

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 02 2008

STATE OF ILLINOIS
Pollution Control Board

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)

Complainant,)

v.)

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

Respondents.)

Site Code:0316485103

AC: 2006-039

AC: 2006-040

AC: 2006-041

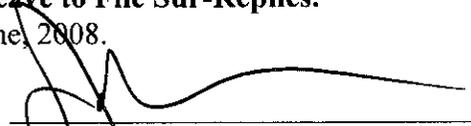
AC: 2007-025

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 **Motion for Leave to File Sur-Replies**.
Dated at Chicago, Illinois, this 2nd day of June, 2008.

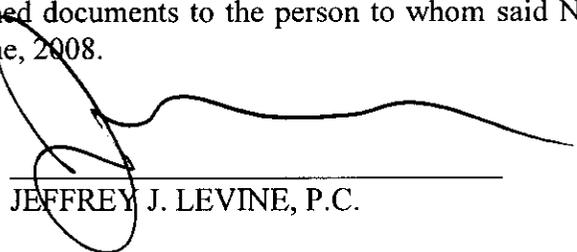


JEFFREY J. LEVINE, P.C.
Attorney for Respondents
Speedy Gonzalez Landscaping, Inc.,
Jose Gonzalez, and
1601-1759 East 130th Street, LLC.

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 2nd day of June, 2008.



JEFFREY J. LEVINE, P.C.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)	
OF ENVIRONMENT,)	
)	Site Code:0316485103
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SPEEDY GONZALEZ LANDSCAPING,)	AC: 2007-025
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MOTION FOR LEAVE TO FILE SUR-REPLIES

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 for Leave to File Sur-Replies, state and assert as follows:

1. Pursuant to the Hearing Officer's Order dated April 17, 2008, on or about May 13, 2008, Complainant filed replies in the above captioned matters. These Reply Briefs have raised matters which require that Respondents be allowed to file Sur-Replies.

2. A glaring example occurs in City of Chicago, Department of Environment v. Speedy Gonzalez Landscaping, Inc., Case No. AC: 2006-039. In its May 13, 2008, Reply Brief, the City now contends that the water tanker, present on the property, is waste. Previously, the City had argued that the tanker demonstrated the Respondent's control over the property.

3. The argument made by the City is in direct contrast to the city's main witness, investigator Rafael Maciel. That witness specifically testified under oath at his deposition that the tanker truck on the site was not a violation. See: Macial's 12/06/06 Deposition at p. 148, attached hereto as Exhibit A.

4. The City however, spends half of its Reply Brief now contending that the same tanker

should be classified as waste in order to hold the Respondent liable. In essence this is a fatal variance from the initial charges.

5. Under any minimal due process requirements, a defendant is allowed to know the claims made against him so that he may defend against said claim.

6. The City raises additional issues in its Reply Briefs that must be addressed by way of Sur-Replies such as the following:

In City of Chicago, Department of Environment v. Jose R. Gonzalez, Case No. AC: 2006-040, the City argues that it must show that “an alleged open dumper had control over the source or site of pollution. The City now argues that Mr. Gonzalez was an “open dumper”.

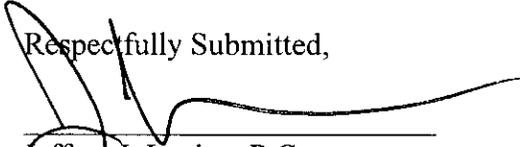
In City of Chicago, Department of Environment v. 1601-1759 East 130th Street, LLC, Case No. AC: 2006-041, the City argues that Respondent can be held liable for “causing or allowing” open dumping even if he did not participate in the dumping.

In City of Chicago, Department of Environment v. 1601-1759 East 130th Street, LLC, Case No. AC: 2007-025, the City argues that Respondent can be held liable for its “passive conduct” when the evidence indicates the owner’s conduct was the opposite of “passive”.

7. Respondents seek leave to file Sur-Replies in the respective cases to correct the recent assertions made by the city regarding the tanker being the basis of a violation and to distinguish the cases asserted in its Reply Briefs

Wherefore, for the above and forgoing reasons, Respondents Speedy Gonzalez Landscaping, Inc., Jose Gonzalez, and 1601-1759 East 130th Street, LLC, pray that they be allowed to file Sur-Replies 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: June 2, 2008

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT, Complainant, vs. SPEEDY GONZALEZ LANDSCAPING, INC., Respondent. AC 06-39 (CDOE No. 06-02--AC)

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT, Complainant, vs. JOSE R. GONZALEZ, Respondent. AC 06-40 (CDOE No. 06-03--AC)

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT, Complainant, vs. 1601-1759 EAST 130th STREET, L.L.C., Respondent. AC 06-41 (CDOE No. 06-01--AC)

The deposition of RAFAEL MACIEL, taken before Sharon Valli, Certified Shorthand Reporter and Notary Public, taken pursuant to the rules governing the Illinois Pollution Control Board pertaining to the taking of depositions for the purpose of discovery at 20 North Clark Street, Suite 800, Chicago, Illinois, commencing at 2:14 p.m. on the 6th of December, A.D., 2008.

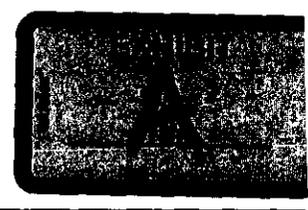
ORIGINAL

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EXHIBITS

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13	(Exhibits retained by Mr. Levine by agreement of counsel.)	
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1 APPEARANCES:

2 CITY OF CHICAGO, DEPARTMENT OF LAW
3 MS. JENNIFER BURKE
4 MR. GRAHAM G. McCAHAN
5 30 North LaSalle Street
6 Room 900
7 Chicago, Illinois 60602
8 Phone: (312) 742-3990; (312) 744-1438

9 On behalf of the Complainant;

10 JEFFREY J. LEVINE, P.C.
11 MR. JEFFREY J. LEVINE
12 20 North Clark Street
13 Suite 800
14 Chicago, Illinois 60602
15 Phone: (312) 372-4800

16 On behalf of the Respondent.

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1 MR. LEVINE: Let the record reflect that this is the
2 discovery deposition of -- Could you please state your
3 name?

