

SUMMARY OF LSRP BOARD COMPLAINT NO. 003A-2012

Nature of Complaint

Complaint 003A-2012 was submitted on August 23, 2012, by the Site Remediation Professional Licensing Board (“SRPLB”) Audit Committee (“Audit Committee”). This Complaint arose out of a routine audit conducted by the Audit Committee, which is required to audit, on an annual basis, at least 10 percent of the total number of LSRPs. In the Complaint, the SRPLB identified the following items from the audit that it felt presented violations of the LSRP Code of Conduct by the LSRP:

1. In the SRPLB Audit Questionnaire completed by the LSRP, Question B6 asked whether a client had ever released him (voluntarily or involuntarily), or whether the LSRP had ever withdrawn as an LSRP for a particular remediation, prior to the issuance of a Response Action Outcome for the site or area of concern. The LSRP answered this question “No”. However, he had been dismissed from a site herein designated as Site A with no reason offered.
2. Regarding a site herein designated as Site B: the LSRP was required to modify the RAO and reissue with language regarding an underground storage tank, play area, and a cap.
3. Regarding a site herein designated as Site C: After the Remedial Action Outcome (“RAO”) for this site was issued in January 2011, DEP reviewed the RAO and noted the absence of information regarding whether historic fill and other active sites were within the vicinity of this childcare center. The LSRP attempted to use Geoweb as instructed by the DEP reviewer and was unable to access the necessary data. The DEP reviewer attempted to contact the LSRP several times in March and April. He reached the LSRP on May 16, 2012, after having left several messages. The LSRP told the reviewer that he would speak to the client about conducting sampling at the site and filing a deed notice if he found contamination. As of the filing of the Complaint, there was no further response from the LSRP.

In its Complaint, the Audit Committee stated that it believed the first item violated the following provision in the LSRP Code of Conduct:

- N.J.S.A 58:10C-16(q), which among other things prohibits an LSRP from knowingly making a false statement of material fact in response to an investigation by the LSRP Board.

The Audit Committee felt the items involving the two sites violated the following three provisions of the LSRP Code of Conduct:

- N.J.S.A. 58:10C-16(a), which requires the LSRP's highest priority in the performance of professional services to be the protection of public health and safety and the environment.
- N.J.S.A. 58:10C-16(b), which requires an LSRP to exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed.
- N.J.S.A. 58:10C-16(e), which requires LRSPs to correct any deficiency the DEP identifies in a document submitted concerning a remediation in accordance with timeframes established by the department.

Synopsis

The Board's investigation revealed the following information:

- The Complaint Review Team ("CRT") interviewed the LSRP on January 22, 2013, during which he provided information regarding the three items identified in the Complaint. Members of the CRT also spoke with the LSRP by telephone on two occasions to ask follow-up questions.

Site A/Audit Questionnaire:

- Concerning the Audit Questionnaire, the LSRP said that he was not dismissed from Site A until January 24, 2012, which was after he signed the Audit Questionnaire on January 13. However, the CRT later learned that although the LSRP signed the Questionnaire on January 13, he did not submit the Questionnaire until February 9, after his firm had completed a spreadsheet listing all the sites for which the LSRP was an LSRP and their status. The spreadsheet was appended to the Questionnaire.
- The spreadsheet, dated February 9, showed the status of Site A as "Dismissal Submitted 1/24/12." During the follow-up telephone interviews, the LSRP explained that the reason for that entry was that he learned on January 24 that his client, a prospective purchaser of the Site A property, had decided not to purchase the property after all. Upon learning this, he prepared and submitted to DEP a form alerting the DEP that he was no longer the LSRP for that site. The LSRP said that during this event and up to and including February 9, the date he submitted the Audit Questionnaire to DEP, he forgot about his answer to Audit Question B6.

