

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SCOTT MAYER, )  
 )  
 Complainant, )  
 )  
 vs. ) PCB 2011-022  
 )  
 LINCOLN PRAIRIE WATER COMPANY, )  
 KORTE & LUITJOHAN CONTRACTORS, INC., )  
 and MILANO & GRUNLOH ENGINEERS, LLC. )  
 )  
 Respondents. )

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STATE OF ILLINOIS  
Pollution Control Board

**LINCOLN PRAIRIE WATER COMPANY'S MOTION TO DISMISS  
PURSUANT TO TITLE 35, SECTION 103.212(b)**

Now comes the respondent, Lincoln Prairie Water Company, by and through its attorneys, Campbell, Black, Carnine, Hedin, Ballard & McDonald, P.C., and hereby moves the Illinois Pollution Control Board to dismiss the Complaint of the complainant, Scott Mayer, pursuant to Section 103.212(b) of Title 35 of the General Provisions of the Pollution Control Act, for the reason that the Complaint is duplicative and frivolous as that term is defined in Title 35, Subtitle A, Chapter 1, Section 101.202; in support of said motion, respondent states as follows:

1. The allegations of the Complaint before this Board do not state a cause of action because the facts contained therein make it clear that there is no violation of the Illinois EPA, despite the conclusions in the complainant's Complaint.

2. As set out in the Complaint, the respondent, Korte & Luitjohan, on behalf of the respondent, Lincoln Prairie Water Company, installed a water main along an easement on the property owned by the complainant, "shredded into various sized pieces, a telephone cable. (¶ 6).

3. As is elsewhere asserted in the complainant's Complaint, "the pieces of wire, aluminum plastic coating were. . . bulldozed into the trench." (¶ 7).

4. Finally, as further asserted in the complainant's Complaint, the area in question was subsequently planted and harvested in corn. (¶¶ 8-9).

5. It was not until after the field was tilled following the corn harvest that the complainant noticed "pieces of wire, aluminum and plastic coating in the easement."

6. In other words, the materials described in the complainant's Complaint are components of a telephone cable which was in the ground prior to the arrival of the respondent, Korte & Luitjohan Contractors, Inc., and which was placed back in the ground (albeit in a different condition) after the work was done.

7. After the materials were placed back into the ground, it was possible to utilize the ground, and, in fact, the complainant admits to having utilized it in order to grow corn on the property.

8. As a matter of law, the components of telephone cable do not create an environmentally dangerous condition and are not pollutants.

9. The complainant admits as much by asserting that they constitute "non-hazardous, uncontaminated materials."

### **NO OPEN DUMPING**

10. That the complainant complains in Count I (¶ 23) against Korte & Luitjohan Contractors, Inc. that the respondents violated Section 21 of the Environmental Protection Act by engaging in "open dumping" of waste, including "general construction or demolition debris as defined in Section 3.160 of the Act."

11. That the facts asserted in the Complaint make it clear that the respondents did not engage in open dumping at all. Open dumping is defined in the Act as:

“Consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill,” 415 ILCS 5/3.305 (2006).

12. There is no allegation, and there has been no consolidation of refuse from one or more sources at a disposal site of any kind.

### **NO WASTE**

13. The Complaint itself contains the language which it asserts represents a violation: the definition of general construction debris is cited at ¶ 25 of Count I of the complainant’s Complaint, repeated and realleged in the other counts.

14. That that paragraph itemizes what constitutes construction or demolition debris, and specifically states that the definition of construction or demolition debris is “limited to” the itemized materials. Telephone wire is not one of those itemized materials, and therefore, the materials do not constitute general construction debris or demolition debris.

15. In short, the prohibition against open dumping has nothing whatever to do with this property, and the materials generated do not constitute general construction or demolition debris as defined in Section 3.160(a) of the Act.

### **DUPLICATIVE LITIGATION**

16. This cause of action is duplicative of other pending litigation, in that the identical acts are complained of in a lawsuit on file in the Circuit Court of Shelby County, Illinois in Case Number 2008-L-5. The respondent, Korte & Luitjohan Contractors, Inc., has previously attached the

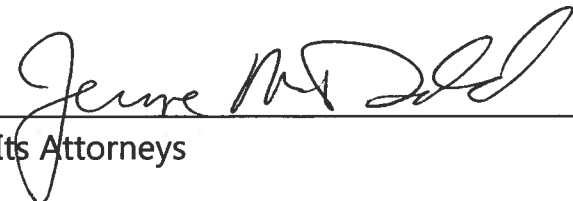
Complaint and Third-Amended Complaint of Scott Mayer as exhibits to its Motion To Dismiss, and this respondent adopts those exhibits as a part of its Motion To Dismiss. The claim in the pending Complaint before the Illinois Pollution Control Board and the claim as asserted in Shelby County are identical. Mayer's Complaint has been pending in Shelby County since February 11, 2008 and is still currently pending.

17. The respondent, Korte & Luitjohan Contractors, Inc., through its attorneys, have filed a Memorandum In Support of its Motion To Dismiss. The Motion To Dismiss of Korte & Luitjohan Contractors, Inc. and Lincoln Prairie Water Company are in essence identical, and, instead of cluttering the record, Lincoln Prairie Water Company adopts the Memorandum In Support Of Motion To Dismiss Pursuant To Title 35, Section 103.212(b) filed by Korte & Luitjohan Contractors, Inc. as its Memorandum In Support of its own Motion To Dismiss.

WHEREFORE, the respondent, Lincoln Prairie Water Company, prays that the Complaint of Scott Mayer be dismissed and that the respondent, Lincoln Prairie Water Company, recover its costs.

Lincoln Prairie Water Company, Respondent

CAMPBELL, BLACK, CARNINE, HEDIN,  
BALLARD & McDONALD, P.C.

BY   
Its Attorneys

Jerome E. McDonald, ARDC No. 03127456  
CAMPBELL, BLACK, CARNINE, HEDIN,  
BALLARD & McDONALD, P.C.  
108 South 9th Street, P. O. Drawer C  
Mt. Vernon, Illinois 62864  
Telephone: 618-242-3310  
Fax: 618-242-3735  
E-Mail: jmcdonald@illinoisfirm.com

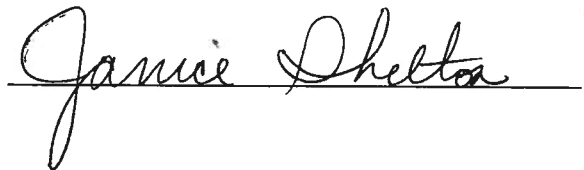
**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing **MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)** was served upon the attorneys of all parties to the above cause by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Box in Mt. Vernon, Illinois, on the 9th day of December, 2010.

Mr. F. James Roytek, III  
Law Office of Roytek, Ltd.  
P.O. Box 746  
Mattoon, IL 61938-0746

Mr. Kirk A. Holman  
Livingston, Barger, Brandt & Schroeder  
115 West Jefferson Street, Suite 400  
Bloomington, IL 61701

Mr. James C. Kearns  
Heyl, Royster, Voelker & Allen  
P.O. Box 129  
Urbana, IL 61803-0129

A handwritten signature in cursive script, reading "Janice Shelton", is written over a horizontal line.

