



State of New Jersey

SITE REMEDIATION PROFESSIONAL LICENSING BOARD

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PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

**IN THE MATTER OF  
HAROLD BLAINE  
LSRP LICENSE 573634**

**NOTICE OF LICENSE  
SUSPENSION AND NOTICE  
OF CIVIL ADMINISTRATIVE  
PENALTY ASSESSMENT**

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This Notice of License Suspension and Notice of Civil Administrative Penalty Assessment is issued pursuant to the authority vested in the Site Remediation Professional Licensing Board ("Board") by the Site Remediation Reform Act ("SRRA"), N.J.S.A. 58:10C-1 et seq. to Harold Blaine, Practical Environmental Solutions, LLC, 11-13 Broad Street, Washington, NJ 07882.

FINDINGS

- I. Background
  1. This Notice of License Suspension and Notice of Civil Administrative Penalty Assessment concerns the remediation of the Towne and Country Cleaners Site, which is located at 212-214 North Livingston Avenue, Livingston, New Jersey, this property being also known and designated as Block 1706, Lots 2, 54 and 55 on the tax map of Livingston Township, Essex County (the "Site"). The New Jersey Department of Environmental Protection ("Department") has identified the Site with Program Interest Number G000061248.
  2. On July 25, 2012, the Board issued permanent license number 573634 to Mr. Blaine to practice as a licensed site remediation professional ("LSRP"), which license has a July 9, 2021 expiration date.
  3. On September 7, 1990, Killam Associates of Millburn issued a report entitled "Livingston Township Water Quality Improvement Report" which made recommendations for water treatment of municipal wells contaminated by tetrachloroethylene (PCE) including well number 8, the nearest municipal well to the Site.
  4. On January 29, 2001, Protank Services of Union issued a report entitled "Remedial Action Report-Greco Property 212-214 North Livingston Avenue, Livingston, N.J. Spill #00-12-19-1110-28" which discusses the removal of a 1,000-gallon heating oil

underground storage tank containing holes, notification of the spill to the Department's hotline, and the removal of 94 tons of contaminated soil from the Site.

5. On August 15, 2007, the Department issued a Directive and Notice to Insurers ("August 2007 Directive") to Bemar Associates, LLC and the Estate of Genevieve Greco (the "Parties") which stated that they were responsible for hazardous substances that were discharged at the Site and that pursuant to N.J.S.A. 58:10-23.11.g.c., the Parties were strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs. The Directive required the Parties to clean up and remove the discharges, in part, by submitting a Preliminary Assessment and Site Investigation report.
6. The August 2007 Directive identified tetrachloroethylene (PCE) as a chemical of concern in the ground water at the Site.
7. Kleinfelder East, Inc., ("Kleinfelder") on behalf of the ExxonMobil Refining and Supply Company service station located adjacent to the Site at 222 North Livingston Avenue, Livingston, N.J., ("ExxonMobil service station") performed an investigation at and in the vicinity of the Site to identify the source of the PCE ground water contamination identified in the August 2007 Directive.
8. On October 16, 2007, Kleinfelder authored a report entitled "Chlorinated Compounds Source Investigation Summary," Exxon Facility #32144, 222 North Livingston Avenue, Livingston, Essex County, New Jersey ("October 2007 Report").
9. The October 2007 Report includes findings of an investigation at the Site and concluded that "PCE has been detected in soil at concentrations exceeding applicable cleanup criteria on and in the vicinity [of] the former dry cleaners/auto parts store property [on the Site]. Since the detected concentrations of PCE (tetrachloroethylene) exceed the NJDEP Impact to Ground water Soil Cleanup Criteria, this area is a potential source for dissolved phase concentrations of PCE detected in ground water."
10. The October 2007 Report further states that the ExxonMobil service station is not considered a source of PCE in soil and ground water contamination discovered at the service station.
11. On March 30, 2009, the Department authored a report entitled "Site Investigation," 212-214 North Livingston Avenue, Livingston Township, Essex County, New Jersey, EPA ID No. NJN000206297 ("March 2009 Report").
12. The Department, in its March 2009 Report, states that dry cleaning operations were conducted at the Site from 1958 into the 1970s and that "results of analysis of ground water and soil samples collected on site ... indicate a release of CAHs (chlorinated

aliphatic hydrocarbons), primarily PCE (tetrachloroethylene), has occurred” at the Site.

