

SRPLB COMPLAINT NO. 002-2014

DISPOSITION

The Board voted to dismiss the complaint based on finding that the subject of the complaint did not violate the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) or any rule, regulation or order adopted or issued pursuant thereto, and did not knowingly make any false statement, representation or certification in any documents or information submitted to the New Jersey Site Remediation Professional Licensing Board (“Board”) or the New Jersey Department of Environmental Protection (“NJDEP”).

NATURE OF THE COMPLAINT

The subject of the complaint is an LSRP. Complaint 002-2014 was made by Complainant, a client of LSRP, on March 26, 2014. LSRP was retained by Complainant on June 12, 2012 to remediate the site known as Complainant’s Garage (PI 123456).

Complainant alleged that LSRP did not exercise reasonable care and diligence in his provision of services in three ways:

1. LSRP provided Complainant with a public notification sign for posting on the site that did not meet the regulatory requirements.
2. LSRP failed to submit an application for an extension to the May 7, 2014 Remedial Investigation deadline in a timely manner.
3. LSRP never visited the site in the two years that he oversaw the project.

SYNOPSIS OF INVESTIGATION

The Board’s investigation revealed the following:

With respect to public notification:

The Board reviewed information in NJEMS and discussed the sign and public notification with the LSRP, the Complainant, and the NJDEP Office of Community Relations. The posted sign was a typical yard sign of approximately 18” x 24” made of plastic or weather-proof cardboard on a wire frame. Printed on the sign was the following text: “Environmental Site Remediation in Progress Call 123-456-7899 for more info. Posted pursuant to N.J.A.C. 7:26C-1.7(h)2.” The phone number is the number for the LSRP’s company. According to the NJDEP Office of Community Relations, although a permanent sign is preferred over a sign that can be easily moved, the sign did adequately meet the statutory and administrative requirements in effect at the time the sign was posted.

The Board questioned the LSRP about the public notifications that he made. The LSRP provided a copy of the public notification form that was signed by the Complainant on 6/29/12, and by himself on 7/9/12, a public notification photograph, and the response “The public notification form was submitted to the municipality and county”. He provided the addresses of the township and county to which he mailed the public notifications.

With respect to the LSRP’s failure to submit an application for an extension to the May 7, 2014 Remedial Investigation deadline in a timely manner:

The Board reviewed information in NJEMS and discussed the effort made to obtain the remedial investigation extension with the LSRP and Complainant. According to NJEMS, the records of the LSRP, and the testimony of both the LSRP and the Complainant, there were numerous emails and phone calls between the LSRP, the Complainant and the NJDEP with respect to both an application to the Hazardous Discharge Site Remediation Fund (“HDSRF”), and the application for the extension which required the Complainant to sign an “Authorization for LSRP to Submit the May 7, 2014 Remedial Investigation Complete Timeframe Extension Form”. In a phone call, the LSRP told the Complainant that since the Complainant could not establish a trust fund, the HDSRF application was required to be completed in order to obtain the extension.

The Complainant maintained that he sent the Authorization form to the LSRP on March 14, 2014. The Complainant sent to the Board a copy of the delivery receipt and tracking, which confirms the shipment and arrival date on March 17, 2014. The Complainant also sent to the Board a NJDEP Form “Authorization for LSRP to Submit the May 7, 2014 Remedial Investigation Complete Timeframe Extension Form”. The form is complete, signed by Complainant, and dated March 14, 2014. However, the form appears to be an original, based on the signature (original ink, not copy). Based on this document, which was sent to the Board, as well as an email to the Complainant from the LSRP on March 28, 2014 requesting a signed copy of the Authorization form, the Board concluded that the Complainant mistakenly sent the HDSRF application to the LSRP on March 14, rather than the authorization form, which we now have.

