

ILLINOIS POLLUTION CONTROL BOARD
May 21, 2009

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

OPINION AND 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. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties’ stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Attorney General and the State’s Attorneys may bring actions before the Board on behalf of the People to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege 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.

On April 2, 2009, the People and respondents filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), which requires that the public have an opportunity to request a hearing whenever the State and a respondents propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Dixon Telegraph* on April 10, 2009. The Board did not receive any requests for hearing. The Board grants the parties’ request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2006); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board’s procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the

nature of respondents' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Respondents do not affirmatively admit the alleged violations. Respondents agreed to pay a total civil penalty of \$7,500. The People and respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Felker and Bennett must pay a civil penalty of \$7,500 for the alleged violations no later than June 22, 2009, which is first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and respondents' Federal Tax Identification Numbers must appear on the face of the certified check or the money order.
3. Respondents must submit payment of the civil penalty to:

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

Respondents must send a copy of the certified check or money order and any transmittal letter to:

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


4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

5. Respondents must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 21, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board