13. The Department’s March 2009 Report further states that the Department removed approximately 50 tons of PCE contaminated soil from the area near the back door of the dry cleaners at the Site as part of an installation of a sub-slab ventilation system which services a Site building and a neighboring residence. The Department connected three sub-slab soil vapor extraction points to the sub-slab ventilation system in the basement of the building because indoor air was impacted by PCE.
14. In April 2011, the Department issued a report entitled “Unknown Source Investigation Summary,” Livingston Township Water Department Well #8, Livingston Township, Essex County, New Jersey (“April 2011 Report”).
15. The Department, in its April 2011 Report, states that “in November 1989, tetrachloroethylene (PCE) contamination was discovered by the Livingston Township Water Department in Well 8 at 19.95 ppb (parts per billion).”
16. The Department, in its April 2011 Report, includes findings of prior investigations at the Site which indicated that dry cleaning operations had taken place at the Site, chlorinated aliphatic hydrocarbon compounds were documented in soil at the Site, and the Site was considered a source of the contamination of the Livingston Township Water Department Well #8.
17. On November 14, 2012, the Department sent a letter to Beatrice F. Gesualdo, Managing Member, Bemar Associates, LLC, the owner of Lots 2 and 55 of the Site, informing her that “this site has been identified as a source of chlorinated volatile organic contamination in Livingston Township municipal supply well #8.”
18. On May 17, 2013, Mr. Blaine conducted a site inspection of the Site.
19. On or about December 19, 2013, Mr. Blaine submitted to the Department a Preliminary Assessment Report for the Site dated September 2013 (“2013 Preliminary Assessment Report”). The 2013 Preliminary Assessment Report identified seven areas of concern (“AOCs”) at the Site.
20. On or about December 19, 2013, Mr. Blaine submitted to the Department a completed Preliminary Assessment/Site Investigation form certified by Mr. Blaine on December 16, 2013.
21. Mr. Blaine, in his 2013 Preliminary Assessment Report, recommended “no further investigation” or “no further action” for all seven areas of concern he had identified at

the Site.

22. On or about March 13, 2014, Mr. Blaine submitted to the Department a Licensed Site Remediation Professional Notification of Retention or Dismissal Form that indicated Bemar Properties (Beatrice Gesualdo, Managing Member) retained Mr. Blaine on November 1, 2013 as the LSRP for the Site.
23. On November 20, 2014, Mr. Blaine received an email from the Department that stated the Department had removed “30 tons of contaminated soil (PCE contamination)” from the Site.<sup>1</sup>
24. On or about November 28, 2014, Mr. Blaine submitted to the Department a Receptor Evaluation Report for the Site dated November 2014 (“2014 Receptor Evaluation Report”).
25. On or about November 28, 2014, Mr. Blaine submitted to the Department a Receptor Evaluation Form for the Site certified by Mr. Blaine on November 24, 2014 (“2014 Receptor Evaluation Form”).
26. On April 22, 2015, the Department filed a complaint with the Board concerning Mr. Blaine’s remediation at the Site.
27. On May 29, 2015, the Department advised Mr. Blaine to withdraw the 2013 Preliminary Assessment Report because:
  - (i) Mr. Blaine did not propose any further site investigation of identified areas of concern including AOC 2 which identified the Site as a potential PCE source area; and
  - (ii) Mr. Blaine did not establish background conditions for the contaminated ground water.
28. In correspondence to the Department dated June 26, 2015, Mr. Blaine withdrew himself as LSRP for the Site and withdrew his 2014 Receptor Evaluation Report and 2013 Preliminary Assessment Report because Mr. Blaine admitted he was unaware of the following facts:

“In the December 2008-January 2009 timeframe, the Department completed publicly funded remedial actions, i.e., excavation and removal, of soils contaminated with tetrachloroethene (“PCE”) at the Site; and

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<sup>1</sup> However, as noted in paragraph 13, the Department’s March 30, 2009 Site Investigation report states that 50 tons of PCE contaminated soil was removed from the Site.

A site investigation performed on behalf of the Department concluded that disposal and/or discharges of hazardous substances, including petroleum and chlorinated solvents, previously occurred at the Site and required further action.”

Mr. Blaine further states that “had I been aware of these facts, I would have certified and submitted materially different Reports to the Department.”

29. On July 10, 2015, counsel for Mr. Blaine submitted correspondence to the Board which states that he subcontracted the preparation of the 2013 Preliminary Assessment Report and the 2014 Receptor Evaluation Report to another LSRP, David Pry.
30. The Board completed its review of Mr. Blaine’s 2014 Receptor Evaluation Report and his 2013 Preliminary Assessment Report and found the violations described in the following paragraphs.
31. Mr. Blaine, in his 2013 Preliminary Assessment Report, failed to recommend a site investigation of any of the identified potentially contaminated areas of concern, as required by N.J.A.C. 7:26E-3.1(d).
32. Mr. Blaine, in his 2013 Preliminary Assessment Report, identified seven areas of concern, noted that dry cleaning reportedly took place on the Site from 1958 until the early 1970s, included a photograph of a “vent pipe in ceiling in dry cleaner space,” and noted that PCE, a contaminant commonly associated with dry cleaners, was found in the soil, soil gas and ground water on the Site.
33. Mr. Blaine, in his 2013 Preliminary Assessment Report, cites reports noted in paragraphs 3 through 16 which indicate that dry cleaning operations took place at the Site, PCE soil contamination exceeding cleanup criteria was detected at the Site and the Site is the source of PCE ground water contamination discovered at Livingston Township municipal water supply well number 8.
34. Furthermore, as noted in paragraph 13, the Department removed approximately 50 tons of PCE contaminated soil near the backdoor of the dry cleaners at the Site.
35. Without adequate justification, and in contradiction to extensive evidence that areas of concern at the Site were potentially contaminated, Mr. Blaine, in his 2013 Preliminary Assessment Report, concluded that no further investigation was required for each one of the areas of concern identified by Mr. Blaine.
36. By failing to recommend a site investigation, Mr. Blaine violated the Technical Requirements for Site Remediation which state that “if a potentially contaminated area

of concern is identified during the preliminary assessment, the person responsible for conducting the remediation ... shall conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.4.” (N.J.A.C. 7:26E-3.1(d))

