

**DISPOSITION**

Based on its investigation, 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 SRPL Board Rules (N.J.A.C. 7:26I) alleged in the complaint and referenced below.

**ISSUE**

This complaint was received from a homeowner who hired the LSRP that is the Subject of the complaint (“Subject LSRP”) to remove a previously abandoned with foam 550-gallon #2 heating oil underground storage tank (“UST”) from a residential property. An in-service 275-gallon aboveground storage tank (“AST”) had to be drained and removed to access the UST and then replaced after the UST was removed and the UST excavation was backfilled. The Subject LSRP provided a scope of work dated June 4, 2024 and work began at the property July 17, 2024. The actions of the Subject LSRP in gaining access to and removing the UST formed the basis of this complaint.

The Complainant asserted several complaints against the Subject LSRP, all of which pertain to the Subject LSRP’s job performance. Specifically, the Complainant objected to the Subject LSRP:

- performing the work without a permit and later discovering that no permit was required even though permit procurement activities and an associated fee were included in the scope of work;
- having difficulty in discovering the location of the UST despite having a diagram;
- being unqualified to operate an excavator;
- electing to use road stone to backfill the excavation, ultimately using quarry dust;
- damaging the front porch stairs and foundation of the house;
- damaging sanitary sewer and drain lines;
- damaging a neighbor’s fence; and,
- threatening to leave contaminated soil at the Complainant’s house.

The Complainant cited violations of the following:

Ignoring site diagram: N.J.S.A. 58:10C-16i ... make a good faith and reasonable effort to identify and obtain the relevant and material facts, data, reports and other information evidencing conditions at a contaminated site...

Unable to safely operate an excavator: N.J.S.A. 58:10C-16c ...shall not provide professional services outside the area of professional competency...

All of Day one: N.J.S.A. 58:10C-16b ...remediation professional shall exercise reasonable care and diligence...

Threat to dump contaminated soil: N.J.S.A. 58:10C-16a ...highest priority...protection of...the environment...

Threat to dump contaminated soil: N.J.A.C. 7:26I-6.3a ...LSRP shall know and apply the applicable statutes, rules, regulations...

## **INVESTIGATION**

The Professional Conduct Committee of the Board appointed a Complaint Review Team (“CRT”) to investigate the allegations and response. The CRT reviewed the complaint received on September 16, 2024 along with the submitted emails, invoices, and scope of work, the Subject LSRP’s response, submitted on December 1, 2024, and a NJDEP Field Inspection Report, authored by Steven Mason, dated August 21, 2024. The CRT met with the Complainant on January 14, 2025, the LSRP who completed the remediation on January 23, 2025 and the Subject LSRP on February 4, 2025.

### **A. Permit Fee**

During the initial meeting between the parties, the Subject LSRP agreed to obtain the necessary permits and submit the appropriate documents (\$100 procurement fee in the scope of work), coordinate activities with municipal officials and schedule required inspections as set forth in the scope of work. One of the Complainant’s assertions included fraud on the part of the Subject LSRP who he alleged told him that a permit was required when in fact it was not required. The Subject LSRP stated that the permit activities and \$100 permit procurement fee were included in the scope of work in the event the construction code official would not accept the old permit. Ultimately, a permit was not required and charges for the permit activities and \$100 permit fee were never charged to the Complainant.

### **B. Locations of Tanks**

The Complainant alleged that the Subject LSRP began digging in the area he presumed the UST to be without the benefit of a diagram that was provided to him showing the location of the tanks. The Complainant alleged that the Subject LSRP had no knowledge of the location of the UST and just began digging until the Complainant pointed out the location of the UST. The Subject LSRP responded that the map that was provided showed the location of the fill pipe and not the precise location of the UST. As a result, he began digging a trench at the edge of the driveway with a plan “to burrow toward the tank so that the old tank could be dropped into the trench to

enable lifting as there was insufficient headspace beneath the porch to use the excavator bucket to lift the tank.”

#### C. Physical Damage to the House and Damage to the Neighbor’s Fence

The Complainant stated that the Subject LSRP demolished the front stairs on the porch to gain access to the UST and struck the porch and the foundation several times while gaining access and removing the UST. The Subject LSRP responded that, “the tank removal was extremely difficult, and caused minor cosmetic damage. I have personally removed over 10,000 oil tanks, and this was one of the hardest. There was no headroom beneath the porch. There was insufficient yard space between the porch and the neighbor’s fence to horizontally extend the excavator arm.” During the interview with the Subject LSRP, he acknowledged “scraping” the house a few times but said he did not cause much damage as the house was not hit very hard. He also stated that he discussed the difficulty in accessing the UST and the Complainant agreed to remove the porch stairs as he was going to remove them anyway.

#### D. Subject LSRP being unqualified to operate excavator

The Complainant alleged that the Subject LSRP was unqualified to operate an excavator. The Subject LSRP responded that he “used a brand new excavator...the same model as two other machines we own, so I was completely familiar with the operation. Coincidentally, the Komatsu salesman visited the jobsite and watched nearly the entire removal operation. That day he commented about my operation ability [so] I asked him to write a letter to express his recollection.” A letter from the Komatsu salesman was provided to the Board opining that the Subject LSRP was a capable operator.

