

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

INDIAN CREEK DEVELOPMENT COMPANY,)
an Illinois partnership, individually as)
beneficiary under trust 3291 of the Chicago)
Title and Trust Company dated December 15, 1981)
and the Chicago Title and Trust Company,)
as trustee under trust 3291, dated)
December 15, 1981,)

Complainant,)

vs.)

THE BURLINGTON NORTHERN AND SANTA FE)
RAILWAY COMPANY, a Delaware Corporation,)

Respondent.)

PCB- 07-44
Citizen's Enforcement
§21(e), §12(a), §12(d)

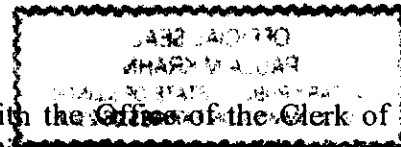
RECEIVED
CLERK'S OFFICE

JAN 18 2007

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: Glenn C. Sechen
Schain, Burney, Ross Citron, Ltd.
222 N. LaSalle Street, Suite 1900
Chicago, Illinois 60601



PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Respondent's Motion to Dismiss, a copy of which is hereby served upon you. Take note that you may be required to attend a hearing at a date set by the Board.

DATE: January 5, 2007

BNSF RAILWAY COMPANY

By: Robert M. Baratta, Jr.
One of Its Attorneys

Weston W. Marsh
Robert M. Baratta, Jr.
James M. Witz
FREEBORN & PETERS LLP
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606
(312) 360-6000 – telephone
(312) 360-6597 – facsimile

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the Respondent's Motion to Dismiss by depositing the same in the U.S. Mail box at 311 South Wacker Drive, Chicago, Illinois before 5:00 p.m. on January 5, 2007, postage prepaid and addressed to:

Glenn C. Sechen
Schain, Burney, Ross Citron, Ltd.
222 N. LaSalle Street, Suite 1900
Chicago, Illinois 60601


Robert M. Baratta, Jr.

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 5th DAY OF
JANUARY, 2007


NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

INDIAN CREEK DEVELOPMENT COMPANY,)
an Illinois partnership, individually as)
beneficiary under trust 3291 of the Chicago)
Title and Trust Company dated December 15, 1981)
and the Chicago Title and Trust Company,)
as trustee under trust 3291, dated)
December 15, 1981,)

Complainant,)

vs.)

THE BURLINGTON NORTHERN AND SANTA FE)
RAILWAY COMPANY, a Delaware Corporation,)

Respondent.)

RECEIVED
CLERK'S OFFICE
JAN 18 2007
STATE OF ILLINOIS
Pollution Control Board

PCB- 07-44
Citizen's Enforcement
§21(e), §12(a), §12(d)

RESPONDENT'S MOTION TO DISMISS

Respondent, the BNSF Railway Company ("BNSF"), hereby moves the Board to dismiss as duplicative the Complaint filed by Complainant. In support of its Motion to Dismiss, Respondent states as noted below and also files its Memorandum in Support of its Motion to Dismiss concurrently herewith.

1. This matter arises out of the purported release of diesel fuel as a result of a January 20, 1993 collision between two trains on BNSF property in the vicinity of Complainant's facility.

2. Complainant files this citizen's enforcement action under the Illinois Environmental Protection Act (the "Act") requesting a finding by the Board that BNSF has violated the Act and seeking environmental cleanup of the diesel fuel.

3. The Illinois Attorney General and the State's Attorney of Kane County filed a lawsuit against BNSF in the Circuit Court of Kane County alleging violations of the Act and seeking cleanup of the diesel fuel.

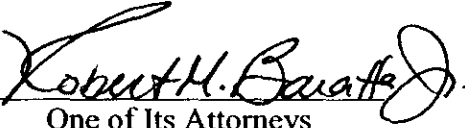
4. The Circuit Court of Kane County entered a Consent Order addressing the very same types of relief sought by Complainant in this action. The Consent Order is attached as Exhibit A to the Complaint.

5. The Complaint duplicates the Kane County lawsuit and requests the same types of relief as that provided in the Consent Order.

WHEREFORE, for the reasons stated above and the reasons set forth in the memorandum filed concurrently herewith, BNSF requests that the Board dismiss the Complaint with prejudice.

Respectfully submitted,

BNSF RAILWAY COMPANY

By: 
One of Its Attorneys

Weston W. Marsh
Robert M. Baratta, Jr.
James M. Witz
FREEBORN & PETERS LLP
311 South Wacker Drive
Suite 3000
Chicago, Illinois 60606
(312) 360-6000 – telephone
(312) 360-6597 – facsimile

1256925