

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 Professional Licensing Board Rules (N.J.A.C. 7:26I-1 et seq.) alleged in the complaint and referenced below.

ISSUE

The Complaint was brought by the Audit Committee of the Board. During the conduct of the Subject LSRP’s audit, the Audit Committee noted two apparent failures to make notifications to the Department of Environmental Protection regarding missed mandatory timeframes.

INVESTIGATION

The Audit Committee referred the complaint to the Professional Conduct Committee, which accepted the complaint and assigned the Audit Committee to serve as the Complaint Review Team. The Complaint Review Team notified the Subject LSRP of the complaint, reviewed his response and conducted additional investigation.

FINDINGS

In auditing the Subject LSRP, the Audit Committee identified two instances in which the Subject LSRP apparently failed to notify the Department of a missed mandatory timeframe, potentially violating N.J.A.C. 7:26I-6.8(c).

PI 1 – LSR 180001 – Site Investigation Report (“SIR”) Mandatory Timeframe is 5/20/20

1/8/19 – LSRP retained

7/18/19 – SIR submitted

The LSRP maintained that the SIR timeframe was not missed because he submitted it on 7/18/19, which is prior to the Mandatory Timeframe of 5/20/20. The Audit Committee initially thought this was a violation because the DEP originally considered the Site Investigation Report incomplete, requesting that the Site Investigation Report include 4 additional Areas of Concern (“AOCs”), specifically AOCs H, I, J, and N.

The Complaint Review Team confirmed that the Site Investigation Report was submitted prior to the Mandatory timeframe, and that the Subject LSRP provided a supplemental Site Investigation Report including the four additional AOCs as requested by the Department.

Therefore, the Board considers the issue resolved and finds no violation of N.J.A.C. 7:26I-6.8(c).

PI 2 – LSR 190001 – Remedial Action Report (“RAR”) Mandatory Timeframe is 5/6/19

2/27/19 - LSRP retained

3/7/19 – LSRP submitted form entitled “Remedial Timeframe Notification Form” and requested extension for PA/SI/RI/RA timeframes

3/28/19 – DEP denied request for extension to RA timeframe because PA/SI/RI timeframes were already missed

4/4/19 – LSRP spoke with Department personnel to ask how to proceed. In the conversation they discussed that the missed timeframes for the PA/SI/RI required that the case be in “Direct Oversight.”

The Board carefully considered this fact pattern, and acknowledged that the Subject LSRP did not submit the form designed to notify the Department of a missed timeframe and thus comply with N.J.A.C. 7:26I-6.8(c) (form entitled “Notice of Failure to Comply with a Mandatory or Expedited Site-Specific Remediation Timeframe”). However, in submitting the “Remedial Timeframe Notification Form” the Subject LSRP believed that he had complied with N.J.A.C. 7:26I-6.8(c), in that implicit in the request for a timeframe extension is the assumption that the existing timeframe will not be met. In addition, the Subject LSRP discussed the missed timeframes, denial of the extension request, and how the remediation would proceed in Direct Oversight with DEP personnel, and thought that the discussion constituted notification of the missed timeframes as the fact of the missed timeframes was an element of the discussion.

The Board determined that in this particular situation, in which the Subject LSRP was retained after missed timeframes (for the PA/SI/RI), quickly took action to request extensions, and spoke with Department personnel about the timeframes and status of the remediation, it would not be constructive to find a violation of N.J.A.C. 7:26I-6.8(c). However, the Board did advise the Subject LSRP to be careful to submit the correct notification form in the future.