37. Mr. Blaine, in his 2013 Preliminary Assessment Report, cites four documents in Section 14.0 – entitled “Previously Conducted or On-Going Remediation.” These documents are:
  - a. “Livingston Township Water Quality Improvement Report” prepared by Killam Associates of Millburn, NJ dated September 7, 1990.
  - b. “Remedial Action Report – Greco Property 212-214 North Livingston Avenue, Livingston, NJ Spill #00-12-19-1110-28” prepared by Protank Services of Union, NJ dated January 29, 2001.
  - c. “Chlorinated Compounds Source Investigation Summary – Exxon Facility #32144 222 North Livingston Avenue, Livingston, Essex County, NJ NJDEP Case # 07-08-17-1345-42” prepared by Kleinfelder East, Inc. dated October 16, 2007.
  - d. “Unknown Source Investigation Summary – Livingston Township Water Department Well No. 8” prepared by NJDEP and dated April 2011.
38. These four reports contain sampling results and information about contamination and remediation that took place at the Site. The Technical Requirements for Site Remediation, specifically, N.J.A.C. 7:26E-3.2(a)4, require that a preliminary assessment report present “a summary of the data and information reviewed, which shall be compiled and presented by area of concern.”
39. Mr. Blaine violated N.J.A.C. 7:26E-3.2(a)4 because he did not present a summary and compilation of the data and information available in these four reports for each area of concern in his 2013 Preliminary Assessment Report.
40. In his 2013 Preliminary Assessment Report, Mr. Blaine identifies seven areas of concern. For each identified area of concern, the Technical Requirements for Site Remediation, specifically N.J.A.C. 7:26E-3.2(a)6, require a recommendation supported by a written rationale that either additional remediation is necessary, or additional remediation is not necessary because the area of concern is not suspected to contain contaminants at concentrations above any applicable remediation standard or criteria.
41. Mr. Blaine, in his 2013 Preliminary Assessment Report, includes in Section 17.0 a table of each of the seven areas of concern, with a brief description and the status/next steps for each area of concern.

42. Mr. Blaine violated N.J.A.C. 7:26E-3.2(a)6 because his 2013 Preliminary Assessment Report contains insufficient information, omits relevant Site history, fails to provide sampling results and does not provide a technically supported rationale why he did not suspect the areas of concern to contain contaminants at concentrations above any applicable remediation standard or criteria or why “no further investigation” is the appropriate recommendation.

## II. SUMMARY OF VIOLATIONS

43. The Board has conducted a compliance evaluation in response to the complaint and has determined that Mr. Blaine failed to comply with the applicable requirements of SRRA as follows:

- a. Requirement: Pursuant to N.J.S.A. 58:10C-16.i., a licensed site remediation professional shall comply with the requirements and procedures set forth in the SRRA. Specifically, a licensed site remediation professional is required to apply the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as required by N.J.S.A. 58:10C-14c(2)a.

### Description of Noncompliance:

- (i) Mr. Blaine failed to recommend an investigation of any of the identified potentially contaminated areas of concern, as required by N.J.A.C. 7:26E-3.1(d), and as detailed in paragraphs 31-36 above;
- (ii) Mr. Blaine did not present “a summary of the data and information reviewed, which shall be compiled and presented by area of concern” as required by N.J.A.C. 7:26E-3.2(a)4, and as detailed in paragraphs 37-39 above; and
- (iii) Mr. Blaine did not present a technically supported rationale for all areas of concern that either additional remediation is necessary, or additional remediation is not necessary because the area of concern is not suspected to contain contaminants at concentrations above any applicable remediation standard or criteria, as required by N.J.A.C. 7:26E-3.2(a)6, and as detailed in paragraphs 40-42 above.
- b. Requirement: Pursuant to N.J.S.A. 58:10C-16.b., a licensed site remediation professional shall exercise reasonable care and diligence and shall apply the knowledge and skill ordinarily exercised by LSRPs in good standing practicing in the State.

