



State of New Jersey
SITE REMEDIATION PROFESSIONAL LICENSING BOARD

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Governor

SHEILA Y. OLIVER
Lt. Governor

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IN THE MATTER OF : **SETTLEMENT**
PAUL McGAHA : **AGREEMENT**
LSRP #586577 : **RE: NOTICE OF CIVIL**
: **ADMINISTRATIVE**
: **PENALTY ASSESSMENT**

This Settlement Agreement (“Agreement”) is made between the Site Remediation Professional Licensing Board (“Board”) and Paul McGaha (collectively, the “Parties”) and shall be effective upon the date of the last signature set forth below (“Effective Date”).

FINDINGS

1. On October 22, 2012, the Board issued license #586577 to Mr. McGaha to practice as a licensed site remediation professional.
2. US Bank NA Trust hired Atlas Disposal to remove a 550-gallon unregulated heating oil underground storage tank from a private residence located at 3 Reidar Street, Succassuna, Morris County, New Jersey (“the Site”). The New Jersey Department of Environmental Protection (“Department”) has identified the Site with Program Interest Number 657867. Atlas Disposal remediated soil surrounding the former tank by excavation and disposal but identified a 12” thick layer of stained soil below the basement floor of the residential structure. Atlas Disposal

hired McGaha Consulting and Mr. McGaha to perform an in-situ remediation of the 12" thick layer of stained soil immediately below the residential structure using the Fenton Reaction.

3. On October 6, 2014, the Department filed a complaint with the Board regarding Mr. McGaha's remediation of the discharges at the Site.
4. On October 28, 2014, Mr. McGaha submitted to the Board a response to the Department's complaint.
5. On July 17, 2015, the Department issued an Area of Concern No Further Action Letter to US Bank NA Trust regarding the Site.
6. The Board investigated the complaint.
7. At its meeting on October 17, 2016, the Board found that Mr. McGaha violated the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.; specifically, N.J.S.A. 58:10C-16.a., N.J.S.A. 58:10C-16.b. and N.J.S.A. 58:10C-16.i. and assessed penalties against him of \$5,000.00, \$1,000.00 and \$1,000.00, respectively, for said violations.
8. On March 6, 2018, the Board issued a Notice of Civil Administrative Penalty Assessment to Mr. McGaha pursuant to N.J.S.A. 58:10C-17.f. for the above referenced violations.
9. On April 10, 2018, Mr. McGaha filed a written request for an administrative hearing. The request for an administrative hearing indicated a willingness to negotiate a settlement with the Board.
10. On April 11, 2018, the Board granted Mr. McGaha's request for an administrative hearing.
11. Pending the hearing, the Parties have negotiated in good faith and reached an agreement to amicably settle the penalties assessed against Mr. McGaha in the Notice of Civil Administrative Penalty Assessment on the terms and conditions set forth in this Settlement Agreement.
12. The \$7,000.00 penalty assessed under the Notice of Civil Administrative Penalty Assessment for violations of the provisions of the SRRA is hereby reduced to

\$3,166.00 based upon additional evidence presented by Mr. McGaha and the Board's reconsideration of its findings, as follows:

a. For the violation of N.J.S.A. 58:10C-16.a. noted in paragraph 30.c. of the Notice of Civil Administrative Penalty Assessment, the associated \$5,000.00 penalty is reduced to \$1,666.00 based on the following:

- i. The Board originally found that Mr. McGaha failed to obtain a discharge to ground water permit-by-rule as required by N.J.A.C. 7:26E-5.6(a) prior to injecting pollutants 10 feet from a potable well. This finding remains unchanged.
- ii. The Board originally found that Mr. McGaha failed to ensure that chemicals injected at the Site into the ground water did not have any impacts on the potable well and were not a threat to the public health and safety. Following the Board's finding, Mr. McGaha further explained his actions. Consequently, the Board finds that Mr. McGaha did consider public health and safety and did take measures to ensure that chemicals injected in the ground did not affect public health and safety. Thus, the Board's original finding is withdrawn.
- iii. The Board originally found that Mr. McGaha used a peristaltic pump to collect ground water into sampling jars, which is not one of the appropriate sampling methods that the Department has recognized. Based on further information provided to the Board, the Board subsequently found that Mr. McGaha did not use a peristaltic pump to collect ground water, therefore this finding is withdrawn.

