

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 06 2007

STATE OF ILLINOIS
Pollution Control Board

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)

Complainant,)

v.)

SPEEDY GONZALEZ LANDSCAPING,)
INC.,)

Respondents.)

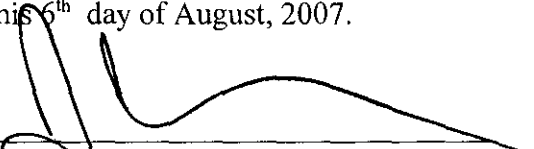
Site Code:0316485103
AC: 2006-039
(CDOE No. 06-02-AC)

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 **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
SPEEDY GONZALEZ LANDSCAPING, INC.

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, 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, SPEEDY GONZALEZ LANDSCAPING, INC., 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:

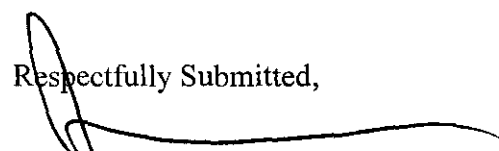
1. Respondent's brief was due on Friday, August 3, 2007, and counsel for Respondent sought to complete and file all pleadings in all the related matters by that date.

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.

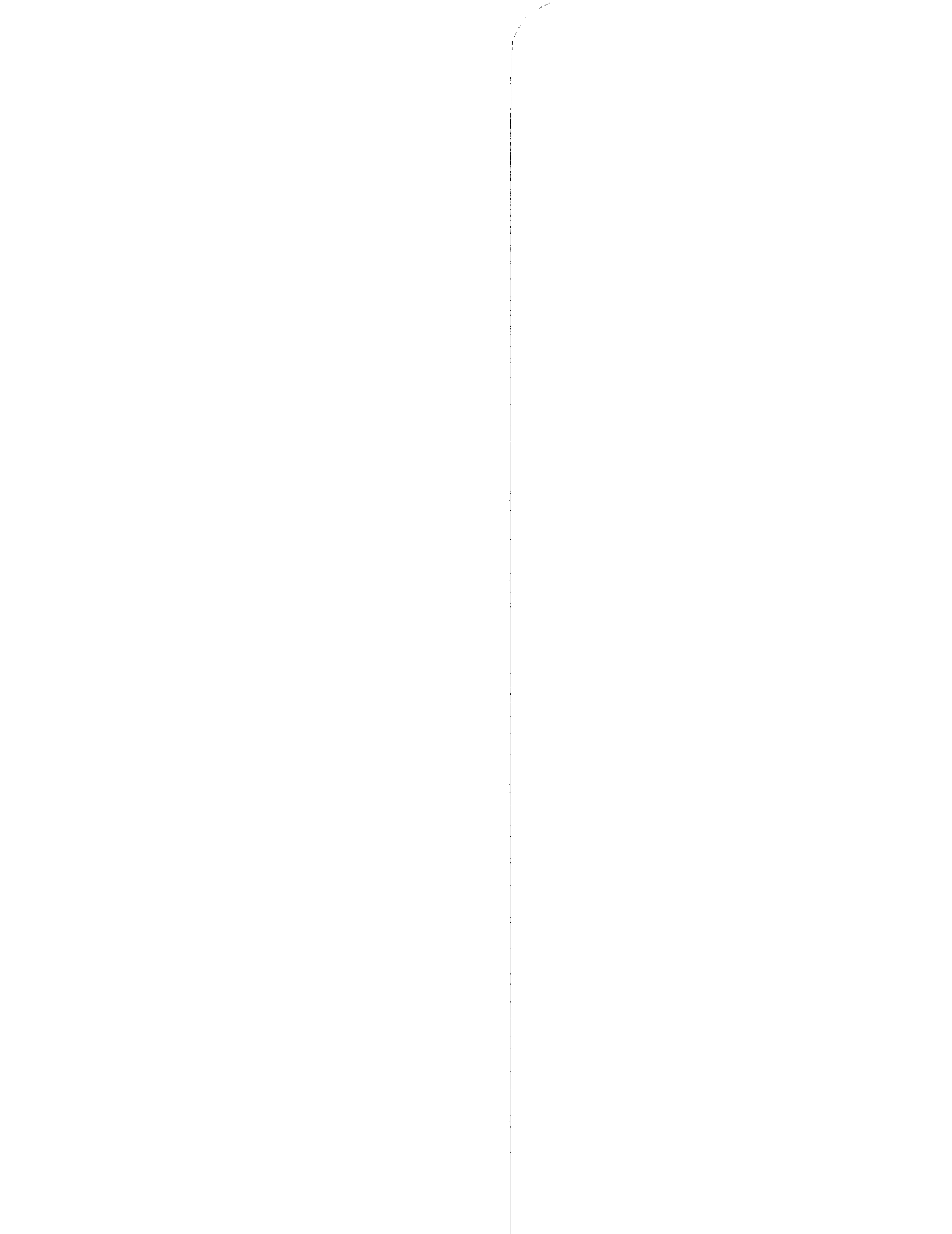
Wherefore, for the above and forgoing reasons, Respondent Speedy Gonzalez Landscaping, Inc., prays that it be granted leave to file its Post-Hearing Brief and other pleadings instanter and for such further relief as is just and equitable.

