

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 17 2007

STATE OF ILLINOIS  
Pollution Control Board

CITY OF CHICAGO DEPARTMENT )  
OF ENVIRONMENT, )

Complainant, )

v. )

SPEEDY GONZALEZ )  
LANDSCAPING, INC.; JOSE R. )  
GONZALEZ; 1601-1759 EAST 130<sup>TH</sup> )  
STREET, LLC, )

Respondents. )

AC 2006-039

AC 2006-040

AC 2006-041

AC 2007-025

NOTICE OF FILING

TO: Jeffrey J. Levine  
Jeffery J. Levine PC  
20 N. Clark St., Suite 800  
Chicago, IL 60602

Bradley Halloran  
Illinois Pollution Control Board  
100 W. Randolph Street  
James R. Thompson Center, #11-500  
Chicago, IL 60601

PLEASE TAKE NOTICE that on August 17, 2007, City of Chicago filed with the Clerk of the Illinois Pollution Control Board the attached Motion to Strike Respondents' Motion to Dismiss Actions, Opposition to Respondents' Renewed Motion to Consolidate, and Motion to Modify Post-Hearing Briefing Schedule copies of which are served upon you.

  
Jennifer A. Burke

Jennifer A. Burke  
Senior Counsel  
City of Chicago Department of Law  
30 N. LaSalle Street, Suite 900  
Chicago, IL 60602  
(312) 742-3990

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on August 17, 2007 she caused copies of this notice and the documents referenced herein to be served on the party to whom it is directed by U.S. Mail, first class postage prepaid.

  
Jennifer A. Burke

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**CITY OF CHICAGO'S MOTION TO STRIKE  
RESPONDENTS' MOTION TO DISMISS ACTIONS**

The City of Chicago Department of Environment ("City"), by its Corporation Counsel Mara S. Georges, moves this Board to strike Respondents' Motion to Dismiss Actions ("Respondents' Motion"). In support thereof, the City states as follows.

1. Pursuant to Section 101.506 of the Board's rules, the City moves to strike Respondents' Motion because it (i) is untimely, (ii) fails to cite any legal authority as a basis for the motion, and (iii) makes closing arguments which should be confined to Respondents' post-hearing brief. Section 101.506 of the Board's rules states, "[a]ll motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result." 35 Ill. Adm. Code 101.506. In compliance with Section 101.506, the City files its Motion to Strike within 30 days after the service of the Respondents' Motion.

2. Respondents' Motion, titled "Motion to Dismiss Actions," is untimely and should be stricken because it violates Section 101.506. Under the Board's procedural rules and the Illinois Code of Civil Procedure, a "Motion to Dismiss" is generally directed at the legal sufficiency of a complaint or other pleading. *See* 35 Ill. Adm. Code 101.506, 735 ILCS 5/2-615, 735 ILCS 5/2-619. Respondents' Motion does not specify the document that it challenges. However, if Respondents' Motion is directed at the legal sufficiency of the City's administrative citation, or any other document filed by the City in these proceedings including the City's post-hearing briefs, then it is not timely under the 30-day limit imposed by Section 101.506.

3. Respondents' Motion violates Section 101.504 because it fails to cite any legal basis for the relief requested. Section 101.504 of the Board's rules states, "[a]ll motions and responses must clearly state the grounds upon which the motion is made and must contain a concise statement of the position or relief sought." 35 Ill. Adm. Code 101.504. Respondents cite no legal authority for their claims in their Motion and thereby provide no legal basis upon which the City can respond or this Board can make a decision.

4. Respondents' Motion simply is a rant of unsupported legal and factual argument which is directed at the sufficiency of the City's case-in-chief as presented at the hearings. Any such argument directed at whether the City has met its burden of proof under 415 ILCS 5/31.1(d)(2) -- which the City contends it has met as set forth in its post-hearing briefs -- must be made on the record during the hearing or in Respondents' post-hearing briefs. *See* 415 ILCS 5/33 (The Board is authorized to issue final orders or make final determinations "after due consideration of the written and oral statements, the

testimony and arguments that shall be submitted at the hearing."); *Brill v. Latoria*, PCB 00-219 (Aug. 7, 2003) ("post-hearing briefs are to argue from facts previously admitted into the record"). Respondents' Motion constitutes closing argument impermissibly presented as a "motion to dismiss" which should be stricken by the Board.

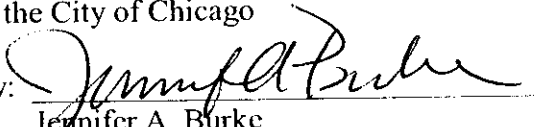
WHEREFORE, Complainant City of Chicago respectfully requests that this Board strike Respondents' Motion to Dismiss Actions as untimely and improper. If the Board denies the City's Motion to Strike, the City requests that this Board allow the City leave to file a response to the Respondents' Motion to Dismiss Actions.

