

06405-R7018
JCK/tlp

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 15 2010

STATE OF ILLINOIS
Pollution Control Board

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

PCB 2011-022

NOTICE OF FILING

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

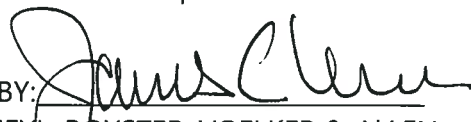
Mr. Jerome E. McDonald
Campbell, Black, Carnine, Hedin,
Ballard & McDonald, P.C.
108 S. 9th Street
P.O. Drawer C
Mt. Vernon, IL 62864

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

PLEASE TAKE NOTICE that I have mailed today to be filed with the Office of the Clerk of the Pollution Control Board, the **MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)**, and **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)**, copies of which are herewith served upon you.

Dated: December 9, 2010

KORTE & LUITJOHAN CONTRACTORS, INC.,
Respondent

BY: 
HEYL, ROYSTER, VOELKER & ALLEN
James C. Kearns

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

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

PCB 2011-022

MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)

NOW COMES the Respondent, KORTE & LUITJOHAN CONTRACTORS, INC., by JAMES C. KEARNS of HEYL, ROYSTER, VOELKER & ALLEN, its attorneys, and hereby moves 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. The Complaint alleges that the Respondent, Korte & Luitjohan, in the course of work on property (installing 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. Although the complained of acts occurred in 2005, it was not until after the field was tilled following the corn harvest in the Fall of 2005 that the Complainant noticed "pieces of wire, aluminum and plastic coating in the easement." (¶ 10).

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, the ground was usable, and in fact the Complainant grew corn on the property.

8. The Complainant admits that the components of telephone cable do not create an environmentally dangerous condition and are not pollutants, asserting that they constitute "non-hazardous, uncontaminated materials."

KORTE & LUITJOHAN DID NOT ENGAGE IN OPEN DUMPING

9. 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."

10. 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).

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

KORTE & LUITJOHAN DID NOT LEAVE WASTE ON COMPLAINANT’S PROPERTY

12. The Complaint itself contains the definition of general construction debris, in ¶ 25 of Count I of the Complainant’s Complaint, repeated and realleged in the other counts.

13. That paragraph identifies particular items of debris that constitute “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.

14. The Complainant’s Complaint alleges violations of both Section 21(a) and 21(p) of the Environmental Protection Act. Both of those sections require, in order that there be a violation, that there be “open dumping.” Likewise, both require that the material which is contained in the open dump be “waste.” The materials involved are not waste and there is no open dump.

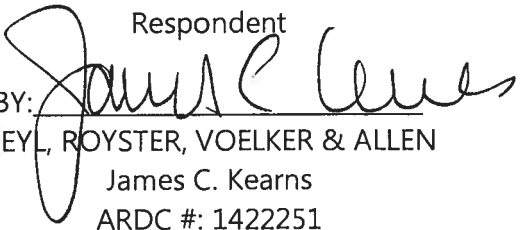
15. In short, the prohibition against open dumping has no applicability to the circumstances here, and the materials generated do not constitute general construction or demolition debris as defined in Section 3.160(a) of the Act, and are not waste.

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. That attached hereto, marked as Exhibits A and B, are the Complaint and Third-Amended Complaint of the Complainant, Scott Mayer, asserting identical causes of action against these Respondents. Said Complaint has been pending since February 11, 2008, and is pending still.

WHEREFORE, the Respondent, KORTE & LUITJOHAN CONTRACTORS, INC., prays that the Complaint of the Complainant, SCOTT MAYER, be dismissed and that Respondent recover its costs in being required to address this.

KORTE & LUITJOHAN CONTRACTORS, INC.,
Respondent

BY: 
HEYL, ROYSTER, VOELKER & ALLEN
James C. Kearns
ARDC #: 1422251

HEYL, ROYSTER, VOELKER & ALLEN
Suite 300, 102 East Main Street
P.O. Box 129
Urbana, IL 61803-0129
Telephone: 217.344.0060
Facsimile: 217.344.9295

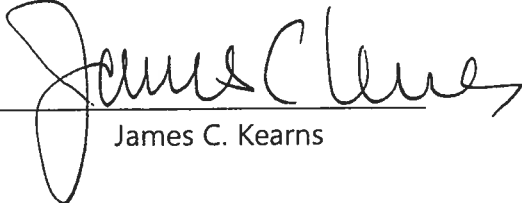
PROOF OF SERVICE

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 Urbana, Illinois, on the 9th day of December, 2010.

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

Mr. Jerome E. McDonald
Campbell, Black, Carnine, Hedin, Ballard &
McDonald, P.C.
108 S. 9th Street
P.O. Drawer C
Mt. Vernon, IL 62864

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


James C. Kearns

IN THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL CIRCUIT OF ILLINOIS
SHELBY COUNTY, SHELBYVILLE, ILLINOIS

SCOTT MAYER and ROSE ELAINE
MAYER, As Successor Trustee
of the ROSCOE HAMILTON and
BEATRICE M. HAMILTON Trust
dated March 24, 1972.

Plaintiffs,

v.

LINCOLN PRAIRIE WATER COMPANY,
KORTE & LUITJOHAN CONTRACTORS,
INC., and MILANO & GRUNLOH
ENGINEERS, LLC,

Defendants.

Case No. 08-L-5

FILED

FEB 11 2008

Susan Arthur
Clerk of the Circuit Court, Fourth Judicial Circuit
Shelby County, IL

COMPLAINT

Now come the Plaintiffs, Scott Mayer and Rose Elaine Mayer,
As Successor Trustee of the Roscoe Hamilton and Beatrice M.
Hamilton Trust dated March 24, 1972, and as their Complaint
against the Defendants, Lincoln Prairie Water Company, Korte &
Luitjohan Contractors, Inc., and Milano & Grunloh Engineers, LLC
state as follows:

COUNT I
(Contract)

1. The Plaintiffs are the owners of real estate whose legal
description is as follows:

The Southeast Quarter (SE 1/4) of the
Southwest Quarter (SW 1/4) and the West Half
(W 1/2) of the West Half (W 1/2) of the West Half
(W 1/2) of Southeast Quarter (SE 1/4), all in
Section Thirty-four (34), Township Twelve

COPY

EXHIBIT A

(12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois.

2. At all times relevant, Plaintiffs used the aforesaid real estate to grow crops.

3. On or about April 15, 2005, Plaintiffs and Defendant, Lincoln Prairie Water Company, entered into a written agreement prepared by Defendant, and entitled "Right of Way Easement," a copy of which is attached hereto and marked "Plaintiffs' Exhibit 1".

4. After entering into the aforesaid agreement, Defendant, Lincoln Prairie Water Company, through its agents, Korte & Luitjohan Contractors, Inc., and Milano & Grunloh Engineers, LLC, began trenching across the south side of the above described real estate, lying adjacent to, and parallel with and north of an existing road with said trench running approximately three-eighths (3/8) mile.

5. In the course of said trenching, Defendant, Lincoln Prairie Water Company, cut through a section of gas line; left an open hole in the field where said gas line was cut; and, shredded into various sized pieces, a telephone cable running the length of said trench, leaving pieces of wire in the field.

6. Defendant, Lincoln Prairie Water Company, has refused to repair the aforesaid damage and refused to clean the pieces of wire from the field.

7. As a direct and proximate result of the aforesaid

trenching, Plaintiffs have been damaged in that approximately 3.8 acres of the aforesaid real estate has been contaminated with pieces of telephone cable; a portion of the hay crop grown on said property has been contaminated with pieces of telephone cable; and the gas line has been contaminated in that it has become filled with water and dirt.

Wherefore, Plaintiffs seek judgment on their behalf and against the Defendant, Lincoln Prairie Water Company, in the amounts as follows: \$612,500.00 to put the acreage in the condition it was prior to contamination; \$18,000.00 for the contamination of a portion of the 2007 hay crop; \$4,800.00 per year as lost income for each year after 2007 until the contamination is remedied; \$3,264.00 for the cost of replacement of the damaged gas line, together with costs of this suit.

COUNT II

(Business Transactions Act)

1, 2, 3, 4, 5 & 6. Plaintiff incorporate paragraphs 1 through 6 of Count I of this Complaint as paragraphs 1 through 6 of this Count II.

7. In the course of refusing to repair the aforesaid damage and clean the pieces of wire from the field, Defendant, Lincoln Prairie Water Company through its agents, Bill Teichmiller and Jeff White, have advised the Plaintiffs as follows:

Defendant, Lincoln Prairie Water Company will pay for the repair of the natural gas service line by Ameren but Ameren will not repair the

line; that Defendant will have a service technician pickup visible fragments when the field is worked; that Defendant is not responsible for any damage as it has a hold harmless agreement with Korte & Luitjohan Contractors, Inc.

8. As a direct and proximate result of the aforesaid trenching, Plaintiffs have been damaged in that approximately 3.8 acres of the aforesaid real estate has been contaminated with pieces of telephone cable; a portion of the hay crop grown on said property has been contaminated with pieces of telephone cable; the gas line has been contaminated in that it has become filled with water and dirt; and, Plaintiffs have incurred attorney fees in prosecuting this matter.

