

AUG 20 2012

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
August 20, 2012

SCOTT MAYER,)
)
Complainant,)
)
v.) PCB 11-22
) (Citizens Enforcement - Land)
LINCOLN PRAIRIE WATER COMPANY,)
KORTE & LUITJOHAN KORTE, INC., AND)
MILANO & GRUNLOH ENGINEERS, LLC,)
)
Respondents.)
)

HEARING OFFICER ORDER

On August 1, 2012, complainant filed a motion to compel respondent Korte & Luitjohan Contractors (Korte) to answer interrogatories. On August 15, 2012 Korte filed a response. For the following reasons, complainant's motion to compel is granted. Korte's answers are due by September 17, 2012.

Background

Complainant alleges that he gave respondent Lincoln Prairie Water Company an easement for installation, operation, and maintenance of underground water lines, and that during trenching, respondents shredded an underlying telephone line. Complainant alleges that the pieces were then open dumped by bulldozing them into the open trench causing contamination of his alfalfa crop.

Interrogatories

Interrogatory 1 asks for information on the person answering the interrogatories on behalf of Korte. Korte objected on the grounds that the request was irrelevant and unlikely to lead to the discovery of admissible evidence.

Interrogatory 2 asks for the amount charged by Korte for trenching and laying the water line on complainant's property. Korte objected on the grounds that the request was irrelevant and unlikely to lead to the discovery of admissible evidence.

Interrogatory 3 asks how much of the amount charged for trenching and laying the water line was attributable to trenching and filling the trench after the waterline had been put in place. Korte objected on the grounds that the request was irrelevant and unlikely to lead to the discovery of admissible evidence.

Motion to Compel Korte to Answer Interrogatories

Complainant's motion states that his expert witness has advised him that removing the contaminated soil from the trench in which the water line is located will involve the destruction of the water line. Complainant further states that the simplest and most cost effective way to determine the cost of replacing the water line would be for Korte to provide that information.

Korte's response to the motion to compel states that the information is irrelevant to any issue presented in this case, and the information sought is not likely to lead to the discovery of admissible evidence in this case. Korte argues that the facts sought do not relate to the statutory and regulatory framework of "open dumping", nor do they relate to the issue of penalty. Korte asserts that complainant's request is based on an undisclosed, speculative opinion/theory of complainant's expert witness.

The Board's procedural rules provide that all relevant information and information calculated to lead to relevant information is discoverable. 35 Ill. Adm. Code 101.616(a). Korte claims that the costs requested do not directly relate to the "open dumping" law. Korte does not explain its assertion that the costs are not related to the issue of penalty.

In this case, complainant is suing for remediation costs. It is not far-fetched to believe that removing contaminated soil from a trench may destroy a water line located in that trench. Korte does not assert that the requested discovery is overly burdensome, privileged, or that complainant would not be responsible for costs to replace the water line. If complainant is responsible for the water line, the costs requested in the interrogatories are, or may be, relevant remediation expenses. Therefore, complainant's motion to compel is granted, and Korte's answers are due by September 17, 2012.

The parties are reminded to participate in a telephone status conference with the hearing officer at 2:00 p.m. on September 17, 2012. The conference call-in number is (800) 300-2164, passcode 8632.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class on August 20, 2012, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on August 20, 2012:

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