4 THE WITNESS: Rafael Maciel.

5 MR. LEVINE: Maciel?

6 THE WITNESS: Yes.

7 MR. LEVINE: (Continuing.) -- Maciel taken pursuant
8 to a notice out -- because I will send a notice out --
9 pursuant to a notice that will be sent out at some point
10 in three different cases. And the cases are: City of
11 Chicago Department of Environment vs. Jose Gonzalez --
12 Which number do you go by, the top one?

13 MS. BURKE: Mm-hmm.

14 MR. LEVINE: (Continuing.) -- AC 06-40; City of
15 Chicago Department of Environment vs. Speedy Gonzalez
16 Landscaping, Incorporated, Case No. AC 06-39; and City of
17 Chicago Department of Environment vs. 1601-1759 East
18 130th Street, L.L.C., Case No. AC 06-41.

19 Will you please swear the witness?
20 (Witness sworn.)

21 WHEREUPON:
22 RAFAEL MACIEL,
23 called as a witness herein, having been first duly sworn,
24 was examined and testified as follows:

1 handwriting on it. Is that part of your --
 2 MS. BURKE: I think it's on there.
 3 THE WITNESS: It's on there.
 4 MR. LEVINE: Is it?
 5 MS. BURKE: Exhibit B.
 6 THE WITNESS: Right.
 7 BY MR. LEVINE:
 8 Q. Oh, I'm sorry. Yeah. Directing your attention
 9 to Exhibit B, page 2, marked as 7 at the bottom, is that
 10 your signature on the bottom?
 11 A. It is, correct.
 12 Q. And did you complete the report?
 13 A. The report was completed by -- with myself and
 14 Christopher Antonopoulos.
 15 Q. And was the investigation ever completed?
 16 A. The investigation was completed? No.
 17 Q. Okay. What needed to be done with the
 18 investigation as far as you know?
 19 A. Well, we had to find out exactly where the
 20 material -- who was going to dispose of the material, how
 21 it was going to be disposed of, who were the responsible
 22 parties for the material being there. I mean, there was
 23 so many different angles before we could finish off the
 24 investigation, subsequently, close it out.

1 Q. Was that completed at some time?
 2 A. To my knowledge, no. I have no idea.
 3 Q. Who would have been responsible for completing
 4 the investigation?
 5 A. My supervisor, Stanley Kaehler. You have John
 6 Kryl, who is director of inspection.
 7 Q. How about Chris?
 8 A. Well, Chris was just an investigator just like
 9 me. So ...
 10 Q. With regard to the site conditions, I'm going
 11 to go through a couple of things. The stone piles, that
 12 was the clean stone?
 13 A. I have no idea.
 14 Q. Those were the piles listed in --
 15 A. Yeah. I would say yes, it is.
 16 Q. Okay. And do you know whether those were
 17 pollution or waste?
 18 A. I wouldn't say that they were.
 19 Q. With regard to the debris piles, the debris
 20 piles, I'm assuming, are the small piles all around the
 21 edges of the berm, correct?
 22 A. Correct.
 23 Q. And you stated you had no information whether
 24 any defendant caused or allowed those piles to be placed

1 there, correct?
 2 A. Correct.
 3 Q. With regard to the suspected CTA material which
 4 you later learned to be the CTA material ...
 5 A. Yeah. We still haven't -- To my knowledge, I
 6 have no idea if it was still CTA material.
 7 Q. Well, you previously testified that it was from
 8 the CTA, correct?
 9 MS. BURKE: No, he did not. That is
 10 mischaracterizing his testimony. I object.
 11 BY MR. LEVINE:
 12 Q. Did you subsequently learn from talking to
 13 people and checking manifests that this material came
 14 from the CTA Brown Line?
 15 A. Like I said, during the process of my
 16 investigation, there was so many clashing stories. The
 17 people, as far as the drivers and operators there, they
 18 told me the material was coming from a CTA project.
 19 Chuck Webber had stated at first that it was from a CTA
 20 project. And then you had Paschen who rebutted that and
 21 said that material was not from the CTA project.
 22 Q. Does anyone know at the City of Chicago where
 23 the material is from?
 24 A. To my knowledge, I have no idea.

1 Q. Okay. The compost pile, do you know whether --
 2 do you have any information whether any defendant caused
 3 or allowed the placement of that compost pile on the
 4 yard?
 5 A. To my knowledge, no.
 6 Q. With regard to the timber with possible
 7 arsenic -- not arsenic. Is it creosote?
 8 A. Yes.
 9 Q. Do you have any knowledge whether or not any
 10 defendant caused or allowed that material to be placed in
 11 the yard?
 12 A. To my knowledge, no.
 13 Q. You list 50 waste tires. Do you have any
 14 information whether any defendant caused or allowed the
 15 placement of those tires in the yard?
 16 A. To my knowledge, no.
 17 Q. Now, there's a dump truck, a tanker truck, and
 18 a flatbed parked and labeled on-site. Is that a
 19 violation?
 20 A. Is that a violation?
 21 Q. Yeah.
 22 A. No.
 23 Q. No. Okay. That's just parked trucks?
 24 A. Yes.