

SRPL Board Complaint No. 002-2018

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 provision of the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) alleged in the complaint and referenced below.

ISSUES

This complaint was made by the Chief Risk Officer for a railroad company with property contiguous to the site the LSRP was remediating. The Complainant alleged that the LSRP that was the subject of the complaint violated the Site Remediation Reform Act (“SRRRA”); specifically, N.J.S.A. 58:10C-16.b.¹ by not exercising reasonable care and diligence and not applying the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State at the time the services are performed. The basis of the allegation is that the Subject LSRP attributed PCBs on the railroad property to railroad operations, rather than discharges on the site he was remediating.

INVESTIGATION

The Board reviewed the site remediation activities conducted by the LSRP. The LSRP delineated PCB contamination through 14 on-site soil borings and 25 soil borings on the railroad property. Based on the fact that he found PCB concentrations on the railroad property significantly higher than concentrations on the site, and that scientific literature has established the presence of PCBs within railroad rights-of-way, the LSRP concluded that PCBs on the railroad property were not related to discharges on the site, but to railroad operations, and issued an RAO. He also reported a discharge to the Department, which resulted in the Department requiring the railroad to remediate their site.

The LSRP retained by the railroad conducted additional sampling, which contradicted the Subject LSRP’s findings and indicated that the Subject LSRP’s site was a source of contamination on the railroad site. When this new information was presented to the Subject LSRP, he reported this as a new discharge, amended his RAO, and proceeded with further investigation of his site.

¹ This would also be considered a violation of N.J.A.C. 7:26I-6.3(d).

FINDINGS

The Board's assessment is that the Subject LSRP conducted a thorough investigation and properly applied professional judgment. He conducted extensive soil sampling, followed lines of evidence to conclude that PCB contamination on the railroad site originated from the railroad, and appropriately reported a discharge. Although the railroad's site investigation conducted at a later date indicated that PCB contamination could originate from the Subject LSRP's site, this does not inevitably warrant a finding that the Subject LSRP violated the SRRA or Board Rules. The Subject LSRP did exercise due care, followed the correct procedures, and took the appropriate steps when new information was presented to him after he issued the RAO. He willingly and expeditiously reported the contamination found at the railroad site during the site investigation as a "new" discharge and has proceeded with the required investigation. Therefore, the Board finds that the Subject LSRP did not violate the SRRA or the Board Rules; specifically, N.J.S.A. 58:10C-16.b. or N.J.A.C. 7:26I-6.3(d).