

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
CLERK'S OFFICE

AUG 06 2007

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)

Complainant,)

v.)

SPEEDY GONZALEZ LANDSCAPING,)
INC., et al.)

Respondents.)

Site Code:0316485103

STATE OF ILLINOIS
Pollution Control Board

AC: 2006-039

AC: 2006-040

AC: 2006-041

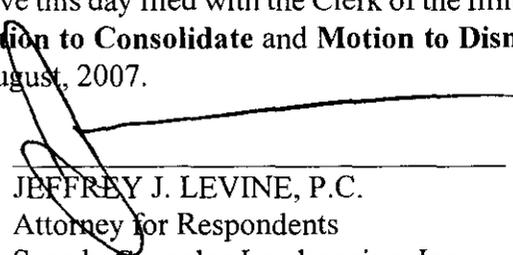
AC: 2007-025

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 **Renewed Motion to Consolidate and Motion to Dismiss Actions**. Dated at Chicago, Illinois, this 6th day of August, 2007.

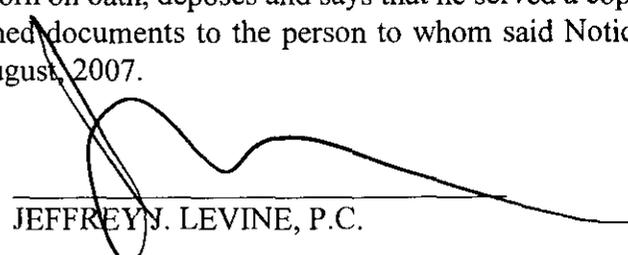


JEFFREY J. LEVINE, P.C.
Attorney for Respondents
Speedy Gonzalez Landscaping, Inc.,
Jose Gonzalez, and
1601-1759 East 130th Street, LLC.

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 6th day of August, 2007.



JEFFREY J. LEVINE, P.C.

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RENEWED MOTION TO CONSOLIDATE ACTIONS

Now come Respondents, Speedy Gonzalez Landscaping, Inc., Jose Gonzalez, and 1601-1759 East 130th Street, LLC, by and through their attorney, Jeffrey J. Levine, P.C., and for their Renewed Motion to Consolidate, state and assert as follows:

1. On or about December 20, 2006, Respondents sought to consolidate these matters for hearing for purposes of judicial economy. Said motion was denied.

2. With the instant motion, Respondents, Speedy Gonzalez Landscaping, Inc., Jose Gonzalez, and 1601-1759 East 130th Street, LLC, seek to consolidate cases 2006-039, 2006-040 and 2006-041.

3. The facts in each case are the same. The allegations arose out of claims made at the same property, largely on the same date and involved the testimony of the same witnesses. The only difference in the cases are the identity of the Respondents. However, those Respondents are interconnected. Jose Gonzalez owns both Speedy Gonzalez Landscaping, Inc., and 1601-1759 East 130th Street, LLC. All Respondents are represented by the same counsel.

4. No differences exist in the proof presented by the Department of Environment between the three respondents except their individual name.

5. During the individual hearings, the parties stipulated to allow the testimony of witnesses

in one action be used in other actions. Case 2007-25, involve a later date at the site.

6. Respondents seek to raise issues regarding the competency of witnesses, discovery violations and outrageous government conduct before the Pollution Control Board and, if required, on appeal of any adverse decision by the Board.

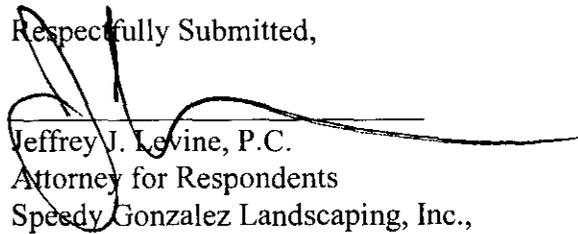
7. The veracity of testimony given by Complainant's witnesses is called into question when the testimony is compared in the different actions. See: Motion to Dismiss Complaints.

