

## **SRPL BOARD COMPLAINT NO. 006-2014**

### **DETERMINATION OF BOARD**

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

### **COMPLAINT ISSUES**

The New Jersey Department of Environmental Protection (“Department”) submitted Complaint 006-2014 to the Board on October 15, 2014. According to the complaint, the subject of the complaint (“subject”) completed remediation activities required to have been completed by an LSRP. At the time that he conducted the remediation activities he did not hold an LSRP license. The complaint alleged violations of the following provisions of the SRRA:

58:10C-10. Term of validity for license

Each license issued pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) shall be issued to an individual, shall be valid only for the individual to whom it is issued and shall not be transferable. Each license issued pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) shall be valid for a period not to exceed three years, unless a shorter period is specified therein, or unless suspended or revoked.

58:10C-11. License required for site remediation professional

No person shall be, act as, advertise as, or hold himself out to be, or represent himself as being, a licensed site remediation professional unless that person has been issued a valid license pursuant to P.L.2009, c.60 (C.58:10C-1 et al.).

### **BOARD INVESTIGATION**

#### **Issue 1: Did the subject violate N.J.S.A. 58:10C-10.**

The complaint did not specify how the subject violated this provision, and the Board found no facts indicating that the subject violated this provision.

#### **Issue 2: Did the subject violate N.J.S.A. 58:10C-11.**

#### **Investigation:**

The complaint alleged that the subject violated N.J.S.A. 58:10C-11 by conducting remediation activities required to have been completed by an LSRP; specifically, conducting sub-slab sampling and installing sub-slab depressurization systems. At the time of the sub-slab sampling and installation of the sub-slab depressurization systems, the subject was not an LSRP, and no LSRP directed or oversaw the work conducted by the subject. Therefore, the complaint alleges that the subject violated N.J.S.A. 58:10C-11 by acting as an LSRP without a valid license.

The Complaint Review Team convened by the Board met with the subject on May 14, 2015. The subject explained that his company was hired by the current owner of the property. The current owner was concerned that the former owner, which was conducting the remediation of the site, was not adequately remediating the site. Consequently, the current owner believed that vapor intrusion was affecting the air quality in site buildings, and wanted to find out if this was the case, and if so, to institute measures to ensure that occupants of site buildings did not breathe unhealthy air. A summary of the subject's account to the Complaint Review Team of his activities is as follows:

The subject stated that the company by which he is employed has worked for the current owner for a long time, over 20 years. The current owner expressed concerns about the ability to rent space to tenants within the 1 ½ million square foot building, known as "Building 2", on the site. He stated that OSHA sampling had been conducted which alerted the current owner to the fact that there were air issues. He stated that the Department was aware of the air issues and had tried to encourage the former owner to address the issues. Since the former owner was making excuses, and the current owner could not rent the building until progress was made, the current owner hired the subject's company to take care of the air issues.

The subject explained that the former owner alleged that the depth to groundwater was 200 feet, so any potential vapors in ground water could not impact the building, and the slab of the building was too thick to allow sub slab sampling. Furthermore, the former owner was relying on a Department memo dated January 19, 2011 which stated that the vapor intrusion pathway from the groundwater plume to indoor air quality could not be confirmed due to the current automotive operations and the operations of the former tenants. The memo stated that the on-going pump and treat groundwater remediation system would continue to remediate groundwater. The current owner was not satisfied, and believed that a vapor intrusion investigation was both possible and necessary. Therefore, the current owner hired the subject's company to conduct sub slab

sampling in order to collect information that would prove there was a vapor intrusion issue and it was feasible for the former owner to address that issue.

The subject's understanding was that this work was being done in order to allow the space to be leased, not as part of the site remediation. The subject did not believe that the work he was doing would serve to remediate the entire building, but would prove that it was possible to create a zone of influence, and thus demonstrate that the former owner did have the means to proceed with a remediation which it had been saying was not possible. It would provide a data set that would tell the client what was going on in the building and allow them to negotiate with the former owner and the Department.

The subject stated that his company was transparent with the Department. In fact, he attended a meeting with representatives of the Department in December 2013, and a site visit with representatives of the Department in July 2014. He never represented himself as an LSRP. He stated he was shocked when he received the complaint, for no one from the Department had ever suggested in any way that he was personally violating the Site Remediation Reform Act by acting as an LSRP.

**Finding:**

The Board determined not to find the subject in violation of N.J.S.A. 58:10C-11 due to the fact that the circumstances that resulted in the subject conducting the work at the site without the oversight of an LSRP were created by his company, and possibly the attorney for the company's client. Consequently, the Board has decided to refer this matter to the Professional Conduct Committee to pursue investigation of other persons involved in the matters covered by Complaint 006-2014.