### Description of Noncompliance:

Mr. Blaine failed to exercise reasonable care and diligence and failed to apply the knowledge and skill ordinarily exercised by LSRPs practicing in the State by:

- (i) not fully analyzing and compiling Site data;
  - (ii) not submitting relevant Site history and remediation;
  - (iii) dismissing lines of evidence that establish the Site as the source of PCE off-site ground water contamination;
  - (iv) erroneously concluding that, despite clear evidence to the contrary, dry cleaning operations never took place at the Site, and
  - (v) not investigating any area of concern identified in his 2013 Preliminary Assessment Report when relevant Site history and the administrative record clearly indicate that PCE discharges occurred at the Site from former dry-cleaning operations, as detailed in paragraphs 3-17 above.
- c. Requirement: Pursuant to N.J.S.A. 58:10C-16.n., an LSRP “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.”

Description of Noncompliance:

Mr. Blaine failed to promptly notify the Department in writing of material facts that would result in a report with material differences from the report he submitted for the following reasons:

- (i) The Department informed Mr. Blaine in an email dated November 20, 2014 that the Department had removed 30 tons of PCE contaminated soil from the Site;
- (ii) Mr. Blaine did not include this information in his 2014 Receptor Evaluation Report nor in his certified 2014 Receptor Evaluation Form both of which were received by the Department on November 28, 2014;
- (iii) In June 26, 2015 correspondence to the Department, Mr. Blaine acknowledges that he would have submitted a report with material differences from the report he submitted had he been aware of the Department’s removal of PCE contaminated soil at the Site; and



- (iv) After learning of the Department's removal of 30 tons of PCE contaminated soil from the Site on November 20, 2014, it was not until seven months later, on June 26, 2015, that Mr. Blaine advised the Department that he would have submitted a report with material differences from the report he submitted. A seven-month delay is not prompt notification under N.J.S.A. 58:10C-16.n.
- d. Requirement: Pursuant to N.J.S.A. 58:10C-16.h, an LSRP "shall not certify any document submitted to the department unless the licensed site remediation professional 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..."

Description of Noncompliance:

Mr. Blaine failed to adequately manage, review or evaluate the work of another LSRP, David Pry, for the following reasons:

- (i) Mr. Blaine hired and relied upon Mr. Pry, according to his July 10, 2015 letter submission to the Board ("July 2015 letter"), "to conduct most aspects of the PAR [Preliminary Assessment Report], including review of the OPRA [Open Public Records Act] responses and documents."
- (ii) In the July 2015 letter, Mr. Blaine further states that he "subcontracted the preparation of the PAR [Preliminary Assessment Report] and IRE [Initial Receptor Evaluation] to" David Pry.
- (iii) In the July 2015 letter, Mr. Blaine also states that he reviewed his 2013 Preliminary Assessment Report and IRE and asked questions of Mr. Pry. The review did not meet the statutory standard at N.J.S.A. 58:10C-16.h.
- (iv) In his July 2015 letter, Mr. Blaine admits that "the PAR submitted to the NJDEP omits material information," but Mr. Blaine blames this deficiency on his client and the team of professionals performing the work.
- (v) Mr. Blaine claims in his 2013 Preliminary Assessment Report that dry cleaning operations never took place at the Site, but the documents cited in the 2013 Preliminary Assessment Report clearly indicate that dry cleaning operations were conducted at the Site from 1958 until the early 1970's.
- (vi) In his July 2015 letter, Mr. Blaine states that he was unaware at the time he submitted his 2013 Preliminary Assessment Report that the Department

performed a removal action at the Site to address PCE soil contamination behind the Site building.

- (vii) But in Mr. Blaine's 2013 Preliminary Assessment Report he cites the Department's 2011 Unknown Source Investigation Summary report, which attached the Department's March 2009 Site Investigation report. The information in Mr. Blaine's 2013 Preliminary Assessment Report and its attachments make it clear that a "hot spot" removal of 50 tons of PCE contaminated soil was removed from an area near the back door of the dry cleaners at the Site.
- (viii) Mr. Blaine, in his 2013 Preliminary Assessment Report, states that the adjacent Exxon service station property is the source of the PCE soil and ground water contamination at the Site and the PCE contamination in Livingston Township's municipal well number 8.
- (ix) However, the documents cited in Mr. Blaine's 2013 Preliminary Assessment Report, and the attachments to those documents, make it clear that the Site's former dry-cleaning operation is the source of the PCE contamination discovered at the Site and Livingston Township's municipal well.
- (x) Mr. Blaine's omission of material facts in his 2013 Preliminary Assessment Report, his lack of knowledge of relevant facts and the contradictions in his 2013 Preliminary Assessment Report with other lines of evidence indicate that Mr. Blaine did not thoroughly and adequately manage, review or evaluate the work of another LSRP that he hired to prepare the 2013 Preliminary Assessment Report.

For these reasons, the Board finds that Mr. Blaine violated N.J.S.A. 58:10C-16.h.

- e. Requirement: Pursuant to N.J.S.A. 58:10C-16.a., an LSRP's "highest priority in the performance of professional services shall be the protection of public health and safety and the environment."

Description of Noncompliance:

- (i) On or about November 28, 2014, Mr. Blaine submitted to the Department a 2014 Receptor Evaluation Report.
- (ii) On or about November 28, 2014, Mr. Blaine submitted to the Department a 2014 Receptor Evaluation Form certified by Mr. Blaine on November 24,

2014.

