporary
6 license is necessitated by the public interest.]

7 b. [After July 1, 1992 , the provisions of any other law to the
8 contrary notwithstanding, no temporary license shall be approved,
9 issued or renewed by the department for any applicant or permittee, as
10 the case may be, to own or operate a resource recovery facility or
11 other solid waste facility approved by the department for the long-term
12 solid waste disposal requirements of a district or districts pursuant to
13 the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et
14 seq.) prior to the completion by the Attorney General and the
15 department of the requirements of sections 3 and 8 of P.L.1983, c.392
16 (C.13:1E-128 and 13:1E-133); except that the department may issue
17 a temporary license to an applicant or renew the temporary license of
18 a permittee if the Commissioner of the Department of Environmental
19 Protection determines, in writing, that the issuance of a temporary
20 license for that applicant or renewal of the temporary license for that
21 permittee is necessitated by the public interest.](Deleted by
22 amendment, P.L.1996, c.)(pending in the Legislature as this bill)
23 (cf: P.L.1991, c.269, s.10)

24

25 21. Section 11 of P.L.1970, c.39 (C.13:1E-11) is amended to read
26 as follows:

27 11. [a.] During the first registration year of each applicant or
28 permittee as defined in section 2 of P.L.1983, c.392 (C.13:1E-127) for
29 approval of a registration statement to engage in the collection of solid
30 waste, or a registration statement or engineering design approval for
31 a solid waste facility, or the year following any violation of the
32 provisions of P.L.1970, c.39 (C.13:1E-1 et seq.) resulting in a
33 revocation or suspension of registration, the department is authorized
34 to give temporary approval of registrations conditioned upon the
35 applicant or permittee, as the case may be, effecting specified
36 additions, changes or improvements in methods of operation and
37 equipment within such time and manner as may be required by the
38 department. The fee for such temporary approval shall be the
39 appropriate fee established pursuant to section 3 of P.L.1971, c.461
40 (C.13:1E-18), notwithstanding the length of time for which it is given.

41 b. [After July 1, 1992, the provisions of any other law to the
42 contrary notwithstanding, no temporary approval of registrations shall
43 be given, issued or renewed by the department for any applicant or
44 permittee, as the case may be, to own or operate a resource recovery
45 facility or other solid waste facility approved by the department for the
46 long-term solid waste disposal requirements of a district or districts

1 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
2 (C.13:1E-1 et seq.) prior to the completion by the Attorney General
3 and the department of the requirements of sections 3 and 8 of
4 P.L.1983, c.392 (C.13:1E-128 and 13:1E-133); except that the
5 department may renew the temporary approval of registrations of an
6 applicant or permittee if the commissioner determines, in writing, that
7 the renewal of a temporary approval for that applicant or permittee is
8 necessitated by the public interest.](Deleted by amendment, P.L.1996,
9 c.)(pending in the Legislature as this bill)

10 (cf: P.L.1991, c.269, s.14)

11

12 22. Section 12 of P.L.1970, c.39 (C.13:1E-12) is amended to read
13 as follows:

14 12. The department, after a hearing held pursuant to the
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.), may revoke or suspend the registration issued to any person
17 engaged in [the] solid waste collection or solid waste disposal [upon
18 a finding that such person:

19 a. Has violated any provision of this act or any rule, regulation, or
20 administrative order promulgated hereunder; or

21 b. Has violated any provision of any laws related to pollution of the
22 waters, air or land surfaces of the State; or

23 c. Has refused or failed to comply with any lawful order of the
24 department] pursuant to section 5 of P.L.1970, c.39 (C.13:1E-5).

25 a. The department may revoke or suspend the registration issued
26 to any person engaged in solid waste collection or disposal for any of
27 the causes enumerated in subsection a. of section 9 of P.L.1983, c.392
28 (C.13:1E-134).

29 b. A determination to suspend or revoke an approved registration
30 issued to any person engaged in solid waste collection or solid waste
31 disposal shall constitute a contested case under the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and any such
33 person shall have the opportunity to contest the determination in an
34 administrative hearing.