With respect to the failure of the LSRP to make a site visit:

On February 21, 2012 Complainant signed a “Contract for Environmental Services” with the LSRP’s company. The description of work from the contract stated: “perform receptor evaluation and submit NJDEP form”. Field work noted on the contract included: field evaluation within 200 feet, door-to-door survey (obtain 200 foot tax list), door-to-door survey (send questionnaires), field evaluate ecology. Each of these items was specified to be performed by an environmental scientist, with LSRP task oversight and review. NJEMS indicates a receptor evaluation was submitted on March 13, 2012 without an LSRP signature. It was

resubmitted with required signatures on June 11, 2012. The review was completed on August 22, 2012. There were no other issues with this document noted in NJEMS.

On May 10, 2012 Complainant signed a “Contract for Environmental Services” with the LSRP’s company. The description of work from the contract stated: “comply with public notification and LSRP retention requirements”. There is no field work specified in this contract.

FINDINGS

The Board’s findings are as follows.

Issue 1: With respect to the public notification sign that LSRP provided to his client the Complainant, did LSRP violate N.J.S.A. 58:10C-14(c) by not employing the remediation requirements set forth in N.J.A.C. 7:26C and the NJDEP guidance for notification signs?

The Board finds that the LSRP provided his client with a public notification sign that met the requirements set forth in N.J.A.C. 7:26C and the NJDEP guidance for notification signs in effect at the time; and therefore did not violate N.J.S.A. 58:10C-14c.

Issue 2: With respect to the failure to submit an application for an extension to the May 7, 2014 Remedial Investigation deadline, did LSRP violate N.J.S.A. 58:10C-16(b) by failing to exercise reasonable care and diligence?

The Board finds that the LSRP exercised reasonable care and diligence. There are multiple emails and telephone calls documented by the LSRP between himself and his client in which he directed his client to complete the HDSRF application, which was required as part of the extension request, as well as the authorization form, which was also required for the extension request.

Specifically, in his email dated March 13, 2014 to his client, LSRP states: “Today, please sign the authorization form and send back to me. I can then file the extension request on line. Thank you.” Again, on March 28, 2014, the LSRP specifically states, “Please sign the attached authorization form and send it back to me (Email, fax or mail). We are already late with the extension request.”

Although LSRP was apparently on vacation the week of March 17, this does not seem to have been the crucial factor in the failure to file the extension request. Rather, Complainant’s failure to supply LSRP with the authorization form, perhaps because of inadequacy in communication between the parties, seems to have been the problem.

Based on the facts as presented above, the Board finds that the LSRP did not violate N.J.S.A. 58:10C-16(b) by failing to exercise reasonable care and diligence in providing services to his client with respect to the application for an extension request.

Issue 3: With respect to the failure of the LSRP to visit the site in the two years he oversaw the project, did LSRP violate N.J.S.A. 58:10C-16(i) by failing to make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports and other information evidencing conditions at a contaminated site for which he is responsible that is in possession of the owner of the property, or that is otherwise available?

The Board finds that the LSRP did make a good faith and reasonable effort to identify and obtain relevant and material facts, data, reports and other information evidencing conditions at the contaminated site for which he was responsible, as required by N.J.S.A. 58:10C-16(i). N.J.S.A. 58:10C-16(i) does not require an LSRP to personally conduct field work if adequate information about the site conditions may be gained through others or by other means.

The LSRP stated that he had not visited the site since July 10, 2007, but he stated in his response to the complaint that an environmental scientist from his company inspected the site on February 29, 2012 and June 11, 2012.

Although in most cases a personal site visit would be a crucial element of the information gathering contemplated by N.J.S.A. 58:10C-16(i), it is the Board's opinion that for the tasks being undertaken by the LSRP during the time frame in question, field visits by an environmental scientist overseen by the LSRP were adequate. Therefore, the Board finds no violation of N.J.S.A. 58:10C-16(i).

DETERMINATION OF THE BOARD

Based on its investigation and findings, the Board determines that the subject of the complaint did not violate the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) or any rule, regulation or order adopted or issued pursuant thereto, and did not knowingly make any false statement, representation or certification in any documents or information submitted to the Board or the NJDEP.