- (iii) Mr. Blaine, in his 2014 Receptor Evaluation Report, states that elevated levels of PCE were identified in the sub-slab of the building at the Site and indoor air samples indicated elevated levels of benzene and PCE in the indoor air.
- (iv) When Mr. Blaine certified his 2014 Receptor Evaluation Form on November 24, 2014, Mr. Blaine was aware that the Department removed PCE contaminated soil from the Site. A November 20, 2014 email from a Department representative to Mr. Blaine states that the Department removed from the Site “30 tons of contaminated soil (PCE contamination).”
- (v) Mr. Blaine, in his 2014 Receptor Evaluation Form, indicates that ground water contaminants at the Site exceed the Vapor Intrusion Ground Water Screening Levels that trigger a vapor intrusion evaluation.
- (vi) Mr. Blaine, in his 2014 Receptor Evaluation Form, states that the vapor intrusion investigation was completed.
- (vii) Mr. Blaine, in his 2014 Receptor Evaluation Report, states that according to an Exxon Site Receptor Evaluation report submitted in February 2013, the Department completed a vapor intrusion investigation for a number of properties surrounding the Site.
- (viii) Mr. Blaine, in his 2014 Receptor Evaluation Form, further indicates that ground water contamination has not been delineated to the applicable Ground Water Vapor Screening Level.
- (ix) Mr. Blaine, in his 2014 Receptor Evaluation Form, reveals that there are buildings/sensitive populations that exist within 100 feet from ground water contamination at the Site with concentrations above the Vapor Intrusion Ground Water Screening Levels.
- (x) Mr. Blaine, in his 2014 Receptor Evaluation Form, also indicates that a vapor intrusion pathway is not a concern at or adjacent to the Site, despite numerous residential properties within a 200-foot radius of the Site. The 2014 Receptor Evaluation Form requires written justification if a vapor intrusion pathway is not a concern at or adjacent to the Site, but Mr. Blaine provided none.
- (xi) Mr. Blaine, in his 2014 Receptor Evaluation Form, reveals that indoor air

sampling was performed at the Site and the results were above the Department's Indoor Air Screening Levels but at or below the Rapid Action Levels. The 2014 Receptor Evaluation Form requires responses to follow up questions when this occurs, but Mr. Blaine did not provide any responses.

- (xii) Mr. Blaine, in his 2013 Preliminary Assessment Report and 2014 Receptor Evaluation Report, indicates that a sub-slab depressurization system was installed at the Site and is maintained by the Department.
- (xiii) Mr. Blaine, in his 2014 Receptor Evaluation Report, indicates that there are numerous residential properties and a commercial establishment located within a 200-foot radius of the Site.
- (xiv) Furthermore, the Department, in its March 2009 Site Investigation report, states that: (a) twenty-three people occupied residences or attended school or day care within 200 feet of the Site; (b) eight people worked on or within 200 feet of the Site; and (c) there were five on-Site employees.
- (xv) Department representatives documented that the Site was occupied by businesses during their Site inspection on June 18, 2014.
- (xvi) Mr. Blaine certified his 2014 Receptor Evaluation Form four days after learning in an email from the Department that the Department removed 30 tons of PCE contaminated soil from the Site.
- (xvii) Mr. Blaine, in his 2014 Receptor Evaluation Form, demonstrates that a vapor intrusion investigation was required, ground water contamination was not delineated to ground water vapor screening levels, and that there are buildings/sensitive populations within 100 feet of the Site that exceed ground water vapor intrusion screening levels. But Mr. Blaine did not propose any investigation at the Site, thus disregarding the public health threat that existed.
- (xviii) Mr. Blaine failed to provide, as required by the 2014 Receptor Evaluation Form, a justification why a vapor intrusion pathway did not exist at or adjacent to the Site despite numerous residential properties within a 200-foot radius of the Site.
- (xix) Indeed, indoor air sampling at the Site indicated exceedances of Indoor Air Screening Levels to workers within the Site building but Mr. Blaine failed to answer required follow up questions concerning these exceedances in his

