



State of New Jersey

SITE REMEDIATION PROFESSIONAL LICENSING BOARD

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December 10, 2020

Board Determination and Offer of Settlement

By Certified and Regular Mail

James P. Mack
James P. Mack, LLC
25 Starview Drive
Hillsborough, NJ 08844

RE: In the matter of LSRP James P. Mack, LSRP #576435
SRPL Board Complaint 001-2018



Dear Mr. Mack:

This letter is to advise you that the New Jersey Site Remediation Professional Licensing Board (“Board”) has reviewed information concerning your professional conduct in connection with the above captioned matter.

You were hired to conduct remediation at the US Gas Service Station Site (“Site”), which is located at 39-41 Central Avenue, Jersey City, New Jersey. The New Jersey Department of Environmental Protection (“Department”) has designated this contaminated site as PI 001468.

On or about April 6, 2017, you submitted to the Department a “Preliminary Assessment Report/Site Investigation Report/Remedial Investigation Report” dated February 2017 (“2017 PAR/SIR/RIR”). With submittal of the 2017 PAR/SIR/RIR you certified that the remedial investigation was complete for the 20 contaminated Areas of Concern associated with this case and addressed in this submission. However, the Case Inventory Document submitted with the 2017 PAR/SIR/RIR, as well as the text of the report itself, recommends further investigation of five Areas of Concern (12, 14, 15, 16, and 20). The Department advised you to withdraw the 2017 PAR/SIR/RIR because the remedial investigation was not complete for all Areas of Concern. You did not withdraw the document, so the Department rejected the 2017 PAR/SIR/RIR as incomplete on December 20, 2017.

Board Determination

The Board has determined that you violated the following provisions of the Site Remediation Reform Act and Board Rules:

1. N.J.S.A. 58:10C-16.i. and N.J.A.C. 7:26I-6.8(a) for failure to comply with the requirements and procedures set forth in the Site Remediation Reform Act and any rule, regulation or order adopted or issued pursuant thereto.
 - a. The 2017 PAR/SIR/RIR that you submitted was deficient in that it did not include a vapor intrusion investigation that was conducted in accordance with the New Jersey Technical Requirements for Site Remediation or the New Jersey Vapor Intrusion Technical Guidance. The vapor intrusion investigation was deficient because sub slab and near slab soil gas sampling was not conducted; sampling was not conducted down gradient of ground water flow, and sampling was not conducted within buildings that were located within 30 feet of petroleum hydrocarbon related ground water contamination. No rationale was provided for why the vapor intrusion investigation deviated from guidance.
 - b. The 2017 PAR/SIR/RIR that you submitted was deficient in that you certified that the remedial investigation was complete for the 20 contaminated Areas of Concern associated with this case and addressed in this submission although the Case Inventory Document and the text of the RIR itself indicated that further investigation was required at Areas of Concern 12, 14, 15, 16 and 20. Therefore, you inappropriately certified that the remedial investigation was complete.
 - c. The 2017 PAR/SIR/RIR that you submitted was deficient in that the Case Inventory Document did not identify the number, size or contents of the Underground Storage Tanks in Areas of Concern 2, 12 and 14.

Penalties

The Board finds that the violation is a first violation of “medium” conduct and “high” severity as evaluated pursuant to the Board’s “Guidance to Determine Conduct and Severity of a Violation when Assessing Civil Administrative Penalties,” and intends to assess a civil administrative penalty in the amount of \$8,000.00. This penalty is assessed above the medium penalty for a “medium” conduct and “high” severity violation due to the aggravating circumstances including failure to conduct an adequate vapor intrusion investigation of residences within 30 feet of petroleum hydrocarbon contaminated ground water, failure to adequately review remediation

documents prior to submitting them to the Department and failure to withdraw documents when requested by the Department, resulting in the Department rejecting the documents.

Offer of Settlement

As a result of the foregoing, the Board will pursue formal disciplinary proceedings against you for the above referenced violations to assess the above referenced penalties for these violations. Notwithstanding this decision, the Board has determined that it will first offer you an opportunity to settle these violations before instituting formal disciplinary proceedings if you consent to the following terms:

Agree to pay a civil administrative penalty in the amount of \$6,400.00, which is 80% of the civil administrative penalty of \$8,000.00 the Board intends to assess in formal disciplinary proceedings. Payment should be by certified check or money order payable to "Treasurer, State of New Jersey," and mailed to Janine MacGregor, Executive Director at the address above.

