

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF 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 SANTA FE)
RAILWAY COMPANY, a Delaware Corporation)

Respondents.)

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

NOTICE OF FILING AND PROOF OF SERVICE

TO: See Attached Service List

PLEASE TAKE NOTICE that on February 6, 2007, the attached document, Complainant's **Response to Motion to Dismiss**, was filed with the Clerk of the Pollution Control Board and is hereby served upon the person(s) referenced above by placing a copy of the same in the U.S. mail at 222 N. LaSalle Street, Chicago, Illinois on or before 4:00 p.m. on the 6th day of February, 2007, with proper postage affixed.

**Indian Creek Development Company and
Chicago Land Trust Company t/u/t 3291,
dated December 15, 1981**

By *Glenn C. Sechen*
One of Its Attorneys

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Service List

Weston W. Marsh
Robert M. Barratta Jr.
James H. Wiltz
Freeborn & Peters, LLP
311 S. Wacker Drive
Suite 3000
Chicago, Illinois 60606

312-360-6000
312-360-6520 - Facsimile

Illinois Attorney General
General Law Bureau
100 West Randolph Street
13th Floor
Chicago, Illinois 60601

312-814-3650
312-814-4425 - Facsimile

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Ctr, Ste. 11-500
100 W. Randolph Street
Chicago, Illinois 60601

312-814-3620
312-814-3669 - Facsimile

Assistant Attorney General
Matthew J. Dunn, Chief Environmental
Enforcement/Asbestos Litigation Div.
100 W. Randolph Street
Chicago, Illinois 60601

312-814-2521
312-814-2347 - Facsimile

George Theophilos
Environmental Enforcement /Asbestos
Litigation Division
100 W. Randolph Street
Chicago, Illinois 60601

312-814-6986
312-814-2347 - Facsimile

John Waligore, Legal Counsel
Illinois Environmental Protection
Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

217-782-9836
217-782-9807 – Facsimile

Megan Boyle, Legal Counsel
Illinois Environmental Protection
Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

217-785-1621
217-782-9807 - Facsimile

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RESPONSE TO MOTION TO DISMISS

NOW COME the complainants, Indian Creek Development Company, individually and as the beneficial owner under the Chicago Title and Trust Company trust number 3291 dated December 15, 1981, and the Chicago Title and Trust Company, trustee under trust number 3291 dated December 15, 1981 (collectively, "Indian Creek") and respond to the motion to dismiss and memorandum in support thereof filed by the Respondent, the Burlington Northern Santa Fe Railway Company ("BNSF"). In support thereof, Indian Creek states as follows:

INTRODUCTION

Fourteen years after the initial release that subsequently contaminated Indian Creek's property and despite the ongoing flow of contaminants onto and under Indian Creek's property, the BNSF continues its tap dance. While it is difficult to admire its motives, one must admire the BNSF's effectiveness. Despite the BNSF's claim, this

action is not in any way duplicative nor does Indian Creek seek to circumvent the Consent Order. Indian Creek's property was not known to be impacted by the contamination at the time the Consent Order was entered nor is Indian Creek a party to that Consent Order. The BNSF raises a vague claim of circumvention of the Consent Order by references to specific, but apparently long ignored deadlines in the Consent Order. However, simply deafening is the BNSF's silence on what remediation measures have been submitted to and approved by the Agency regarding ANYTHING on the Indian Creek or even the BNSF's own property since the entry of the Consent Order. Fourteen years later, NOTHING of the sort has been approved by the Agency. Yes, the BNSF filed its close-out reports with the Agency. The very same close-out report in which it FAILED inform the Agency of diesel fuel contamination on the Indian Creek property despite the BNSF having actual knowledge of that contamination (Complaint, pages 18, 19, 20). With a more subtle hand but with blatant disregard for the Consent Order itself, the BNSF now attempts to avoid Board action in an apparent effort to sidestep its responsibility to remediate the environmental contamination on its property which has migrated and continues to migrate to and contaminate Indian Creek's property (the "Indian Creek Property") (Complaint, paragraphs 11, 17, 29, 37).

Significantly, the Consent Order contemplates other potential actions against the BNSF before the Board. The BNSF is unable to rely on the facts stipulated in the Consent Order itself or even file its motion to dismiss. The Consent Order expressly states that neither the entry of the consent decree nor the stipulated facts therein can be used for any purpose except to enforce the Consent Order. Accordingly, the BNSF violates the Consent Order by filing its motion to dismiss and supporting memorandum.

Still the BNSF claims that this enforcement action is duplicative some fourteen (14) years after the initial release. Given the ongoing migration of contaminants to the Indian Creek Property, the allegations in the Complaint and the Boards' expertise, it is clear that the facts and circumstances cannot have remained substantially unchanged. Nonetheless, the BNSF asks the Board to sit back and ignore its ongoing environmental contamination of Indian Creek's Property based on a Consent Order that allows remediation, should the BNSF eventually submit a remediation plan and obtain IEPA approval. This would be essentially discretionary on IEPA's part. However, the Consent Order does not even require remediation of the BNSF's own property (the "BNSF Property") which is and is alleged to be the source of the contamination at issue.¹

BACKGROUND ALLEGATIONS

This matter involves a release of diesel fuel on January 20, 1993 on the BNSF Property which is owned and operated by the BNSF. The Complaint alleges that property owned by Indian Creek ("Indian Creek Property") continues to receive soil and groundwater contamination flowing from the BNSF Property fourteen (14) years after the release (Complaint, Paragraphs 11, 17, 24, 37). In 1996, prosecutors filed a civil enforcement action in Circuit Court and obtained a consent decree against the BNSF which expressly denies rights of third parties and precludes enforcement by third parties such as Indian Creek (Consent Order, Pages 2, 30 at Paragraph K). For convenience a copy of Indian Creek's complaint including the attached Consent Order and close-out report(s) is attached hereto as Exhibit A.

1. Fourteen years after the initial release it would appear that the BNSF has elected by default not to remediate the BNSF Property.

The Complaint alleges that, at the time of the consent decree, contamination was not known to exist on the Indian Creek Property although the BNSF had an obligation to investigate the extent of contamination, a requirement which was largely ignored by the BNSF (Complaint, paragraphs 12, 20). When contamination was discovered on its property, Indian Creek notified the BNSF, and the BNSF sent representatives to view the contamination. Amazingly, after contamination was discovered on the Indian Creek Property the BNSF attempted to close the incident without informing the Agency of the contamination found on the Indian Creek Property, despite the BNSF's actual knowledge of said contamination (Complaint, paragraphs 19, 20, 46).

Previous counsel sued the BNSF in Circuit Court but was unable to enforce the Act there and certainly could not enforce the Consent Order. What was left was a mass of confusing Common Law claims (See Exhibit B, without attachments). The Board functions in the role of the primary environmental enforcement mechanism under the Act. Nonetheless, fourteen (14) years after the release, near the midway point of the second decade after the initial incident the BNSF seeks to deny Indian Creek the right to enforce the Act before the Board (hereinafter "Remedy"). Indian Creek is not a citizen filing an enforcement action regarding environmental harm to a stream or other asset enjoyed by the public in general. Indian Creek seeks to protect property in which owns. This effort by the BNSF flies in the face of the Consent Order itself as well as the purpose and intent of the Act and case law.

ARGUMENT

Apparently, the BNSF sees no problem in depriving a citizen of their Remedy if the State files a case first without the citizen being a party and a consent decree is entered into. The BNSF's view is contrary to both the purpose of the Act and contrary to the very purpose for which the Board was created. As pointed out, it is contrary to the Consent Order as well.

One need only carry the BNSF's position to its logical absurdity to see the flaw in its position. For example, should the Agency mistakenly approve (which it has not) and the BNSF actually perform remediation on the BNSF Property to a level that is significantly less clean, than the Indian Creek Property, Indian Creek would have no remedy under the Act before the Board to protect itself from the continued flow of contamination onto its property. If BNSF never remediates its Property as allowed under Paragraph 3(d) of the Consent Order, BNSF's view is that Indian Creek still has no Remedy before the Board. Either way, BNSF's view would preclude a Remedy under the Act before the Board, the agency primarily vested with such authority.

Indeed, the legislature and the drafters of the Act had exactly the opposite intent. Section 2(c) of the Act provides that the Act shall be liberally construed so as to effectuate its purposes and the express language of Section 2(a)(v) of the Act:

The General Assembly finds:

(v) that in order to alleviate the burden on enforcement agencies, to assure that **all interests are given a full hearing**, and to increase public participation in the task of **protecting** the environment, **private** as well as governmental remedies **must** be provided.

[emphasis added.]

Professor David P. Currie was both the principal draftsman of the Act and the first chairman of the Board.² He and the Legislature recognized that "[t]he complexity of the [environmental law] field and the need for continuous, informed supervision made it desirable to establish a separate enforcement agency rather than rely solely upon the regular prosecutors." Currie, Enforcement Under the Illinois Pollution Law, 70 N.W.U.L. Rev. 389,444 (1976), emphasis added. Professor Currie explained that once the legislative decision was made "to rely principally upon an administrative rather than a judicial tribunal to hold hearings and determine whether violations had taken place, it seemed imperative to create a separate board to do so in order that no single body would be 'both prosecutor and judge'." *Id.*, emphasis added. Additionally, and of greater significance, as underscored by Professor Currie, was the legislative determination to vest jurisdiction of environmental claims in the Board. Thus, Professor Currie states that "[m]ore interesting in the long run, although quite orthodox, was the decision to sidestep the courts as primary tribunals in the first instance." *Id.*, emphasis added.

The BNSF asks the Board to deny not a member of the public in general, but a property owner, access to the primary tribunal vested with the authority to enforce the Act. To do so would turn the Board decision here into one which contravenes the express purpose of the Act: the interests of innocent property owners?

Professor Currie explained that the Act contains important multiple and overlapping enforcement provisions to guard against less than ideal performance by the various

² Professor Currie's views have been relied upon by the courts: Landfill, Inc. v. Pollution Control Board, 74 Ill. 2d 541, 387 N.E. 2d 258 (1978); Monsanto v. Pollution Control Board, 67 Ill. 2d 276, 367 N.E. 2d 684 (1977); Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E. 2d 148 (1978); Mathers v. Pollution Control Board, 107 Ill. App. 3d 729, 438 N.E. 2d 213 (1982); Village of Western Springs v. Pollution Control Board, 107 Ill. App. 3d 864, 438 N.E. 2d 458 (1982); Rockford Drop Forge Co., v. Pollution Control Board, 71 Ill. App. 3d 295, 389 N.E. 2d 212 (1979).

agencies charged with enforcement, calling citizen's complaints "an additional safeguard against inadequate prosecution." *Id.* at 451-452. The drafters of the Act and the Legislature recognized that the Agency is well intentioned but the Agency in particular and State government in general is understaffed, overburdened and too frequently led to pursue seemingly more immediately pressing issues. The BNSF'S argument is in fact directed at the statutory scheme which does not suit its purposes and with which it apparently disagrees, as well as with the express language of the Consent Order precluding the filing of a motion such as the one filed by BNSF. What the BNSF asks of the Board is no less than circumvention of its own role under the Act.

The definitions in the Board's Procedural Rules (Section 101.202) state: "Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum". By virtue alone of the many years that have passed, this matter is not duplicative. Further adding to that are the alleged change in conditions, the migration of contaminants and the discovery of diesel fuel contaminations on and under the Indian Creek Property. Accordingly and contrary to BNSF's position, the violations are not the same as the BNSF claims.

It is not the Consent Order that is being circumvented as the BNSF claims. BNSF seeks to circumvent the right of Indian Creek to protect its property from ongoing and continuing contamination fourteen (14) years after the release.

Importantly, the Consent Order expressly states at page 2 thereof:

STIPULATION OF USE AND AUTHORIZATION

The parties stipulate that this Consent Order is entered into for purposes of settlement only and that **neither the fact that a party has entered into this Consent Order, nor any of the facts stipulated herein, shall be used for any purpose in this or any other proceeding** except to

enforce the terms hereof by the parties to this agreement. [(Emphasis added.)]

Accordingly, the Consent Order not only contemplates actions such as this, but precludes motions to dismiss like the very one filed by the BNSF. On this basis alone, the BNSF's motion to dismiss must be denied.

The BNSF relies on four (4) cases in support of its position. Lefton Iron and Metal Co. Inc., v. Moss-American Corporation, PCB 87-91 1990 WL 263948 (November 29, 1989), Northern Illinois Anglers' Assn. v. City of Kankakee, PCB 88-183 (January 5, 1989), Sherex Chemical Co., v. Illinois EPA, PCB 91-202 1992 WL 196660 (July 30, 1992)³ and the dissenting opinion in State of Illinois v. Estate of Lloyd Weiman and Cheryl Halbrooks, PCB 93-191 1999 WL 1134752 (December 2, 1999). None of the cases cited are on point. Indeed, there appears to be no case directly on point with the one before the Board here. Nonetheless, it is apparent from the cases that do exist that this matter is not duplicative even ignoring the plain language of the Act and the Consent Order cited above.

In Lefton the Board held that the Circuit Court was in a much better position to consider the equitable issues because of the consent decree entered in that case. The Board stated:

If, for example, the Board were to retain jurisdiction and find both parties in violation of the Act, these very same parties would be in Circuit Court arguing the extent of their liability. In point of fact, they are already there. Lefton, slip at 4.

Here, Indian Creek could not file under the Act in Circuit Court and, subsequent to motion practice, was left with common law actions in an attempt redress the ongoing

³ Sherex is not on point but it does show the Board's ability to fashion a remedy where a related consent decree exists.

pollution of its property. The same parties are not and were not in Circuit Court in any action involving the Act. A copy of the latest and subsequently voluntarily dismissed Circuit Court Complaint is attached hereto as Exhibit B.

Northern Illinois Anglers' is a case involving a group attempting to enforce the Act to protect a public asset, a waterway, from the discharge of a POTW. The Anglers' had no private ownership interest in the waterway. In that case the Board relied on Janson v. Illinois Pollution Control Board, 69 Ill. App.3d 324, 387 N.E.2d. 404 (3rd Dist. 1979) quoting Janson as follows:

Although the two proceedings do have some aspects in common we do not believe that they are sufficient to classify them as identical causes of action and thereby require the abatement of one by the other. 387 N.E.2d at 752. Northern Illinois Anglers' slip at 2.

In Northern Illinois Anglers' the Board accepted jurisdiction as to a time period not covered by the consent decree at issue there saying:

Unlike in Janson, the time span for the alleged pollution activities involving discharges of BOD₅ and SS as alleged by NIAA in its complaint before the Board, is covered by the cease and desist portion of the consent decree. However, as to fecal coliform, the alleged violations took place subsequent to the time-span covered by the cease and desist order. The Board believes that a citizen action seeking to enforce Board regulations concerning fecal coliform for a time period subsequent to January 1, 1988 is not barred by the circuit court's consent decree. Northern Illinois Anglers', slip at 4.

Indeed, Northern Illinois Anglers' supports Indian Creek's position. Indian Creek's property suffers ongoing pollution from a release fourteen (14) years ago. Involved is a largely ignored Consent Order over a decade old which was entered before any contamination on the Indian Creek Property was discovered and to which

Indian Creek was not a party.⁴ For the same reasons the dissenting opinion in State of Illinois v. Estate of Lloyd Weiman and Cheryl Halbrooks does not help the BNSF.

Further the fact that this is a dissenting opinion stating that:

The citizen suit under Section 31(d) is subject to the duplicitous and frivolous test for a variety of reasons, among which are to insure that the Attorney General and the "private attorney general" do not duplicate efforts and that a respondent is not required to defend against a claim more than once. Based on Section 31(d), when the two complaints are identical, that filed by the private citizen can and should be dismissed as duplicitous.

The facts are anything but identical as the BNSF merely attempts to utilize a Consent Order to avoid an obligation that exists regardless of the Consent Order, one with which it apparently it disagrees and, for various reasons, has been able to avoid for some fourteen (14) years from the original release. The overly broad position advocated by the BNSF would make a mockery of the Act and the role of the Board in the Illinois system as pointed out by Professor Currie.

The rule is that similar violations occurring at different times are not duplicative, particularly where the complainant was not a party to the Circuit Court consent decree. Dettlaff v. Edward Boado and EPB Services, Inc., PCB 92-26, 1992 WL 81500 (March 26, 1992), See also: Fredette v. Village of Beecher, PCB 89-61, 1990 WL 275962 (January 24, 1990), Janson v. Illinois Pollution Control Board, *Supra*, Winnetkans Interested in Protecting the Environment v Illinois Pollution Control Board, 55 Ill. App.3d 475, 370 N.E.2d 1176 (1st Dist. 1977).

There is no real conflict with the Consent Order, although BNSF attempts to create one⁵. The Consent decree gives the Agency broad discretion. The Board is

⁴ In Lefton, the Board relied on Northern Illinois Anglers'. Accordingly, Lefton does not aid the BNSF's position.

skilled in fashioning remedies where Consent Orders exist and the Board can take the Consent Order into consideration when it fashions the appropriate relief just as it did in Fredette. Fredette, slip at 6.

Accordingly, the Board should deny the BNSF's motion to dismiss because, for among the following reasons:

- The Consent Order expressly states that neither the entry of the consent decree nor the stipulated facts therein can be used for any purpose except to enforce the Consent Order. The Order thus contemplates additional actions and places the BNSF's motion at odds with the Consent Order itself.
- Section 2 of the Act requires that the Act shall be liberally construed and that **all interests are given a full hearing** to increase public participation in the task of **protecting** the environment, and that **private** as well as governmental remedies **must** be provided.
- Of necessity, conditions have changed in the fourteen (14) years since the original release and more than a decade since the entry of the Consent Order.
- Indian Creek's property was not known to be impacted by the contamination at the time the Consent Order was entered.
- The only area mentioned in the Consent Order other than that on the BNSF Property is a drainage ditch which collects surface water and discharges into Indian Creek, a tributary of the Fox River.
- Indian Creek was not a party to the Consent Order and is unable to enforce it.
- BNSF is silent on what remediation measures have been submitted to and approved by the Agency regarding ANYTHING on the Indian Creek or the BNSF Property since the Consent Order was entered because fourteen years later, NOTHING of the sort has been approved by the Agency.

⁵ The Agency can be joined as Indian Creek has requested in Paragraph 6 of it's payer for relief and Indian Creek has further prayed for a No Further Remediation Letter to be issued which necessarily requires IEPA's participation by way of the Site Remediation Program. Prosecutors willing to intervene in this matter can be allowed to do so.

WHEREFORE, Complainants, Indian Creek, pray that the Board find that this matter is not identical or substantially similar to one brought in the Consent Order and that the Board deny the Respondent's Motion to Dismiss.

Respectfully Submitted,

Indian Creek Development Company and
Chicago Land Trust Company t/u/t 3291, dated
December 15, 1981

By: *Glenn C. Sechen*

GLENN C. SECHEN
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle St., #1910
Chicago, IL 60601
312-332-0200
312-332-4514 telefax
gsechen@schainlaw.com

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Exhibit A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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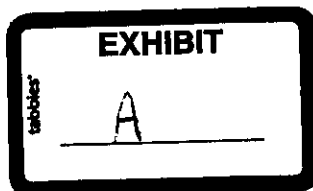
PCB- 07-44
Citizen's Enforcement
§21(e), §12(a), §12(d)

COMPLAINT

VIOLATIONS OF SECTION 21(e) OF THE ILLINOIS ENVIRONMENTAL
PROTECTION ACT (415 ILCS 5/21(e))

NOW COME the complainants, Indian Creek Development Company, individually and as the beneficiary owner under the Chicago Title and Trust Company trust number 3291 dated December 15, 1981 and the Chicago Title and Trust Company, trustee under trust number 3291 dated December 15, 1981 (collectively, "Indian Creek") and in support of its complaint against the Respondent, the Burlington Northern Santa Fe Railway Company ("BNSF") Indian Creek states as follows:

1. At all times relevant hereto, complainant, Indian Creek Development Company, an Illinois Partnership, was the beneficial owner, through the aforesaid Chicago Title and Trust Company t/u/t 3291, of certain real property in Kane County, Illinois commonly known as 1500 Dearborn Avenue, Aurora, Illinois 60505 and including



property index numbers: 15-13-376-001; 15-14-479-005, 15-14-479-006, 15-14-479-009, and 15-14-479-010; 15-23-227-026 and 15-23-227-028; 15-24-101-004; 15-24-102-001, 15-24-102-008, 15-24-102-009 and 15-24-102-010; 15-24-103-002 and 15-24-103-003. (collectively the "Premises").

2. At all times relevant hereto, respondent, BNSF, a Delaware corporation, owned real property adjacent to the Premises which contained railroad tracks upon which BNSF operated a railroad ("BNSF Property").

3. On or about January 20, 1993 there occurred a release through the discharging, depositing, dumping, leaking and spilling of thousands of gallons of diesel fuel as a result of the industrial or commercial railroad operations conducted on the BNSF Property.

4. The direction of groundwater flow is from the BNSF Property to the Premises and Indian Creek, which runs through the Premises.

5. Subsequent to the release and pursuant to the Act, including Sections 12(a) and 12(d), the Attorney General and State's Attorney of Kane County filed an enforcement action against the BNSF and others in Circuit Court bearing case number CH KA 95 0527.

6. On or about February 5, 1996, a consent decree (hereinafter, "Consent Decree") was entered in the Kane County enforcement action regarding the release of diesel fuel on the BNSF Property. A copy of that Consent Decree is attached hereto as Exhibit A.

7. Among other things, the Consent Decree required the BNSF to prevent further migration of the diesel fuel contamination and to determine the extent to which the soil and groundwater were impacted both on and off of the BNSF Property.

8. Pursuant to specific deadlines, the Consent Decree required the BNSF to submit a work plan to, and obtain the approval of, the Illinois Environmental Protection Agency ("Agency"), and it also required that the BNSF notify the State's Attorney, Attorney General and IEPA in writing of the action(s) taken. See generally Exhibit A.

9. Thereafter, the BNSF was, pursuant to the Consent Decree, required to file a close-out report which, at a minimum, was to include a summary of all sampling and other data required to be collected, as well as a certification by an Illinois Registered Professional Engineer that the requirements of the Consent Decree had been met.

10. The BNSF's initial efforts to remediate the affected areas, limit the migration of free product, and recover released diesel fuel were primarily focused on areas distanced from the Premises. Moreover, these efforts were largely unsuccessful, resulting in the recovery of only a small amount of the diesel fuel that was actually released.

