

ILLINOIS POLLUTION CONTROL BOARD  
August 22, 2019

INDIAN CREEK DEVELOPMENT )  
COMPANY, an Illinois Partnership, individual )  
and as beneficiary under trust 3291 of the )  
Chicago Title and Trust Company dated )  
December 15, 1981 and the Chicago Title & )  
Trust Company, as trustee under trust 3291, )  
Dated December 15, 1981, and JB )  
INDUSTRIES, INC., )

Complainant, )

v. )

BNSF RAILWAY COMPANY, f/k/a The )  
Burlington Northern and Santa Fe Railway )  
Company, )

Respondent. )

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INDUSTRIES, INC., )

Respondents. )

PCB 07-44  
(Citizen's Enforcement – Water, Land)

PCB 14-81  
(Citizen's Enforcement – Water, Land)  
(Consol.)

ORDER OF THE BOARD (by K. Papadimitriu):

On December 4, 2006, Indian Creek Development Company (Indian Creek) filed a three-count complaint against the Burlington Northern Santa Fe Railway Company, a Delaware

corporation (BNSF). The complaint concerned BNSF's industrial or commercial railroad operations located adjacent to Indian Creek's property located at 1500 Dearborn Avenue in Aurora, Kane County. The parties now seek to voluntarily dismiss the consolidated citizen's enforcement actions. For the reasons below, the Board grants the parties' stipulation to dismiss the consolidated citizen's enforcement actions.

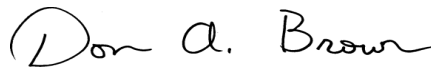
Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2018); 35 Ill. Adm. Code 103. In this case, Indian Creek alleged that BNSF violated Sections 12(a), (d), and 21(e), of the Act (415 ILCS 5/12(a), (d), and 21(e) (2018)). Indian Creek further alleged that BNSF committed these violations by: (1) causing or allowing the discharge of diesel fuel contaminants on BNSF's property in 1993; (2) threatening, causing and allowing the discharge of diesel fuel contaminants through migration to other parts of the property; (3) threatening and eventually causing and allowing the ongoing discharge of contaminants onto the soil and into the groundwater; and (4) causing and allowing the deposited contaminants to move, migrate, and deposit onto other portions of the property.

On December 10, 2013, BNSF filed a complaint against Indian Creek and JB Industries, Inc. (JB Industries). The complaint alleged that Indian Creek and JB Industries violated Sections 12(a), 12(d), and 21(e) of the Act (415 ILCS 5/12(a), 12(d), and 21(e) (2018)). The complaint further alleged that BNSF incurred costs for its environmental response work on Indian Creek's property regarding petroleum constituents not related to a 1993 collision and diesel fuel spill on BNSF's property.

On January 8, 2015 the Board ordered the consolidation of the two citizen enforcement actions. On July 24, 2019, Indian Creek and BNSF filed a stipulation to dismiss the consolidated citizen enforcement actions with prejudice, and stipulated that all costs, expenses, attorneys' and consultants' fees and related costs shall be borne by each respective party having incurred the costs. The Board grants the parties' stipulation to dismiss the consolidated citizen's enforcement actions and closes the dockets.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 22, 2019 by a vote of 5-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board