

IN THE MATTER OF :
ANDREW LEUNG, LSRP : NOTICE OF REPRIMAND AND
License #549398 : CIVIL ADMINISTRATIVE
 : PENALTY ASSESSMENT
 :

COMPLAINT NO.: 004-2011

This Notice of Reprimand and Civil Administrative Penalty Assessment (hereinafter the "NOCAPA") is issued pursuant to the authority vested in the New Jersey Site Remediation Professional Licensing Board (hereinafter the "Board") by the Site Remediation Reform Act at N.J.S.A. 58:10C-1, et seq., and duly delegated to the Board's Chairman, pursuant to section three of the Board's By-Laws.

FINDINGS

1. Andrew Leung ("Leung") is a licensed site remediation professional (Temporary License # 549398) who has a business address of Yu and Associates, 200 Riverfront Boulevard, Elmwood Park, NJ 07407.
2. On December 14, 2010, the New Jersey Department of Environmental Protection (hereinafter the "DEP") sent a letter to Michelle Huang as the manager of G & J Stone, Union, New Jersey, reporting the results of sub-slab air sampling conducted August 5, 2010, on her business property. The sampling was conducted as part of the remedial investigation of a discharge of gasoline on a nearby property. The DEP reported that the contamination detected beneath G & J Stone's property was not associated with the discharge of gasoline on the nearby property and was considered by the DEP to be from an unknown source.
3. On December 15, 2010, the DEP sent a letter to Huang notifying her that a release of a hazardous substance had been reported at the G & J Stone property and that G & J Stone was obligated to remediate the discharge.
4. On August 10, 2011, Huang, on behalf of G & J Stone, accepted and signed a proposal from Leung to conduct three tasks: 1) a review of DEP documents concerning the G & J Stone facility; 2) a Phase I Environmental Site Assessment; and 3) collection of additional sub-slab air samples to confirm DEP's air sample finding. The total price agreed upon was \$4,400, and G & J Stone submitted payment of \$2,000 to Leung as a retainer.
5. Although retained by G & J Stone, Leung did not submit the required LSRP Notice of Retention to the DEP.
6. The Phase I Environmental Site Assessment was completed on September 26, 2011. Leung stated that the confirmatory air sampling was not conducted because he felt that prior to

conducting the confirmatory air sampling a Receptor Evaluation was necessary to assess the nature and extent of the contamination from the adjacent properties. Leung also stated to the Complaint Review Team during an interview that he was not permitted to access the property to conduct the testing.

7. Leung stated that Tasks 1 and 2 from the August 10, 2011 contract were completed for \$2,200, so G & J Stone owed a balance of \$200.

8. On November 10, 2011 Leung submitted a proposal to G & J Stone calling for 1) a review of DEP files on two adjacent properties where petroleum spill cases were pending; 2) a Receptor Evaluation that would include historical data review, information inquiry, review and coordination with agencies, a baseline ecological evaluation and preparation of a map and table of sensitive work; and 3) confirmatory air sampling. In Task 1 Leung also agreed to “coordinate and interact with the NJDEP to facilitate the submittal of the LSRP Notification of Retention Form”.

9. G & J Stone did not accept the proposal but instead filed a Complaint with the Site Remediation Professional Licensing Board against Leung.

10. Based on the FINDINGS above, the Board has determined that Leung failed to comply with applicable requirements as follows:

- a) Requirement: Pursuant to N.J.S.A. 58:10C-16d of the Site Remediation Reform Act, a licensed site remediation professional retained by a person responsible for conducting the remediation shall notify the department within 15 calendar days after being retained.

Description of Noncompliance: Leung was retained by G & J Stone on August 10, 2011 but to date has never notified the Department of his retention. The language of the statutory provision is unambiguous in its requirement that notice be submitted within 15 days of retention. Not only did Leung’s client sign the proposal on August 10, 2011, thereby making it a contract, but the company also submitted a \$2000 retainer. As the LSRP, Leung was responsible for submitting the notice of retention, and should have filed it no later than August 25, 2011. And even though G & J Stone in effect discharged Leung by not hiring him to conduct the work of the second proposal, the notification requirement remained as per N.J.S.A. 58:10C-16w, which states “a licensed site remediation professional shall provide any notification to the board or the department required pursuant to this section, even if the licensed site remediation professional is discharged by the client prior to doing so”.

