

ILLINOIS POLLUTION CONTROL BOARD

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

MOTION TO FILE THIRD PARTY COMPLAINT

Rod Bennett Construction, Inc. (Respondent), by and through its attorney, James E. Meason, files this Motion to File Third Party Complaint pursuant to 35 Ill. Admin. Code 103.206(d), stating as follows:

1. The Illinois Pollution Control Board (IPCB) regulations permit a party to file a third-party complaint upon moving IPCB for leave to file the pleading. 35 Ill. Admin. Code 103.206(d).
2. The basis for this Motion is that Respondent has a claim that arises out of the occurrences that are the subject of the proceeding.
3. In the alternative, pursuant to 35 Ill. Admin. Code 103.206(a), Respondent requests IPCB to add McClellan Blakemore Architects, Inc. (MBA) and Wendler Engineering Services, Inc. (Wendler) because a complete determination of the controversy cannot be had without the presence of the entities.
4. Moreover, the Illinois Code of Civil Procedure permits a defendant to, through the filing of a third-party complaint, “bring in as a defendant a person not a party to the action who is or may be liable to him or her for all or part of the plaintiff’s claim against him or her.” 735 ILCS 5/2-406(b).
5. The Environmental Protection Act (Act) (415 ILCS 5/1 et seq.) prohibits causing, threatening, or allowing the discharge of any contaminant into the environment so as to cause or tend to cause water pollution. 415 ILCS 5/12(a).
6. The Act prohibits the deposit of any contaminant as to create a water pollution hazard. 415 ILCS 5/12(d).
7. The Act prohibits the causing, threatening, or allowing of the discharge of any

contaminant into the waters of the State without a National Pollution Discharge Elimination System (NPDES) permit. 415 ILCS 5/12(f).

8. Respondent incorporates the Complaint in this case by reference. In addition to the allegations contained in the Complaint, Respondent maintains:

9. Respondent Felker Pharmacy, Inc. hired Respondent to build a store known as Snyder Pharmacy Dixon in Dixon, Illinois (project).

10. Respondent hired McClellan Blakemore Architects, Inc. (MBA) to design the project.

11. MBA hired Wendler Engineering Services, Inc. (Wendler) to provide engineering services on the project. It was within Wendler's scope of services to submit the Notice of Intent for General Permit to Discharge Wastewater from a Construction Site (NOI) application to the Illinois Environmental Protection Agency (IEPA). Wendler failed to do so.

12. Further, because Wendler failed to apply for the NOI, IEPA did not issue a NPDES permit for the project.

13. On or about August 26, 2005, an IEPA inspector visited the site and noted the lack of an NOI or NPDES permit. As a result of that inspection, IEPA referred a regulatory enforcement case for prosecution.

14. On or about August 20, 2007, Petitioner filed this case against Respondents, alleging violations of the Environmental Protection Act and its implementing regulations for water pollution, creating a water pollution hazard, and failing to obtain an NPDES Permit (i.e., 415 ILCS 5/12(a), (d), (f) and 35 Ill. Admin. Code 309.102(a).

15. Since Wendler did not obtain the NPDES permit, any storm water runoff from the project also was unpermitted, constituting and causing, threatening, or allowing water pollution and a water pollution hazard. Such a failure constitutes negligent conduct. Wendler had a duty to perform its services in a competent fashion, and it failed, thereby breaching its duty. Consequently, because of that breach of duty, Respondent is a named party in the Complaint and may incur liability.

16. MBA had a duty to properly supervise Wendler. MBA failed to properly supervise Wendler, and therefore breached its duty to Respondent to perform its services in a competent fashion, thereby breaching its duty to Respondent. Consequently, because of that breach of duty, Respondent is a named party in the Complaint and may incur liability.

17. The Joint Tortfeasor Contribution Act (Contribution Act) (410 ILCS 100/1 et seq.) provides "where 2 or more persons are subject to liability in tort arising out of the same injury to person or property . . . there is a right of contribution among them, even though judgment has not been entered against them . . ." 740 ILCS 100/2(a). Liability under the Act creates the requisite "liability in tort" for purposes of the Contribution Act. People v. Brockman, 143 Ill.2d 351, 373 (1991) (recognizing third party Contribution Act claim where original defendant sued under

Act); Illinois State Toll Highway Authority v. Amoco Oil Company and Mobil Oil Corp., 336 Ill.App.3d 300, 313 (2 Dist. 2003) (applying Contribution Act claim to underlying liability under Act). Illinois State Toll Highway Authority v. Amoco Oil Company and Mobil Oil Corp., 336 Ill.App.3d at 315-16 (allegation that Act's joint liability provisions subjected parties to liability is sufficient to maintain contribution action).