Site B:

- According to the Complaint, the fact that the LSRP was required to modify the RAO to include language concerning "a UST, a play area, and a cap" made the Audit Committee

question his understanding of protectiveness concerning sensitive populations. However, during the CRT's interview with the LSRP, he explained that at the time he prepared the RAO, the DEP's model RAO did not require mention of a UST having been located at a site. In the Preliminary Assessment for the site, the LSRP did mention the presence of a UST and the fact that there was no indication of contamination from the UST. The Model RAO requires the mention of a UST only if contamination is apparent. Also, at that time, no formal guidance existed on the requirements of RAOs.

- Nevertheless, the LSRP reacted promptly to this suggestion from the DEP reviewer, which was made in June 2011. After confirming with Diane Pupa, who was the only DEP employee in charge of reviewing child care sites, that this language was required, on July 21, 2011, the LSRP submitted a revised RAO with the suggested language.

Site C:

- During the CRT's interview with the LSRP, he explained that after he was contacted by the DEP reviewer about accounting for historic fill and active sites within the vicinity of the child care center, he tried to contact Diane Pupa by telephone for guidance on the reviewer's suggestion. When he finally reached her after several attempts, she said only to "get the issue resolved." The LSRP tried without success to access the historic fill layers near the site on the NJ Geoweb as the reviewer suggested. He contacted the reviewer and others about this difficulty. DEP's John Bocchino replied in an e-mail saying that this data is available to DEP but not on the external NJ Geoweb application. He said that the reviewer is using an internal version of the application and is able to see the layer. Discussions with Mr. Charyak confirmed that the NJDEP had requested actions that could not be performed by the LSRP considering the access limitations to NJ Geoweb.
- In response to the possible presence of historic fill noted by the reviewer, the LSRP took soil samples in May 2012 for PAHs and PCBs but found nothing above soil standards. The following month, the LSRP submitted a revised RAO reporting the results of the sampling.
- The Complaint claims that the LSRP did not respond to numerous e-mails sent by the DEP reviewer from March to May 2012. This claim is not borne out by copies of e-mails given to the CRT by the LSRP during the interview. Following the March 2 and April 11, 2012, e-mails from the reviewer, the LSRP responded in an e-mail dated April 13, 2012, in which he described his difficulty finding the historic fill layer on the Geoweb. The reviewer responded with instructions on April 17, and then the LSRP wrote back on April 24, saying he was still having trouble with Geoweb. On May 16, 2012, the LSRP contacted DEP GISNET requesting assistance with his problem with Geoweb. On May 16, 2012, John Bocchino replied with the explanation mentioned above. The LSRP ultimately resolved his dilemma by taking soil samples within a month of the call from John Bocchino and reporting the results to DEP.

The Board's Decisions

Site A:

- After considering all the information provided by the LSRP, the Board has concluded that there was no violation of N.J.S.A 58:10C-16(q)(1). The LSRP's response to Question B6 was not false at the time he completed the questionnaire. Also, his firm's "dismissal" from Site A was not a reflection on the competency or integrity of his firm but was instead a business decision by his client. The Board has concluded that his failure to correct the answer to Question B6 after his firm was "dismissed" from the Site was an oversight and not an act intended to conceal information reflecting negatively on his firm.

Site B:

- After considering all the information provided by Audit Committee and the LSRP, the Board has concluded that viewed in their totality, the LSRP's actions for this site were reasonable and not dilatory and so did not violate any of the provisions of the Code of Conduct cited in the Complaint.

Site C:

- The Complaint alleged that the LSRP's actions for this Site were not timely and cited him for his alleged "lack of response to NJDEP inspectors, reviewers, and supervisors." In light of the written and oral information provided by the LSRP during the interview, the Board concluded that 1) the LSRP's difficulty with Geoweb was a technological glitch and did not reflect a lack of ability or diligence on the LSRP's part; and 2) the many communications by the LSRP with various persons at DEP, as well as his resolution of the problem with the Geoweb by taking soil samples, do not demonstrate the "lack of response" alleged in the Complaint. The Board found no violation of any of the cited Code of Conduct provisions in the LSRP's actions with respect to Site C.

Accordingly, the Board dismissed the Complaint without admonition or warning.