

SUMMARY OF SRPLB COMPLAINT No. 003-2011

Nature of Complaint

In October 2011, a New Jersey resident filed a complaint with the Board in which the conduct of an LSRP was questioned with respect to reporting, retention, public health and safety, and public outreach requirements, i.e., sign posting. The complaint was related to a proposed residential development site where lead from a former skeet shooting range was detected in soil at concentrations greater than DEP standards.

Synopsis

The Board's investigation revealed the following information:

- The discovery of the discharge, i.e., the detection of lead in soil at concentrations greater than DEP standards, did not occur on a contaminated site for which the LSRP was responsible. Specifically, at the time of the discovery, the LSRP had not been retained as the LSRP for the site. Rather his firm was hired by a developer, (i.e., the prospective purchaser of the site) as part of the developer's appropriate inquiry into the previous ownership and uses of the property.
- The LSRP's firm was hired by a developer to conduct an environmental site assessment (ESA). The LSRP assisted with the ESA, but at that time, he was not acting as the LSRP of record for the site. As the ESA expanded into an investigation, the LSRP was retained by the developer, on behalf of the owner, (i.e., the person responsible for conducting the remediation) as the LSRP of record for the site.
- The LSRP was retained 10 months after the discovery of the elevated lead concentrations. The LSRP retention form was filed 12 days beyond the statutory 15-day timeframe and 25 days beyond the DEP regulatory 45-day timeframe. The LSRP retention form was used for the dual purpose of documenting the retention of the LSRP and to provide notice to DEP that an LSRP had been retained.
- Conditions at the site did not warrant further action by the LSRP to protect public health because the conditions did not constitute an Immediate Environmental Concern. Further, the LSRP was not responsible for public outreach.

Board's Decision

The Board dismissed the complaint without admonition or warning.

Specifically, the Board determined that the complainant's suggestion that the LSRP failed to timely notify DEP of the discharge is not valid because, at the time the discharge was discovered, the LSRP was not performing services on a contaminated site for which he was responsible. Further, there were no IEC conditions at the site that would require the LSRP to notify the DEP, regardless of whether the LSRP was responsible for the contaminated site.

The Board also concluded that the LSRP had no duty to file a retention form within 45 days of discovery of the lead contamination because this filing and its associated timeframe applies to the person who initiated remediation, not the LSRP. Further, the delay in filing the retention form appears to be, in part, attributable to the time it took the person responsible for conducting the remediation to sign the form. During the LSRP interview, conducted as part of the complaint investigation, it was mentioned to the LSRP that he should consider filing the retention form unsigned by the person responsible for conducting the remediation in order to meet the 15-day timeframe or use other means to notify the DEP that do not rely on action by the person responsible for conducting the remediation.

The LSRP was not required to post a sign because public outreach requirements apply to the person responsible for conducting the remediation. Further, the site is generally secure, i.e., private property surrounded by woods, with no apparent impacts at the surface.