

CHAPTER 253

AN ACT concerning disclosure statements and certain other requirements for the licensing of solid waste and hazardous waste operations, and amending and supplementing P.L.1983, c.392.

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

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

C.13:1E-127 Definitions.

2. As used in the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.) and P.L.1991, c.269 (C.13:1E-128.1 et al.):

a. "Applicant" means any business concern which has filed a disclosure statement with the department and the Attorney General and is seeking an initial license, provided that the business concern has furnished the department and the Attorney General with any information required pursuant to P.L.1991, c.269 (C.13:1E-128.1 et al.).

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

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

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

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

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

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

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

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

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

the permittee, as the case may be, or by any key employee, officer, director, or partner thereof;

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

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

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

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

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

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

(b) The full name, business address and federal employer identification number of any business concern in any state, territory or district of the United States, which collects, transports, treats, stores, recycles, brokers, transfers or disposes of solid waste or hazardous waste on a commercial basis, in which the applicant or the permittee holds an equity interest of 25% or more, and the type, amount and dates of the equity held in such business concern;

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

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

(e) A listing and explanation of any notices of violation or prosecution, administrative orders or license revocations issued by this State or any other state or federal authority to the applicant or permittee in the 10 years immediately preceding the filing of the application or

disclosure statement, whichever is later, which are pending or have resulted in a finding or a settlement of a violation of any law or rule or regulation relating to the collection, transportation, treatment, storage, recycling, processing, transfer or disposal of solid waste or hazardous waste by the applicant or permittee;

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

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

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

f. "Key employee" means any individual employed by the applicant, the permittee or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste.

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

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

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

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

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

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

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

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

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

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

h. "Licensee" means any business concern which has completed the requirements of section 3 of P.L.1983, c.392 (C.13:1E-128) and whose application for the issuance or renewal of a license has been approved by the department pursuant to section 8 of P.L.1983, c.392 (C.13:1E-133).

i. "Permittee" means and shall include:

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

(2) Any business concern which has filed a disclosure statement with the department and the Attorney General and to which a temporary license has been approved, issued or renewed by the department pursuant to section 10 of P.L.1983, c.392 (C.13:1E-135), but which has not otherwise completed the requirements of section 3 of P.L.1983, c.392 (C.13:1E-128) and whose application for a license has not been approved by the department pursuant to section 8 of P.L.1983, c.392 (C.13:1E-133), provided that the temporary license remains valid, and provided further that the business concern has furnished the department and the Attorney General with any information required pursuant to P.L.1991, c.269 (C.13:1E-128.1 et al.);

(3) Any business concern which has filed a disclosure statement with the department and the Attorney General and to which a valid registration statement or engineering design approval for the collection, transportation, treatment, storage, transfer or disposal of solid waste or hazardous waste pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.) or P.L.1981, c.279 (C.13:1E-49 et seq.) has been given by the department between February 20, 1985 and January 23, 1986, inclusive, provided that the registration statement or engineering design approval remains valid, and provided further that the business concern has furnished the department and the Attorney General with any information required pursuant to P.L.1991, c.269 (C.13:1E-128.1 et al.); or

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

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

k. "Secondary business activity corporation" means any business concern which has derived less than 5% of its annual gross revenues in each of the three years immediately preceding the one in which the application for a license is being made from the collection, transportation, treatment, storage, recycling, processing, transfer or disposal of solid waste or hazardous waste, whether directly or through other business concerns partially or wholly owned or controlled by the applicant or the permittee, as the case may be, and which (1) has one or more classes of security registered pursuant to section 12 of the "Securities Exchange

Act of 1934," as amended (15 U.S.C. s.78l), or (2) is an issuer subject to subsection (d) of section 15 of the "Securities Exchange Act of 1934," as amended (15 U.S.C. s.78o).

l. "Institutional investor" means a retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees; government or government-owned entity; investment company registered under the "Investment Company Act of 1940" (15 U.S.C. s.80a-1 et seq.); collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency; closed end investment trust; chartered or licensed life insurance company or property and casualty insurance company; banking or other chartered or licensed lending institution; partnerships, funds or trusts managed by or directed in conjunction with an investment adviser registered under the "Investment Advisers Act of 1940" (15 U.S.C. s.80b-1 et seq.) or an institutional investment manager required to make filings under subsection (f) of section 13 of the "Securities Exchange Act of 1934," as amended (15 U.S.C. s.78m); institutional buyer, as defined pursuant to section 2 of the "Uniform Securities Law (1997)," P.L.1967, c.93 (C.49:3-49); small business investment company licensed by the United States Small Business Administration under subsection (c) of section 301 of the "Small Business Investment Act of 1958," as amended (15 U.S.C. s.681); private equity or venture capital entity having or managing aggregate capital commitments in excess of \$25,000,000; and other persons as the department may determine for reasons consistent with the policies of P.L.1983, c.392 (C.13:1E-126 et seq.).