9. This Count II is made pursuant to the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1).

Wherefore, Plaintiffs seek judgment on their behalf and against the Defendant, Lincoln Prairie Water Company, in the amounts as follows: \$612,500.00 to put the acreage in the condition it was prior to contamination; \$18,000.00 for the contamination of the portion of the 2007 hay crop; \$4,800.00 per year as lost income for each year after 2007 until the contamination is remedied; \$3,246.00 for the cost of replacement of the damaged gas line, together with costs of this suit and attorney fees to be summarily taxed.

COUNT III
(Reckless Disregard)

1. The Plaintiffs are the owners of real estate whose legal description is as follows:

The Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) and the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of Southeast Quarter (SE 1/4), all in Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois.

2. At all times relevant, Plaintiffs used the aforesaid real estate to grow crops.

3. On or about April 15, 2005, Defendant, Korte & Luitjohan Contractors, Inc., through its employees and agents, began trenching across the south side of the above described real estate, lying adjacent to, and parallel with and north of an existing road with said trench running approximately three-eighths (3/8) mile.

4. Prior to the trenching of Plaintiffs' field, Defendant, Korte & Luitjohan Contractors, Inc., through its employees and agents, had trenched two other fields directly west of the Plaintiffs' field where in said fields, they trenched through and shredded telephone cable making such shredded cable visible above the surfaces of the two other fields.

5. Prior to the trenching of Plaintiffs' field, the employees and agents of Defendant, Korte & Luitjohan Contractors, Inc., were made aware of and were further advised of the location of buried telephone cable in Plaintiffs' field in addition to

being made aware of and advised of the location of a gas line in Plaintiffs' field, in addition to being advised that they should not cut either.

6. In the course of said trenching, Defendant, Korte & Luitjohan Contractors, Inc., knowingly and without regard for the consequences, cut and shredded into various sized pieces, a telephone cable running the length of said trench, leaving pieces of wire in the field for a distance of three-eighths (3/8) mile in addition to cutting a gas line.

7. As a direct and proximate result of the aforesaid trenching, Plaintiffs have been damaged in that approximately 3.8 acres of the aforesaid real estate has been contaminated with pieces of telephone cable; and, the gas line has been contaminated in that it has become filled with water and dirt.

Wherefore, Plaintiffs seek judgment on their behalf and against the Defendant, Korte & Luitjohan Contractors, Inc., in the amounts as follows: \$612,500.00 to put the acreage in the condition it was prior to contamination; and, \$3,264.00 for the cost of replacement of the damaged gas line, together with costs of this suit.

COUNT IV
(Punitive Damages)

1, 2, 3, 4, 5, 6 & 7. Plaintiffs incorporate paragraphs 1 through 7 of Count III of this Complaint as paragraphs 1 through 7 of this Count IV.

Wherefore, Plaintiff prays for judgment against Defendant in the sum of \$1,000,000.00 for and as exemplary damages, in order to deter Defendant and others from such oppressive conduct in the future.

COUNT V

(Negligent Misrepresentation)

1. The Plaintiffs are the owners of real estate whose legal description is as follows:

The Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) and the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of Southeast Quarter (SE 1/4), all in Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois.

2. At all times relevant, Plaintiffs used the aforesaid real estate to grow crops.

3. At all times relevant, Defendant, Milano & Grunloh Engineers, LLC, was in the business of providing information to individuals, concerning trenching and compensation for any damages that may result from said trenching.

4. On or about April 15, 2005, Defendant, Milano & Grunloh Engineers, LLC, through its agent, Lee R. Beckman, represented to the Plaintiffs that if Plaintiffs entered into a written agreement entitled "Right of Way Easement," a copy of which is attached hereto and marked "Plaintiffs' Exhibit 1," with Lincoln Prairie Water Company, that Plaintiffs would be compensated for any damages related to trenching work done on the aforesaid

property.

5. Based upon the representation of Defendant, Milano & Grunloh Engineers, LLC, Plaintiffs entered into the aforesaid agreement with Lincoln Prairie Water Company.

6. After entering into said agreement, Lincoln Prairie Water Company through its agents, Korte & Luitjohan Contractors, Inc., and Milano & Grunloh Engineers, LLC, began trenching across the south side of the above described real estate, lying adjacent to, and parallel with and north of an existing road with said trench running approximately three-eighths (3/8) mile.

7. In the course of said trenching, Lincoln Prairie Water Company, cut through a section of gas line; left an open hole in the field where said gas line was cut; and, shredded into various sized pieces, a telephone cable running the length of said trench, leaving pieces of wire in the field.

8. As a direct and proximate result of the aforesaid trenching, Plaintiffs have been damaged in that approximately 3.8 acres of the aforesaid real estate has been contaminated with pieces of telephone cable; the gas line has been contaminated in that it has become filled with water and dirt; a portion of the hay crop grown in the field has become contaminated with wire; and, the business reputation of the Plaintiffs has been diminished due to the contaminated crop.

9. Plaintiffs have not been compensated for the aforesaid

B

damage.

Wherefore, Plaintiffs seek judgment on their behalf and against the Defendant, Milano & Grunloh Engineers, LLC, wherefore, in the amounts as follows: \$612,500.00 to put the acreage in the condition it was prior to contamination; \$18,000.00 for the contamination of a portion of the 2007 hay crop; \$4,800.00 per year as lost income for each year after 2007 until the contamination is remedied; \$3,264.00 for the cost of replacement of the damaged gas line; \$5,000.00 for damage to business reputation, together with costs of this suit.

COUNT VI

(Reckless Disregard)

1. The Plaintiffs are the owners of real estate whose legal description is as follows:

The Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) and the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of Southeast Quarter (SE 1/4), all in Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois.

2. At all times relevant, Plaintiffs used the aforesaid real estate to grow crops.

3. On or about April 15, 2005, Defendant, Milano & Grunloh Engineers, LLC, directed and supervised Korte & Luitjohan Contractors, Inc., through its employees and agents, in trenching across the south side of the above described real estate, lying adjacent to, and parallel with and north of an existing road with

said trench running approximately three-eighths (3/8) mile.

4. Prior to the trenching of Plaintiffs' field, Defendant, Milano & Grunloh Engineers, LLC, had directed and supervised Korte & Luitjohan Contractors, Inc., through its employees and agents, in trenching two other fields directly west of the Plaintiffs' field where in said fields, Korte & Luitjohan Contractors, Inc., trenched through and shredded telephone cable making such shredded cable visible above the surfaces of the two other fields.

5. Prior to the trenching of Plaintiffs' field, the employees and agents of Defendant, Milano & Grunloh Engineers, LLC, were made aware of and were further advised of the location of buried telephone cable in Plaintiffs' field in addition to being made aware of and advised of the location of a gas line in Plaintiffs' field, in addition to being advised that they should not cut either.

6. In the course of said trenching, Defendant, Milano & Grunloh Engineers, LLC, knowingly and without regard for the consequences, directed and supervised the cutting and shredding into various sized pieces, a telephone cable running the length of said trench, leaving pieces of wire in the field for a distance of three-eighths (3/8) mile in addition to cutting a gas line.

7. As a direct and proximate result of the aforesaid

trenching, Plaintiffs have been damaged in that approximately 3.8 acres of the aforesaid real estate has been contaminated with pieces of telephone cable; and, the gas line has been contaminated in that it has become filled with water and dirt.

Wherefore, Plaintiffs seek judgment on their behalf and against the Defendant, Milano & Grunloh Engineers, LLC, in the amounts as follows: \$612,500.00 to put the acreage in the condition it was prior to contamination; \$3,264.00 for the cost of replacement of the damaged gas line, together with costs of this suit.

COUNT VII
(Punitive Damages)

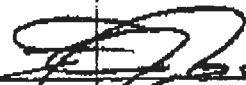
1, 2, 3, 4, 5, 6 & 7. Plaintiffs incorporate paragraphs 1 through 7 of Count VI of this Complaint as paragraphs 1 through 7 of this Count VII.

Wherefore, Plaintiffs pray for judgment against Defendant, Milano & Grunloh Engineers, LLC, in the sum of \$1,000,000.00 for and as exemplary damages, in order to deter Defendant and others from such oppressive conduct in the future.

Dated: January 24, 2008.

SCOTT MAYER and ROSE ELAINE
MAYER, As Successor Trustee
Of the Roscoe Hamilton and
Beatrice M. Hamilton Trust
Dated March 24, 1972

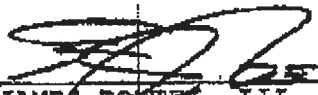
ROYTEK, LTD.



F. JAMES ROYTEK, III, Attorney
for Plaintiffs

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury on all issues in this cause.



F. JAMES ROYTEK, III

F. James Roytek, III
Roytek, Ltd.
921 Broadway
P.O. Box 746
Mattoon, IL 61938-0746

Telephone: 217/234-3132

217-234-3135

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PRINTABLE
SCOTT MAYER

PAGE 14
PAGE 01/02

Form FMM-IL 442-20
(8-25-03)
(REVISED 07-25-03)
#500711 (Windsor)

SHELBY COUNTY, ILLINOIS
NO. 05-1429
FILED APR 30 2005
AT 10:30 AM
Kathy A. Kelly RECORDER

(Space above this line for recording data.)

