

New Jersey Site Remediation Professional Licensing Board
Professional Conduct Committee (PCC)

USING CATEGORIES OF MISCONDUCT AND APPLYING BOARD DISCRETION
TO ASSESS A CIVIL ADMINISTRATIVE PENALTY
WHEN FINDING A VIOLATION

I. INTRODUCTION:

This document defines the process for assessing Civil Administrative Penalties for violations by assigning each Board Rule violation to one of the three categories of misconduct as defined by PCC and the Rules Committee, and applying Board discretion through consideration of aggravating or mitigating factors to address the specifics of a particular case.

II. BACKGROUND:

For each complaint reviewed by the Complaint Review Team (CRT), the CRT will:

1. Investigate all allegations.
2. Investigate any potential violation not alleged but identified during investigation of the original complaint.
3. Identify all violations and provide details describing the specific act(s) or omission(s) constituting the violation.
4. Specify the provision(s) of the statute, rule, regulation, guidance, or order violated.
5. Identify and provide justification for the aggravating or mitigating factors that might be relevant for assessing the degree of misconduct.
6. Make recommendations and provide the basis for grouping of violations, such as whether multiple instances of the same violation should be grouped together or considered separately, whether one act that violates multiple provisions should be cited for a single provision or additional applicable provision(s), etc.

The Professional Conduct Committee (PCC) will:

1. Review the report and recommendations from the CRT.
2. Determine what type of disciplinary action/sanction should be recommended to the Board for its approval. Board actions in response to violation include, per N.J.A.C. 7:26I-7.7:
 - a. Suspend or revoke the license of an LSRP;
 - b. Institute a civil action in Superior Court;

- c. Issue an administrative order;
 - d. Bring an action in Superior Court for a civil penalty;
 - e. Assess a civil administrative penalty;
 - f. Petition the Attorney General to bring a criminal action; or
 - g. Issue a Letter of Admonition.
3. The PCC may recommend the imposition of conditions to supplement the disciplinary actions or Civil Administrative Penalties, including but not limited to:
- a. a requirement to take additional continuing education credits, or
 - b. a requirement to submit documents to the Board for review.

The Board will:

1. Review the report and the PCC's recommendations.
2. After review and discussion of the report and recommendations the Board may take one of these actions:
 - a. Refer the report back to the PCC for additional research and consideration;
 - b. Carry the report over to the next board meeting for additional discussion;
 - c. Affirm the PCC's recommended disciplinary actions/sanctions;
 - d. Impose additional or different disciplinary actions/sanctions than recommended by the PCC;
 - e. Another action as determined appropriate by the Board and authorized by SRRA.

III. CIVIL ADMINISTRATIVE PENALTY GUIDANCE:

If the PCC recommends a Civil Administrative Penalty as a disciplinary action (2.e above under the heading "The Professional Conduct Committee (PCC) will") the PCC calculates the amount of the recommended penalty to be assessed, following steps 1-4 below.

1. Identify Category of Misconduct as defined below and presented in *Table 1 – Violations by Category of Misconduct*.

Category I: Conduct contrary to the Board regulations or procedures that may be administrative in nature.

Category II: Conduct contrary to Board regulations that is related to the documentation or substantiation of the remediation.

Category III: Conduct contrary to Board regulations or procedures that undermines the integrity of the LSRP program.

2. Identify Base Penalty Amount and Discretionary Penalty Range as found in *Table 2 – Base Penalty Amount and Discretionary Penalty Range*.

Following the first complaint against an LSRP in which the Board has assessed civil administrative penalties, the penalty bases and discretionary ranges provided in this table may be increased when an LSRP is found to have repeated a specific violation in a subsequent, unrelated case and after the prior Board determination. The maximum penalty is not to exceed \$20,000.00 per violation.

3. Apply Board discretion to adjust Base Penalty Amount within the Discretionary Penalty Range and to account for Aggravating or Mitigating Factors. See *Table 3 – Aggravating or Mitigating Factors*.
4. Identify Final Penalty Assessment and Settlement parameters to be recommended to Full Board.

TABLE 1 – VIOLATIONS BY CATEGORY OF MISCONDUCT

Category I: Conduct contrary to the Board regulations or procedures that may be administrative in nature.