35 The provisions of the "Administrative Procedure Act" to the
36 contrary notwithstanding, and consistent with the public policy set
37 forth in the provisions of P.L.1996, c.)(pending in the
38 Legislature as this bill), at the administrative hearing, or any
39 administrative hearing at which an approved registration may be
40 revoked or suspended, the administrative law judge shall have the
41 duties, powers and responsibilities set forth in subsections c., d. and

1 e. of section 9 of P.L.1983, c.392 (C.13:1E-134).

2 (cf: P.L.1970, c.39, s.12)

3

4 23. Section 17 of P.L.1991, c.269 (C.13:1E-133.3) is amended to
5 read as follows:

17. The Department of Environmental Protection shall not issue
any permits required pursuant to P.L.1954, c.212 (C.26:2C-1 et seq.),
P.L.1962, c.19 (C.58:16A-50 et seq.), P.L.1975, c.232 (C.13:1D-29
et seq.), P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1981, c.262
(C.58:1A-1 et seq.), or any other law, or any rules and regulations
adopted thereto, to any person proposing to own or operate a resource
recovery facility prior to the completion by the Attorney General and
the department of the requirements of sections 3 and 8 of P.L.1983,
c.392 (C.13:1E-128 and 13:1E-133), and unless the person proposing
to own or operate the resource recovery facility has received a license
approved by the department pursuant to section 8 of P.L.1983, c.392
(C.13:1E-133); except that the department may issue such permits if
the department has approved, issued or renewed a temporary license
for such person pursuant to section 10 of P.L.1983, c.392
(C.13:1E-135).

²¹ (cf: P.L.1991, c.269, s.17)

22

23 24. Section 8 of P.L.1991, c.269 (C.13:1E-133.2) is repealed.

24

25 25. This act shall take effect immediately.

26

STATEMENT

This bill would provide the expressed standards to be used by the Department of Environmental Protection (Department) in administering the "A-901" licensing program. Assembly Bill No. 901 of 1982 was enacted into law as P.L.1983, c.392 (C.13:1E-126 et seq.) on December 14, 1983. This solid and hazardous waste industry disclosure and licensing law, which has been commonly referred to as the "A901" program ever since, was designed to ensure the effective exclusion of criminal elements and environmental "bad actors" from the State's solid and hazardous waste industries.

Unfortunately, the absence of expressed standards in the application of the "A-901" program has invited inconsistencies, encouraged controversy, and has perhaps lead to arbitrary and capricious actions by the Department in administering the program.

43 P.L.1983, c.392, as revised by P.L.1991, c.269 (C.13:1E-128.1 et
44 al.), provides criteria for licensure of private business concerns and
45 individuals performing, or seeking to perform, most solid waste or
46 hazardous waste collection, disposal and transportation activities in

1 New Jersey. The "A-901" licensing program, under the joint
2 administration of the Department and the Attorney General, requires
3 each such business concern or individual to submit to the Attorney
4 General and the Department a disclosure statement from which the
5 State Police performs a background investigation. The Division of
6 Law in the Department of Law and Public Safety evaluates the
7 information revealed by each investigation and prepares a report in
8 which it concludes whether or not the Department is precluded,
9 strictly as a matter of law, by the criteria of "A901" from granting a
10 license.

11 These criteria are designed to preclude individuals or business
12 concerns with criminal backgrounds or a history of violations of
13 environmental laws in this State or other state or federal jurisdictions
14 from lawful participation in waste management activities in New
15 Jersey. Absent a per se legal bar, the final decision as to licensure shall
16 be made by the Department.

17 The bill would require the Attorney General and the Department,
18 within 90 days of the bill's effective date, to jointly publish in the New
19 Jersey Register a copy of all forms necessary to be filed with an
20 applicant's or permittee's request for an "A-901" license, including a
21 form prescribing the contents and specific requirements of the
22 disclosure statement to be filed with the Department and the Attorney
23 General, and a form for providing any additional or updated
24 information that may be added to the disclosure statement after it has
25 been filed by the applicant, permittee or licensee.