18. Respondent filed electronically a Third Party Complaint with IPCB on December 7, 2007.

19. Therefore, Respondent requests IPCB to either allow Respondent to add Wendler and MBA as third party respondents retroactively, using the previously filed complaint, or in the alternative, order the Petitioner to add Wendler and MBA as respondents to this case.

Respectfully submitted,

Rod Bennett Construction, Inc., Respondent

By: _____
James E. Meason

James E. Meason
Attorney at Law
113 W. Main Street
Rockton, IL 61072-2416
(815) 624-6517

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Rod Bennett Construction, Inc., Respondent

By: _____
Rod Bennett

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CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 12, I certify that on December 28, 2007, I sent via U.S. mail from Rockton, Illinois, at 3:00 p.m. or via electronic filing as indicated the Motion to File Third Party Complaint to the following persons:

Illinois Pollution Control Board (electronic filing)
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

Bradley P. Halloran, Esq.
Hearing Officer, Illinois Pollution Control Board
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

Stephen J. Sylvester, Esq.
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, IL 60602

Eric D. Morrow, Esq.
Smith Hahn Morrow & Floski, P.C.
129 S. Fourth Street
P.O. Box 10
Oregon, IL 61061-0010

Rod Bennett Construction, Inc.

By: _____
James E. Meason
Respondent's Attorney

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
)
Complainant,)
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v.) PCB 08-17
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FELKER PHARMACY, INC., an Illinois) (Enforcement-Water)
corporation, and ROD BENNETT)
CONSTRUCTION, INC., an Illinois)
corporation,)
)
Respondents,)
)
v.)
)
MCCLELLAN BLAKEMORE)
ARCHITECTS, INC., an Illinois)
corporation, and WENDLER)
ENGINEERING SERVICES,)
INC., an Illinois corporation)
)
Third Party Respondents.)

THIRD PARTY COMPLAINT

Rod Bennett Construction, Inc. (Respondent), by and through its attorney, James E. Meason, files this Third Party Complaint pursuant to the Illinois Code of Civil Procedure (Code), specifically 735 ILCS 5/2-406(b), stating as follows:

1. The Code permits a defendant to, through the filing of a third-party complaint, “bring in as a defendant a person not a party to the action who is or may be liable to him or her for all or part of the plaintiff’s claim against him or her.” 735 ILCS 5/2-406(b).
2. The Environmental Protection Act (Act) (415 ILCS 5/1 et seq.) prohibits causing, threatening, or allowing the discharge of any contaminant into the environment so as to cause or tend to cause water pollution. 415 ILCS 5/12(a).
3. The Act prohibits the deposit of any contaminant as to create a water pollution hazard. 415 ILCS 5/12(d).
4. The Act prohibits the causing, threatening, or allowing of the discharge of any contaminant into the waters of the State without a National Pollution Discharge Elimination System (NPDES) permit. 415 ILCS 5/12(f).

5. Respondent incorporates the Complaint in this case by reference and attaches a copy of the Complaint to this Third Party Complaint. In addition to the allegations contained in the Complaint, Respondent maintains:
6. Respondent Felker Pharmacy, Inc. hired Respondent to build a store known as Snyder Pharmacy Dixon in Dixon, Illinois (project).
7. Respondent hired McClellan Blakemore Architects, Inc. (Third Party Respondent MBA) to design the project.
8. Respondent MBA hired Wendler Engineering Services, Inc. (Third Party Respondent Wendler) to provide engineering services on the project. It was within Third Party Respondent Wendler's scope of services to submit the Notice of Intent for General Permit to Discharge Wastewater from a Construction Site (NOI) application to the Illinois Environmental Protection Agency (IEPA). Third Party Respondent Wendler failed to do so.
9. Further, because Third Party Respondent failed to apply for the NOI, IEPA did not issue a NPDES permit for the project.
10. On or about August 26, 2005, an IEPA inspector visited the site and noted the lack of an NOI or NPDES permit. As a result of that inspection, IEPA referred a regulatory enforcement case for prosecution.
11. On or about August 20, 2007, Petitioner filed this case against Respondents, alleging violations of the Environmental Protection Act and its implementing regulations for water pollution, creating a water pollution hazard, and failing to obtain an NPDES Permit (i.e., 415 ILCS 5/12(a), (d), (f) and 35 Ill. Admin. Code 309.102(a).
12. Since Third Party Respondent Wendler did not obtain the NPDES permit, any storm water runoff from the project also was unpermitted, constituting and causing, threatening, or allowing water pollution and a water pollution hazard. Such a failure constitutes negligent conduct. Third Party Respondent Wendler had a duty to perform its services in a competent fashion, and it failed, thereby breaching its duty. Consequently, because of that breach of duty, Respondent is a named party in the Complaint and may incur liability.
13. Third Party Respondent MBA had a duty to properly supervise Third Party Respondent Wendler. Third Party Respondent MBA failed to properly supervise Third Party Respondent Wendler, and therefore breached its duty to Respondent to perform its services in a competent fashion, thereby breaching its duty to Respondent. Consequently, because of that breach of duty, Respondent is a named party in the Complaint and may incur liability.
14. The Joint Tortfeasor Contribution Act (Contribution Act) (410 ILCS 100/1 et seq.) provides "where 2 or more persons are subject to liability in tort arising out of the same injury to person or property . . . there is a right of contribution among them, even though judgment has not been entered against them . . ." 740 ILCS 100/2(a). Liability under the Act creates the requisite "liability in tort" for purposes of the Contribution Act. People v. Brockman, 143 Ill.2d 351, 373

