

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 11 2009

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)

Complainant,)

v.)

JOSE GONZALEZ & 1601-1759 EAST)
130TH STREET, LLC., INC., ET AL.)

Respondents.)

Site Code:0316485103

AC: 2006-039

AC: 2006-040

AC: 2006-041

AC: 2007-025 - Consolidated

STATE OF ILLINOIS
Pollution Control Board

RESPONSE CHALLENGING CLAIMED COSTS

Now come Respondents Jose Gonzalez, and 1601-1759 East 130th Street, LLC, by and through their attorney, Jeffrey J. Levine, P.C., and for their Response Challenging Claimed Costs, state and assert as follows:

1. Pursuant to the Board's Interim Opinion dated March 19, 2009, and the Affidavit of Costs dated May 31, 2009, Respondents file the instant Response Challenging Claimed Costs.

2. In the thirty-five page Interim Opinion, the Board directs that the Clerk of the Board and the Chicago Department of Environment (CDOE) "provide cost documentation for the AC 06-40 and AC 06-41 hearings." See: March 19, 2009, Interim Opinion, p. 3.

3. In response, the Assistant Clerk of the Board supplied an affidavit and correspondence dated March 31, 2009, delineating the "true and accurate" costs for the hearings in AC 06-39, AC 06-40, AC 06-41 and AC 07-25. See: Exhibit A, March 31, 2009 correspondence and affidavit.

4. In a filing dated April 15, 2009, the City of Chicago Department of Environment indicated that it would not seek hearing costs.

5. Because the CDOE did not establish that Speedy Gonzalez Landscaping, Inc., was liable in AC 06-39, Respondents should not be responsible for hearing costs associated with efforts related

to those charges.

6. Further, as the CDOE did not prove that Respondents Mr. Gonzalez or 1601-1759 East 130th Street, LLC., caused or allowed the open dumping of waste in standing water, Respondents should not be responsible for hearing costs associated with efforts related to those charges.

7. Also charged but not demonstrated were the charges in AC 07-25, against Respondent 1601-1759 East 130th Street, LLC. Respondents should not be responsible for hearing costs associated with efforts related to that matter.

8. As the Board has determined, in the Interim Opinion, that numerous allegations filed were baseless, Respondents could not have conceded the allegations and accepted the imposition of fines in those instances. Respondents were therefore required to proceed to hearing in order to refute the unsubstantiated allegations.

9. For this reason, the costs of the hearing cannot be attributable to the Respondents. To hold Respondents responsible where certain allegations are found to be baseless amounts to a form of extortion where the CDOE can charge baseless allegations and a Respondent must either accede to all charges or become responsible for paying the costs of a protracted hearing to challenge baseless allegations.

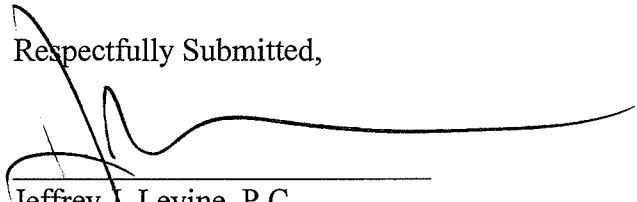
10. Because the March 19, 2009, Interim Opinion found that numerous charges against Respondents were not established at hearing, the Opinion specifically requested that the Clerk of the Board provide cost documentation for the AC 06-40 and AC 06-41 hearings. The March 31, 2009, Affidavit of Costs of the hearings was not bifurcated into portions indicating the specific documentation for the AC 06-40 and AC 06-41 hearings, most likely because it would have been impossible to segregate testimony resulting in liability and non-liability. The testimony of most all the witnesses, in many instances, tended to exculpate the Respondents.

11. It would be inequitable to hold Respondents responsible for costs that resulted in unsubstantiated charges. This would be akin to holding the CDOE responsible for Respondent's attorney's fees for the unsubstantiated allegations.

12. As the costs for portions of the hearing holding Respondent liable, cannot be separated from those hearing costs related to unsubstantiated allegations, the costs cannot be deemed as "true and accurate" as claimed in the March 31, 2009, affidavit. The affidavit ignores the Board's March 19, 2009, instructions to provide cost documentation for only the AC 06-40 and AC 06-41 hearings.

Wherefore, for the above and forgoing reasons, Respondents Jose Gonzalez, and 1601-1759 East 130th Street, LLC, pray that this Board decline to impose costs for the hearings as there is no basis to accurately determine the costs for the AC 06-40 and AC 06-41 hearings and for such further relief as is just and equitable.

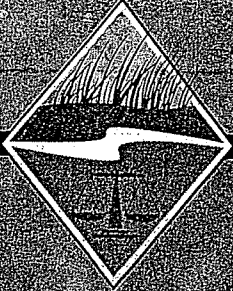
Respectfully Submitted,



Jeffrey J. Levine, P.C.
Attorney for Respondents
Jose Gonzalez, and
1601-1759 East 130th Street, LLC.

