

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RECEIVED
CLERK'S OFFICE

JAN 03 2011

PCB No. 00011-022
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: 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

PLEASE TAKE NOTICE that I have mailed today to be filed with the Office of the Clerk of the Pollution Control Board, three Responses to Motion to Dismiss Pursuant to Title 35, Section 103.212(b), copies of which are herewith served upon you.

Dated: December 30, 2010.

SCOTT MAYER, Complainant

ROYTEK, LTD.

COPY



F. JAMES ROYTEK, III, Attorney
for SCOTT MAYER

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

Telephone: 217/234-2132

RECEIVED
CLERK'S OFFICE

JAN 03 2011

STATE OF ILLINOIS
Pollution Control Board

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

PCB No. 2011-022

RESPONSE TO
MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)
(Lincoln Prairie Water Company)

Now comes the Complainant, Scott Mayer, by his Attorney, F. James Roytek, III of Roytek, Ltd., and as his Response to Motion to Dismiss Pursuant to Title 35, Section 103.212(b), states as follows;

1. Respondent, Lincoln Prairie Water Company, has filed herein, a Motion to Dismiss Pursuant to Title 35, 103.212(b).

OPEN DUMPING

2. In said Motion, Respondent makes reference to section 5/3.305 of the Illinois Environmental Protection Act (415 ILCS 5/3.305) as being a basis for dismissal.

3. Section 3.305 of the Illinois Environmental Protection Act provides as follows:

§ 3.305. Open dumping. "Opening dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

COPY

(414 ILCS 5/3.305).

4. Section 3.385 of the Illinois Environmental Protection Act Provides as follows:

§ 3.385. Refuse. "Refuse" means waste.

(414 ILCS 5/3.385).

5. Paragraph 5/3.160 continues to set forth violations of the act by setting forth the meaning of debris as non-hazardous, uncontaminated materials resulting from: "the construction, remodeling, repair and demolition of utilities;" "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".

6. The fundamental rule of statutory construction is to ascertain and give effect to the intention of the legislature. "The language of the statute is the most reliable indicator of the legislature's objective in enacting a particular law." The words used by the legislature are to be given their plain and ordinary meaning.... People Ex Rel. Madigan v. Lincoln Ltd. 322 Ill. Dec. 56, 61, 62, 383 Ill. App. 3d 198, 890 N.E. 2d 975, 980, 981 (Ill. App. 1 Dist. 2008).

7. Complainant has never alleged that the components of telephone cable do not create an environmentally dangerous condition and are not pollutants, nor has Complainant asserted that they constitute "non-hazardous, uncontaminated materials" as

alleged by Respondent.

TELEPHONE WIRE

8. Respondent further asserts that telephone wire is not one of the itemized materials listed in paragraph 5/3.160 of the Illinois Environmental Protection Act.

9. Paragraph 5/3.160 of the Illinois Environmental Protection Act lists electrical wiring plus other itemized materials alleged in said Complaint.

10. Contrary to what Respondent states in said Motion, Complainant has alleged that Respondent has dumped demolition debris on the real estate owned by Complainant.

DUPLICATIVE LITIGATION

11. Respondent correctly states that there is a pending lawsuit concerning identical acts on file in the Circuit Court of Shelby County, Illinois in Case Number 2008-L-5.

12. In the Shelby County Case, the Court ruled that at common law, the Complainant would only be allowed diminution in value of the real estate as his damages as opposed to the cost of restoration of the real estate.

13. A private right of action is unavailable under Illinois Environmental Protection Act. Neumann v. Carlson Environmental, 429 F. Supp. 2d 946 N.D. Ill. 2006.

14. A person seeking judicial review of decision of administrative agencies cannot do so without first exhausting

remedies within the Administrative agency. Decatur Auto Auction v. Macon county farm Bureau, Inc., 194 Ill. Dec. 487, 490, 255 Ill. App. 3d 679, 627 N.E. 2d 1129, 1132.

15. On October 26, 2010, Attorney for Complainant made argument in the Shelby County Case that Complainant would be prejudiced if he received only diminution in value as his damages as opposed to the cost of restoration of the real estate.

16. On October 26, 2010, the Honorable Bradley T. Paisley in the Shelby County Case, entered an order that Complainant was to file a Complaint with the Illinois Environmental Protection Agency (Illinois Pollution Control Board) within 30 days and that jury trial setting of February 21, 2011 was vacated.

Wherefore, Complaint prays that Motion to Dismiss Pursuant to Title 35, Section 103.212(b) be denied.

Dated: December 29, 2010.

SCOTT MAYER, Complainant

ROYTEK, LTD.



F. JAMES ROYTEK, III, Attorney
for SCOTT MAYER

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

Telephone: 217/234-3132

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JAN 03 2011

STATE OF ILLINOIS
Pollution Control Board

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

PCB No. 2011-022

RESPONSE TO
MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)
(Korte & Luitjohan Contractors, Inc.)