RIGHT OF WAY EASEMENT

In consideration of good and valuable consideration delivered to ROSE ELAINE MAYER, as Successor Trustee of the Roscoe Hamilton and Beatrice M. Hamilton Trust dated March 24, 1972, and SCOTT MAYER, as their respective interest may appear, (the "Grantor") by LINCOLN PRAIRIE WATER COMPANY, an Illinois not for profit corporation (the "Grantee"), the receipt and sufficiency of which is hereby acknowledged by the Grantor, the Grantor does hereby grant and convey unto the Grantee, its successors and assigns, a permanent, exclusive easement with the right to erect, construct, install, and lay, and thereafter use, operate, inspect, repair, maintain, abandon, replace, and remove underground water lines and above and below ground appurtenances thereto (the "Improvements") over, in, under, through and across the following described real estate:

The Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) and the West Half (W 1/2) of the West Half (W 1/2) of the West Half (W 1/2) of the Southeast Quarter (SE 1/4), all in Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois;

together with the right of ingress and egress over the adjacent land of the Grantor, its successors and assigns, for the purpose of this easement.

This easement shall be:

A 20 foot wide permanent easement across the South side of the above described property, lying adjacent to, parallel with and Northerly of the existing road right-of-way; together with a 6 foot wide temporary construction easement lying adjacent to, parallel with and Northerly of the above described permanent easement (the "Easement Area"). ABOVE OR BELOW THE 10" FIELD TILE, NOT TO BE CUT.

The consideration hereinabove recited shall constitute payment in full for any damages to the real estate of the Grantor, its successors and assigns, by reason of the initial

PLAINTIFFS' EXHIBIT 1

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PRINDABLE
SCOTT MAYER

PAGE 15
PAGE 02/02

construction and installation of the improvements; provided, however, that Grantee shall pay Grantor reasonable damages to Grantor's growing crops or other personal property of the Grantor caused by Grantee by reason of the initial construction and installation of the improvements, or during the operation, reconstruction, inspection, relocation, replacement, maintenance or removal of the improvements. The Grantor shall place no permanent building or structure within or over the Easement Area or the improvements as finally constructed in any manner that may damage the improvements or restrict the operation, maintenance, repair or replacement of the improvements or the Easement Area. Grantor shall not deny or impair the Grantee access to the Easement Area or the improvements for purposes of operation, maintenance, repair, or replacement thereof. During periods of construction, installation, maintenance, repair and/or replacement of said improvements, the Grantee shall have exclusive use of the Easement Area for the reasons stated herein. All materials or equipment used in the construction, installation, operation, maintenance, repair or replacement of the improvements, and all surplus soil and debris excavated in the course thereof, may be transported to or from and be used and stored upon the Easement Area; provided, however, that the Grantee shall remove from the Easement Area all surplus soil and debris resulting from any such activity, and shall reseed and reasonably restore the Easement Area to approximately that grade that existed prior to construction within a reasonable time after completion of construction. The Grantee shall be privileged to remove structures, personal property, sod, trees, bushes, shrubs and plants of any kind, which are on any part of the Easement Area or interfere with the construction, installation, operation, maintenance, repair or replacement of the improvements. This easement shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 15th day of April, 2008.

Scott Mayer
SCOTT MAYER

Rose Elaine Mayer
ROSE ELAINE MAYER, as Successor
Trustee of the Roscoe Hamilton and
Beatrice M. Hamilton Trust dated March
24, 1972

051427

IN THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL CIRCUIT OF ILLINOIS
SHELBY COUNTY, CHARLESTON, ILLINOIS

SCOTT MAYER and ROSE ELAINE
MAYER, As Successor Trustee
of the ROSCOE HAMILTON and
BEATRICE M. HAMILTON Trust
dated March 24, 1972,

Plaintiffs,

v.

LINCOLN PRAIRIE WATER COMPANY,
KORTE & LUITJOHAN CONTRACTORS,
INC., MILANO & GRUNLOH
ENGINEERS, LLC and LEE R.
BECKMAN,

Defendants.

Case No. 08-L-5

FILED

FEB 11 2008

Susan Artman
Clerk of the Circuit Court, Fourth Judicial Circuit
Shelby County, IL

AFFIDAVIT AS TO AMOUNT OF DAMAGES

STATE OF ILLINOIS)
) SS
COUNTY OF COLES)

Now comes the Affiant, F. JAMES ROYTEK, III, having been duly sworn upon his oath, and upon personal knowledge deposes and states as follows:

1. That I am an attorney licensed to practice law in the State of Illinois and under no legal disability for the purposes of executing this Affidavit.
2. That I have reviewed the facts related to the claims made in this cause and it is my opinion that the damages sought are in excess of \$50,000.00.
3. That if called and sworn, I would testify to the same as contained in this Affidavit.

Affiant sayeth not.


F. JAMES ROYTEK, III

COPY

Subscribed and sworn to before
me, February 7, 2008.

[Handwritten Signature]
Notary Public

OFFICE SEAL
LAURA S. BECKER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 5/8/2010

F. James Roytek, III
Roytek, Ltd.
921 Broadway
P.O. Box 746
Mattoon, IL 61938-0746

Telephone: 217/234-3132

IN THE CIRCUIT COURT
FOR THE FOURTH JUDICIAL CIRCUIT OF ILLINOIS
SHELBY COUNTY, SHELBYVILLE, ILLINOIS

SCOTT MAYER and ROSE ELAINE)
MAYER, As Successor Trustee)
of the ROSCOE HAMILTON and)
BEATRICE M. HAMILTON Trust)
dated March 24, 1972,)

Plaintiffs,)

v.)

Case No. 08-L-5

LINCOLN PRAIRIE WATER COMPANY,)
KORTE & LUITJOHAN CONTRACTORS,)
INC., MILANO & GRUNLOH)
ENGINEERS, LLC, CONSOLIDATED)
COMMUNICATIONS, INC., and)
ILLINOIS CONSOLIDATED TELEPHONE)
COMPANY,)

Defendants.)

THIRD AMENDED COMPLAINT

Now comes the Plaintiff, Scott Mayer, and as his Third Amended Complaint against the Defendants, Lincoln Prairie Water Company, Korte & Luitjohan Contractors, Inc., Milano & Grunloh Engineers, LLC, Consolidated Communications, Inc., and Illinois Consolidated Telephone Company, states as follows:

COUNT I
(Contract)

Plaintiff incorporates Count I of original Complaint as Count I of Third Amended Complaint.

COUNT II
(Business Transactions Act)

Count II of original Complaint was voluntarily withdrawn at

hearing held June 3, 2008.

COUNT III
(Reckless Disregard)

Plaintiff incorporates Count III of original Complaint as Count III of Third Amended Complaint.

COUNT IV
(Punitive Damages)

Plaintiff incorporates Count IV of original Complaint as Count IV of Third Amended Complaint.

COUNT V
(Negligent Misrepresentation)

Count V of original Complaint was voluntarily withdrawn at hearing held June 3, 2008.

COUNT VI
(Reckless Disregard)

Plaintiff incorporates Count VI of First Amended Complaint as Count VI of Third Amended Complaint.

COUNT VII
(Punitive Damages)

Plaintiff incorporates Count VII of First Amended Complaint as Count VII of Third Amended Complaint.

COUNT VIII
(Contract)

1. The Plaintiff, Scott Mayer, is an owner of real estate whose legal description is as follows:

The Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) and the West Half (W ½) of the West Half (W ½) of the West Half (W ½) of Southeast Quarter (SE 1/4), all in

Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois.

2. At all times relevant, Plaintiff, Scott Mayer, used the aforesaid real estate to grow crops.

3. On or about May 18, 1973, Illinois Consolidated Telephone Company entered into a "Right of Way Permit," a copy of which is attached hereto and marked "Plaintiffs' Exhibit 2".

4. Defendant, Illinois Consolidated Telephone Company has failed to comply with the terms of "Right of Way Permit" as follows:

A. Prior to April 11, 2005, Defendant, Illinois Consolidated Telephone Company, placed two separate cables across the aforesaid property which run parallel, west to east.

B. Prior to April 11, 2005, Defendant, Illinois Consolidated Telephone Company, discontinued use of and abandoned the north of the aforesaid cables.

C. On April 11, 2005, a "Joint Utility Locating Information" request was made by Gary Pugh, agent for Korte & Luitjohan Construction, Inc., with regard to the aforesaid real estate.

D. Defendant, Illinois Consolidated Telephone Company, has refused to locate the north of the aforesaid cables when a "Joint Utility Locating Information" request is made as it is the policy of Defendant, Illinois Consolidated Telephone Company, to not flag or locate cable no longer used and abandoned.

E. That in the course of trenching the aforesaid field and as a result of failing to locate the north of the aforesaid cables, the

cable has been cut into small pieces and spread onto and into the aforesaid real estate.

F. Defendant, Illinois Consolidated Telephone Company, has not paid for damage to growing crops arising from the pieces of cable being spread onto and into the field and thereafter into the hay grown on the field.

5. Plaintiff and his predecessors have done all things required of them by "Right of Way Permit".

6. As a direct and proximate result of the Defendant's, Illinois Consolidated Telephone Company, failure to comply with the terms of the "Right of Way Permit," Plaintiff has been damaged in that he has lost \$18,000.00 as a result of the contamination of a portion of the 2007 hay crop; and, \$4,800.00 per year as lost income for each year after 2007 until the contamination is remedied.

Wherefore, Plaintiff prays for judgment against Defendant, Illinois Consolidated Telephone Company, in the sum of \$18,000.00; and, \$4,800.00 per year as lost income for each year after 2007 until the contamination is remedied, together with costs of this suit.

