

SRPL BOARD COMPLAINT NO. 003B-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 (“SRRA”) (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced below.

COMPLAINT ISSUES

The New Jersey Department of Environmental Protection (“Department”) submitted Complaint 003B-2015 to the Board on February 24, 2015. According to the complaint, the LSRP that is the subject of the complaint (hereinafter “Subject”) was the president of a company that is a generator and transporter of hazardous wastes and used oils and owns and operates a used oil transportation and storage facility. The company had picked up some used dry cleaning solvents, and was storing them at the company’s facility in a tank trailer, which leaked. The complaint alleges that the Subject was negligent in characterizing the hazardous wastes at the site and failed to notify the Department of a hazardous discharge, in contravention of the following provisions of the SRRA:

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

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-16b

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.

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

j. If a licensed site remediation professional identifies a condition at a contaminated site that in his independent professional judgment is an immediate environmental

concern, then the licensed site remediation professional shall: (1) immediately verbally advise the person responsible for conducting the remediation of that person's duty to notify the department of the condition; and (2) immediately notify the department of the condition by calling the Department's telephone Hotline.

SYNOPSIS OF THE INVESTIGATION

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

- On July 26, 2010, a valve on a tank trailer parked on the Subject's site leaked causing an unknown amount of liquid material to run into the street and enter a storm drain.
- A removal service was engaged to pump out the trailer and transport the material for disposal.
- Upon sampling the material, the removal service discovered the material was hazardous.
- The local County Sheriff's Department Hazardous Materials Team was notified, and called the spill into the Department's telephone Hotline.
- The Department's Emergency Response Unit responded to the site, and directed the Subject to remove residue from the storm drain. This was done by the Subject's employees.
- The Department directed no further remediation of the site; therefore, no LSRP was required to be retained for the site pursuant to N.J.A.C. 7:26C-1.4(e).

FINDINGS OF THE BOARD

The Board's findings are as follows.

Issue 1: Allegation that the Subject was negligent in characterizing hazardous wastes at the site.

The Board found that even though the Subject was negligent in characterizing the hazardous wastes at the site, he did not do so in his capacity as an LSRP, but in his capacity as a responsible party. Since he was not providing professional services as an LSRP at the time he negligently characterized the hazardous wastes, the Board does not find that the Subject violated N.J.S.A. 58:10C-16a or N.J.S.A. 58:10C-16b.

Issue 2. Allegation that the Subject failed to notify the Department of the hazardous discharge.

The Board found that even though the Subject failed to notify the Department of the hazardous discharge, he did so not in his capacity as an LSRP, but in his capacity as a responsible party. Since he was not providing professional services as an LSRP at the time that he failed to notify the Department of the discharge, the Board does not find that the Subject violated N.J.S.A. 58:10C-16a or N.J.S.A. 58:10C-16b.

Issue 3. Allegation that the Subject failed to notify the Department of an Immediate Environmental Concern.

The Board found that there was no evidence that an immediate environmental concern existed on the site; therefore, the Board does not find that the Subject violated N.J.S.A. 58:10C-16j.

NOTE: The Board notes that the Department issued a Notice of Civil Administrative Penalty Assessment dated March 2, 2011 to the Subject and his company alleging violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and pertinent rules, and assessing a penalty of \$32,500 for actions and inactions of the Subject and his company on and around July 26, 2010. On February 19, 2015, the parties entered into a Stipulation of Settlement to settle the matters in the Notice of Civil Administrative Penalty Assessment.