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A P P E A R A N C E S

MS. DEANNA GLOSSER, Chairman
MR. JERRY O'LEARY, Board Member
MS. JENNIFER BURKE, Board Member
MS. CARRIE ZALEWSKI, Board Member
MR. JOHN THERRIAULT, Clerk

1 MS. GLOSSER: We will now allow
2 members of the public to address the Board
3 concerning items that appear on today's agenda.
4 If you wish to speak, please state your name and
5 who you represent for the record.

6 We ask that your -- you keep
7 your remarks brief and I understand we have at
8 least one person wishing to speak today. Michael
9 Jacobson, if you would like to, I guess, stand up.
10 We don't have a podium today, but if you can stand
11 up and speak.

12 MR. JACOBSON: Ladies and gentlemen
13 of the Board, my name is Michael Jacobson on
14 behalf of the respondent Indian Creek Development
15 Company in Case Number 14-81, BNSF Railway versus
16 Indian Creek Development Company.

17 I just want to say a few remarks
18 regarding the respondent's pending motion to
19 dismiss the complainant's complaint as frivolous.
20 This case arises out of a 1993 train collision
21 that occurred on the complainant's property that
22 the train is -- the train tracks, I'm sorry, were
23 owned and operated by the complainant and as part
24 of that collision over -- between 5,800 and 6,800

1 gallons of diesel fuel spilled into the ground.
2 It has migrated to the surrounding areas around
3 the complainant's property.

4 The respondents own property
5 that has been affected by the diesel oil spill.
6 They are a victim of the 1993 train collision and
7 they have been trying to get their property
8 cleaned up for the last 20 years or so.

9 Now, what the complainant is
10 doing in the case is trying to get an allocation
11 against the victim here and what I mean by that is
12 they're trying to use different statutes and
13 regulations as a basis for leave for which they
14 don't have any basis for any relief in that
15 regard. In their complaint, they cite Section
16 22.2(d) Subpart F as a basis for their
17 contribution for Indian Creek to be allocated some
18 of the responsibilities for this action and I'll
19 tell you also that in 1996 there was a judicial
20 consent order entered into between the IEPA and
21 the BNSF Railway Company.

22 That consent order required BNSF
23 to clean up only its contamination on the
24 surrounding areas that had been affected by the

1 1993 train collision. As it stands, BNSF is only
2 obligated to clean up its own contamination.
3 Section 22.2(d) Subpart F is a basis for
4 allocation liability if there is an order from the
5 director of the IEPA or consent order from the
6 director of the IEPA issuing a responsive action.

7 The consent order entered into
8 by the IEPA and BNSF is not a Section 22.2(d)
9 response action. It is completely separate. They
10 don't really have any basis for relief under
11 22.2(d). Regardless, this, again, is not an
12 action where there can be any allocation of
13 responsibility because BNSF is the only party that
14 is responsible to clean up its own contamination.

15 Additionally, and for the first
16 time, in its response to the respondent's motion
17 to dismiss the complainant's cite to section --
18 regulation, sorry, 35 Ill. Adm. Code 741 as an
19 alternative basis for allocation liability.

20 Again, this section is also a
21 frivolous attempt to allocate liability here
22 because this section stems from 415 ILCS 58.9,
23 which requires that two parties be jointly
24 responsible for such contamination for there to be

1 some sort of contribution or allocation liability
2 and in the same regard BNSF is the only party that
3 is responsible for any sort of contamination,
4 remediation and investigative action. There is no
5 joint responsibility on behalf of the respondents
6 in this action. Thank you.

7 MS. GLOSSER: Thank you very much.
8 Is there anyone else that wishes to speak today?
9 Seeing none, this concludes the time the Board has
10 set aside to allow the public to address the
11 Board. We will now proceed with the items on our
12 agenda.

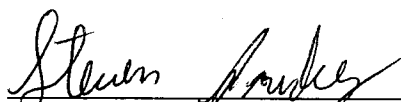
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
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5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this 21st day of
15 March, A.D., 2014.

