

SRPLB COMPLAINT NO. 003-2014**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 (“SRRA”) (N.J.S.A. 58:10C-1 et seq.) referenced below.

NATURE OF THE COMPLAINT

Complaint 003-2014 was received by the Board on June 30, 2014. The complaint alleged that the subject of the complaint, an LSRP, committed various violations of the SRRA while working on four projects as a Professional Engineer (“PE”) and/or Licensed Site Remediation Professional (“LSRP”).

The complaint alleged “a pattern ... that seems to indicate”:

- Mischaracterization of data
- Mischaracterization of remediation sites
- Manipulation of calculations
- Certifications under signature and seal of incorrect information
- Withholding of vital data
- Non-compliance with requests for additional site characterization

The complaint went on to enumerate various violations allegedly committed by the LSRP. Some of the alleged violations dated prior to September 7, 2011, which was the date the LSRP received his temporary LSRP license. The Board determined that actions or statements made by the LSRP, or documents authored or certified by the LSRP, prior to the date that he obtained his temporary license (September 7, 2011), are outside of the Board’s jurisdiction, and were therefore not further investigated by the Board.

SYNOPSIS OF THE INVESTIGATION AND FINDINGS

The Board conducted an independent evaluation of the allegations in the complaint. The Board made OPRA requests for each of the four projects, as well as investigated the site history and documents available in NJEMS. The Board met with the complainant, the subject of the complaint, and a representative of the New Jersey

Department of Environmental Protection (“Department”). The Board thoroughly investigated the LSRP’s responses, as well as all relevant documents authored or certified by the LSRP that were dated September 2011 or later (i.e. after the LSRP’s Temporary License was issued).

With respect to alleged violations of N.J.S.A. 58:10C-16b and 16c

The complaint alleged that the LSRP is not a Water Resources Engineer, nor a Certified Floodplain and Stormwater Manager, yet he made several representations regarding those subjects, which are incorrect, in violation of N.J.S.A. 58:10C-16b and 16c, which require an LSRP to apply the knowledge and skill ordinarily exercised by LSRPs in good standing and prohibit an LSRP from providing professional services that are outside his or her areas of professional competency.

The Board reviewed the allegations and documents cited by the complainant, and did not find evidence that the LSRP made representations that were incorrect, or that were only appropriately made by a Water Resources Engineer or a Certified Floodplain and Stormwater Manager. Therefore, the Board found no evidence of a violation of N.J.S.A. 58:10C-16b or 16c by the LSRP.

With respect to alleged violations of N.J.S.A. 58:10C-16e

The complaint alleged that the LSRP did not correct deficiencies in documents, in violation of N.J.S.A. 58:10C-16e, which requires an LSRP to correct any deficiency the Department identifies in a document submitted concerning the remediation. The complaint referred to documents that the LSRP had submitted and which the Department had reviewed and identified deficiencies or requested further information. The Board reviewed the original submittals of the LSRP, the review documents from the Department, and the responses of the LSRP as well as subsequent Department comments and LSRP responses. The Board also met with a representative of the Department to discuss the LSRP’s interactions with the Department and responses to the Department’s comments. The Board found that there had been multiple meetings between the LSRP, his clients, and the Department, and many documents had been submitted by the LSRP, which had been commented on by the Department, and responded to by the LSRP. The Department representative attested to the cooperation and responsiveness of the LSRP in a timely manner, and asserted that although various Department reviewers did find issues during their reviews, the LSRP appropriately responded, and ultimately the Department was satisfied that the LSRP had corrected the deficiencies identified in his submittals. Therefore, the Board found no evidence of a violation of N.J.S.A. 58:10C-16e by the LSRP.

With respect to alleged violations of N.J.S.A. 58:10C-16h and 16i

The complaint alleged that the LSRP worked for one major client, and as such, was not exercising independent professional judgment, but was inappropriately certifying documents that supported his client's plan to carry out activities that were not environmentally sound, particularly with respect to a specific site that was being capped. In a meeting with the Board, the LSRP acknowledged that he had one major client, although he asserted that he does have other clients.