Base Penalty Amount: \$500.00, Discretionary Penalty Range: \$0 - \$1,500.00

ACTION/VIOLATION	NJAC 7:26I CITE (unless noted)	RULE PROVISION (from NJAC 7:26I unless noted)
Failure to Notify of Retention (within appropriate time frame)	6.5(a)	An LSRP retained by a person responsible for conducting the remediation shall submit an LSRP Notification of Retention or Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms no later than 15 days after: <ol style="list-style-type: none"> 1. The person responsible for conducting the remediation retains the LSRP; and 2. The person responsible for conducting the remediation releases the LSRP from responsibility for remediation, if the release occurs prior to issuance of the RAO.
Failure to Notify of Dismissal (within appropriate time frame)	6.5(b)	When an LSRP decides to terminate his or her position as the LSRP responsible for the remediation of a contaminated site prior to issuing an RAO, the LSRP shall, within 15 days after terminating his or her position: <ol style="list-style-type: none"> 1. Communicate this directly in writing to the person responsible for conducting the remediation; and 2. Submit a Notification of Dismissal as found on the Department website at www.nj.gov/dep/srp/srra/forms.
Failure to Notify Prior to Missing a Regulatory Timeframe	6.8(b)	An LSRP shall notify the person responsible for conducting the remediation in writing when in his or her professional judgment based on site history any one or more applicable regulatory timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.
Failure to Notify Prior to Missing a Mandatory Timeframe	6.8(c)	An LSRP shall notify the person responsible for conducting the remediation and the Department in writing when in his or her professional judgment based on site history any one or more applicable mandatory or expedited site-specific timeframes referenced in N.J.A.C. 7:26C-3 is unlikely to be met.
Revealing Unauthorized Information	6.12	An LSRP shall not reveal information obtained in a professional capacity, except as may be authorized or required by law, without the prior consent of the client, if the client has notified the LSRP, in writing, that the information is confidential. The provisions of this section shall not apply to information that is in the public domain.
Failure to Notify PRCR of Applicable Timeframes	6.18 (b)	An LSRP shall inform a client of: <ol style="list-style-type: none"> 1. Each regulatory, mandatory, and expedited site-specific timeframe that the LSRP can reasonably ascertain for each contaminated site for which the client has hired the LSRP;

Failure to Respond to Public Inquiry	6.19(a)	An LSRP shall respond to public inquiries for information when the person responsible for conducting the remediation designates the LSRP as the point of contact for public inquiries pursuant to N.J.A.C. 7:26C-1.7(o).
Failure to Provide Required Information	6.19(b)	Information that the LSRP shall provide, when his or her client has designated the LSRP as the point of contact for the public pursuant to (a) above, shall include: 1. Information that is required to be provided to the public pursuant to N.J.A.C. 7:26C1.7; 2. Information that has been submitted to the Department; and 3. Any additional information that is important for the public to know in order to protect their health and safety.
Failure to Comply with Client Confidentiality When Responding to Public Inquiries	6.19(d)	The client confidentiality requirements of N.J.A.C. 7:26I-6.12 apply to this section.
Failure to Provide Required Notification	6.22	An LSRP shall provide any notification to the Board and the Department required pursuant to the SRRRA or any rule, regulation, or order adopted or issued pursuant thereto if the notification requirement arises during the LSRP's retention, even if the client discharges the LSRP, or the LSRP discharges himself or herself, prior to providing the notification.
Failure to Ensure PRCR Payment of Fees and Oversight Costs Prior to Issuing RAO	6.25 (a) 2	(a) Upon completion of the remediation, the LSRP shall not issue an RAO to the person responsible for conducting the remediation until: 2. The person responsible for conducting the remediation has paid to the Department all fees and oversight costs.
Failure to File RAO in Timely Manner	6.25(b)	(b) The LSRP shall file the RAO with the Department no later than 30 days after issuing it to the person responsible for conducting the remediation.
Failure to Provide Submissions Simultaneously while in Direct Oversight	6.26	For any contaminated site subject to direct oversight pursuant to the SRRRA and N.J.A.C. 7:26C-14, the LSRP shall provide all submissions concerning the remediation that the Department requires simultaneously to the Department and the person responsible for conducting the remediation.
Failure to Maintain and Preserve Information	6.27(a)	An LSRP shall maintain and preserve all data, documents, records, and information concerning remediation activities at each contaminated site the LSRP has worked on including, but not limited to, technical records, contractual documents, raw sampling data, and monitoring data. This obligation exists whether or not the data, documents, records, and information concerning remediation activities at the contaminated site were developed by the LSRP or the LSRP's divisions, employees, agents, accountants, contractors, or attorneys. 1. The period of time during which an LSRP shall maintain all data, documents, records, and information concerning remediation activities at a contaminated site shall be a minimum of 10 years following the later of the following dates: i. The date that the LSRP submits a notification of dismissal to the Department; or ii. The date that the LSRP issues his or her last area of concern specific or entire site RAO for the site.
Restricting LSRP's Ability to Preserve Information	6.27(b)	No one, including without limitation an LSRP's employer and/or clients, shall restrict the LSRP from personally maintaining and preserving all data, documents, records, and information specified in (a) above in the format and location that the LSRP chooses.

