

SRPL BOARD COMPLAINT NO. 005-2017

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 Department of Environmental Protection submitted Complaint 005-2017 to the Board on May 2, 2017. According to the complaint, the LSRP that is the subject of the complaint (hereinafter “Subject LSRP”) submitted to the Department a Preliminary Assessment and Response Action Outcome in 2016. The Subject LSRP included in the Preliminary Assessment a 2009 summary written by a former case manager with the Department which included analytical results from Temporary Well Point DEL-15S, which was installed on the northeast side of the Subject Site by the LSRP for an adjacent site. The concentration of contaminants in that well were several orders of magnitude higher than what was reported at any other well location, indicating a potential source of contamination at the Subject Site. The Subject LSRP concluded in the 2016 Preliminary Assessment that chlorinated solvent contamination was migrating onsite from an offsite source and that there were no sources of chlorinated solvent contamination onsite requiring the collection of additional data or the obligation to conduct a Site Investigation pursuant to N.J.A.C. 726E-3.9 to support his conclusion.

The complaint alleges that the LSRP’s submittal of the Preliminary Assessment and Response Action Outcome in 2016 without conducting a Site Investigation pursuant to N.J.A.C. 7:26E-3.9 was a violation of N.J.S.A. 58:10C-14.c. 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.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, including interviews with the Subject LSRP and representatives of the Complainant. The Board concluded that the Subject LSRP properly investigated the areas of concern on the Subject Site in accordance with Rules and guidance, as well as exercised reasonable care and diligence in reaching his conclusions that the Subject Site was not a source of the chlorinated solvent contamination. Both in the Preliminary Assessment and in his response to the complaint the Subject LSRP clearly outlined his investigation techniques, as well as all areas of concern on the Subject Site and why they could not result in chlorinated solvent impact on the Subject Site. He also demonstrated diligence and responsibility by discussing the conditions and investigations occurring on surrounding sites with the LSRPs for those sites. Facts that the Board found dispositive were as follows:

1. In December 2015, the responsible party for the Subject Site received a Notice of Violation regarding the finding of contamination in Temporary Well Point DEL-15S, which was installed on the northeast side of the Subject Site by an LSRP for an adjacent contaminated site. The responsible party promptly retained the Subject LSRP to bring the Subject Site into compliance. The Subject LSRP completed a Preliminary Assessment in accordance with N.J.A.C. 7:26E-3.1 and contacted the LSRP who had found contamination in Temporary Well Point DEL-15S. That LSRP explained that he identified contamination in DEL-15S in the course of investigating a nearby site and told the Subject LSRP that there were other open NJDEP spill cases involving chlorinated solvents within the immediate vicinity of the Subject Site.
2. The Subject LSRP reviewed NJDEP databases and identified 5 active cases involving chlorinated solvent contamination.
3. The Subject LSRP contacted another LSRP for one of the 5 active cases to discuss the area. The other LSRP stated that ground water was complex and was funneling toward the Subject Site from all directions.
4. The Subject LSRP conducted a Preliminary Assessment of the Subject Site. He worked with another LSRP from his company and both LSRPs signed the Preliminary Assessment letter directed to the person responsible for conducting remediation of the Subject Site, dated June 23, 2016.

5. The Subject LSRP assessed the prior uses of the property, which included 9 companies that operated on the Subject Site. He assessed each company's use of solvents. He determined that there were only small scale/limited use of solvents documented at the Subject Site for a limited period of time during the Site's operations.

6. The Subject LSRP also identified and evaluated nine Areas of Concern. Of the nine Areas of Concern, only AOC-4 Floor Drain and AOC-8 Hazardous Materials Storage or Handling Areas had the *potential* to serve as a conduit for chlorinated solvent contamination to be discharged to the environment. Upon examination of the Areas of Concern the Subject LSRP determined that they could not have provided a conduit for chlorinated solvents into the environment, thus no further action was required. In the Preliminary Assessment the Subject LSRP states:

“AOC-4 – Floor Drain: One floor drain was observed associated with the natural gas heating unit located in the eastern portion of the warehouse. No staining or other indicators of impacts were identified. The floor drain is connected to the municipal sanitary sewer system. No further action is required for this AOC.”

“AOC 8 – Hazardous materials storage or handling areas: Small containers of oils, cleaners and degreasers were observed throughout the site building related to housekeeping and maintenance of the fork lifts and building machines. All containers were observed to be capped and stored properly. No staining of the concrete flooring in the areas of the containers were observed. The concrete floor slab throughout the building was in good condition with no cracks or floor drains observed. No further action is recommended for this AOC.”

7. AOC-6 Chlorinated Solvent Ground Water Impacts were also evaluated and in the Preliminary Assessment the Subject LSRP states:

“AOC-6-Chlorinated Solvent Ground Water Impacts: NJDEP Incident #09-12-10-xxxx-xx related to chlorinated solvents identified in ground water at the Site. Concentrations of PCE at 44,000 micrograms per kilogram (ug/L), TCE at 11,000 ug/L and total volatile organic compounds (VOCs) at 75,000 ug/L were identified in the ground water sample collected at the Site. A duplicate incident #09-10-29-xxxx was identified for the chlorinated solvents but was eliminated by the NJDEP. Based on the findings of this Preliminary

Assessment, no known source of the chlorinated solvents was identified at the Site. Although small quantities of some chlorinated solvents were utilized historically by Industries (which were identified as being properly disposed off-site), no potential migration route to the environment was identified due to the lack of floor drains.”

8. The Subject LSRP recommended no further action on any Area of Concern, as they would not serve as a conduit for chlorinated solvents to migrate to the environment, and issued a Response Action Outcome for AOC-6 in 2016.
9. The Subject LSRP justified not conducting a Site Investigation through multiple lines of evidence including excluding the Subject Site as a potential source of chlorinated solvent contamination in ground water, identifying nearby sites with chlorinated solvent contamination in ground water, and establishing that these sites were upgradient of the Subject Site.
10. The Subject LSRP cooperated with the Department by withdrawing the PA and RAO submitted in 2016 when directed to do so. The Subject LSRP ultimately conducted and submitted a Preliminary Assessment/Site Investigation and issued a Response Action Outcome in 2019, which corroborated the Preliminary Assessment issued in 2016.
11. The Subject LSRP did notify the Department of the offsite source of contamination in accordance with N.J.A.C. 7:1E-5.3(a) and 7:26C-1.7.

FINDINGS OF THE BOARD

The Board found that the Subject LSRP did not violate N.J.S.A. 58:10C-14.c. or 16.b.