The Board reviewed the LSRP's statements concerning the site and the amount of material needed to form the cap. The Board notes that the design of the cap was extensively reviewed by the Department, both the Site Remediation Program and the Division of Land Use Regulation, and ultimately received all required permits. The Board found no evidence that the LSRP did not exercise independent professional judgment or was inappropriately certifying documents, and thus no violation of N.J.S.A. 58:10C-16h and 16i by the LSRP.

With respect to alleged violations of N.J.S.A. 58:10C-16i

The complaint alleged that the LSRP withheld critical technical information from Department technical component reviewers, and in so doing, did not 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 for which he was responsible that were in possession of the owner of the property, in violation of N.J.S.A. 58:10C-16i.

Specifically, this allegation referred to a Geotechnical Report that was authored by another company for the LSRP's client. The LSRP provided the Geotechnical Report in its entirety to the Department, but requested that the Geotechnical Report not be made available in response to OPRA requests, due to proprietary information. The LSRP also provided the Department with a redacted report, which he said could be made available in response to OPRA requests. According to the Department representative interviewed by the Board, the complete report was provided to the Department and reviewed in its entirety by a Department engineer as part of its technical review of the project.

The complaint also pointed out differences between the redacted report and the complete report. The Board questioned the LSRP about the differences. He responded that the redacted report was actually an unsigned draft report. The Board notes that the differences were minor, and the complete report was the version that was utilized by the Department in its technical review. Therefore, the Board found no evidence that the LSRP failed to obtain and provide relevant and material facts, data and information, and thus no violation of N.J.S.A. 58:10C-16i by the LSRP.

With respect to alleged violations of N.J.S.A. 58:10C-16i

The complaint alleged that the LSRP did not comply with Section 16l of SRRA, which requires the LSRP to notify the Department if his client deviates from a remedial action workplan or other report. The complaint referenced a Remedial Action Workplan that is cited in four Biannual Reports. The complaint went on to assert that various statements made in the four Biannual Reports by the LSRP are contrary to the certification in the reports that a facility cap “is being constructed in accordance with an approval issued by NJDEP”.

The gist of this section is that much more material is being placed on the 80.7 acres that is being capped than was permitted in the approval of the Remedial Action Workplan

The Board reviewed the relevant documents, and found no evidence that a maximum amount of material may be placed on the site as part of the capping, or that the amount of material placed has exceeded a maximum amount allowed. The four Biannual Reports each report the total tonnage of material placed in the cap. Furthermore, a 5 year permit extension was granted for the site. If the amounts previously placed were over a limit, whether stated in the Remedial Action Workplan or elsewhere, it is unlikely that the Department would have approved a 5 year permit extension for the site. Therefore, the Board found no evidence that the LSRP is failing to notify the Department that his client is deviating from a remedial action workplan and thus no violation of N.J.S.A. 58:10C-16l by the LSRP.

With respect to alleged violations of N.J.S.A. 58:10C-16n

The complaint alleged that the LSRP did not comply with Section 16n of SRRA, which requires the LSRP to notify the client and the Department when he learns of material facts, data or other information subsequent to the completion of a report concerning a phase of remediation which would result in a report with material differences from the report submitted. The complaint again referenced a Remedial Action Workplan that is cited in four Biannual Reports. The complaint asserted that it was inappropriate for the LSRP to continually report in the Biannual Reports that there was progress in the remediation, when filling of the site was never concluded.

The Board found no evidence that the specific facility had an approved maximum cap volume, or that the amount of materials reported to have been deposited as part of the cap in the four Biannual Reports were either incorrect, or over some limit. Therefore, the Board found no evidence that the LSRP failed to notify the client and the Department of material facts, data or other information which would result in a report with material differences from the report submitted, and thus no violation of N.J.S.A. 58:10C-16n by the LSRP.