- b) Requirement: Pursuant to N.J.S.A. 58:10C-16b of the Site Remediation Reform Act, a licensed site remediation professional shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time the services are performed.

Description of Noncompliance: The Board finds that Leung was not adequately versed in DEP's site remediation requirements. During interviews with the Board's Complaint Review Team, Leung acknowledged that he should not have accepted G & J Stone as a client. Leung has expressed his intention to not apply to take the LSRP licensure examination, but intends to allow his temporary LSRP license to expire in February 2013. The Complaint Review Team does not believe that Leung's conduct rises to the level of a violation of N.J.S.A. 58:10C-16b. However, in the event Leung does contract with a client to conduct any work as a Temporary LSRP, or if he decides to sit for the Permanent LSRP examination, he must first notify the Board in writing and comply with the Board's directives to obtain further training and/or continuing education.

11. Based on the facts set forth in these FINDINGS, the Board has determined that Leung has violated the Site Remediation Reform Act at N.J.S.A. 58:10C-16d.

NOTICE OF REPRIMAND AND CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

12. Pursuant to N.J.S.A. 58:10C-16d, and based upon the above FINDINGS, the Board hereby issues a reprimand to Andrew Leung.

13. Pursuant to N.J.S.A. 58:10C-16d, and based upon the above FINDINGS, the Board hereby assesses a civil administrative penalty against Andrew Leung in the amount of \$1000.

14. This Notice shall be effective upon receipt by Andrew Leung or someone on the violator's behalf authorized to accept service.

NOTICE OF RIGHT TO A HEARING

15. Pursuant to N.J.S.A. 58:10C-17b(2), Andrew Leung is entitled to request a hearing. Andrew Leung shall, in his request for a hearing, complete and submit the enclosed ADMINISTRATIVE HEARING REQUEST AND CHECKLIST TRACKING FORM along with all required information. Submittal or granting of a hearing request does not stay the terms or effect of this ORDER.

16. If no request for a hearing is received within thirty-five (35) calendar days from receipt of this Notice of Reprimand and Civil Administrative Penalty Assessment, it shall become a FINAL ORDER upon the thirty-sixth (36th) calendar day following its receipt, and the penalty shall be due and payable.

17. If a timely request for a hearing is received, payment of the penalty is due when Andrew Leung receives a notice of the denial of the request, or, if the hearing request is granted, when Andrew Leung withdraws the request or abandons the hearing, or, if the hearing is conducted, when Andrew Leung receives a final decision from the Board in this matter.

18. Payment shall be made by check payable to "Treasurer, State of New Jersey" and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury

Division of Revenue

P.O. Box 417

Trenton, NJ 08646-0417

GENERAL PROVISIONS

19. No obligations imposed by this Notice of Reprimand and Civil Administrative Penalty Assessment are intended to constitute a debt which may be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.

20. This Notice of Reprimand and Civil Administrative Penalty Assessment is issued only for violations identified in the FINDINGS hereinabove and violations of any statutes, rules, or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this Notice of Reprimand and Civil Administrative Penalty Assessment, the Board does not waive its rights to initiate additional enforcement actions.

21. Neither the issuance of this Notice of Reprimand and Civil Administrative Penalty Assessment or anything contained herein shall relieve Andrew Leung of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.

22. Pursuant to N.J.S.A. 58:10C-17e, any person who violates the Site Remediation Reform Act at N.J.S.A. 58:10C-1 et seq., or any rule, regulation, code of conduct, or order adopted or issued pursuant thereto, or who fails to pay a civil penalty or civil administrative penalty in full or to agree to a schedule of payments, shall be subject, upon order of a court, to a civil penalty not to exceed \$10,000 for a first violation and not more than \$20,000 for every subsequent violation.

DATE:

11/21/12



David Sweeney, Chairman

Site Remediation Professional Licensing Board