2014 Receptor Evaluation Form.

- (xx) Mr. Blaine, in his 2013 Preliminary Assessment Report, states that the Department considered the Site as the source of off-Site PCE ground water contamination.
- (xxi) Mr. Blaine failed to place as his highest priority the protection of public health and safety and the environment for the following reasons:
  - a.) Mr. Blaine certified his 2014 Receptor Evaluation Form four days after being informed that the Department removed 30 tons of PCE contaminated soil at the Site but did not propose any additional investigation.
  - b.) Mr. Blaine failed to attach a justification, required by the 2014 Receptor Evaluation Form, why he believed a vapor intrusion pathway was not a concern at or adjacent to the Site.
  - c.) Mr. Blaine failed to answer required follow up questions on his 2014 Receptor Evaluation Form concerning indoor air sampling that exceeded the Department's Indoor Air Screening Levels.
  - d.) Mr. Blaine was aware that the Department considered the Site as a source of contamination of a Livingston Township municipal supply well but did not propose any investigation.
  - e.) Mr. Blaine, in his 2014 Receptor Evaluation Form, indicates that there are buildings/ sensitive populations that exist within 100 feet of ground water contamination at the Site with concentrations above the Vapor Intrusion Ground Water Screening Levels. However, Mr. Blaine did not propose any investigation at the Site thus ignoring the public health threat that existed.
  - f.) Mr. Blaine erroneously concluded that the Site never operated as a dry cleaning establishment when there was clear evidence to the contrary.
  - g.) There was a sub-slab depressurization system at the Site due to elevated levels of PCE in the indoor air, but Mr. Blaine did not propose any further investigation at the Site.

NOTICE OF LICENSE SUSPENSION

- 44. Pursuant to N.J.S.A. 58:10C-17.b., and based upon the above FINDINGS, the Board has determined that License 573634, issued to Mr. Blaine, is suspended for a period of not less than 24 months, pursuant to N.J.A.C. 7:26I-2.13(a).

45. During the period of suspension, Mr. Blaine shall not be, act as, advertise as, hold himself out to be, or represent himself as being an LSRP, pursuant to N.J.A.C. 7:26I-2.13(b).
46. At the end of the 24-month period of suspension, Mr. Blaine's license will be automatically reinstated pursuant to N.J.A.C. 7:26I-2.13(c).

#### NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

47. Pursuant to N.J.S.A. 58:10C-17.f, and based upon the above FINDINGS, the Board has determined that a civil administrative penalty is hereby assessed against Mr. Blaine in the amount of \$25,000.00. The Board's rationale for the civil administrative penalty is set forth in the enclosed Penalty Assessment Worksheet, and incorporated herein.
48. Pursuant to N.J.S.A. 58:10C-17.f(3), the Board may assess and recover, by civil administrative order, the costs of any investigation incurred by the Board, or any other State agency, and the reasonable costs of preparing and successfully enforcing a civil administrative penalty.

#### NOTICE OF RIGHT TO REQUEST A HEARING

49. Within 35 days after Mr. Blaine's receipt of this Notice of Intent to Suspend License and Notice of Civil Administrative Penalty Assessment, Mr. Blaine may request an administrative hearing on this Notice of Intent to Suspend License and Civil Administrative Penalty Assessment by providing the Board with all of the information specified in the "Administrative Hearing Request Checklist" available on the Board website at [http://www.nj.gov/lsrpboard/board/prof\\_conduct/admin\\_hearing\\_request\\_form.pdf](http://www.nj.gov/lsrpboard/board/prof_conduct/admin_hearing_request_form.pdf). The Board shall deny the hearing request if Mr. Blaine does not comply with these requirements. Mr. Blaine shall submit the hearing request to:

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

50. If no request for a hearing is received within thirty-five (35) calendar days from

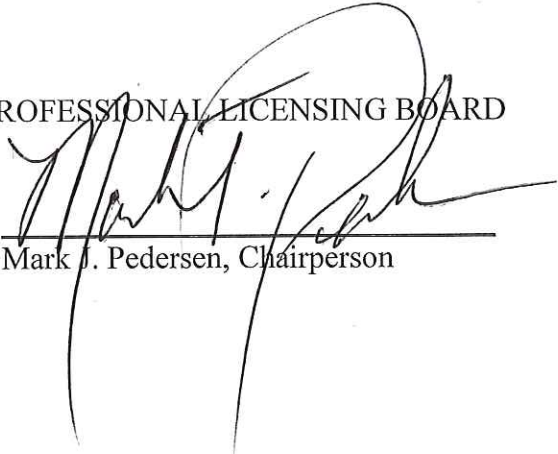
receipt of this Notice, the Notice of Intent to Suspend License and Civil Administrative Penalty Assessment shall become a Final Order upon the thirty-sixth calendar day following its receipt.

51. If the Board receives a timely and complete request for a hearing, the Notice of Intent to Suspend License and Notice of Civil Administrative Penalty Assessment shall become final when Mr. Blaine receives a notice of the denial of the request, or, if the hearing request is granted, when Mr. Blaine withdraws the request or abandons the hearing, or, if the hearing is conducted, when Mr. Blaine receives a final decision from the Board in this matter.
52. When the Notice of Intent to Suspend License and Notice of Civil Administrative Penalty Assessment becomes a final order, Mr. Blaine shall:
  - a. Notify each of his clients by whom he has been retained as an LSRP, with a copy to the Board and the Department, that he is no longer an LSRP; and
  - b. Provide for the maintenance and preservation of all data, documents, records and information concerning remediation activities at each contaminated site he has worked on.