Dated: May 11, 2009

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



ILLINOIS POLLUTION CONTROL BOARD

GOVERNOR

CHAIRMAN

G. Patrick Grant, Ph.D.

March 31, 2009

TO: ALL PARTIES CONCERNED

RE: AC 2006-039, City of Chicago Department of Environment v. Speedy
Gonzalez Landscaping, Inc. (CDOE # 06-02-AC)

AC 2006-040, City of Chicago Department of Environment v. Jose R.
Gonzalez (CDOE # 06-03-AC)

AC 2006-041, City of Chicago Department of Environment v. 1601-1759
East 130th Street, LLC (CDOE # 06-01-AC)

AC 2007-025, City of Chicago Department of Environment v. 1601-1759
East 130th Street, LLC (Site Code 0316485103)

Pursuant to the March 19, 2009 Interim Opinion and Order adopted in the above-referenced matter, attached is an Affidavit of the Costs that were incurred by the Board as a result of hearing.

Sincerely,

John T. Therriault
Assistant Clerk of the Board

SPRINGFIELD OFFICE

1021 North Grand Ave. East
P.O. Box 19274
Springfield, IL
62794-9274
TEL 217-524-8500
FAX 217-524-6503

CHICAGO OFFICE

James R. Thompson Center
100 West Randolph
Suite 14-500
Chicago, IL 60601
TEL 312-324-3630
FAX 312-324-3660
TTY 312-324-3663

WEB SITE

www.ipc.state.il.us

JTT/me
Attachments

EXHIBIT

A

tabbies

ILLINOIS POLLUTION CONTROL BOARD

March 31, 2009

IN THE MATTER OF:

CITY OF CHICAGO DEPARTMENT OF
ENVIRONMENT,

Complainant,

v.

SPEEDY GONZALEZ LANDSCAPING,
INC.,

Respondent.

AC 06-39
(Administrative Citation)

CITY OF CHICAGO DEPARTMENT OF
ENVIRONMENT,

Complainant,

v.

JOSE R. GONZALEZ,

Respondent.

AC 06-40²
(Administrative Citation)

CITY OF CHICAGO DEPARTMENT OF
ENVIRONMENT,

Complainant,

v.

1601-1759 EAST 130th STREET, L.L.C.,

Respondent.

AC 06-41
(Administrative Citation)



PROOF OF SERVICE

I, John T. Therriault, do state that I have this 31st day of March, 2009, served the attached Affidavit of Costs upon the persons listed below, by placing same in envelopes addressed to said persons, first class mail, postage prepaid, and depositing same in a United States mailbox located at 100 West Randolph Street, Chicago, Illinois 60601.

1601-1659 E. 103th St. LLC
10630 S. Torrence
Chicago, IL 60617


Chicago Department of Law
30 North LaSalle Street
Suite 900
Chicago, IL 60602

Dennis W. Winkler, Ltd.
161 N. Clark Street
Suite 3100
Chicago, IL 60601-3242

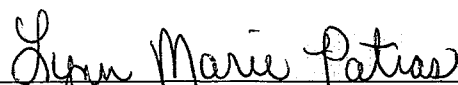
Jeffrey J. Levine
20 N. Clark Street
Suite 800
Chicago, IL 60602

City of Chicago Department of Environment
30 North LaSalle Street
Suite 2500
Chicago, IL 60602

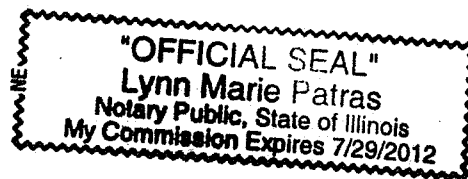
Speedy Gonzalez, Inc.
P. O. Box 359
Naperville, IL 60566-0359


John T. Therriault
Assistant Clerk

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 31st DAY OF MARCH, 2009



Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT
OF ENVIRONMENT,

Complainant,

v.

JOSE GONZALEZ & 1601-1759 EAST,
130th STREET, LLC., INC., ET AL.
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STATE OF ILLINOIS
Pollution Control Board

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, Senior Counsel
City of Chicago, Dept. of Environment
30 North La Salle Street, 9th Floor
Chicago, Illinois 60602

PLEASE TAKE NOTICE that we have this day filed with the Clerk of the Illinois Pollution Control Board, Respondent's **Response Challenging Claimed Costs.**

Dated at Chicago, Illinois, this 11th day of May, 2009.

JEFFREY J. LEVINE, P.C.
Attorney for Respondents
Jose Gonzalez, and
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 11th day of May, 2009.

JEFFREY J. LEVINE, P.C.