COUNT IX
(Reckless Disregard)

1. Plaintiff, Scott Mayer, is an owner of real estate whose legal description is as follows:

The Southeast Quarter (SE 1/4) of the
Southwest Quarter (SW 1/4) and the West Half

(W ½) of the West Half (W ½) of the West Half (W ½) of Southeast Quarter (SE 1/4), all in Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois.

2. At all times relevant, Plaintiff used the aforesaid real estate to grow crops.

3. At all times relevant, Defendant, Consolidated Communications, Inc., knew there were two telephone cables on the aforesaid property which ran west to east and parallel with one another.

4. On or about April 11, 2005, a "Joint Utility Locating Information" request was made by a Gary Pugh, agent for Korte & Luitjohan Construction, Inc., with regard to the aforesaid real estate.

5. On or about April 11, 2005 and pursuant to the aforesaid request, representatives of Defendant, Consolidated Communications, Inc., flagged or located the south of the aforesaid two telephone cables.

6. On or about April 11, 2005, representatives of Defendant, Consolidated Communications, Inc., did not flag or locate the north of the aforesaid two telephone cables as said telephone cable was not in use and had been abandoned.

7. At all times relevant, it was the policy of Consolidated Communications, Inc., to not have its representatives flag or locate telephone cable that is not in use or has been abandoned.

8. On or about April 15, 2005, Korte & Luitjohan Contractors, Inc., through its employees and agents, began trenching across the above described real estate, running the right tract of its trenching machine across the flagged portion of the south of the aforesaid two telephone cables.

9. In the course of said trenching, Korte & Luitjohan Contractors, Inc., cut and shredded into various sized pieces, the north of the aforesaid two telephone cables, leaving pieces of wire in the field for a distance of three-eighths (3/8) mile.

10. As a direct and proximate result of the aforesaid failure to mark the north of the aforesaid two telephone cables, Plaintiff was damaged in that approximately 3.8 acres of the aforesaid real estate became contaminated with pieces of telephone cable.

11. The cost associated with removing the contamination from the aforesaid 3.8 acres is \$612,500.00.

Wherefore, Plaintiff seeks judgment on his behalf and against the Defendant, Consolidated Communications, Inc., in the amount of \$612,500.00 to put the acreage in the condition it was prior to contamination, together with costs of this suit.

COUNT X
(Punitive Damages)

1, 2, 3, 4, 5, 6, 7, 8, 9, 10 & 11. Plaintiff incorporates paragraphs 1 through 11 of Count IX of this Third Amended Complaint as paragraphs 1 through 11 of this Count X.

Wherefore, Plaintiff pray for judgment against Defendant, Consolidated Communications, Inc., in the sum of \$1,000,000.00 for and as exemplary damages, in order to deter Defendant and others from such oppressive conduct in the future.

COUNT XI
(Reckless Disregard)

1. Plaintiff, Scott Mayer, is an owner of real estate whose legal description is as follows:

The Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) and the West Half (W ½) of the West Half (W ½) of the West Half (W ½) of Southeast Quarter (SE 1/4), all in Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois.

2. At all times relevant, Plaintiff used the aforesaid real estate to grow crops.

3. At all times relevant, Defendant, Illinois Consolidated Telephone Company, knew there were two telephone cables on the aforesaid property which ran west to east and parallel with one another.

4. On or about April 11, 2005, a "Joint Utility Locating Information" request was made by a Gary Pugh, agent for Korte & Luitjohan Construction, Inc., with regard to the aforesaid real estate.

5. On or about April 11, 2005 and pursuant to the aforesaid request, representatives of Defendant, Illinois Consolidated Telephone Company, flagged or located the south of the aforesaid

two telephone cables.

6. On or about April 11, 2005, representatives of Defendant, Illinois Consolidated Telephone Company, did not flag or locate the north of the aforesaid two telephone cables as said telephone cable was not in use and had been abandoned.

7. At all times relevant, it was the policy of Illinois Consolidated Telephone Company, to not have its representatives flag or locate telephone cable that is not in use or has been abandoned.

8. On or about April 15, 2005, Korte & Luitjohan Contractors, Inc., through its employees and agents, began trenching across the above described real estate, running the right tract of its trenching machine across the flagged portion of the south of the aforesaid two telephone cables.

9. In the course of said trenching, Korte & Luitjohan Contractors, Inc., cut and shredded into various sized pieces, the north of the aforesaid two telephone cables, leaving pieces of wire in the field for a distance of three-eighths (3/8) mile.

10. As a direct and proximate result of the aforesaid failure to mark the north of the aforesaid two telephone cables, Plaintiff was damaged in that approximately 3.8 acres of the aforesaid real estate became contaminated with pieces of telephone cable.

11. The cost associated with removing the contamination

from the aforesaid 3.8 acres is \$612,500.00.

Wherefore, Plaintiff seeks judgment on his behalf and against the Defendant, Illinois Consolidated Telephone Company, in the amount of \$612,500.00 to put the acreage in the condition it was prior to contamination, together with costs of this suit.

COUNT XII
(Punitive Damages)

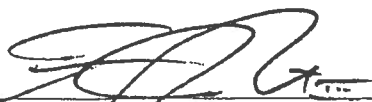
1, 2, 3, 4, 5, 6, 7, 8, 9, 10 & 11. Plaintiff incorporates paragraphs 1 through 11 of Count XI of this Third Amended Complaint as paragraphs 1 through 10 of this Count XII.

Wherefore, Plaintiff pray for judgment against Defendant, Illinois Consolidated Telephone Company, in the sum of \$1,000,000.00 for and as exemplary damages, in order to deter Defendant and others from such oppressive conduct in the future.

Dated: December 2, 2008.

SCOTT MAYER, Plaintiff

ROYTEK, LTD.



F. JAMES ROYTEK, III, Attorney
for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury on all issues in this cause.



F. JAMES ROYTEK, III

F. James Roytek, III
Roytek, Ltd.
921 Broadway
P.O. Box 746
Mattoon, IL 61938-0746

Telephone: 217/234-3132

SHELBY COUNTY, ILLINOIS
NO. 05-1429
FILED APR 20, 2005
AT 10:20 Am
Kathy A. Kelly RECORDER

(Space above this line for recording data.)

RIGHT OF WAY EASEMENT

In consideration of good and valuable consideration delivered to ROSE ELAINE MAYER, as Successor Trustee of the Roscoe Hamilton and Beatrice M. Hamilton Trust dated March 24, 1972, and SCOTT MAYER, as their respective interest may appear, (the "Grantor") by LINCOLN PRAIRIE WATER COMPANY, an Illinois not for profit corporation (the "Grantee"), the receipt and sufficiency of which is hereby acknowledged by the Grantor, the Grantor does hereby grant and convey unto the Grantee, its successors and assigns, a permanent, exclusive easement with the right to erect, construct, install, and lay, and thereafter use, operate, inspect, repair, maintain, abandon, replace, and remove underground water lines and above and below ground appurtenances thereto (the "Improvements") over, in, under, through and across the following described real estate:

The Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) and the West Half (W1/2) of the West Half (W1/2) of the West Half (W1/2) of the Southeast Quarter (SE1/4), all in Section Thirty-four (34), Township Twelve (12) North, Range Five (5) East of the Third Principal Meridian, Shelby County, Illinois;

together with the right of ingress and egress over the adjacent land of the Grantor, its successors and assigns, for the purpose of this easement.

This easement shall be:

A 20 foot wide permanent easement across the South side of the above described property, lying adjacent to, parallel with and Northerly of the existing road right-of-way; together with a 5 foot wide temporary construction easement lying adjacent to, parallel with and Northerly of the above described permanent easement (the "Easement Area"). ABOVE OR BELOW THE 10" FIELD TILE, NOT TO BE CUT.

The consideration hereinabove recited shall constitute payment in full for any damages to the real estate of the Grantor, its successors and assigns, by reason of the initial

construction and installation of the Improvements; provided, however, that Grantee shall pay Grantor reasonable damages to Grantor's growing crops or other personal property of the Grantor caused by Grantee by reason of the initial construction and installation of the Improvements; or during the operation, reconstruction, inspection, relocation, replacement, maintenance or removal of the Improvements. The Grantor shall place no permanent building or structure within or over the Easement Area or the Improvements as finally constructed in any manner that may damage the Improvements or restrict the operation, maintenance, repair or replacement of the Improvements or the Easement Area. Grantor shall not deny or impair the Grantee access to the Easement Area or the Improvements for purposes of operation, maintenance, repair, or replacement thereof. During periods of construction, installation, maintenance, repair and/or replacement of said improvements, the Grantee shall have exclusive use of the Easement Area for the reasons stated herein. All materials or equipment used in the construction, installation, operation, maintenance, repair or replacement of the Improvements, and all surplus soil and debris excavated in the course thereof, may be transported to or from and be used and stored upon the Easement Area; provided, however, that the Grantee shall remove from the Easement Area all surplus soil and debris resulting from any such activity, and shall reseed and reasonably restore the Easement Area to approximately that grade that existed prior to construction within a reasonable time after completion of construction. The Grantee shall be privileged to remove structures, personal property, sod, trees, bushes, shrubs and plants of any kind, which are on any part of the Easement Area or interfere with the construction, installation, operation, maintenance, repair or replacement of the Improvements. This easement shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 15th day of April, 2005.