11. Since 1993, the diesel fuel has remained abandoned on and under the BNSF Property and thereafter has migrated, and continues to migrate, from the BNSF Property onto and under the Premises.

12. On or about late October or November, 2000, Indian Creek excavated a small portion of a building floor on the Premises in order to install a piece of equipment

there. The area of the excavation of the Premises was located near the boundaries of the BNSF Property.

13. During the excavation, an odor was noted and free product and apparently contaminated soil and groundwater were observed. Subsequently, samples of the free product were taken from the excavated part of the Premises, and lab analysis identified the free product as diesel fuel.

14. Indian Creek notified BNSF of the excavation on the Premises, and the attendant odor, and the BNSF responded by removing some of the contaminated soil from the excavation on the Premises.

15. The BNSF has a duty to prevent the migration to and contamination of the soil and groundwater on and under the Premises, but despite the obligations imposed by law and the Consent Decree, the BNSF has completely failed to take sufficient steps to halt the migration of the diesel fuel contamination onto the soil and groundwater on and under the Premises.

16. In contravention of its duty, the BNSF did little to remediate the affected areas, recover released diesel fuel, limit the migration of the diesel fuel contamination, adequately sample to determine the extent of contamination, and to monitor the migration of the diesel fuel contaminants from the BNSF Property.

17. Diesel fuel contamination on the BNSF Property continues to migrate onto the Premises, further contaminating the soil and groundwater located on and under the Premises on an ongoing basis.

18. Subsequent to the discovery of diesel fuel contamination on the Premises, without having performed any remediation of the premises and without prior

notification to Indian Creek, the BNSF requested Agency closure of the incident pursuant to the Consent Decree without notifying the Agency of the contamination that Indian Creek found on the Premises.

19. The BNSF failed to disclose the contamination of the Premises to the Agency despite Indian Creek's notification to the BNSF regarding the contamination it found on and under the Premises when it excavated, despite the BNSF's removal of contaminated soil from the excavation on the Premises, despite the observations of BNSF's agents, servants, and employees when it removed the contaminated soil, and despite the fact that laboratory analysis of samples taken from the excavations of the Premises revealed that the contamination was diesel fuel. A copy of the BNSF's request for closure dated April 2, 2001 with a prior request for closure dated November 6, 1998 attached thereto, attached to this petition as Exhibit B.

20. The spread of diesel fuel contamination to portions of the BNSF property not initially impacted and eventually to the Premises was willful, as is amply demonstrated by the BNSF's attempt to close the incident under the Consent Decree without informing the Agency of the diesel fuel contamination on and under the Premises.

21. The Agency is working to fulfill its role under the Consent Decree and to obtain the remediation by the BNSF.

22. The diesel fuel contamination in the groundwater under both the BNSF Property and under the Premises constitutes Water Pollution within the meaning of Section 3.545 of the Environmental Protection Act, 415 ILCS 5 *et. seq.* ("the Act"), as it is a nuisance, renders such groundwater harmful or detrimental or injurious to public

health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

23. This case is a refiling of Kane County case number 04 L 607 filed on or about December 7, 2004.

24. This case, like the Kane County case, concerns contamination that has migrated to and continues to migrate onto the Premises from the BNSF Property. The Kane County case was voluntarily dismissed on November 21, 2006. A copy of the order of dismissal is attached as Exhibit C.

COUNT I
Section 12(a) Violation

25. Paragraphs 1-24 are incorporated by reference as paragraph 25 hereof.

26. Section 12(a) of the Act provides that no person shall:

Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

27. Section 3.550 of the Act defines "Waters" as all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

28. Accordingly, the groundwater under the Premises and that under the BNSF Property are Waters within the meaning of Section 3.550 of the Act.

29. Section 3.165 of the Act (415 ILCS 5/3.165) defines "Contaminant" as any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

30. The diesel fuel which was released is a Contaminant within the meaning of Section 3.165 of the Act.

31. Section 3.545 of the Act defines "Water Pollution" as such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.545.

32. The General Assembly has expressly found "that pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, depresses property values, and offends the senses". 415 ILCS 5/11(a).

33. The BNSF caused and allowed the discharge of diesel fuel contaminants on the BNSF Property in 1993, threatened, caused and allowed the discharge of said diesel fuel contaminants through migration to other parts of the BNSF Property, and threatened and eventually caused and allowed the ongoing discharge of contaminants onto the soil and into the groundwater on and under the Premises so as to cause and tend to cause water pollution in violation of Section 12(a) of the Act.

34. Because of the ongoing migration of the diesel contamination and its continued discharge onto and under the Premises, the violation of Section 12(a) of the

Act is ongoing and will continue unless and until abated by order of the Pollution Control Board.

WHEREFORE, Complainants, pray that the Board grant the following relief in favor of Indian Creek and against the BNSF:

- A. Find the BNSF in violation of Section 12(a) of the Act;
- B. Direct the BNSF to cease and desist from further violations of Section 12(a) of the Act;
- C. Mandate and direct the abatement of the continuing violation of Section 12(a) of the Act at the expense of the BNSF as follows:
 - i. Mandate the remediation of the BNSF Property in such a manner as to stop the ongoing contamination of the Premises; and
 - ii. Mandate that the Premises be remediated to achieve the removal of all contamination on the Premises that flowed from the BNSF Property;
 - iii. Mandate, to the extent technically feasible, that all remediation be performed to background levels and that, in no event, remediation be performed to a level less than the applicable residential standards contained in the Tiered Approach to Corrective Action Objectives, 35 Ill. Admn. Code 742; and
 - iv. Mandate that the remediation of the Premises occurs pursuant to the Agency's Site Remediation Program and that a No Further Remediation Letter be obtained;

- D. Mandate that the Agency as well as the Parties hereto and their consultants and attorneys be permitted to monitor the remediation of the BNSF Property and the Premises, and allow them to have access to all reports and laboratory analyses related in any way to the BNSF Property and the contamination thereon;
- E. Order that any and all remediation be conducted by consultants and engineers selected by either Indian Creek or the Board due to the BNSF's failure to take adequate steps over more than 13 years to prevent to migration of the contamination to other properties, and based on the BNSF's attempt to obtain closure of the incident without notification to Indian Creek and without informing the Agency of the contamination that it knew existed on and under the Premises;
- F. Order that any and all remediation that is conducted be conducted by utilizing methods selected by either Indian Creek or the Board;
- G. That the Board request the Agency to investigate the facts and violations set forth herein pursuant to Section 30 of the Act and thereafter name the Agency as a party in interest, pursuant to 35 Ill. Adm. Code 101.404 and 103.202, to coordinate the Agency's duties and efforts pursuant to the Consent Decree, Exhibit B;
- H. Mandate that the BNSF reimburse Indian Creek for its all of its costs and expenses (including the fees of consultants and experts as well as the cost of sampling and laboratory analysis) related to the contamination, including but not limited to:

- i. The costs of past and, to the extent reasonably necessary, future investigation of the contamination on the Premises;
 - ii. The costs of past and, to the extent reasonably necessary, future sampling and monitoring of the contamination on the Premises, its migration from the BNSF Property to the Premises; AND
- I. Grant such other and further relief as the Illinois Pollution Control Board deems appropriate.

COUNT II
Section 12(d) Violation

35. Paragraphs 1 to 34 are incorporated by reference as paragraph 35 hereof.
36. Section 12(d) of the Act provides that no person shall:

Deposit any contaminants upon the land in such a place and manner so as to create a water pollution hazard.
37. The BNSF caused and allowed the deposit of diesel fuel contaminants on the BNSF Property in 1993. Subsequently, the BNSF caused and allowed the deposited contaminants to move, migrate, and deposit onto other portions of the BNSF Property, and eventually to the Premises.
38. Accordingly, the BNSF's actions have created a water pollution hazard on both the BNSF Property and the Premises in violation of Section 12(d) of the Act.
39. Because of the ongoing migration of the diesel contamination onto the Premises, the violation of Section 12(d) of the Act is ongoing and will continue unless and until abated by order of the Pollution Control Board.

WHEREFORE, Complainants, pray that the Board grant the following relief against the BNSF:

- A. Find the BNSF in violation of Section 12(d) of the Act;
- B. Direct the BNSF to cease and desist from further violations of Section 12(d) of the Act;
- C. Mandate and direct the abatement the continuing violation of Section 12(d) of the Act at the expense of the BNSF as follows:
 - i. Mandate the remediation of the BNSF Property in such a manner as to stop the ongoing contamination of the Premises;
 - ii. Mandate the Premises be remediated causing the removal of all contamination on the Premises which flowed from the BNSF Property;
 - iii. Mandate, to the extent technically feasible, that all remediation be performed to background levels and, in no event, that the remediation be performed to a level less than applicable residential standards contained in the Tiered Approach to Corrective Action Objectives, 35 Ill. Admn. Code 742;
 - iv. Mandate that the remediation of the Premises occur pursuant to the Agency's Site Remediation Program and that a No Further Remediation Letter be obtained;
- D. Mandate that the Agency as well as the Parties hereto and their consultants and attorneys be permitted to monitor the remediation of the BNSF Property and the Premises, and allow them to have access to all

reports and laboratory analysis related in any way to the BNSF Property and the contamination thereon;

- E. Order that any and all remediation be conducted by consultants and engineers selected by either Indian Creek or the Board due to the BNSF's failure to take adequate steps over more than 13 years to prevent to migration of the contamination to other properties, and based on the BNSF's attempt to obtain closure of the incident without notification to Indian Creek and without informing the Agency of the contamination that it knew existed on and under the Premises;
- F. Order that any and all remediation that is conducted be conducted by utilizing methods selected by either Indian Creek or the Board;
- G. That the Board request the Agency to investigate the facts and violations set forth herein pursuant to Section 30 of the Act and thereafter name the Agency as a party in interest, pursuant to 35 Ill. Adm. Code 101.404 and 103.202, to coordinate the Agency's duties and efforts pursuant to the Consent Decree, Exhibit B.
- H. Mandate that the BNSF reimburse Indian Creek for its all of its costs and expenses (including but not limited to the fees of consultants and experts as well as the cost of sampling and laboratory analysis) related to the contamination including but not limited to:
 - i. The costs of past and, to the extent reasonably necessary, future investigation,

- ii. The costs of past and, to the extent reasonably necessary, future sampling and otherwise monitoring the contamination on the Premises and the migration of contamination on the BNSF Property;
 - iii. such costs and expenses include but are not limited to the fees of consultants and experts as well as the cost of sampling and laboratory analysis; AND
- I. Grant such other and further relief as the Illinois Pollution Control Board may deem appropriate.

COUNT III
Section 21(e) Violation

40. Paragraphs 1 to 38 are incorporated by reference as paragraph 39 hereof.
41. Section 21(e) of the Act provides that:

No person shall . . . [d]ispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

42. Section 3.535 of the Act defines "Waste" as, *inter alia*, any "discarded material" resulting from industrial or commercial operations. 415 ILCS 5/3.535.

43. The diesel fuel and contaminated media on and under the BNSF Property that the BNSF has abandoned and disposed of is Waste under the Act.

44. Section 3.185 of the Act defines "Disposal" as the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste may enter

the environment or be emitted into the air or discharged into any waters, including groundwater. 415 ILCS 5/3.185.

45. By allowing the diesel fuel spilled in 1993 to remain on and under the BNSF Property and the Premises to mix with soil and groundwater media, the BNSF has abandoned and disposed of said diesel fuel and diesel fuel contaminants.

46. The BNSF's abandonment and disposal of the diesel fuel and diesel fuel contaminated media under the BNSF Property and the Premises are knowing violations of the Act, as aptly demonstrated by the BNSF's attempt to close the incident pursuant to the Consent Decree without informing the Agency of the diesel fuel contamination on and under the Premises – contamination of which the BNSF was fully aware.

47. Neither the BNSF Property nor the Premises are permitted by the Agency to be waste disposal sites or facilities and for that reason and otherwise they do not meet the requirements of a waste disposal site or facility under the Act or under applicable Illinois Pollution Control Board regulations.

48. Such violation of Section 21(e) of the Act is ongoing and will continue unless and until abated by order of the Pollution Control Board.

WHEREFORE, Complainants, pray that the Board grant the following relief against the BNSF:

- A. Find the BNSF in violation of Section 21(e) of the Act;
- B. Direct the BNSF to cease and desist from further violations of Section 21(e) of the Act;
- C. Mandate and direct the abatement the continuing violation of Section 21(e) of the Act at the expense of the BNSF as follows:

- i. Mandate the remediation of the BNSF Property in such a manner as to stop the ongoing contamination of the Premises;
 - ii. Mandate the Premises be remediated causing the removal of all contamination on the Premises which flowed from the BNSF Property;
 - iii. Mandate, to the extent technically feasible, that all remediation be performed to background levels and, in no event, that the remediation be performed to a level less than applicable residential standards contained in the Tiered Approach to Corrective Action Objectives, 35 Ill. Admn. Code 742;
 - iv. Mandate that the remediation of the Premises occur pursuant to the Agency's Site Remediation Program and that a No Further Remediation Letter be obtained;
- D. Mandate that the Agency as well as the Parties hereto and their consultants and attorneys be permitted to monitor the remediation of the BNSF Property and the Premises, and allow them to have access to all reports and laboratory analysis related in any way to the BNSF Property and the contamination thereon;
- E. Order that any and all remediation be conducted by consultants and engineers selected by either Indian Creek or the Board due to the BNSF's failure to take adequate steps over more than 13 years to prevent to migration of the contamination to other properties, and based on the BNSF's attempt to obtain closure of the incident without notification to

Indian Creek and without informing the Agency of the contamination that it knew existed on and under the Premises;

- F. Order that any and all remediation that is conducted be conducted by utilizing methods selected by either Indian Creek or the Board;
- G. That the Board request the Agency to investigate the facts and violations set forth herein pursuant to Section 30 of the Act and thereafter name the Agency as a party in interest, pursuant to 35 Ill. Adm. Code 101.404 and 103.202, to coordinate the Agency's duties and efforts pursuant to the Consent Decree, Exhibit B.
- H. Mandate that the BNSF reimburse Indian Creek for its all of its costs and expenses (including but not limited to the fees of consultants and experts as well as the cost of sampling and laboratory analysis) related to the contamination including but not limited to:
 - iv. The costs of past and, to the extent reasonably necessary, future investigation,
 - v. The costs of past and, to the extent reasonably necessary, future sampling and otherwise monitoring the contamination on the Premises and the migration of contamination on the BNSF Property;
 - vi. such costs and expenses include but are not limited to the fees of consultants and experts as well as the cost of sampling and laboratory analysis; AND

- I. Grant such other and further relief as the Illinois Pollution Control Board may deem appropriate.

Respectfully Submitted,

**Indian Creek Development Company and
Chicago Land Trust Company t/u/t 3291,
dated December 15, 1981**

By: M. Hope Whitfield
One of Its Attorneys

GLENN C. SECHEN
JAMES R. GRIFFIN
M. HOPE WHITFIELD
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle St., #1910
Chicago, IL 60601
312-332-0200
312-332-4514 telefax
gsechen@schainlaw.com

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EXHIBIT "A"

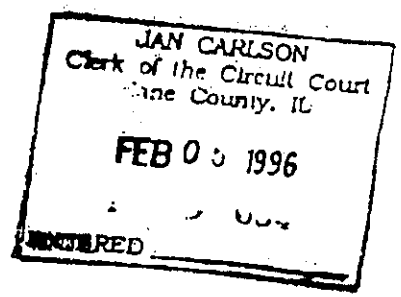
IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. JAMES E. RYAN, Attorney)
General of the State of Illinois)
and ex rel. DAVID R. AKEMANN,)
State's Attorney of Kane)
County,)
Plaintiff,)

vs.

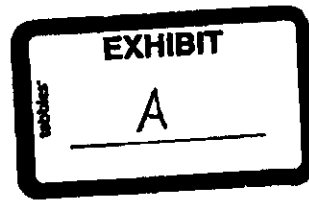
No. CH KA 95 0527

BURLINGTON NORTHERN RAILROAD)
COMPANY, a Delaware corporation,)
SOUTHERN PACIFIC TRANSPORTATION)
COMPANY, a Delaware corporation,)
and subsidiary of SOUTHERN)
PACIFIC RAIL CORPORATION,)
a Delaware corporation, and)
SPCSL CORP., a Delaware corporation)
and subsidiary of SOUTHERN PACIFIC)
TRANSPORTATION COMPANY,)
Defendants.)



CONSENT ORDER

Plaintiff, the PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, ex rel. DAVID R. AKEMANN, State's Attorney of Kane County, Illinois, and Defendants, BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, and subsidiary of SOUTHERN PACIFIC RAIL CORPORATION, a Delaware corporation, and SPCSL CORP., a Delaware corporation and subsidiary of SOUTHERN PACIFIC TRANSPORTATION COMPANY, having agreed to the making of this stipulation and the entry of this Consent Order, do hereby stipulate and agree as follows:



I.

STIPULATION OF USE AND AUTHORIZATION

The parties stipulate that this Consent Order is entered into for purposes of settlement only and that neither the fact that a party has entered into this Consent Order, nor any of the facts stipulated herein, shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. Further, this Consent Order or the performance hereunder by the defendants BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, and subsidiary of SOUTHERN PACIFIC RAIL CORPORATION, a Delaware corporation, and SPCSL CORP., a Delaware corporation and subsidiary of SOUTHERN PACIFIC TRANSPORTATION COMPANY, shall not create any right on behalf of any person or entity not a party hereto. Notwithstanding the previous sentences, this Consent Order may be used in any future enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Section 42(h) of the Act, 415 ILCS 5/42(h) (1994).

The undersigned representative for each party certifies that he/she is fully authorized by the party who he/she represents to enter into the terms and conditions of this Consent Order and to legally bind the party he/she represents to the Consent Order.

II.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brings this action on his own motion as well as at the request of the Illinois Environmental Protection Agency ("Agency"), and the State's Attorney of Kane County, Illinois, brings this action on his own motion, pursuant to the statutory authority vested in them under Section 42 of the Act, 415 ILCS 5/42 (1994).

2. The Agency is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1994), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Consent Order, Burlington Northern Railroad Company ("Burlington"), is a Delaware corporation authorized to do business in Illinois since February 27, 1970, and is engaged in the business of providing rail transportation services.

4. At all times relevant to this Consent Order, Southern Pacific Rail Corporation ("SPRC"), is a Delaware rail holding corporation and is not authorized to do business in Illinois. SPRC is the parent company of Southern Pacific Transportation Company, owning 100% of its capital stock.

5. At all times relevant to this Consent Order, Southern Pacific Transportation Company, ("Southern Pacific"), a Delaware corporation and subsidiary of Southern Pacific Rail Corporation, is the parent company of SPCSL Corp. Southern Pacific is in the business of providing railroad freight transportation services and provides such services in Illinois through its wholly-owned

subsidiary SPCSL. Southern Pacific itself is not authorized to do business in Illinois. On information and belief Southern Pacific conducts business in Illinois through its wholly owned subsidiary SPCSL Corp.

6. At all times relevant to this Consent Order, SPCSL Corp. ("SPCSL") was and is a Delaware corporation qualified to do business in Illinois on November 3, 1989. SPCSL is a wholly-own subsidiary of Southern Pacific and is in the business of providing rail transportation services in Illinois.

7. Defendants Southern Pacific, SPRC and SPCSL, shall hereinafter be referred to collectively as Southern Pacific.

B. Site Description

1. At all times relevant to this Consent Order, the site is located on the Burlington rail lines east of the Village of Aurora near the community of Eola, Aurora, Kane County, Illinois. The site consists of five east-west rail tracks and spurs with a warehouse forming its southern boundary and a smaller building forming the northern boundary.

2. Of the five east west rail tracks, three are mainline tracks and the other two are siding tracks. The three mainline tracks provide Burlington access into the Chicago, Illinois gateway. The three mainline tracks originate in Chicago, Illinois and extend west to Galesburg, Illinois, and Kansas City, Missouri and also to St. Paul, Minnesota and to Seattle, Washington. The mainline tracks are utilized to provide through freight rail service, Amtrak service and Metra computer service. In excess of 155 trains per 24 hour period operate over the three mainline tracks. The two siding tracks are used as passing tracks and for the storage of cars and

trains. They are also used to assist in train movement over the three mainline tracks.

3. Located parallel to the site is a drainage ditch. Surface runoff is collected by a storm sewer that discharges into Indian Creek which is a tributary of the Fox River.

4. At all times relevant to this Consent Order, Burlington owns, operates and is in control of the site. The movement of trains, cars and engines over and along its tracks are subject to Burlington's direction and control.

5. At all times relevant to this Consent Order, pursuant to a Trackage Rights Agreement entered into by and between Burlington and Southern Pacific, Southern Pacific uses the site for the conduct of its rail services.

C. Alleged Violations

1. Section 12(a) of the Act, 415 ILCS 5/12(a) (1994), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

2. Section 12(d) of the Act, 415 ILCS 5/12(d) (1994), provides as follows:

No person shall:

- d. Deposit any contaminants upon land in such place and manner so as to create a water pollution hazard;

3. Plaintiff alleges that on January 20, 1993, due to errors on the part of certain Burlington employees, including, its

dispatcher, train engineer and conductor, a train owned and operated by Burlington and traveling westbound over the site, collided head-on with a train owned and operated by Southern Pacific which was traveling eastbound. Burlington denies this allegation.

4. On January 20, 1993, when the trains collided, three diesel fuel tanks with combined fuel capacity of 10,800 gallons of fuel, ruptured, releasing approximately 5,800-6,800 gallons of diesel fuel onto the ground and into a nearby creek causing an "oily" sheen to appear on the waters in the nearby ditch and creek.

5. To date, 208 gallons of the 5,800-6,800 gallons of diesel fuel spilled at the site have been recovered via the recovery trench system installed. Burlington as the owner and operator of the site has not fully remediated the diesel fuel contaminated soil at the site.

III.

APPLICABILITY

This Consent Order shall apply to and be binding upon the State or plaintiff, Burlington and Southern Pacific. Burlington and Southern Pacific shall not raise as a defense to any action to enforce this Consent Order, the failure of any of its officers, agents, servants or employees to take such action as shall be required to comply with the provisions of this Consent Order.

IV.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Consent Order in no way affects the responsibilities of Burlington and Southern Pacific to comply with any other federal, state or local regulations, including but not limited to the Act, and the Board Rules and Regulations, 35 Ill. Adm. Code Subtitles A

through H.

V.

VENUE

The parties agree that the venue of any action commenced in Circuit Court for the purpose of interpretation and enforcement of the terms and conditions of this Consent Order shall be in Kane County.

VI.

