

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB No. 11-22

RECEIVED
CLERK'S OFFICE
NOV 15 2010
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, the Complaint, Entry of Appearance, Certificate of Service and Services List of Complainant, Scott Mayer, a copy of which is herewith served upon you.

Dated: November 8, 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: 217/234-2132

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SCOTT MAYER)
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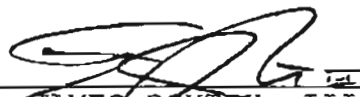
ENTRY OF APPEARANCE

On behalf of the Complainant, SCOTT MAYER, F. JAMES ROYTEK, III of ROYTEK, LTD., hereby enters his appearance as attorney of record.

Dated: November 8, 2010.

Respectfully submitted,

ROYTEK, LTD.



 F. JAMES ROYTEK, III, Attorney
 for SCOTT MAYER

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

Telephone: 217/234-3132

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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LINCOLN PRAIRIE WATER COMPANY,)
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ENGINEERS, LLC,)
)
Respondents.)

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COMPLAINT

Complainant, Scott Mayer by his Attorney, F. James Roytek, III of Roytek, Ltd., complains of the Respondents, Lincoln Prairie Water Company, Korte & Luitjohan Contractors, Inc., and Milano & Grunloh Engineers, LLC, as follows:

COUNT I

(Lincoln Prairie Water Company)

1. This Count I of Complaint is brought pursuant to the terms and provisions of Section 31(d)(1) of the Illinois Environmental Protection Act (415 ILCS 5/31).

2. Complainant is the 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 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.

3. The aforesaid real estate contains approximately 50

COPY

acres upon which the Complainant grows crops.

4. On April 15, 2005, Complainant and Respondent, Lincoln Prairie Water Company, entered into a written agreement prepared by Respondent, and entitled "Right of Way Easement," a copy of which is attached hereto and marked "Complainant's Exhibit 1".

5. On April 15, 2005, Respondent, 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 ("Easement").

6. In the course of said trenching, Respondent, Lincoln Prairie Water Company, through its agents, shredded into various sized pieces, a telephone cable running the length of said trench, leaving pieces of wire, aluminum and plastic cable coating in the field.

7. The pieces of wire, aluminum and plastic coating were initially dumped along side the trench and thereafter, bulldozed into the open trench.

8. In the Spring of 2005 and after the aforesaid trenching was completed, Complainant planted the entire 50 acres in corn.

9. In the Fall of 2005, Complainant harvested the corn and tilled the soil.

10. While tilling the soil in the Fall of 2005, Complainant

noticed the pieces of wire, aluminum and plastic coating in the "Easement".

11. During the Spring of 2006, Complainant left fallow, the "Easement" and planted the remainder of the real estate in alfalfa.

12. After bailing a portion of the 2006 alfalfa crop from the real estate, Complainant observed a wire protruding from one of the bails.

13. After bailing a portion of the 2006 alfalfa crop, Complainant quarantined approximately 200 bales of alfalfa valued at \$18,000.00.

14. After bailing a portion of the 2006 alfalfa crop, Complainant ceased bailing the 60 feet directly north of the "Easement" due to the wire contamination to his alfalfa.

15. In the Spring of 2010, Complainant had anhydrous applied to the "Easement".

16. After the aforesaid application, Complainant observed pieces of wire, aluminum and plastic cable coating in the "Easement".

17. On April 11, 2010, Complainant tilled the "Easement".

18. On April 11, 2010 and after the tilling, Complainant observed pieces of wire, aluminum and plastic cable coating in the "Easement".

19. On June 25, 2010 and after the aforesaid "Easement" had

been rained on, Complainant observed approximately 170 pieces of wire, aluminum and plastic cable coating.

20. On June 25, 2010, Complainant removed the approximately 170 pieces of wire, aluminum and plastic cable coating from the "Easement".

21. After June 25, 2010, Complainant tilled the "Easement".

22. After June 25, 2010 and after the tilling, Complainant observed pieces of wire, aluminum and plastic cable coating in the "Easement".

23. After June 25, 2010 and after the aforesaid "Easement" had been rained on, Complainant observed approximately 200 pieces of wire, aluminum and plastic cable coating.

24. Section 21 of the Illinois Environmental Protection Act, provides the following prohibitions:

§ 21. Prohibited Acts. No Person shall:

(a) Cause or allow the open dumping of any waste.

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(7) deposition of:

(I) general construction or demolition debris as defined in Section 3.160(a) of this Act; * * *.

(415 ILCS 5/21).

25. Section 5/3.160 of the Illinois Environmental

Protection Act in pertinent part, provides the following definition:

§ 3.160. Construction or demolition debris.

(a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair and demolition of utilities, structures, and roads, 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.

