

SRPL Board Complaint No. 007-2019

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 (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced below.

ISSUES

This complaint was made against an LSRP (“Subject LSRP”) by members of a Condominium Association for the residential condominiums at the Subject Site. The Subject Site has a long industrial history, beginning with operation of an asphalt plant in the 1930s. The successor to the asphalt plant, which is the person responsible for conducting remediation, retained the Subject LSRP on February 4, 2016 to remediate ground water. All parties acknowledge that there is Light Non-Aqueous Phase Liquid (“LNAPL”) related to the former asphalt plant in the ground water, and that some of the condominium buildings were built directly over the LNAPL.

The Complainant alleges that the Subject LSRP violated N.J.S.A. 58:10C-16.a. for failure to protect public health, safety and the environment, N.J.S.A. 58:10C-16.b. for failure to exercise reasonable care and diligence, and apply the knowledge and skill ordinarily exercised by LSRPs, and N.J.S.A. 58:10C-16.i. for failure to exercise independent professional judgment, and obtain relevant and material facts, data, reports and other information evidencing conditions at a contaminated Site for which he is responsible. The Complainant alleges that the Subject LSRP violated these provisions by not conducting a vapor intrusion investigation as required by N.J.A.C. 7:26E-1.15(a)2.¹

¹ N.J.A.C. 7:26E-1.15 Receptor evaluation - vapor intrusion

(a) The person responsible for conducting the remediation shall conduct a receptor evaluation of the vapor intrusion pathway pursuant to this section when any of the following conditions exist: ...

2. Free product is identified:
 - i. Within 100 feet of a building and it is not petroleum hydrocarbon based; or
 - ii. Within 30 feet of a building and it is petroleum hydrocarbon based ...

INVESTIGATION:

The Board reviewed the site remediation activities conducted by the Subject LSRP. The Subject Site has two media undergoing remediation, soil and ground water. The Subject LSRP was retained to remediate ground water. Another LSRP was retained to remediate soil through a Soil Remedial Action Permit which requires biennial certifications.

Representatives of the Board met with the Subject LSRP on February 6, 2020 to discuss his activities at the Subject Site. It was evident that the Subject LSRP had a thorough and comprehensive understanding of the Site and past remediation. According to the Subject LSRP, he collected a sample of the LNAPL from the site for hydrocarbon characterization. The results “were consistent with blended fuel oils and the presence of residual components suggested that the sample was a No. 6 fuel oil variant that had undergone significant environmentally induced degradation based on the distribution of mono- and polycyclic aromatic hydrocarbons (MAHs and PAHs) remaining in the sample.” Through analysis of the ground water and application of Vapor Intrusion Guidance the Subject LSRP determined that a vapor intrusion investigation was not warranted. The Subject LSRP did acknowledge that should future analyses of ground water indicate that a vapor intrusion investigation is triggered, it is his responsibility to conduct that investigation.

Present with the Subject LSRP at the meeting with Board representatives was a retired employee of the New Jersey Department of Environmental Protection who was integral to the development of the Department’s guidance to address vapor intrusion. The retired employee maintained that he reviewed all the site data and corroborated the Subject LSRP’s opinion that current data does not indicate a requirement to conduct a vapor intrusion investigation. The Board considered the retired employee’s opinion in reaching the same conclusion that a vapor intrusion investigation was not required in this case based on data collected to date.

Representatives of the Board met with representatives of the Complainant on February 7, 2020. From the meeting the Board representatives understood that the members of the Condominium Association are highly concerned about the presence of LNAPL on the Subject Site beneath their residences and how that may impact their health.

FINDINGS

The Board’s assessment is that in the remediation of this Site, and in particular the decision not to conduct a vapor intrusion investigation of the Site, the Subject LSRP has not violated the SRRA or any rules, regulations or orders adopted or issued pursuant thereto, and is placing as his highest priority protection of public health and safety and the environment. In the Board’s opinion the Subject LSRP adequately assessed the ground water and applied his professional judgment to determine that a vapor intrusion investigation is not required.

The Board notes that it is not assessing the appropriateness of the remedial action or development of the Site, or the way the environmental conditions at the Subject Site have been communicated to the residents of the Site. In particular, one of the representatives of the Complainant stated that she was not aware of any contamination on the Site at the time she purchased her home approximately five years ago. Her lack of knowledge indicates a failure of the Condominium Association to abide by the Deed Notice filed November 21, 2011, which clearly states that “[the Condominium Association, Inc.] and its successors and each individual owner is jointly and severally responsible for ensuring that each new owner and/or lessee receives a copy of this Deed Notice in addition to the Declaration of Covenants and Restrictions and By-Laws.” In addition, the Deed Notice requires that active sub-slab depressurization systems be installed in each residence. All parties agreed that the fans that were a component of the systems were in fact not installed, so the systems were not “active.” However, the Board finds that the scope of retention of the Subject LSRP does not include installing, operating or maintaining the sub-slab depressurization systems, or ensuring that the terms of the Deed Notice are carried out in general. Therefore, failings in these areas cannot be attributed to the Subject LSRP.