8. The multiple claims alleged, many of them baseless, and the failure to perform an adequate investigation, were threatened by the inspector after he sought to "work out" prior allegations. These are only revealed when the testimony is compared from each action. Consolidation of these actions would reveal to the Pollution Control Board, the full scope of the scheme.

9. There is no valid reason not to consolidate these matters.

Wherefore, for the above and forgoing reasons, Respondent Speedy Gonzalez Landscaping, Inc., prays that cases 2006-039, 2006-040 and 2006-041, be consolidated, that Case No. 2007-25, also be consolidated with the others and for such further relief as is just and equitable.

Respectfully Submitted,


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

Dated: August 6, 2006

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MOTION TO DISMISS ACTIONS

Now come Respondents, Speedy Gonzalez Landscaping, Inc., Jose Gonzalez, and 1601-1759 East 130th Street, LLC, by and through their attorney, Jeffrey J. Levine, P.C., and for their Motion to Dismiss Actions for Discovery Sanctions and Outrageous Governmental Conduct, state and assert as follows:

1. The above captioned matters involve four related sets of violations wherein the City of Chicago, Department of Environment has alleged that Respondents have committed numerous acts in violation of Section 21(p) of the Illinois Environmental Protection Act. With the instant motion, Respondents seek dismissal of the actions (and/or other relief), for discovery sanctions and governmental misconduct. Respondents finally claim that false allegations, selective prosecution, the failure to conduct an adequate investigation, selective responses in deposition testimony, the failure to provide subpoenaed documents and false testimony of witnesses result in a denial of Respondents constitutional rights to Procedural Due Process.

2. Respondents hereby incorporate by reference their Post Hearing Briefs in the above captioned matters as though set out herein in their entirety.

3. Inspector Rafael Macial knew Respondent Jose Gonzales growing up in his neighborhood.

When he had previously sought to money from Gonzalez by offering to “work out” claimed violations, Macial promised to retaliate stating: “You’ll pay for this.” Macial, on March 22, 2006, wrote numerous false allegations and ticket persons and entities who did not own or control the property. This evidence indicated that Macial attempted to extort Mr. Gonzalez.

False Allegations

4. Raphael Macial, the inspector has testified that on occasions he has discussed “working out” claims with alleged violators rather than issuing violations. See: AC 06-39, May 9, 2007, Tr. 126-28. Respondent’s witness testified that the inspector Rafael Maciel had previously asked him for money and when Gonzalez refused, Macial promised to retaliate stating: “You’ll pay for this.”See: AC 06-39, May 9, 2007, Tr. 181-82.

5. Mr. Macial testified that he has told certain individuals that he could help them avoid citations. May 9, 2007, Tr. 126. He would say to individuals “Help me help you avoid a citation.” May 9, 2007, Tr. 127. He denied asking for bribes stating that based upon his credibility, he was pretty sure that he had never taken a bribe. See: May 9, 2007, Tr. 124-27. 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.

6. At the site Macial promised to ticket Mr. Gonzalez’s landscaping company, which had nothing to do with the property investigated, telling him: “...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 personally, as well as his landscaping company. 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.

7. Similar to the complaint charging Speedy Gonzalez Landscaping Inc.(AC 2006-39), the property in AC 2006-40 was not owned in Mr. Gonzalez’s name. However, throughout his

testimony, Mr. Macial repeatedly identified Respondent Jose Gonzalez as a property owner. See: AC 06-40, May 9, 2007, Tr. 35, 39-40, 64, 87, 100, 125-27. The fact that Mr. Gonzalez is not the property owner, is conceded at page 1, of the City's Post-Hearing Brief in AC 2006-40.

