

ILLINOIS POLLUTION CONTROL BOARD
May 9, 2007

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CITY OF CHICAGO DEPARTMENT OF)	
ENVIRONMENT,)	
)	
Complainant,)	
)	
vs.)	AC 06-40
)	(CDOE No. 06-03-AC)
JOSE R. GONZALEZ,)	(Administrative
)	Citation)
Respondent.)	

Transcript of proceedings held in the above-entitled cause before Hearing Officer Bradley P. Halloran, called by the Illinois Pollution Control Board, pursuant to notice, taken before Martina Manzo, CSR, a notary public within and for the County of Cook and State of Illinois, at the James R. Thompson Center, 100 West Randolph Street, Room 11-512, Chicago, Illinois, on the 9th day of May, A.D., 2007, commencing at 12:30 p.m..

1 APPEARANCES:

2 Ms. Jennifer A. Burke
3 (City of Chicago, Department of Law,
4 Aviation, Environment & Regulatory Section)
5 30 North LaSalle Street
6 Room 900
7 Chicago, Illinois 60602
8 Phone: (312) 742-3990

9 On behalf of the Complainant;

10 Mr. Graham G. McCahan
11 (City of Chicago, Department of Law,
12 Revenue Litigation Division)
13 30 North LaSalle Street
14 Room 900
15 Chicago, Illinois 60602
16 Phone: (312) 744-1438

17 On behalf of the Complainant;

18 Mr. Jeffrey J. Levine
19 (Jeffrey J. Levine, PC)
20 20 North Clark Street
21 Suite 800
22 Chicago, Illinois 60602
23 Phone: (312) 372-4600

24 On behalf of the Respondent.

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1 THE HEARING OFFICER: We're back on the
2 record.

3 Thank you, again. My name is
4 Bradley Halloran. I'm a hearing officer with the
5 Illinois Pollution Control Board. I'm also assigned to
6 this case entitled City of Chicago, the Complainant,
7 vs. Jose R. Gonzalez. It is docketed at the Board as a
8 AC 6-40. This matter is also related to 6-39, 6-41,
9 and 7-125.

10 It's still May 9th, 2007. It's
11 approximately 12:30.

12 The administrative citation alleges
13 that the respondent violated Section 21(p)(1), (2),
14 (3), (4), and (7) of the Act. The respondent has filed
15 a petition for review, and that's why we're here.
16 Again, this matter will be conducted in accordance with
17 Section 108 and Section 101, subpart (f), of the
18 Board's procedural rules.

19 I will not be making the ultimate
20 decision. It's the members of the Board who will.

21 With that said, would the City like
22 to introduce themselves, please.

23 MS. BURKE: Jennifer Burke for the City
24 of Chicago and --

1 MR. McCAHAN: Graham McCahan for the
2 City of Chicago.

3 THE HEARING OFFICER: Mr. Levine.

4 MR. LEVINE: Jeff Levine on behalf of
5 Jose R. Gonzalez who is intermittently present at this
6 hearing.

7 THE HEARING OFFICER: Opening, City.

8 MS. BURKE: Yes, briefly.

9 OPENING STATEMENT ON BEHALF OF THE COMPLAINANT

10 MS. BURKE: The evidence will show in
11 this hearing that on March 22nd, 2006, Jose Gonzalez
12 violated Section 21(p) of the Illinois Environmental
13 Protection Act by causing or allowing open dumping at
14 1601 East 130th Street in Chicago which resulted in
15 litter, scavenging, open burning, deposition of waste
16 and water, and deposition of general construction and
17 demolition debris.

18 We believe that the Board will find
19 that the statutory penalty is appropriate in this case.

20 THE HEARING OFFICER: Thanks, Ms. Burke.

21 Mr. Levine.

22 OPENING STATEMENT ON BEHALF OF THE RESPONDENT

23 MR. LEVINE: On behalf of Mr. Gonzalez,
24 it's our contention that Mr. Gonzalez neither caused

1 nor allowed the open dumping of any waste in a manner
2 which results in littering, scavenging, open burning,
3 deposition of waste and standing or flowing waters, and
4 deposition of general construction and demolition
5 debris and that the hearing will demonstrate that.

