

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF CARDINAL UTILITIES,) CASE NO.
INC. FOR THE TRANSFER OF COMMON STOCK) 89-161
TO STEVE POPE)

O R D E R

On June 13, 1989, Steve Pope filed an application requesting Commission approval of the transfer to him of all issued and outstanding common stock of Cardinal Utilities, Inc., a Kentucky corporation ("Cardinal Utilities"). The current owner of the stock is Lorraine P. Kimbrell. This Order denies the approval requested.

On August 3, 1989, Commission Staff notified Mr. Pope that his application failed to meet certain filing requirements per Commission regulations. Mr. Pope submitted the requested information on August 10, 1989. By Order dated August 30, 1989, Commission Staff directed Cardinal Utilities and Steve Pope to file additional information necessary for staff to evaluate Mr. Pope's application. Mr. Pope's response to said Order was filed on September 11, 1989. However, the information filed was largely unresponsive to the request.

After review of the evidence of record and being sufficiently advised, the Commission finds that:

1. Cardinal Utilities owns 6 sewage treatment plants in Kentucky. Steve Pope has been the person primarily responsible for the daily operation of the sewage treatment plants since December of 1985. Steve Pope holds a certificate from the Kentucky Board of Certification of Wastewater System Operators to operate a Class I wastewater system.

2. On January 11, 1989, the Kentucky Natural Resources and Environmental Protection Cabinet filed a Verified Complaint and Motion for Injunctive Relief (attached hereto as Exhibit A) against Cardinal Utilities, Lorraine P. Kimbrell, and Steve Pope, alleging that each and every one of the 6 sewage treatment facilities owned and operated by Cardinal Utilities was in violation of one or more of that agency's regulations. The Complaint also alleged that Lorraine P. Kimbrell and Steve Pope, as owners and operators of the 6 sewage treatment facilities, had failed to maintain and operate the facilities pursuant to KRS Chapter 224 and the Kentucky Administrative Regulations. On February 7, 1989, an Order was entered in the case (attached hereto as Exhibit B) wherein all parties agreed that the 6 facilities were discharging inadequately treated wastewater into the waters of the Commonwealth. The parties further agreed that the discharge from the 6 facilities exceeded Kentucky Pollutant Discharge Elimination System ("KPDES") permit limits. The Order directed Lorraine P. Kimbrell and Steve Pope to perform the repair and maintenance necessary to bring the 6 facilities within the KPDES permit limit by March 2, 1989. As of this date, an action against Steve Pope and Lorraine Kimbrell for contempt of that

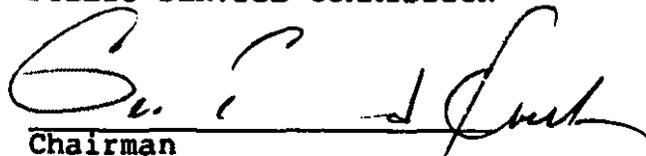
Order is pending. Attorneys for the Public Service Commission have attended hearings in the contempt action at which Steve Pope has repeatedly told the Court that Cardinal Utilities does not have the money to perform the necessary repairs and maintenance to bring all the facilities within the KPDES discharge limits.

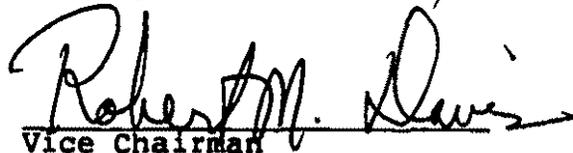
3. Steve Pope is not providing reasonable service to the customers of Cardinal Utilities and does not have the financial, technical, and managerial abilities to provide reasonable service at the present time.

IT IS THEREFORE ORDERED that Steve Pope's application for approval of the transfer to him of ownership of the stock of Cardinal Utilities is denied without prejudice.

Done at Frankfort, Kentucky, this 5th day of October, 1989.

PUBLIC SERVICE COMMISSION

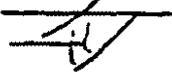

Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT 10046
CIVIL ACTION NO.
DIVISION NO. 