Now comes the Complainant, Scott Mayer, by his Attorney, F. James Roytek, III of Roytek, Ltd., and as his Response to Motion to Dismiss Pursuant to Title 35, Section 103.212(b), states as follows;

1. Respondent, Korte & Luitjohan Contractors, Inc., has filed herein, a Motion to Dismiss Pursuant to Title 35, 103.212(b).

OPEN DUMPING

2. In said Motion, Respondent makes reference to section 5/3.305 of the Illinois Environmental Protection Act (415 ILCS 5/3.305) as being a basis for dismissal.

3. Section 3.305 of the Illinois Environmental Protection Act provides as follows:

§ 3.305. Open dumping. "Opening dumping" means the consolidation of refuse from one or more sources at a disposal site

COPY

that does not fulfill the requirements of a sanitary landfill.

(414 ILCS 5/3.305).

4. Section 3.385 of the Illinois Environmental Protection Act Provides as follows:

§ 3.385. Refuse. "Refuse" means waste.

(414 ILCS 5/3.385).

5. Paragraph 5/3.160 continues to set forth violations of the act by setting forth the meaning of debris as non-hazardous, uncontaminated materials resulting from: "the construction, remodeling, repair and demolition of utilities;" "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".

6. The fundamental rule of statutory construction is to ascertain and give effect to the intention of the legislature. "The language of the statute is the most reliable indicator of the legislature's objective in enacting a particular law." The words used by the legislature are to be given their plain and ordinary meaning.... People Ex Rel. Madigan v. Lincoln Ltd. 322 Ill. Dec. 56, 61, 62, 383 Ill. App. 3d 198, 890 N.E. 2d 975, 980, 981 (Ill. App. 1 Dist. 2008).

7. Complainant has never alleged that the components of telephone cable do not create an environmentally dangerous condition and are not pollutants, nor has Complainant asserted

that they constitute "non-hazardous, uncontaminated materials" as alleged by Respondent.

TELEPHONE WIRE

8. Respondent further asserts that telephone wire is not one of the itemized materials listed in paragraph 5/3.160 of the Illinois Environmental Protection Act.

9. Paragraph 5/3.160 of the Illinois Environmental Protection Act lists electrical wiring plus other itemized materials alleged in said Complaint.

10. Contrary to what Respondent states in said Motion, Complainant has alleged that Respondent has dumped demolition debris on the real estate owned by Complainant.

DUPLICATIVE LITIGATION

11. Respondent correctly states that there is a pending lawsuit concerning identical acts on file in the Circuit Court of Shelby County, Illinois in Case Number 2008-L-5.

12. In the Shelby County Case, the Court ruled that at common law, the Complainant would only be allowed diminution in value of the real estate as his damages as opposed to the cost of restoration of the real estate.

13. A private right of action is unavailable under Illinois Environmental Protection Act. Neumann v. Carlson Environmental, 429 F. Supp. 2d 946 N.D. Ill. 2006.

14. A person seeking judicial review of decision of

administrative agencies cannot do so without first exhausting remedies within the Administrative agency. Decatur Auto Auction v. Macon county farm Bureau, Inc., 194 Ill. Dec. 487, 490, 255 Ill. App. 3d 679, 627 N.E. 2d 1129, 1132.

15. On October 26, 2010, Attorney for Complainant made argument in the Shelby County Case that Complainant would be prejudiced if he received only diminution in value as his damages as opposed to the cost of restoration of the real estate.


16. On October 26, 2010, the Honorable Bradley T. Paisley in the Shelby County Case, entered an order that Complainant was to file a Complaint with the Illinois Environmental Protection Agency (Illinois Pollution Control Board) within 30 days and that jury trial setting of February 21, 2011 was vacated.

Wherefore, Complaint prays that Motion to Dismiss Pursuant to Title 35, Section 103.212(b) be denied.

Dated: December 29, 2010.

SCOTT MAYER, Complainant

ROYTEK, LTD.



F. JAMES ROYTEK, III, Attorney
for SCOTT MAYER

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

Telephone: 217/234-3132

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RECEIVED
CLERK'S OFFICE

JAN 03 2011

PCB No. 2011-022

STATE OF ILLINOIS
Pollution Control Board

RESPONSE TO
MOTION TO DISMISS PURSUANT TO TITLE 35, SECTION 103.212(b)
(Milano & Grunloh Engineers, LLC)

Now comes the Complainant, Scott Mayer, by his Attorney, F. James Roytek, III of Roytek, Ltd., and as his Response to Motion to Dismiss Pursuant to Title 35, Section 103.212(b), states as follows;

1. Respondent, Milano & Grunloh Engineers, LLC, has filed herein, a Motion to Dismiss Pursuant to Title 35, 103.212(b).

DUTY

2. In said Motion, Respondent states that it had no duty to the Complainant as Respondent claims it had no contract with the Complainant as did Lincoln Prairie Water Company.

