

SRPLB Complaint No. 006-2013

Disposition

The Board voted to dismiss the complaint due to finding that the LSRP did not violate the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.

Nature of the Complaint

Complaint 006-2013 was made by a property owner (hereinafter “Complainant”) against an LSRP. The LSRP was engaged to remediate property owned by a company (hereinafter “Company Site”). The Company Site is adjacent to property owned by the Complainant. Soil and groundwater contamination from the Company Site extends to Complainant’s property and the Complainant has been engaged in a dispute with the Company concerning the remediation of his property since at least 2007.

Synopsis

On September 20, 2013 the Complainant filed a complaint against the LSRP. The Complainant’s complaint alleged issues with the following aspects of the remediation:

1. The need for a Deed Notice on the Complainant’s property;
2. The completeness of the Remedial Investigation; and
3. The need to conduct a Vapor Intrusion Investigation.

Each topic will be addressed separately below:

1. With respect to the need for a Deed Notice on the Complainant’s property:

The Complainant claimed that the LSRP told him that he must sign a deed notice. The LSRP claimed that he never told the Complainant that he was required to sign a deed notice. In order to attempt to resolve this issue, the Complaint Review Team of the Board (hereinafter “CRT”) requested both parties to produce signed and notarized affidavits stating what they each believed the LSRP personally had said with respect to the deed notice.

Complainant’s affidavit: Complainant presented a statement that did not address the CRT’s request except to include an account of a meeting held on August 16, 2012 attended by the Complainant, a property developer “JC,” and three representatives of the Company, including the LSRP. According to the statement:

“I asked if a deed notice is the only option here and all 3 members representing the Company agreed and said “YES”.”

LSRP's affidavit: The LSRP presented the following affidavit:

“I hereby certify that at no time in a conversation with the Complainant I have made any affirmative statements that the Deed Notice would be the only acceptable remedial approach. I did not make a claim that the Complainant's property must be remediated to the NJDEP non-residential direct contact soil remediation standards (NRDSRS).”

Determination of the Board: The CRT requested the Complainant provide a signed and notarized statement with respect to what the LSRP had personally stated. He did not do this. Furthermore, at this time, the Company is no longer seeking a Deed Notice. According to the March 28, 2013 Meeting Minutes provided by the LSRP:

“Mr. B (Complainant's Attorney) asked why it was necessary to sign a deed notice. Mr. B (representing Company) said that a deed notice is premature given the necessary RA is unknown and, therefore, is not required at this time.”

The Board is satisfied that the LSRP did not provide false information to the Complainant in an attempt to coerce the Complainant into signing a deed notice. Furthermore, the Board is satisfied that the signing of a deed notice is no longer an issue between the parties.

Therefore, the Board dismissed the complaint with respect to this issue.

2. *With respect to the completeness of the Remedial Investigation:*

The Complainant complained that a remedial investigation from 2003 was incomplete, and that boring techniques used in 2003 were not to industry standards.

The Board finds that the 2003 remedial investigation was conducted by a company other than the LSRP's company; therefore any issues with the boring techniques not being in conformance with industry standards cannot be attributed to the LSRP.

The Board finds that with respect to the incompleteness of the 2003 remedial investigation, the LSRP acknowledged in his response that “delineation of the soil impacts down to the RDCSRS was not fully completed outside the property boundary, as specified and required in the NJDEP Technical Requirements (N.J.A.C. 7:26E).” The LSRP maintains that at the August 16, 2012 meeting mentioned above, he explained to the Complainant that the horizontal and vertical soil delineation still had to be completed at the Complainant's property. The LSRP stated in his response that the remedial investigation commenced in October 2013, and is currently ongoing.

Determination of the Board: According to Department data, the remedial investigation completion due date is May 7, 2017 and the remedial investigation report is due May 7, 2017. The fact that the remedial investigation is incomplete is not a violation of any remediation requirements.

Therefore, the Board dismissed the complaint with respect to this issue.

3. *With respect to the need to conduct a Vapor Intrusion Investigation:*

The Complainant maintained that the LSRP should have done a vapor intrusion investigation as early as 2009. The LSRP responded that the Company and the NJDEP had conferred regarding the need to conduct a vapor intrusion investigation, and “in its April 2007 letter that NJDEP sent to Company, NJDEP concurred that low levels of chlorinated solvents in the groundwater were attributable to the off-site sources.” The LSRP further maintained that “due to the fact that the chlorinated solvents were not attributable to the Company historical operation, the vapor intrusion investigation at Complainant’s property was not Company’s responsibility. Therefore, the remedial action proposed by Company and approved by NJDEP was not designed to address the chlorinated solvents.”

The NJDEP conducted a vapor intrusion investigation in April 2013. Sub-slab and indoor air samples were collected by the NJDEP at five properties on April 2 and 3, 2013, including the Complainant’s property. TCE and PCE were not detected in the sub-slab soil gas samples or indoor air samples collected from the Complainant’s property.

Ultimately, in October 2013, Company did conduct vapor intrusion sampling at the Complainant’s property. According to the LSRP, the results of the VII demonstrated that a complete vapor intrusion exposure pathway is not present in either of the evaluated buildings. Most notably, the concentrations of PCE and TCE in sub-slab samples or indoor air samples did not exceed the applicable NJDEP vapor intrusion screening criteria. As required by the N.J.A.C. 7:26E-1.15(d), the property owner was notified of the results of the VII through a letter report.

Determination of the Board:

The NJDEP did not require Company to conduct a vapor intrusion investigation since volatile organic contaminants detected in the groundwater were not attributable to Company. The NJDEP did carry out sampling in April 2013. The Company also conducted vapor intrusion sampling in October 2013. Results indicated PCE and TCE in sub-slab samples and indoor air samples did not exceed the applicable NJDEP vapor intrusion screening criteria. There is no evidence to suggest that the LSRP inappropriately deferred a vapor intrusion investigation that was necessary to protect public health and safety.

Therefore, the Board dismissed the complaint with respect to this issue.