Category II: Conduct contrary to Board regulations that is related to the documentation or substantiation of the remediation.

Base Penalty Amount: \$1,500.00; Discretionary Penalty Range: \$500.00 - \$5,000.00

**NJAC
7:26I CITE
(unless
noted)**

ACTION/VIOLATION

RULE PROVISION (from NJAC 7:26I unless noted)

Failure to Apply the Applicable Statutes, Rules, Regulations and Guidance:	6.3(a)	An LSRP shall know and apply the applicable statutes, rules, regulations, and appropriate technical guidance concerning the remediation of contaminated sites including, but not limited to, the remediation requirements set forth at N.J.S.A. 58:10C-14.c:
Failure to Identify and Document a Variance from Rule; Failure to Properly Document Off-Site Source; Failure to Fully Delineate All Impacted Media; Failure to Conduct Ecological Evaluation; Failure to Identify/Evaluate All AOCs for RAO-E; Failure to Complete a PA Prior to Off-site Source RAO; Failure to Identify Current/Historical AOCs Prior to RAO-E		<ol style="list-style-type: none"> 1. The health risk and environmental standards established pursuant to N.J.S.A. 58:10B-12; 2. The Remediation Standards rules at N.J.A.C. 7:26D; 3. The indoor air standards adopted by the Department of Health pursuant to N.J.S.A. 52:27D-130.4; 4. The Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E; 5. The Administrative Requirements for the Remediation of Contaminated Sites rules at N.J.A.C. 7:26C; 6. The mandatory remediation timeframes and expedited site-specific timeframes adopted by the Department pursuant to N.J.S.A. 58:10C-28; 7. The presumptive remedies adopted by the Department pursuant to N.J.S.A. 58:10B-12; and 8. Any other applicable standards, rules, or regulations adopted pursuant to law.
Failure to Apply Appropriate Technical Guidance	6.3(b)	An LSRP shall apply any available and appropriate technical guidance concerning site remediation as issued by the Department.
Failure to Justify Use of Alternative Guidance	6.3(c)	<p>When there is no specific technical guidance issued by the Department, or in the judgment of the LSRP the guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, the LSRP may use the following additional guidance provided that the LSRP includes in the appropriate report a written rationale concerning why the technical guidance issued by the Department is inappropriate or unnecessary to meet the remediation requirements listed in (a) above, and justifies the use of the guidance or methods that were utilized:</p> <ol style="list-style-type: none"> 1. Any relevant guidance from the U.S. Environmental Protection Agency or other states; and 2. Any other relevant, applicable, and appropriate methods and practices to ensure the protection of public health and safety and the environment.
Failure to Submit Complete and Accurate Documents	6.3(d)	An LSRP shall exercise reasonable care and diligence, and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed.
Providing Services Outside	6.3(e)	An LSRP shall not provide professional services outside his or her areas of