7. 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. AC 06-39, 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 (AC 06-39, May 9, 2007, Tr. 130), but he had no evidence that the offenses occurred. AC 06-39, May 9, 2007, Tr. 68, 129-32. These allegations are listed as attachment "B" in Complainant's Inspection Reports. See: Complainant's Exhibits. Mr. Maciel concluded that he had "no idea" why the violations were charged when there was no basis for them. AC 06-39, May 9, 2007, Tr. 132.

Selective Prosecution

8. During the course of the limited investigation, Inspectors Macial and Chris Antonopoulos discovered the entities responsible for a large amount of debris on the site. Both investigators testified regarding an agreement entered into regarding what has been deemed the "suspect CTA waste" at the property in question. Mr. Antonopoulos described how the agreement was between Mr. Gonzalez, Paschen Construction, E. King and a representative of the CTA. The agreement called for CTA waste material from the Brown Line construction, to be stored in roll-off truck boxes over the weekend at the site in question. AC 2006-39, May 17, 2007, Tr. 31; May 9, 2007, Tr. 44, 59-60.

9. When the CID landfill opened, the roll-off boxes would be removed from the property and brought to CID. AC 2006-39, May 17, 2007, Tr. 31. Complainant's investigation revealed that, either E. King or Paschen Construction didn't follow the agreement to store the CTA waste in the

roll-off trucks. It was that entity who caused the CTA waste to be deposited at the property in question. May 17, 2007, Tr. 49.

10. The investigators collected manifests (See: Respondents Exhibit A), at the site which indicate that the waste material came from the CTA at 567 West Lake Street. 2006 AC-39, May 9, 2007. Tr. 33-6. E. King was the hauler on the manifests. 2006 AC-39, May 9, 2007, Tr. 83-4. Mr. Antonopoulos testified that Mr. Maciel had the hazardous waste manifests on the day of the investigation. 2006 AC-39, May 17, 2007, Tr. 44-5.

11. No tickets were issued to the CTA, Paschen Construction or E. King Trucking. The investigators later allowed those entities to conclude their clean-up. AC 06-39, May 9, 2007, Tr. 204. Rather than ticket all entities involved, Complainant selectively chose to ticket non-owner Respondents Speedy Gonzalez Landscaping, Inc., (2006 AC-39) and Jose R. Gonzalez. (2006 AC-40), making good on Macial's promise to Gonzalez "...to write you a ticket for everything I could write you a ticket on." 2006 AC 06-39, May 9, 2007, Tr. 193. The charging of Respondents and the failure to even investigate the other entities that actually committed the dumping of the debris, demonstrates the selective and vindictive nature of these prosecutions.

Failure to Conduct an Adequate Investigation

12. Complainant's investigation revealed that, either E. King or Paschen Construction didn't follow the agreement to store the waste in the roll-off trucks. It was that entity who caused the CTA waste to be deposited at the property in question. 2006 AC-40, May 17, 2007, Tr. 49. However, neither the manifests nor any of the other documents observed that day regarding other individuals at the site are included in the investigation report. 2006 AC-40, May 9, 2007. Tr. 35-8.

13. No mention was made in the investigation report that Elaine King was present on site discussing the agreement. 2006 AC-40, May 9, 2007, Tr. 44-9. Macial testified that he selectively

excluded information in his investigation report, and that he had been taught to conduct investigations in this manner. 2006 AC-40, May 9, 2007, Tr. 48-52.

14. Mr. Antonopoulos testified that an inspector's job is to determine where the waste came from. 2006 AC-40, May 17, 2007, Tr. 20. Antonopoulos said an investigation would have revealed the entity that didn't follow the agreement and dumped the CTA debris. 2006 AC-40, May 17, 2007, Tr. 33. He agreed that a ticket cannot be written without proof of a violation. 2006 AC-40, May 17, 2007, Tr. 43. He testified that a more thorough investigation should have been performed because the Department of Environment didn't have all the facts. He further testified that he did not feel comfortable charging individuals and entities when an adequate investigation had not been performed. He believed that he would be remiss in his duties if he had performed the type of investigation performed in the instant case. 2006 AC-40, May 17, 2007, Tr. 24-5.

