

SRPL BOARD COMPLAINT NO. 001-2015

DETERMINATION OF THE BOARD

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, Karyn Norton, violated provisions of the Site Remediation Reform Act (“SRRA”) (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced below.

A Notice of Civil Administrative Penalty Assessment was issued to Ms. Norton on August 14, 2017, which assessed a \$3000.00 penalty. Every person has the right to request a hearing within 35 days of receipt of a disciplinary order from the Board. Ms. Norton requested a hearing, therefore, the Notice of Civil Administrative Penalty Assessment did not become final. In the intervening months, the Board and Ms. Norton engaged in settlement discussions, resulting in a Settlement Agreement that became effective January 18, 2018. Ms. Norton satisfied all settlement terms, and the Board considers this matter resolved. The terms of the Settlement Agreement are summarized below under “Settlement Agreement”.

COMPLAINT ISSUES

This complaint was made by the owner of the site against the former LSRP for the site, Karyn Norton. The complaint was supplemented by a report from the present LSRP, who was hired by the complainant to replace Ms. Norton, which outlined deficiencies in the Remedial Investigation Report (“RIR”) that Ms. Norton submitted to the New Jersey Department of Environmental Protection (“Department”) on May 5, 2014.

The Board investigated the facts of the case, and found justification for violations of the SRRA as set forth below.

Issue 1 – N.J.S.A. 58:10C-16i

The LSRP hired by the complainant to replace Ms. Norton submitted to the Board a letter that provided a history of the site, and listed purported technical and administrative deficiencies in the RIR signed May 5, 2014 by Ms. Norton as LSRP. The Board considered each of the deficiencies noted in the RIR, and found instances in which Ms. Norton did not apply the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as required by N.J.S.A. 58:10C-14c(2)a, and the Department’s Technical Guidelines, as required by N.J.S.A. 58:10C-14c(3), and thus violated N.J.S.A. 58:10C-16i. Specifically:

- a. The RIR reported soil contamination, but did not provide any conclusions on the completeness of the delineation of horizontal and vertical contamination of soil to

the applicable standards, as required by N.J.A.C. 7:26E-4.2(a), and did not delineate the horizontal and vertical extent of all soil contamination in the unsaturated zone, as required by N.J.A.C. 7:26E-4.2(a)3.

- b. The RIR did not include a discussion, by area of concern, of the specific findings, including: the remedial investigation analytical results; a discussion of the following items be area of concern; a detailed description, including dimensions, contaminants and suspected source of contamination; and a determination whether remedial action is needed for each area of concern, as required by N.J.A.C. 7:26E-4.9(a)6.
- c. The RIR did not include a quality assurance project plan as required by N.J.A.C. 7:26E-1.6(a)4.
- d. The RIR did not include a description of the physical setting of the site that includes a general description of soils, geology, hydrology, hydrogeology, and topography of the site and surroundings, as required by N.J.A.C. 7:26E-1.6(b)1.
- e. The RIR did not include the applicable regulatory timeframes, as required by N.J.A.C. 7:26E-1.6(b)5.
- f. The RIR identified areas of concern, but did not include a summary table, organized by area of concern, of all sampling results, including sample location, medium, sample depth, field and laboratory identification numbers, analytical results, and comparison to remediation standards, and the following: identification of each sample with a method detection limit or a practical quantitation level that exceeds a remediation standard, along with an explanation in the table key, as required by N.J.A.C. 7:26E-1.6(b)6.
- g. The RIR did not include a discussion of the usability of laboratory analytical data, as required by N.J.A.C. 7:26E-1.6(b)9.
- h. The RIR did not include a description of the significance of information generated in the library search of tentatively identified compounds and unknown compounds, as required by N.J.A.C. 7:26E-1.6(b)10.
- i. The RIR did not utilize a six-inch sample interval in collecting soil samples, as required by the Department's Field Sampling Procedures Manual, pursuant to N.J.A.C. 7:26E-4.2(b).
- j. The RIR did not include the appropriate analysis of waste oil in soil as set forth in the Protocol for Addressing Extractable Petroleum Hydrocarbons (Version 5.0 August 9, 2010).

Issue 2 – N.J.S.A. 58:10C-16b

The Board found Ms. Norton in violation of N.J.S.A. 58:10C-16b based on the following findings:

- a. Ms. Norton failed to correct the extractable petroleum hydrocarbon data in Table I of the previously submitted site investigation report upon realizing the error.
- b. Ms. Norton failed to delineate soil contamination in accordance with technical regulations, specifically N.J.A.C. 7:26E-4.2 (see paragraphs a and i above).
- c. Ms. Norton failed to comply with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E (see paragraphs a through j above).

Ms. Norton maintains that in the preparation of the Report, she relied upon her own knowledge and skills and, for areas outside of her professional competency, the technical assistance of other professionals that she determined to be qualified by education, training and experience.

SETTLEMENT AGREEMENT

The Board agreed to reduce the \$500.00 penalty assessed under the Notice of Civil Administrative Penalty Assessment for violation of N.J.S.A. 58:10C-16.i. to \$100.00, and the \$2500.00 penalty assessed under the Notice of Civil Administrative Penalty Assessment for violation of N.J.S.A. 58:10C-16.b. to \$100.00, for the following reasons:

- a. The Board reconsidered the penalties originally assessed in the Notice of Civil Administrative Penalty Assessment, applying the criteria, including mitigating factors, set forth in its Guidance for Penalty Assessment, adopted in the interval between the Board's determination to issue the Notice of Civil Administrative Penalty Assessment and its issuance.
- b. In following the Guidance, the Board considered that each violation could be deemed "Low" conduct and "Low" severity under its Penalty Matrix. "Low" conduct and severity appears to be a reasonable basis for assessing penalties for the violations in this case and settling this matter. In conducting the remediation, the LSRP reported findings of soil contamination, but did not complete delineation of the soil contamination, including additional sampling as necessary, and did not report her findings in correct formats. However, the reason she did not complete the delineation is that she was dismissed by the property

owner and she requested withdrawal of her license. The Board did not find that the LSRP's actions prior to withdrawal of her license had an adverse impact to the environment. Foreseeability, a criterion for finding "Medium" conduct justifying higher penalties under the Guidance, does not apply to this case in the usual sense. The Guidance provides for a penalty range for a "Low-Low" violation to be from \$0-\$1,000.00 subject to adjustment for aggravating or mitigating factors. Under the Guidance, the Board finds that reducing the penalties to the lower end of the ranges provided in the Guidance in settling the Notice of Civil Administrative Penalty Assessment and the issues raised in the request for a hearing is a reasonable compromise in this case.

- c. Ms. Norton no longer has a license to practice as an LSRP. An important purpose of penalties is to discourage an LSRP from repeating the actions that resulted in a violation; the higher the penalty, the greater its potential deterrent effect. Since Ms. Norton is no longer a practicing LSRP, and has represented that she will no longer perform or supervise site remediation activities in the State of New Jersey, a higher penalty is not needed for deterrent effect.