

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 06 2007

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)

Complainant,)

v.)

1601-1759 EAST 130th STREET, LLC,)

Respondent.)

Site Code:0316485103
AC: 2007-25
(CDOE No. 06-03-AC)

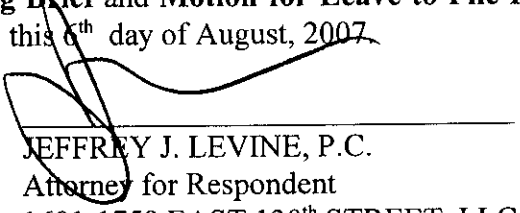
STATE OF ILLINOIS
Pollution Control Board

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
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 **Post-Hearing Brief and Motion for Leave to File Post-Hearing Brief Instantly**. Dated at Chicago, Illinois, this 6th day of August, 2007.



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 6th day of August, 2007.



JEFFREY J. LEVINE, P.C.

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MOTION FOR LEAVE TO FILE POST-HEARING BRIEF INSTANTER

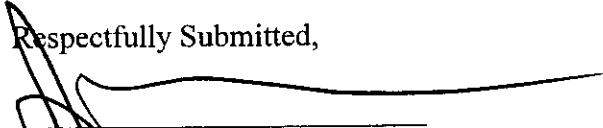
Now comes the Respondent, 1601-1759 EAST 130th STREET, LLC, by and through its counsel Jeffrey J. Levine, P.C., and for its Motion for Leave to File Post-Hearing Brief Instanter, states and asserts as follows:

1. Respondent's brief was due on Friday, August 3, 2007, and counsel for Respondent sought to complete and file all pleadings in all the related matters by that date.

3. Counsel could not complete all pleadings by that date, as he was required to prosecute for a municipality on Friday afternoon. Said counsel did not wish to file the pleadings in part. Respondent therefore seeks to file his Post-Hearing Brief and the related pleadings instanter.

4. Counsel for Complainant has no objection to the instant Motion as long as adequate time for the filing of the Reply is provided.

Wherefore, for the above and forgoing reasons, Respondent 1601-1759 EAST 130th STREET, LLC, prays that it be granted leave to file its Post-Hearing Brief and other pleadings instanter and for such further relief as is just and equitable.

Respectfully Submitted,


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
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1601-1759 EAST 130th STREET, LLC'S POST HEARING BRIEF

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

Introduction

1. Respondent 1601-1759 EAST 130th STREET, LLC, is a corporation owned by Jose R. Gonzalez who works as a minority contractor in Chicago. He runs Speedy Gonzalez Landscaping, Inc., and has acquired an interest in property located at 1601-1759 East 130th Street. When he acquired the property it was loaded with junk. The waste was an issue in purchase negotiations. May 17, 2007, Tr. 102. The property sits next to the CID landfill. He seeks to develop the property, build buildings on the land and lease the property to the Ford Motor Company. May 17, 2007, Tr. 102. He has already performed extensive testing on the property, particularly to determine whether there was a gas station tank on the property. Also, tests were performed as to whether the landfill was leaching waste into the property.

Investigation

2. A field supervisor, Stanley Kaehler testified that he received a complaint regarding the property and investigated on October 3, 2006. AC 07-25, May 17, 2007, Tr. 9, 15-7. He stated that

the lot was secured with a chain. October 3, 2006. AC 07-25, May 17, 2007, Tr. 12. In fact, the investigation report specifically states that “Speedy has dumped new C and D waste on the site. He testified that complaints usually don’t identify the owner of the property. AC 07-25, May 17, 2007, Tr. 15-6. Kaehler testified that he didn’t know where the debris came from. AC 07-25, May 17, 2007, Tr. 14, Nor was Kaehler whether the Respondent LLC caused or allowed the dumping. AC 07-25, May 17, 2007, Tr. 19. Mr. Kahler agreed that if the site was secured, the LLC would not have caused or allowed the debris to be on the property. AC 07-25, May 17, 2007, Tr. 21.

3. Mr. Kahler also agreed that an owner would be given time to remove debris and the time given depends upon how much waste is on the site. AC 07-25, May 17, 2007, Tr. 22-3. Mr. Kaehler, a field supervisor concluded that an entity is responsible whether or not they caused or allowed the violation and admitted that his opinion was contrary to the statute. AC 07-25, May 17, 2007, Tr. 24. Kahler concluded that because the gate was locked, respondent caused or allowed the dumping. He stated he had no other evidence of the violation. AC 07-25, May 17, 2007, Tr. 27.