COMMONWEALTH OF KENTUCKY,
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

VERIFIED COMPLAINT

FILED

CARDINAL UTILITIES, INC.,
LORAINNE P. KIMBRELL, STEVE POPE, and
JIFFY MART FINE FOODS, INC., d/b/a
SOUTHERN PRIDE TRUCK PLAZA

COURT COURT
HALL, CLERK
DEFENDANTS

Comes the Plaintiff, Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, by counsel, and for its Verified Complaint and request for injunctive relief against the Defendants, states as follows:

1. The Plaintiff, Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet (hereinafter referred to as the Cabinet), is charged with the statutory duty of enforcing the laws of the Commonwealth relating to water quality and pollution as set forth in Kentucky Revised Statutes (KRS) Chapter 224 and the regulations promulgated pursuant thereto.
2. The Franklin Circuit Court has jurisdiction to hear the injunctive relief requested pursuant to KRS 224.995.
3. Each of the above named Defendants, Cardinal Utilities, Inc., Lorainne P. Kimbrell, Steve Pope, and Jiffy

Mart Fine Foods, Inc., d/b/a Southern Pride Truck Plaza, are a "person" as defined in KRS 224.005(12).

4. At all times pertinent and material to this Verified Complaint and request for injunctive relief, Lorraine P. Kimbrell, Steve Pope and Cardinal Utilities, Inc., operated sewage treatment facilities serving Fieldmont Subdivision, Green Acres Subdivision and Blandville West Subdivision, all in McCracken County, Kentucky; Golden Acres Subdivision and Gateway Subdivision in Marshall County, Kentucky; and Holifield Heights Subdivision, in Graves County, Kentucky.

5. At all times pertinent and material to this Verified Complaint, Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Plaza, operated in McCracken County, Kentucky, and discharged wastewater into the Fieldmont Sewage Treatment Facility operated by Cardinal Utilities, Inc.

6. On or about October 12, 1987, an authorized agent of the Cabinet issued to Cardinal Utilities, Inc., a notice of violation for environmental violations at the Gateway Subdivision in Marshall County, Kentucky. Violations cited included degradation of the surface waters of the Commonwealth, 401 KAR 5:031; failure to report a spill or by-pass, 401 KAR 5:015; failure to apply secondary treatment to effluent, 401 KAR 5:035; and violation of the conditions of KPDES Permit No. KY 0044181.

7. On or about November 18, 1987, an authorized agent of the Cabinet issued to Cardinal Utilities, Inc., a notice of violation for violations at Green Acres Subdivision in McCracken County. The Defendant was cited for allowing the effluent to exceed permit limits.

8. On or about August 14, 1987, an authorized agent of the Cabinet issued to Cardinal Utilities, Inc., a notice of violation for violations at Fieldmont Subdivision in McCracken County. Violations cited included failure to meet limits of KPDES Permit No. KY 0058971.

9. The Cabinet alleges that Lorainne P. Kimbrell and Steve Pope, as owners and operators, of the six wastewater treatment facilities in the Cardinal Utilities, Inc. group have failed to maintain and operate the facilities pursuant to KRS Chapter 224 and the Kentucky Administrative Regulations.

10. Periodic inspections made by the Cabinet at the wastewater treatment plants serving Holifield Heights Subdivision, Gateway Subdivision, Golden Acres Subdivision, Blandville West Subdivision, Green Acres Subdivision and Fieldmont Subdivision show that each and every one of the facilities is discharging untreated wastewater into the waters of the Commonwealth.

11. Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Plaza, discharges sanitary wastewater from the Truck

Plaza into the Fieldmont Subdivision, a discharge plant owned by Cardinal Utilities, Inc.

12. On or about June 26, 1987, the Cabinet issued to Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Plaza, a notice of violation which alleged that the Defendant had violated 401 KAR 5:005, construction of wastewater lines without Division of Water approval; and 401 KAR 5:031, polluting the waterways of the Commonwealth.

13. On or about August 19, 1987, the Cabinet issued to Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Plaza, a notice of violation which alleged that the Defendant had violated 401 KAR 5:005, failure to submit plans to the Division of Water; and 401 KAR 5:031, pollution of streams of the Commonwealth by way of Fieldmont Subdivision wastewater treatment facility.

14. On or about October 28, 1987, the Cabinet issued to Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Plaza, a notice of violation which alleged that the Defendant had violated KRS 224.060, indirectly discharging pollutants into the waterways of the Commonwealth.

