

SRPL BOARD COMPLAINT NO. 005-2014

DETERMINATION OF BOARD

Based on its investigation, 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 005-2014 to the Board on November 5, 2014. According to the complaint, the subject of the complaint (“subject”) completed remediation activities required to have been completed by an LSRP. At the time that he conducted the remediation activities he did not hold an LSRP license, although approximately one year later he did obtain an LSRP license. The complaint alleged violations of the following provisions of the SRRA:

58:10C-10. Term of validity for license

Each license issued pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) shall be issued to an individual, shall be valid only for the individual to whom it is issued and shall not be transferable. Each license issued pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) shall be valid for a period not to exceed three years, unless a shorter period is specified therein, or unless suspended or revoked.

58:10C-11. License required for site remediation professional

No person shall be, act as, advertise as, or hold himself out to be, or represent himself as being, a licensed site remediation professional unless that person has been issued a valid license pursuant to P.L.2009, c.60 (C.58:10C-1 et al.).

BOARD INVESTIGATION

Issue 1: Did the subject violate N.J.S.A. 58:10C-10.

The complaint did not specify how the subject violated this provision, and the Board found no facts indicating that the subject violated this provision.

Issue 2: Did the subject violate N.J.S.A. 58:10C-11.

Investigation:

The complaint alleged that the subject violated N.J.S.A. 58:10C-11 by conducting remediation activities required to have been completed by an LSRP; specifically, a vapor intrusion investigation. At the time the vapor intrusion investigation was conducted, the subject was not an LSRP, and no LSRP directed or oversaw the work conducted by the subject. Therefore, the complaint alleges that the subject violated N.J.S.A. 58:10C-11 by acting as an LSRP without a valid license.

As stated in the complaint: “The subject was aware the site for which the vapor intrusion investigation was conducted was a facility subject to remediation under the Site Remediation Reform Act. The subject demonstrated familiarity with the Department’s Vapor Intrusion Technical Guidance, and the subject should have been aware that the current owner is a party responsible for conducting remediation. In spite of this, the subject performed remedial investigation services at the facility without a license to do so”.

The Complaint Review Team convened by the Board met with the subject on March 20, 2015. The subject explained that his company was hired by the current owner of the property. The current owner was concerned that the former owner, which was conducting the remediation of the site, was not adequately remediating the site. Consequently, the current owner believed that vapor intrusion was affecting the air quality in site buildings, and wanted to find out if this was the case. A summary of the subject’s account to the Complaint Review Team of his activities is as follows:

About one week after beginning work with his employer in February 2013, subject’s coworker requested that he accompany him to the site. The next day the subject and his coworker drove to the site and set up air canisters according to a sampling location plan that the coworker had. When the data came back, the coworker asked the subject to review it, tabulate it, and put together a summary letter to the attorney for the current owner. The letter was reviewed by the coworker, and sent with a map and data table to the attorney. According to the subject, once he completed the March 5, 2013 letter to the attorney, he had no further involvement with the site, and has done no work with respect to the site since. The subject said that he was aware the site had ongoing remediation, and that there was an LSRP for the former owner which was conducting the remediation. He said that he never spoke with the LSRP or anyone from either the current owner or the former owner.

The Complaint Review Team contacted the president of the company employing the subject, who is an LSRP. The president LSRP stated that the client did not want any LSRP involvement on the project, and had requested that the company institute “silos”

or “firewalls” around the project to keep it from oversight or involvement by LSRPs. He stated that he now realizes that the project should have been done with LSRP oversight. The subject’s coworker was the person who prepared the proposal and he (President LSRP) signed the proposal. The coworker ran the project, and the subject was essentially a “task manager” on the project.

Finding:

The Board determined not to find the subject in violation of N.J.S.A. 58:10C-11 due to the subject’s low level of involvement with the project and the fact that the circumstances that resulted in the subject conducting the vapor intrusion investigation without the oversight of an LSRP were created by his company, and possibly the attorney for the company’s client. Consequently, the Board has decided to refer this matter to the Professional Conduct Committee to pursue investigation of other persons involved in the matters covered by Complaint 005-2014.