Respectfully Submitted,



Jeffrey J. Levine, P.C.
Attorney for Respondent
Speedy Gonzalez Landscaping, Inc.

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20 North Clark Street, Suite 800
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SPEEDY GONZALEZ LANDSCAPING,)
INC.,)

Respondent.)

SPEEDY GONZALEZ LANDSCAPING, INC.'S POST HEARING BRIEF

Now comes the Respondent, SPEEDY GONZALEZ LANDSCAPING, INC., by and through it's counsel Jeffrey J. Levine, P.C., and for its Post Hearing Brief, states and asserts as follows:

1. Complainant's prosecution of Respondent Speedy Gonzalez Landscaping, Inc., offered no evidence that this respondent was in any way responsible for committing any violations. Complainant's witness, Rafael Maciel, a senior environmental inspector (May 9. 2007, Tr. 7), testified that he had no knowledge or information whether Respondent Speedy Gonzalez Landscaping, Inc., caused or allowed any of the alleged violations. May 9. 2007, Tr. 41-2, 152-55.

2. The alleged violations also contained baseless allegations regarding securing the property, salt unloading operations, ACM or asbestos, waste next to residential homes and oil flowing into the sewer. May 9. 2007, Tr. 68, 129-32. Macial contended that these charges were put into his investigative report because Respondent Speedy Gonzalez Landscaping, Inc., committed the additional offenses (May 9. 2007, Tr. 130), but he had no evidence that the offenses occurred. May 9. 2007, Tr. 68, 129-32.

3. Complainant offered no other witnesses against Respondent Speedy Gonzalez

Landscaping, Inc. Mr. Maciel concluded that he had “no idea” why the violations were charged when there was no basis for them. May 9. 2007, Tr. 132.

4. Counsel for Complainant is left to argue that the truck trailers stored on the property revealed evidence of a potential future violation. Mr. Gonzalez testified that the tanker requires eight thousand dollars to pass DOT inspection so it is being stored at the lot. (May 9. 2007, Tr. 201). Complaint argues that the tanker lacked value or re-use value and therefore constituted “discarded material”. See: Complainant’s Post Hearing Brief at p. 3. The testimony reveals that the tanker could be fixed, however it is stored pending a decision. (May 9. 2007, Tr. 201). Complainants argue that this tanker and a flatbed truck reveal this Respondents access and control over the site.

See: Complainant’s Post Hearing Brief at p. 4. Finally, Complainants argue that the assertion by Macial that landscaping waste was present also reveals Respondents access and control over the site.

See: Complainant’s Post Hearing Brief at p. 4. In a skip in logic, Complainants argue that a waste generator can be liable for “causing or allowing” open dumping. *Id.* However, no evidence was presented that Respondent Speedy Gonzalez Landscaping, Inc., generated any waste.

5. As no evidence against Respondent has been presented, and the record reveals baseless charges, the next logical inquiry is to determine whether the allegations made were as a result of a mistake or confusion as to the parties. This can be ruled out as numerous charges, such as those of salt unloading operations, asbestos, waste next to residential homes and oil flowing into sewers, are completely baseless allegations. There are no residential homes near the property, there was no salt or asbestos, there are no sewers on the property.

6. In this instance, the baseless allegations are combined with inconsistent and the patently false testimony of the inspector, Rafael Maciel. This false testimony, from the only witness presented by Complainant, is evident by reviewing three issues; 1) Maciel’s testimony regarding whether the

trucks were dumping on or cleaning the property, 2) his testimony regarding taking bribes, and 3) his claim regarding his FBI training.

Trucks were cleaning property

7. Maciel maintained at the hearing that the trucks on site were dumping material. May 9, 2007, R. 42, 72, 74, 78. He later testified that he assumed this. May 9, 2007, Tr. 137. Mr. Macial initially testified that he could not determine whether trucks were loading or unloading at the site. May 9, 2007, Tr. 16. He testified that he concluded that another entity's trucks were dumping at the site. May 9, 2007, Tr. 72, 74. This conclusion is contrary to his report, (May 9, 2007, Tr. 43, 46-7), and his prior deposition testimony wherein he testified that the trucks were loading. May 9, 2007, Tr. 74-6.

8. Maciel testified that he would impound a truck if it was dumping but did not impound the E. King trucks on the lot. May 9, 2007, Tr. 48. Neither Macial or anyone else saw trucks dumping. May 9, 2007, Tr. 81. He agreed that he testified both at the hearing and at his deposition that, rather than loads being dumped, the material was being removed and that the trucks were loading. May 9, 2007, Tr. 138. He then testified that a worker told him that "We're bringing it here." May 9, 2007, Tr. 141, line 6. He then testified "I don't recall if he did say that or not." May 9, 2007, Tr. 141, line 12.