Respectfully submitted,

CITY OF CHICAGO  
DEPARTMENT OF ENVIRONMENT

Mara S. Georges, Corporation Counsel  
of the City of Chicago

By:

  
Jennifer A. Burke

Dated: August 17, 2007

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**CITY OF CHICAGO'S OPPOSITION TO**  
**RESPONDENTS' RENEWED MOTION TO CONSOLIDATE ACTIONS**

The City of Chicago Department of Environment ("City"), by its Corporation Counsel Mara S. Georges, opposes Respondent's Renewed Motion to Consolidate Actions because the motion is untimely and further will delay determination of the pending claims.

On May 9 and May 17, 2007, Hearing Officer Bradley Halloran conducted hearings in the above-captioned matters. The City timely filed its post-hearing briefs in each of the four matters on June 22, 2007. On July 18, 2007, the Hearing Officer granted Respondents an extension of time to file their post-hearing response briefs on August 3, 2007. Respondents filed their post-hearing briefs in each of the four matters on August 6, 2007 and moved instant for a further extension of time. Together with the post-hearing briefs on each of the separate administrative citations, Respondents filed a motion to consolidate the four administrative citation proceedings.

As an initial matter, the City notes that Respondents' motion is inaccurately titled a "renewed" motion. One of the three Respondents, 1601-1759 East 130<sup>th</sup> Street, LLC, previously moved to consolidate the two matters pending against it -- Administrative Citation 2006-041 and Administrative Citation 2007-025. 1601-1759 East 130<sup>th</sup> Street, LLC filed that motion simultaneously with its petition to contest AC 07-025 in the midst of discovery depositions in the AC 06-041 matter. The City opposed the prior motion to consolidate because it did not want to delay hearing in the AC 06-041 matter. Neither 1601-1759 East 130<sup>th</sup> Street, LLC nor the other Respondents ever moved to consolidate the other matters.

The City opposes consolidating these four matters at this late date after the hearings were completed and after the City and Respondents filed their post-hearing briefs in each of the four matters. The Board has the authority to consolidate proceedings for the purpose of hearing or decision or both. 35 Ill. Adm. Code 101.406. The Board will consolidate proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. *Id.*

Consolidating the four matters at this time would not improve efficiency or serve any of the interests provided in Board Rule 101.406. The hearings were conducted separately, there are separate transcripts for each hearing, and the parties have filed post-hearing briefs in each of the four proceedings. The motion to consolidate is untimely and would not serve any legitimate purpose. Furthermore, consolidation would cause material prejudice to the City unless the City is granted leave to re-write each of its post-

hearing briefs to consider testimony and evidence presented in the related proceedings.


Thus, consolidation would unnecessarily delay final determination in these four matters.

For the reasons stated herein, the City respectfully requests that the Board deny Respondent's untimely request to consolidate.

Respectfully submitted,

CITY OF CHICAGO  
DEPARTMENT OF ENVIRONMENT

Mara S. Georges, Corporation Counsel  
of the City of Chicago

By:   
Jennifer A. Burke

Dated: August 17, 2007

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**CITY OF CHICAGO'S MOTION TO MODIFY**  
**POST-HEARING BRIEFING SCHEDULE**

The City of Chicago Department of Environment ("City"), by its Corporation Counsel Mara S. Georges, moves to modify the post-hearing briefing schedule and in support of its motion states as follows:

1. On May 9 and May 17, 2007, Hearing Officer Bradley Halloran conducted hearings in the above-captioned matters.
2. The City filed its post-hearing briefs on June 22, 2007.
3. On July 18, 2007, the Hearing Officer granted Respondents an extension of time to file their Post-Hearing Response Briefs on August 3, 2007. Respondents filed their post-hearing briefs on August 6, 2007. On August 6, 2007, Respondents also filed their Motion to Dismiss Actions and Renewed Motion to Consolidate Actions.
4. The City's replies to Respondents' post-hearing briefs are due on either August 17 or August 20, depending on whether the Board or the Hearing Officer grants Respondents' second motion for extension of time filed instanter with their briefs.
5. The City moved to strike Respondents' Motion to Dismiss Actions and opposed Respondents' Renewed Motion to Consolidate Actions because they are

untimely and violate the Board's procedural rules. *See* City's Motion to Strike Respondents' Motion to Dismiss Actions and City's Opposition to Respondents' Renewed Motion to Consolidate Actions filed together with this motion.


6. The outcome of these three pending motions will impact how the City prepares its post-hearing reply briefs in these four administrative citation proceedings. Therefore, the City cannot prepare its post-hearing reply briefs until the Board decides the various pending motions. In the interests of fairness and judicial economy, and pursuant to Board Rule 101.522, the City requests an extension of time to file its post-hearing reply briefs in each of the above-captioned matters to 21 days after the Board issues orders on the three pending motions.

WHEREFORE, the City of Chicago respectfully requests that the Hearing Officer grant its motion to modify the post-hearing briefing schedule as set forth above.

Respectfully submitted,

CITY OF CHICAGO  
DEPARTMENT OF ENVIRONMENT

Mara S. Georges, Corporation Counsel

By:   
Jennifer A. Burke

Dated: August 17, 2007

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