Area of Competence		professional competence, unless the LSRP has relied upon the technical assistance of another professional whom the LSRP has reasonably determined to be qualified by education, training, and experience.
Providing Engineering Services without a License	6.4	An LSRP shall not perform services that constitute the practice of professional engineering, unless the LSRP is a professional engineer licensed in the State of New Jersey.
Failure to Correct Technical or Administrative Deficiencies	6.6	An LSRP shall, in accordance with timeframes the Department establishes, correct any deficiency the Department identifies and resubmit the document to the Department.
Failure to Review Work Completed by Others Prior to Reliance	6.7(a)	An LSRP may complete any phase of remediation based on remediation work performed under the supervision of another site remediation professional, licensed or not, provided that the LSRP: <ol style="list-style-type: none"> 1. Reviews all available documentation on which he or she relies; 2. Conducts a site visit to observe current conditions and to verify the status of as much of the work previously performed as is reasonably observable; and 3. Concludes, in the exercise of his or her independent professional judgment, that there is sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.
Failure, When Taking Over Remediation, to Correct Deficiencies of a Previous Professional	6.7(b)	An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, shall correct all material deficiencies in a document submitted by the previous site remediation professional including, but not limited to, those the Department identifies, in accordance with timeframes the Department establishes.
Failure, When Taking Over Remediation, to Notify of Undisclosed Material Facts Prior to Issuance of Final Remediation Document	6.7(c)	An LSRP who has taken over the responsibility for remediation of a contaminated site from another site remediation professional, licensed or not, before the issuance of a final remediation document, and who learns of material facts, data, or other information concerning any phase of the remediation for which a report was submitted to the Department and the material facts, data, or other information were not disclosed in the report, shall promptly notify the LSRP's client and the Department in writing of those material facts, data, or other information and circumstances.
Failure to Follow SRRA, Regulations, or Orders	6.8(a)	An LSRP shall exercise independent professional judgment and comply with the requirements and procedures set forth in the SRRA and any rule, regulation, and order adopted or issued pursuant thereto.
Failure to Make Effort to Obtain Available Information or to Obtain Additional Information LSRP Deems Necessary	6.8(d)	An LSRP shall 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 or she is responsible that are in the possession of the owner of the property, the Department, or that are otherwise available, and identify and obtain whatever additional data and other information as the LSRP deems necessary.
Failure to Disclose Information or Limitations that Do Not Support Conclusions	6.8(e)	An LSRP shall disclose and explain in any document submitted to the Department any facts, data, information, qualifications, or limitations the LSRP knows that do not support the conclusions reached in the document.
Failure to Notify of Deviation from Workplan	6.11	If an LSRP learns of a client's action or decision that results in a deviation from the remedial action workplan or other report concerning the remediation, the LSRP shall promptly notify the client and the Department, in writing, of the deviation.

Failure to Notify Regarding New Information with Material Differences Learned after Completion of Report	6.13	An LSRP who learns of material facts, data, or other information subsequent to the completion of a report concerning any phase of remediation, which would result in a report with material differences from the report submitted, shall promptly notify the client and the Department in writing of those facts, data, information, and circumstances.
Association with Persons Engaging in Fraudulent or Dishonest Practices	6.14	An LSRP shall not allow the use of his or her name by a person, and shall not associate 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.
Failure to Cooperate in an Investigation	6.15(a)	An LSRP shall cooperate in an investigation by the Board or the Department by furnishing, in response to requests, orders, or subpoenas, any information the Board or the Department, or persons duly authorized by the Board or the Department, deems necessary to perform its duties, by the date the Board or the Department specifies.
Failure to Provide information	6.15(b)	An LSRP shall, in the time and manner the Board or the Department prescribes, provide all information the Board or the Department requests including, but not limited to: <ol style="list-style-type: none"> 1. The LSRP's compliance with the SRRA and any rule, regulation, or order adopted or issued pursuant thereto, 2. A description of and the status of any remediation the LSRP has participated in including, but not limited to: <ol style="list-style-type: none"> i. Investigative and remedial activities completed to date; ii. Investigative and remedial activities required or planned to be completed in the future; iii. The LSRP's role in the remediation; iv. Any other person's role in the remediation; v. Each natural resource or environmental media included in the investigation or remediation; vi. Data and information collected or available concerning the remediation; vii. A projection of the cost for investigative and remediation activities required or planned to be completed in the future; and viii. Any information that an LSRP may have that any person has violated (c) below.
Joint Responsibility for Violation of a Supervised LSRP	6.16(a)	An LSRP shall be jointly responsible for a violation of any provision of this subchapter committed by another LSRP whose work he or she supervises or reviews if: <ol style="list-style-type: none"> 1. The LSRP orders, directs, or agrees to the provision of professional services conducted or prepared by another LSRP under his or her supervision; 2. The LSRP knows that the professional services constitute a violation of the SRRA or any rule, regulation, or order adopted or issued pursuant thereto; and 3. The LSRP fails to take reasonable steps to avoid or mitigate the violation.
Failure to Inform Clients of Limitations in Writing	6.18(a)	An LSRP shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication by promptly providing the client or prospective client with written documentation of these assumptions, limitations, or qualifications.
Failure to Accurately Describe Qualifications	6.21(a)	In any description of qualifications, experience, or ability to provide services, an LSRP shall not knowingly: <ol style="list-style-type: none"> 1. Make a material misrepresentation of fact;