THE NEW JERSEY SITE REMEDIATION PROFESSIONAL LICENSING BOARD

DATE: \_\_\_\_\_

10/30/18

  
\_\_\_\_\_  
Mark J. Pedersen, Chairperson

PENALTY ASSESSMENT WORKSHEET

LSRP'S NAME: Harold Blaine  
LSRP'S PERMANENT LICENSE NUMBER: 573634  
CONTAMINATED SITE: 212-214 North Livingston Avenue,  
Livingston, Essex County, New Jersey  
Program Interest Number G000061248

VIOLATIONS:

(1) Statute: N.J.S.A. 58:10C-16.i.

Requirement: "A licensed site remediation professional shall ... comply with the requirements and procedures set forth in the provisions of P.L.2009, c.60 (C.58:10C-1 et al.)..."

Dates of Violation: December 19, 2013 and November 28, 2014

Type of Violation: First Violation

Penalty Amount: \$5,000.00

Basis: Mr. Blaine failed to follow the requirements and procedures set forth in the Technical Requirements for Site Remediation as follows:

- a) Mr. Blaine, in his 2013 Preliminary Assessment Report, failed to recommend a site investigation of any of the identified potentially contaminated areas of concern, as required by N.J.A.C. 7:26E-3.1(d).

By failing to recommend a site investigation, Mr. Blaine violated the Technical Requirements for Site Remediation which state that "if a potentially contaminated area of concern is identified during the preliminary assessment, the person responsible for conducting the remediation ... shall conduct a site investigation pursuant to N.J.A.C. 7:26E-3.3 through 3.4." (N.J.A.C. 7:26E-3.1(d))



- b) In his 2013 Preliminary Assessment Report, Mr. Blaine cites four documents in Section 14.0 – “Previously Conducted or On-Going Remediation” that contain sampling results and information about contamination and remediation that took place at the Site. The Technical Requirements for Site Remediation, specifically, N.J.A.C. 7:26E-3.2(a)4, require that a preliminary assessment report present “a summary of the data and information reviewed, which shall be compiled and presented by area of concern.”

Mr. Blaine violated N.J.A.C. 7:26E-3.2(a)4 because he did not present a summary and compilation of the data and information available in these four reports for each area of concern in his 2013 Preliminary Assessment Report. Despite a documented history of Site contamination and remediation, Mr. Blaine did not provide any historic sampling data in his 2013 Preliminary Assessment Report.

- c) In his 2013 Preliminary Assessment Report, Mr. Blaine identifies seven areas of concern. For each identified area of concern, the Technical Requirements for Site Remediation, specifically N.J.A.C. 7:26E-3.2(a)6, require a recommendation supported by a written rationale that either additional remediation is necessary, or additional remediation is not necessary because the area of concern is not suspected to contain contaminants at concentrations above any applicable remediation standard or criteria.

Mr. Blaine violated N.J.A.C. 7:26E-3.2(a)6 because his 2013 Preliminary Assessment Report contains insufficient information, omits relevant Site history, fails to provide sampling results and does not provide a technically supported rationale why each area of concern is not suspected to contain contaminants at concentrations above any applicable remediation standard or criteria or why “no further investigation” is the appropriate recommendation.

The Board utilized the “Guidance to Determine Conduct and Severity of a Violation When Assessing Civil Administrative Penalties” approved by the Board on May 2, 2016 to determine the penalty amount. The Board considers this violation to be of

“medium” conduct and “medium” severity.

The Board considered this violation to be of medium conduct. Although Mr. Blaine’s actions were unintentional, it was foreseeable that Mr. Blaine’s acts or omissions would violate the SRRA. The Board considered this violation to be of medium severity because there was potential impact to the environment and no impact to public health.

The penalty range for first violation that is medium conduct and medium severity is \$1,000.00-\$5,000.00, with a midpoint of \$3,000.00. The Board assessed \$5,000.00 for this violation.

(2) Statute: N.J.S.A. 58:10C-16.b.

Requirement: “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.”

Dates of Violation: December 19, 2013 and November 28, 2014

Type of Violation: First Violation

Penalty Amount: \$5000.00

Basis: Mr. Blaine 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 by:

- a. not fully analyzing and compiling Site data;
- b. omitting relevant Site history and remediation;
- c. dismissing lines of evidence that establish the Site as the source of PCE off-site ground water contamination;
- d. erroneously concluding that, despite clear evidence to the contrary, dry cleaning operations never took place at the Site, and

- e. not investigating any area of concern identified in his 2013 Preliminary Assessment Report when relevant Site history and the administrative record clearly indicate that PCE discharges occurred at the Site from former dry-cleaning operations, as detailed in paragraphs 3-17 above.

The Board utilized the “Guidance to Determine Conduct and Severity of a Violation When Assessing Civil Administrative Penalties” approved by the Board on May 2, 2016 to determine the penalty amount. The Board considers this violation to be of “medium” conduct and “medium” severity.

The Board considered this violation to be of medium conduct. Although Mr. Blaine’s actions were unintentional, it was foreseeable that Mr. Blaine’s acts or omissions would violate the SRRA. The Board considered this violation to be of medium severity because there was potential impact to the environment and no impact to public health. The penalty range for a first violation that is medium conduct and medium severity is \$1,000.00-\$5,000.00, with a midpoint of \$3,000.00. The Board assessed \$5,000.00 for this violation.

