

SRPL BOARD COMPLAINT NO. 007-2014

DETERMINATION OF BOARD

Based on its investigation, the Site Remediation Professional Licensing Board (“Board”) voted to resolve the complaint with a finding that the Licensed Site Remediation Professional (“LSRP”) who was 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

This complaint was brought by the Department of Environmental Protection (“Department”) against an LSRP that was conducting remediation at an industrial site for the former owner of that property. The complaint alleged that the LSRP violated various provisions of the Site Remediation Reform Act (“SRRA”) by not following up on an Immediate Environmental Concern condition that he reported, not completing a remedial investigation of groundwater, and not conducting a vapor intrusion investigation.

Issue 1 – Immediate Environmental Concern Condition

According to the complaint, the LSRP violated N.J.S.A. 58:10C-16j, 14c, and 16a by not submitting an Immediate Environmental Concern (“IEC”) Response Action Form or completing any of the remaining requirements of N.J.A.C. 7:26E-1.11.

N.J.A.C. 7:26E-1.11 includes provisions for conducting a remediation of an IEC, but these provisions are directed to the person responsible for conducting the remediation. The LSRP is not a person responsible for conducting the remediation; therefore, the Board found that he did not violate N.J.A.C. 7:26E-1.11.

N.J.S.A. 58:10C-16j requires that an LSRP who identifies an IEC condition must “(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.”

There is no dispute that the LSRP called the telephone hotline on March 21, 2013 and reported the IEC, indicating the current owner as the Incident Source/Responsible Party.

There is no evidence that the LSRP verbally advised the person responsible for conducting the remediation, which the LSRP believed to be the current owner, of that

person's duty to notify the Department of the condition. However, the LSRP learned of the IEC condition through the current owner when he was copied on a letter from the current owner's attorney demanding that the former owner "make the required notifications to DEP." Based on this letter, the LSRP believed that the person responsible for conducting the remediation (current owner) was aware of the IEC condition and the duty of notification.

The LSRP was questioned with respect to whether he had discussed the results of the environmental sampling with his client, the former owner. The LSRP provided a summary of his discussions, which the Board believed indicated that the LSRP did fulfill his responsibilities. Given the specific facts of this case, the Board found no violation with respect to N.J.S.A. 58:10C-16j.

N.J.S.A. 58:10C-14c requires that an LSRP follow appropriate remediation requirements. Considering the LSRP made proper notifications and had no responsibility to conduct the remediation, the Board found that with respect to this issue, the LSRP was not in violation of N.J.S.A. 58:10C-14c.

N.J.S.A. 58:10C-16a states that an LSRP's highest priority is the protection of public health and safety and the environment. The LSRP notified the Department of the IEC condition. The LSRP was made aware of the IEC condition by the person whom he believed was responsible. Therefore, the Board found that the LSRP met the minimum requirements for addressing an IEC and thus did not violate N.J.S.A. 58:10C-16a.

Issue 2 - Remedial Investigation Report

According to the complaint, in May 2014 the LSRP submitted a Remedial Investigation Report (RIR) (previously submitted and reviewed by the Department in March 2010) and Remedial Investigation Report Form wherein the LSRP indicated ground water contamination had been fully delineated. The component review completed by the Department in March 2010 found that delineation of ground water contamination was considered incomplete. According to the complaint, the LSRP violated N.J.S.A. 58:10C-14c and 16a by submitting an RIR and Remedial Investigation Report Form wherein he indicated that ground water contamination had been fully delineated.

The 2010 RIR was first submitted to the Department when it was completed in 2010, and was submitted again on April 28, 2014 to substantiate that the remedial investigation was complete. According to the LSRP:

"As a matter of professional judgment I believed then, and believe now, that the groundwater remedial investigation has been completed in a manner fulfilling NJDEP guidance and requirements, particularly under the above policy."

