

ASSEMBLY AGRICULTURE AND WASTE MANAGEMENT
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1171

STATE OF NEW JERSEY

DATED: JUNE 12, 1997

The Assembly Agriculture and Waste Management Committee favorably reports Assembly Bill No. 1171.

The Assembly Committee Substitute for Assembly Bill No. 1171 would provide additional procedures and standards to be used by the Department of Environmental Protection (Department) in administering the solid and hazardous waste operators 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 "A-901" program ever since, was designed to ensure the exclusion of criminal elements and chronic environmental offenders from the State's solid and hazardous waste industries.

P.L.1983, c.392 (C.13:1E-126 et seq.), as revised by P.L.1991, c.269 (C.13:1E-128.1 et al.), provides criteria for licensure of private business concerns and individuals performing, or seeking to perform, solid waste or hazardous waste collection, disposal and transportation activities in New Jersey. These criteria are designed to preclude individuals or business concerns with criminal backgrounds or a history of violations of environmental and solid waste management laws in this State or other state or federal jurisdictions from participation in waste management activities in New Jersey.

This bill would establish additional procedures and criteria to be followed during the investigative phase and the licensing decision. For instance, currently the provisions of P.L.1983, c.392 expressly provide that the Department may either issue or deny an application for a license or revoke the license of a bad actor. This bill would provide for a third option, a monitoring of the license, which would allow the licensee to continue operations, with conditions, provided that certain criteria are met and none of the express grounds for revocation exist.

In addition, currently the provisions of P.L.1991, c.269 allow persons convicted of certain enumerated crimes to be found to be rehabilitated. This procedure was not previously explicitly available

to parties whose licenses were denied or revoked for civil or regulatory violations. This bill would explicitly make a finding of rehabilitation available to parties whose licenses are denied or revoked for certain civil or regulatory violations of the law. Further, in reviewing the rehabilitation application of a person whose license was previously revoked on grounds which would result in a monitorship under the provisions of this bill, the Department would be able to take this fact into account in making its determination.

The remainder of the new procedures in this bill are designed to allow the "A-901" licensing investigation to move forward expeditiously, but not in a manner which would harm the environment or the public health or welfare. The more notable of the additional procedures are described below.

Under Section 3 of the bill, the Department must approve or deny an application from an applicant for an initial license within 120 days of the filing of a completed application and disclosure statement, or, if later, within 60 days after the State Police receive back from the Federal Bureau of Investigation the results of a review of fingerprint cards from individuals subject to "A-901" review. Currently, fingerprint checks take 90 to 120 days. The approval deadline could be extended with the consent of the applicant or if the Attorney General determines good cause supports an extension of up to 15 months. Thereafter, the Attorney General must seek approval in the Superior Court for any additional extensions upon a showing of serious harm to the public health, welfare or the environment if an extension is not granted.

If a licensing decision is not made within the applicable time frames, including any extensions, then the applicant would be allowed to commence operations, but only, in the case of a solid or hazardous waste facility, if a valid engineering design approval has also been issued by the Department. The "A-901" investigation of any such company would still continue during any period of temporary approval and the company would still be treated as an applicant for the approval of an initial license. If the Department denies an application from an applicant for an initial license after a temporary approval of registration has been given by the Department and the solid waste facility has commenced operations, the applicant would be entitled to continue operations at the solid waste facility pending a final agency decision following an administrative hearing.

The bill would also provide that if the Department bases a decision for denial, monitorship or revocation on information found in the investigative report prepared by the Attorney General, then, if requested, the Department must release all non-privileged parts of the investigative report which are reasonably calculated to lead to the discovery of admissible evidence. Should the Department not disclose a requested part of an investigative report, that part of the investigative report could not be admitted into evidence or made a part of the record in a plenary hearing.

The bill would require the Department to establish and maintain a list of all individuals debarred or companies revoked under the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), as revised by P.L.1991, c.269 (C.13:1E-128.1 et al.), "A-901" act or the "Solid Waste Utility Control Act," (C.48:13A-1 et seq.). The Department must furnish all "A-901" permittees, applicants and licensees with copies of the list on an annual basis. No temporarily or permanently licensed person would be allowed to transact any business with any person whose name is contained on the list. Any person on the list could have their name removed from the list by demonstrating rehabilitation under the provisions of section 7 of P.L.1991, c.269 (C.13:1E-133.1), or by demonstrating severance of a debarred or disqualifying individual pursuant to the provisions of section 10 of P.L.1983, c.392 (C.13:1E-135).

The bill would clarify the circumstances when and to whom information gathered pursuant to the requirements of the "A-901" statutes could be disclosed. The bill would prevent the disclosure of so-called "confidential information," as newly defined in amendments to section 2 of P.L.1983, c.392 (C.13:1E-127), with certain exceptions set forth in revisions to section 6 of P.L.1983, c.392 (C.13:1E-131).

The bill would also revise the definition of "license" under section 2 of P.L.1983, c.392 (C.13:1E-127) to delete the term "first" before the word "renewal" to correct an oversight in the 1991 amendments to the "A-901" program enacted as P.L.1991, c.269, and to conform it to the 1991 amendments to section 3 of P.L.1971, c.461 (C.13:1E-18) regarding annual fees. This amendment reflects that the 1991 amendments to section 3 of P.L.1971, c.461 (C.13:1E-18), regarding fees charged to "A-901" companies, allowed the Department to charge fees for all companies on an annual basis, which the Department could continue to collect every year after a company had secured A-901" approval.

Further, the bill would add a provision allowing a waiver from the filing of a Personal History Disclosure Form and fingerprint cards by certain individuals listed in an "A-901" application. This waiver would apply to an individual or group of individuals who acquire a limited interest in a permittee or licensee by inheritance under specified conditions.

In the case of the standards for licensure, the bill would retain the current standards for licensure found under section 8 of P.L.1983, c.392 (C.13:1E-133), with only minor modifications to subsections c. and d. thereof. However, the bill would clarify and narrow the grounds for revocation of the license of a permittee or licensee. Currently, section 9 of P.L.1983, c.392 (C.13:1E-134) enumerates certain grounds for revocation based on criminal or organized crime activity, or activity that violates certain other public policies. The bill would amend these provisions to provide that not all causes which might lead to a denial of an initial license would now be grounds for revocation. Instead, section 9 of P.L.1983, c.392 (C.13:1E-134) is

amended to provide that the failure to meet certain licensing criteria as set forth in subsections a., c. and e. of section 8 of P.L.1983, c.392 (C.13:1E-133), absent express grounds requiring revocation, would now result in some form of monitorship by the Department, during which the permittee would be allowed to continue in operation.

The bill would provide for different levels of monitorship and conditions of monitoring. Failure to comply with the conditions, however, would constitute grounds for revocation. The criteria and conditions for a finding of rehabilitation would now include an option that monitorship could be imposed on a person found to be rehabilitated.

Finally, the bill would set up a procedure so that in limited circumstances a permittee or licensee could avoid having its license revoked or denied if a disqualifying individual severs their interest in the affected permittee or licensee. This provision is designed to protect innocent owners or employees who are not involved in the conduct which would lead the Department to revoke a business concern's license. It would do so by allowing the company to continue in operation for a brief period during which the disqualified person would be permitted to hold debt liability of the company. This provides time for the company to buy out the interest of the disqualified person under appropriate conditions.