Scott Mayer
SCOTT MAYER

Rose Elaine Mayer
ROSE ELAINE MAYER, as Successor
Trustee of the Roscoe Hamilton and
Beatrice M. Hamilton Trust dated March
24, 1972

RIGHT OF WAY PERMIT

Permit Number _____

Received of ILLINOIS CONSOLIDATED TELEPHONE COMPANY Five Dollars (\$ 5.00), in consideration of which the undersigned hereby grant unto said Company, its successors and assigns, the right, privilege, and authority to construct, operate, maintain, replace and remove a communication system consisting of such underground cables, wires, conduit, splicing boxes, surface terminals, markers, and other appurtenances, as the grantee may from time to time require upon, over, under and across the property which the undersigned own or in which the undersigned have any interest in the

SOUTHWEST 1/4 OF SECTION 33, AND SOUTH 1/2

of Section 34, Township 12-N, Range 5-E, County Shelby, Illinois, and upon, over, under and across the public roads, streets and highways, on or adjoining said property, including the following further rights: of ingress and egress over and across said property for the purpose of exercising the rights herein granted; to clear and keep cleared such trees, roots, brush and other obstructions from the surface and subsurface as may be required; and to carry in said system the wires, circuits and appurtenances of any other company.

ILLINOIS CONSOLIDATED TELEPHONE COMPANY agrees to pay for any damage to fences, drain tile and growing crops arising from the construction and maintenance of the aforesaid system.

The communication system shall be installed not more than 6 FEET ~~one (1) rod~~ from the highway right of way line and any structures which are above the ground shall be installed on the said highway right of way line.

Witness _____ hand _____ and seal _____, this 17TH day of MAY A.D. 1973.

Witness Harold M Davis _____ Rose Hamilton Zwick (SEAL)

Witness _____ (SEAL)

Witness _____ (SEAL)

PAYMENT INFORMATION:

Draft No. 2755

Date MAY 17, 1973

Amount \$ 10.00

Issued By Harold M Davis

Approved _____

Job No. WINDSOR W.O. #88

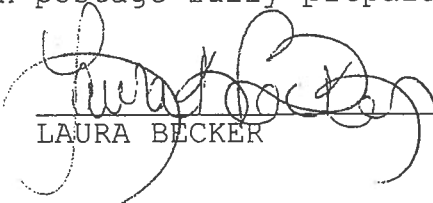
Exchange or Toll Route _____

FILED FOR RECORD Aug 21 1973 AT 9:30 A.M. Windsor

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
) SS
COUNTY OF COLES)

The undersigned certifies that on April 23, 2009, she served upon Milano & Grunloh Engineers, LLC c/o Mr. Kirk A. Holman, Livingston, Barger, Brandt & Schroeder, Attorneys at Law, P.O. Box 3457, Bloomington, IL 61702-3457; Lincoln Prairie Water Company c/o Mr. Jerry McDonald, Campbell, Black, Carnine, Hedin, Ballard & McDonald, P.C., Attorneys at Law, P.O. Drawer C, Mt. Vernon, IL 62864; Korte & Luitjohan Contractors, Inc., c/o Mr. James C. Kearns, Heyl, Royster, Voelker & Allen, P.O. Box 129, Urbana, IL 61803-0129; and Consolidated Communications, Inc., c/o Mr. R. Sean Hocking, Craig & Craig, Attorneys at Law, P.O. Box 689, Mattoon, IL 61938-0689, a copy of the foregoing Third Amended Complaint, by depositing a true copy thereof in a United States Post Office Box, enclosed in an envelope, plainly addressed to the above-named person, at the above address, with postage fully prepaid.

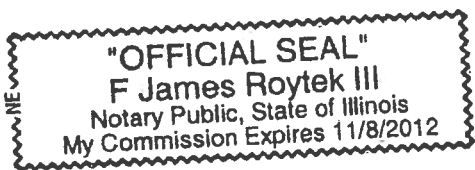


LAURA BECKER

Subscribed and sworn to before
me, April 23, 2009.



Notary Public



06405-R7018
JCK/tlp

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 15 2010

STATE OF 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.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)**

I. INTRODUCTION

The Complainant's Complaint pleads violations of the Illinois Environmental Protection Act, in that he asserts various violations of Section 21(a) of the Act (415 ILCS 5/21(a)), in which it is asserted that these Respondents caused or allowed "open dumping" of "waste." As the facts in the Complainant's own Complaint make clear, this Respondent – and indeed all Respondents – are not guilty of open dumping, and the material involved was not waste. Additionally, there is ongoing litigation about the damages, if any, suffered by the Complainant as a consequence of the alleged activity of this Respondent.

II. THERE WAS NO OPEN DUMPING

As alleged in the Complaint, while digging a trench, this Respondent dug up and shredded a buried telephone cable; portions of that buried telephone cable were returned to the ground when the trench was filled in. Following that, the Complainant grew corn on the property.

This is not open dumping.

Open dumping, as defined in the statute at 415 ILCS 5/3.305 (2006) is:

“Consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.”

The acts described in the Complainant’s Complaint do not constitute consolidation of refuse from one or more sources. Respondents simply placed back in the ground telephone wire that was in the ground when they began the project.

Attached to this Memorandum as Exhibits A, B and C, are three publications taken from the Illinois EPA website which relate to open dumps, and which illustrate the inapplicability of that concept to the facts set out in the Complaint. Exhibit A describes open dumps as “piles of household garbage, bags of yard waste, appliances, old barrels, used tires, or demolition debris such as lumber, shingles, pipes and asbestos.” It goes on to say that, “Open dumping can threaten the health of humans, wildlife and the environment.” Exhibits B and C define open dumping similarly. There are numerous photographs illustrating open dumps. It is inconceivable that open dumping, as defined in the statute and as explained further in the brochures issued by the IEPA, could include replacing preexisting telephone wire into a trench when the trench is refilled with the dirt that came from that trench.

In short, if there is no open dumping, there is no violation of Section 21(a) of the Act.

It is noted, of course, that the Complainant also cites to Section 21(p) of the Act. Section 21(p) of the Act, however, specifically states that it is a specific example of Section 21(a) and requires that there be open dumping before Section 21(p) comes into play. Inasmuch as there is no Section 21(a) violation, there is no Section 21(p) violation, either.

III. THE MATERIAL INVOLVED WAS NOT WASTE

The Complainant also asserts that the telephone wire is "construction or demolition debris," and asserts that there is a violation of Section 21(p)(7)(i) of the Act. This is incorrect.

General construction or demolition debris, is defined in Section 3.160(a) of the Act, and (as quoted in the Complainant's Complaint) consists of:

"Non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair and demolition of utilities, **limited to the following**: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings' plaster; drywall; plumbing fixtures' non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials." (Emphasis added)

Section 3.160 limits the definition of construction debris to specific materials, which do not include telephone wire. The materials are itemized and the statute by its own definition limits itself to those items. If the material involved is not one of those items, it is not general construction or demolition debris. Telephone wire is not included in that list, and it is not, therefore, construction or demolition debris. Even if there was open dumping of the telephone wire which, as stated above, it clearly is not, it would not be open dumping of general construction or demolition debris.

In addition, the telephone wire is not a material "resulting from the construction, remodeling, repair and demolition of utilities, structures and roads." It is telephone wire that was in the ground when the project began, and is in the ground now that the project has been completed. There is nothing about the source of general construction or demolition debris as defined in Section 3.160 that applies to that telephone wire.

Although the Complainant has not argued this in his Complaint, the wire is not "clean construction or demolition debris," either. As the statute notes:

"Clean construction or demolition debris means 'uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities.'"

Nothing in that definition applies to telephone wire.

Even if one could argue that this material was construction debris, it is not waste:

"Clean construction or demolition debris shall not be considered 'waste' if it is (1) used as fill material outside of a setback zone if the fill is placed no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area, and if covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling."

Here, following the completion of the project, the Complainant planted and grew corn on the property. There is simply no basis for asserting that Section 21(p) was violated in any way.

If the dirt and telephone wire which were placed back in the trench are neither clean construction nor demolition debris, or general construction or demolition debris as defined in the Act, what are they? They are, as defined in Section 3.160(c) of the Act, uncontaminated soil.

Section (c) states:

"'Uncontaminated soil' means soil that does not contain contaminants in concentrations that compose a threat to human health and safety and the environment."

As pointed out in Section 3.160(c)(2): "Uncontaminated soil shall not be considered waste."

The tiny pieces of telephone wire are contaminants – see 415 ILCS 5/3.165; however, they now pose no more of a threat to human health and safety or the environment than they did before Korte & Luitjohan dug and filled in the trench on the Mayer property.

In short, not only was there no open dumping, the material involved was not waste. The Environmental Protection Act does not apply.

IV. ANOTHER LAWSUIT PENDING

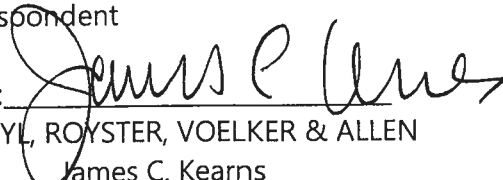
The genesis of this Complaint before the Pollution Control Board is the Complainant's (to date unsuccessful) attempts to prosecute a lawsuit against the Respondents in state court in Shelby County. That suit remains pending, and as can be seen by the exhibits attached to the Respondent's Motion to Dismiss, is based upon identical facts. Both the Environmental Protection Act and Illinois law forbid splitting one's cause of action and bringing two separate claims in two separate jurisdictions for what is in essence the same activity. That, too, is a basis for dismissal of this claim.