(415 ILCS 5/3.160).

26. The Respondent is a "person" as that term is defined under Section 5/3.315 of the Illinois Environmental Protection Act, as follows:

§ 3.315. Person.

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, stage agency, or any other legal entity, or their legal representative, agent or assigns.

(415 ILCS 5/3.315).

27. By dumping demolition debris onto the real estate owned by the Complainant, Respondent has violated Section 21 of the

Illinois Environmental Protection Act.

(415 ILCS 5/21).

28. The Complainant has been damaged in that the cost to remove and replace the contaminated soil is in excess of \$647,000.00.

29. The Complainant has incurred attorney fees and costs as a result of prosecuting this matter.

Wherefore, Complainant, Scott Mayer, respectfully requests that the Board grant the following relief:

A. Find that the Respondent, Lincoln Prairie Water Company, has violated the Act as herein alleged;

B. Order the Respondent to pay to the Complainant, the amounts as follows: \$647,000.00 to put the real estate in the condition it was prior to contamination.

C. Award the Complainant its costs and reasonable attorney fees; and

D. Grant such other relief as the Board may deem appropriate.

COUNT II

(Korte & Luitjohan Contractors, Inc.)

1. This Count II of Complaint is brought pursuant to the terms and provisions of Section 31(d)(1) of the Illinois Environmental Protection Act (415 ILCS 5/31).

2. Complainant is the 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.

3. The aforesaid real estate contains approximately 50 acres upon which the Complainant grows crops.

4. On April 15, 2005, Respondent, Korte & Luitjohan Contractors, Inc., 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 ("Easement").

5. In the course of said trenching, Respondent, Korte & Luitjohan Contractors, Inc., shredded into various sized pieces, a telephone cable running the length of said trench, leaving pieces of wire, aluminum and plastic cable coating in the field.

6. The pieces of wire, aluminum and plastic coating were initially dumped along side the trench and thereafter, bulldozed into the open trench.

7. In the Spring of 2005 and after the aforesaid trenching was completed, Complainant planted the entire 50 acres in corn.

8. In the Fall of 2005, Complainant harvested the corn and tilled the soil.

9. While tilling the soil in the Fall of 2005, Complainant noticed the pieces of wire, aluminum and plastic coating in the

"Easement".

10. During the Spring of 2006, Complainant left fallow, the "Easement" and planted the remainder of the real estate in alfalfa.

11. After bailing a portion of the 2006 alfalfa crop from the real estate, Complainant observed a wire protruding from one of the bails.

12. After bailing a portion of the 2006 alfalfa crop, Complainant quarantined approximately 200 bales of alfalfa valued at \$18,000.00.

13. After bailing a portion of the 2006 alfalfa crop, Complainant ceased bailing the 60 feet directly north of the "Easement" due to the wire contamination to his alfalfa.

14. In the Spring of 2010, Complainant had anhydrous applied to the "Easement".

15. After the aforesaid application, Complainant observed pieces of wire, aluminum and plastic cable coating in the "Easement".

16. On April 11, 2010, Complainant tilled the "Easement".

17. On April 11, 2010 and after the tilling, Complainant observed pieces of wire, aluminum and plastic cable coating in the "Easement".

18. On June 25, 2010 and after the aforesaid "Easement" had been rained on, Complainant observed approximately 170 pieces of

wire, aluminum and plastic cable coating.

19. On June 25, 2010, Complainant removed the approximately 170 pieces of wire, aluminum and plastic cable coating from the "Easement".

20. After June 25, 2010, Complainant tilled the "Easement".

21. After June 25, 2010 and after the tilling, Complainant observed pieces of wire, aluminum and plastic cable coating in the "Easement".

22. After June 25, 2010 and after the aforesaid "Easement" had been rained on, Complainant observed approximately 200 pieces of wire, aluminum and plastic cable coating.

23. Section 21 of the Illinois Environmental Protection Act, provides the following prohibitions:

§ 21. Prohibited Acts. No Person shall:

(a) Cause or allow the open dumping of any waste.

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(7) deposition of:

(I) general construction or demolition debris as defined in Section 3.160(a) of this Act; * * *.

(415 ILCS 5/21).

24. Section 5/3.160 of the Illinois Environmental Protection Act in pertinent part, provides the following

definition:

§ 3.160. Construction or demolition debris.

(a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair and demolition of utilities, structures, and roads, 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.

(415 ILCS 5/3.160).

25. The Respondent is a "person" as that term is defined under Section 5/3.315 of the Illinois Environmental Protection Act, as follows:

§ 3.315. Person.

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, stage agency, or any other legal entity, or their legal representative, agent or assigns.

(415 ILCS 5/3.315).

26. By dumping demolition debris onto the real estate owned by the Complainant, Respondent has violated Section 21 of the Illinois Environmental Protection Act.