#### E. Backfilling the Excavation

The Complainant objected to the Subject LSRP’s choice to use ¼ inch road stone and commented that this would cause flooding in the basement. The Subject LSRP agreed to use quarry process and later it was discovered that he used quarry dust which the Complainant believed to be cheaper and not as structurally sound. The Subject LSRP stated that the material he used was commonly used and appropriate as fill.

#### F. Damage to the Sewer and Sanitary Drains

The Complainant asserted the Subject LSRP not only damaged the sanitary and sewer lines but also refuted the Complainant’s allegations of damage and attempted to conceal the damage. The Subject LSRP responded, “a 4” clay pipe, additional to the sewer pipe was encountered during the course of the job. I knew the unmarked sewer pipe had to be repaired, and sent the crew the next day ... to make the fix. During that fix we saw that the second pipe also needed repair. I instructed my crew to make that fix as well. Contrary to [Complainant’s] statement, we never bury

a problem leaving the homeowner with a potential flooded basement problem. If we know about it, we fix it.”

#### G. Threat to Leave Contaminated Soil

During the removal of the AST, product was observed in the soil. This was initially believed to be a discharge from the UST, however the Complainant confirmed that this was from overfill of the AST. The contaminated soil was stockpiled at the edge of the driveway while the tanks were being removed (estimated to be about 4 tons). Once there was no more room to stockpile more soil, the Subject LSRP stored the remaining contaminated soil in his truck (a total of 5.68 tons). The Subject LSRP removed and inspected the UST and finding no holes, he confirmed that the discharge was from overfill of the AST. The Subject LSRP transported the UST back to his yard, removed the foam and disposed of the tank at a metal recycling facility (receipt dated August 8, 2024 provided).

On July 18, 2024, the Subject LSRP submitted an invoice to the Complainant totaling \$17,962.80. The Complainant provided a check dated July 18, 2024 toward the payment of this invoice in the amount of \$7,000.00. In the following days, the Complainant became unhappy with the Subject LSRP and stopped payment on the \$7,000.00 check on July 23, 2024. After learning of the stopped payment on the check, the Subject LSRP emailed the Complainant:

“I just found out you canceled your check. That means we have no agreement. In good faith I had instructed my lab to rush the samples. Please call me so I can reauthorize the lab to continue with the rushed analysis, and reauthorize my cadcam sample plan map maker to continue. Or if you prefer to use someone else that is fine. I will return the load of contaminated soil we are holding in our truck and part ways. Your new contractor can redig the area and collect new samples from the 6’ depth.”

As of July 23, 2024, the contaminated soil was still in the Subject LSRP’s truck and the Subject LSRP’s excavator was still at the Complainant’s property. The Subject LSRP explained in email correspondence that to pick up the excavator he had to use his dump truck which was full of the contaminated soil. Since the Complainant stopped payment on the check and did not intend to have the Subject LSRP continue the work, the Subject LSRP wanted to put the soil back on the property to avoid having to incur costs to dispose of the soil. The Subject LSRP continued, “This is your soil so it goes back to you, unless you pay for it.”

Email correspondence continued over the next several days concerning the work that had been done, the work that had to be done and outstanding costs. The Subject LSRP continued with the intention to drop off the contaminated soil at the Complainant’s property.

On or around July 31, 2024, the Complainant reached out to Steve Mason with NJDEP Northern Field Operations to learn what he needed to do to accept contaminated waste. The Subject LSRP also contacted the NJDEP to request a representative be present while he returned the contaminated soil to the Complainant's site. The Subject LSRP then changed his mind and decided to dispose of the contaminated soil at his own expense. The contaminated soil in the Subject LSRP's truck was disposed of at the expense of the Subject LSRP on August 1, 2024. A disposal receipt was provided to the Board. The UST was disposed of on August 8, 2024. A disposal receipt was provided to the Board.

#### Report of NJDEP:

Steven Mason of NJDEP's Northern Field Operations conducted a site inspection on August 21, 2024. The inspection report provided a similar synopsis of the events that had transpired along with photos. The inspector stated:

"Inspector stressed that homeowner heating oil tanks are unregulated which limits what actions the Department can take in this case and that the Department doesn't get involved in contract disputes between the homeowner and the contractor."

#### New LSRP:

The Complainant issued a stop work order to the Subject LSRP and hired a new LSRP to complete the remediation. The new LSRP mobilized to the site on August 9, 2024 to collect samples. On September 4, 2024, the new LSRP returned to the site and removed the soil that had been left at the property, a total of approximately 4.27 tons. A Remedial Action Report was prepared and submitted on September 24, 2024 and a No Further Action Letter was provided by the NJDEP on November 6, 2024.

#### **FINDINGS:**

After reviewing the complaint, the Subject LSRP's response to the complaint, the interviews with the Complainant, the Subject LSRP, the New LRSP and review of documents and correspondence, the Board concluded that the Subject LSRP's actions did not violate the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) or SRPL Board Rules (N.J.A.C. 7:26I). The Board finds that the issues and grievances alleged in the complaint are contractual in nature so fall outside the jurisdiction of the Board.