2. Omit a fact when the omission results in a materially misleading description; or
3. Make a statement that, in the Board's opinion, is likely to create an unjustified expectation about results the LSRP may achieve, or state or imply that the LSRP may achieve results by means that violate the provisions of applicable environmental statutes, rules, or regulations, including the SRRA and any rule, regulation, or order adopted or issued pursuant thereto.

Category III: Conduct that is contrary to Board regulations or procedures that undermines the integrity of the LSRP program.

Base Penalty Amount: \$4,500.00, Discretionary Penalty Range: \$1,500.00 - \$10,000.00

ACTION/VIOLATION	NJAC 7:26I CITE (unless noted)	RULE PROVISION (from NJAC 7:26I unless noted)
Acting as an LSRP Without a License	2.3	No person shall be, act as, advertise as, hold himself or herself out to be, or represent himself or herself as being an LSRP unless the Board has issued a license to that person pursuant to the SRRA and this chapter and the license is current and not expired, suspended, revoked, or inactivated.
Failure to Maintain Confidentiality of LSRP Exam Questions	2.8(d)	A candidate's violation of the LSRP Licensing Examination Candidate Agreement at any time before, during, or after the LSRP examination constitutes grounds for commencement of disciplinary action pursuant to N.J.A.C. 7:26I-7.
Person Who is Not an LSRP Performing Remediation	SRRA 11.b.	N.J.S.A. 58:10C-11.b. Except as provided in subsection d. of section 30 of P.L.2009, c.60 (C.58:10B-1.3), a person who is not a licensed site remediation professional shall not perform remediation unless the remediation is managed, supervised, or periodically reviewed and evaluated by a licensed site remediation professional.
Failure to Protect Receptors	6.2	An LSRP's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.
Failure to Report IEC	6.9(a)	If an LSRP identifies a previously unreported condition at a contaminated site that in his or her independent professional judgment is an immediate environmental concern, the LSRP shall: 1. Immediately verbally advise the person responsible for conducting the remediation of the condition and of that person's duty to notify the Department of the condition; and 2. Immediately notify the Department of the condition by calling the Department's telephone hotline at 1-877-WARNDEP.
Failure to Report Discharge	6.10(a)	If an LSRP obtains specific knowledge that a previously unreported discharge, other than of historic fill, has occurred on a contaminated site for which he or she is responsible, the LSRP shall: 1. Immediately notify the person responsible for conducting the remediation of the discharge and of that person's duty to notify the Department of the

