

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 12-
) (Enforcement - Water)
KIMBLE SEPTIC, INC., an Illinois corporation,)
and CLEVELAND KIMBLE, an individual,)
)
Respondents.)

NOTICE OF ELECTRONIC FILING

TO: Mr. Cleveland Kimble Kimble Septic, Inc.
Kimble Septic, Inc. 1334 Loretta Avenue
1334 Loretta Avenue Joliet, Illinois 60436
Joliet, Illinois 60436

PLEASE TAKE NOTICE that today, December 6, 2011, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

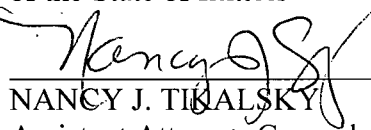
NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 *et seq.*) to correct the alleged pollution.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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

BY:



NANCY J. TIKALSKY

Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-8567

Date: December 6, 2011

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2010), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent, Kimble Septic, Inc., ("Kimble"), was and is an Illinois corporation in good standing with the Illinois Secretary of State.

4. From at least December 10, 2010, or a date better known to Respondents, and continuing through the date of filing of this complaint, Kimble's operations are located at 636 Patterson Road, Joliet, Will County, Illinois ("Site"), where Respondents conduct a septic tank cleaning and repair service business.

5. At all times relevant to this Complaint, Respondent, Cleveland Kimble, is an individual and resident of the State of Illinois. From January 2010, or a date better known to the Respondents, through the date of filing of this complaint, Cleveland Kimble, on information and belief, has been and is in control of and is responsible for the day-to-day operations of Kimble. Cleveland Kimble actively negotiated, arranged for and personally engaged in the collection of septic wastewater from local off-site locations. Cleveland Kimble actively transported septic wastewater to the Site and discharged it at the Site. These actions show Cleveland Kimble's active involvement in making decisions regarding all activities conducted by Kimble Septic, Inc. at the Site.

6. On December 10, 2010, Will County officials observed a liquid flow of wastewater on the ground and in a ravine at the Site. The wastewater had a slight sewage odor. The septic wastewater was discharged at the Site through a hose from Kimble's septic pumper truck onto the

ground and into a ravine at the Site. The ravine runs approximately 1,000 feet from the Site where it discharges into the junction of Sugar Run Creek and the Des Plaines River.

7. On December 15, 2010, an Illinois EPA inspector interviewed Cleveland Kimble. Cleveland Kimble stated that approximately 400 gallons of septic wastewater from a flooded residential basement was discharged at the Site from Respondents' septic pumper truck.

8. Upon review of Illinois EPA permit records by the Illinois EPA inspector, neither Kimble Septic, Inc. nor Cleveland Kimble submitted a permit application for a National Pollution Discharge Elimination System ("NPDES") permit and, therefore, failed to obtain an NPDES permit for point source discharges.

9. Section 12(a) of the Act, 415 ILCS 5/12 (2010), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants 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.

10. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

11. Respondents are each a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

12. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

13. Septic wastewater is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

14. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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.

15. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), provides 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.

16. The ravine at the Site, the Sugar Run Creek, and the Des Plaines River are each “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

17. By discharging an odorous septic wastewater onto the ground at the Site where it flowed into waters of the State, the Respondents caused, threatened and allowed the discharge of contaminants into waters of the State such that it will or is likely to create a nuisance or render such waters harmful or detrimental or injurious.

18. By discharging contaminants onto the ground at the Site where they flowed into waters of the State, Respondents caused, threatened and allowed "water pollution" as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2010).

19. The Respondents, by causing, threatening and allowing the discharge of septic wastewater from the Site so as to cause water pollution, have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board ("Board") enter an order against Respondents, KIMBLE SEPTIC, INC. and CLEVELAND KIMBLE, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Find that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);
3. Order Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);
4. Assess against the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board Water Pollution Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
5. Order Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Grant such other relief as the Board deems appropriate and just.

COUNT II

VIOLATION OF THE GENERAL USE WATER QUALITY STANDARDS -
OFFENSIVE CONDITIONS

1 - 11 Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 11 of Count I, as paragraphs 1 through 11 of this Count II.

12. Part 302 of the Board Water Pollution Regulations, 35 Ill. Adm. Code Part 302, establishes general use water quality standards for non-specified waters of the State of Illinois.

13. Section 302.203, Offensive Conditions, of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

14. Section 301.440 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.440, provides 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 the State of Illinois, except that sewers and treatment works are not included except as specially mentioned; provided, that nothing herein contained shall authorize the use of natural or otherwise protected waters as sewers or treatment works except that in-stream aeration under Agency permits is allowable.