m. "Publicly traded corporation" means a corporation or other legal entity, except a natural person, which:

(1) has one or more classes of security registered pursuant to section 12 of the "Securities Exchange Act of 1934," as amended (15 U.S.C. s.78l);

(2) is an issuer subject to subsection (d) of section 15 of the "Securities Exchange Act of 1934," as amended (15 U.S.C. s.78o); or

(3) has one or more classes of securities traded in an open market in any foreign jurisdiction, provided that the department determines that the foreign exchange provides openness, integrity and oversight in its operations sufficient to meet the intent of P.L.1983, c.392 (C.13:1E-126 et seq.), or that the securities traded on the foreign exchange are regulated pursuant to a statute of a foreign jurisdiction that is substantially similar, both in form and effect, to section 12 or subsection (d) of section 15 of the "Securities Exchange Act of 1934," as amended.

C.13:1E-128.2 Disclosure, submission requirements.

2. Notwithstanding any provision of section 2 of P.L.1983, c.392 (C.13:1E-127) or section 3 of P.L.1983, c.392 (C.13:1E-128), or any rules or regulations adopted pursuant thereto, to the contrary, a business concern that is a secondary business activity corporation which is listed in the disclosure statement of an applicant or a permittee as required pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.), and that is not the applicant or permittee, shall not be required to disclose or submit any more information than that which is required of a secondary business activity corporation that is an applicant or a permittee, as provided pursuant to paragraphs (a) through (h) of subsection e. of section 2 of P.L.1983, c.392 (C.13:1E-127), and, as applicable, subsections b. and d. of section 3 of P.L.1983, c.392 (C.13:1E-128) and sections 4 and 5 of P.L.1983, c.392 (C.13:1E-129 and C.13:1E-130).

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

C.13:1E-128 Disclosure.

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

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

(2) Except as otherwise provided in this subsection, any person required to be listed in the disclosure statement shall be fingerprinted for identification and investigation purposes in accordance with procedures therefor established by the Attorney General;

(3) The Attorney General shall, upon the receipt of the disclosure statement from an applicant for an initial license or from a permittee, prepare and transmit to the department an investigative report on the applicant or the permittee, as the case may be, based in part upon the disclosure statement. In preparing this report, the Attorney General may request and receive criminal history information from the State Commission of Investigation or the Federal Bureau of Investigation;

(4) In conducting a review of the application, the department shall include a review of the disclosure statement and investigative report;

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

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

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

(6) (a) A person who is a director or chief executive officer of a business concern that is a secondary business activity corporation, a publicly traded corporation or an institutional investor, including limited partnership interests, that is not the applicant or permittee but which is listed in the disclosure statement of an applicant or permittee, pursuant to subsection e. of section 2 of P.L.1983, c.392 (C.13:1E-127), shall be exempt from the fingerprint and personal history disclosure requirements; and

(b) An individual who is an officer or partner of, or who holds any equity in or debt liability of, a business concern that is a secondary business activity corporation, a publicly traded corporation or an institutional investor, including limited partnership interests, that is not the applicant or permittee but which is listed in the disclosure statement of an applicant or permittee, pursuant to subsection e. of section 2 of P.L.1983, c.392 (C.13:1E-127), shall be exempt from the fingerprint and personal history disclosure requirements, provided that the person or secondary business activity corporation or publicly traded corporation or institutional investor does not and will not have any responsibility for, or control of, the commercial solid waste or hazardous waste operations of the applicant or permittee conducted in New Jersey.

b. All applicants, permittees and licensees shall have the continuing duty to provide any assistance or information requested by the department or the Attorney General, and to cooperate in any inquiry or investigation conducted by the Attorney General or the State Commission of Investigation and any inquiry, investigation, or hearing conducted by the department. Except as otherwise determined by the Superior Court pursuant to subsection d. of this section, if, upon issuance of a formal request to answer any inquiry or produce information, evidence or testimony, any applicant, permittee or licensee refuses to comply,

the application of the business concern for a license may be denied, or the license of that business concern may be revoked by the department.

c. If any of the information required to be included in the disclosure statement changes, or if any information provided concerning the applicability of an exemption under subsection d. of this section changes, or if any additional information should be added to the disclosure statement after it has been filed, the applicant, permittee or licensee shall provide that information to the department and the Attorney General, in writing, within 30 days of the change or addition.

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

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

4. This act shall take effect immediately.

Approved January 16, 2010.