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27. The Complainant has been damaged in that the cost to remove and replace the contaminated soil is in excess of \$647,000.00.

28. The Complainant has incurred attorney fees and costs as a result of prosecuting this matter.

Wherefore, Complainant, Scott Mayer, respectfully requests that the Board grant the following relief:

A. Find that the Respondent, Korte & Luitjohan Contractors, Inc., has violated the Act as herein alleged;

B. Order the Respondent to pay to the Complainant, the amounts as follows: \$647,000.00 to put the real estate in the condition it was prior to contamination.

C. Award the Complainant its costs and reasonable attorney fees; and

D. Grant such other relief as the Board may deem appropriate.

COUNT III
(Milano & Grunloh Engineers, LLC)

1. This Count III of Complaint is brought pursuant to the terms and provisions of Section 31(d)(1) of the Illinois Environmental Protection Act (415 ILCS 5/31).

2. Complainant is the 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.

3. The aforesaid real estate contains approximately 50 acres upon which the Complainant grows crops.

4. On April 15, 2005, Korte & Luitjohan Contractors, Inc., 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 ("Easement").

5. In the course of said trenching, Korte & Luitjohan Contractors, Inc., shredded into various sized pieces, a telephone cable running the length of said trench, leaving pieces of wire, aluminum and plastic cable coating in the field.

6. The pieces of wire, aluminum and plastic coating were initially dumped along side the trench and thereafter, bulldozed into the open trench.

7. At all times relevant, Respondent, Milano & Grunloh Engineers, LLC, provided construction inspection and observation for the benefit of the Complainant, Scott Mayer, in part, to avoid contamination of the aforesaid real estate during said trenching.

8. In the Spring of 2005 and after the aforesaid trenching was completed, Complainant planted the entire 50 acres in corn.

9. In the Fall of 2005, Complainant harvested the corn and tilled the soil.

10. While tilling the soil in the Fall of 2005, Complainant noticed the pieces of wire, aluminum and plastic coating in the "Easement".

11. During the Spring of 2006, Complainant left fallow, the "Easement" and planted the remainder of the real estate in alfalfa.

12. After bailing a portion of the 2006 alfalfa crop from the real estate, Complainant observed a wire protruding from one of the bails.

13. After bailing a portion of the 2006 alfalfa crop, Complainant quarantined approximately 200 bales of alfalfa valued at \$18,000.00.

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25. Section 5/3.160 of the Illinois Environmental Protection Act in pertinent part, provides the following definition:

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26. The Respondent is a "person" as that term is defined under Section 5/3.315 of the Illinois Environmental Protection Act, as follows:

§ 3.315. Person.

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Wherefore, Complainant, Scott Mayer, respectfully requests that the Board grant the following relief:

A. Find that the Respondent, Milano & Grunloh Engineers, LLC, has violated the Act as herein alleged;

B. Order the Respondent to pay to the Complainant, the amounts as follows: \$647,000.00 to put the real estate in the condition it was prior to contamination.

C. Award the Complainant its costs and reasonable attorney fees; and

D. Grant such other relief as the Board may deem appropriate.

Dated: November 8, 2010.

Respectfully submitted,
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

SHELBY COUNTY, ILLINOIS
NO. 05-1429
FILED Apr 20, 2005
AT 10:20 Am
Kathy A. Lutz 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

STATE OF ILLINOIS)
) SS
COUNTY OF Shelby)

I, the undersigned, a Notary Public, do hereby certify that SCOTT MAYER, personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 15th day of April, 2005.

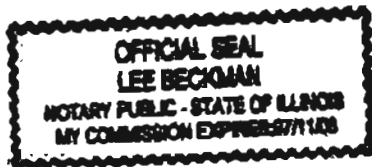


Lee Beckman
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF Shelby)

I, the undersigned, a Notary Public, do hereby certify that ROSE ELAINE MAYER, as Successor Trustee of the Roscoe Hamilton and Beatrice M. Hamilton Trust dated March 24, 1972, personally known to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 15th day of April, 2004.



Lee Beckman
Notary Public

This instrument prepared by: TAYLOR LAW OFFICES, P.C.
P.O. Box 668, Effingham, IL 62401

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,
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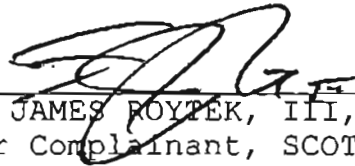
RECEIVED
CLERK'S OFFICE

NOV 15 2010

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I hereby certify that I did on November 8, 2010, cause to be served by Certified Mail, Return Receipt Requested, 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 instruments entitled NOTICE OF FILING, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on service list.



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

This filing is submitted on recycled paper.

((