

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. 08-17

FELKER PHARMACY, INC., an Illinois)
corporation, and ROD BENNETT)
CONSTRUCTION, INC., an Illinois)
corporation,)

(Enforcement- Water)

Respondents.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 2nd day of April, 2009, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: *Stephen J. Sylvester*
STEPHEN J SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
ssylvester@atg.state.il.us

DATE: April 2, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter as to Respondents, Felker Pharmacy, Inc. and Rod Bennett Construction, Inc. In support thereof, the Complainant states as follows:

1. On August 20, 2007, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On April 2, 2009, a Stipulation and Proposal for Settlement was filed with the Board in this matter.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2006), provides as follows:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a

complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415

ILCS 5/31(c)(2) (2006).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2006).

Respectfully submitted,

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

BY: _____



STEPHEN J SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Felker Pharmacy, Inc. (“Felker Pharmacy”) and Rod Bennett Construction, Inc. (“Bennett Construction”) have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2006), and the Board Water Pollution Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On August 20, 2007, a Complaint was filed 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 upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against Felker Pharmacy. The August 20, 2007 Complaint was also filed 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 Bennett Construction.

2. 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).

3. At all times relevant to the Complaint, Felker Pharmacy was and is an Illinois corporation that is authorized to transact business in the State of Illinois. Felker Pharmacy is and was the owner of a commercial development known as Snyder Pharmacy, which was comprised of approximately 1.85 acres and located near the intersection of Galena Avenue and Everett Street, Dixon, Lee County, Illinois ("Site").

4. At all times relevant to the Complaint, Bennett Construction was and is an Illinois corporation that is authorized to transact business in the State of Illinois. Bennett Construction was the general contractor retained by Felker Pharmacy responsible for the development of the Site.

5. 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.

6. On October 3, 2005, the Illinois EPA issued to Snyder Drug Stores coverage under National Pollutant Discharge Elimination System ("NPDES") stormwater general permit No. ILR10D924 for the 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.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that Felker Pharmacy and Bennett Construction have violated the following provisions of the Act and Board Water Pollution Regulations:

- Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);
- Count II: Creating a Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006); and
- Count III: Failure to Obtain an NPDES Stormwater Permit, in violation 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).

C. Non-Admission of Violations

Felker Pharmacy and Bennett Construction neither admit nor deny the violations alleged in the Complaint filed in this matter and referenced herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and Felker Pharmacy and Bennett Construction, and any officer, director, agent, or employee of Felker Pharmacy and Bennett Construction, as well as any successors or assigns of Felker Pharmacy or Bennett Construction. Felker Pharmacy and Bennett Construction shall not raise as

a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against Felker Pharmacy or Bennett Construction in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by Respondents' failure to implement adequate stormwater pollution control measures at the Site and the Illinois EPA's information gathering responsibilities hindered by the Respondents' failure to obtain coverage under the general

NPDES stormwater permit prior to initiating construction activities at the Site.

2. The Site has social and economic benefit.
3. Respondents' construction activities at the Site were suitable for the area in which they occurred.
4. Obtaining an NPDES permit prior to engaging in construction activities at the Site and compliance with the permit's terms was both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and Board Water Pollution Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. Respondents' failure to timely apply for and obtain coverage under an NPDES storm water permit denied the Illinois EPA the opportunity for oversight during critical phases of the construction project at the Site. Further, Complainant alleges that contaminants discharged from the Site in storm water runoff were of sufficient volume to clog the storm sewer serving the Site. Respondents represent that contaminants discharged from the Site in storm water runoff did not clog the storm sewer serving the Site. Respondents' failure to obtain NPDES storm water permit coverage endured for approximately five months.

2. Respondents were diligent in attempting to come back into compliance with the Act and Board Water Pollution Regulations, once the Illinois EPA notified them of their noncompliance.

3. The civil penalty obtained includes any economic benefit that Respondents may have accrued, as a result of the delay in compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Water Pollution Regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

Felker Pharmacy and Bennett Construction shall jointly and severally pay a civil penalty in the sum of Seven Thousand Five Hundred Dollars (\$7,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If Felker Pharmacy and/or Bennett Construction fail to make any payment required by this Stipulation on or before the date upon which the payment is due, Felker Pharmacy and/or Bennett Construction shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Felker Pharmacy and/or Bennett Construction not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Stephen J. Sylvester
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., #1800
Chicago, Illinois 60602

D. Future Compliance

This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

E. Release from Liability

In consideration of Felker Pharmacy and Bennett Construction payment of the \$7,500.00 penalty, and upon the Board' approval of this Stipulation, the Complainant releases, waives and discharges Felker Pharmacy and Bennett Construction from any further liability or penalties for the violations of the Act and Board Water Pollution Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those

expressly specified in Complainant' Complaint filed on August 20, 2007. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Felker Pharmacy and Bennett Construction with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. and liability for natural resources damage arising out of the alleged violations;
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Felker Pharmacy and Bennett Construction.

F. Enforcement and Modification of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

G. Execution of Stipulation

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

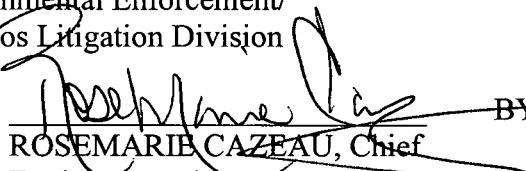
WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

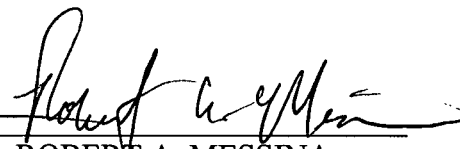
PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General of the State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 12/9/08

DATE: 12/3/08

FELKER PHARMACY, INC.

BY: _____
Name: _____
Title: _____

DATE: _____

ROD BENNETT CONSTRUCTION,
INC.

BY: _____
Name: _____
Title: _____

DATE: _____

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

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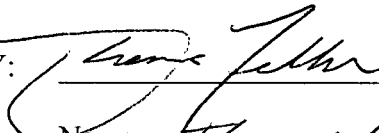
BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

DATE: _____

FELKER PHARMACY, INC.

BY: 
Name: Thomas Felker
Title: Pres

DATE: _____

ROD BENNETT CONSTRUCTION,
INC.

BY: _____

DATE: _____

Name: _____

Title: _____

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DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

DATE: _____

FELKER PHARMACY, INC.

BY: _____
Name: _____
Title: _____

DATE: _____

ROD BENNETT CONSTRUCTION,
INC.

BY: Rod Bennett Construction, Inc. DATE: MARCH 3, 2009

Name: Rod Bennett

Title: PRESIDENT

SERVICE LIST

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Rockford, IL 61114

Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 2nd day of April, 2009, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


STEPHEN J. SYLVESTER