SEVERABILITY

It is the intent of the parties hereto that the provisions of this Consent Order shall be severable, and should any provisions be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect. In the event that any provision of this Consent Order and plans implemented herein shall be declared inconsistent with the provisions of the Act, 415 ILCS, 5/1 et seq. (1994), the provisions of the Act shall be controlling.

VII.

FINAL JUDGMENT ORDER

NOW, THEREFORE, in consideration of the foregoing, and upon the consent of the parties hereto to perform the activities to be ordered by the court, it is hereby ORDERED, ADJUDGED AND DECREED:

A. Jurisdiction

This court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act.

B. Objective

The objective of this Consent Order is to have an enforceable order which will ensure the implementation of the terms hereof, to obtain remediation of the site as is economically reasonable and technologically feasible, to assure the protection of public health, safety, welfare and the environment, and compliance with the Act, Board's Water Pollution Regulations, the Federal Clean Water Act and any applicable rules and regulations promulgated thereunder.

C. Terms of Settlement

1. Payment to the Environmental Protection Trust Fund

a. Penalty

- i. Burlington and Southern Pacific shall together pay a penalty of \$85,000.00 into the Illinois Environmental Protection Trust Fund. Such penalty amount shall be paid within thirty (30) days of the date of this order. This penalty shall be paid by check to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case, the Agency's incident number that was assigned to this release and Burlington's and Southern Pacific's Federal Employer's Identification Number

("FEIN") shall appear in the face of the check. Burlington's FEIN is 41-6034000. Southern Pacific's FEIN is 94-600123. The Agency's incident number is 930190.

- ii. Burlington and Southern Pacific are jointly and severally liable for the \$85,000.00 civil penalty required in Section VII.C.1.a.i. herein.

b. Stipulated Penalties

- i. In the event Burlington fails to satisfy any requirement or comply with any provision of this Consent Order, or fails to satisfy any requirement of any plaintiff-approved work plan or schedule developed pursuant to this Consent Order, Burlington shall pay to the plaintiff for payment into the Illinois Environmental Protection Trust Fund, stipulated penalties in the amount of \$500.00 per day of noncompliance until such time as compliance is achieved.
- ii. All penalties owed the plaintiff under this subsection VII.C.1.b. shall be payable within thirty (30) days of the date Burlington knows or should have known of its noncompliance with any provision of the Consent Order.
- iii. All penalties shall begin to accrue on the day that complete performance is due and continue to accrue through the final day of

correction of the non-compliance.

- iv. All stipulated penalties shall be paid by check made payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

The name and number of the case and Burlington's Federal Employer's Identification Number ("FEIN") shall appear on the face of the check.

- v. The stipulated penalties shall be enforceable by the plaintiff and shall be in addition to and shall not preclude the use of any other remedies or sanctions arising from Burlington's failure to comply with the Consent Order.

c. Past Response Costs

Within thirty (30) days of entry of the Consent Order, Burlington shall pay the amount of \$1,430.55 in satisfaction of claim(s) the plaintiff may have for all investigation, response, and oversight costs that occurred prior to the entry of this Consent Order. The \$1,430.55 payment required herein shall be paid to the Treasurer of the State of Illinois designated to the Hazardous Waste Fund with the Emergency Oversight number, 930190 on the face of the check, and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

d. Future Response Costs

Subject to Section F below, Burlington shall reimburse the Agency for any response and oversight cost incurred subsequent to the entry of this Consent Order. The Agency agrees to submit to Burlington, on a quarterly or annual basis at its discretion, a detailed accounting that shall include a summary of response and oversight activities performed, a detailed summary of all expenses claimed and a statement that the expenses have actually been incurred. Upon request, the Agency shall provide Burlington with copies of all receipts and other documents evidencing such expenditures, excluding actual Agency employee signed timesheets. No reimbursement shall be required for the costs for which no documentation was provided, until such time as the required documentation is provided for such costs. Said detailed accounting shall include all response and oversight costs incurred pursuant to this Consent Order by the Agency with respect to this Consent Order after the effective date of this Consent Decree. Specifically relating to the issue of future response cost only, where the Dispute Resolution provision of Section F is invoked herein in good faith, each party to bear its own legal costs associated with the resolution of the future response costs dispute.

Within thirty (30) days of receipt of the accounting required herein, any payments required herein shall be paid to the Treasurer of the State of Illinois designated to the

Hazardous Waste Fund on the check, and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

e. The name and number of the case and Burlington's Federal Identification Number ("FEIN") shall appear on the face of all checks required herein.

f. Interest on Penalty

Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1994), interest shall accrue on any penalty amount not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1994).

- i. Interest on unpaid penalties shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received.
- ii. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.
- iii. All interest on penalties owed the plaintiff, shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19275
Springfield, IL 62794-9276

The name and number of the case and Burlington's Federal Identification Number ("FEIN") shall appear on the face of the check.

2. Fuel Containment and Recovery Activities

Burlington shall minimize the impact to the environment from the approximately 5,800 - 6,800 gallons of diesel fuel spilled and released at the site. The following is designed to achieve this objective:

- a. On approximately February 14, 1994, Burlington provided to Plaintiff, a report titled, Phase I Emergency Fuel Containment ("Phase I Report"), which outlined the activities and measures implemented by Burlington in its initial response to contain, the 5,800 - 6,800 gallons of diesel fuel spilled and released at the site. These included the following:
 - i. On January 20, 1993, absorbent material was placed in the creek immediately north of the site where fuel was ponding.
 - ii. Shallow cut-off trenches were dug on either side of the tracks in the area of the spill and two (2) over and under dams were constructed.
 - iii. Booms were deployed at the east end of the storm sewer and at the west end of the storm sewer where such storm sewer discharges.

iv. From February 8 - 10, 1993, four soil borings were installed and completed as monitoring wells on each side of the track in the area of the diesel fuel release. Four additional monitoring wells were installed downgradient of the area of the diesel fuel spill.

b. In approximately March, 1993, Burlington retained the services of Radian Corporation ("Radian"), an Engineering firm, to characterize the subsurface extent of any diesel fuel contamination of the site, and to implement a diesel fuel recovery system. These included but were not limited to the following activities:

i. Soil and groundwater samples were obtained and analyzed for total petroleum hydrocarbons ("TPH"). The result from such sampling activity showed diesel fuel contamination of the area soil and groundwater. Free diesel fuel was also observed in one of the monitoring wells.

ii. Between April 2, 1993 and August 17, 1993, a groundwater interceptor trench with a groundwater depression pump and scavenger pump was installed to remove free diesel fuel from the groundwater.

- iii. On May 30, 1993, a Wastewater Discharge Permit IWDP-029 was issued by the Aurora Sanitary District ("Sanitary District") for the discharge of groundwater from Burlington's remediation system to the sanitary district sewer. 525,360 gallons of groundwater have been pumped and discharged to the sanitary district sewer.
- iv. The Phase I Report provided for a Phase II Follow-up Response which included among other things, the performance of a supplemental site characterization and evaluation of remedial options.
- c. Effective immediately, Burlington shall at all times maintain in good working order its diesel fuel containment and recovery system.
- d. Effective immediately and continuing until the site, including the soil and groundwater, and off-site areas are remediated to meet any and all Agency-approved closure criteria established for this site, Burlington shall continue to monitor its diesel fuel containment and recovery system and implement as appropriate, all measures designed to prevent the diesel fuel spilled and released at its site, from migrating further off-site.
- e. No later than sixty (60) days of entry of this Consent Order, Burlington shall prepare and provide to the plaintiff and the Agency, a report which

summarizes all fuel containment, recovery, remediation, monitoring and maintenance activities conducted at the site since the January 20, 1993 diesel fuel release. Burlington shall also document in said report all soil and groundwater analyses conducted at the site from January 20, 1993 to the date of entry of this Consent Order. Burlington shall also include copies of all analytical results and all boring logs obtained during this period of time.

3. Identified Response Action

Burlington shall determine the extent to which the soil and groundwater are impacted by the diesel fuel released, and shall remediate the site including the soil and groundwater and any off-site impacted area(s) to achieve the Agency-approved closure criteria established for the site and to prevent further migration of the released and unrecovered diesel fuel. The following is designed to achieve this requirement:

- a. Beginning not later than forty-five (45) days from the date of entry of this Consent Order, Burlington's Engineering Consultant shall prepare and provide to the plaintiff and the Agency for review and approval, a draft Phase II Work Plan ("Work Plan") and schedule for all of the activities required herein. This Work Plan shall include a detailed description of the procedures for the conduct of a study to determine the technical feasibility of in-situ bioremediation and soil

flushing as well as other technologically feasible technologies to address soil and groundwater remediation on and off-site. The Work Plan shall also include the activities to be performed for the characterization of the soil and groundwater, the identification of potential pathways of migration of the diesel fuel contaminated soil and groundwater, and identification of potentially affected human and environmental receptors. The Work Plan shall also propose the site closure criteria for the plaintiff and Agency approval. Such approval shall not be unreasonably withheld. The plaintiff shall have thirty (30) days for the review of this Work Plan. The plaintiff may extend the time for review by a period not to exceed fourteen (14) days by notifying Burlington prior to the expiration of the initial thirty (30) day review period.

- i. If the plaintiff accepts the Phase II Work Plan required in paragraph VII.C.3.a. above, Burlington shall implement said Work Plan in accordance with the schedule contained therein.
- ii. If the plaintiff objects to any recommended activity, or requires any additional activity to be performed by Burlington, it shall provide Burlington with a detailed statement as to reasons for its objections, including the specific type of information which the plaintiff deems Burlington did not provide in

the Phase II Work Plan, or the specified activity Burlington is required to perform.

- iii. Within thirty (30) days of receipt of any Phase II Work Plan disapproval or modification, Burlington shall submit a revised Phase II Work Plan to the plaintiff which incorporates the modifications required by the plaintiff, or shall invoke the Dispute Resolution provisions of Section VII.F. below. If Burlington fails to initiate the Dispute Resolution procedures within the thirty (30) day time period specified herein, Burlington shall be deemed to have agreed to the specified modifications.
- iv. In the event that the Dispute Resolution provision of paragraph VII.F. herein, is invoked, within twenty-one (21) days from the date of the resolution, of the dispute, Burlington shall provide to the plaintiff a revised Phase II Work Plan consistent with the results of the Dispute Resolution addressing Plaintiff's comments. Plaintiff shall have thirty (30) days to review this revised Phase II Work Plan.
- v. Burlington shall initiate and complete the implementation of the Phase II Work Plan including the study of the technical feasibility of in-situ bioremediation and soil flushing or other possible technologies to

address soil and groundwater remediation on and off-site, within the time frame specified in any Phase II Work Plan approved by the Plaintiff.

- b. Within forty-five (45) days of the completion of all activities required pursuant to the plaintiff-approved Phase II Work Plan, the engineering consultant shall prepare a draft report of all Phase II activities performed. This draft report shall be submitted to the plaintiff and the Agency for review and comments. The draft report shall document the study process including copies of all drawings indicating all materials and equipment examined in the study. The report shall also include, Burlington's determination of technical feasibility of in-situ bioremediation and soil flushing or other technologies to address soil and groundwater remediation on and off-site, all findings of Burlington's site characterization including results of the groundwater sampling analyses, and all identified potential pathways for migration of the diesel fuel contaminated soil and groundwater and the potentially affected human and environmental receptors. This draft report shall also include any and all recommended remedies including but not limited to in-situ bioremediation and soil flushing to remediate the site, as well as other technologies to remediate soil and groundwater on and off-site.

Plaintiff shall have thirty (30) days to comment on the draft report.

- c. Within thirty (30) days of receiving plaintiff's comments, Burlington shall provide to the Plaintiff a final report which shall incorporate the Plaintiff's comments. Concurrent with this report, Burlington shall notify the plaintiff and the Agency in writing, of the action(s) to be taken by Burlington to remediate the site, including soil and groundwater.
- d. If Burlington proposes not to remediate the site, including the soil and groundwater contamination, or proposes an alternative remedial measure not outlined in its final report, the notification required in Section VII.C.3.c. above shall set forth in detail, all reasons for either the non-action or the alternative remedial action being proposed.
- e. The plaintiff retains the right to among other things, rebut and/or reject Burlington's selection of a particular remedial action or its decision of non-action or selection of an alternative remedial action not outlined in its final report and pursuant to Section VII.F. of this Consent Order, request that the Kane County Circuit Court decide the propriety of Burlington's decision.
- f. If Burlington proposes to remediate the site, including the soil and groundwater, the notification required in Section VII C.3.c. above, must also

include for review and approval, a work plan for implementation of the selected remedial activity. The work plan shall detail all soil and groundwater remedial activities to be performed at the site and the date(s) on which all such activities will be implemented. The Work Plan shall also propose the site closure criteria for the plaintiff and Agency approval. Such approval shall not be unreasonably withheld.

- i. If the plaintiff accepts the work plan for implementation of selected remedial activities required in paragraph VII.C.3.f. above, Burlington shall implement the work plan in accordance with the schedule contained therein.
 - ii. If the plaintiff objects to any recommended activity, or requires any additional activity or work to be performed by Burlington, it shall provide Burlington with a detailed statement as to the reasons for its objections, including the specific type of information which the plaintiff deems Burlington did not provide in the work plan, or the specific activity or work Burlington is required to perform.
- g. Within thirty (30) days of receipt of any work plan disapproval or modification, Burlington shall submit a revised work plan to the plaintiff which incorporates the modifications required by the plaintiff, or shall invoke the Dispute Resolution

provisions of Section VII.F. below. If Burlington fails to initiate the Dispute Resolution procedures within the thirty (30) day time period specified herein, Burlington shall be deemed to have agreed to the specified modifications.

h. In the event that the Dispute Resolution provision of paragraph VII.F. herein, is invoked, within thirty (30) days from the date of the resolution of the dispute, Burlington shall provide to the plaintiff a revised work plan consistent with the results of the Dispute Resolution, addressing plaintiff's comments. Plaintiff shall have thirty (30) days to review this revised work plan.

i. Beginning thirty (30) days after Burlington commences the soil and groundwater remediation activities, and monthly for six (6) months and quarterly thereafter until the completion of all such remediation activities, Burlington shall provide to the plaintiff and the Agency reports of the progress of all remediation activities being conducted at the site.

j. Burlington shall initiate and complete all soil and groundwater remediation activities in accordance with the requirements of the plaintiff-approved Work Plan and in accordance with any and all schedule contained therein.

4. Project "Close-Out" Report

a. Subject to Section VII.C.3.d. and e. above, not

later than sixty (60) days of the completion of all remedial activities at the site, including soil and groundwater remediation, Burlington shall prepare and submit to the plaintiff and the Agency a project "close-out" report. This report shall include at a minimum the following:

- i. A summary of all data required to be collected pursuant to this Consent Order, including sampling data from the soil and the groundwater monitoring wells.
 - ii. A certification by an Illinois Registered Professional Engineer that the requirements pursuant to this Consent Order have been met consistent with the objectives of the Consent Order, including the achievement of the Agency-approved closure criteria. The certification shall also include his/her conclusion(s) regarding the condition of the site, including the soil and groundwater.
 - iii. A compilation of each written report previously prepared and provided to the plaintiff pursuant to Section VI.C.3. above.
 - iv. All laboratory reports and boring logs referenced in the data summary required herein.
- b. Plaintiff shall have ninety (90) days to review and provide comment(s) on the project "close-out" report required herein. The plaintiff may extend this time for review for a period not to exceed thirty (30)

days, by notifying Burlington in writing prior to the expiration of the initial (90) day review period.

- c. Within seven (7) days following the completion of its review, the plaintiff shall notify Burlington in writing whether plaintiff accepts or rejects the project "close-out" report.
- d. If the plaintiff accepts the project "close-out" report provided by Burlington, the report shall then be filed by the parties with this Court as an amendment to this Consent Order, within fourteen (14) days of the date of the acceptance notification.
- e. If the plaintiff rejects the project "close-out" report provided by Burlington it shall provide Burlington with a detailed statement as to the reasons for its rejection, including any insufficiency found in the evaluation of the remediation activities conducted on and off-site and the completeness of such remediation, the specified type of information which the plaintiff deems Burlington did not provide in the report or other deficiencies contained therein. Plaintiff reserves its right to seek judicial intervention pursuant to Section VII.F. below to resolve any dispute regarding the project "close-out" report.

D. Certification and Reports

1. All certifications, correspondence(s), documents,

notifications, reports, plans, scope of work, studies, and any other documentation required by this Consent Order shall be submitted in writing and sent by certified mail or any other form of mail delivery which records the date of receipt, to the plaintiff and the Agency at the addresses which appear below or to such other addresses which the plaintiff and the Agency may hereafter designate in writing.

John Waligore
Assistant Counsel
Illinois EPA
P.O. Box 19276
2200 Churchill Road
Springfield, IL 62794-9276

RoseMarie Cazeau
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
100 W. Randolph Street, 11th Flr.
Chicago, Illinois 60601

Stan Komperda
Bureau of Land
Illinois EPA
2200 Churchill Road
Springfield, IL 62794

Michele Niermann
Assistant State's Attorney
Kane County State's Attorney's
Office
Kane County Judicial Center
37 W 777 Route 38, Suite 300
St. Charles, IL 60175-7535
Chicago, Illinois 60601

Dennis Ahlberg
Emergency Response Unit
Illinois EPA
2200 Churchill Road
Springfield, IL 62794

Howard Chinn, P.E.
Chief Engineer
Illinois Attorney General's Office
100 W. Randolph Street, 11th Flr.
Chicago, IL 60601

2. All documents including plans, approvals and all other correspondences to be submitted to Burlington pursuant to this Consent Order shall be sent to:

Michael L. Szadnanoff, Esq.
Kenneth J. Wysoglad & Associates
Suite 1002A
2200 West Monroe Street
Chicago, Illinois 60606

Greg Jeffries, Manager
Environmental Operations
Burlington Northern Railroad Co.
4105 Lexington Avenue
North Arden Hills, MN 55126

Elizabeth Hill
Law Department
Burlington Northern Rail Co.
3800 Continental Plaza
777 Main Street
Fort Worth, TX 76102

E. Cease and Desist

Burlington and Southern Pacific shall cease and desist from violation of the Act, any and all of 35 Ill. Adm. Code, Subtitle C, and any and all federal laws and regulations except as specifically provided in this Consent Order. Burlington shall at all times properly operate and maintain its site and take all reasonable measures to prevent releases which violate the Act and the Board's Air Pollution Regulations, in accordance with the Compliance Plan set forth in Section VII.C.

F. Dispute Resolution

The parties shall use their best efforts to resolve all disputes or differences of opinion arising with regards to this Consent Order, informally and in good faith. If, however, disputes arise concerning this Consent Order which the parties are unable to resolve informally, either party may, by written motion, request that an evidentiary hearing be held before the Kane County Circuit Court to resolve the dispute between the parties.

Burlington shall have the burden of persuasion, by a preponderance of the evidence, on all issues concerning the activities required in Sections VII.C.2., VII.C.3. and VII.C.4. of this Consent Order. Except as specifically provided herein and in Section VII.G. below, the rules of civil procedure shall govern these proceedings.

G. Force Majeure

1. Force Majeure for purposes of this Consent Order is defined as any event arising from causes beyond the control of Burlington which delays or prevents the performance of any obligation under this Consent Order. "Force Majeure" shall not include increased costs or expenses associated with performance of the obligations under this Consent Order.

2. When an event occurs which will delay the timely completion of any obligation under this Consent Order, whether or not caused by a force majeure event, Burlington shall promptly notify the plaintiff and the Agency in writing within forty-eight (48) hours of the occurrence of the event. Within ten (10) days of the occurrence of the event which Burlington contends will be responsible for a delay, Burlington shall also provide to the plaintiff and the Agency in writing, the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Burlington to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to provide the 48-hour notice and/or provide the 10-day follow-up written explanation to the plaintiff and the Agency in a timely manner, shall constitute a waiver of any claim of force majeure.

3. If within thirty (30) days of the date of Burlington's 48-hour notification, the plaintiff agrees that a delay is or will be attributable to a force majeure event, the parties shall modify the relevant schedules to provide such additional time as may be necessary to allow the completion of the specific obligation.

4. If the plaintiff and Burlington cannot agree whether the reason for the delay was a force majeure event, or whether the duration of the delay is or will be warranted under the circumstances, Burlington may invoke the Dispute Resolution provisions of paragraph VII.F. of this Consent Order. However, Burlington invoking the Dispute Resolution provisions of Section VII.F. is not in and of itself a force majeure event. Burlington has the burden of proving force majeure by a preponderance of the evidence.

H. Right of Entry

In addition to any other authority, the Agency, its employees and representatives, and the plaintiff his agents and representatives, in accordance with constitutional limitations, shall have the right of entry into and upon Burlington's site which is the subject of this Consent Order, at all reasonable times, with twenty-four (24) hours notice, for the purposes of carrying out inspections including taking photographs, collecting samples, collecting information, and enforcing the terms of this Consent Order.

The individuals conducting any inspections of the site shall make all reasonable attempts to ensure that inspection activities will not impede the safe and efficient operation of rail traffic at the site. Further, the individuals conducting the inspections will comply with reasonable site safety rules and regulations in effect at the site at the time of such inspections. A copy of Burlington's Safety Rules and Regulations were provided to the plaintiff.

I. Transfer of Interest

No less than thirty (30) days prior to any transfer by Burlington of an ownership interest and/or control in the Burlington's site, Burlington shall notify the plaintiff and the Agency of the transfer, as provided in Section VII.D.1.

Burlington shall also notify the transferee of this Consent Order and provide to the transferee a copy of this Consent Order.

Burlington shall include in any agreement or contract for such transfer a provision requiring the transferee to implement the compliance plan contained in Section VII.C. herein. In any event, Burlington shall remain responsible for the completion of all activities specified herein.

J. Covenant Not to Sue

1. Southern Pacific

Upon receipt of Southern Pacific's payment of a \$85,000.00 penalty jointly with Burlington and commitment to refrain from future violations of the Act, the plaintiff or State covenants not to sue or bring any civil, judicial or administrative action against Southern Pacific for known violations of the Act which were the subject matter of the Consent Order herein. In the event the \$85,000.00 penalty is not paid, the State shall be released from this covenant not to sue.

Further, nothing in this Consent Order shall be construed as a waiver by the plaintiff of the right to redress future violations of the Act, the Board's regulations, or this Consent Order, or to obtain penalties with respect thereto.

