

SRPL BOARD COMPLAINT NO. 004-2014

COMPLAINT ISSUES

This complaint was made by the former owners of a site against the License Site Remediation Professional (“LSRP”) that they hired to remediate the site. Mr. Johnnidis, the LSRP, works on multiple cases for the present owner of the site, who owns many gas stations. In this particular case Mr. Johnnidis was recommended by the present owner to the former owners. The former owners were aware that Mr. Johnnidis frequently works for the present owner. The conflict arose when groundwater sampling in 2012 indicated a sharp increase in benzene concentrations in a monitoring well over the course of several months. Mr. Johnnidis wrote notes to the former owner which indicated the latest round of sampling confirmed a new release or discharge. He did not notify both the present and former owners, but never notified the Department of Environmental Protection (“Department”). The Board investigated this incident, as well as other facts in this case. The Board found justification for numerous violations of the SRRA as set forth below. However, after settlement discussions with Mr. Johnnidis, the Board decided to modify its findings, as described in “Determination of the Board”.

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

The Board fined Mr. Johnnidis \$3000 for violation of the following provision of N.J.S.A. 58:10C-16.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.”

The Board concludes that Mr. Johnnidis did not, at the time he performed his services, meet this provision for the following three reasons.

- a. First, Mr. Johnnidis stated that there was a line leak and line leak repair in the November 2010 Remedial Investigation and Action Report (“RIAR”) but failed to revise and correct the November 2010 RIAR when he discovered that was not the case.
- b. Second, Mr. Johnnidis failed to obtain the written reports of the June 26, 2012 line test and the July 3, 2012 tank test, obtaining those reports two years later in December 2014 in response to the inquiries of the Board.

- c. Third, Mr. Johnnidis failed to prepare any reports, take field notes or otherwise document his impressions and observations of the condition of the USTs and the soil removal surrounding the USTs on February 6, 2013.

Through settlement discussions the Board decided to withdraw Item “b” above as a basis for finding a violation of N.J.S.A. 58:10C-16.b., so reduced the violation to \$2000.

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

The Board fined Mr. Johnnidis \$1000 for violation of the following provision of N.J.S.A. 58:10C-16.d.:

“A licensed site remediation professional retained by a person responsible for conducting the remediation shall notify the department within 15 calendar days after being retained.”

The Board concludes that Mr. Johnnidis did not submit a notification of retention in a timely manner, as required by N.J.S.A. 58:10C-16.d., for the following reason. Mr. Johnnidis, as an LSRP holding a temporary license pursuant to N.J.S.A. 58:10C-13, was retained by a person responsible for conducting a remediation of a contaminated site, and was therefore required to submit a completed LSRP Notification of Retention or Dismissal form to the Department within 15 days of May 8, 2012, which was the date that all persons responsible for conducting remediation were required to retain LSRPs. Mr. Johnnidis did not file the LSRP Notification of Retention or Dismissal form with the Department until December 6, 2012, which was not within 15 days of May 8, 2012.

Through settlement discussions the Board decided it was appropriate to reduce the penalty for this violation to \$500.

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

The Board fined Mr. Johnnidis \$1000 for violation of the following provision of N.J.S.A. 58:10C-16.i.:

“A licensed site remediation professional shall ...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 concludes that Mr. Johnnidis did not meet this provision for the following reason. Mr. Johnnidis obtained verbal, not written, results of the June 26, 2012 line testing of the USTs at the Site and the July 3, 2012 tank testing of the USTs at the Site,

both of which were performed by a third-party company. An LSRP exercising reasonable care would have obtained the written reports documenting the conditions of the USTs at the Site for which he was responsible.

Through settlement discussions the Board decided to withdraw its finding that Mr. Johnnidis violated N.J.S.A. 58:10C-16.i, as Mr. Johnnidis presented evidence that he was provided with written results, but requested them again as part of the complaint investigation.

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

The Board fined Mr. Johnnidis \$1000 for violation of the following provision of N.J.S.A. 58:10C-16.k.:

“If a licensed site remediation professional obtains specific knowledge that a discharge has occurred on a contaminated site for which he is responsible, the licensed site remediation professional shall: ... (2) notify the department of the discharge by calling the department’s telephone hotline.”