15. Even Mr. Macial agreed that the investigation was not thorough. 2006 AC-40, May 9, 2007, Tr. 78. Macial testified that he just assumed that Mr. Gonzalez "was doing something illegal." 2006 AC-40, May 9, 2007, Tr. 83. Mr. Antonopoulos concluded that "...it was easier to ticket Mr. Gonzalez than conduct an adequate investigation..." 2006 AC-40, May 17, 2007, Tr. 95. Finally, Mr. Macial testified that his ability to read peoples credibility was part of his investigation. 2006 AC-39, May 9, 2007, Tr. 117.

Selective Responses in Deposition Testimony

16. Contempt for the legal process is demonstrated by Mr. Maciel's reference to his claimed training by the FBI regarding his ability to tell if someone was telling a lie. Mr. Maciel testified that he had not disclosed this alleged training in his deposition testimony because "he only gave information that he thought was pertinent". AC 06-39, Tr. 118. Complainants therefore, admitted to failing to give truthful deposition testimony and only providing the deposition testimony which

they believed was “pertinent”. Respondents were therefore precluded an opportunity to investigate the class that Maciel claims to have taken regarding his ability to determine how to tell if an individual was telling the truth.

Failure to Provide Subpoenaed Documents

17. The investigator in this case, Rafael Maciel, testified that certain information was transcribed into “field notes”. Counsel for Complainant was not informed of the existence of these notes. AC 06-39, May 9, 2007, Tr. 58-9. Mr. Maciel testified that Edward Collins “took the information down”.

18. On May 1, 2007, Mr. Maciel, Mr. Collins and all other witnesses were subpoenaed to the hearing. The Subpoenas also sought “any and all documents related” to the cases. See: May 1, 2007, Subpoenas, attached hereto and incorporated herein as Group Exhibit A. These subpoenas are indicative of the subpoenas issued in all of the above captioned cases. The “field notes” referenced by Mr. Maciel were never produced in discovery or pursuant to the subpoenas. Nor were the business cards collected from individuals at the site ever produced pursuant to the subpoena. AC 06-39, May 9, 2007, Tr. 53-4. Complainants therefore selectively withheld documents sought pursuant to subpoena.

False Testimony of Witness

19. Mr. Maciel maintained at the hearing that the trucks on site were dumping material. 2006 AC-39, May 9, 2007, R. 42, 72, 74, 78. He later testified that he assumed this. 2006 AC-39, May 9, 2007, Tr. 137. Mr. Maciel initially testified that he could not determine whether trucks were loading or unloading at the site. 2006 AC-39, May 9, 2007, Tr. 16. He testified that he concluded that another entity’s trucks were dumping at the site. 2006 AC-39, May 9, 2007, Tr. 72, 74. This conclusion is contrary to his report, (2006 AC-39, May 9, 2007, Tr. 43, 46-7), and his prior

deposition testimony wherein he testified that the trucks were loading. 2006 AC-39, May 9, 2007, Tr. 74-6.

20. Maciel testified that he would impound a truck if it was dumping but did not impound the E. King trucks on the lot. 2006 AC-39, May 9, 2007, Tr. 48. Neither Macial or anyone else saw trucks dumping. 2006 AC-39, 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. 2006 AC-39, May 9, 2007, Tr. 138. He then testified that a worker told him that "We're bringing it here." 2006 AC-39, May 9, 2007, Tr. 141, line 6. He then testified "I don't recall if he did say that or not." 2006 AC-39, May 9, 2007, Tr. 141, line 12.

21. Mr. Antonopoulos testified that an E. King employee opened the gate and an E. King truck was loaded up with debris and waste. 2006 AC-40, May 17, 2007, Tr. 19-20. Mr. Macial's testimony that the trucks were dumping was false. It is contradicted by his own testimony, his signed investigation report and Mr. Antonopoulos' testimony.