2. Burlington

Upon receipt of Burlington's payment of a \$85,000.00 penalty

jointly with Southern Pacific and the payment of past costs of \$1,430.55 and the actions Burlington has taken to date, the completion of all actions required pursuant to this Consent Order and commitment to reimburse the plaintiff its future response and oversight costs and to refrain from future violations of the Act, the plaintiff or State covenants not to sue or bring any civil, judicial or administrative action against Burlington for known violations of the Act which were the subject matter of the Consent Order herein. In the event any money owing the State is not paid and/or Burlington refuses or fails to perform to completion all actions required by this Consent Order, the State shall be released from this covenant not to sue.

Further, nothing in this Consent Order shall be construed as a waiver by the plaintiff of the right to redress future violations of the Act, the Board's regulations, or this Consent Order, or to obtain penalties with respect thereto.

K. Enforcement of Consent Order

Upon entry of this Consent Order, any party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing the terms and conditions of this Consent Order. This Consent Order is a binding and enforceable Order of the Court and

may be enforced as such through any and all available means.

PEOPLE OF THE STATE OF ILLINOIS
ex rel. JAMES E. RYAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

Date: 1/18/96 By: *William D. Seith*
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

ex rel. DAVID R. AKEMANN,
State's Attorney of
Kane County, Illinois

By: *Patricia Johnson-Lord*
PATRICIA JOHNSON-LORD
Chief, Civil Division

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Date: 1/11/96 By: *Joseph E. Svobeda*
JOSEPH E. SVOBODA
General Counsel

BURLINGTON NORTHERN RAILROAD COMPANY

Date: 1/3/98 By: *L. Elizabeth Hill*

Title: *Attorney*

SOUTHERN PACIFIC
TRANSPORTATION COMPANY,
subsidiary of SOUTHERN PACIFIC RAIL
CORPORATION, and SPCSL Corp.

Date: 1/9/96 By: *Melvin E. Dunn*

Title: *Asst. Gen. Atty*
MELVIN E DUNN

Entered: FEB 0 1996 _____
Judge

01-1270

ThermoRetec Consulting Corporation
10000 Highway 100
St. Paul, MN 55110-1987

April 2, 2001

REVIEWER MM

ThermoRetec
Smart Solutions. Positive Outcomes.

APR 09 2001

Mr. Stanley F. Komperda
Project Manager
Remedial Project Management Section
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62794-9276

REVIEWER MM

(651) 222-0871 Phone
(651) 222-6914 Fax
www.thermoretec.com

0438995000
Burlington Northern
SF/Rec'd

ORIGINAL

RE: Site Closure Request, Diesel Fuel Spill Site - Eola, Illinois (BN100-01908-810)
IEPA Incident No. 930190

Dear Mr. Komperda:

On behalf of The Burlington Northern and Santa Fe Railway Company (BNSF), ThermoRetec Consulting Corporation (ThermoRetec) is providing additional information to the Illinois Environmental Protection Agency (IEPA) so that a Site Closure Request can be considered for the diesel fuel spill site located in Eola, Illinois (Site).

On November 6, 1998, ThermoRetec submitted a Project Close-Out Report (Report) for the Site. The purpose of the Report was to provide the IEPA with information that supported site-closure. The Report contents are summarized below:

- Incident summary
- Introduction of past submittals
- Results of additional site investigation activities conducted on and off BNSF property to further characterize the Site
- Description of the selected remedial alternative
- Results of the *in situ* bioremediation pilot study conducted at monitoring wells MW-5 and MW-14
- Results of a final groundwater monitoring event conducted on July 15, 1998

A copy of the Project Closeout Report is provided in Attachment A.

Based on results of the groundwater monitoring event conducted on July 15, 1998, Tier 1 Tiered Approach to Cleanup Objectives (TACO) remediation objectives were not exceeded. Therefore, the project closeout request was submitted to the IEPA.

EXHIBIT
B

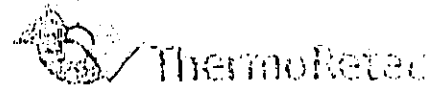
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Mr. Stanley F. Komperde

April 2, 2001

Page 2



On several occasions since submittal of the Project Closeout Report, ThermoRetec has inspected monitoring wells MW-5 and MW-14 for the presence of petroleum product. Petroleum product was not observed during any of the inspections.

Based on the results of the groundwater sampling conducted in 1998 that indicates groundwater no longer exceeds the Tier 1 TACO standards and inspections of MW-5 and MW-14 that indicates petroleum product has been recovered to the extent practical in both wells, ThermoRetec requests that the Site be closed.

If you have any questions, please call me at (651) 222-0841 or Mr. Greg Jeffries of BNSF at (763) 782-3483.

Sincerely,

ThermoRetec Consulting Corporation

A handwritten signature in black ink, appearing to read "Daryl R. Beck".

Daryl R. Beck
Environmental Engineer

DRB:smw

Attachments

cc: G. Jeffries, BNSF

ATTACHMENT A

**Project Close-Out Report
November 6, 1998**

RETEC

412 Western Street
Suite 400
St. Paul, MN 55104
(651) 727-0551
FAX (651) 727-0551

November 6, 1998

Ms. Rose Marie Cazeau
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
100 W. Randolph Street, 11th Floor
Chicago, Illinois 60601

RE: Project Close-Out Report, Diesel Fuel Spill Site - Eola, Illinois (3-1908-700)
IEPA Incident Number: 930190

Dear Ms. Cazeau:

On behalf of The Burlington Northern and Santa Fe Railway Company (BNSF), RETEC is providing this project close-out report (Report) to the State of Illinois and the Illinois Pollution Control Agency (IEPA) for the diesel fuel spill site located in Eola, Illinois (Site). This Report was completed in accordance with the Consent Order dated February 5, 1996, related to the spill site. The Report provides a summary of Site remediation and monitoring activities. Based on the results of the remediation and monitoring activities, RETEC recommends that the Site be closed.

The Report contains the following Attachments:

- Attachment A - Tables and Figures
- Attachment B - Analytical Laboratory Reports

SITE BACKGROUND

On January 20, 1993, a head-on collision between an eastbound Southern Pacific train and a westbound BNSF train resulted in a diesel fuel spill estimated at 5,800 to 6,800 gallons from damaged diesel tanks on locomotives of both trains. Response efforts were immediately focused on removing the injured train crews from the locomotives. Once access was permitted to the Site, it was determined that three of the seven locomotives involved in the accident had damaged fuel tanks that spilled diesel fuel.

November 6, 1998

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The Site is located in Kane County, Illinois northeast of Aurora and west of Eola on BNSF trackage. The Site is located in Section 13, Township 38 North, Range 2 East and is shown on Figure 1.

On January 20, 1993, BNSF and their contractors arrived at the Site to provide emergency spill response services. A summary of the response activities is provided in the document *Status Report, Diesel Fuel Spill Site, Eola, Illinois* dated March 1996 (Status Report). The Status Report was completed in accordance with the Consent Order.

In 1993 and 1995, soil and groundwater investigations were conducted to determine the extent of impact caused by the diesel fuel release. Results of the soil and groundwater investigations are provided in the Status Report. The 1993 investigation was conducted to define the extent of impacts caused by the diesel fuel spill. The 1995 investigation was conducted to further define subsurface impacts, in particular, the area below the mainline railroad tracks.

ADDITIONAL SITE INVESTIGATION

Soil

As part of the Consent Order, additional subsurface investigation activities were conducted on and off BNSF property at the Site. Additional subsurface investigation activities are described in the document *Work Plan, Diesel Fuel Spill Site, Eola, Illinois* dated March 1996. In May 1996, four soil borings, designated SB-1 through SB-4, were conducted to determine subsurface soil impacts. These four borings were conducted on BNSF property. Locations of the soil borings are shown on Figure 2. Soil samples were collected from each of the soil borings and analyzed for benzene, toluene, ethylbenzene, and xylenes (BTEX) and polycyclic aromatic hydrocarbons (PAHs).

In March 1997, RETEC conducted the off-site portion of the additional subsurface investigation. Eleven soil borings were completed along the southern property boundary. Four of the soil borings were completed as monitoring wells. Soil samples were collected from soil borings SB-5, SB-6, MW-23, and MW-24 and analyzed for BTEX and PAHs. Soil sample results of the on- and off-site subsurface investigation are provided in Table 1. None of the soil samples collected during the on- and off-site subsurface investigations exceeded the Tier 1 corrective action objectives presented in the IEPA guidance document Tiered Approach to Corrective Action Objectives (TACO).

Groundwater

Groundwater samples were also collected during the two investigation events. In May 1996, groundwater samples were collected from monitoring wells MW-2, MW-3, MW-4, MW-6, MW-7, MW-8, MW-9, MW-10, and MW-17. In April 1997, groundwater samples were collected from MW-2, MW-3, MW-4, MW-9, MW-10, MW-21, MW-22,

Ms. Rose Marie Chastain

November 6, 1998

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RETEC

MW-23, and MW-24. Sample results are provided in Table 2. Based on results of the groundwater investigation, several parameters exceeded their Tier 1 TACO corrective action objectives. In addition, petroleum product was still present in monitoring wells MW-5 and MW-14 and in the recovery trench sump.

Results of the May 1996 on-site investigation were reported to the State of Illinois and the IEPA in the document *Feasibility Study, Diesel Fuel Spill Site, Eola, Illinois* (Feasibility Study) dated June 1996. Results of the March 1997 off-site investigation were reported to the State of Illinois and the IEPA in a letter report dated June 3, 1997.

SITE REMEDIATION

Using results of the 1993, 1995, and 1996 soil and groundwater investigations, RETEC conducted a study to determine closure criteria for the Site and to select a remedial alternative to achieve closure. Results of the study are presented in the Feasibility Study. Cleanup objectives for soil and groundwater were determined using the IEPA TACO guidance manual. Site-specific closure criteria developed in the Feasibility Study are provided in Table 3.

Several technologies were screened during preparation of the Feasibility Study. The remedial alternative that was selected to remediate the Site is described below:

- Operating the existing recovery trench to collect free product and prevent free product from entering the drainage ditch.
- Installing a recovery well where monitoring well MW-14 is located and placing a hydrophobic collection sump to recover free product.
- Monitoring the progress of intrinsic bioremediation through groundwater monitoring.
- Recognizing the high-traffic railroad usage of the Site as a land use restriction.

The existing recovery trench had been installed shortly after the incident occurred. In April 1997, the IEPA accepted the remedial alternative selected in the Feasibility Study in addition to conducting a *in situ* bioremediation pilot study, which is summarized below.

Petroleum product recovered in the recovery trench sump was removed twice monthly. Recovery trench operation was suspended in July 1997, following IEPA approval, due to the insignificant amount of petroleum product being recovered. Absorbent pillows were placed in the recovery trench sump to recover residual petroleum product.

Ms. Rose Marie Gagnon

November 6, 1998

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RETEC also conducted monthly inspections to recover petroleum product from monitoring wells. Absorbent booms were placed in monitoring wells MW-5 and MW-14 to recover free phase petroleum product. The absorbent booms and pillows were replaced during each monthly inspection or monitoring event.

As described above, groundwater samples were collected in 1996 and 1997 from selected Site monitoring wells. Sample results are provided in Table 2.

IN SITU BIOREMEDIATION PILOT STUDY

The objective of the *in situ* bioremediation pilot study was to evaluate the effects of increasing subsurface oxygen level on the degradation of residual petroleum product at monitoring wells MW-5 and MW-14. In June 1997, a slurry of Oxygen Release Compound (ORC) was injected in the subsurface over an area approximately 20 feet by 20 feet around each well. The ORC was installed using a high pressure injection system at an interval of 3 to 7 feet below the ground surface.

In situ bioremediation performance was monitored monthly for six months by collecting water and air samples at monitoring wells MW-5 and MW-14. The two wells were monitored from June 1997 to January 1998. Performance monitoring results were provided to the IEPA in a summary letter report dated April 7, 1998. In the summary letter report, RETEC recommended inspecting Site monitoring wells bi-monthly for six months to determine if petroleum product returned to MW-5 and MW-14. If petroleum product was not observed at the end of six months, 11 Site monitoring wells, including MW-5 and MW-14, would be sampled to determine if groundwater met the IEPA approved closure criteria listed in the Feasibility Study. Petroleum product was not observed from September 1997 through February 1998.

SITE CLOSURE EVALUATION

On July 15, 1998, monitoring wells MW-1, MW-3, MW-6, MW-9, MW-10, MW-14, and MW-21 through MW-24 were sampled. Monitoring well MW-5 was sampled on July 30, 1998. Samples were analyzed for BTEX and PAHs. Sample results are provided in Tables 2 and 4.

Groundwater at the Site has been remediated to meet closure criteria set forth in the Feasibility Study and approved by the IEPA based on the following:

- Results of the July 1998 groundwater sampling event do not exceed Tier 1 TACO corrective action objectives, except for benzo (a) anthracene at monitoring well MW-23.

November 6, 1998
Page 5

RETEC

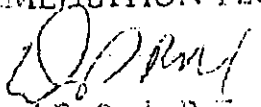
- Petroleum product has not been observed in monitoring wells MW-5 and MW-14 or in the recovery trench sump since September 1997.

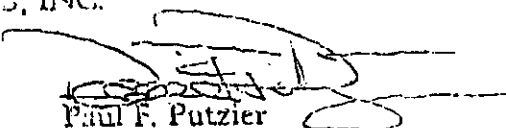
Benzo (a) anthracene was detected at 0.66 micrograms per liter (ug/L) in monitoring well MW-23. The Tier 1 TACO corrective action objective for benzo (a) anthracene is 0.65 ug/L. Based on a telephone conversation with Mr. Stanley Komperda of the IEPA on September 4, 1998, a Tier 2 TACO evaluation would not be required for the benzo (a) anthracene exceedance at MW-23. Therefore, RETEC recommends the Site be closed with no further action. Upon approval of this recommendation to close the Site, the monitoring wells will be sealed and the recovery trench decommissioned.

If you have any questions concerning this matter, please contact either of us at (651) 222-0841 or Mr. Jim Cunningham of BNSF at (612) 782-3483.

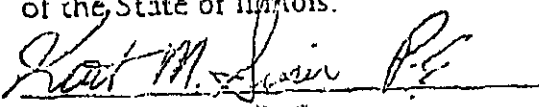
Sincerely,

REMEDATION TECHNOLOGIES, INC.


 Daryl R. Beck, P. E., CIIMM
 Environmental Engineer


 Paul F. Putzier
 Senior Hydrogeologist

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Registered Professional Engineer under the laws of the State of Illinois.


 Kurt M. Geiser, P. E.
 Environmental Engineer
 Remediation Technologies, Inc.
 St. Paul, Minnesota

062-046016
 Registration Number
11/5/98
 Date

Attachments

- cc: J. Waligore - IEPA
- S. Komperda - IEPA
- D. Allberg - IEPA
- M. Niemann - Kane County State Attorney's Office
- H. Chinn, P. E. - Illinois Attorney General's Office
- M. Sazdanoff, Esq. - Kenneth J. Wysoglad & Associates, w/o enclosure
- J. Cunningham, BNSF

DATE: 1-20-66	PROJECT: BURLINGTON MONITORING STATION 16	SCALE: 1"=40'
BY: [Signature]	APPROVED: [Signature]	
NO. 1	NO. 2	NO. 3
NO. 4	NO. 5	NO. 6
NO. 7	NO. 8	NO. 9
NO. 10	NO. 11	NO. 12
NO. 13	NO. 14	NO. 15
NO. 16	NO. 17	NO. 18
NO. 19	NO. 20	NO. 21
NO. 22	NO. 23	NO. 24
NO. 25	NO. 26	NO. 27
NO. 28	NO. 29	NO. 30
NO. 31	NO. 32	NO. 33
NO. 34	NO. 35	NO. 36
NO. 37	NO. 38	NO. 39
NO. 40	NO. 41	NO. 42
NO. 43	NO. 44	NO. 45
NO. 46	NO. 47	NO. 48
NO. 49	NO. 50	NO. 51
NO. 52	NO. 53	NO. 54
NO. 55	NO. 56	NO. 57
NO. 58	NO. 59	NO. 60
NO. 61	NO. 62	NO. 63
NO. 64	NO. 65	NO. 66
NO. 67	NO. 68	NO. 69
NO. 70	NO. 71	NO. 72
NO. 73	NO. 74	NO. 75
NO. 76	NO. 77	NO. 78
NO. 79	NO. 80	NO. 81
NO. 82	NO. 83	NO. 84
NO. 85	NO. 86	NO. 87
NO. 88	NO. 89	NO. 90
NO. 91	NO. 92	NO. 93
NO. 94	NO. 95	NO. 96
NO. 97	NO. 98	NO. 99
NO. 100		



- EXPLANATION**
- ▽ SURVEY POINT
 - ⊕ ELECTRIC WELL
 - ⊕ OBSERVATION WELL
 - ⊕ 24" COLLECTION POINT
 - ⊕ 24" MONITORING WELL
 - ⊕ MONITORING POINT
 - SLOUCH BOX
 - FENCE LINE
 - - - UNDEVELOPED AREA
 - RAILROAD TRACK LOCATION
 - EXISTING STRUCTURE

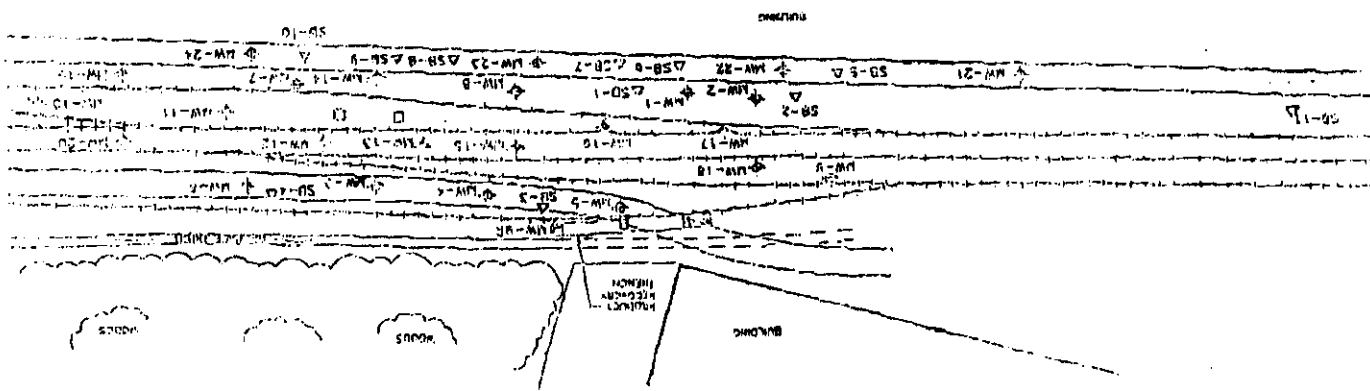




Table 1 - Analytical Soil Results

Sample Location Sample Depth (feet) Sample Date Parameter	SE-1 2 to 5 05/14/96	SE-2 3 to 5 05/14/96	SE-3 3 to 4 05/14/96	SE-4 3 to 6 05/14/96	SE-5 4 to 6 3/12/97	SE-6 5 to 10 3/12/97	MW-23 4 to 6 3/12/97	MW-24 9 to 14 3/12/97
Polycyclic Aromatic Hydrocarbons								
Naphthalene	61	310	<5.0	3.1	110	<1.3	45	1200
Acenaphthylene	69	<10	<10	<10	<9.0	<20	<23	<4.0
Acenaphthene	<10	36	<10	<10	148	36	<2.2	<6.4
Fluorene	96	510	<2.0	12	640	100	210	<1.2
Phenanthrene	320	850	0.90	77	1400	170	250	<0.65
Anthracene	27	180	<1.0	10	1100	140	650	760
Fluoranthene	40	49	<2.0	9.3	4300	<1.0	<1.2	<2.3
Pyrene	150	510	<1.0	32	1200	160	860	<0.23
Benzo(a)anthracene	<3.0	<3.0	<3.0	<3.0	<4.1	88	150	260
Chrysene	31	<1.0	<1.0	<1.0	1900	<0.21	2200	1300
Benzo(b)fluoranthene	32	<2.0	<2.0	<2.0	<1.8	65	130	<0.65
Benzo(k)fluoranthene	35	9.1	<1.0	1.6	<1.0	<0.21	<0.34	<0.40
Benzo(a)pyrene	50	<1.0	<1.0	3.6	<3.0	<0.63	130	<1.5
Dibenzo(a,h)anthracene	<2.0	120	<2.0	<2.0	<3.4	<0.70	<0.22	<1.6
Benzo(g,h,i)perylene	<1.0	<1.0	<1.0	<1.0	<3.0	<0.63	<0.73	<1.5
Indeno(1,2,3-c,d)pyrene	34	<1.0	<1.0	2.1	<1.5	<0.31	100	130
BTEX Compounds								
Benzene	<5*	<50	<0.5	<50	<12	<9.8	<57	<57
Toluene	2,100	<50	<0.5	<50	49	9.7	52	89
Ethylbenzene	<500	15	<0.5	<50	160	2.6	240	600
Xylenes	3,500	<50	<1.0	<50	370	<65	550	1100

Notes:
 * S concentrations reported in ug/gp.
 < - Analyte amount not detected or below the detection limit.
 - Analyzed after holding time.