15. The aforementioned acts and omissions of the named Defendants constitute violations of KRS Chapter 224 and the regulations promulgated pursuant thereto.

16. The Defendants herein are subject to injunctive relief sought by the Cabinet pursuant to KRS 224.995 for violations of KRS Chapter 224.

WHEREFORE, the Plaintiff respectfully prays:

1. That the Defendants be adjudged in violation of the applicable provisions of KRS Chapter 224 and the regulations promulgated pursuant thereto.

2. That the Defendants be assessed a civil penalty in the amount of ten thousand dollars (\$10,000) per day for each violation of KRS Chapter 224.

3. That Cardinal Utilities, Inc., Lorainne P. Kimbrell and Steve Pope, be temporary and permanently enjoined from continuing the discharge of untreated wastewater from the treatment facilities serving Fieldmont Subdivision, Green Acres Subdivision, Blandville West Subdivision, Golden Acres Subdivision, Gateway Subdivision and Holifield Heights Subdivision.

4. That Lorainne P. Kimbrell, Steve Pope and Cardinal Utilities, Inc. be enjoined from failing to forthwith bring each and every one of their wastewater treatment facilities into compliance with the KPDES permit limits.

5. That the Court impose a tap on ban prohibiting additional sewer connections in the systems serving Green Acres Subdivision, Gatewood Subdivision, Blandville West Subdivision, Fieldmont Subdivision and Holifield Heights Subdivision.

6. That Jiffy Mart Fine Foods, Inc., d/b/a Southern Pride Truck Plaza, be ordered to perform all remedial

measures that are deemed necessary by the Cabinet to abate the violations cited above.

7. That the Cabinet be awarded each and every item of relief to which it may appear entitled.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET



CHARLES W. KURTZ
Department of Law
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601
(502) 564-5576

COUNSEL FOR PLAINTIFF

VERIFICATION

I, Nancy Fouser, Acting Manager, Enforcement/Compliance Branch, Division of Water, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, have read the foregoing Verified Complaint, and verify that all the allegations contained therein are true and correct to the best of my knowledge and belief.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

Nancy Fouser
NANCY FOUSER, ACTING MANAGER
ENFORCEMENT/COMPLIANCE BRANCH

Subscribed and sworn to before me by Nancy Fouser, this the 10th day
of January, 1989.

Christine D. Hicor Smith

NOTARY PUBLIC

My Commission Expires: September 27, 1990

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO.
DIVISION NO. 14 ~~39~~ ~~10040~~

COMMONWEALTH OF KENTUCKY,
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

NOTICE AND MOTION FOR
INJUNCTIVE RELIEF

FILED

CARDINAL UTILITIES, INC.,
LORAINNE P. KIMBRELL
STEVE POPE
JIFFY MART FINE FOODS, INC.,
d/b/a SOUTHERN PRIDE TRUCK PLAZA

CIRCUIT COURT
HALL, CLERK

DEFENDANTS

NOTICE

The Defendants will please take notice that the following Motion for Injunctive Relief will be brought on for hearing before the Franklin Circuit Court on the 31st day of January, 1989, at 10:00 a.m. or as soon thereafter as counsel may be heard, at the Franklin Circuit Courthouse, 218 St. Clair Street, Frankfort, Kentucky 40601.

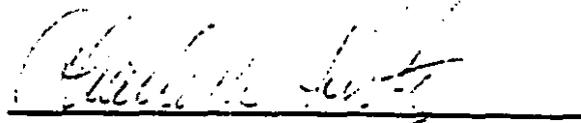
MOTION

Plaintiff, Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, by counsel, moves this Court to grant injunctive relief in the above-styled action on the grounds that the Plaintiff's rights are being violated by the Defendants, and the Plaintiff will suffer immediate and irreparable injury pending a final judgment in this action as is clearly demonstrated by the Verified Complaint filed with the Circuit Court Clerk in this action, and as will be demonstrated by the evidence presented at a hearing on this Motion.

Plaintiff prays that the injunctive relief include provisions enjoining the Defendants herein, their officers, agents, employees, and all other persons acting in concert with the Defendants from discharging or allowing the discharge of untreated wastewater into the waters of the Commonwealth.