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CSR No. 084-004675

<p style="text-align: center;">A</p> <p>A.D 7:15 a.m 1:7 action 4:18 5:6,9 5:12 6:4,6 Additionally 5:15 address 3:2 6:10 Adm 5:18 aforsaid 7:8 agenda 3:3 6:12 allocate 5:21 allocated 4:17 allocation 4:10 5:4,12,19 6:1 allow 3:1 6:10 alternative 5:19 appear 3:3 appears 7:10 areas 4:2,24 arises 3:20 aside 6:10 attempt 5:21</p> <hr/> <p style="text-align: center;">B</p> <p>basis 4:13,14,16 5:3,10,19 behalf 3:14 6:5 BNSF 3:15 4:21 4:22 5:1,8,13 6:2 Board 1:2,5 2:2 2:3,3 3:2,13 6:9,11 Brickey 1:5 7:5 7:20 brief 3:7 BURKE 2:3</p> <hr/> <p style="text-align: center;">C</p> <p>C 2:1 called 1:5 CARRIE 2:3 case 3:15,20 4:10</p>	<p>cause 1:4 Certified 7:5 certify 7:6 Chairman 1:4 2:2 Chicago 1:6 7:22 cite 4:15 5:17 clean 4:23 5:2 5:14 cleaned 4:8 Clerk 2:4 Code 5:18 collision 3:20,24 4:6 5:1 commencing 1:7 Company 3:15 3:16 4:21 complainant 3:23 4:9 complainant's 3:19,21 4:3 5:17 complaint 3:19 4:15 complete 7:9 completely 5:9 concerning 3:3 concludes 6:9 consent 4:20,22 5:5,7 contamination 4:23 5:2,14,24 6:3 contribution 4:17 6:1 Control 1:2,5 Cook 7:3,14 correct 7:9 County 7:3,14 Creek 3:14,16 4:17 CSR 1:5 7:20,23</p> <hr/> <p style="text-align: center;">D</p>	<p>day 1:6 7:14 Deanna 1:4 2:2 Development 3:14,16 diesel 4:1,5 different 4:12 direction 7:12 director 5:5,6 dismiss 3:19 5:17 doing 4:10</p> <hr/> <p style="text-align: center;">E</p> <p>E 2:1,1 entered 4:20 5:7 entitled 1:4</p> <hr/> <p style="text-align: center;">F</p> <p>F 4:16 5:3 first 5:15 foregoing 7:8 frivolous 3:19 5:21 fuel 4:1</p> <hr/> <p style="text-align: center;">G</p> <p>gallons 4:1 gentlemen 3:12 Glosser 1:5 2:2 3:1 6:7 ground 4:1 guess 3:9</p> <hr/> <p style="text-align: center;">H</p> <p>held 1:4 hour 1:7</p> <hr/> <p style="text-align: center;">I</p> <p>IEPA 4:20 5:5,6 5:8 ILCS 5:22 Ill 5:18 Illinois 1:2,5,6,6 7:1,14,22 Indian 3:14,16 4:17</p>	<p>investigative 6:4 issuing 5:6 items 3:3 6:11</p> <hr/> <p style="text-align: center;">J</p> <p>Jacobson 3:9,12 3:13 JENNIFER 2:3 JERRY 2:2 JOHN 2:4 joint 6:5 jointly 5:23 judicial 4:19</p> <hr/> <p style="text-align: center;">K</p> <p>keep 3:6</p> <hr/> <p style="text-align: center;">L</p> <p>Ladies 3:12 leave 4:13 liability 5:4,19 5:21 6:1</p> <hr/> <p style="text-align: center;">M</p> <p>March 1:6 MATTER 1:1 mean 4:11 MEETING 1:2 Member 2:2,3,3 members 3:2 Michael 3:8,13 migrated 4:2 Monroe 7:21 motion 3:18 5:16</p> <hr/> <p style="text-align: center;">N</p> <p>N 2:1 name 3:4,13 notes 7:11 Number 3:15</p> <hr/> <p style="text-align: center;">O</p> <p>O'LEARY 2:2 obligated 5:2 occurred 3:21</p>	<p>official 7:13 oil 4:5 operated 3:23 order 4:20,22 5:4,5,7 owned 3:23</p> <hr/> <p style="text-align: center;">P</p> <p>P 2:1,1 part 3:23 parties 5:23 party 5:13 6:2 pending 3:18 person 3:8 personal 7:11 Phone 7:22 please 3:4 podium 3:10 Pollution 1:2,5 proceed 6:11 proceedings 1:4 7:7,9 property 3:21 4:3,4,7 public 3:2 6:10</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p style="text-align: center;">R</p> <p>R 2:1 Railway 3:15 4:21 Randolph 1:6 really 5:10 record 3:5 regard 4:15 6:2 regarding 3:18 Regardless 5:11 regulation 5:18 regulations 4:13 relief 4:14 5:10 remarks 3:7,17 remediation 6:4 REPORT 1:4 reported 7:6 Reporter 7:6</p>
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<p>represent 3:5 required 4:22 requires 5:23 respondent 3:14 respondent's 3:18 5:16 respondents 4:4 6:5 response 5:9,16 responsibilities 4:18 responsibility 5:13 6:5 responsible 5:14 5:24 6:3 responsive 5:6</p> <hr/> <p style="text-align: center;">S</p> <p>S 2:1 section 4:15 5:3 5:8,17,20,22 Seeing 6:9 separate 5:9 set 6:10 shorthand 7:5,7 signature 7:13 sorry 3:22 5:18 sort 6:1,3 speak 3:4,8,11 6:8 spill 4:5 spilled 4:1 SS 7:2 stand 3:9,10 stands 5:1 state 1:5 3:4 7:1 statutes 4:12 stems 5:22 stenographic 7:10 Steven 1:5 7:5 7:20 Street 1:6 7:21 Subpart 4:16 5:3</p>	<p>Suite 7:21 surrounding 4:2 4:24</p> <hr/> <p style="text-align: center;">T</p> <p>taken 1:5 7:11 tell 4:19 Thank 6:6,7 THERRIault 2:4 time 5:16 6:9 today 3:8,10 6:8 today's 3:3 tracks 3:22 train 3:20,22,22 4:6 5:1 transcribed 7:11 transcript 7:9 trial 7:7,10 true 7:8 trying 4:7,10,12 two 5:23</p> <hr/> <p style="text-align: center;">U</p> <p>understand 3:7 use 4:12</p> <hr/> <p style="text-align: center;">V</p> <p>versus 3:15 victim 4:6,11</p> <hr/> <p style="text-align: center;">W</p> <p>want 3:17 West 1:6 7:21 wish 3:4 wishes 6:8 wishing 3:8 Witness 7:13</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p style="text-align: center;">Y</p> <p>years 4:8</p> <hr/> <p style="text-align: center;">Z</p> <p>ZALEWSKI 2:3</p>	<hr/> <p style="text-align: center;">0</p> <hr/> <p>084-004675 7:23</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>100 1:6 11:00 1:7 14-81 3:15 1993 3:20 4:6 5:1 1996 4:19</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>20 4:8 2007 7:21 2014 1:6 7:15 20th 1:6 22.2(d) 4:16 5:3 5:8,11</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>312 7:22 35 5:18</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>415 5:22 419-9292 7:22</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5,800 3:24 58.9 5:22</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6,800 3:24 60603 7:22</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>741 5:18</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 7:21</p>		
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