RES-15

Table 2 - Groundwater Analytical Results

Mentioning Well ID	Consecutive Action Objectives	MP-1 07/19/96	MP-2 05/14/96	MP-2 04/02/97	MP-3 05/14/98	MP-2 10/21/97	MP-3 04/21/98	MP-3 01/15/99	MP-2 04/14/99
PAH by Method 8310 (ug/L)									
Naphthalene	39	6.9	5.2	19	5.2		<0.080	<0.092	<0.050
1-Methyl Naphthalene	NA	41.2	NS	NS	NS		NS	<0.064	NS
2-Methyl Naphthalene	NA	12.4	NS	NS	NS		NS	<0.034	NS
Acenaphthylene	NA	<0.6	1.3	12	<1.0		<0.39	<0.6	<1.0
Acenaphthene	2,100	4	0.67	<0.092	<1.0		<0.093	<0.041	<1.0
Fluorene	1,400	2.7	1.5	6.9	0.5		0.073	<0.071	<0.10
Fluoranthene	NA	5.1	0.61	15	0.27		0.5	<0.032	<0.050
Anthracene	10,500	<0.020	0.33	<0.0079	0.051		0.093	<0.025	<0.10
Fluoranthene	1,400	<0.04	<0.10	<0.017	<0.10		0.2	<0.04	<0.10
Pyrene	1,050	0.8	0.061	<0.0059	0.064		0.18	<0.01	<0.050
Benzo(a)anthracene	0.65	0.05	<0.050		<0.050		0.089	<0.008	<0.050
Chrysene	7.5	0.08	<0.050	<0.0090	0.098		0.11	<0.005	<0.050
Benzo(b)fluoranthene	0.9	<0.062	<0.10	<0.018	<0.10		0.11	<0.062	<0.10
Benzo(k)fluoranthene	0.85	<0.071	<0.050	<0.0051	0.011		0.052	<0.071	<0.050
Benzo(a)pyrene	1	<0.061	<0.050	<0.0038	0.038		0.14	<0.061	<0.050
Dibenzo(a,h)anthracene	1.5	<0.023	<0.10	<0.029	<0.10		0.057	<0.023	<0.10
Benzo(g,h,i)perylene	NA	<0.024	<0.10	<0.022	<0.10		0.15	<0.024	<0.10
Indeno(1,2,3-cd)pyrene	2.15	<0.046	<0.10	<0.013	0.02		0.24	<0.046	<0.10
ETEX by Method 8020 (ug/L)									
Benzene	25	2.9	<0.5	6.7	<0.5		<0.67	<1.0	<0.5
Toluene	2,500	<1.0	<0.5	<5.0	<0.5		<0.30	<1.0	<0.5
Ethylbenzene	1,000	5.5	6.1	10	<0.5		<0.33	<1.1	<0.5
Xylenes	10,000	7.2	4.1	<14	<1.0		<1.4	<0.5	<1.0

Notes:

1) Parameter not detected at or above referenced detection limit

2) Stated values indicate parameter concentration greater than Class II Tier I Groundwater Corrective Action Objective.

3) NA: No Tier I Corrective Action Objective has been established for indicated parameter.

4) Specific sample collected at MW-21.

RESULTS

Table 2 - Groundwater Analytical Results (Cont'd)

Monitoring Well ID	Corrective Action Objectives	04/02/97	05/05/98	07/16/98	02/14/99	05/14/99	08/14/99	10/15/99	01/12/00
PA13 by Method 8210 (ug/L)									
Naphthalene	50	<0.005	<0.006	<0.006	<0.006	<0.006	<0.006	<0.006	<0.006
1-Methyl Naphthalene	NA	NS	<0.04	<0.04	NS	NS	NS	NS	NS
2-Methyl Naphthalene	NA	NS	<0.034	<0.034	NS	NS	NS	NS	NS
Acenaphthylene	NA	<0.36	<0.6	<0.6	<1.0	<1.0	<1.0	<1.0	<0.58
Acenaphthene	2,100	<0.002	<0.041	<0.041	<1.0	<1.0	<1.0	<1.0	<0.022
Fluorene	1,400	<0.021	<0.071	<0.071	<0.10	<0.10	<0.10	<0.10	<0.021
Phenanthrene	NA	<0.028	<0.032	<0.032	<0.050	<0.050	<0.050	<0.050	<0.050
Anthracene	10,500	<0.0079	<0.029	<0.029	<0.10	<0.10	<0.10	<0.10	<0.07
Fluoranthene	1,400	<0.017	<0.04	<0.04	<0.10	<0.10	<0.10	<0.10	<0.07
Pyrene	1,050	0.016	<0.01	<0.01	<0.050	<0.050	<0.050	<0.050	0.22
Benzo(a)anthracene	0.65	<0.0078	<0.008	<0.008	<0.050	<0.050	<0.050	<0.050	0.098
Chrysene	7.5	<0.0090	<0.005	<0.005	<0.050	<0.050	<0.050	<0.050	0.15
Benzo(b)fluoranthene	0.9	<0.018	<0.062	<0.062	<0.10	<0.10	<0.10	<0.10	0.15
Benzo(k)fluoranthene	0.85	<0.0021	<0.071	<0.071	<0.050	<0.050	<0.050	<0.050	0.084
Benzo(a)pyrene	2	<0.0088	<0.061	<0.061	<0.050	<0.050	<0.050	<0.050	0.16
Dibenzo(a,h)anthracene	1.5	<0.029	<0.023	<0.023	<0.10	<0.10	<0.10	<0.10	0.056
Benzo(g,h,i)perylene	NA	<0.022	<0.024	<0.024	<0.10	<0.10	<0.10	<0.10	0.26
Indeno(1,2,3-cd)pyrene	2.15	<0.013	<0.046	<0.046	<0.10	<0.10	<0.10	<0.10	0.47
BTEX by Method 8020 (ug/L)									
Benzene	25	<0.47	<1.1	<1.1	<0.5	<0.5	<0.5	<0.5	<0.47
Toluene	2,500	<0.50	<1.0	<1.0	<0.5	<0.5	<0.5	<0.5	<0.50
Ethylbenzene	1,000	<0.33	<1.1	<1.1	<0.5	<0.5	<0.5	<0.5	<0.33
Xylenes	10,000	<1.4	<5.5	<5.5	<1.0	<1.0	<1.0	<1.0	<1.4

Note: < = Parameter not detected at or above reporting detection limit

Shaded values indicate parameter concentration greater than Class II Tier I Groundwater Corrective Action Objective.

NA: No Tier I Corrective Action Objective has been established for indicated parameter.

Duplicate sample collected at PA13-1.



Table 2 - Groundwater Analytical Results (Cont.)

Monitoring Well ID	Corrective Action Objectives	PAW-5 07/15/98	PAW-10 05/15/98	PAW-10 04/02/97	PAW-10 07/16/98	510150	PAW-21 06/02/97	PAW-7 03/05/97
PAW by Method 8210 (ug/L)								
Naphthalene	37	<0.03E	<0.50	<0.087	<0.05E		3.7	<0.12E
1-Methyl Naphthalene	NA	<0.05	NS	NS	<0.04	NS	NS	<0.13E
2-Methyl Naphthalene	NA	<0.034	NS	NS	<0.034	NS	NS	<0.11E
Acenaphthylene	NA	<0.6	<1.0	<0.58	<0.6	7E	<0.9E	<1.98E
Acenaphthene	2,100	<0.61	<1.0	<0.91	<0.61	11	0.15	<0.19E
Fluorene	1,400	<0.071	<0.10	<0.021	<0.071	92	0.25	<0.22E
Phenanthrene	NA	<0.032	0.014	<0.028	<0.032	270	0.59	<0.10E
Anthracene	10,500	<0.029	<0.10	0.01	<0.029	44	0.14	<0.07E
Fluoranthene	1,600	<0.04	<0.10	0.079	<0.04	19	1.1	<0.15E
Pyrene	1,050	<0.1	<0.050	0.11	0.077	140	<0.0059	0.17
Benzo(a)anthracene	0.65	<0.008	<0.050	0.059	0.066	<0.50	0.041	<0.02E
Chrysene	7.5	<0.005	<0.050	<0.0090	0.068	<0.50	<0.0000	<0.01E
Benzo(b)fluoranthene	0.9	<0.062	<0.10	0.066	<0.062	<1.0	<0.01E	<0.20E
Benzo(k)fluoranthene	0.85	<0.071	<0.050	0.044	<0.071	<0.50	<0.0091	<0.23E
Benzo(a)pyrene	2	<0.061	<0.050	0.066	<0.061	0.37	<0.0052	<0.20E
Dibenzo(a,h)anthracene	1.5	<0.025	<0.10	<0.029	<0.023	<1.0	<0.029	<0.07E
Benzo(g,h,i)perylene	NA	<0.024	<0.10	0.078	<0.024	<1.0	<0.022	<0.07E
Indeno(1,2,3-cd)pyrene	2.15	<0.046	<0.10	0.13	<0.046	<1.0	<0.013	<0.15E
BTEX by Method 8020 (ug/L)								
Benzene	25	<1.1	<0.5	<0.47	<1.1	4.7	<0.47	<1.1
Toluene	2,500	<1.0	<0.5	<0.50	<1.0	2.6	3.6	<1.0
Ethylbenzene	1,000	<1.1	<0.5	<0.53	<1.1	44	0.66	<1.1
Xylenes	10,000	<3.5	<1.0	<1.4	<3.5	4E	<1.4	<3.5

Note:
 < Parameter not detected at or above referenced detection limit.
 Shaded values indicate parameter concentration greater than Class II Tier 1 Groundwater Corrective Action Objective.
 NA: No Tier 1 Corrective Action Objective has been established for indicated parameter.
 E: Highest sample volume analyzed.

TRACES

Table 2 - Groundwater Analytical Results (Con't)

Monitoring Well ID Sample Date	Corrective Action Objectives	Duplicate 04/02/91	HW-21 04/02/91	HW-22 07/16/98	HW-23 04/02/91	HW-24 07/16/98	HW-24 07/16/98
PAR by Method 8210 (ug/L)							
Naphthalene	59	2.2	0.1	<0.038	<0.087	<0.038	<0.029
1-Methyl Naphthalene	NA	NS	NS	<0.04	NS	<0.04	NS
2-Methyl Naphthalene	NA	NS	NS	<0.034	NS	<0.034	NS
Acenaphthylene	NA	<0.38	<0.38	<0.6	<0.36	<0.6	<0.39
Acenaphthene	2,100	0.14	1.0	1.15	<0.091	1.25	<0.074
Fluorene	1,400	0.23	0.44	0.57	5.5	1.12	0.056
Phenanthrene	NA	0.30	1.4	<0.032	2.0	<0.032	0.46
Anthracene	1,400	0.41	2.2	<0.029	1.7	<0.029	<0.080
Fluoranthene	1,050	<0.017	7.2	0.7	<0.017	<0.04	0.13
Pyrene	0.65	<0.0058	3.0	0.4	12	0.44	0.22
Benzo(a)anthracene	7.5	0.022	<0.0090	0.15	<0.0090	0.13	<0.005
Chrysene	0.9	<0.0090	<0.0090	0.19	<0.0090	0.13	<0.005
Benzo(b)fluoranthene	0.85	<0.018	<0.018	<0.062	<0.0090	<0.062	<0.062
Benzo(k)fluoranthene	2	<0.0087	<0.0087	<0.071	0.44	<0.071	<0.071
Benzo(a)pyrene	1.5	<0.029	<0.029	<0.061	<0.0087	<0.061	<0.061
Dibenzo(a,h)anthracene	NA	<0.022	<0.022	<0.023	<0.029	<0.023	<0.023
Benzo(ghi)perylene	2.15	<0.013	<0.013	<0.024	<0.022	<0.024	<0.024
Indeno(1,2,3-cd)pyrene				<0.045	<0.013	<0.045	<0.045
ETEX by Method 8020 (ug/L)							
Benzene	25	<0.47	<0.47	<1.1	<2.4	<1.1	<1.1
Toluene	2,500	2.7	4.8	1.1	<2.5	<1.0	<1.0
Ethylbenzene	1,000	0.72	0.9	<1.1	<1.7	<1.1	<1.1
Xylenes	10,000	<1.4	<1.4	<3.5	<7.0	<3.5	<3.5

Notes:
 1. Parameter not detected at or above informed detection limit.
 2. Should refer to corrective action objectives rather than Class II Tier I Groundwater Corrective Action Objectives.
 3. No Tier I Corrective Action Objectives have been established for indicated parameters.
 4. Duplicate sample collected at HW-21.

Table 3 - TACO Tier 1 Soil and Groundwater Cleanup Objectives

Parameter	Soil Cleanup Objectives (ug/kg)	Class II Groundwater Cleanup Objectives (ug/L)
Polycyclic Aromatic Hydrocarbons		
Naphthalene	47,000	39
Acenaphthene	1,000,000	2,100
Fluorene	800,000	1,400
Anthracene	21,500,000	10,500
Fluoranthene	4,900,000	1,400
Pyrene	7,000,000	1,050
Benzo(a)anthracene	3,500	0.65
Chrysene	5,000	7.5
Benzo(b)fluoranthene	8,000	0.9
Benzo(k)fluoranthene	20,000	0.85
Benzo(a)pyrene	800	2
Dibenzo(a,h)anthracene	800	1.5
Indeno(1,2,3-c,d)pyrene	8,000	2.15
BTEX Compounds		
Benzene	100	25
Toluene	12,500	2,500
Ethylbenzene	7,000	1,000
Xylenes	74,000	10,000

Table 2. Bioremediation Performance - Analytical and Field Results

Parameter	MW-5								Reference Concentration (mg/L)
	6/9/97	7/15/97	8/14/97	9/23/97	10/29/97	12/8/97	2/10/99	7/30/04	
PAHs (ug/L)									
Benzene	<1.1	NS	NS	<1.1	NS	NS	<1.1	<1.1	25
Toluene	<1.0	NS	NS	<1.0	NS	NS	<1.0	<1.0	2,500
Ethylbenzene	<1.1	NS	NS	<1.1	NS	NS	<1.1	<1.1	1,000
Xylenes	<3.5	NS	NS	<3.5	NS	NS	<3.5	<3.5	10,000
Polycyclic aromatic Hydrocarbons (ug/L)									
1-Methyl Naphthalene	7.8	NS	NS	3.7	NS	NS	<0.04	<0.132	150
2-Methyl Naphthalene	5.6	NS	NS	<0.112	NS	NS	<0.034	<0.112	150
Acenaphthene	<0.625	NS	NS	<0.135	NS	NS	<0.041	<0.135	2,500
Acenaphthylene	<1.452	NS	NS	<1.98	NS	NS	<0.6	<1.960	150
Anthracene	<0.049	NS	NS	<0.096	NS	NS	<0.029	<0.096	10,500
Benzo(a)anthracene	<0.033	NS	NS	<0.036	NS	NS	<0.008	<0.036	0.05
Benzo(a)pyrene	<0.033	NS	NS	<0.201	NS	NS	<0.031	<0.201	5
Benzo(b)fluoranthene	<0.033	NS	NS	<0.205	NS	NS	<0.062	<0.205	0.05
Benzo(k)fluoranthene	<0.099	NS	NS	<0.079	NS	NS	<0.024	<0.079	150
Benzo(k)fluoranthene	<0.033	NS	NS	<0.234	NS	NS	<0.071	<0.234	0.05
Chrysene	<0.066	NS	NS	0.15	NS	NS	<0.005	<0.016	5
Dibenz(a,h)anthracene	<0.033	NS	NS	<0.076	NS	NS	<0.025	<0.076	150
Fluoranthene	0.9	NS	NS	5	NS	NS	<0.04	0.32	1,000
Fluorene	1	NS	NS	1.5	NS	NS	<0.071	0.31	1,000
Indeno(1,2,3-cd)pyrene	<0.033	NS	NS	<0.152	NS	NS	<0.046	<0.152	2.5
Naphthalene	<0.792	NS	NS	<0.125	NS	NS	<0.039	<0.125	50
Phenanthrene	5.3	NS	NS	<0.106	NS	NS	<0.032	<0.106	150
Pyrene	<0.066	NS	NS	<0.033	NS	NS	<0.01	0.20	1,000
Total Petroleum Hydrocarbons (mg/L)									
TPH as Gasoline	0.4	0.6	0.3	0.3	0.4	1,150	<0.2	NS	150
TPH as Fuel Oil	1.6	2.8	1.3	1	1.5	9,400	0.9	NS	150
Dissolved Oxygen - Water (mg/L)									
	1.2	3.3	5.75	1.3	0.44	10.65	2.0	NS	150
Oxygen - Soil Gas (ppm)									
	9	4	3	NS	11	9	4	NS	150
Carbon Dioxide - Water (mg/L)									
	86	131	61	87.1	123	62.7	73.9	NS	150
Carbon Dioxide - Soil Gas (%)									
	6	0.5	1	1	2	4	2	NS	150
Reduction Oxidation Potential (mV)									
	-125	-129.6	-149.6	-181.2	-68.4	100.1	155.8	NS	150

Notes:

ug/L: Micrograms per liter

mg/L: Milligrams per liter

mV: Millivolt

NS: Indicates compound was not detected at or below analytical laboratory detection limit

NA: Not Applicable

NS: Not sampled

Table 4. Bioremediation Performance - Analytical and Field Results (Cont.)

Parameter	mV _h								Reference Concentration (mg/L)
	01/02/97	7/12/97	01/15/97	02/02/97	10/29/97	12/14/97	1/12/98	7/17/98	
BTEX (µg/L)									
Benzene	4.6	NS	NS	7.8	NS	NS	1.6	1.3	25
Toluene	18	NS	NS	9	NS	NS	<1.0	3.9	2,000
Ethylbenzene	13	NS	NS	25	NS	NS	10.2	6.7	1,000
Xylenes	9.2	NS	NS	23	NS	NS	6	<5.5	10,000
Polycyclic Aromatic Hydrocarbons (µg/L)									
1-Methyl Naphthalene	18	NS	NS	<0.04	NS	NS	<0.132	6.7	500
2-Methyl Naphthalene	23	NS	NS	<0.034	NS	NS	<0.112	<0.034	NS
Acenaphthene	<1.25	NS	NS	<0.041	NS	NS	0.9	2.3	2,100
Acenaphthylene	<2.2	NS	NS	<0.6	NS	NS	<1.98	<0.6	NS
Anthracene	<0.15	NS	NS	<0.029	NS	NS	<0.096	0.24	10,000
Benzo(a)anthracene	<0.05	NS	NS	<0.008	NS	NS	<0.026	0.11	0.05
Benzo(b)pyrene	<0.05	NS	NS	<0.061	NS	NS	<0.201	<0.061	3
Benzo(k)fluoranthene	<0.05	NS	NS	<0.062	NS	NS	0.36	<0.062	0.05
Benzo(g,h,i)perylene	<0.15	NS	NS	<0.024	NS	NS	<0.079	<0.024	NS
Benzo(a)fluoranthrene	<0.05	NS	NS	<0.071	NS	NS	<0.234	<0.071	0.05
Chrysene	<0.1	NS	NS	0.64	NS	NS	<0.016	<0.005	0
Dibenz(a,h)anthracene	<0.05	NS	NS	<0.023	NS	NS	<0.076	<0.023	3
Fluoranthene	<0.15	NS	NS	1.3	NS	NS	<0.132	1.4	1,000
Fluorene	<0.1	NS	NS	<0.071	NS	NS	<0.234	0.1	1,000
Indeno(1,2,3-cd)pyrene	<0.05	NS	NS	<0.016	NS	NS	<0.132	<0.006	2,000
Naphthalene	10	NS	NS	<0.038	NS	NS	<0.125	<0.038	NS
Phenanthrene	7.8	NS	NS	<0.032	NS	NS	<0.106	<0.032	NS
Pyrene	<0.1	NS	NS	0.72	NS	NS	0.5	0.27	1,000
Total Petroleum Hydrocarbons (mg/L)									
TPH as Gasoline	0.6	0.9	0.9	1.2	0.6	19.0	1.7	NS	NS
TPH as Fuel Oil	2.4	3.8	3.7	4.2	5	163	7.9	NS	NS
Dissolved Oxygen - Water (mg/L)									
	1.1	6.4	2.1	1.03	0.23	10.4	3.51	NS	NS
Oxygen - Soil Gas (%)									
	10	4	4	NS	19	10	3	NS	NS
Carbon Dioxide - Water (mg/L)									
	68	69.7	26.1	87.1	96.4	62.7	33.9	NS	NS
Carbon Dioxide - Soil Gas (%)									
	3	0.5	1	0.5	0	2	1	NS	NS
Reduction Oxidation Potential (mV)									
	-160	-95	-175	-139.2	-92.6	99.0	-99.8	NS	NS

Notes:
 µg/L: Micrograms per liter
 mg/L: milligrams per liter
 mV: millivolts
 c: Indicated compound was not detected or is above reference Laboratory detection limit
 NS: Not Sampled

ATTACHMENT B

LABORATORY ANALYTICAL REPORTS



MVTI LABORATORIES, Inc.

P.O. BOX 245, 1126 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 354-6517 WATS (800) 782-3557 FAX (507) 350-2500

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 4 Sep 1998

Lab Number: 93-L16929

Work Order #: 22-437

Account #: 019159

DARYL BECK
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 31 Jul 1998

Date Sampled: 30 Jul 1998

Temperature at Receipt: 9.0 C

Project Number: 3-1908-400

PVOC Analysis Date: 4 Aug 1998

PVOC Dilution Factor: 1

Project Name: DNSF EOLA, IL
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-5

ANALYTE

Benzene
Toluene
Ethyl Benzene
Xylenes (Total)

Result	Units	RL	Analyst
< 1.1	ppb	1.1	KE
< 1.0	ppb	1.0	KE
< 1.1	ppb	1.1	KE
< 3.5	ppb	3.5	KE

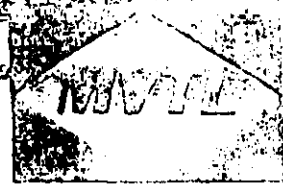
AAA-TFT (SURROGATE) RECOVERY: 96 %

RL = Reporting Limits

BTX/GRO Sample pH < 2

All data for this report has been approved by MVTI Laboratory Management.

MVTI guarantees the accuracy of the analytical data to the sample submitted for testing. It is not possible for MVTI to guarantee that a test result obtained for a particular sample will be the same for every sample under all conditions or for the entire duration of the test, including sampling by MVTI. As a mutual protection to all, the public and industry, all reports submitted to MVTI must include a copy of the test results.



MVAL LABORATORIES, Inc.

P.O. BOX 249, 1126 N. FRONT STREET
 NEW ULM, MN 56073-0249
 PHONE (507) 354-0517 WAIS (800) 782-3557 FAX (507) 359-2000

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 1 Sep 1998

Lab Number: 98-L18329

Work Order #: 22-437

Account #: 019159

DARYL BECK

RETEC

413 WACOUTA ST STE 400

ST PAUL MN 55101

Date Received: 31 Jul 1998

Date Sampled: 30 Jul 1998

Temperature at Receipt: 9.0 C

Project Number: 3-1908-400

Project Name: BNSF EOLA, IL

EPA SW-846 Method 8310: Method Detection Limits
 determined according to 40CFR, Appendix B,
 Part 136, 1992.