26 The Department must approve or deny an application from an
27 applicant for an initial license within 120 days of the filing of a
28 completed application and disclosure statement, unless the time period
29 is extended with the consent of the applicant.

30 If the Department denies an application from an applicant for an
31 initial license after a temporary approval of registration has been given
32 by the Department and the solid waste facility has commenced
33 operations, the applicant would be entitled to continue operations at
34 the solid waste facility pending a decision following an administrative
35 hearing to be conducted as a contested case under the "Administrative
36 Procedure Act," and the exhaustion of all judicial relief.

37 The bill would also provide that within 10 days of transmittal to the
38 Department, the applicant, permittee or licensee must be furnished
39 with a copy of the investigative report prepared by the Attorney
40 General and copies of any other reports on the applicant, permittee or
41 licensee prepared by the Department, the State Police or other federal,
42 State or local agency.

43 If the Attorney General fails or refuses to provide copies of any
44 such reports to the applicant, permittee or licensee, as the case may be,
45 the reports may not be utilized in any manner whatsoever by the
46 Attorney General or the Department in any decision or determination

1 on the application for initial licensing, renewal or revocation.

2 Within 30 days of receipt of an investigative report or other report
3 pertinent to an application for initial licensing, renewal or revocation,
4 the applicant, permittee or licensee may notify the governmental
5 agency that prepared the report of any information contained therein,
6 which is considered by the applicant, permittee or licensee to be
7 inaccurate or incomplete.

8 Access to and use of the investigative report prepared by the
9 Attorney General, or any other report on the applicant, permittee or
10 licensee prepared by the Department, the State Police or other federal,
11 State or local agency, would be restricted to the purpose for which the
12 report was prepared and cannot be disseminated to any other person
13 or federal, State or local agency without the written consent of the
14 applicant, permittee or licensee.

15 The bill would require the Department, by rule or regulation
16 adopted pursuant to the "Administrative Procedure Act," to establish
17 and maintain a disqualification list of all persons debarred or
18 disqualified from doing business with persons licensed under the
19 "A901" program. The list must be published in the New Jersey
20 Register and would include the criteria and standards for exclusion.
21 The Department must furnish all licensees with copies of the list as
22 updated. No applicant or permittee may transact any new business
23 with any person whose name is contained on the disqualification list.

24 Whenever the Department intends to place the name of any person
25 on the disqualification list, it must prepare a petition setting forth its
26 allegations and serve the petition on that person by personal service or
27 by certified mail at the last known address of that person.

28 Within 30 days after service of the petition, the person named for
29 exclusion may demand a hearing before the Department. At any such
30 hearing the Department would have the affirmative obligation to
31 demonstrate, by a preponderance of the evidence, that the person
32 named for exclusion satisfies the criteria and standards for exclusion
33 established by the Department. Failure to demand such a hearing
34 within 30 days after service would be deemed an admission of all
35 matters and facts alleged in the Department's petition and would
36 preclude a person from having an administrative hearing, but would in
37 no way affect that person's right to judicial review.

38 The Department may seek preliminary placement on the list of a
39 person named in a petition for exclusion pending completion of a
40 hearing on the petition. The hearing would be a limited proceeding at
41 which the Department would have the affirmative obligation to
42 demonstrate that there is a reasonable probability that the person so
43 named satisfies the criteria and standards for exclusion established by
44 the Department. If a person has been placed on the list as a result of
45 an application for preliminary placement, unless otherwise agreed by
46 the Department and the named person, a hearing on the petition for

1 exclusion would be initiated within 30 days of the receipt of a demand
2 for the hearing, or the date of preliminary placement on the list,
3 whichever is later.

