

SRPL Board Complaint No. 008-2019

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.) or the Board Rules (N.J.A.C. 7:26I).

ISSUES

This complaint was brought by a homeowner (“Complainant”) who was in the process of selling his home against an LSRP (“Subject LSRP”). The Subject LSRP had been hired by the prospective purchaser of the home to conduct a subsurface evaluation (metallic survey) of the residential property to ensure that there were no underground storage tanks. In the process of conducting the subsurface evaluation the Subject LSRP did not find any underground storage tanks, but did find an area of dead vegetation that he suspected was the result of a discharge of hazardous substances. He reported this discharge to the Department of Environmental Protection on June 14, 2019. The Subject LSRP was asked by a person who was allegedly responsible for the discharge (“Alleged Discharger”) to meet at the site in order for the Subject LSRP to present a proposal for remediation of the discharge at the site. The Complainant was aware of this meeting and in fact listened to it on an open phone line between him and the Alleged Discharger during the meeting. The Alleged Discharger also recorded the meeting.

The Complainant alleges that during this meeting and in his written proposal the Subject LSRP made fraudulent statements regarding his proposed remediation of the potentially contaminated area on the Site.

INVESTIGATION

The Board’s Complaint Review Team (“CRT”) met with the Complainant on May 29, 2020. In the course of meeting with the CRT the Complainant admitted that he had asked the Alleged Discharger to contact the Subject LSRP to request a proposal for remediating the Site, and that the Alleged Discharger did not identify himself by name to the Subject LSRP or explain his relationship to the Site or the Complainant to the Subject LSRP. The Alleged Discharger did not tell the Subject LSRP that he was recording their conversation, nor did he tell him that the Complainant was listening in, which the Complainant admitted to the CRT.

The CRT met with the Subject of the Complaint on May 26, 2020, reviewed the audio tapes of his meeting with the Alleged Discharger provided by the Complainant, and reviewed the documents the Subject LSRP presented to the Alleged Discharger regarding his proposed remediation of the potentially contaminated area on the Site.

FINDINGS

First, the Board commends the LSRP for notifying the Department of an unreported discharge and understanding his obligations as an LSRP.

With respect to the allegations of the complaint, the Board noted that the Subject LSRP, in the taped meeting, did not clearly explain the conditions at the Site, the decision making process he would follow to determine how he would conduct the remediation, or the additional information he would need and how that could affect his determinations. The Subject LSRP should have made it clear to the Alleged Discharger that he could not definitively predict whether soil removal would be required or not until soil delineation had been completed and samples of the soil had been analyzed and compared to soil remediation standards. Also, he should have carefully checked the draft proposal he presented as it contained errors. However, the Board did not find that the Subject LSRP intended to mislead the Alleged Discharger or present incorrect information.

In summary, the Board finds that the actions of the Subject LSRP did not amount to a violation of the provisions of the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) or the Board Rules (N.J.A.C. 7:26I). However, the Board advises the Subject LSRP to make efforts to be clearer in his oral and written communications to clients and prospective clients by explaining the contingencies that may affect his decisions with respect to appropriate remediation and by carefully proofreading the documents he presents to them to be sure they contain complete information and do not contain errors or omissions.