

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)
)
Complainant,)
)
v.)
)
1601-1759 EAST 130th STREET, LLC,)
)
Respondent.)

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JUN 30 2008

STATE OF ILLINOIS
Pollution Control Board

Site Code:0316485103
AC: 2006-041
(CDOE No. 06-01-AC)

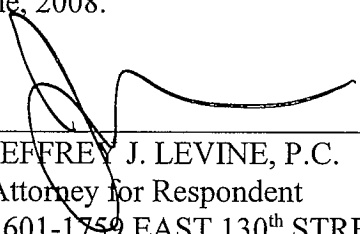
NOTICE OF FILING

TO: Mr. Bradley P. Halloran
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Ms. Jennifer A. Burke
City of Chicago, Dept. of Law
30 North La Salle Street, Suite 900
Chicago, Illinois 60602

PLEASE TAKE NOTICE that we have this day filed with the Clerk of the Illinois Pollution Control Board, Respondent's **Sur-Reply Brief**.

Dated at Chicago, Illinois, this 30th day of June, 2008.



JEFFREY J. LEVINE, P.C.
Attorney for Respondent
1601-1759 EAST 130th STREET, LLC

Jeffrey J. Levine, P.C. #17295
20 North Clark Street, Suite 800
Chicago, Illinois 60602
(312) 372-4600

PROOF OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he served a copy of the Notice together with the above mentioned documents to the person to whom said Notice is directed by hand delivery, this 30th day of June, 2008.



JEFFREY J. LEVINE, P.C.

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1601-1759 EAST 130th STREET, LLC,)

Respondent.)

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1601-1759 EAST 130th STREET, LLC'S SUR-REPLY

Now comes the Respondent, 1601-1759 EAST 130th STREET, LLC, by and through its counsel Jeffrey J. Levine, P.C., and for its Sur-Reply, states and asserts as follows:

1. In their May 13, 2008, Reply Brief, the City contends that the evidence and testimony demonstrated violations. Respondent contends that contrary to the City's position, the evidence and testimony demonstrated 1) an ineffective investigation, 2) selective prosecution, 3) false testimony, 4) an utter contempt for the process which included a failure to provide discovery and providing selective information, 5) complaints against entities with no basis, 6) false allegations, and 7) evidence that the investigator was seeking a bribe.

2. The central question was whether Respondent, the owner of the property in question, had caused or allowed the waste and whether the alleged violation resulted from uncontrollable circumstances. The City has the burden of proof in these hearings. 415 ILCS 5/31.1(d)(2)(2004); 35 Ill. Admn. Code 108.400.

3. The City argues that the owner Respondent is liable as he failed to prevent others from dumping waste and let waste remain on the property. See: May 13, 2008, Reply Brief, p. 3. As authority, the City offers *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004).

4. The evidence presented conclusively demonstrates that Respondent neither caused nor allowed the waste. The hearing record is replete with testimony that Respondent repeatedly worked to secure access to the property. An earthen berm was constructed around the property (May 9, 2007, Tr. 197), and a gated fence was installed at the entrance to the site. May 9, 2007, Tr. 205. The owner testified that after the property was initially cleaned, the locks on the gate have been cut and additional fly dumping occurred. The gates have been replaced numerous times and additional gates have been installed. See: May 9, 2007, Tr. 205. A gate was present on the date of the alleged violation. May 9, 2007, Tr. 9.

5. Rather than causing or allowing the waste, the owner has fought fly-dumpers since acquiring the property which he is developing. See: May 9, 2007, Tr. 173, 199. The owner was in the process of putting down a gravel road to gain access to the back portion of the property with heavy equipment when he was ticketed. May 9, 2007, Tr. 187-92.

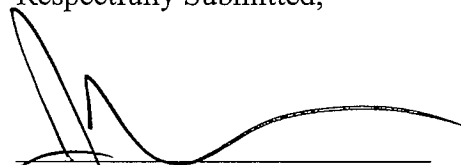
6. The inspector testified that Respondent would be given a reasonable time to clean up the property “from the date of the inspection.” May 9, 2007, Tr. 159. The inspector then denied that trucks leaving with material from the property “wasn’t a clean-up.” May 9, 2007, Tr. 160. Mr. Macial, the City’s witness had previously testified that CTA waste, mistakenly dumped by another entity, was being removed. May 9, 2007, Tr. 45-60, 73-9.

7. In *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004), the site had “no fence and was easily accessible from a heavy trafficked roadway.” The City has failed to carry its burden that Respondent either allowed waste to remain on the property or failed to make repeated efforts to secure the site to prevent others from dumping waste. Respondent’s agent, seeking to develop the site, repeatedly sought to secure the site, and cleaned up fly-dumped material. When others deposited waste he organized a massive clean-up which included putting in a stone road to allow heavy

equipment access to other waste. Complainant has failed to present evidence that Respondent acquiesced in any manner to the waste deposited by others. The waste deposited by fly-dumpers who repeatedly cut the lock on the gate or knocked it down must be deemed uncontrollable circumstances. The CTA waste deposited by E. King Trucking (which was supposed too be stored in containers) was removed within the reasonable time indicated by the City's witness.

Wherefore, for the above and forgoing reasons, Respondent 1601-1759 EAST 130th STREET, LLC prays that the Illinois Pollution Control Board dismiss Complainant's Administrative Citation and for such further relief as it deems just and equitable.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey J. Levine', written over a horizontal line.

Jeffrey J. Levine, P.C.
Attorney for Respondent
1601-1759 EAST 130th STREET, LLC

Dated: June 30, 2008

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