9. Macial concluded that the assumption he made, that the trucks were unloading, did not make sense. May 9, 2007, Tr. 146, lines 10-1. At the site, Mr. Gonzalez told Macial that the workers were cleaning the yard and Macial agreed that he had watched the site for three days to see if debris was coming into the yard. May 9, 2007, Tr. 193.

10. Portions of the material being cleaned was segregated so that the CID landfill would accept the debris and to minimize the cost of disposal. May 9, 2007, Tr. 202-03. After appearing at

the site the investigators allowed the entities to conclude the clean-up. May 9, 2007, Tr. 204.

Request for bribe

11. Mr. Macial testified that he tells certain individuals that he could help them avoid citations. May 9, 2007, Tr. 126. He would say "Help me help you avoid a citation." May 9, 2007, Tr. 127. He then testified that based upon his credibility, he was pretty sure that he had never taken a bribe. See: May 9, 2007, Tr. 124-27. He denied that he ever discussed helping Mr. Gonzalez avoid a citation. May 9, 2007, Tr. 127.

12. However, Mr. Gonzalez testified that he interpreted Mr. Macial's prior offer to "work it out" as a request for a bribe. May 9, 2007, Tr. 180-83. Gonzales testified that when he refused to pay Macial, the inspector responded "All right. You'll pay for this." May 9, 2007, Tr. 182.

13. At the site Macial promised to ticket Mr. Gonzalez's landscaping company (which he believed was performing contract work for the CTA), telling him: "Oh, I'll see to it that you never get work from the CTA again. See: AC 06-39, May 9, 2007, Tr. 204. Maciel ticketed Mr. Gonzalez, and his landscaping company, but issued no tickets to the CTA, Paschen Construction or E. King. He told Gonzalez "...we're going to write you a ticket for everything I could write you a ticket on." May 9, 2007, Tr. 193.

FBI training

14. If there was any question of Mr. Maciel's false testimony, one need only review his testimony with reference to his claimed training by the FBI regarding his ability to tell if someone was telling a lie. May 9, 2007, Tr. 116-24. Maciel could not give any specifics related to the alleged class that he attended. He didn't recall the name of the course, the name of the teacher, the address of the course, and concluded that he paid for the course with a money order. He denied that vague answers were an indication of someone not telling the truth. May 9, 2007, Tr. 121. (In the next

hearing, however, he agreed that lack of specificity could be an indicator of whether or not someone was telling the truth. See: AC 06-40, May 9, 2007, Tr. 57.)

15. This embarrassing testimony was contrary to his testimony given under oath in his deposition wherein he was asked about all his training, but never mentioned the claimed FBI training. Macial agreed that he had failed to provide the information regarding his FBI training, when he was asked about his training at his deposition as “he only gave information that he thought was pertinent”. May 9, 2007, Tr. 118. (In the next hearing, Macial testified that the identification of witnesses on site were not included in his investigation report because he was taught to leave out non-pertinent information. See: AC 06-40, May 9, 2007, Tr. 50-1).

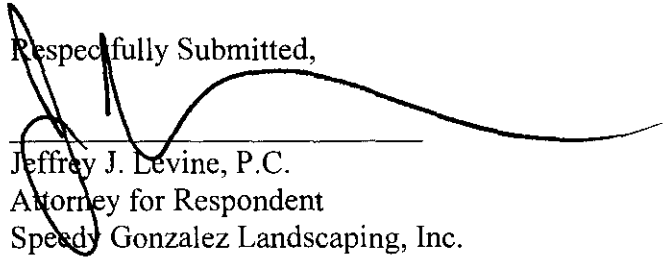
Conclusion

16. Complainant no evidence that this respondent was in any way responsible for committing any violations. The violations also charged regarding securing the property, salt unloading operations, ACM or asbestos, waste next to residential homes and oil flowing into the sewer. The baseless allegations were not made as a result of a mistake or confusion. Macial testified that he tells certain individuals that he could help them avoid citations. Mr. Gonzalez interpreted Mr. Macial’s offer to “work it out” as a request for a bribe. Gonzales testified that when he refused to pay Macial, the inspector responded “All right. You’ll pay for this.”

17. As Macial promised he would, he wrote a tickets to Gonzalez and his companies for everything he could think of, but issued no tickets to the CTA, Paschen Construction or E. King. Mr. Maciel, Complainant’s only witness, gave false testimony. The instant baseless charges are based on Macials false claim that trucks were dumping at the site but logically represent an attempt at reprisals for Mr. Gonzalez’s failure to “work it out” to Macial’s satisfaction. The prosecution is nothing more than the result of an ugly reprisal taken to the extreme.

Wherefore, for the above and forgoing reasons, Respondent Speedy Gonzalez Landscaping, Inc., 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
Speedy Gonzalez Landscaping, Inc.

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