6 THE HEARING OFFICER: Thank you,
7 Mr. Levine.

8 Sir, if you'd just raise your
9 right. Martina will swear you in.

10 (Witness sworn.)

11 WHEREUPON:

12 RAFAEL MACIEL,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. BURKE:

17 Q. Mr. Maciel, will you state your name and
18 spell your last name, please?

19 A. My name is Rafael Maciel, M-A-C-I-E-L.

20 Q. And what is your occupation?

21 A. I'm a senior environmental inspector with the
22 Department of Environment for the City of Chicago.

23 Q. And have you had any special training to be
24 an inspector?

1 A. Yes, I have. I've been --

2 Q. And what is that?

3 A. I've been State trained from IEPA to be
4 deputized as an agent for the EPA -- IEPA. I'm sorry.

5 Q. And what does IEPA stand for?

6 A. Illinois Environmental Protection Agency.

7 Q. And briefly explain what you do at your job
8 as an inspector for the City.

9 A. As an inspector for the City, we take on
10 complaints from the residents of the City of Chicago.
11 We also do inspections of landfills, transfer stations.
12 We do open-dump inspections, investigations,
13 fly-dumping-incident investigations. We also do hazmat
14 response too.

15 Q. And how many inspections do you perform in an
16 average week?

17 A. Close -- 20 to 25 in a week.

18 Q. And how long have you worked for the City as
19 an inspector?

20 A. 7 years.

21 Q. So in your 7 years as an inspector, you've
22 conducted thousands of investigations?

23 A. Yes.

24 Q. Are you familiar with the property at

1 1601 East 130th Street?

2 A. Yes, I am.

3 Q. Did you visit that property on March 22nd,
4 2006?

5 A. Yes, I did.

6 Q. And how did you come to be at the property on
7 March 22nd?

8 A. I was in the process of attending a different
9 site on 136th and Hoxie. We came off the 130th east
10 exit, and as I was looking on the south end -- I'm
11 sorry -- yes -- the south end of 130th Street,
12 particularly because of the CID landfill there, I
13 noticed that there was a bit of smoke coming up and,
14 also, it looked like some flame too.

15 Q. And what did you do then?

16 A. Particularly I waited till we started going a
17 little bit further on 130th Street, and as I looked, I
18 questioned if we still had some ample time to go and
19 stop by and take a look at this real quickly because of
20 the fact that it was drawing my attention that it was
21 close to the landfill.

22 Q. And then did you enter the property?

23 A. Upon entering the property, that's when we
24 realized that there was some open burning there --

1 Q. What did the entrance to the property look
2 like?

3 A. It was a gated facility, but it was open.

4 Q. And what did you -- What did the property
5 look like along 130th Street as you drove along there?

6 A. There was a berm across it with some
7 vegetation on top of it probably about 4 foot in height
8 or so.

9 Q. And then at the entrance, what was the ground
10 surface made of?

11 A. There was some stone out there, gravel.

12 Q. And was there a fence at that entrance?

13 A. Yes, there was.

14 Q. And was it closed or open?

15 A. It was open at the time.

16 Q. Did you see a lock on the fence?

17 A. It was hanging off of there with the chain.

18 Q. I'm going to show you what's marked as
19 Exhibit A.

20 Is this your report of your visit
21 to the site on March 22nd?

22 A. It's a partial, yes.

23 Q. If you could flip through this document at
24 Tab A and tell me whether this is your complete report.

1 A. I would say yes, minus the manifests.

2 Q. What are the -- Just briefly, what are the
3 components of the report?

4 A. Briefly what it is -- the first page would be
5 a sheet where we gather an LPC number. For every
6 action that's done in the State of Illinois, we get an
7 LPC number. Basically if it's a landfill, a transfer
8 station, or an open dump, you get an LPC number.

9 The following would be an open-dump
10 checklist which is required by the State for us to fill
11 out which lists the violation counts with general
12 information of who the respondent was and also owner of
13 the property -- and/or owners of the property and other
14 information with the time, date, weather, amount of
15 material.

16 And then you have a list of
17 apparent State violations, and you have a list of
18 municipal violations.

19 And then what we have is a
20 narrative of our findings for that day.

21 Following that, you have also site
22 conditions as far as what was on the site. We also
23 have a site sketch of the property. We also have
24 photos that we take of the materials that we found or

1 any evidence that would suggest -- that we need from
2 the site for the investigation.

