

ILLINOIS POLLUTION CONTROL BOARD
March 20, 2008

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 08-17
) (Enforcement - Water)
FELKER PHARMACY, INC. and ROD)
BENNETT CONSTRUCTION, INC.,)
)
Respondents.)

ROD BENNETT CONSTRUCTION, INC.,)
)
Third-Party Complainant,)
)
v.) PCB 08-17
) (Citizens Enforcement - Water)
MCCLELLAN BLAKEMORE) (Third-Party Complaint)
ARCHITECTS, INC. and WENDLER)
ENGINEERING SERVICES, INC.,)
)
Third-Party Respondents.)

ORDER OF THE BOARD (by G.T. Girard):

On August 20, 2007, the People of the State of Illinois by the Attorney General, on her own motion and at the request of Illinois Environmental Protection Agency (People), filed a three-count complaint against Felker Pharmacy, Inc. (Felker) and Rod Bennett Construction, Inc. (Bennett) (collectively, respondents). *See* 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. The complaint concerns the Synder Pharmacy site located at Galena Avenue and Everett Street, Dixon, Lee County. On August 23, 2007, the Board accepted the complaint for hearing.

On December 10, 2007, Bennett filed a third-party complaint against McClellan Blakemore Architects, Inc. (McClellan) and Wendler Engineering Services, Inc. (Wendler) (collectively, third-party respondents). On December 28, 2007, Bennett filed a motion for leave to file the third-party complaint or in the alternative to add respondents. Bennett failed to file a proof of service for the complaint or motion. On February 8, 2008, Bennett refiled the motion and the complaint (TPComp). On February 11, 2008, Bennett filed proof of service.

The third-party complaint incorporates the complaint filed by the People as well as adding additional allegations. TPComp. at 2. Specifically, the complaint filed by the People

alleges that respondents violated 415 ILCS 5/12(a), 5/12(d), 5/12(f) (2006) and 35 Ill. Adm. Code 309.102(a). The People further allege that respondents violated these provisions by causing, threatening, or allowing water pollution, creating a water pollution hazard, and failure to obtain a National Pollutant Discharge Elimination System permit. The People ask the Board to order respondents to cease and desist from further violations of the Act and assess a civil penalty of \$50,000 for each violation and an additional \$10,000 per day during which each violation continued.

The third-party complaint alleges that McClellan was hired to design the Snyder Pharmacy in Dixon and McClellan hired Wendler. TPComp. at 2. The third-party complaint alleges that Wendler scope of services included submission of the application for the "Notice of Intent for General Permit to Discharge Wastewater from a Construction Site" and Wendler failed to do so. *Id.* The third-party complaint alleges that because Wendler failed to apply for the permit, any stormwater runoff was unpermitted and Wendler's failure was a breach of duty. The third-party complaint asserts that McClellan had a duty to supervise Wendler. *Id.*

Section 31(d) provides that "[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing." 415 ILCS 5/31(d)(1) (2006); *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests "relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). Third-party respondents have filed no motion and no evidence before the Board indicates that the third-party complaint is duplicative or frivolous.

The Board accepts the third-party complaint for hearing. *See* 415 ILCS 5/31(d)(1) (2006); 35 Ill. Adm. Code 103.212(a). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if third-party respondents fail within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider third-party respondents to have admitted the allegation. 35 Ill. Adm. Code 103.204(d). The Board directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 20, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