4. Mr. Gonzales denied that he had dumped the debris. He testified that if he dumped material on his own property, he would just have to pay another hauler to take it to the dump. He would be paying double. AC 07-25, May 17, 2007, Tr. 38. Mr. Gonzales further stated that the debris pictured in the complainant’s report is the same debris from the past violations on March 22, 2006. AC 07-25, May 17, 2007, Tr. 38-45. He concluded that he was never contacted by the Department of environment and given time to clean up the debris. He was just given additional violations.

5. For the sake of brevity, Respondent hereby incorporates all arguments made in the Post Trial Briefs in Cases 2006-039, 2006-040 and 2006-041, and the Motion to Dismiss the Actions, as though incorporated herein in their entirety.

Complainant’s Argument

6. Complainant's Post-Hearing Brief maintains that respondent caused or allowed open dumping because his control over the site make him responsible for "causing and allowing open dumping". However in *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004), the individual did not remove debris over a two year period and new debris appeared on the property which was not secured. In this instance, Respondent secured the property and rather than causing or allowing open dumping, was cleaning refuse when ticketed. Mr. Gonzalez did not allow waste to remain on his property. Testimony at the hearing revealed that property owners are allowed time to remove waste. Rather than asserting the clean-up as a defense, the actions were contrary to proof of a violation.

7. Complainant's brief constantly refers to "Respondent's open dumping" when no evidence has been demonstrated. The assertion is contrary to the marginal and incompetent investigation conducted by the Department of the Environment inspectors and all evidence produced at the hearing. All evidence demonstrates that Mr. Gonzalez's efforts were directed toward securing the property from fly-dumpers and cleaning the garbage that was placed on the property by others. The evidence adduced at the hearing further demonstrates that Department of the Environment inspectors hindered clean-up efforts and failed to even investigate the entities that actually caused and allowed the dumping.

Legal argument

8. While the Environmental Protection Act does not require proof of knowledge or intent, it does not impose strict liability on an alleged polluter. *People v. A.J. Davinroy Contractors*, 249 Ill.App.3d 788, 618 N.E.2d 1282, 1286 (5th Dist. 1993); *Phillips Petroleum v. Illinois Environmental Protection Agency*, 72 Ill.App.3d 217, 390 N.E.2d 620, 623 (2nd Dist. 1979). In that case, the court found that the record did not indicate sufficient evidence that defendant exercised sufficient control over the source of the pollution in such a way to have caused, threatened or allowed the pollution.

9. Similarly, in the instant case, there is no competent evidence that Respondent exercised sufficient control over the source of the pollution in such a way to have caused, threatened or allowed the pollution. In determining whether alleged polluters have violated the Act, courts look to whether the alleged polluter exercised sufficient control over the source of the pollution. *People v. A. J. Davinroy Contractors*, 249 Ill.App.3d 788, 618 N.E.2d 1282, 1286 (5th Dist. 1993); *People v. Fiorini*, 143 Ill.2d 318, 346, 574 N.E.2d 612, 623 (1991).

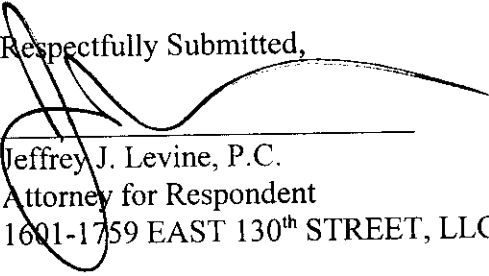
10. In instances where others caused the pollution without the landowner's knowledge or consent, courts look to the record to establish if the landowner had taken any precautions to prevent the actions of others. See: *Perkinson v. Pollution Control Board*, 187 Ill.App.3d 689, 543 N.E.2d 901 (1989). In this instance, Respondent, a minority contractor, repeatedly secured the property, put down a gravel road and was in the process of cleaning the property for purposes of future development when the investigators stopped the removal of debris and charged Mr. Gonzalez for his efforts.

11. Respondent maintains that he and his companies were targeted in these matters after having a confrontation with Complainant's witness, Rafael Maciel. See: Speedy Gonzalez Landscaping Inc.'s Post Hearing Brief, AC 2006-039. This is demonstrated by baseless allegations, the charging of entities who were not the owners of the property, a biased and incomplete investigation and investigation report, discovery abuses and the failure to respond to subpoenas at hearing. See: Motion to Dismiss Actions.

12. Mr. Gonzalez and his companies are ticketed when cleaning the property, and they are again ticketed when they stop cleaning the property. Complainant seeks to impose a "Catch 22" to repeatedly ticket and fine him for obtaining property in the City of Chicago.

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,



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

Dated: August 6, 2007

Jeffrey J. Levine, P.C. #17295
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