

## SUMMARY OF LSRP BOARD COMPLAINT No. 004-2011

### LSRP

Andrew Leung, License # 549398

### Nature of Complaint

In November 2011, Michelle Huang, manager of G&J Stone Company in Union, filed a Complaint with the Licensed Site Remediation Professional Board (“Board”) in which she alleged that she entered into a contract with Mr. Leung’s consulting firm for remediation investigative work to be done at the G&J Stone Company property and that she had been assured that all the necessary work to comply with DEP regulations would be accomplished under the contract for the price quoted. After doing some but not all of the work promised under the contract, the LSRP told Ms. Huang that additional work needed to be done at additional cost. She alleged that she never received a report on the initial work done under the contract. In its investigation into the Complaint, the Board discovered that Mr. Leung had never filed the LSRP Notice of Retention form required by N.J.S.A. 58:10C-16d.

### Synopsis

The Board’s investigation revealed the following information:

- On December 14, 2010, the DEP sent a letter to Ms. Huang reporting the results of sub-slab air sampling conducted at her property as part of the remedial investigation at a nearby property. On December 15, 2010, the DEP sent a letter to Ms. Huang notifying her that a release of a hazardous substance had been reported at her property and that she was obligated to remediate the discharge.
- Ms. Huang accepted and signed a proposal from the LSRP to conduct three tasks: 1) a review of DEP documents concerning Ms. Huang’s facility; 2) a Phase I Environmental Site Assessment; and 3) collection of additional sub-slab air samples to confirm DEP’s air sample finding. The total price agreed upon was \$4,400, and Ms. Huang submitted payment of \$2,000 to the LSRP as a retainer.
- As of September 26, 2011, the LSRP had completed the document review and the Phase I Environmental Site Assessment. The LSRP told DEP that he had not yet conducted the confirmatory air sampling because he felt that prior to conducting the confirmatory air sampling, a Receptor Evaluation was necessary to assess the nature and extent of the contamination from the adjacent properties.

- On November 10, 2011 the LSRP submitted a proposal to Ms. Huang calling for additional work to be done as part of the investigation, including the confirmatory air sampling that had been part of the first proposal. The additional work proposed was 1) a review of DEP files on two adjacent properties where petroleum spill cases were pending; 2) a Receptor Evaluation that would include historical data review, information inquiry, review and coordination with agencies, a baseline ecological evaluation and preparation of a map and table of sensitive work. In Task 1 the LSRP also agreed to “coordinate and interact with the NJDEP to facilitate the submittal of the LSRP Notification of Retention Form. Ms. Huang did not accept the LSRP’s proposal but instead filed this Complaint.

### **The Board’s Decision**

This Complaint primarily involves a contractual dispute between Ms. Huang and the LSRP, an area in which the Board does not have jurisdiction. However, in the process of investigating the Complaint, the Complaint Review Team (“CRT”) discovered that 1) the required LSRP Notification of Retention form was never filed; and 2) the LSRP was not adequately versed in DEP’s site remediation requirements and the standard processes for investigating a discharge of hazardous substances. During the CRT’s interview with the LSRP, he said he had not performed the confirmatory air sampling because Ms. Huang’s firm would not give the LSRP access to the property.

After reviewing the materials submitted by Ms. Huang and the LSRP and following the CRT’s interview with the LSRP, the Board concluded that the LSRP violated N.J.S.A. 58:10C-16d, which states: “a licensed site remediation professional retained by a person responsible for conducting the remediation shall notify the department within 15 calendar days after being retained.” The LSRP was retained by Ms. Huang on August 10, 2011, but to date has never notified the Department of his retention. The language of the statutory provision is unambiguous in its requirement that the notice be submitted within 15 days of retention. The LSRP’s client signed the proposal on August 10, 2011, thereby affirming that she had retained his services as an LSRP and starting the 15-day time period for filing the Notice of Retention. The LSRP was responsible for submitting this Notice to DEP and should have filed it no later than August 25, 2011.

The LSRP said he had not filed the Notice of Retention because he was uncertain whether Ms. Huang would proceed with the second proposal. This is not a legitimate excuse for failing to comply with the notification requirement. In fact, N.J.S.A. 58:10C-16w states, “a licensed site remediation professional shall provide any notification to the board or the department required pursuant to this section, even if the licensed site remediation professional is discharged by the client prior to doing so.” In any event, the deadline for filing the Notice of Retention with DEP was more than a month prior to the LSRP’s submission of the second proposal to Ms. Huang; the LSRP should have filed the Notice regardless of whether a second proposal was pending.

The Board also considered whether the LSRP violated N.J.S.A. 58:10C-16b, which requires that “a licensed site remediation professional shall exercise reasonable care and diligence, and shall 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". In the CRT's interview of the LSRP to discuss his handling of the initial steps of the investigation at Ms. Huang's property, it became apparent that the LSRP was not adequately versed in DEP's site remediation requirements. The CRT learned that the LSRP's firm works primarily in "hard-core engineering", as opposed to site remediation, and the LSRP's individual expertise was in geotechnical science and civil engineering. The LSRP acknowledged that the firm should not have taken Ms. Huang as a client and has agreed not to continue to seek work as an LSRP. The LSRP also has said he does not intend to apply to take the LSRP licensure examination and intends to allow his temporary LSRP license to expire in February 2013.

The Board concluded that the LSRP violated the provision of the Code of Conduct that requires submittal of a Notice of Retention by a client as an LSRP (N.J.S.A. 58:10C-16d). The Board therefore cited the LSRP for this violation and assessed a penalty against him of \$1,000. Meanwhile, the Board found that the LSRP's handling of the preliminary steps of the investigation of the Ms. Huang's property did not constitute a violation of N.J.S.A. 58:10C-16b. However, in its Notice of Reprimand and Civil Penalty Assessment being issued to the LSRP, the Board has included a provision that should he contract with a client to conduct any work as a Temporary LSRP, or should he decide to sit for the Permanent LSRP examination, he must first notify the Board in writing and comply with the Board's directives to obtain further training and/or continuing education.

\*A Notice of Reprimand and Civil Administrative Penalty Assessment was issued to this LSRP on November 21, 2012. Every LSRP has a right to request a hearing within 35 days of receipt of a disciplinary order from the Board.