

SRPL BOARD COMPLAINT NO. 003A-2015

DISPOSITION

Based on its investigation and findings, the Site Remediation Professional Licensing Board (“Board”) voted to resolve the complaint with a finding that the subject of the complaint did not violate the provisions of the Site Remediation Reform Act (“SRRA”) (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced below.

COMPLAINT ISSUES

The New Jersey Department of Environmental Protection (“Department”) submitted Complaint 003A-2015 to the Board on February 24, 2015. According to the complaint, the LSRP that is the subject of the complaint (hereinafter “LSRP”) allowed “numerous environmental violations, leaking and otherwise improperly stored hazardous waste, potentially dangerous chemicals and deteriorated conditions” to occur at the site. The complaint alleges violations of the following provisions of the SRRA, based on the alleged negligence of the LSRP to properly characterize the hazardous conditions at the site and his alleged failure to notify the Department of the hazardous discharges occurring at the site:

N.J.S.A. 58:10C-16a

a. A licensed site remediation professional's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.

N.J.S.A. 58:10C-16b

b. A licensed site remediation professional shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time the services are performed.

N.J.S.A. 58:10C-16j

j. If a licensed site remediation professional identifies a condition at a contaminated site that in his independent professional judgment is an immediate environmental concern, then the licensed site remediation professional shall: (1) immediately verbally advise the person responsible for conducting the remediation of that person's duty to

notify the department of the condition; and (2) immediately notify the department of the condition by calling the Department's telephone Hotline.

N.J.S.A. 58:10C-16k

k. If a licensed site remediation professional obtains specific knowledge that a discharge has occurred on a contaminated site for which he is responsible, the licensed site remediation professional shall: (1) notify the person responsible for conducting the remediation of the existence of the discharge; and (2) notify the department of the discharge by calling the Department's telephone Hotline. The person responsible for conducting the remediation shall also be responsible for notifying the department of the existence of the discharge. The provisions of this subsection shall not apply to a discharge that may be a result of the existence of historic fill material.

SYNOPSIS OF THE INVESTIGATION

The Board conducted an independent investigation and evaluation of the allegations in the complaint. The Board found the following facts:

- A plating and polishing company operated at the site that is the subject of the complaint. When the company ceased operations, the Industrial Site Recovery Act was triggered.
- The widow of the owner of the plating and polishing company and site retained the LSRP to address the entire site investigation and remediation. The Board questioned the LSRP regarding the scope of his retention. In his response, the LSRP emphasized that he was “not hired to handle the Plating and Polishing Company (i) wind down, (ii) building cleanout, (iii) sale of equipment and chemicals, (iv) waste disposal, (v) sewer discharge inspections, (vi) closeout of the sewer discharge permit, and (vii) close out of the Plating and Polishing Company’s EPA ID number.”
- The LSRP identified VOC contamination in groundwater and contacted the Department Hotline to report the discharge.
- The LSRP notified the estate of the widow and the company of the requirements for addressing the discharge, and the consequences for not complying.
- The LSRP communicated with the Department concerning the state of the site, which had been essentially abandoned, and the need to conduct remediation. He indicated to the Department that he had not been authorized to proceed with remediation, and had considered dismissing himself, but had not done so in the

hopes that he would be authorized to proceed with the site investigation and remediation.

- In early 2014 a stormwater investigator noted the conditions at the site; specifically, that the building was unsecure, and containers which potentially contained hazardous materials were left both inside and outside the building.
- On May 7, 2014, a representative of the Department inspected the building with the LSRP. She directed the LSRP to call the Department hotline, which he did. The Board questioned the Department representative with respect to whether she had identified a discharge. She stated “no”, however, she felt it was necessary for the Department Hotline to be notified because of the hazardous conditions at the site.
- A removal action was commenced by the Department, and transferred to the United States Environmental Protection Agency (“EPA”) which completed the removal action.
- The LSRP withdrew as the LSRP after the removal action, in May 2014.

Findings and Recommendations

The Boards findings are as follows.

Issue 1: Allegation that the LSRP was negligent in characterizing the hazardous conditions at the site and failed to notify the Department of the hazardous discharges occurring at the site.

With respect to this site, the Board finds that the LSRP took the actions that he was required to take as LSRP to investigate and remediate the site. The LSRP was in a situation that many LSRPs find themselves in. He was aware of the need to conduct site remediation, he informed the client of the activities that needed to be done, he informed the client of potential violations they might incur by not conducting activities, but he received no authorization to proceed. Complicating this situation was the fact that between June 2012 and July 2014 the original owner died, his wife died and their daughter was removed as executor. It was a very unsettled situation, and the persons responsible for the site were not paying attention to the site. But the dereliction of their responsibilities cannot be the fault of the LSRP, or create an obligation on the part of the LSRP.

The Board finds that the LSRP was not responsible for the condition of the site or the maintenance of the site by virtue of being retained as LSRP to conduct site remediation.

The Board does not agree that the LSRP took actions, or failed to take actions, that indicated he did not protect public health and safety and the environment, exercise reasonable care and diligence, or apply the knowledge and skill ordinarily exercised by LSRPs, within the context of his position as LSRP. Therefore, the Board finds no violation of N.J.S.A. 58:10C-16 a or b.

Issue 2. Allegation that the LSRP failed to notify the Department of an Immediate Environmental Concern.

The Board found that there was no evidence that an immediate environmental concern existed on the site; therefore, the Board does not find that the Subject violated N.J.S.A. 58:10C-16j.

Issue 3. Allegation that the LSRP failed to report a discharge. I.

The Board contacted the Complainant to obtain more specific details on how the LSRP violated this provision. The Complainant stated that “LSRP was reluctant to call the Hotline during our inspection after viewing the conditions at the site and had to be directed to do so. From my perspective conduct unbecoming an LSRP”.

The Board cannot find a violation of the SRRRA based on an LSRP’s attitude. The LSRP did make a notification to the Department Hotline on May 7, 2014 (14-05-07-XXXX-XX), although there is no evidence that there was in fact a discharge to the environment. Based on these facts, the Board finds no violation of N.J.S.A. 58:10C-16k.