		<p>discharge;</p> <p>2. Immediately notify the Department of the discharge by calling the Department's telephone hotline at 1-877-WARNDEP; and</p> <p>3. Immediately notify any other LSRP that is working on the contaminated site of the discharge.</p>
Falsifying or Failure to Disclose Relevant Information in Response to an Investigation	6.15(c)	<p>In response to a Board or Department investigation an LSRP shall not:</p> <ol style="list-style-type: none"> 1. Knowingly make a false statement of material fact; 2. Fail to disclose a fact necessary to correct a material misunderstanding known by the LSRP to have arisen in the matter; 3. Knowingly and materially falsify, tamper with, alter, conceal, or destroy any data, documents, records, remedial systems, or monitoring devices that are relevant to the investigation, without obtaining the prior approval of the Department; or 4. Knowingly allow or tolerate any employee, agent, or contractor of the LSRP to engage in any of the foregoing activities.
Failure to Comply with Disciplinary Proceeding Conditions	6.17	An LSRP shall comply with all conditions the Board imposes as a result of a license suspension, revocation, or other Board disciplinary proceeding.
Communicating to the Public False Information	6.19(c)	An LSRP shall not communicate to the public information that he or she knows is false, inaccurate, misleading, or incomplete. An LSRP shall be deemed to have provided incomplete information when he or she withholds information that is encompassed within (b) above.
Implying Influence Over Government Official	6.20	An LSRP shall not state or imply, as an inducement or a threat to a client or prospective client, an ability to improperly influence a government agency or official.
Failure to Disclose Provision of Services to Parties Whose Interests Conflict	6.23(a)	An LSRP shall not accept compensation, financial or otherwise, for professional services pertaining to a contaminated site from two or more persons whose interests are adverse or conflicting, unless the circumstances are fully disclosed and agreed to by all persons engaging the LSRP.
Serving as LSRP When Also a Salaried Employee of PRCR.	6.23(b)	An LSRP shall not be a salaried employee of the person responsible for conducting the remediation, or any related entities, for which the LSRP is providing remediation services.
Allowing Interest to Affect Professional Services Provided	6.23(c)	An LSRP shall not allow any ownership interest, compensation, or promise of continued employment, of the LSRP or any immediate family member, to affect the professional services the LSRP provides.
Failure to Perform, Review, or Complete Work for which LSRP Certified Documents	6.24(a)	<p>(a) An LSRP shall not certify any document submitted to the Department, unless the LSRP has:</p> <ol style="list-style-type: none"> 1. Managed, supervised, or performed the work that is the basis of the submission; 2. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or 3. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable, pursuant to N.J.
Failure to Perform, Manage, Review, or Complete, and Ensure Consistency with Remediation Requirements for Work for which the LSRP Certified Documents	6.24(b)	<p>For documents that the person responsible for conducting the remediation submits to the Department that require LSRP certification, the LSRP shall certify that:</p> <ol style="list-style-type: none"> 1. The work was performed; 2. The LSRP has: <ol style="list-style-type: none"> i. Managed, supervised, or performed the work that is the basis of the submission;

		<p>ii. Periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission; or</p> <p>iii. Completed the work of another site remediation professional, licensed or not, and has concluded such work is reliable pursuant to N.J.A.C. 7:26I-6.7; and</p> <p>3. The work and the submitted documents conform to, and are consistent with, the remediation requirements in N.J.A.C. 7:26I-6.3(a).</p>
Allowing Others to Certify LSRP's Work	6.24(c)	An LSRP shall certify electronic submissions he or she makes to the Department concerning the remediation of a contaminated site. The LSRP shall attest that no other person is authorized or able to use any password, encryption method, or electronic signature that the Board or the Department has provided to the LSRP.
<u>Failure to Certify in Accordance with Requirements</u>	SRRRA 16.h.	N.J.S.A. 58:10C-16.h. A licensed site remediation professional shall not certify any document submitted to the department unless the licensed site remediation professional: (1) believes that the information in the submission is true, accurate, and complete; ... A licensed site remediation professional shall not knowingly make any false statement, representation, or certification in any document or information required to be submitted to the board or the department.
Failure to Remediate in Compliance Prior to Issuing RAO	6.25(a)	Upon completion of the remediation, the LSRP shall not issue an RAO to the person responsible for conducting the remediation until: 1. In the LSRP's opinion, the contaminated site or area of concern has been remediated so that it is in compliance with all applicable statutes, rules, and regulations protective of public health and safety and the environment;
Failure to Provide Information Needed for Department Review	6.28(a)	An LSRP shall provide any data, documents, records, and information the Department requests to conduct a review of the remediation of a contaminated site pursuant to N.J.S.A. 58:10C-21, by the date the Department specifies.
Continuing Remediation while Department Directed Otherwise	6.28(b)	Unless the Department directs otherwise, the LSRP may continue to remediate the contaminated site on behalf of the person responsible for conducting the remediation while the Department conducts any inspection or additional review of documents pursuant to N.J.S.A. 58:10C-21.
LSRP Assisted in Retention of Non-LSRP to Perform Remediation	SRRRA 16.aa	Except as provided in subsection d. of section 30 of P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation professional shall not facilitate, aid, assist, or cooperate with any person in retaining or arranging for the retention of any person who is not a licensed site remediation professional to perform remediation, unless the remediation is managed, supervised, or periodically reviewed and evaluated by a licensed site remediation professional retained for that purpose, and the department has been notified of the retention.
LSRP Performed Remediation Without Notifying Department of Retention	SRRRA 16.bb	bb. Except as provided in subsection d. of section 30 of P.L.2009, c.60 (C.58:10B-1.3), a licensed site remediation professional shall not manage, supervise, perform, engage, or participate in remediation unless: (1) the licensed site remediation professional has been retained by a person responsible for conducting the remediation, and the department has been notified of the retention; or (2) the remediation is being managed, supervised, or performed by another licensed site remediation professional retained by the person responsible for conducting the remediation, and the department has been notified of the retention of the other licensed site remediation professional.

