

SRPL BOARD COMPLAINT NO. 002-2016

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

Through investigation of Complaint 002-2016, the Board identified an issue in need of some clarification, which is summarized in a note at the end of this document.

COMPLAINT ISSUES

A member of the public submitted Complaint 002-2016 to the Board on August 2, 2016. According to the complaint, the LSRP that is the subject of the complaint (hereinafter “Subject”) was the LSRP for a utility company that owned a switching station adjacent to the Complainant’s property. On September 13, 2015, an explosion and fire occurred at the switching station which resulted in a discharge that impacted a portion of the Complainant’s property. The Subject issued a Remedial Action Outcome (“RAO”) for an Area of Concern (“AOC”) which encompassed the area of discharge on four off-site properties, including the Complainant’s property. The Complainant alleged that:

1. The Subject improperly issued the RAO without conducting a Preliminary Assessment and Site Investigation of the Complainant’s Property; and
2. The Subject improperly alleged that the Polycyclic Aromatic Hydrocarbons (“PAH”) found on the Complainant’s property was from historic fill when it was actually from the discharge.

The Complainant alleged that these actions were violations of N.J.S.A. 58:10C-14.c.; N.J.S.A. 58:10C-16.a.; and N.J.S.A. 58:10C-16.b.

N.J.S.A. 58:10C-14.c.

c. The licensed site remediation professional shall employ the following remediation requirements in providing professional services for the remediation of contaminated sites...

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

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-16.b.

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.

SYNOPSIS OF THE INVESTIGATION

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

1. On September 13, 2015, the New Jersey Department of Environmental Protection (“Department”) issued a Field Directive, which directed the utility company to:
 - a. Remediate all impacted media on-site and off-site of the substation (vertical and horizontal extent);
 - b. Remediate surface waters and residential properties;
 - c. Retain an LSRP for ... case closure and continued oversight; and
 - d. Remunerate the Department for costs incurred as the result of cleanup oversight of the discharge.

2. Pages 21-22 of the Subject’s Remedial Investigation/Remedial Action Report dated May 24, 2016 provide multiple lines of evidence that were used to conclude that the PAH compounds at the offsite properties are not the result of the discharge of dielectric fluid. These include:
 - a. Testing of spill site soil samples containing nearly free product level Extractable Petroleum Hydrocarbon (“EPH”) concentrations did not reveal any PAH compounds exceeding a standard.
 - b. The area behind two of the off-site properties was formerly a brook which was filled.
 - c. Soils in the vicinity of the brook contained historic fill like materials including construction debris, ash and cinders.
 - d. Samples collected adjacent to roadways and seal coated driveways generally contain Diffuse Anthropogenic Pollution (“DAP”).

3. Representatives of the Department acknowledged that the Subject had conferred with them prior to issuing the RAO-AOC, and the representatives had advised the Subject to issue a single RAO-AOC for the four off-site properties.

FINDINGS OF THE BOARD

The Board's findings are as follows:

Complaint Issue 1: Allegation that the Subject improperly issued the RAO without conducting a Preliminary Assessment and Site Investigation of the Complainant's Property

The Subject properly issued an RAO-AOC which did not require a Preliminary Assessment and Site Investigation. The Board notes that the Subject consulted with representatives of the Department to determine the most appropriate form in which to issue the RAO-AOC. The representatives originally advised the Subject to issue one RAO-AOC for all off-site properties. However, after further discussions with the Department, the Subject withdrew the original RAO-AOC which included all four off-site properties, and issued four separate RAO-AOCs, one for each property, which included only the notice(s) specific to each of the properties.

Complaint Issue 2: Allegation that the Subject improperly alleged that the PAH found on the Complainant's property was from historic fill when it was actually from the discharge.

The Subject provided multiple lines of evidence that supported his conclusion that PAHs found on the Complainant's property were not from the discharge on September 13, 2015.

NOTE: The Board advises LSRPs to be aware that RAOs that apply to off-site properties should not make blanket statements or incorporate notices that do not apply to each one of the off-site properties included in the RAO. If conditions and remaining contamination differ on the off-site properties, separate RAOs should be issued for each one of the properties so that the RAOs do not inaccurately characterize the properties and create unintended consequences for their owners.