3 And on this particular
4 investigation, I also did have an analysis report from
5 the material -- suspect material from the site, and
6 also we did have a title search that was done, too,
7 attached to the report.

8 Q. And when did you prepare this report?

9 A. Myself and Chris Antonopolous prepared this
10 maybe, like, a day or two after the investigation
11 itself.

12 Q. And does the Department of Environment keep
13 these reports in the ordinary course of business?

14 A. Yes, they do.

15 Q. And does this report accurately describe the
16 condition of the property on March 22nd and your
17 inspection of it?

18 A. Yes.

19 MS. BURKE: I'd note for the record that
20 this report is attached to the administrative citation
21 in the case 2006 040 against Jose Gonzalez.

22 BY MS. BURKE:

23 Q. So when you entered the site on March 22nd,
24 what did you see when you first entered?

1 A. When we first entered, we noticed that there
2 was a front end loader. There was one dump truck at
3 the time. There was also a white pickup truck off to
4 the side. And, also, we did notice a few workers out
5 there. It looked like -- to be like they were
6 segregating material.

7 Q. And what type of material did you see at the
8 site?

9 A. I noticed that there was compose material. I
10 noticed that there was C and D debris, which is
11 construction and demolition debris, some landscape
12 materials, shrubbery, landscape waste. There was also
13 some railroad ties, concrete. There was some suspected
14 scrap metal. There could have been, possibly, some
15 scavenging going on there. There was a big pile of
16 material there that was questionable only because it
17 looked like it was a C and D combination type of
18 material, but also there was some discoloration of the
19 material too. So that would indicate that there was
20 some kind of contamination inside of it. There was
21 some City property on there, tires, brick, and stone.
22 And I think that would be basically it.

23 Q. Where on the property was the compose
24 material located that you referenced?

1 If it's helpful, you can use the
2 site sketch on page 8.

3 A. On the site sketch, the compose material
4 would be on the north end of the property, which is
5 closest to 130th Street. It should be, probably, Photo
6 No. 20, I believe. Yes, Photo 20.

7 Q. And where on this site did you see
8 construction and demolition debris?

9 A. There was construction and demolition debris
10 throughout the whole site, if you look on Photo No. 19,
11 Photo 18. Even the suspected CTA waste material, which
12 is 17, had some C and D debris in there. Photo 15,
13 Photo 13, Photo 12, like I said, the photos of the CTA
14 material too 9 and 10, Photo 6, Photo 5 -- Photo 4, I
15 think, is just a different-angle picture of Photo 6, I
16 believe -- Photo 1 and Photo 2.

17 Q. And where on the site did you observe
18 landscape waste or shrubbery?

19 A. Approximately, it was in the area on the
20 north side of the property, again, close to 130th
21 Street. Photos 1 and 2 indicate a little bit of the
22 shrubbery and landscape waste. Photo 3 also indicates
23 that. Photo 13 indicates a little bit of a pile there.

24 Q. And what materials are you -- What

1 specifically are you referring to as landscape waste?

2 A. As landscape waste, we consider it any kind
3 of shrubberies, trees, branches, grass, grass
4 clippings, vegetation that's already died out or even
5 that was just recently pulled out.

6 THE HEARING OFFICER: I think we're
7 going to take a break here. We'll go off the record.
8 We'll be back in an hour or so. Approximately about
9 1:50, we'll resume.

10 (The hearing in the above-entitled
11 cause recessed for lunch from
12 12:50 p.m. till 1:50 p.m.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3 Martina Manzo, being first duly sworn, on
4 oath says that she is a Certified Shorthand Reporter
5 doing business in the City of Chicago, County of Cook
6 and the State of Illinois;

7 That she reported in shorthand the
8 proceedings had at the foregoing hearing;

9 And that the foregoing is a true and correct
10 transcript of her shorthand notes so taken as aforesaid
11 and contains the proceedings had at the said hearing.

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13

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MARTINA MANZO, CSR

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CSR No. 084-004341

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SUBSCRIBED AND SWORN TO
before me this 22nd day of
May, A.D., 2007.

22

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NOTARY PUBLIC

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