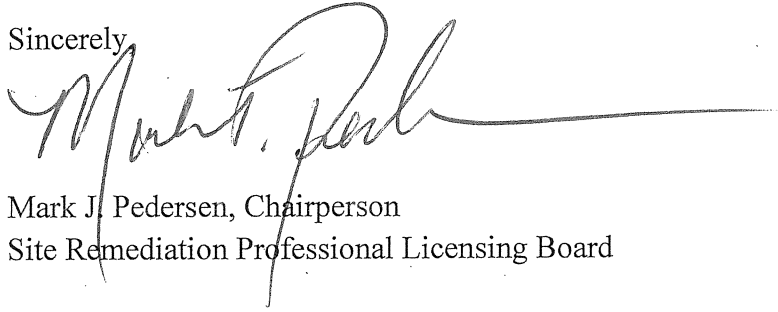
If we are unwilling or unable to settle this matter, the Board will pursue formal disciplinary proceedings for these violations pursuant to N.J.S.A. 58:10C-17.f. to assess the above referenced penalties and you will be afforded an opportunity to request a hearing regarding this matter. In that event, the Board, pursuant to N.J.S.A. 58:10C-17.f., may also enter an order assessing and requiring you to pay the costs for the investigation which led to the establishment of the violations, and its costs for successfully enforcing its penalty action against you. In addition, pursuant to N.J.S.A. 58:10C-17.e., any person who violates the Site Remediation Reform Act or any rule, regulation or order of the Board, or who fails to pay a civil administrative penalty assessed by the Board, shall be subject, upon order of the Superior Court, to pay a civil penalty of not more than \$10,000.00 for the first violation and not more than \$20,000.00 for every subsequent violation. The Board reserves its right to amend its findings and conclusions based on further review or investigation if this matter is not settled.

If you elect to settle this matter, you must sign the attached Acknowledgement and Acceptance of Board Offer of Settlement and return it along with payment to the Board within thirty-five (35) days following your receipt of this Board Determination and Offer of Settlement. Here, and throughout this document, the beginning date to calculate this 35-day time period is the date of delivery as indicated on the return receipt of this document. If the Board receives no response from you within thirty-five (35) days, the Board's settlement offer shall be considered withdrawn and the Board will pursue formal disciplinary proceedings.

Should you have any questions concerning this Board Determination and Offer of Settlement or the Acknowledgement and Acceptance of Board Offer of Settlement, you may contact Executive

Director Janine MacGregor at 609-984-3424 or SRPLBoardContact@dep.nj.gov or seek the advice of your legal counsel. This Board Determination and Offer of Settlement does not constitute a formal enforcement order, a final agency action or a final legal determination that may be appealed or contested. Please note that the Board Determination and Offer of Settlement and this Acknowledgement and Acceptance of Board Offer of Settlement are public documents.

Sincerely

A handwritten signature in black ink, appearing to read "Mark J. Pedersen", with a long horizontal line extending to the right.

Mark J. Pedersen, Chairperson
Site Remediation Professional Licensing Board

Enc: Acknowledgement

ACKNOWLEDGEMENT and ACCEPTANCE OF BOARD OFFER OF SETTLEMENT

I, James Mack, hereby acknowledge that I have reviewed the attached December 10, 2020 Board Determination and Offer of Settlement and the settlement offer of the Board set forth therein.

I acknowledge the conduct which has been charged. I accept the settlement offer of the Board and agree to the following to settle the violations addressed in the December 10, 2020 Board Determination and Offer of Settlement pursuant to the following terms:

Immediate payment of a civil administrative penalty of \$6,400.00.

I acknowledge that if I fail to perform any of the foregoing settlement terms the Board may terminate or enforce this settlement agreement upon 30 days prior written notice to me.

I am aware that by signing this Acknowledgement and Acceptance of Board Offer of Settlement I have entered into a binding settlement agreement and I am waiving any rights I may have to an administrative hearing for the matters addressed in the Board Determination and Offer of Settlement and this Acknowledgement and Acceptance of Board Offer of Settlement. I am aware that the findings of the Board in connection with this matter are a matter of public record and that this Board Determination and Offer of Settlement and this Acknowledgement and Acceptance of Board Offer of Settlement are public documents.

Dated: 1/4/2021

James Mack
James Mack, LSRP #576435