With respect to alleged violations of N.J.S.A. 58:10C-16p

The complaint alleged that the LSRP violated Section 16p of SRRA, which prohibits an LSRP from allowing the use of his name by a person, and association with a person in a business venture, if the LSRP knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of an LSRP. Specifically, the complaint alleged that the LSRP's major client filed false or incorrect financial information in its application for a self-guarantee.

The facts as stated do not support a finding of a violation of this section. The documents referenced do not indicate that the LSRP had involvement in their preparation or presentation to the Department. The complaint does not specify what information in the application is "fraudulent" or "dishonest". Rather, the complaint alleged that the applicant did not qualify for a self-guarantee because it has a negative net worth. If the applicant did not qualify for a self-guarantee, that is for the Department to determine. It is not fraudulent or dishonest for an applicant to present an application to the Department, even if the application is ultimately denied, as long as the information provided in the application is truthful. Therefore, the Board did not find evidence that the LSRP allowed the use of his name, or associated in a business venture, with a person that engaged in fraudulent or dishonest business or professional practices, and thus no violation of N.J.S.A. 58:10C-16p.

With respect to alleged violations of N.J.S.A. 58:10C-16v

The complaint alleged that the LSRP violated Section 16v of SRRA, which prohibits an LSRP, in any description of qualifications, experience or ability to provide services, from making a material misrepresentation of fact, omitting a fact when the omission results in a materially misleading description, or making a statement that, in the opinion of the Board, is likely to create an unjustified expectation about the results that the LSRP may achieve.

Specifically, the complaint cited to a newspaper article and newspaper editorial. The newspaper article quoted the LSRP as saying in response to the question would contaminated soil be used on a project, "No, not really", before amending his response to 'no' when asked for clarification". Assuming it is true that the LSRP made this statement, it does not amount to a violation of Section 16v, for it is not part of a "description of qualifications, experience or ability to provide services". Furthermore, there are no facts that support a conclusion that this statement is a "material misrepresentation of fact". Thus, the Board found no evidence of a violation of N.J.S.A. 58:10C-16v by the LSRP.

The newspaper editorial stated "The LSRP also asserted that the environmental group was in favor of it, but the environmental group rescinded its endorsement long ago once the scope of the project became apparent". The editorial did not state when the LSRP

made this assertion, or in what context. Assuming it is true that the LSRP made this statement, it does not amount to a violation of Section 16v, for it is not part of a “description of qualifications, experience or ability to provide services”. Furthermore, without evidence of what exactly was said by the LSRP, there are no facts that support a conclusion that this statement is a “material misrepresentation of fact”. For the above stated reasons, the Board found no evidence of a violation of N.J.S.A. 58:10C-16v by the LSRP.

Finally, the complaint alleged that the LSRP has repeatedly submitted information to the Department regarding a process of preparing material to cap sites that is false or is in direct contrast to known solidification/stabilization science. The complaint went on to state that in a particular Remedial Action Workplan the LSRP cites a series of reports by the Portland Cement Association. The problem with the reports, according to the complaint, is that they test only Portland cement and no other additives, while “the process the LSRP is referring to does not use Portland cement, it primarily uses Cement Kiln Dust at 1% by weight”. The citation for this fact is 1st Quarter Report 2005. The complaint went on to state that “the LSRP has not corrected NJDEP when in its permits mistakenly characterized the process as mixing ‘soil and cement’”.

This entire section made numerous allegations that the LSRP misrepresented the process. However, it is within the jurisdiction of the Department to require submittal of data that will support the issuance of permits. Moreover, statements with respect to the process do not amount to a violation of Section 16v, for they are not part of a “description of qualifications, experience or ability to provide services”. Furthermore, there are no facts that support a conclusion that these statements are a “material misrepresentation of fact”. For the above stated reasons, the Board found no evidence of a violation of N.J.S.A. 58;10C-16v by the LSRP.

DETERMINATION OF THE BOARD

Based on its investigation and findings, the 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 referenced above.