Date Extracted: 6 Aug 1998

Date Analyzed: 2 Sep 1998

Dilution Factor: 3

Sample Description: NU-5

POLYNUCLEAR AROMATIC HYDROCARBONS

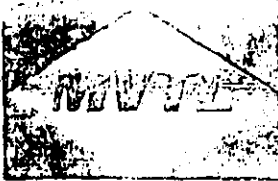
	Result	Units	RL
1-Methyl Naphthalene	< 0.132	ug/L	0.132
2-Methyl Naphthalene	< 0.112	ug/L	0.112
Acenaphthene	< 0.135	ug/L	0.135
Acenaphthylene	< 1.980	ug/L	1.980
Anthracene	< 0.096	ug/L	0.096
Benzo(a)anthracene	< 0.026	ug/L	0.026
Benzo(a)pyrene	< 0.201	ug/L	0.201
Benzo(b)fluoranthene	< 0.205	ug/L	0.205
Benzo(ghi)perylene	< 0.079	ug/L	0.079
Benzo(k)fluoranthene	< 0.234	ug/L	0.234
Chrysene	< 0.016	ug/L	0.016
Dibenzo(ah)anthracene	< 0.076	ug/L	0.076
Fluoranthene	0.820	ug/L	0.132
Fluorene	0.310	ug/L	0.234
Indeno(1,2,3-cd)pyrene	< 0.152	ug/L	0.152
Naphthalene	< 0.125	ug/L	0.125
Phenanthrene	< 0.106	ug/L	0.106
Pyrene	0.280	ug/L	0.033

p-TERPHENYL (SURROGATE) RECOVERY: 107 %

* RL adjusted due to sample matrix

RL = Reporting Limits

All data for this report has been approved by MVAL Laboratory Management.



MVTL LABORATORIES, INC.

P.O. BOX 245, 1126 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 354-8517 WAYS (800) 782-3557 FAX (507) 355-2650

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 4 Sep 1990

Lab Number: 98-L18330
Work Order #: 22-437
Account #: 019159

DARYL BECK
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 31 Jul 1990
Date Sampled: 30 Jul 1990
Temperature at Receipt: 9.0 C
Project Number: 3-1908-600
PVOC Analysis Date: 5 Aug 1990
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, IL
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: TRIP BLANK

ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

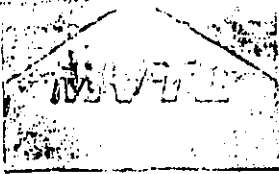
AAA-TFT (SURROGATE) RECOVERY: 98 %

RL = Reporting Limits

BTEX/GRO Sample pH < 2

All data for this report has been approved by MVTL Laboratory Management.

MVTL guarantees the accuracy of the analytical data for the sample submitted for testing. It is not possible for MVTL to guarantee that a true result obtained by a particular sample will be the same by any other sample under all conditions affecting the accuracy of the data. Analytical consulting by MVTL is a mutual protection for clients; the parties and its services, all reports are submitted by the client and its personnel.



NVTL LABORATORIES, Inc.

P.O. BOX 248, 1126 N. FRONT STREET
NEW ULM, MN 56073-0248
PHONE (507) 354-8517 WATS (800) 792-3857 FAX (507) 359-2898

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-118641
Work Order #: 21-275
Account #: 019159

TEDD ROONING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 22 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, IL
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-21

ANALYTE	Result	Units	RL	Analysis
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

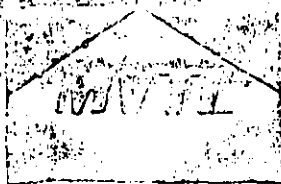
AAA-TFT (SURROGATE) RECOVERY: 93 %

RL = Reporting Limits

BTEX Sample pH < 2

All data for this report has been approved by NVTL Laboratory Management.

NVTL guarantees the accuracy of the analysis based on the sample submitted for testing. It is not possible for NVTL to guarantee that a test result obtained on a particular sample will be the same if any of the sample analysis conditions (including the sample collection, storage, and analysis) by NVTL. As a standard procedure to identify the possible sources of error, all reports are checked based on the analytical procedure.



ENVIRONMENTAL LABORATORIES, Inc.

P.O. BOX 249, 1126 N. FRONT STREET
 NEW ULM, MN 56073-0249
 PHONE (507) 554-3517 WATS (800) 782-3557 FAX (507) 555-2655

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

TEDD KONNING
 PEPEC
 413 WACOUTA ST STE 400
 ST PAUL MN 55101

Lab Number: 98-L16611
 Work Order #: 21-275
 Account #: 019159

Date Received: 17 Jul 1998
 Date Sampled: 15 Jul 1998
 Temperature at Receipt: CW ICE
 Project Number: 9-1908-400

Project Name: ENSF EOLA, IL
 EPA SW-846 Method 8310: Method Detection Limits
 determined according to 40CFR, Appendix B,
 Part 136, 1992.

Date Extracted: 22 Jul 1998
 Date Analyzed: 30 Jul 1998
 Dilution Factor: 3

Sample Description: MW-21

POLYNUCLEAR AROMATIC HYDROCARBONS

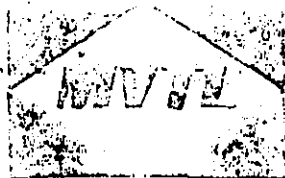
	Result	Units	RL
1-Methyl Naphthalene	< 0.132	ug/L	0.132
2-Methyl Naphthalene	< 0.112	ug/L	0.112
Acenaphthene	< 0.135	ug/L	0.135
Acenaphthylene	< 1.980	ug/L	1.980
Anthracene	< 0.096	ug/L	0.096
Benzo(a)anthracene	< 0.026	ug/L	0.026
Benzo(a)pyrene	< 0.201	ug/L	0.201
Benzo(b)fluoranthene	< 0.205	ug/L	0.205
Benzo(ghi)perylene	< 0.079	ug/L	0.079
Benzo(k)fluoranthrene	< 0.234	ug/L	0.234
Chrysene	< 0.016	ug/L	0.016
Dibenzo(ah)anthracene	< 0.076	ug/L	0.076
Fluoranthene	< 0.132	ug/L	0.132
Fluorene	< 0.234	ug/L	0.234
Indeno(1,2,3-cd)pyrene	< 0.152	ug/L	0.152
Naphthalene	< 0.125	ug/L	0.125
Phenanthrene	< 0.106	ug/L	0.106
Pyrene	0.190	ug/L	0.033

p-TERPHENYL (SURROGATE) RECOVERY: 72 %

* RL adjusted due to sample matrix

RL = Reporting Limits

All data for this report has been approved by NVTI Laboratory Management.



LABORATORIES, Inc.

P.O. BOX 245, 1126 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 354-0517 WATS (800) 702-3557 FAX (507) 359-2890

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16642

Work Order #: 21-275

Account #: 019159

TEDD KONNING

RETEC

413 WACOUTA ST STE 400

ST PAUL MN 55101

Date Received: 17 Jul 1998

Date Sampled: 15 Jul 1998

Temperature at Receipt: ON ICE

Project Number: 3-190B-400

PVOC Analysis Date: 22 Jul 1998

PVOC Dilution Factor: 1

Project Name: BNSF EOLA, 1L

EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-22

ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	1.1	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

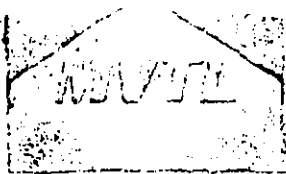
AAA-PFT (SURROGATE) RECOVERY: 103 %

RL = Reporting Limits

BTEX Sample pH < 2

All data for this report has been approved by MVT Laboratory Management.

MVTL warrants the accuracy of the analytical data on the sample submitted for testing. It is not possible for MVTL to guarantee that a test sample obtained on a particular sample will be the same as any other sample under all conditions offered for the service. However, including sampling by MVTL, a written promise to clients, the public and state agencies reports are submitted in the confidence of the quality of the data.



LABORATORIES, INC.

P.O. BOX 249, 1126 N. FRONT STREET
NEW OLEA, MN 56073-0249
PHONE (507) 354-8017 WATS (800) 762-3567 FAX (507) 354-2000

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16642
Work Order #: 21-275
Account #: 019159

TEDD RONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400

Project Name: BWSF EOLA, IL
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Sample Description: MW-23

POLYNUCLEAR AROMATIC HYDROCARBONS

	Result	Units	RL
1-Methyl Naphthalene	< 0.040	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	1.150	ug/L	0.041
Acenaphthylene	< 0.600	ug/L	0.600
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	0.150	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthrene	< 0.071	ug/L	0.071
Chrycene	0.190	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	0.700	ug/L	0.040
Fluorene	0.570	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	0.400	ug/L	0.010

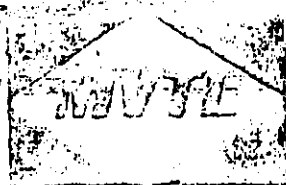
p-TERPHEENYL (SURROGATE) RECOVERY: 126 %

Sample matrix interfered with U.V. detection but not Fluorescence detection.
Quantified using Fluorescence detector only.

RL = Reporting Limits

11 data for this report has been approved by MVT Laboratory Management.

MVT Laboratories warrants the accuracy of the analytical data for the samples submitted to us. It is not possible for MVT to guarantee that a test result obtained on a particular sample will be the same as that obtained on another sample of the same material. MVT is not responsible for the accuracy of the data for samples submitted to us by others. As a national provider of services, the public and industry are invited to use our services for the most efficient and accurate results.



LABORATORIES, Inc.

P.O. BOX 249, 1126 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 354-8517 WATS (800) 782-3557 FAX (507) 359-2000

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16643

Work Order #: 21-275

Account #: 019159

TEDD RONNING

RETEC

113 WACOUTA ST STE 400

ST PAUL MN 55101

Date Received: 17 Jul 1998

Date Sampled: 15 Jul 1998

Temperature at Receipt: ON ICE

Project Number: 3-1908-400

PVOC Analysis Date: 22 Jul 1998

PVOC Dilution Factor: 1

Project Name: BNSF EOLA, 1L

EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-23

ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

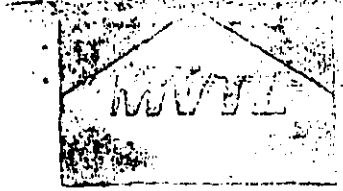
AAA-TFT (SURROGATE) RECOVERY: 100 %

RL = Reporting Limits

BTEX Sample pH < 2

All data for this report has been approved by MVTL Laboratory Management.

MVTL guarantees the accuracy of the analysis data on the sample submitted for testing. It is not possible for MVTL to guarantee that a test result obtained on a particular sample will be the same as any other test result obtained on the same sample by another laboratory. As a method procedure to eliminate the possibility of error, all reports generated by MVTL are subject to a final review and approval.



MVTL LABORATORIES, Inc.

P.O. BOX 249, 1126 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 354-8517 WATS (800) 782-3357 FAX (507) 355-2050

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

TEDD KONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Lab Number: 98-116643
Work Order #: 21-275
Account #: 019159

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-000

Project Name: DMSF EOLA, IL
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Sample Description: MW-23

POLYNUCLEAR AROMATIC HYDROCARBONS		Result	Units	RL
1-Methyl Naphthalene	<	0.040	ug/L	0.040
2-Methyl Naphthalene	<	0.034	ug/L	0.034
Acenaphthene		1.250	ug/L	0.041
Acenaphthylene	<	0.500	ug/L	0.500
Anthracene	<	0.029	ug/L	0.029
Benzo(a)anthracene		0.660	ug/L	0.003
Benzo(a)pyrene	<	0.061	ug/L	0.061
Benzo(b)fluoranthene	<	0.062	ug/L	0.062
Benzo(ghi)perylene	<	0.024	ug/L	0.024
Benzo(k)fluoranthrene	<	0.071	ug/L	0.071
Chrysene		0.130	ug/L	0.005
Dibenzo(ah)anthracene	<	0.023	ug/L	0.023
Fluoranthene	<	0.040	ug/L	0.040
Fluorene		1.120	ug/L	0.071
Indeno(1,2,3-cd)pyrene	<	0.046	ug/L	0.046
Naphthalene	<	0.038	ug/L	0.038
Phenanthrene	<	0.032	ug/L	0.032
Pyrene		0.440	ug/L	0.010

p-TERPHENYL (SURROGATE) RECOVERY: 116%

Sample matrix interfered with U.V. detection but not Fluorescence detection.
Quantified using fluorescence detector only.

RL = Reporting Limits

All data for this report has been approved by MVTL Laboratory management.

MVTL does not warrant the accuracy of the results. It is the responsibility of the client to provide the sample and to ensure that the data is used for the intended purpose. MVTL is not responsible for any results obtained from a sample which is not analyzed in accordance with the MVTL Analytical Procedures. In addition, the public and private use of all data is not intended as the result of this report.



LABORATORIES, Inc.

P.O. BOX 249, 1126 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 354-8517 WATS (800) 702-5587 FAX (507) 354-2050

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-116644
Work Order #: 21-275
Account #: 019159

TEDD RONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1903-400
PVOC Analysis Date: 23 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EDLA, IL
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-24

ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

AAA-TFT (SURROGATE) RECOVERY: 101 %

RL = Reporting Limits

DTEX Sample pH < 2

All data for this report has been approved by MVTL Laboratory Management.

MVTL guarantees the accuracy of the analytical data on the samples submitted for testing. It is not possible for MVTL to guarantee that a laboratory's analytical results are free from any other errors or omissions that may occur in the laboratory or in the field. Such errors or omissions, including sampling by MVTL, are not to be held against MVTL. All required records are maintained at the MVTL Laboratory.



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WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16644
Work Order #: 21-275
Account #: 019159

TEDD RONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400

Project Name: DMSF EOLA, IL
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Sample Description: MW-24

POLYNUCLEAR AROMATIC HYDROCARBONS

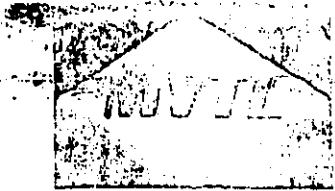
	Result	Units	RL
1-Methyl Naphthalene	< 0.040	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	< 0.041	ug/L	0.041
Acenaphthylene	< 0.600	ug/L	0.600
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	< 0.008	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthrene	< 0.071	ug/L	0.071
Chrysene	< 0.005	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	< 0.040	ug/L	0.040
Fluorene	< 0.071	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	0.020	ug/L	0.010

p-TERPHENYL (SURROGATE) RECOVERY: 77 %

RL = Reporting Limits

All data for this report has been approved by MVTI Laboratory Management.

MVTI warrants the accuracy of the analytical results for the sample submitted for testing. It is not possible for MVTI to guarantee that a test result derived from an analyzed sample will be the same as any other test result derived from a sample of the same material. The method used for the analysis is the standard method for the analysis of the sample.



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WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-116645
Work Order #: 21-275
Account #: 019159

TEDD ROHNTEC
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 23 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, IL
EPA SW-846 Method 8020/8030 MODIFIED

Sample Description: MH-9

ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

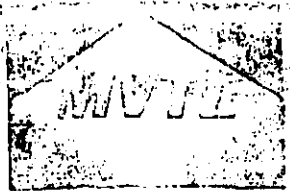
AAA-TFT (SURROGATE) RECOVERY: 103 %

RL = Reporting Limits

DTEX Sample pH < 2

All data for this report has been approved by MVTL Laboratory Management.

MVTL guarantees the accuracy of its analytical data on the sample submitted for testing. It is not possible for MVTL to guarantee that a test result obtained on a particular sample will be the same as any other test result obtained on the same sample at a different time or by a different analyst. MVTL is not responsible for any errors or omissions in the data or for any consequences arising from the use of the data.



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WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 aug 1998

Lab Number: 98-L15645
Work Order #: 21-275
Account #: D19159

TEDD KONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1508-400
Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Project Name: BNSF EOLA,IL
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Sample Description: MW-9

POLYNUCLEAR AROMATIC HYDROCARBONS

	Result	Units	RL
1-Methyl Naphthalene	< 0.040	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	< 0.041	ug/L	0.041
Acenaphthylene	< 0.500	ug/L	0.500
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	< 0.008	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthene	< 0.071	ug/L	0.071
Chrysene	< 0.005	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	< 0.040	ug/L	0.040
Fluorene	< 0.071	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	< 0.010	ug/L	0.010

p-TERPHENYL (SURROGATE) RECOVERY: 78 %

RL = Reporting Limits

All data for this report has been approved by MVTI Laboratory Management.

MVTI does not warrant the accuracy of the results shown on this report unless the sample submitted for testing. It is not possible for MVTI to guarantee that a test result obtained on a reported sample will be the same as that obtained on the same sample if the sample is not properly stored, handled, or analyzed. MVTI is not responsible for any errors or omissions in the analysis of samples.



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Report Date: 3 Aug 1998

Lab Number: 98-L16646
Work Order #: 21-275
Account #: 019159

TEDD RONNING
RSTEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 23 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, IL
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-1

ANALYTE	Result	Units	RL	Analyst
Benzene	2.9	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	5.5	ppb	1.1	KE
Xylenes (Total)	7.2	ppb	3.5	KE

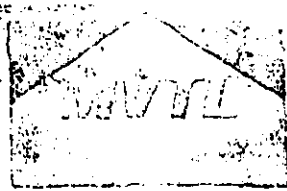
AAA-TFT (SURROGATE) RECOVERY: 101 %

EL = Reporting Limits

BTEX Sample pH < 2

All data for this report has been approved by MVTI Laboratory Management.

MVTI warrants the accuracy of the analytical data in the report submitted for testing. It is not possible for MVTI to guarantee that a test result obtained at a particular laboratory will be the same as a result obtained at another laboratory. All reports are subject to the analytical procedures used at the time of testing.



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Report Date: 3 Aug 1998

TEDD KONRING
 ETEEC
 413 WACOUTA ST STE 400
 ST PAUL MN 55101

Lab Number: 98-L16646
 Work Order #: 21-275
 Account #: 019159

Date Received: 17 Jul 1998
 Date Sampled: 15 Jul 1998
 Temperature at Receipt: ON ICE
 Project Number: 3-1908-400

Project Name: BNSF EOLA, IL
 EPA SW-846 Method 8310: Method Detection Limits
 determined according to 40CFR, appendix B,
 Part 136, 1992.

Date Extracted: 22 Jul 1998
 Date Analyzed: 30 Jul 1998
 Dilution Factor: 1

Sample Description: MW-1

POLYNUCLEAR AROMATIC HYDROCARBONS

	Result	Units	RL
1-Methyl Naphthalene	41.20	ug/L	0.040
2-Methyl Naphthalene	12.40	ug/L	0.034
Acenaphthene	4.000	ug/L	0.041
Acenaphthylene	< 0.600	ug/L	0.600
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	0.050	ug/L	0.000
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthrene	< 0.071	ug/L	0.071
Chrysene	0.080	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	< 0.040	ug/L	0.040
Fluorene	2.700	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	6.900	ug/L	0.038
Phenanthrene	6.100	ug/L	0.032
Pyrene	0.800	ug/L	0.010

p-TERPHENYL (SURROGATE) RECOVERY: 124 %

Sample matrix interfered with U.V. detection but not Fluorescence detection.
 Quantified using Fluorescence detector only.

RL = Reporting Limits

All data for this report has been approved by MVTL Laboratory Management.

MVTL warrants the accuracy of the data reported in this report based on the sample submitted for testing. It is not possible for MVTL to guarantee that the test results obtained are a true and accurate representation of the sample as received or that the sample was not contaminated during collection, storage, or transport. MVTL is not responsible for any errors or omissions in the data reported in this report. MVTL is not responsible for any errors or omissions in the data reported in this report. MVTL is not responsible for any errors or omissions in the data reported in this report.



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NEW ULM, MN 56073-0249
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Report Date: 3 Aug 1998

Lab Number: 98-L16647
Work Order #: 21-275
Account #: 019159

TEDD KONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 23 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, 1L
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-14

ANALYTE	Result	Units	RL	Analyst
Benzene	1.3	ppb	1.1	KE
Toluene	2.9	ppb	1.0	KE
Ethyl Benzene	4.7	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

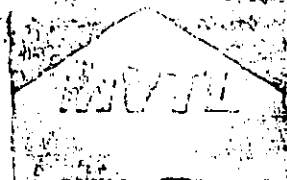
AAA-TFT (SURROGATE) RECOVERY: 107 %

RL = Reporting Limits

BTEX Sample pH < 2

All data for this report has been approved by MVTL Laboratory Management.

MVTL guarantees the accuracy of the results shown on the reports issued for testing. It is not possible for MVTL to guarantee that a test result obtained on a portion of a sample will be the same as that obtained on the entire sample. The accuracy of the results is dependent on the quality and quantity of the sample and the quality of the analytical procedure used. All reports are subject to the standard disclaimer of liability.



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Report Date: 3 Aug 1998

Lab Number: 98-116647
Work Order #: 21-275
Account #: 019159

TEDD KORNERS
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: On ICE
Project Number: 3-1908-400
Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Project Name: BNSF EOLA, IL
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Sample Description: HW-14

POLYNUCLEAR AROMATIC HYDROCARBONS

	Result	Units	RL
1-Methyl Naphthalene	6.700	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	2.200	ug/L	0.041
Acenaphthylene	< 0.600	ug/L	0.600
Anthracene	0.240	ug/L	0.029
Benzo(a)anthracene	0.110	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthrene	< 0.071	ug/L	0.071
Chrysene	< 0.005	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	1.440	ug/L	0.040
Fluorene	6.100	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	0.270	ug/L	0.010

p-TERPHENYL (SURROGATE) RECOVERY: 91 %

Sample matrix interfered with U.V. detection but not Fluorescence detection.
Quantified using Fluorescence detector only.

RL = Reporting Limits

All data for this report has been approved by MVTI Laboratory Management.

MVTI and its employees are not responsible for the results of the analysis if the sample is not properly prepared or if the sample is not properly labeled. MVTI is not responsible for the results of the analysis if the sample is not properly stored or if the sample is not properly handled. MVTI is not responsible for the results of the analysis if the sample is not properly analyzed or if the sample is not properly reported. MVTI is not responsible for the results of the analysis if the sample is not properly reviewed or if the sample is not properly approved.



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NEW ULM, MN 56073-0249
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Report Date: 3 Aug 1998

Lab Number: 98-L16648
Work Order #: 21-275
Account #: 019159

TEDD KONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 24 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, 1L
EPA SW-046 Method 8020/5030 MODIFIED

Sample Description: MW-10

ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

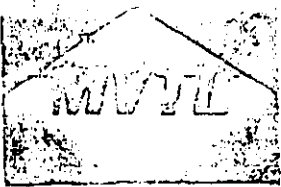
AAA-TFT (SURROGATE) RECOVERY: 93 %

RL = Reporting Limits

WTEX Sample pH < 2

All data for this report has been approved by MVTI Laboratory Management.

MVTI guarantees the accuracy of the analysis done on the sample submitted for testing. It is not possible for MVTI to guarantee that a true result will be obtained if the sample is not in the form of a liquid or if the sample is not properly prepared. The accuracy of the analysis is dependent on the quality of the sample and the quality of the reagents used in the analysis.



