

## 58:10C-16. Protection of public health, safety, environment highest priority

a. A licensed site remediation professional's highest priority in the performance of professional services shall be the protection of public health and safety and the environment.

b. 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.

c. A licensed site remediation professional shall not provide professional services outside the areas of professional competency, unless the licensed site remediation professional has relied upon the technical assistance of another professional whom the licensed site remediation professional has reasonably determined to be qualified by education, training, and experience. A licensed site remediation professional shall not perform services that constitute the practice of professional engineering unless the licensed site remediation professional is a professional engineer licensed in the State.

d. 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. In addition, a licensed site remediation professional shall notify the department within 15 calendar days after being released from responsibility for a remediation if the release occurs prior to issuance of the response action outcome for the site by the licensed site remediation professional.

e. A licensed site remediation professional and the person responsible for conducting the remediation shall correct any deficiency the department identifies in a document submitted concerning a remediation. The deficiency shall be corrected in accordance with timeframes established by the department.

f. A licensed site remediation professional may complete any phase of remediation based on remediation work performed under the supervision of another licensed site remediation professional, provided that the licensed site remediation professional: (1) reviews all available documentation on which he relies; (2) conducts a site visit to observe current conditions and to verify the status of as much of the work as is reasonably observable; and (3) concludes, in the exercise of independent professional judgment, that there is sufficient information upon which to complete any additional phase of remediation and prepare workplans and reports related thereto.

g. A licensed site remediation professional who has taken over the responsibility for the remediation of a contaminated site from another licensed site remediation professional shall correct all deficiencies in a document submitted by the previous licensed site remediation professional identified by the department in accordance with timeframes established by the department.

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; and (2) has managed, supervised or performed the work that is the basis of the submission, or has periodically reviewed and evaluated the work performed by other persons that forms the basis for the information in the submission, or has completed the work of another licensed site remediation professional and has concluded such work is reliable pursuant to subsection f. of this section. 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.

i. A licensed site remediation professional shall exercise independent professional judgment, comply with the requirements and procedures set forth in the provisions of P.L.2009, c.60 (C.58:10C-1 et al.), 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 is retained that is in possession of the owner of the property, or that is otherwise available, and identify and obtain whatever additional data and other information as the licensed site remediation professional deems necessary. The licensed site remediation professional shall disclose and explain in any document submitted to the department any facts, data, information, qualifications, or limitations known by the licensed site remediation professional that are not supportive of the conclusions reached in the document.

j. If a licensed site remediation professional obtains specific knowledge of a condition that in his independent professional judgment is an immediate environmental concern, then the licensed site remediation professional shall: (1) immediately verbally advise, and confirm in writing to, the person responsible for conducting the remediation of that person's duty to notify the department of the condition, provided the person is known to the licensed site remediation professional; and (2) immediately notify the department of the condition by calling the department's telephone hotline.

k. If a licensed site remediation professional retained to perform remediation at a site or any portion of a site obtains specific knowledge that a discharge has occurred at any location on the site, the licensed site remediation professional shall: (1) notify the person responsible for conducting the remediation of the existence of the discharge; and (2) notify the department of the discharge by calling the department's telephone hotline. The person responsible for conducting the remediation shall also be responsible for notifying the department of the existence of the discharge. The provisions of this subsection shall not apply to a discharge that may be a result of the existence of historic fill material.

l. If a licensed site remediation professional learns of an action or decision by a client that results in a deviation from the remedial action workplan or other report concerning the remediation developed by the licensed site remediation professional, the licensed site remediation professional shall promptly notify the client and the department, in writing, of the deviation.

m. A licensed site remediation professional 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 licensed site remediation professional, in writing, that

the information is confidential. The provisions of this subsection shall not apply to information that is in the public domain.

n. A licensed site remediation professional who learns of material facts, data or other information subsequent to the completion of a report concerning a 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.

o. A licensed site remediation professional who succeeds another licensed site remediation professional before the issuance of a response action outcome, and who learns of material facts, data or other information concerning a 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 client and the department in writing of those facts, data, information, and circumstances.

p. A licensed site remediation professional shall not allow the use of his name by a person, and shall not associate with a person in a business venture, if the licensed site remediation professional knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of a licensed site remediation professional.

q. A licensed site remediation professional shall cooperate in an investigation by the board or the department by promptly furnishing, in response to formal 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. In an investigation by the board of a license application or a license suspension or revocation, a licensed site remediation professional shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a material misunderstanding known by the licensed site remediation professional to have arisen in the matter;

(3) knowingly and materially falsify, tamper with, alter, conceal, or destroy any document, data record, remedial system, or monitoring device that is 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 licensed site remediation professional to engage in any of the foregoing activities.

r. A licensed site remediation professional shall be jointly responsible for a violation of any provision of this section committed by another licensed site remediation professional whose work he supervises or reviews if:

(1) the licensed site remediation professional orders, directs, or agrees to the provision of professional services conducted or prepared by another licensed site remediation professional under his supervision;

(2) the licensed site remediation professional knows that the professional services constitute a violation of this section; and

(3) the licensed site remediation professional fails to take reasonable steps to avoid or mitigate the violation.

s. A licensed site remediation professional shall comply with all conditions imposed by the board as a result of a license suspension or other disciplinary proceeding conducted by the board.

t. A licensed site remediation professional shall inform a client or prospective client of any relevant and material assumptions, limitations, or qualifications underlying their communication. Evidence that a licensed site remediation professional has provided the client or prospective client with timely written documentation of these assumptions, limitations, or qualifications shall be deemed by the board or the department to have satisfied the requirements of this subsection.

u. A licensed site remediation professional 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.

v. In any description of qualifications, experience, or ability to provide services, a licensed site remediation professional shall not knowingly:

(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 opinion of the board, is likely to create an unjustified expectation about results the licensed site remediation professional may achieve, or state or imply that the licensed site remediation professional may achieve results by means that violate the provisions of applicable environmental statutes, rules or regulations, including the provisions of P.L.2009, c.60 (C.58:10C-1 et al.).

w. 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.

x. A licensed site remediation professional 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 clients engaging the licensed site remediation professional.

y. A licensed site remediation professional shall not be a salaried employee of the person responsible for conducting the remediation, or any related entities, for which the licensed site remediation professional is providing remediation services.

z. A licensed site remediation professional shall not allow any ownership interest, compensation, or promise of continued employment, of the licensed site remediation professional or any immediate family member, to affect the professional services provided by the licensed site remediation professional.

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.

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.

#### History

L. 2009, c. 60, § 16, eff. May 7, 2009; amended 2019, c. 263, § 22, eff. Aug. 23, 2019.