V. CONCLUSION

Title 35, Subtitle A, Chapter 1, Section 103.202(b) defines actions such as this one as "frivolous." This lawsuit is indeed frivolous. There is absolutely no basis in law or fact to claim that Respondents caused environmental damage by leaving telephone wire in the ground that was already there, and there is no more basis for imposing liability under the Environmental Protection Act against these Respondents than there would be for imposing it against the telephone company for putting the wire in the ground in the first place.

The Respondent respectfully requests that this Complaint be dismissed, and that Complainant bear the costs of this litigation.

KORTE & LUITJOHAN CONTRACTORS, INC.,
Respondent

BY: 
HEYL, ROYSTER, VOELKER & ALLEN
James C. Kearns
ARDC #: 1422251

HEYL, ROYSTER, VOELKER & ALLEN
Suite 300, 102 East Main Street
P.O. Box 129
Urbana, IL 61803-0129
Telephone: 217.344.0060
Facsimile: 217.344.9295

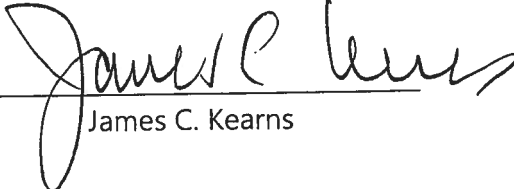
PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing MEMORANDUM IN SUPPORT OF 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 Urbana, Illinois, on the 9th day of December, 2010.

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

Mr. Jerome E. McDonald
Campbell, Black, Carnine, Hedin, Ballard & McDonald, P.C.
108 S. 9th Street
P.O. Drawer C
Mt. Vernon, IL 62864

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


James C. Kearns

Illinois EPA Regional Offices

IEPA Headquarters –
Springfield
217/785-8604

Region 1 – Rockford
815/987-7760

Region 2 - Des Plaines
847/294-4000

Region 3 – Peoria
309/693-5462

Region 4 – Champaign
217/278-5800

Region 5 – Springfield
217/786-6892

Region 6 – Collinsville
618/346-5120

Region 7 – Marion
618/993-7200



For more information call or write to:




Illinois Environmental Protection Agency
Bureau of Land
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/785-8604

Printed on recycled paper
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12-06 500 35339
IISG07-547



State of Illinois
Rod R. Blagojevich, Governor

Illinois Environmental Protection Agency



I-RID

**Illinois Removes
Illegal Dumps**

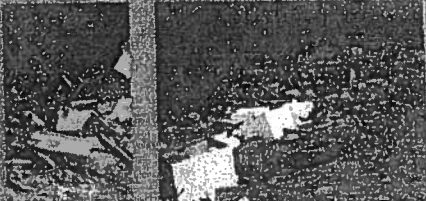


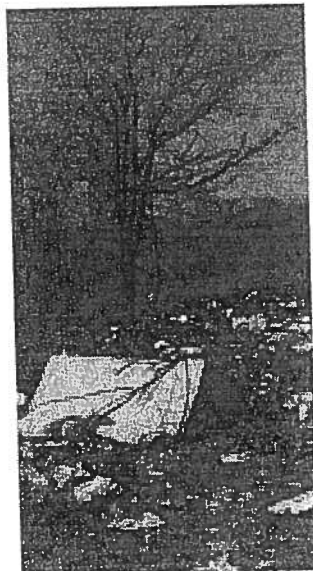
EXHIBIT A

Open Dumps



Open dumps are piles of household garbage, bags of yard waste, appliances, old barrels, used tires, or demolition debris such as lumber, shingles, pipes and asbestos. Open dumping can threaten the health of humans, wildlife, and the environment. Open dumps can be found in urban, suburban, and rural

areas throughout the state heaped at the bottom of ravines, in abandoned lots and empty pastures, or along roads. An open dump is an illegal waste disposal site and should not be confused with a permitted municipal solid waste landfill or a recycling facility. If allowed to remain, open dumps often grow larger, and may attract dumping of both solid and hazardous wastes.



Open Dumping is Prohibited by Law

Open dumps create a public nuisance, divert land from more productive uses, and depress the value of surrounding land.

Open dumps pose the following health, safety, and environmental threats:

Region 1	815-987-7760
Region 2	847-294-4000
Region 3	309-693-5462
Region 4	217-333-8361
Region 5	217-786-6892
Region 6	618-346-5120
Region 7	618-993-7200

the open dump site would qualify for a clean up funded by the I-RID program.

What if I discover open dumping on my property?

Report open dumping to local law enforcement authorities or the local health department immediately.

Protect yourself against future open dumping:

- Put up barriers (locked cables and gates) to prevent physical access to the property.
- Post warning signs such as "NO DUMPING" or "NO TRESPASSING".
- Clean up dump sites immediately so as not to encourage others to dump.
- Notify local law enforcement and health departments as well as keep a log book. Record the date, time and description of what is dumped, and which authorities you notified each time you found signs of dumping.
- Ask local law enforcement officials to patrol the problem area more frequently.
- Alert adjoining property owners of the open dumping problem and enlist their help in a neighborhood watch program.

The dumper and generators of the waste are liable and subject to enforcement action. Further, the land owner has a duty to prevent open dumping and to clean up any pollution on his/her property. The I-RID program was initiated to clean up orphan dump sites and abandoned piles of waste. Significant measures to prevent future open dumping will be obligatory at all sites cleaned up under the I-RID program.

- Decrease in the quality of life to nearby residents and the local community
- Damage to plant and wildlife habitats
- Contamination of drinking water
- Contamination of soil and groundwater
- Contamination of streams, rivers, and lakes
- Disease carried by mosquitoes, flies, and rodents
- Injury to children playing on or around the dump site
- Inhalation of toxic gases
- Fire and explosion

Causing or allowing open dumping is illegal, and may result in substantial penalties. Any of the following seven conditions at a dump site can result in the issuance of an Administrative Citation:

- Litter
- Scavenging
- Open burning
- Placement of waste in standing or flowing water
- Promoting an increase of disease-carrying organisms
- Standing or flowing liquid discharge from the dump site
- Dumping of clean or general construction or demolition debris



I-RID can help fund a clean up in your area!

I-RID (Illinois Removes Illegal Dumps) is an initiative that will provide the largest state funding in history to clean up orphan open dump sites. In an effort to facilitate the removal of waste and prevention of future open dumping, the Illinois EPA started this program to facilitate the removal of waste and the prevention of future dumping on the following types of properties:

- State lands
- County government properties
- Local municipality or township lands
- Abandoned properties
- Public lands
- Public Right-of-Way
- Park or Natural Areas
- Environmental Justice Areas
- Privately owned lands with up to 20 cubic yards of waste



The IEPA may undertake a consensual removal action for the removal of up to 20 cubic yards of waste at no cost to the owner of the property. However, IEPA has restricted private land clean ups to those sites where fly dumping has occurred, sites bought by owners who were unaware of dumping on the property, or sites owned by individuals with severe

illness or financial difficulties. When more than 20 cubic yards of waste is present, a partnership between IEPA and the property owner may be the best solution.

The I-RID program was initiated to clean up *orphan* dump sites and *abandoned* piles of waste. Essentially, the land owner has a duty to prevent open dumping and to clean up any pollution on their property. The dumper is also liable for open dumping and is subject to enforcement action. The generator of the waste that is illegally dumped is also responsible. If a clean up is ordered on private lands due to a threat to human and environmental health, IEPA may attempt to recover the costs of the clean up from the property owner.

In some cases the IEPA may spend up to \$50,000 at any *single* site in response to open dumping. The IEPA may spend more if the General Assembly appropriates the funds or if the Director determines that the open dumping poses an imminent endangerment to public health or the environment.

Report Open Dumping to Your Local Authorities

Local law enforcement and public health officials have a duty to enforce open dumping laws. Counties and municipalities may impose additional penalties for open dumping. In the case of a fly dump site or an abandoned pile of waste, IEPA can use the I-RID funds to remove the waste and install preventative measures such as cables, signs, and barricades to impede future dumping.

Local authorities have the advantage of being close to the open dump sites and can immediately respond to complaints and can:

- Investigate to find evidence of the persons responsible for the open dumping
- Require an immediate clean up of the area
- Levy their own local fines for open dumping
- Issue citations or notices to appear in court
- Report the site to the Illinois EPA as an I-RID candidate
- Patrol the problem area after the I-RID clean up



Inspection Delegation Agreements

The Illinois EPA has established delegation agreements with 19 Illinois counties and the City of Chicago. These units of local government have agreed to conduct inspections. To find out if you live in a delegated area, contact your Illinois EPA Regional Office.

Individuals living in non-delegated counties are encouraged to contact the Illinois EPA inspector in the field office serving your area. They can help you determine if


www.epa.state.il.us

Pat Quinn, Governor

Open Dumps

I-RID (Illinois Removes Illegal Dumps)

Open Dumps

(I-RID Brochure) ↗

Open dumps are piles of household garbage, bags of yard waste, appliances, old barrels, used tires, or demolition debris such as lumber, shingles, pipes and asbestos. Open dumping can threaten the health of humans, wildlife, and the environment. Open dumps can be found in urban, suburban, and rural areas throughout the state heaped at the bottom of ravines, in abandoned lots and empty pastures, or along roads. An open dump is an illegal waste disposal site and should not be confused with a permitted municipal solid waste landfill or a recycling facility. If allowed to remain, open dumps often grow larger, and may attract dumping of both solid and hazardous wastes.