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NEW ULM, MN 56073-0249
PHONE (507) 354-8517 WATS (800) 782-8557 FAX (507) 354-2450

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Report Date: 3 Aug 1998

Lab Number: 98-116848
Work Order #: 21-275
Account #: 019159

TFOD RONNING
METEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Project Name: BNSF EOLA, IL
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Sample Description: MW-10

POLYNUCLEAR AROMATIC HYDROCARBONS

	Result	Units	RL
1-Methyl Naphthalene	< 0.040	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	< 0.041	ug/L	0.041
acenaphthylene	< 0.600	ug/L	0.600
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	0.066	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthrene	< 0.071	ug/L	0.071
Chrysene	0.068	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	< 0.040	ug/L	0.040
Fluorene	< 0.071	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	0.077	ug/L	0.010

p-TERPHEYL (SURROGATE) RECOVERY: B2 X

RL = Reporting Limits

All data for this report has been approved by MVTI Laboratory Management.



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WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16049
Work Order #: 21-275
Account #: 019159

TEDD RONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 24 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, IL
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MM-6

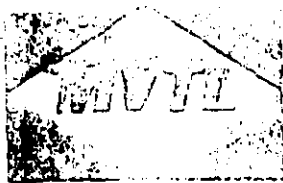
ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

AAA-TFT (SURROGATE) RECOVERY: 95 %

RL = Reporting Limits

BTEX Sample pH < 2

All data for this report has been approved by NVTL Laboratory Management.



ENVIRONMENTAL LABORATORIES, Inc.

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Report Date: 3 Aug 1998

TEDD KONNING
 RETEC
 413 WACOUTA ST STE 400
 ST PAUL MN 55101

Lab Number: 98-L16649
 Work Order #: 21-275
 Account #: 019159

Date Received: 17 Jul 1998
 Date Sampled: 15 Jul 1998
 Temperature at Receipt: ON ICE
 Project Number: 3-1908-400
 Date Extracted: 22 Jul 1998
 Date Analyzed: 30 Jul 1998
 Dilution Factor: 1

Project Name: HNSF ECLA, IL
 EPA SW-846 Method 8310: method Detection Limits
 determined according to 40CFR, Appendix B,
 Part 136, 1992.

Sample Description: MW-5

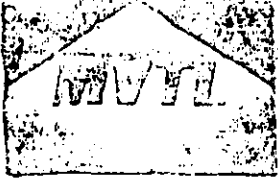
POLYNUCLEAR AROMATIC HYDROCARBONS

	Result	Units	RL
1-Methyl Naphthalene	< 0.040	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	< 0.041	ug/L	0.041
Acenaphthylene	< 0.600	ug/L	0.600
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	< 0.008	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.052	ug/L	0.052
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthene	< 0.071	ug/L	0.071
Chrysene	< 0.005	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	< 0.040	ug/L	0.040
Fluorene	< 0.071	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	< 0.010	ug/L	0.010

p-TERPHENYL (SURROGATE) RECOVERY: 80 %

RL = Reporting Limits

1 data for this report has been approved by MVTI Laboratory Management.



LABORATORIES, Inc.



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PHONE (507) 354-8517 WATS (800) 782-3557 FAX (507) 358-2890

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

TEDD RONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Lab Number: 98-L10650
Work Order #: 21-275
Account #: 019159

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 24 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, JL
EPA SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-3

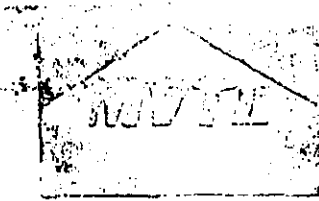
ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

AAA-TTT (SURROGATE) RECOVERY: 92 %

RL = Reporting Limits

MTEX Sample pH < 2

(1) data for this report has been approved by MVTL Laboratory Management.



MVTL LABORATORIES, Inc.

P.O. BOX 245, 1026 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 354-8517 FAX (507) 355-2850

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16650
Work Order #: 21-275
Account #: 019159

TEDD KONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400

Project Name: BNSF KOLA, IL
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Sample Description: MW-3

POLYNUCLEAR AROMATIC HYDROCARBONS

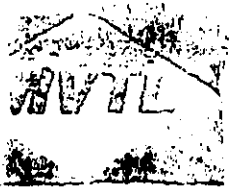
	Result	Units	RL
1-Methyl Naphthalene	< 0.040	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	< 0.041	ug/L	0.041
Acenaphthylene	< 0.600	ug/L	0.600
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	< 0.008	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(ghi)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthrene	< 0.071	ug/L	0.071
Chrysene	< 0.005	ug/L	0.005
Dibenzo(ah)anthracene	< 0.023	ug/L	0.023
Fluoranthene	< 0.040	ug/L	0.040
Fluorene	< 0.071	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	< 0.010	ug/L	0.010

p-TERPENEYL (SURROGATE) RECOVERY: 78 %

RL = Reporting Limits

All data for this report has been approved by MVTL Laboratory Management.

NOTE: MVTL does not guarantee the accuracy of the results of this analysis. It is not possible for MVTL to guarantee that the results of this analysis are a true representation of the sample analyzed.



HVTL LABORATORIES, Inc.

MEMBER
FACTS

P.O. BOX 249, 1125 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 358-8517 WATS (800) 742-3557 FAX (507) 359-2090

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16651
Work Order #: 21-275
Account #: 019159

TEDD RONNING
RETEC
413 WACOUITA ST STE 600
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400
PVOC Analysis Date: 24 Jul 1998
PVOC Dilution Factor: 1

Object Name: BNSF EOLA, IL
A SW-846 Method 8020/5030 MODIFIED

Sample Description: MW-25

ANALYTE	Result	Units	RL	Analyst
benzene	< 1.1	ppb	1.1	KE
toluene	< 1.0	ppb	1.0	KE
ethyl Benzene	< 1.1	ppb	1.1	KE
xylenes (Total)	< 3.5	ppb	3.5	KE

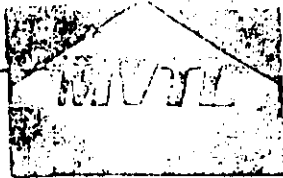
CAA-TFT (SURROGATE) RECOVERY: 96 %

RL = Reporting Limits

BTEX Sample pH < 2

data for this report has been approved by HVTL Laboratory Management.

It is not possible for HVTL to guarantee that a true result of a sample was obtained. HVTL is not responsible for any errors or omissions in this report. HVTL is not responsible for any damage or loss of any kind resulting from the use of this report.



LABORATORIES, Inc.

P.O. BOX 249, 1126 N. FRONT STREET
NEW ULM, MN 56072-0249
PHONE (507) 354-8317 WATS (800) 782-3557 FAX (507) 359-2690

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

TEDD KONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Lab Number: 98-L16651
Work Order #: 21-275
Account #: 019159

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 3-1908-400

Project Name: BNSF EOLA, II.
EPA SW-846 Method 8310: Method Detection Limits
determined according to 40CFR, Appendix B,
Part 136, 1992.

Date Extracted: 22 Jul 1998
Date Analyzed: 30 Jul 1998
Dilution Factor: 1

Sample Description: MI-25

POLYNUCLEAR AROMATIC HYDROCARBONS

	Result	Units	RL
1-Methyl Naphthalene	< 0.040	ug/L	0.040
2-Methyl Naphthalene	< 0.034	ug/L	0.034
Acenaphthene	< 0.041	ug/L	0.041
Acenaphthylene	< 0.600	ug/L	0.600
Anthracene	< 0.029	ug/L	0.029
Benzo(a)anthracene	< 0.008	ug/L	0.008
Benzo(a)pyrene	< 0.061	ug/L	0.061
Benzo(b)fluoranthene	< 0.062	ug/L	0.062
Benzo(g,h,i)perylene	< 0.024	ug/L	0.024
Benzo(k)fluoranthrene	< 0.071	ug/L	0.071
Chrysene	< 0.005	ug/L	0.005
Dibenzo(a,h)anthracene	< 0.023	ug/L	0.023
Fluoranthene	< 0.040	ug/L	0.040
Fluorene	< 0.071	ug/L	0.071
Indeno(1,2,3-cd)pyrene	< 0.046	ug/L	0.046
Naphthalene	< 0.038	ug/L	0.038
Phenanthrene	< 0.032	ug/L	0.032
Pyrene	< 0.010	ug/L	0.010

p-TERPHENYL (SURROGATE) RECOVERY: 84 %

RL = Reporting Limits

All data for this report has been approved by MVTI Laboratory Management.



LABORATORIES, Inc.

145

P.O. BOX 245, 1126 N. FRONT STREET
NEW ULM, MN 56073-0249
PHONE (507) 359-6517 WATS (800) 782-3857 FAX (507) 359-6690

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

Report Date: 3 Aug 1998

Lab Number: 98-L16652
Work Order #: 21-275
Account #: 019159

TEDD RONNING
RETEC
413 WACOUTA ST STE 400
ST PAUL MN 55101

Date Received: 17 Jul 1998
Date Sampled: 15 Jul 1998
Temperature at Receipt: ON ICE
Project Number: 9-1908-400
PVOC Analysis Date: 24 Jul 1998
PVOC Dilution Factor: 1

Project Name: BNSF EOLA, IL
PA SW-846 Method 8020/5030 MODIFIED

Sample Description: TRIP BLANK

ANALYTE	Result	Units	RL	Analyst
Benzene	< 1.1	ppb	1.1	KE
Toluene	< 1.0	ppb	1.0	KE
Ethyl Benzene	< 1.1	ppb	1.1	KE
Xylenes (Total)	< 3.5	ppb	3.5	KE

AAA-TFT (SURROGATE) RECOVERY: 97 %

RL = Reporting Limits

BTEX Sample pH < 2

1 data for this report has been approved by HVTL Laboratory Management.



IATL LABORATORIES, Inc.
 1126 North Front Street
 New Ulm, MN 56072

Phone: (507) 554-6517
 Fax: (507) 554-1231

No. 9013

WORK ORDER # 21-875

Project Name/Number

BNSF EOLA, IL 3-1908-400

CHAIN OF CUSTODY RECORD

PLEASE DO NOT WRITE IN THE SHADED AREAS

Job ID	Your Sample ID, or Number	Sample Description	Date Time	Type of Sample (Details or Substance)			Analyze For:
				Soil	Water	Other (Please Be Specific)	
EX-1	EX-1	EX-1	8/15/92		X	Empty of Liquid Layer No. bottom: ridge	Vitamins A, B, C, E, Selenium, Shell 1/16
44	MW-21	GROUNDWATER	7/15/92	✓			STATS CAK
42	MW-22			✓			
43	MW-23			✓			
44	MW-24			✓			
45	MW-9			✓			
46	MW-1			✓			
47	MW-14			✓			
48	MW-10			✓			
49	MW-6			✓			
50	MW-3			✓			
51	MW-25			✓			
52	TRAIL BLANK	BLANK		✓			STATS

Transferred by:	Comments: (Sample Condition)	Received by:	Date	
			Time	Year
<i>Matt P</i>	DATE ON SAMPLE CONTAINER IS INCORRECT. IT SHOULD BE 7/15/92.		12:32	1992
	DATE ON SAMPLE CONTAINER IS INCORRECT. IT SHOULD BE 7/15/92.			
	DATE ON SAMPLE CONTAINER IS INCORRECT. IT SHOULD BE 7/15/92.			
	DATE ON SAMPLE CONTAINER IS INCORRECT. IT SHOULD BE 7/15/92.			

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 04L607

Plaintiff(s) Litcher Creek Development Co. et al	Defendant(s) BNSF/Petco et al
Plaintiff(s) Atty. Adresser	Defendant(s) Atty. B. Babcock S. Carlson M. Mann
Judge Brown	Deputy Clerk 34
<input type="checkbox"/> A copy of this order should be sent <input type="checkbox"/> has been sent Present <input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other	

Shelby Sully
Clerk of the Circuit Court
Kane County, IL
NOV 21 2006
FILED ENTERED 34
File Stamp

ORDER

This matter coming on to be heard at the Court being fully advised in the premises. IT IS HEREBY ORDERED:

1. Plaintiff's motion to voluntarily nonsuit/Dismiss pursuant to 735 ILCS 5/2-1007 et seq. is granted.
2. matter is nonsuited/Dismissed pursuant to 735 ILCS 5/2-1009 et seq. without Prejudice and Plaintiff granted leave to renew within the 1 year ~~to~~ time period.
3. Plaintiff to pay Defendants, BNSF and Petco, costs w/21 days. Defendants to tender statement of costs w/10 days. BNSF costs are \$106⁵⁰

Date: 11/21/06 Yes - Disposal No - Disposal

[Signature]
Judge

EXHIBIT
C

Exhibit B

IN THE CIRCUIT COURT FOR THE SIXTEENTH
JUDICIAL CIRCUIT, KANE COUNTY, ILLINOIS

INDIAN CREEK DEVELOPMENT
COMPANY, an Illinois Partnership, and
INDIAN CREEK DEVELOPMENT
COMPANY, an Illinois Partnership as
beneficiary of Chicago Land Trust
Company Trust No 3291 dated
December 15, 1981 and Chicago Land Trust
Company as Trustee of Trust No 3291 dated
December 15, 1981

Plaintiff,

No. 04 L 607

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY, a
Delaware Corporation,
a/k/a BNSF Railway Company,
REMEDIATION TECHNOLOGIES, INC.
a/k/a and n/k/a THE RETEC GROUP, INC
a corporation. et.al.

Defendants.

DEBORAH ST. YULI
CIRCUIT COURT CLERK
KANE COUNTY, IL

2005 OCT 21 P 4:45

ENTERED

FILED

SECOND AMENDED COMPLAINT

Plaintiff, INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and
INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of
Chicago Land Trust Company Trust No 3291 dated December,15 1981 and Chicago
Land Trust Company as Trustee of Trust No 3291 dated December 15, 1981, Joseph J.
Walczak, P.C. and Law Office of Stuart A. Petersen, Ltd, complaining of defendants, THE
BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY, a Delaware corporation, a/k/a BNSF Railway Company,
REMEDIATION TECHNOLOGIES, INC. a/k/a and n/k/a THE RETEC GROUP, INC, a
Corporation, states as follows:



COUNT I
NEGLIGENT INJURY TO PROPERTY
DEFENDANT BURLINGTON

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN CREEK")**, by its attorney(s), Joseph Walczak P.C. and Law Office of Stuart A. Petersen, Ltd. complaining of Defendants, **THE BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation ("**BURLINGTON**"), BSNF Railway Company a Delaware corporation.

1. At all relevant times, **INDIAN CREEK** through its beneficial interest in of herein above referenced Trust owned the real estate with property index numbers of:
PINS 15-13-376-001; 15-14-479-005, -006, -009, AND -010; 15-23-227-026 AND -028; 15-24-101-004; 15-24-102-001, -008, -009 AND -010; AND 15-24-103-002 and -003
and said property is commonly known as 1500 Dearborn Ave., Aurora, IL. 60505, hereinafter referred to as the "Premises").

2. At all times relevant to this complaint, **BURLINGTON** was and is a Delaware corporation authorized to do business in Illinois since February 27, 1970, and is engaged in the business of operating, maintaining and supervising railroad transportation on and over railroad tracks and providing rail transportation services. **REMEDATION TECHNOLOGIES, INC. a/k/a and n/k/a THE RETEC GROUP ,INC.** was a State of Minnesota Corporation was and sometime thereafter remained based in the State of Minnesota as a registered a foreign Corporation and

was licensed to do business in the State of Illinois. THE RETEC GROUP, Inc. is believed to be either a State of Delaware or Massachusetts corporation.

3. On or about January 20, 1993 and at all times relevant to this complaint and up until the filing of this complaint and thereafter BURLINGTON owned, operated, maintained and controlled the railroad tracks and real property located on the rail lines east of the City of Aurora Illinois, near the community of Eola, Aurora, and, more specifically, including a portion of said railroad tracks, five in number, lying contiguous, and located immediately north of the real property owned by Indian Creek stretching approximately 2,200 feet along said property line. This section of railroad tracks and real property is hereinafter referred to as the "Contiguous Railroad Tracks".

4. On or about January 20, 1993 and at all times relevant to this complaint, BURLINGTON directed, supervised, scheduled and controlled of the movement of trains, cars and engines over and along its tracks, including the Contiguous Railroad Tracks. On or about January 20, 1993, and upon information and belief, at all times relevant to this complaint, pursuant to a Trackage Rights Agreement entered into by and between BURLINGTON and SOUTHERN PACIFIC, used the railroad tracks, including the Contiguous Railroad Tracks to operate and conduct its rail service business, including the movement of trains, cars and engines over the Contiguous Railroad Tracks.

5. On or about January 20, 1993, without fault on the part of INDIAN CREEK, a train owned, operated and/or controlled by BURLINGTON and traveling westbound over the Contiguous Railroad Tracks, collided head-on with a train owned, operated and/or controlled by SOUTHERN PACIFIC, which was traveling eastbound over the Contiguous Railroad Tracks.

6. At the time of the collision and at all relevant times to this complaint, the movement of trains, cars and engines over, upon and along the railroad tracks, including the Contiguous Railroad Tracks was subject to Burlington's directions and control. The westbound BURLINGTON train collided with the eastbound SOUTHERN PACIFIC train due in part to errors on the part of certain BURLINGTON employees, including, its dispatcher, train engineer and conductor, and due to their failure to use due care to avoid the accident. The westbound BURLINGTON train collided with the eastbound SOUTHERN PACIFIC train due in part to errors on the part of certain BURLINGTON employees, including, its dispatcher, train engineer and conductor, and due to its employees failure to use due care to avoid the accident.

7. On or about January 20, 1993, when the trains collided, three diesel fuel tanks with combined fuel capacity of 10,800 gallons of fuel, ruptured, releasing approximately 5,800-6,800 gallons of diesel fuel onto a site (the "Site") located on the Contiguous Railroad Tracks, said site being located adjacent from the Premises. As a result of said spill the Defendants Burlington and Southern Pacific entered into a Consent Order the State of Illinois in a case known Kane County case No. CH KA 95 0527, See attached Exhibit "A". The State Agency involved in the clean up was the Illinois Environmental Protection Agency ("IEPA").

7A). At the time of the collision and presently, the Site was and is elevated above INDIAN CREEK's property lying to the South of the tracks and above an unknown owner's property lying North of the tracks. On the day of the accident, all of the diesel fuel flowed downgradient in a Northerly direction, away from INDIAN CREEK's property into a creek and on the unknown owner's property, which was downgradient to the rail road tracks.

7B). On the date of the accident there was no diesel fuel visible on Indian Creek's Premises, and the first time diesel fuel was visible on INDIAN CREEK's Premises was after the

28th day of October 2000.

8. At no time prior to October 28, 2000 did INDIAN CREEK have any knowledge that the diesel fuel from the above-referenced spill had migrated onto its property nor did INDIAN CREEK have any knowledge prior to said date that of the diesel fuel from the spill contaminated its property.

9. At no time prior to October 28, 2000 did BURLINGTON or its agents inform or disclose to INDIAN CREEK or the IEPA that any diesel fuel had been detected in or on, or migrated to, or contaminated INDIAN CREEK's property.

10. Upon information and belief that the Defendant did not notify the IEPA of the presence of diesel fuel on the INDIAN CREEK's property until some time in year 2002 or thereafter.

11. BURLINGTON conducted testing in 1993 and thereafter installed and maintained a recovery, containment and monitoring system on BURLINGTON's property not INDIAN CREEK's property to clean up the spill and prevent and ensure that the migration of diesel fuel and or contamination of neighboring soil and ground water did not occur off site to neighboring properties, including INDIAN CREEK's Premises, and in furtherance of said remediation efforts BURLINGTON took the following actions:

a. From February 8 - 10, 1993, caused four soil borings to be installed and completed as monitoring wells on each side of the track on BURLINGTON's property. BURLINGTON installed four additional monitoring wells were installed downgradient of the area of the diesel fuel spill on the spill site property controlled and maintained by BURLINGTON, not on INDIAN CREEK property.

b. In approximately March, 1993, Burlington retained the services of Radian Corporation ("Radian"), an Engineering firm, to characterize the subsurface extent of any diesel fuel

contamination of the site, and to implement, maintain, control and operate a diesel fuel recovery system on the spill site property controlled and maintained by BURLINGTON, not on INDIAN CREEK property. These included but were not limited to the following activities:

- i. Soil and groundwater samples were obtained and analyzed for total petroleum hydrocarbons ("TPH"). The result from such sampling activity showed diesel fuel contamination of the area soil and groundwater on the spill site property controlled and maintained by BURLINGTON. Free diesel fuel was also observed in one of the monitoring wells on the spill site property controlled and maintained by Burlington, not on INDIAN CREEK Property.
- ii. Between April 2, 1993 and August 17, 1993, a groundwater interceptor trench with a groundwater depression pump and scavenger pump was installed to remove free diesel fuel from the groundwater on the spill site property controlled and maintained by BURLINGTON, not on INDIAN CREEK property.

The following was designed by BURLINGTON and to achieve this objective:

- a. On approximately February 14, 1994, Burlington provided to IEPA a report titled, Phase I Emergency Fuel Containment ("Phase I Report"), which outlined the activities and measures implemented by Burlington in its initial response to contain, the 5,800 - 6,800 gallons of diesel fuel spilled and released at the site. These included the following:
 - i. On January 20, 1993, absorbent material was placed in the creek immediately north of the site where fuel was ponding on a property site controlled and maintained by BURLINGTON, not on INDIAN CREEK property.

The INDIAN CREEK PROPERTY is to the south of the property site spill

- ii. Shallow cut-off trenches were dug on either side of the tracks in the area of the spill and two (2) over and under dams were constructed on the spill site property controlled and maintained by BURLINGTON, not on INDIAN CREEK property.
- iii. Booms were deployed at the east end of the storm sewer and at the west end of the storm sewer where such storm sewer discharges on the spill site property controlled and maintained by BURLINGTON, not on INDIAN CREEK property.
- iv. On May 30, 1993, a Wastewater Discharge Permit IWDP-029 was issued by the Aurora Sanitary District ("Sanitary District") for the discharge of groundwater from Burlington's remediation system to the sanitary district sewer. 525,360 gallons of groundwater have been pumped and discharged to the sanitary district sewer from the spill site property controlled and maintained by BURLINGTON, not on INDIAN CREEK property.
- v. The Phase I Report provided for a Phase II Follow-up Response, which included among other things, the performance of a supplemental site characterization and evaluation of remedial options for the spill site property controlled and maintained by BURLINGTON, not INDIAN CREEK property.

b. Pursuant to the Consent Order herein referenced BURLINGTON was to at all times maintain in good working order its diesel fuel containment, recovery and monitoring system on the spill site property controlled and maintained by BURLINGTON, not INDIAN Creek Property.

c. BURLINGTON pursuant to the Consent Order until the site, including the soil and groundwater, and off-site areas are remediated to meet any and all IEPA approved closure criteria established for this site, was to, and shall continue to monitor its diesel fuel containment and recovery system and implement as appropriate, all measures designed to prevent the diesel fuel spilled and released at its site, from migrating off-site.

d. No later than sixty (60) days of entry of the Consent Order, Burlington was to prepare and provide summarizes all fuel containment, recovery, remediation, monitoring and maintenance activities conducted at the site since the January 20, 1993 diesel fuel release. Burlington was to document in said report all soil and groundwater analyses conducted at the site from January 20, 1993 to the date of entry of this Consent Order. Burlington was to include copies of all analytical results and all boring logs obtained during this period of time.