21. Mr. Macial cannot be regarded as competent to testify as a witness. 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. AC 06-40, 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 when asked if the check he paid with was a personal check, he stated that he paid for the course with a money order.

22. Macial's testimony changed from case to case on the same day. For instance in Case No. AC 2006-39, Mr. Macial testified as follows:

Q. Are vague answers an indication that someone's not telling the truth, sir?

A. No, that's not an indication. (AC 2006-39, May 9, 2007, Tr. 121-22).

However, in Case No. AC 2006-40, Macial gave the following testimony:

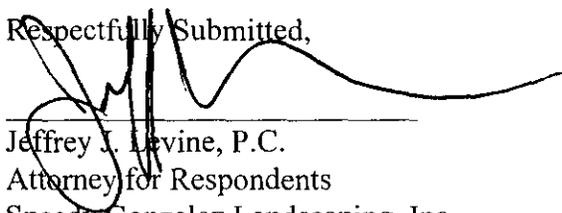
Q. Is lack of specificity an indicator as to whether or not someone is telling the truth or not?

A. That could be one, yes. (AC 2006-39, May 9, 2007, Tr. 57).

23. Review of his testimony regarding his alleged FBI training reveals the depths to which Macial will go to support false testimony. However, Respondents could not prove that the testimony was false because Maciel had not disclosed the information when asked in his deposition testimony. Respondents were therefore prejudiced in presenting their defense to the trier of fact.

Wherefore, for all the above and forgoing reasons, Respondents Speedy Gonzalez Landscaping, Inc., Jose Gonzalez, and 1601-1759 East 130th Street, LLC, pray that their Motion to Dismiss Actions for Discovery Sanctions and Outrageous Governmental Conduct be granted and for such further relief as is just and equitable.

Respectfully Submitted,



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

Dated: August 6, 2006

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

Before the Illinois Pollution Control Board

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STATE OF ILLINOIS
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Complainant/Petitioner,)

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v.)

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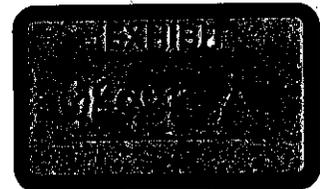
TO: Mr. Chris Antonopoulos
City of Chicago, Department of Environment
c/o Jennifer A. Burke
30 N. LaSalle Street, Suite 900
Chicago, IL 60602
Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e)

(2002)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to attend and give
testimony at the hearing/deposition in the above-captioned matter at _____

8:00 a .m. on May 9, _____ 2007, at

Suite 11-500, 100 West Randolph Street, Chicago, Illinois 60601

You are also ordered to bring with you documents relevant to the matter under
consideration and designated herein, any and all documents related to the
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PCB AC 06-39

v.)

Speedy Gonzalez Landscaping, Inc.)

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Respondent.)

SUBPOENA DUCES TECUM

TO: Mr. Stanley Kaehlar
City of Chicago, Department of Environment
c/o Jennifer A. Burke
30 N. LaSalle Street, Suite 900
Chicago, IL 60602

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TO: **Mr. Rafael Maciel**
 City of Chicago, Department of Environment
 c/o Jennifer A. Burke
 30 N. LaSalle Street, Suite 900
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PCB AC 06-40

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Jose R. Gonzalez)

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City of Chicago, Department of Environment
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v.)

1601-1759 East 130th Street, L.L.C.,)

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Respondent.)

SUBPOENA DUCES TECUM

TO: Mr. Rafael Maciel

City of Chicago, Department of Environment

c/o Jennifer A. Burke

30 N. La Salle Street, Suite 900

Chicago, IL 60602

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Respondent.)

PCB AC-03-25

SUBPOENA DUCES TECUM

TO: Mr. Chris Antonopoulos
City of Chicago, Department of Environment
c/o Jennifer A. Burke
30 N. La Salle Street, Suite 900
Chicago, IL 60602

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