(1991) (recognizing third party Contribution Act claim where original defendant sued under Act); Illinois State Toll Highway Authority v. Amoco Oil Company and Mobil Oil Corp., 336 Ill.App.3d 300, 313 (2 Dist. 2003) (applying Contribution Act claim to underlying liability under Act). Illinois State Toll Highway Authority v. Amoco Oil Company and Mobil Oil Corp., 336 Ill.App.3d at 315-16 (allegation that Act's joint liability provisions subjected parties to liability is sufficient to maintain contribution action).

15. Therefore, Respondent requests the Illinois Pollution Control Board (IPCB) to find Third Party Respondent Wendler and Third Party Respondent MBA liable under the Contribution Act or under an indemnification theory, impose an appropriate sanction against them, and impose any other relief IPCB deems appropriate.

Respectfully submitted,

Rod Bennett Construction, Inc., Respondent

By: _____
James E. Meason

James E. Meason
Attorney at Law
113 W. Main Street
Rockton, IL 61072-2416
(815) 624-6517

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Rod Bennett Construction, Inc., Respondent

By: _____
Rod Bennett

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CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 12, I certify that on December 7, 2007, I sent via regular mail from Rockton, Illinois, at 3:00 p.m. the enclosed documents to the following persons:

Illinois Pollution Control Board
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

Stephen J. Sylvester, Esq.
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, IL 60602

Eric D. Morrow, Esq.
Smith Hahn Morrow & Floski, P.C.
129 S. Fourth Street
P.O. Box 10
Oregon, IL 61061-0010

Rod Bennett Construction, Inc.

By: _____
James E. Meason
Respondent's Attorney

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)	
by LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	
)	PCB No.
FELKER PHARMACY, INC., an Illinois)	
corporation, and ROD BENNETT)	(Enforcement- Water)
CONSTRUCTION, INC., an Illinois)	
corporation,)	
)	
Respondents.)	

COMPLAINT

Complainant, People of the State of Illinois, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondents, FELKER PHARMACY, INC., an Illinois corporation, and ROD BENNETT CONSTRUCTION, INC., an Illinois corporation, as follows:

COUNT I

WATER POLLUTION

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006), as to Respondent, FELKER PHARMACY, INC. ("Felker Pharmacy") only.

2. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, pursuant to the terms and provisions of Section 31(d) of the Act, 415 ILCS 5/31(d) (2006), as to Respondent

ROD BENNETT CONSTRUCTION, INC. ("Bennett Construction") only.

3. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1342(b)(7) (2007).

4. At all times relevant to this Complaint, Respondent, Felker Pharmacy was and is an Illinois corporation in good standing.

5. At all times relevant to this Complaint, Respondent, Bennett Construction, was and is an Illinois corporation in good standing.

6. At all times relevant to this Complaint, Felker Pharmacy is and was the owner of a commercial development known as Snyder Pharmacy.

7. At all times relevant to this complaint, the Snyder Pharmacy was comprised of approximately 1.85 acres and located near the intersection of Galena Avenue and Everett Street, Dixon, Lee County, Illinois ("Site").

8. At all times relevant to this complaint, Bennett Construction was the general contractor retained by Felker Pharmacy, and was responsible for the development of the Site.

9. Stormwater run-off from the Site flows to and through a storm sewer that runs along Hennepin Avenue at the Site. The storm sewer discharges directly to the Rock River.

10. On August 19, 2005, approximately 3.5 inches of rain fell at the Site. As a result of the precipitation, a large volume of runoff flowed over the Site, cut a channel through the lot and carried gravel and fine particles, known as fines, into a storm sewer catch basin on the west side of the Site.

11. On August 26, 2005, the Illinois EPA inspected the Site. At that time, silt fencing had been removed at the Site with the exception of the east side. On the north and west sides of the Site, there were no erosion controls present on soil strips. The soil strips had not been stabilized with vegetative cover. There were no filtering devices on storm sewer inlets to protect from the incursion of solids.

