

SRPL Board Complaint No. 006-2016

DISPOSITION

The Site Remediation Professional Licensing Board (“Board”) voted to dismiss the complaint because the facts alleged in the complaint did not have merit, and some facts alleged in the complaint, even if true, did not indicate that the LSRP that was the subject of the complaint violated the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) or any rule, regulation or order adopted or issued pursuant thereto, or knowingly made any false statement, representation or certification in any document or information submitted to the Board or the Department of Environmental Protection.

COMPLAINT ISSUES

Complaint 006-2016 was received by the Board on June 21, 2016. The complaint was brought by a homeowner with respect to the remediation of discharges from an unregulated 550-gallon home heating oil Underground Storage Tank on his residential property. The complaint was directed against the LSRP that was the president of the firm that the Complainant engaged. Most, if not all, of the work done on the site was conducted by a certified subsurface evaluator employed by the firm.

The complaint included an allegation that the firm falsified sampling results, along with many additional allegations regarding sampling and investigation methods, interpretation of data as it related to required remediation, additional and unnecessary remediation being conducted, selection of laboratory and transmission of lab results, fraudulent practices regarding remediation, and other contractual issues. The Board reviewed the allegations and supporting materials and determined that they were incorrect, baseless or outside of the scope of the Board’s authority. The Board did conduct a preliminary investigation into the allegation of falsified sampling results. The results of that investigation are presented herein.

INVESTIGATION

The Board reviewed the locations and results of samples that were collected by the firm at issue in the complaint, as well as two other firms that were engaged by the Complainant.

The first firm employed by the Complainant removed the Underground Storage Tank, and found that it was perforated. The firm collected six soil samples at the depth of 7 feet, and found two samples indicated Extractable Petroleum Hydrocarbons (“EPH”) above the residential standard of 5,100 mg/kg (11,200 mg/kg and 9,310 mg/kg).

The firm that was the subject of the complaint was then engaged to remove soil and conduct post-excavation sampling. The firm removed approximately 10 tons of soil and

collected five post-excavation samples at the depth of 11 feet. One sample collected within the excavation, just outside of where the tank had been located, was found to be above the residential standard of 5,100 mg/kg (8,600 mg/kg).

A third firm conducted additional post-excavation sampling, collecting an additional five samples at depths of 10 feet, 11 feet and 12 feet. One of the samples collected at 12 feet in the area where the tank had been located was well above the residential standard of 5,100 mg/kg (23,500 mg/kg). The firm removed an additional 13 tons of soil, then collected seven post-excavation samples, two of which were ordered by the Department. All of the samples were well below the residential standard.

The Board determined that based on the locations, depths and results obtained, there was no evidence to substantiate the Complainant's allegations that the LSRP's firm falsified results. Rather, the results were in line with results obtained by the other firms, and were consistent with the reported condition of the Underground Storage Tank at the time of its removal.

The Complainant alleged that the fact that a representative of the Department of Environmental Protection ordered the collection of additional samples was proof that the firm falsified results. In fact, the representative of the Department requested the collection of additional samples to confirm that the area of excavation had been extensive enough to include all contaminated soil. The fact that these samples did not detect contamination was the intended result of the remediation, and did not indicate that the earlier sample was falsified.

The Department issued a No Further Action letter for the Site on December 21, 2015, and the remediation was concluded.

FINDINGS

The Board concluded that in the case of 006-2016, the complaint should be dismissed because no facts supported the Complainant's allegation that the LSRP's firm falsified sampling results. Other facts alleged in the complaint, even if true, did not indicate that the LSRP that was the subject of the complaint violated the Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.) or any rule, regulation or order adopted or issued pursuant thereto, or knowingly made any false statement, representation or certification in any document or information submitted to the Board or the Department of Environmental Protection.

DETERMINATION OF THE BOARD

The Board voted to dismiss the complaint.