

Sewer Gas: Indiana Court of Appeals Addresses Issues Associated with Homeowner's Damage Claims

Arkansas Environmental, Energy, and Water Law Blog



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Raymond Kerr ("Kerr") filed a Complaint against the City of South Bends Indiana alleging that noxious gases from its sewer line had been forced into his home.

Kerr's complaint included claims of nuisance, trespass, negligence, and inverse condemnation.

The Indiana Court of Appeals addressed various issues included whether Kerr's claims were barred by the statute of limitations. See *Kerr v. City of South Bend*, 2015 WL 9315632 (Dec. 23, 2015).

The Indiana Tort Claims Act ("ITCA") limits the potential liability of governmental entities and public employees by imposing a statute of limitations and a notice requirement upon any party seeking to bring a cause of action under its provisions. All claims regarding injury to property are generally limited to no more than 180 days prior to the claimant's filing of notice of tort claim.

Should actions for injury to a person arise, however, Indiana requires that the suit "be commenced within (2) years after the cause of action accrues." In clarifying the notice requirement of the ITCA, the Indiana Supreme Court noted that the crucial consideration is whether the notice supplied by the claimant of his intent to take legal action contained sufficient information for the city to ascertain the full nature of the claim against it so that it could determine its liability and prepare a defense. The Court also clarified that mere actual knowledge of an occurrence, even when coupled with routine investigation, does not constitute substantial compliance.

In *Kerr*, the Court of Appeals of Indiana considered a case brought against the City of South Bend for negligently maintaining ethanol waste that was continuously released into the sewer system and caused the spread of foul odors and pollution. As for whether or not the claimant had filed his case within the statute of limitations, the Court held that the period began anew each time gases entered the claimant's home but that the notice provisions of the ITCA effectively limited potential recovery.

The Court allowed the claimant to seek recovery for the loss of the use and enjoyment of his property beginning only 180 days prior to the filing of notice of his tort claim. Any additional recovery was barred because the City had not been made aware that the claimant had planned to file a claim against it and was not given the opportunity to ascertain the nature of the claim or prepare a defense in advance of the filing.

As such, in pursuing a cause of action under the ITCA, the statute of limitations period begins anew each time gas enters a location, and the city or governmental entity that will be a party to the claim must have

notice that the claimant intends to file a legal action and have the opportunity to ascertain the nature of the claim and prepare a defense prior to the filing. Finally, a claimant will be limited to losses occurring no more than 180 days before he filed notice of his tort claim when seeking damages for injury to property.

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