Therefore, the Board has withdrawn two of the three findings for violation of N.J.S.A. 58:10C-16.a. and reduces the penalty from \$5,000.00 to \$1,666.00.

b. For the violation of N.J.S.A. 58:10C-16.b. noted in paragraph 30.a. of the Notice of Civil Administrative Penalty Assessment, the associated \$1,000.00 penalty is reduced to \$500.00 based on the following:

- i. The Board originally found that Mr. McGaha failed to

exercise reasonable care and diligence and 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 because he omitted certain required items when he submitted to the Department an Unregulated Heating Oil Tank System Remediation Form on August 23, 2014. Mr. McGaha admitted that he omitted certain required items in his August 23, 2014 submission. Mr. McGaha explained that the August 23, 2014 submission mistakenly included a draft, not the final complete version. However, once this error was identified, Mr. McGaha submitted the omitted items per N.J.S.A. 58:10C-16.e. This finding is unchanged.

- ii. Based on Mr. McGaha's revised submission, as stated above, the finding that Mr. McGaha did not use a peristaltic pump to collect ground water is withdrawn.

Therefore, the Board has withdrawn one of the two findings for violation of N.J.S.A. 58:10C-16.b. and reduces the penalty from \$1,000.00 to \$500.00.

- c. Paragraph 30.b. of the Notice of Civil Administrative Penalty Assessment states that Mr. McGaha did not comply with N.J.S.A. 58:10C-16.i., and describes the noncompliance as follows: "Mr. McGaha was required to obtain a discharge to ground water permit-by-rule, pursuant to N.J.A.C. 7:26E-5.6(a) and N.J.A.C. 7:14A-7.5(b)(3), for his injection of a peroxide and iron solution into the ground at the Site. Mr. McGaha did not obtain this discharge to ground water permit-by-rule for his remediation of the contaminated soil at the Site." Mr. McGaha advised the Board that prior to the injection he had determined that, in his professional judgment, no permit-by-rule was necessary because (i) the treatment of 288 cubic feet of Bartley loam soil with 200 gallons of chemicals would only temporarily saturate the twelve inch interval of soil below the basement floor of the on-site residence, (ii) the volume was not sufficient to transport the treatment any deeper through non-saturated soils; and (iii) the rapidity of the reaction was such that any chemicals would transform into water prior to the time that they could potentially reach the ground water, which was about 12 feet below grade. Although Mr. McGaha explained his reasoning behind his professional judgment that a permit-by-rule was not required, the Board

finds that a permit-by rule was required by the cited regulations, so the finding of a violation stands, and the penalty remains at \$1,000.00.

SETTLEMENT

13. In consideration of the foregoing, and in order to amicably resolve this matter without trial or adjudication, and intending to be bound hereby, the Parties agree to settle the Notice of Civil Administrative Penalty Assessment and the issues raised in Mr. McGaha's request for an administrative hearing.
14. Within 35 days of the effective date of this document, Mr. McGaha shall pay the sum of \$2,500.00, which is approximately 80% of \$3,166.00, by check payable to the Treasurer, State of New Jersey as full satisfaction of the penalties assessed in the Notice of Civil Administrative Penalty Assessment. Mr. McGaha shall mail or otherwise deliver the payment to:

Janine MacGregor, Executive Director
Site Remediation Professional Licensing Board
c/o New Jersey Department of Environmental Protection
Site Remediation and Waste Management Program
Office of the Assistant Commissioner
P.O. Box 420
Mail Code 401-06
401 East State Street
Trenton, N.J. 08625-0420

15. No modifications or waiver of this Agreement shall be valid except by written amendment to this Agreement duly executed by the Parties.
16. This Agreement shall be governed and interpreted under the laws of the State of New Jersey.
17. This Agreement represents the entire integrated agreement between the Parties concerning resolution of the Notice of Civil Administrative Penalty Assessment and the issues raised in Mr. McGaha's request for an administrative hearing, and

supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

18. Upon execution of this Settlement Agreement, Mr. McGaha's request for an adjudicatory hearing shall be considered withdrawn with prejudice.
19. This Agreement may be signed and dated in counterparts, each of which shall be an original, and such counterparts shall together be one and the same Agreement.
20. By entering into this Agreement, Mr. McGaha acknowledges the conduct but does not admit to any fault or liability.

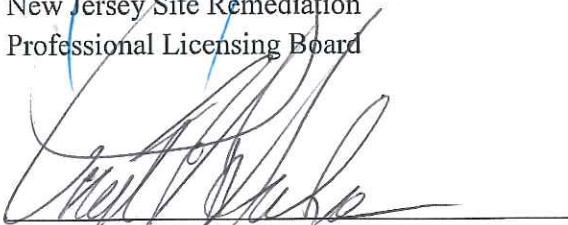
NEW JERSEY SITE REMEDIATION PROFESSIONAL LICENSING BOARD

DATE: 10-18-19



Mark J. Pedersen, Chairperson
New Jersey Site Remediation
Professional Licensing Board

DATE: 10-22-19



Paul McGaha, LSRP #586577