The Board finds that Mr. Johnnidis did not notify the Department of a discharge, as required by N.J.S.A. 58:10C-16.k., for the following reason. Mr. Johnnidis had specific knowledge that there was a sharp increase in the levels of benzene in ground water monitoring well MW-2, when the benzene concentrations increased from 18.9 ppb in July 2011 to 52 ppb in October 2011 to 489 ppb in February 2012. In June 2012, the benzene concentration further increased to 737 ppb. Mr. Johnnidis’s handwritten note on a Summary Report dated June 6, 2012 states: “Dave, this round confirms a new release since have increased with 3-consecutive rounds. I left Sal a phone message, as well. 6/25/12.” A “release” is a discharge. See N.J.S.A. 58:10C-2. At that point, Mr. Johnnidis notified both the present owner and the former owner, but he failed to call the Department’s telephone hotline, which he was required to do.

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

The Board fined Mr. Johnnidis \$1000 for violation of the following provision of N.J.S.A. 58:10C-16.n.

“A licensed site remediation professional who learns of material facts, data or other information subsequent to the completion of a report concerning a phase of remediation, which would result in a report with material differences from the report submitted, shall promptly notify the client and the department in writing of those facts, data, information, and circumstances.”

The Board concludes that Mr. Johnnidis did not meet this provision because he did not correct information in the November 2010 RIAR. That report refers to a “ground water investigation related to a line leak from the gasoline underground storage tank system,” and also states that “a line leak repair was conducted by the new owner and contamination appears to be present above the UST system in place.” However, in an interview with the Complaint Review Team of the Board on December 4, 2014, Mr. Johnnidis told the Complaint Review Team that there had not been a leak. The absence of a line leak and a line leak repair were subsequently discovered material facts that would result in a report with material differences than the November 2010 RIAR. Mr. Johnnidis had an obligation to promptly disclose these facts to his client and the Department, but he failed to do so.

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

The Board fined Mr. Johnnidis \$2000 for violation of the following provision of N.J.S.A. 58:10C-16.x.

“A licensed site remediation professional shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from two or more persons whose interests are adverse or conflicting unless the circumstances are fully disclosed and agreed to by all clients engaging the licensed site remediation professional.”

The Board concludes that Mr. Johnnidis violated this provision by accepting compensation from two persons whose interests were adverse for the following reason. Mr. Johnnidis accepted compensation from the former owner for the observation of the USTs on February 6, 2013. Mr. Johnnidis failed to:

- a) fully disclose to the former owners (his clients in this case) that he had been engaged by the present owner to observe the USTs;
- b) explain to the former owners and the present owner the potential conflict of interest in Mr. Johnnidis’s retention by the present owner for this work, namely, that a finding by Mr. Johnnidis that the present owner’s UST system was not leaking would work to the detriment of the former owners because it would support an argument that the benzene contamination in MW-2 was caused by a discharge that occurred when the former owners owned the Site and thus potentially the responsibility of the former owners, and that the opposite would occur if the present owner’s UST system was found to be leaking; and
- c) obtain the consent, preferably in writing, of both the former owners and the present owner.

Through settlement discussions the Board decided to withdraw its finding that Mr. Johnnidis violated N.J.S.A. 58:10C-16.x., as the Board did not have proof that Mr. Johnnidis was compensated by the present owner with respect to this case.

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, John Johnnidis, 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.

The Board voted to assess penalties as follows:

\$3000 for violation of N.J.S.A. 58:10C-16b

\$1000 for violation of N.J.S.A. 58:10C-16d

\$1000 for violation of N.J.S.A. 58:10C-16i

\$1000 for violation of N.J.S.A. 58:10C-16k

\$1000 for violation of N.J.S.A. 58:10C-16n

\$2000 for violation of N.J.S.A. 58:10C-16x

Total = \$9000.00

A Notice of Civil Administrative Penalty Assessment was issued to Mr. Johnnidis on September 2, 2016. Every person has the right to request a hearing within 35 days of receipt of a disciplinary order from the Board. Mr. Johnnidis requested a hearing, and in lieu of a hearing the Board entered into a settlement agreement with Mr. Johnnidis on May 9, 2017. Under the settlement agreement, the Board agreed to the following:

\$2000 for violation of N.J.S.A. 58:10C-16b

\$500 for violation of N.J.S.A. 58:10C-16d

Finding of violation of N.J.S.A. 58:10C-16i is withdraw

\$1000 for violation of N.J.S.A. 58:10C-16k

\$1000 for violation of N.J.S.A. 58:10C-16n

Finding of violation of N.J.S.A. 58:10C-16x is withdraw

Total = \$4500.00