Plaintiff further prays that the court enjoin Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope, from allowing additional sewer connections to the systems serving Green Acres, Gateway, Blandville, Fieldmont and Holifield subdivisions.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET



CHARLES W. KURTZ
Department of Law
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601
(502) 564-5576

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

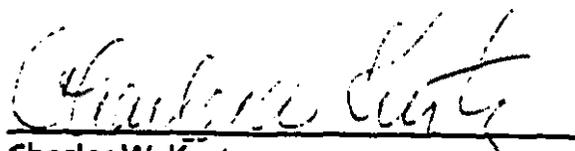
I hereby certify that a true and accurate copy of the foregoing NOTICE AND MOTION FOR INJUNCTIVE RELIEF was mailed, postage pre-paid, to the following this the 11th day of November, 1989:

Steve Pope, Process Agent
Cardinal Utilities, Inc.
P.O. Box 7766
Paducah, Kentucky 42002-7766

Ms. Lorainne P. Kimbrell
901 North 32nd Street
Paducah, Kentucky 42001

Steve Pope
901 North 32nd Street
Paducah, Kentucky 42002-0610

Joe L. Wallace
Process Agent
Jiffy Mart Fine Foods, Inc.
Route 1, Massac Church Road
Paducah, Kentucky 42001



Charles W. Kurtz

FILED

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL ACTION NO. 89-CI-0046
DIVISION NO. II
FRANKLIN CIRCUIT COURT
JANICE MARSHALL, CLERK

COMMONWEALTH OF KENTUCKY,
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

ORDER

CARDINAL UTILITIES, INC.
LORRAINE P. KIMBRELL,
STEVE POPE,
JIFFY MART FINE FOODS, INC.
d/b/a SOUTHERN PRIDE TRUCK PLAZA

DEFENDANT

* * * * *

This matter came on to be heard on January 31, 1989, on the Plaintiff's motion for injunctive relief. The parties were present with counsel and were heard.

The Parties agree and present to the Court that the six (6) sewage treatment facilities operated by Defendants, Cardinal Utilities, Inc., Lorraine P. Kimbrell and Steve Pope, serving Fieldmont Subdivision, Green Acres Subdivision and Blandville West Subdivision, McCracken County, Golden Acres Subdivision and Gateway Subdivision, Marshall County, and Holifield Heights, Graves County, are discharging inadequately treated wastewater into the waters of the Commonwealth of Kentucky.

The parties further agree that the discharge from the six (6) facilities exceeds Kentucky Pollutant Discharge Elimination System (KPDES) permit limits and there have been no discharge monitoring reports filed for the facilities for the third quarter of 1988.

The Court being sufficiently advised:

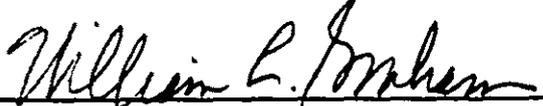
ORDERS Cardinal Utilities, Inc., Lorraine Kimbrell and Steve Pope, to perform the repair and maintenance necessary to the six (6) facilities to ensure that the discharge is within KPDES permit limits on or before March 2, 1989.

The Court hereby issues a Temporary Injunction enjoining and prohibiting any additional sewer connections in the areas served by Green Acres, Gateway, Blandville West, Fieldmont and Holifield Heights until further Orders of this Court.

IT IS FURTHER ORDERED that Cardinal Utilities, Steve Pope, and Lorraine Kimbrell shall perform all repair and maintenance necessary at the six (6) facilities to ensure that there are no future spills or discharges of untreated wastewater from the facilities into the waters of the Commonwealth and Defendants are ordered to sample and submit discharge monitoring reports as required by the KPDES permits.

All matters included in the Verified Complaint, Defendants' Answer, Counterclaim and Crossclaim not

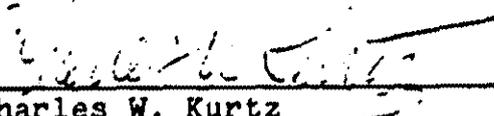
addressed in this Order are reserved for future adjudication by this Court.



Judge, Franklin Circuit Court

AGREED TO:

David K. Ullerich
233 North Seventh Street
Paducah, Kentucky 42001



Charles W. Kurtz
Department of Law
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

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