(3) Statute: N.J.S.A. 58:10C-16.n.

Requirement: “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.”

Dates of Violation: December 19, 2013 and November 28, 2014

Type of Violation: First Violation

Penalty Amount: \$3000.00

Basis: Mr. Blaine failed to promptly notify the Department in writing of material facts that would result in a report with material differences from the report he submitted. Mr. Blaine learned that 30 tons of PCE contaminated soil was removed from the Site but waited seven months before he informed the Department that this information would result in a report with material differences from the report he submitted.

The Board utilized the “Guidance to Determine Conduct and Severity of a Violation When Assessing Civil Administrative Penalties” approved by the Board on May 2, 2016 to determine the penalty amount. The Board considers this violation to be of “medium” conduct and “medium” severity.

The Board considered this violation to be of medium conduct. Although Mr. Blaine’s actions were unintentional it was foreseeable that Mr. Blaine’s acts or omissions would violate the SRRA. The Board considered this violation to be of medium severity because there was potential impact to the environment and no impact to public health.

The penalty range for a first violation that is medium conduct and medium severity is \$1,000.00-\$5,000.00, with a midpoint of \$3,000.00. The Board assessed \$3,000.00 for this violation.

(4) Statute: N.J.S.A. 58:10C-16.h.

Requirement: “A licensed site remediation professional shall not certify any document submitted to the department unless the licensed site remediation professional 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...”

Dates of Violation: December 19, 2013 and November 28, 2014

Type of Violation: First Violation

Penalty Amount: \$4,000.00

Basis: Mr. Blaine failed to adequately manage, review or evaluate the work of another LSRP, David Pry. Mr. Blaine subcontracted the preparation of the 2013 Preliminary Assessment Report to Mr. Pry. Mr. Blaine’s shortcomings consisted of:

- (a) Omission of material facts in his 2013 Preliminary Assessment Report;
- (b) His lack of knowledge of relevant facts; and
- (c) Contradictions in his 2013 Preliminary Assessment Report with other lines of historical evidence indicate that Mr. Blaine did not thoroughly and adequately manage, review or evaluate

the work of another LSRP, and as detailed in paragraph 42.d.(i)-(x).

The Board utilized the "Guidance to Determine Conduct and Severity of a Violation When Assessing Civil Administrative Penalties" approved by the Board on May 2, 2016 to determine the penalty amount. The Board considers this violation to be of "medium" conduct and "medium" severity.

The Board considered this violation to be of medium conduct. Although Mr. Blaine's actions were unintentional, it was foreseeable that Mr. Blaine's acts or omissions would violate the SRRA. The Board considered this violation to be of medium severity because there was potential impact to the environment and no impact to public health.

The penalty range for first violation that is medium conduct and medium severity is \$1,000.00-\$5,000.00, with a midpoint of \$3,000.00. The Board assessed \$4,000.00 for this violation.

(5) Statute

N.J.S.A. 58:10C-16.a.

Requirement:

"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."

Dates of Violation:

December 19, 2013 and November 28, 2014

Type of Violation:

First Violation

Penalty Amount:

\$8,000.00

Basis:

Mr. Blaine failed to place as his highest priority the protection of public health and safety and the environment. Mr. Blaine's 2014 Receptor Evaluation Report indicates that:

(a) Mr. Blaine certified his 2014 Receptor Evaluation Form four days after learning that the Department removed 30 tons of PCE contaminated soil at the Site but did not propose any investigation;

(b) Mr. Blaine failed to provide a written justification and failed to provide responses to follow up questions when required to do so by the 2014 Receptor Evaluation Form;

(c) Mr. Blaine did not propose any investigation at the Site even

though there was a sub-slab depressurization system at the Site due to elevated levels of PCE contamination in the indoor air; and

(d) There are buildings/sensitive populations within 100 feet of the Site that exceed ground water vapor intrusion screening levels, but Mr. Blaine did not propose any investigation at the Site thus ignoring the public health threat that existed, and as detailed in paragraph 43.e.(i)-(xvii).

The Board utilized the “Guidance to Determine Conduct and Severity of a Violation When Assessing Civil Administrative Penalties” approved by the Board on May 2, 2016 to determine the penalty amount. The Board considers this violation to be of “high” conduct and “medium” severity.

The Board considered this violation to be of high conduct, because Mr. Blaine’s acts and omissions were knowing and purposeful by not proposing any investigation concerning a vapor intrusion health threat at and adjacent to the Site. The Board considered this violation to be of medium severity because there was potential impact to the environment and no impact to public health.

The penalty range for first violation that is high conduct and medium severity is \$4,000.00-\$10,000.00, with a midpoint of \$7,000.00. The Board assessed \$8,000.00 for this violation.

TOTAL CIVIL ADMINISTRATIVE PENALTY: \$25,000.00