

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

**CHARLES W. WELCH, III
JUDGE**

July 9, 2015
Sent via facsimile & U.S. Mail

Valerie S. Edge, Esq.
Deputy Attorney General
Department of Justice
102 W. Water Street, 3rd Fl.
Dover, DE 19901

James D. Nutter, Esq.
Elio Battista, Jr., Esq.
Parkowski, Guerke & Swayze, P.A.
16 South Front St.
Georgetown, DE 19947

RE: State of Delaware v. John A. Baker T/A A-Del Construction Co.
Case No.: 1502009938

Decision on State's Motion to Amend Information and Defendant's Objection to
and Motion to Strike Proposed Amended Information.

Dear Ms. Edge and Mr. Nutter:

As you know, the defendant for the above-referenced matter was originally charged with two counts of failure to comply with sediment and storm water plan in violation of 7 *Del. C.* § 4003(c). In particular, the Information in Count 1 indicated that the defendant "did fail to properly install storm water control to prevent sediment from entering the storm water system." Count 2 of the Information indicated that the defendant "did fail to properly install a construction entrance with proper stone to prevent soil erosion." During the Case Review scheduled for this matter on May 20, 2015, the State moved to have the Information amended to charge the defendant with two counts of fail to comply with sediment and storm water plan in violation of 7 *Del. C.* § 4015(a). Count 1 of the proposed Amended Information charged the defendant with violating "a

condition imposed in an approved plan by failing to properly install storm water control to prevent sediment from entering the storm water system.” Count 2 of the proposed Amended Information charged the defendant with violating “a condition imposed in an approved plan by failing to properly install a construction entrance with proper stone to prevent soil erosion.” At Case Review, the Court provided the defense time to file an objection to the proposed Amended Information. In response, the defense filed an objection to the motion and its own motion to strike the proposed Amended Information.

The Court has reviewed all of the submissions concerning the motions regarding the Amended Information, including the State’s response to the defendant’s objection to and motion to strike the proposed Amended Information. Please be advised that the State’s motion to amend the Information for this matter is Denied and the defendant’s motion to strike the proposed Amended Information is Granted.

Court of Common Pleas Criminal Rule 7 provides the proper procedure for the filing and amendment of Informations. In particular, Criminal Rule 7(e) provides that “[t]he Court may permit an Information to be amended at any time before a verdict or finding *if no additional or different offense is charged* and if substantial rights of the defendant are not prejudiced” (emphasis supplied). In this case, the Information cannot be amended as proposed due to the fact that the State is thereby charging the defendant with a different criminal offense. The original Information for this case charged the defendant with violating 7 Del. C. § 4003(c) of the Delaware Code (1) by failing to properly install storm water control to prevent sediment from entering the storm water

system and by (2) failing to properly install a construction entrance with proper stone to prevent soil erosion.¹ The Amended Information charges the defendant with violating 7 Del. C. § 4015(a) by *violating a condition imposed in an approved plan* by (1) failing to properly install storm water control to prevent sediment from entering the storm water system and (2) failing to properly install a construction entrance with proper stone to prevent soil erosion. The criminal offenses charged in the proposed Amended Information are distinct and separate criminal offenses different than the ones charged in the original Information. The factual allegations of the first Information are that the defendant failed to properly install a storm water control system and failed to properly install a construction entrance. The Amended Information charges him with failing to do so pursuant to conditions imposed in an approved plan. Since different criminal offenses are being charged in the Amended Information, Criminal Rule 7(e) prohibits the amendment. Therefore, the State's motion to amend the Information is Denied and the defendant's motion to strike the proposed Amended Information is Granted.

IT IS SO ORDERED.

Sincerely,



Charles W. Welch, III

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¹ The Court notes that 7 Del. C. § 4003(c) provides that “[e]ach land developer shall certify, on the sediment and storm water management submitted for approval, that all land clearing, construction, development and drainage will be done according to the approved plan.” The Court also notes that factual allegations for the original Information for this case do not appear to provide a basis for a violation of 7 Del. C. § 4003(c).