15. The ravine at the Site, the Sugar Run Creek, and the Des Plaines River are each "waters" as that term is defined in Section 301.440 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.440

16. On at least October 10, 2010, Respondents' discharge of septic wastewater from Respondents' septic pumper truck into the ravine caused the waters of the ravine, which

discharges into the junction of Sugar Run Creek and the Des Plaines River, to have an unnatural sewer odor. Respondents discharge resulted in "offensive conditions" in these waters, as that term is used in Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203.

17. By discharging septic wastewater with a sewer odor into waters of the State, Respondents violated Section 302.203 the Board regulations, 35 Ill. Adm. Code 302.203, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, KIMBLE SEPTIC, INC. and CLEVELAND KIMBLE, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Find that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(d) (2010), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

3. Order Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

4. Assess against the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

5. Order Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT III

CREATING A WATER POLLUTION HAZARD

1-15. Complainant realleges and incorporates by reference Paragraphs 1 through 8, and paragraphs 10 through 16 of Count I as Paragraphs 1 through 15 of this Count III.

16. Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), provides as follows:

No person shall:

* * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

17. The Respondents, by discharging septic wastewater onto the ground at the Site where it flowed into waters of the State, deposited contaminants on the land so as to cause a water pollution hazard.

18. By depositing contaminants on the land so as to cause a water pollution hazard, Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, KIMBLE SEPTIC, INC. and CLEVELAND KIMBLE, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Find that Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
3. Order Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
4. Assess against the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
5. Order Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Grant such other relief as the Board deems appropriate and just.

COUNT IV

**DISCHARGING A CONTAMINANT WITHOUT AN
INDIVIDUAL NPDES PERMIT**

1-14. Complainant realleges and incorporates by reference Paragraphs 1 through 8, 10 through 13, and 15 through 16 of Count I as Paragraphs 1 through 14 of this Count IV.

15. Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), 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.

16. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 309.102(2), provides as follows:

NPDES Permit Required

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.

17. The Clean Water Act ("CWA") regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State.

18. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including point source discharges regulated by Section 122.21 of the Code of Federal Regulations ("CFR"), 40 CFR 122.21, which requires a person to obtain an NPDES permit for point source discharges of pollutants.

19. In pertinent part, 40 CFR 122.21(a)(1), provides as follows:

(a) Duty to Apply.

(1) Any person who discharges or proposes to discharge pollutants or who owns or operates a "sludge-only facility" whose sewage sludge use or disposal practice is regulated by part 503 of this chapter, and who does not have an effective permit, except persons covered by general permits under §122.28, excluded under §122.3, or a user of a privately owned treatment works unless the Director requires otherwise under

§122.44(m), must submit a complete application to the Director in accordance with this section and part 124 of this chapter.

20. In pertinent part, 40 CFR 122.2, Definitions, provides as follows:

* * *

“Discharge of a pollutant” means:

(a) Any addition of any “pollutant” or combination of pollutants to “waters of the United States” from any “point source,”

* * *

“Point source” means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged....

* * *

21. A hose from Kimble’s septic pumper truck from which odorous septic wastewater discharged into the waters of the State is a “point source” as that term is defined by Section 122.2 of the CFR, 40 CFR 122.2.

22. The addition of odorous septic wastewater into the ravine from a hose from Respondents’ septic pumper truck at the Site is a “discharge of a pollutant” into waters of the State as that term is defined by Section 122.2 of the CFR, 40 CFR 122.2.

23. By failing to submit a permit application for coverage under an NPDES permit and to obtain an NPDES permit for point source discharges at the Site, Respondents violated Section 309.102(a) the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, KIMBLE SEPTIC, INC. and CLEVELAND KIMBLE, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Find that Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 309.102(a) the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Order Respondents to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 309.102(a) the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assess against the Respondents a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

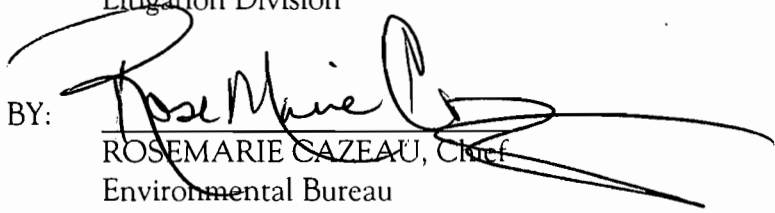
5. Order Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

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

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel

NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-8567

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on December 6, 2011.

BY: 
NANCY J. TIKALSKY