TABLE 2 – BASE PENALTY AMOUNT AND DISCRETIONARY PENALTY RANGE

Provided below is the base penalty amount and discretionary penalty range for each category of misconduct. Penalty ranges overlap between categories so that the Board can use its discretion to assess an appropriate penalty based on aggravating and mitigating circumstances specific to the facts of the case.

Category I	Base Penalty: \$500.00	Discretionary Penalty Range: \$0 - \$1,500.00
Category II	Base Penalty: \$1,500.00	Discretionary Penalty Range: \$500.00 - \$5,000.00
Category III	Base Penalty: \$4,500.00	Discretionary Penalty Range: \$1,500.00 - \$10,000.00

The SRRA specifies penalty amounts up to \$10,000.00 for a first violation and up to \$20,000.00 for each subsequent violation. A first violation is the first instance of the violation of a provision of the SRRA or any rule, regulation or order adopted or issued pursuant thereto, or the first instance of knowingly making a false statement, recommendation or certification in any documents or information submitted to the Board or the Department. After there is a final order with respect to a violation, if a new complaint is made, and the Board again finds a violation of the same provision(s) by the same violator, the violation(s) in the subsequent case(s) are subsequent violations and subject to greater penalties.

TABLE 3 – AGGRAVATING AND MITIGATING FACTORS

The following are examples of **aggravating factors** that may be used in the Board's discretion, along with other considerations, to adjust a penalty up from the base penalty amount.

- i. Potential or actual human health or environmental exposures that were allowed to continue as a result of the Subject's action or inaction.
- ii. New potential or actual human or environmental exposures that occurred as a result of the Subject's action or inaction.
- iii. The evidence shows that the Subject knowingly acted contrary to or acted in reckless disregard of existing rules and regulations.
- iv. Any unusual or extraordinary impacts directly or indirectly imposed on the public or the environment as a result of the violation.
- v. The Subject's lack of cooperation and responsiveness with the Board in performing an investigation of a complaint.
- vi. The Subject's lack of cooperation and responsiveness with the Department during the remediation.
- vii. The same violation occurred multiple times during the remediation.

- viii. The compliance history of the Subject.
- ix. Other aggravating factors the Board determines are necessary or appropriate based on the particular facts and circumstances of each individual case.

The following are examples of **mitigating factors** that may be used in the Board's discretion, along with other considerations, to adjust a penalty down from the base penalty amount.

- i. The nature, timing and effectiveness of any measures taken by the Subject to mitigate the effects of the violation for which the penalty is being assessed.
- ii. The nature, timing and effectiveness of any measures taken by the Subject to prevent future similar violations.
- iii. The Subject's cooperation and responsiveness with the Board in performing an investigation of a complaint.
- iv. The Subject's cooperation and responsiveness with the Department during the remediation.
- v. The compliance history of the Subject.
- vi. Other mitigating factors the Board determines are necessary or appropriate based on the particular facts and circumstances of each individual case.