12. On September 15, 2005, there were no filtering devices on storm sewer inlets to protect from the incursion of solids.

13. Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition:

“PERSON” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency or any other legal entity, or their legal representative, agent or assigns.

15. Felker Pharmacy, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

16. Bennett Construction, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides the following definition:

“CONTAMINANT” is any solid, liquid or gaseous matter, any odor or any form

of energy, from whatever source.

18. Gravel and fines are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), contains the following definition:

"WATERS" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

20. The Rock River is a "water" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

21. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides the following definition:

"Water Pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life.

22. The lack of adequate erosion control measures at the Site caused, threatened or allowed gravel and fines erosion from construction site activities to discharge into storm sewers at the Site which flow to the Rock River. Such gravel and fines, altered, or threatened to alter, the physical, thermal, chemical, or radioactive properties of the Rock River; rendered, or were likely to render, them harmful, detrimental or injurious to wild animals, birds, fish, and other aquatic life; or created, or were likely to create, a nuisance.

23. From at least August 19, 2005 through at least September 15, 2005, on dates better known to Respondents, Respondents utilized inadequate erosion control measures at the Site, which caused, threatened, or allowed gravel and fines-laden stormwater runoff into storm

sewers at the Site which flow to the Rock River.

24. By their actions and omissions, Respondents caused, threatened, or allowed water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FELKER PHARMACY, INC. and ROD BENNETT CONSTRUCTION, INC. on this Count I:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);
4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 12(a) of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II
CREATING A WATER POLLUTION HAZARD

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 and paragraphs 14 through 23 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:

No person shall:

- d. Deposit any contaminant upon the land in such place and manner as to create a water pollution hazard.

24. From at least August 19, 2005 through at least September 15, 2005, on dates better known to Respondents, Respondents caused and/or allowed the placement of gravel and fines at the Site without adequate erosion control structures in place and allowed gravel and fines-laden stormwater runoff to impact storm sewers at the Site which flow to the Rock River.

25. Respondents, by their actions alleged herein, deposited contaminants onto the land so as to create a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FELKER PHARMACY, INC. and ROD BENNETT CONSTRUCTION, INC. on this Count II:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);
4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 12(d) of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including attorney, expert witness, and consultant fees expended by the

State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT III
FAILURE TO OBTAIN NPDES PERMIT

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 and paragraphs 14 through 23 of Count I as paragraphs 1 through 22 of this Count III.

23. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), provides as follows:

No person shall:

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

24. The United States Environmental Protection Agency has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including storm water discharges regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a storm water pollution prevention plan for construction activity including clearing, grading and excavation.

25. In pertinent part, 40 CFR 122.26(a) provides as follows:

- (a) Permit requirement.

* * * * *

- (9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a

NPDES permit only if:

* * *

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

26. In pertinent part, 40 CFR 122.26(b) provides as follows:

(b) Definitions.

* * * *

15) Storm water discharge associated with small construction activity means the discharge of storm water from:

i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. . . .

27. Section 309.102(a) of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

NPDES Permit Required

a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

28. On May 1, 2005, construction activities were commenced at the Site, which included excavating and grading, without having first obtained an NPDES stormwater general permit.

29. On October 3, 2005, the Illinois EPA issued to Snyder Drug Stores NPDES stormwater general permit no. ILR10D924 for commercial development known as Felker-Snyder Pharmacy ("NPDES Permit No. ILR10D924"). On April 12, 2006, NPDES Permit No. ILR10D924 was terminated by the Illinois EPA after construction activities at the Site were completed and final stabilization was achieved.

30. By causing or allowing over one acre and less than five acres of land at the Site to be disturbed without first obtaining coverage under the NPDES storm water general permit for construction site activities prior to initiating such activities at the Site, Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, FELKER PHARMACY, INC. and ROD BENNETT CONSTRUCTION, INC. on this Count III:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing against Respondents pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the

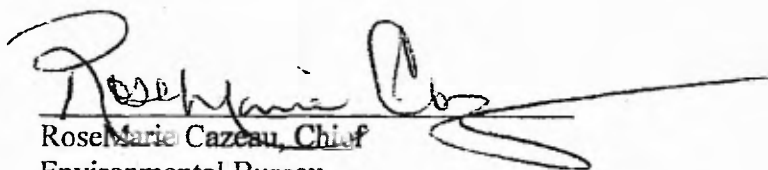
Act and Section 309.102(a) of the Board Water Pollution Regulations:

5. Ordering Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN,
Attorney General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By:


Rose Marie Cazeau, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, IL 6060
Tel: (312) 814-2087
Fax: (312) 814-2347
Email: ssylvester@atg.state.il.us