The policy referred to is the Department Policy Statement: Interpretation of SRRA Requirement to Complete the Remedial Investigation by May 2014. (nj.gov/dep/srp/timeframe/policy_statement.pdf)

The LSRP particularly referred to the following sections of the policy:

“From a performance-based perspective, a remedial investigation can be considered complete when the LSRP in his or her professional judgment can conclude (1) there is sufficient information to know the nature and extent of a discharge of a contaminant both on and off site (2) there is sufficient information to know which, if any, receptors have been or may be impacted by the discharge being remediated, and (3) additional delineation is not necessary in order to select appropriate remedial action(s) to protect public health and the environment. ...

The Department interprets “the nature and extent of a discharge of a contaminant” to mean: delineation to the applicable remediation standards at the time the remedial investigation report is submitted. “Delineation” is not defined in the Technical Requirements or any applicable statute. For the purposes of N.J.A.C. 7:26E-1.4(a)1 (horizontal and vertical extent of contamination) ... the Department strongly emphasizes that delineation does not mean that “clean zone” samples indicating contaminant concentrations are at or below the applicable standards are required for all environmental media to complete the remedial investigation.

The licensed site remediation professional (LSRP) should use applicable regulations, guidance and professional judgment to determine when sufficient data exist to demonstrate “the nature and extent of a discharge of a contaminant.” The LSRP is allowed to employ multiple lines of evidence, including, but not limited to, analytical data indicating that contaminant concentrations are at or below the applicable remediation standards; extrapolation or modeling based on existing data; application of conceptual site models; or other means for determining the extent of the contamination. The remedial investigation report should include information documenting how the LSRP determined the nature and extent of the contamination.”

The LSRP asserted that based on not only the 2010 RIR, but also the subsequent groundwater sampling and analysis (some of which was included in the March 16, 2012 Remedial Action Report), that the remedial investigation was complete.

The Board reviewed the 2010 RIR and 2012 Remedial Action Report. The 2010 RIR stated that “the vertical and horizontal extent of VOC contamination at the site has been sufficiently determined, and no further investigation is necessary.” Maintenance of the

on-going groundwater pump and treat system is proposed, with conversion of monitoring well RW-102 into a recovery well, and conversion of pumping well PW-5 into a monitoring well. The 2012 Remedial Action Report concluded that the groundwater recovery and treatment system continued to be effective in capturing and containing impacts on-site and preventing off-site migration, and proposed to continue to comply with the semiannual groundwater monitoring schedule.

The Board evaluated the LSRP's assertion that he believed then, and he still believes after consideration of any comments made available to him, per the above-referenced policy, and per Department guidance and requirements, that the Remedial Investigation was completed. The Board found no contradictory technical support in the complaint for a finding to the contrary. The Board felt that in this particular instance, decisions made were within the scope of the LSRP's professional judgment. Therefore, the Board found no violation N.J.S.A. 58:10C-14c or N.J.S.A. 58:10C-16a.

Issue 3 – Vapor Intrusion Investigation

The complaint alleged that the March 5, 2010 component review of the RIR found that volatile organic contaminants exceeded the ground water to indoor air screening levels in numerous shallow ground water samples necessitating additional vapor intrusion investigation. The vapor intrusion issue was deferred to the Technical Coordinator working on that particular issue.

A July 2010 Vapor Intrusion RIR was reviewed in a Department memo dated January 19, 2011. The January 19, 2011 memo stated "the RIR is acceptable at this time."

Therefore, the Board found that the complaint did not provide substantiation for the assertion that an additional vapor intrusion investigation was necessary, as the component review referred to in the complaint was completed before the LSRP submitted a Vapor Intrusion RIR, which was found to be acceptable in the January 19, 2011 memo.

The Board also considered the actions of the LSRP after he was retained in 2011. The Board believed that the LSRP assessed the potential for vapor intrusion from groundwater by considering the site conditions (including significant background indoor air sources), empirical data, and modeling results, and determined that in his professional judgment the vapor intrusion pathway from groundwater could not be considered complete. The Department was in agreement with the work done, and the plan going forward. Therefore, the Board did not find that the LSRP was in violation of any provisions of the SRRRA regarding further vapor intrusion investigations after the July 2010 VI RIR.