3. The three Respondents entered into a 279 page document which additionally incorporates "Section 107. Legal Regulations and Responsibility to Public".

4. Said documents make numerous references to the Respondent, Milano & Grunloh Engineers, LLC overseeing the

COPY

trenching and being responsible for preventing damage to the real estate owned by the Complainant and to grantors of easements of real estate owned directly west of the Complainant which also was trenched leaving damage similar to that complained of.

OPEN DUMPING

5. In said Motion, Respondent makes reference to section 5/3.305 of the Illinois Environmental Protection Act (415 ILCS 5/3.305) as being a basis for dismissal.

6. Section 3.305 of the Illinois Environmental Protection Act provides as follows:

§ 3.305. Open dumping. "Opening dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

(414 ILCS 5/3.305).

7. Section 3.385 of the Illinois Environmental Protection Act Provides as follows:

§ 3.385. Refuse. "Refuse" means waste.

(414 ILCS 5/3.385).

8. Paragraph 5/3.160 continues to set forth violations of the act by setting forth the meaning of debris as non-hazardous, uncontaminated materials resulting from: "the construction, remodeling, repair and demolition of utilities;" "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".

9. The fundamental rule of statutory construction is to ascertain and give effect to the intention of the legislature. "The language of the statute is the most reliable indicator of the legislature's objective in enacting a particular law." The words used by the legislature are to be given their plain and ordinary meaning.... People Ex Rel. Madigan v. Lincoln Ltd. 322 Ill. Dec. 56, 61, 62, 383 Ill. App. 3d 198, 890 N.E. 2d 975, 980, 981 (Ill. App. 1 Dist. 2008).

10. Complainant has never alleged that the components of telephone cable do not create an environmentally dangerous condition and are not pollutants, nor has Complainant asserted that they constitute "non-hazardous, uncontaminated materials" as alleged by Respondent.

TELEPHONE WIRE

11. Respondent further asserts that telephone wire is not one of the itemized materials listed in paragraph 5/3.160 of the Illinois Environmental Protection Act.

12. Paragraph 5/3.160 of the Illinois Environmental Protection Act lists electrical wiring plus other itemized materials alleged in said Complaint.

13. Contrary to what Respondent states in said Motion, Complainant has alleged that Respondent has dumped demolition debris on the real estate owned by Complainant.

DUPLICATIVE LITIGATION

14. Respondent correctly states that there is a pending lawsuit concerning identical acts on file in the Circuit Court of Shelby County, Illinois in Case Number 2008-L-5.

15. In the Shelby County Case, the Court ruled that at common law, the Complainant would only be allowed diminution in value of the real estate as his damages as opposed to the cost of restoration of the real estate.

16. A private right of action is unavailable under Illinois Environmental Protection Act. Neumann v. Carlson Environmental, 429 F. Supp. 2d 946 N.D. Ill. 2006.

17. A person seeking judicial review of decision of administrative agencies cannot do so without first exhausting remedies within the Administrative agency. Decatur Auto Auction v. Macon county farm Bureau, Inc., 194 Ill. Dec. 487, 490, 255 Ill. App. 3d 679, 627 N.E. 2d 1129, 1132.

18. On October 26, 2010, Attorney for Complainant made argument in the Shelby County Case that Complainant would be prejudiced if he received only diminution in value as his damages as opposed to the cost of restoration of the real estate.

19. On October 26, 2010, the Honorable Bradley T. Paisley in the Shelby County Case, entered an order that Complainant was to file a Complaint with the Illinois Environmental Protection Agency (Illinois Pollution Control Board) within 30 days and that

jury trial setting of February 21, 2011 was vacated.

Wherefore, Complaint prays that Motion to Dismiss Pursuant to Title 35, Section 103.212(b) be denied.

Dated: December 30, 2010.

SCOTT MAYER, Complainant

ROYTEK, LTD.



F. JAMES ROYTEK, III, Attorney
for SCOTT MAYER

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

Telephone: 217/234-3132

RECEIVED
CLERK'S OFFICE

JAN 03 2011

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I hereby certify that I did on December 30, 2010, cause to be served by U.S. Mail, enclosed in an envelope, with postage thereon fully prepaid, by depositing in a United States Post Office Box, in Mattoon, Illinois, a true and correct copy of the following instrument entitled NOTICE OF FILING upon the persons listed on service list.



F. JAMES ROYTEK, III, Attorney
for Complainant, SCOTT MAYER

This filing is submitted on recycled paper.

COPY

**RECEIVED
CLERK'S OFFICE**

JAN 03 2011

**STATE OF ILLINOIS
Pollution Control Board**

SERVICE LIST

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

COPY