I-RID can help fund a clean up in your area!

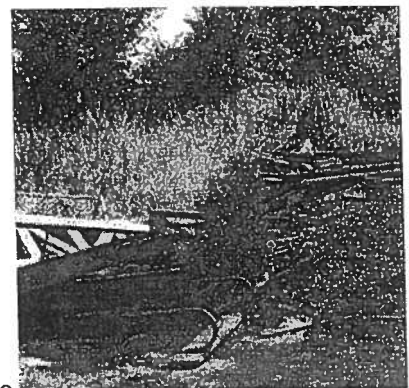
I-RID (Illinois Removes Illegal Dumps) is an initiative that will provide the largest state funding in history to clean up orphan open dump sites. The Illinois EPA started this program to facilitate the removal of waste and prevent future dumping on the following types of properties:

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- Privately owned lands with up to 20 cubic yards of waste

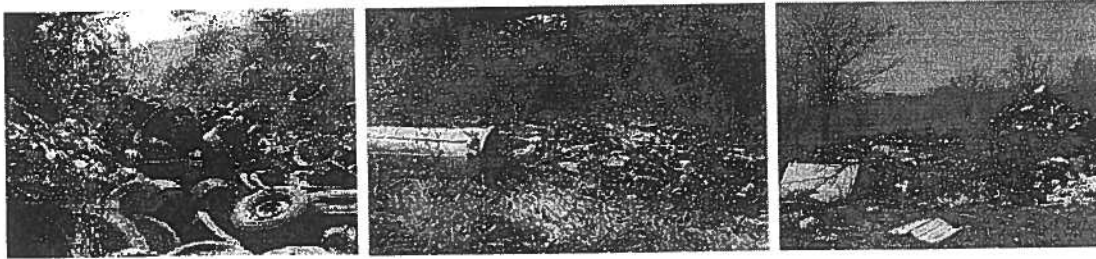
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The I-RID program was initiated to clean up *orphan* dump sites and *abandoned* piles of waste. Essentially, the land owner has a duty to prevent open dumping and to clean up any pollution on their property. The dumper is also liable for open dumping and is subject to enforcement action. The generator of the waste that is illegally dumped is also responsible. If a clean up is ordered on private lands due to a threat to human and environmental health, Illinois EPA may attempt to recover the costs of the clean up from the property owner.

In some cases the Illinois EPA may spend up to \$50,000 at any *single* site in response to open dumping. The Illinois EPA may spend more if the General Assembly appropriates the funds or if

EXHIBIT B

the Director determines that the open dumping poses an imminent endangerment to public health or the environment.



Report Open Dumping to Your Local Authorities

Local law enforcement and public health officials have a duty to enforce open dumping laws. Counties and municipalities may impose additional penalties for open dumping. In the case of a fly dump site or an abandoned pile of waste, Illinois EPA can use the I-RID funds to remove the waste and install preventative measures such as cables, signs, and barricades to impede future dumping. Local authorities have the advantage of being close to the open dump sites and can immediately respond to complaints and can:

- Investigate to find evidence of the persons responsible for the open dumping
- Require an immediate clean up of the area
- Levy their own local fines for open dumping
- Issue citations or notices to appear in court
- Report the site to the Illinois EPA as an I-RID candidate
- Patrol the problem area after the I-RID clean up

Inspection Delegation Agreements

not publicly available
OPEN DUMP CHECKLIST

The Illinois EPA has established delegation agreements with 19 Illinois counties and the City of Chicago. These units of local government have agreed to conduct inspections. To find out if you live in a delegated area, contact your Illinois EPA Regional Office.

Illinois EPA Regional Offices
 IEPA Headquarters - Springfield
 217/785-8604

Region 1 - Rockford
 815/987-7760

Region 2 - Des Plaines
 847/294-4000

Region 3 - Peoria
 309/693-5462

Region 4 - Champaign
 217/278-5800

Region 5 - Springfield
 217/786-6892



Diana Caslock

shelby co. does not have delegation agreement

557-8761

Region 6 – Collinsville
618/346-5120

Region 7 – Marion
618/993-7200

Individuals living in non-delegated counties are encouraged to contact the Illinois EPA inspector in the field office serving your area. They can help you determine if the open dump site would qualify for a clean up funded by the I-RID program.

What if I discover open dumping on my property?

Report open dumping to local law enforcement authorities or the local health department immediately.

To protect yourself against future open dumping:

- Put up barriers (locked cables and gates) to prevent physical access to the property.
- Post warning signs such as "NO DUMPING" or "NO TRESPASSING".
- Clean up dump sites immediately so as not to encourage others to dump.
- Notify local law enforcement and health departments as well as keep a log book. Record the date, time and description of what is dumped, and which authorities you notified each time you found signs of dumping.
- Ask local law enforcement officials to patrol the problem area more frequently.
- Alert adjoining property owners of the open dumping problem and enlist their help in a neighborhood watch program.

The dumper and generators of the waste are liable and subject to enforcement action. Further, the landowner has a duty to prevent open dumping and to clean up any pollution on his/her property. The I-RID program was initiated to clean up orphan dump sites and abandoned piles of waste. Significant measures to prevent future open dumping will be obligatory at all sites cleaned up under the I-RID program.



Pat Quinn, Governor

Bureau of Land

Open Dumps

Report Open Dumping!

Abandoned piles of household garbage, bags of yard waste, appliances, old barrels, used tires, and demolition debris such as lumber, shingles, pipes and asbestos can threaten the health of humans, wildlife, and the environment. Known as open dumps, these sites can be found throughout Illinois -- heaped at the bottom of ravines, in empty lots and pastures, and along roadsides. An open dump is an illegal waste disposal site and should not be confused with a permitted municipal solid waste landfill or a recycling facility. If allowed to remain, open dumps often grow larger, and may attract dumping of both solid and hazardous wastes.



Open dumps pose the following health, safety, and environmental threats:

- Fire and explosion
- Inhalation of toxic gases
- Injury to children playing on or around the dump site
- Disease carried by mosquitoes, flies, and rodents
- Contamination of streams, rivers and lakes
- Contamination of soil and groundwater
- Contamination of drinking water
- Damage to plant and wildlife habitats
- Decrease in the quality of life to nearby residents and the local community

Open dumps create a public nuisance, divert land from more productive uses, and depress the value of surrounding land.

Open Dumping Is Prohibited by Law!

Causing or allowing open dumping is illegal, and may result in substantial penalties. Any of the following seven conditions at a dump site can result in the issuance of an Administrative Citation:

- Litter
- Scavenging
- Open burning
- Placement of waste in standing or flowing water
- Promoting an increase of disease-carrying organisms
- Standing or flowing liquid discharge from the dump site
- Deposition of construction or demolition debris



An Administrative Citation carries a \$1,500 penalty for a first offense and a \$3,000 penalty for a second or subsequent offense. A citation can be issued for any condition observed during every Illinois EPA inspection until the violation is resolved. In addition to an Administrative Citation, the

EXHIBIT C

state can pursue criminal charges and confiscate profits and vehicles that result from, or are used to carry out, open dumping.

I-RID can help fund a clean up in your area!

I-RID (Illinois Removes Illegal Dumps) is an initiative that will provide the largest state funding in history to clean up orphan open dump sites. The Illinois EPA started this program to facilitate the removal of waste and prevent future open dumping.

Report Open Dumping to Your Local Authorities!

Local law enforcement and public health officials have a duty to enforce open dumping laws. Counties and municipalities may impose additional penalties for open dumping.

Local authorities have the advantage of being close to the crime scene and can:

- Investigate to find evidence of the persons responsible for the open dumping
- Require an immediate clean up of the area
- Levy their own local fines for open dumping
- Issue citations or notices to appear in court
- Report the site to the Illinois EPA as an I-RID candidate
- Patrol the problem area after the I-RID clean up

What if I discover open dumping, on my property?

Report open dumping to local law enforcement authorities or the local health department immediately.

Protect yourself against future open dumping:

- Put up barriers (locked cables and gates) to prevent physical access to the property.
- Post warning signs such as "NO DUMPING" or "NO TRESPASSING".
- Clean up dump sites immediately so as not to encourage others to dump.
- Notify local law enforcement and health departments as well as keep a log book. Record the date, time and description of what is dumped, and which authorities you notified each time you found signs of dumping.
- Ask local law enforcement officials to patrol the problem area more frequently.
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The dumper and generators of the waste are liable and subject to enforcement action. Further, the landowner has a duty to prevent open dumping and to clean up any pollution on his/her property. The I-RID program was initiated to clean up orphan dump sites and abandoned piles of waste. Significant measures to prevent future open dumping will be obligatory at all sites cleaned up under the I-RID program.

Acceptable Alternatives to Open Dumping

Garbage

Individuals typically dump garbage from their own households or businesses. This practice carries both environmental and legal risks. The responsible alternative is to hire a company to haul away the garbage. But be careful. Although most garbage disposal and hauling companies comply with environmental laws, not all haulers are reputable. Household garbage is often found in open dumps. Disreputable haulers find that they can make a bigger profit by illegally dumping the garbage rather than paying the disposal fees to the landfills. Regardless of whether the generator of the garbage has contracted with the hauler, the generator can be held responsible for the

garbage if it is illegally disposed.

