

## **SRPL BOARD COMPLAINT NO. 002-2015**

### **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 (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced below.

### **NATURE OF THE COMPLAINT**

The New Jersey Department of Environmental Protection (“Department”) submitted Complaint 002-2015 to the Board on January 22, 2015. According to the complaint, the LSRP that is the subject of the complaint (hereinafter “LSRP”) failed to conduct a vapor intrusion investigation in a timely manner, and stopped working on the site as an LSRP without notifying the Department of his dismissal as the LSRP for the site. According to the complaint, these actions indicate that the LSRP failed to perform professional services in a manner that reflects the highest priority for the protection of public health and safety and the environment, in violation of N.J.S.A. 58:10C-16a, and the LSRP failed to notify the Department within 15 days of being released, in violation of N.J.S.A. 58:10C-16d.

### **INVESTIGATION**

The Board conducted an independent investigation and evaluation of the allegations in the complaint. Documents reviewed included excerpts from Court proceedings. The Board found the following facts:

- The site at issue in this complaint was sold by Company 1 to Company 2 in 2007. The companies entered into a remediation agreement in which Company 2 agreed to assume all environmental liabilities and agreed to be the “lead responsible person for administering and completing all administrative and remediation obligations pursuant to ISRA and the [remediation agreement].”
- In April 2010, the Department issued an Amended Directive and Notice to Insurers to Company 1 and Company 2. The Department directed Company 1 and Company 2 to:
  - a. Conduct a remedial investigation and implement an approved remedial action at the Contaminated Site in order to protect human health and the environment.

- b. Within 7 days of receipt of this Directive, ... convey to the Department, in writing, their commitment to conduct the vapor intrusion investigation and remedial action at this site if required. The vapor intrusion investigation shall be performed in accordance with the Department's Vapor Intrusion Workplan approval dated September 17, 2009.
- Because the Department inadvertently used an incorrect address, Company 1 did not become aware of the directive until February 2013.
  - On February 22, 2013, Company 1 retained LSRP.
  - According to the attorney for Company 1, upon receiving the directive in February 2013 "Company 1 immediately responded by retaining LSRP. Company 1 also immediately sought access to the site from the current owner and from the City (which had acquired ½ of the property in tax foreclosure). Despite repeated efforts by Company 1, each of these entities failed to give LSRP access to the site to conduct the necessary investigation and sampling."
  - The attorney for Company 1 further maintains that Company 1 initiated a lawsuit against Company 2 in order to gain access to the site so that it could commence remediation activities. Although the LSRP could not legally access the site, he remained standing ready in the event that Company 1 did gain access to the site. Ultimately LSRP withdrew on July 28, 2014 after being informed by the Department that he should withdraw as LSRP if he was unable to advance the remediation.
  - On October 24, 2013, Company 2 retained an LSRP, who is not the LSRP who is the subject of this complaint.
  - Company 2's LSRP ultimately conducted VI sampling in August 2014.

## **FINDINGS**

The Board's findings are as follows.

With respect to the alleged failure of the LSRP to perform professional services in a manner that reflects the highest priority for the protection of public health and safety and the environment in violation of N.J.S.A. 58:10C-16a, due to the failure to conduct a vapor intrusion investigation in a timely manner, the Board found no evidence that the LSRP violated this provision. The LSRP was unable to proceed with the vapor intrusion sampling, because Company 1 was unable to obtain site access. The LSRP stated in his response to the complaint that he was aware that Company 1 was engaged in litigation to gain access to the site, and because of the lack of site access agreements, he could not proceed with the remediation that he knew was required. The Board found no

evidence that the LSRP did not fulfill his obligations with respect to the site. He identified the need to conduct vapor intrusion sampling, conveyed that information to his client, and was aware that his client was actively attempting to gain access to the Site in order to carry out the required sampling. It was not within his power to conduct the sampling without proper access. Therefore, the Board did not find that the LSRP violated N.J.S.A. 58:10C-16a.

With respect to the allegation that the LSRP failed to notify the Department within 15 days of being dismissed, in violation of N.J.S.A. 58:10C-16d, due to his not notifying the Department within 15 days of stopping work on the site, the Board found that the LSRP's period of inactivity on the site did not warrant dismissing himself. It was the LSRP's understanding that from the time he completed the Case Inventory Document in April 2013 until Company 2 retained an LSRP, Company 1 was attempting to gain legal access to the site. Court documents, and the statement of the attorney for Company 1, corroborate the LSRP's account. Following Company 2's retention of an LSRP, it was the LSRP's understanding that it was the responsibility of Company 2's LSRP to conduct the remediation. The attorney for Company 1 believed that "Company 1 was obligated to allow the other LSRP to proceed with the site activities". It was only after both LSRP and the attorney for Company 1 had spoken with a Department representative that the attorney for Company 1 advised LSRP to dismiss himself, which he did, promptly making appropriate notification to the Department. Therefore, the Board did not find that the LSRP violated N.J.S.A. 58:10C-16d.

### **DETERMINATION OF THE BOARD**

Based on its investigation and findings, the 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 (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced above.