4 If, upon completion of the hearing on the petition for exclusion, the
5 Department determines that the person named therein does not satisfy
6 the criteria and standards for exclusion, the Department must issue an
7 order so stating. If the person named in the petition for exclusion had
8 been placed on the list as a result of an application for preliminary
9 placement, the Department must notify all applicants, permittees and
10 licensees of the person's removal from the list.

11 If, upon completion of a hearing on the petition for exclusion, the
12 Department determines that placement of the name of the person on
13 the disqualification list is appropriate, the Department would issue an
14 order to that effect, which would be served on all applicants,
15 permittees and licensees. The order would be subject only to judicial
16 review by the Superior Court as provided in the Rules of Court.

17 The bill would also provide that in all matters considered pursuant
18 to the provisions of P.L.1983, c.392, P.L.1991, c.269 or this bill, and
19 heard as contested cases pursuant to the "Administrative Procedure
20 Act," the decision of the administrative law judge must be reviewed by
21 the Commissioner of Environmental Protection upon issuance of the
22 judge's initial decision. Any review of the decision by the
23 Commissioner would be limited to determining whether the findings
24 therein could reasonably have been reached on sufficient credible
25 evidence present in the record considering the proofs as a whole, with
26 due regard of the opportunity of the administrative law judge to hear
27 the witnesses and to judge their credibility.

28 The decision of the administrative law judge could not be disturbed
29 if there is competent evidence in the record to support it, and if the
30 findings could reasonably have been reached on sufficient evidence
31 present in the record.

32 The bill would also provide that the application of the statutory
33 scheme set forth in the "A-901" licensing law must not be selectively
34 applied or enforced.

35 This bill would also establish standards for the revocation or
36 suspension of "A-901" licenses by the Department.

37 A determination by the Department to suspend or revoke the license
38 of any business concern would constitute a contested case under the
39 "Administrative Procedure Act," and any such business concern must
40 have the opportunity to contest the determination in an administrative
41 hearing.

42 At the administrative hearing, or any administrative hearing at
43 which a license may be revoked or suspended, the administrative law
44 judge must weigh and consider certain aggravating and mitigating
45 circumstances, which are set forth in the bill, prior to suspending or
46 revoking the license.

1 The administrative law judge must make findings of fact to support
2 any and all aggravating circumstances or mitigating circumstances.
3 Only upon a finding, by a preponderance of the evidence, that the
4 aggravating factors far outweigh the mitigating factors may the court
5 suspend or revoke a license.

6 Upon a finding that there exists other viable, more appropriate
7 alternatives to penalize the violator, the administrative law judge must
8 set forth alternatives and findings on the record. The administrative
9 law judge may deny the revocation or suspension of the license, at his
10 discretion, and, if appropriate and applicable, may instead order certain
11 alternatives, including, but not limited to:

12 (1) penalties against the violator;

13 (2) community service;

14 (3) payment of reasonable compensatory damages and other actual
15 damages;

16 (4) payment of reasonable costs of investigation, inspection and
17 monitoring;

18 (5) payment of reasonable fees and costs of preparing and litigating
19 the case;

20 (6) changes in organizational structure to reduce opportunity and
21 motive to violate laws;

22 (7) change in long and short-term planning to insure prevention of
23 future violations, and implementation of procedures and policies;

24 (8) change in legal, accounting, internal or external control and
25 monitoring procedures;

26 (9) change in ownership, control, personnel and personnel election
27 process and imposition of reward or disincentive system;

28 (10) monitoring of business;

29 (11) forfeiture or suspension of usage of conveyances used for
30 willful discharge in violation of section 9 of P.L.1970, c.39
31 (C.13:1E-9);

32 (12) appointment of a receiver to handle daily operations of the
33 violator's business concern until further order of the court; or

34 (13) any other reasonable conditions.

35 Any final determination of suspension or revocation may not be
36 utilized in any other proceeding against a different business concern or
37 licensee.

38

39

40

41

42 The "Solid and Hazardous Waste Operator Registration Reform Act
43 of 1995."