As a waste generator, take action to reduce your liability:

- Reduce, reuse, and recycle as much of your daily garbage as possible.
- Choose durable, long lasting goods over less expensive, disposable goods.
- Contract with a licensed and reputable waste hauler.
- Always ask for a receipt.

Landscape Waste

Landscape waste has been banned from landfills since July 1, 1990. There are many landscape waste disposal options:

- Leave grass clippings and leaves on the lawn as a nutrient.
- Mulch grass clippings, leaves, and wood chips for lawn and garden application.
- Take landscape waste to a permitted compost facility.
- Participate in community landscape waste collections.
- Construct an on-site, well maintained, household compost bin. Use the compost as a soil amendment.

Used Tires

Tires were banned from landfills on July 1, 1994. More than 12 million tires are scrapped each year in Illinois. Consequently, many are not disposed of properly. Used tire dumps become havens for disease carrying mosquitos, and open burning of tires causes air and water pollution. In addition to its authority to administer citations, the Illinois EPA has the authority to require removal and proper disposal of used tires pursuant to Section 55.3(d) of the Environmental Protection Act. If the recipient of a Section 55.3(d) Notice fails to remove and properly dispose of the used tires, the Illinois EPA can perform the cleanup and then recover the cost of the cleanup plus a fine equal to double the cost of the cleanup in damages.

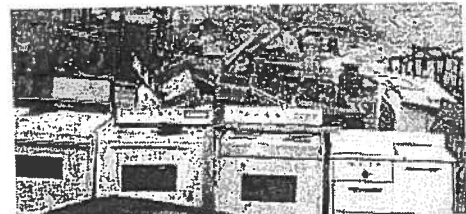


To reduce the risk of used tire dumping:

- Allow your tire retailer to dispose of your used tires for you. Retailers are required by law to accept your old tires, however, they typically charge you a small fee to offset the tire disposal costs.
- Participate in a used tire collection program, if eligible. This program is available to private property owners and farmers on a one time basis. For more information, contact the Illinois EPA's Consensual Removal Agreement Program at 217-785-8604.

White Goods

Items that fall under the classification of "white goods" include refrigerators, freezers, ranges, water heaters, air conditioners, humidifiers, and other similar domestic and commercial large appliances. White goods that have not had their components removed were banned from landfills on July 1, 1994. These components are mercury switches, chlorofluorocarbon (CFC) refrigerant gas (Freon), and polychlorinated biphenyls (PCBs).



The only landfills permitted to receive white goods are those that:

- Participate in the Illinois EPA's Industrial Material Exchange Service;

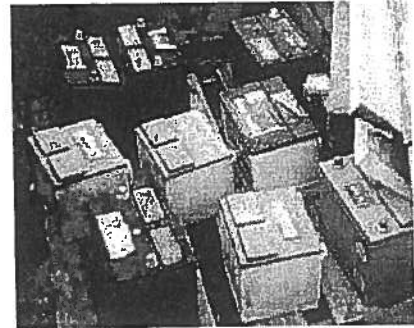
- Remove the white goods components prior to landfilling; and
- Have an Illinois EPA approved operating plan and permit for white goods disposal.

Rather than landfilling the appliance after the white good components are removed, you can arrange to have the appliance hauled to a scrap yard where the metal can be reclaimed.

Lead Acid Batteries

Lead acid motor vehicle batteries were banned from landfills on September 1, 1990.

- Exchange old motor vehicle batteries for new when purchasing a battery. Retailers must accept the old battery in exchange for a new one.
- Sell used motor vehicle batteries to a salvage yard or recycling center.



Motor Oil

Motor oil was banned from landfills on July 1, 1996.

- Save the used oil in a leak-proof container. Some service stations and recycling centers accept used oil.
- Have your oil changed at a service station or a lube center that recycles and properly disposes of used oil.
- Take the used oil to a local Household Hazardous Waste collection.

Do not dump used oil in the street, alleyway, on the ground, down the sewer, or use it for dust control. Doing so can pollute waterways and subject you to substantial penalties.

Household Hazardous Waste

Illinois EPA Household Hazardous Waste collections give people an opportunity to safely rid their homes of unwanted hazardous waste for free. If not disposed of properly, these materials are potentially harmful to the environment:

weed killer * antifreeze * pesticides * paint * drain cleaner * paint thinners * motor oil
 * cleaning products * pool chemicals * gasoline * rodent poisons * asbestos insulation
 * kerosene * tarnish & rust removers * fluorescent light bulbs * thermostats * batteries
 * high intensity discharge light bulbs

The Household Hazardous Waste program is open only to individuals, not industry, business, or agricultural operations. Each year, spring and fall Household Hazardous Waste collections are held throughout the state. In addition, long term collection facilities are in Chicago, Naperville and Rockford. For more information, contact the Illinois EPA's Household Hazardous Waste Program at 217-785-8604.

Universal Wastes

Universal wastes are widely characterized as generated hazardous wastes. This category of wastes includes:

- batteries
- pesticides
- thermostats
- fluorescent light bulbs
- high intensity discharge light bulbs

Although the universal waste management standards are not applicable to household generated wastes, even small quantities of these wastes are a potential threat to the environment if they are not managed properly. To reduce the impact of these wastes on the environment consider these options:

- Use long lasting compact fluorescent bulbs. The use of energy efficient fluorescent lighting is still a good environmental and economic choice.
- Use organic gardening and integrated pest management methods to control lawn, garden and crop pests whenever possible.
- Buy pesticides in only the quantities needed for immediate application.
- Take your household generated hazardous wastes to a local Household Hazardous Waste Collections.

Household Paint and Paint Products

Follow these guidelines when using paint or paint products:

- Use water soluble latex paint.
- Carefully estimate the amount of paint you will need to complete a project.
- Donate usable leftover paint to local churches, housing authorities, or service organizations.
- Drop off old paints, especially those containing lead, mercury or cadmium, at an Illinois EPA Household Hazardous Waste collection or a Partners for Waste Paint Solutions Store. For the nearest Paint Partner Store or Illinois EPA Hazardous waste collection event call 217-785-8604.

Paint thinners, turpentine, mineral spirits and other solvents must not be poured down the drain. Instead consider these alternatives:

- Let used turpentine or mineral spirits sit in a closed container until paint particles settle. Then, pour off the clear liquid into another container for reuse.
- Mix paint residue with unused cat litter, let dry in a well ventilated area and dispose with your household waste at an Illinois EPA permitted landfill.
- Take the unusable solvents to a Household Hazardous Waste collection.

Construction and Demolition Debris

Landfills accept both clean and general construction and demolition debris. CCDD can be disposed of at CCDD disposal sites with interim authorization. The cost is usually about one-tenth of the cost of landfill disposal. It is illegal to open dump either clean or general construction or demolition debris.

Clean construction or demolition debris is defined as uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or dirt or sand generated from construction or demolition activities. Clean construction and demolition debris can be recycled, buried below grade provided it is outside of a groundwater well setback zone, or disposed of in a landfill. If the material is recycled, make sure the recycler is a bona fide recycler; otherwise, the generator, hauler and property owner where the material is placed may be subject to substantial penalties. If buried below grade outside of a groundwater well setback zone, the construction and demolition debris must be covered with sufficient uncontaminated soil to support vegetation within 30 days of the completion of the burial. Broken concrete without protruding metal bars may be used for erosion control.

General construction or demolition debris is defined as non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following:

soil * wall coverings * reclaimed asphalt pavement * rock * plaster * glass * non-hazardous painted wood * drywall * plastics * non-hazardous treated wood * plumbing fixtures * electrical wiring * non-hazardous coated wood * non-asbestos insulation *

bricks * wood products * roofing shingles * concrete * general roof coverings

If recycling general construction or demolition debris, make sure the material is taken only to a recycling facility in compliance with the Environmental Protection Act and regulations; otherwise, the generator, hauler, and property owner where the material is placed may be subject to substantial penalties.

For more information on the recycling of construction and demolition debris, refer to the Illinois Construction and Demolition Site Recycling Guidebook created by the Illinois Department of Commerce and Economic Opportunity (DCEO). To obtain a copy of the guidebook contact DCEO at 217-785-2800.

If you choose to dispose of construction or demolition debris in a landfill make sure the cost of proper disposal is specified in the contractor's bid. As a precaution, get receipts from your contractor.

For more information about construction and demolition debris disposal management, contact the Illinois EPA's Permit Section at 217-524-3300 or your Illinois EPA Regional Field office.

Local Assistance

For local assistance contact your local authorities:

- City Police
- City Public Health Department
- County Sheriff
- County Public Health Department
- State's Attorney

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **NOTICE OF FILING** 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 Urbana, Illinois, on the 9th day of December, 2010.

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

Mr. Jerome E. McDonald
Campbell, Black, Carnine, Hedin, Ballard &
McDonald, P.C.
108 S. 9th Street
P.O. Drawer C
Mt. Vernon, IL 62864

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


James C. Kearns

HEYL, ROYSTER, VOELKER & ALLEN
Suite 300, 102 East Main Street
P.O. Box 129
Urbana, IL 61803-0129
Telephone: 217.344.0060
Facsimile: 217.344.9295