12. As a result of its ongoing obligations and duties stated herein above the Defendant BURLINGTON employed as its agent Radian Corporation and then at some later date Remediation Technologies, Inc. a/k/a and n/k/a RETEC, (THE RETEC GROUP, INC. and hereinafter referred to as "RETEC"), to monitor and remediate said contamination on Site. BURLINGTON had a duty to prevent the diesel fuel from contaminating and migrating unto and under INDIAN CREEK's property. BURLINGTON had a further duty to use reasonable care in the design, installation, operation, supervision and maintenance of the remediation system which BURLINGTON so created, designed, installed, operated, supervised and maintained. At no time did the above remediation plan and its incorporated Phase I, or II plans indicate the presence on Diesel fuel on INDIAN CREEK's property. All test wells and remediation measures referenced

in the Consent Order are on property owned, maintained and Controlled by BURLINGTON or on the off-site location referenced as to the North of the spill site property, which is not owned or controlled by INDIAN CREEK.

On February 7, 1997, Defendant BURLINGTON caused its agent and RETEC to enter into a licensing Agreement with the Plaintiff INDIAN CREEK, herein attached and referenced as Exhibit "B", for the specific purpose of monitoring the possible migration of the diesel fuel. At no time did Remediation Technologies or BURLINGTON ever notify the Plaintiff INDIAN CREEK or the IEPA that they had detected any diesel fuel on INDIAN CREEK's property, nor that remediation was needed for the off-site property known as INDIAN CREEK.

At the time the above reference Exhibit "A" Consent Order and Exhibit "B" were entered into by the Defendant Burlington no diesel fuel had been detected on the Plaintiff's INDIAN CREEK's property.

13. From approximately October 28, 2000 to November 30, 2000, INDIAN CREEK caused holes approximately five feet deep to be cut in the concrete of a building on the Premises lying approximately within 100 feet from the Site to accommodate a tenant's machinery.

14. From approximately October 28, 2000 to November 30, 2000, a number of people observed a liquid and smell consistent with diesel emanating from the excavations in the floor building.

15. On November 30, 2002, in response to a request of INDIAN CREEK, BURLINGTON's agent, Environmental Management Resources ("EMR") took soil samples from the excavations in the floor of the building and tested by TestAmerica, which showed the presence of diesel fuel in the excavations.

16. The diesel fuel in the excavations migrated from the Site to INDIAN CREEK's Premises and injured and contaminated INDIAN CREEK's Premises.

17. At all relevant times, BURLINGTON, had an independent duty to refrain from contaminating and injuring INDIAN CREEKS property and Premises.

18. In violation of this duty BURLINGTON, and based on it's actions and conduct stated hereinabove BURLINGTON, was negligent and guilty of the following acts and/or omissions namely:

(a) carelessly and negligently operated, controlled, supervised and scheduled the westbound BURLINGTON train so as to prevent said train from collided with the eastbound SOUTHERN PACIFIC train;

(b) carelessly and negligently caused or allowed the release of diesel fuel on the ground in such a manner to create a water pollution hazard;

(c) carelessly and negligently caused or allowed the release of diesel fuel on INDIAN CREEK'S property and Premises;

(d) carelessly and negligently failed to adequately, test, monitor, supervise, clean-up, remediate the Site to prevent diesel fuel from migrating from the Site to INDIAN CREEK'S property and Premises.

(e) carelessly and negligently caused, permitted and allowed diesel fuel to migrate from the Site to INDIAN CREEK'S property and Premises.

(f) carelessly and negligently trained its employees and agents to prevent engines and trains from moving on and over its railroad tracks, including the Contiguous Railroad Tracks, from colliding.

(g). BURLINGTON failed in the hereinabove stated duty and breached said duty in that BURLINGTON was and is negligent and guilty of the following acts and/or omissions, which continue to the present day, namely:

- (1). It designed a defective and inadequate remediation, containment and monitoring system and work plan in that - they were insufficient and ineffective to remediate, contain, monitor and recover the spill and prevent diesel fuel from migrating or traveling to INDIAN CREEK's property, and its defective design allowed substantial diesel fuel to migrate and travel from the Site to INDIAN CREEK's Premises;
- (2). Failing to properly implement its remediation, containment and monitoring system and or work plan in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;
- (3). Improperly maintaining and failing to properly maintain its remediation, containment and monitoring system and or work plan by allowing the collection tank system to become in disrepair, not operate properly, and cease to function, all in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;
- (4). Improperly supervising and monitoring, and failing to properly supervise and monitor, its remediation, collection and monitoring system and or work plan, and failure to properly staff and inspect the collection and containment system in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;
- (5). Improperly controlling and failing to properly control its remediation system and or work plan in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;

- (6). Failing to provide, implement and conduct adequate testing and sampling of soil and groundwater to detect, predict and prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises.
- (7). Failing to increase the capacity of the fuel containment system, increase ground and ground water sampling to adequately determine that the diesel fuel was migrating to INDIAN CREEK's Premises and to prevent such migration.
- (8). Failing to modify and adjust the fuel containment system on a monthly and yearly basis, and its work plan on a yearly basis to adequately detect, predict and prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises.
- (9). Failing to take and test samples quarterly from the monitoring wells installed on INDIAN CREEK's property in accordance with the plan thereby allowing diesel fuel to migrate to INDIAN CREEK's property.
- (10). Allowing the collection containment system to become inoperative, and not functioning and removing the collection system and failure to replace and maintain a collection system. Failing to provide for additional trenches to collect and remove diesel product. Failing to adequately, regularly and frequently test the ground and ground water at the Site to properly determine underground water flow rates and patterns to adequately predict the flow of diesel from the Site to INDIAN CREEK's property.

19. A license Agreement was entered into by INDIAN CREEK and the Defendant BURLINGTON through its agents RETEC., see attached Exhibit "B", a true copy of which is attached hereto and incorporated herein. Said Licensing Agreement was entered into at the request of the Defendant BURLINGTON. Pursuant to the Licensing

Agreement Defendant BURLINGTON created a duty and obligation to monitor the diesel fuel on the Site and remediate any diesel fuel, if any, which may contaminate or migrate off-Site to INDIAN CREEK's property said Defendant BURLINGTON failed to properly test said wells, failed to report tests to INDIAN CREEK and failed to remediate diesel fuel which migrated to INDIAN CREEK's premises and property.

20. In addition to BURLINGTON negligent acts hereinabove stated BURLINGTON was negligent and guilty of the following acts and/or omissions namely:

- a. It designed a defective and inadequate remediation system and or plan.
- b. It failed to properly implement its remediation system and or plan
- c. It failed to properly maintain its remediation system and or plan
- d. It failed to properly supervise its remediation system and or plan.
- e. It failed to properly control its remediation system and or plan.

21. BURLINGTON'S actions, conduct and or omissions and failure to act are in the nature of a continuing negligence in that BURLINGTON today continues to fail to do the following:

- a. Operating a defective and inadequate remediation system and or plan.
- b. Failing to properly implement its remediation system and or plan
- c. Failing to properly maintain its remediation system and or plan
- d. Failing to properly supervise its remediation system and or plan.
- e. Failing to properly control its remediation system and or plan.

22. BURLINGTON's acts are of a continuing nature and INDIAN CREEK'S property and premises are contaminated with diesel fuel, which continues to migrate and originate from the Site as BURLINGTON has acted negligently as set forth hereinabove.

23. As a direct and proximate cause of BURLINGTON's, acts and omissions, INDIAN CREEK's Premises and property was injured, continues to be injured, stigmatized, substantially damaged and the marketability, use, value and worth of INDIAN CREEK'S property was substantially decreased and diminished.

24. That the continuing migration of the diesel fuel onto and through the Plaintiff's property and BURLINGTON's failure to properly implement, operate and maintain its remediation system and plan to stop said migration of diesel fuel to INDIAN CREEK's property and premises constitutes a continuing, expanding and growing injury to the premises and property.

WHEREFORE, Plaintiff, INDIAN CREEK, request that this Court enter a judgment against the defendants, jointly and several for an amount in excess of \$8,000,000.00, or such other amounts established by the proofs, enjoin Defendant, BURLINGTON, from permitting and allowing the flow of diesel fuel and diesel contaminants from the Site and from the Defendant's property onto and under INDIAN CREEK's property and premises, order Defendant to remove the diesel contamination from the Premises, and order any other relief which is equitable and just under the circumstances as the Court deems equitable and just.

COUNT II
NEGLIGENT TRESPASS
DEFENDANT BURLINGTON

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN CREEK")**, by its attorney, Joseph J. Walczak, P.C. and the Law Office of Stuart A. Petersen, Ltd., complaining of Defendants, **THE BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BURLINGTON") a/k/a BNSF RAILWAY COMPANY** states as follows:

1-24. INDIAN CREEK incorporates and realleges by reference paragraphs 1-24 of Count I as paragraphs 1-24 of Count II.

25. The Defendant's careless and negligent acts and/or omissions as set forth in paragraphs 18 through 21 and others set forth hereinbefore has caused a substantial quantity of diesel fuel to be deposited upon and under the Premises, and to intrude upon, and contaminate the Premises, and this intrusion and contamination upon the Premises is continuing in nature.

26. INDIAN CREEK has demanded that BURLINGTON remove the diesel fuel and diesel contamination from the Premises. BURLINGTON, has refused and continues to refuse to remove the diesel fuel and contamination from the Premises, and has not removed the diesel fuel and diesel contamination from the Premises.

27. INDIAN CREEK has incurred substantial expenses in investigating the intrusion of

diesel fuel on the Premises and will incur substantial fees and expenses in connection with the clean up and remediation of the diesel fuel and diesel contamination on and under the Premises.

28. That the continued migration of the diesel fuel and diesel contamination onto, under and through the Plaintiff's, INDIAN CREEK, property and Premises constitutes a continuing and expanding trespass.

29. As a result of the presence of the diesel fuel and diesel contamination on the Premises, the Premises has been stigmatized and the marketability, use, value and worth of the Premises has been substantially diminished and decreased, the Premises have been substantially damaged, and INDIAN CREEK will incur substantial costs, expenses, fees and damages in connection with the clean-up and remediation of the diesel and diesel contamination upon and under the Premises.

WHEREFORE, Plaintiff, INDIAN CREEK, request that this Court enter a judgment against the Defendants for an amount in excess of \$8,000,000.00, or such other amounts established by the proofs, enjoin Defendant from permitting and allowing the flow of diesel fuel and diesel contaminants from the Site and from the Defendant's property onto and under INDIAN CREEK's property and premises and order any other relief which is equitable and just under the circumstances as the Court deems equitable and just.

COUNT III
CONTINUING NUISANCE
DEFENDANT BURLINGTON

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and
INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of**

Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN CREEK"), by its attorney, Joseph J. Walczak, P.C. and Law Office of Stuart A. Petersen, Ltd., complaining of defendant, THE BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BURLINGTON") a/k/a BNSF Railway Company:

1-29. INDIAN CREEK incorporates and realleges by reference paragraphs 1-29 of Count II as paragraphs 1-29 of Count III.

30. The Defendants careless and negligent acts and/or omissions as set forth in paragraphs 18 through 21 and others set forth hereinbefore has caused a substantial quantity of diesel fuel to be deposited upon and under the Premises, and to intrude upon, and contaminate the Premises, and this intrusion and the Defendants careless and negligent acts and omissions are continuing and the contamination upon the Premises is continuing in nature.

31. Upon Information and belief, the diesel fuel, which originated on the Site continues to migrate onto and flow from the Site and from the Defendant's property onto and under property and Premises of INDIAN CREEK. The migration and flow of the diesel fuel has created a nuisance.

32. The continued migration of the diesel fuel onto and through the Plaintiff's property constitutes a nuisance. As a result of the above-described nuisance, the Premises has been stigmatized and marketability, use, value and worth of the Premises has been substantially diminished and decreased, the Premises has been substantially damaged, and INDIAN CREEK will incur substantial costs, expenses, fees and damages in connection with the clean-up and remediation of the diesel fuel and diesel contamination on and under the Premises.

WHEREFORE, Plaintiff, INDIAN CREEK, request that this Court enter a judgment against the defendants, jointly and several for an amount in excess of \$8,000,000.00, or such other amounts established by the proofs, enjoin Defendant from permitting and allowing the flow of diesel fuel and diesel contaminants from the Site and from the Defendant's property onto and under INDIAN CREEK's property and premises and order any other relief which is equitable and just under the circumstances as the Court deems equitable and just.

COUNT IV
BREACH OF CONTRACT
LICENSING AGREEMENT
DEFENDANT BURLINGTON AND RETEC
(WRITTEN CONTRACT)

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN CREEK")**, by its attorney, Joseph J. Walczak, P.C. and Law Office of Stuart A. Petersen, Ltd., complaining of defendant, **THE BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BURLINGTON") a/k/a BNSF Railway Company and RETEC** states as follows:

1-24. Paragraphs 1 through 24 of Count I are hereby re-alleged and incorporated by reference as paragraphs 1 through 24 of Count IV.

25 . That as result of the Defendant(s) BURLINGTON obligations arising in a Consent Order known as Kane County case number CH KA 95-0527 the Defendants had the duty, responsibility and obligation to properly and accurately monitor and remediate all contamination, including but not limited, all contamination and diesel fuel moving, migrating and traveling from the Site to the Premises, if any, as a result of its actions stated herein and as set forth in attached Exhibit "A".

26. That as a result of the Consent Order entered in Kane County case number CH KA 950527 the Premises, was an off-site location arising from and contemplated by the Consent Order, and thereby INDIAN CREEK and the Premises, and property were to benefit and be protected by the Consent Order.

26(A). That BURLINGTON has an independent duty to INDIAN CREEK to contain the fuel spill, prevent the fuel from migrating to INDIAN CREEK's property and Premises and to remediate the diesel fuel and contamination from INDIAN CREEK's property and Premises.

27. As a result of its ongoing obligations the Defendant(s) employed as its agents Radian Corporation and RETEC to monitor, remediate and contain said contamination.

28. That as a result of the Consent Order and its duties under law, BURLINGTON negotiated the terms of the - License Agreement, and upon information and belief, directed RETEC to enter into said Agreement by the Plaintiff and RETEC on behalf of and for the benefit of BURLINGTON.

29. RETEC was the agent of BURLINGTON and BURLINGTON exercised substantial control of RETEC's actions and conduct and BURLINGTON acted in the following manner:

- a. BURLINGTON not RETEC contacted INDIAN CREEK to obtain a access agreement.
- b. BURLINGTON not RETEC negotiated the terms of the License Agreement.
- c. BURLINGTON never represented that RETEC was an independent contractor and- the License Agreement states the RETEC is the "contractor " contractor" and Plaintiff believed RETEC was BURLINGTON's Agent.
- d. BURLINGTON represented that RETEC was its agent;
- e. RETEC was performing work for which BURLINGTON was required to perform under the Consent Order and all the work was for the direct benefit of BURLINGTON.
- f. Upon information and belief, BURLINGTON, not RETEC, determined controlled the actions of RETEC in that it acted as follows:
 1. Burlington negotiated the License Agreement
 2. Burlington determined how many monitoring wells to implement.
 3. Burlington directed how many samples would be taken and the frequency of the samples.
 4. Burlington directed whom, how and when to report the findings.
 5. All data had to be first provided to Burlington prior to dissemination to other parties.

30. The Defendant(s) BURLINGTON and its agents, Radian Corporation and RETEC failed

to properly and accurately monitor the test wells and remediate the contamination.

31. BURLINGTON and its agents failed to regularly and properly and accurately monitor test wells located on the Plaintiff's Property and failed to notify and inform the Plaintiff's of any results of testing performed on said test wells.

32. A license Agreement was entered into by INDIAN CREEK and the Defendant BURLINGTON through its agent RETEC., see attached Exhibit "B", a true copy of which is attached hereto and incorporated herein. Said License Agreement was entered into at the request and with the authority of the Defendant BURLINGTON. Pursuant to the License Agreement, Defendant BURLINGTON created a duty and obligation to notify INDIAN CREEK of any diesel fuel and contamination found in the wells, to properly and accurately monitor said wells, and to remediate said diesel fuel and contamination, as more fully set forth in said License Agreement, and said Defendant Burlington through its negligent, willful and intentional conduct and/or omission/failure to act breached said Licensing Agreement and its responsibilities, duties and obligations under Licensing Agreement.

33. That the Defendant(s) Burlington has breached its duties and obligations under the License Agreement as they have refused to complete the work as set forth in Exhibit "A".

34. That the Defendant(s) Burlington and RETEC have breached its duties and obligations under the License Agreement as they have refused to complete the work as set forth in Exhibit "B", have failed to conduct testing in accordance with the License Agreement, have failed to notify INDIAN CREEK of the results of said testing, have failed to remediate the diesel fuel and contamination on INDIAN CREEK's Premises.

35. That the duties and obligations of Burlington set forth in Exhibit "A" have remained substantially unfinished and therefore Defendant(s) Burlington failed to perform its obligations

as set forth in the stated Consent Order and the duty of BURLINGTON created thereunder.

36. That the duties and obligations of Burlington as set forth in the Licensing Agreement, Exhibit "B", have remained substantially unfinished and therefore Defendant(s) Burlington failed to perform its duties and obligations as set forth in the stated Licensing Agreement.

37. That at various times Defendant(s) BURLINGTON employed Radian Corporation and RETEC to act as their agent in fact to monitor and remediate and contain and monitor said contamination caused by the diesel fuel spill. Said Agents acted on the behalf of Defendant(s) BURLINGTON. Defendant(s) BURLINGTON, authorized RETEC to execute the Licensing Agreement, as agent for BURLINGTON and it was the intent of the parties that BURLINGTON and RETEC both had the responsibility, duty and obligation to perform all duties, obligations and terms set forth in, and arising out of, the Licensing Agreement.

38. At all times relevant to the issues herein, the principal, Defendant Burlington affirmatively, and through its conduct as principal, represented to INDIAN CREEK that the RETEC and Radian Corporation were authorized agents of BURLINGTON, acting on Burlington's behalf, with actual, real, and apparent authority to bind BURLINGTON, as principal to the acts of said agents.

39. INDIAN CREEK reasonably relied on the principal's, Defendant(s) BURLINGTON, representations that said agents were , actual agents of BURLINGTON in that BURLINGTON requested that INDIAN CREEK work with and cooperate with said agent(s) as said agents were fulfilling the BURLINGTON's obligations under the Consent Order, Exhibit" A", and the Licensing Agreement(s) and Access Agreement, Exhibit "B" requested by Defendant Burlington. As a result of BURLINGTON's actions, it is estopped from denying that Radian Corporation and RETEC were its authorized agents and estopped from denying that they did not have the

authority to bind BURLINGTON to the License Agreement, and by BURLINGTON's aforesaid acts and conduct, BURLINGTON is bound by the terms of the License Agreement as if BURLINGTON had executed the License Agreement itself.

41. As a result the failure of BURLINGTON, and its agents, Radian Corporation and RETEC., to comply with its responsibilities, duties and obligations under the Licensing Agreement, diesel fuel and contamination has moved from the Site to the Premises, damaging and injuring the Premises, and stigmatizing the Premises and damaging decreasing and diminishing the marketability, use, value and worth the Premises, all to the damage and injury of INDIAN CREEK in an amount in excess of \$8,000,000.00.

WHEREFORE, Plaintiff, INDIAN CREEK, request that this Court enter a judgment against the defendants BNSF and RETEC, jointly and several for an amount in excess of \$8,000,000.00, or such other amounts established by the proofs, enjoin Defendants from permitting and allowing the flow of diesel fuel and diesel contaminants from the Site and from the Defendant's property onto and under INDIAN CREEK's property and premises and order any other relief which is equitable and just under the circumstances as the Court deems equitable and just.

COUNT V
NEGLINGENT FAILURE TO DESIGN REMEDIATION SYSTEM
AND TO MAINTAIN REMEDIATION SYSTEM
DEFENDANT BURLINGTON

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago**

Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN CREEK"), by its attorney(s), Joseph Walczak P.C. and Law Office of Stuart A. Petersen, Ltd. complaining of Defendants, **THE BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation ("**BURLINGTON**"), BSNF Railway Company a Delaware corporation.

1-24. Paragraphs 1 through 24 of Count I are hereby re-alleged and incorporated by reference as paragraphs 1 through 24 of Count V.

25. The Defendants careless and negligent acts and/or omissions as set forth in paragraphs 18 through 21 and others set forth hereinbefore has caused a substantial quantity of diesel fuel to be deposited upon and under the Premises, and to intrude upon, and contaminate the Premises, and this intrusion and contamination upon the Premises is continuing in nature.

26. BURLINGTON designed and installed a diesel fuel containment and recovery system on the spill site property and along the property lying South of the Site to contain the spill, and developed and implemented a phase II work plan to prevent the diesel fuel from spreading further to the South and to prevent the diesel fuel from spreading to INDIAN CREEK's property.

27. BURLINGTON as a result of installing and operating said remediation system(s) and implementing of a Phase II work plan to remediate the spill and prevent migration of diesel fuel to off site property, - created a duty to use reasonable care to design, operate and maintain the remediation system and the Phase II work plan, and to supervise, maintain, control and operate its remediation system without injuring or harming others or their property.

28. BURLINGTON failed in the hereinabove stated duty and breached said duty in that BURLINGTON was and is negligent and guilty of the following acts and/or omissions, which continue to the present day, namely:

1. It designed a defective and inadequate remediation, containment and monitoring system and work plan in that - they were insufficient and ineffective to remediate, contain, monitor and recover the spill and prevent diesel fuel from migrating or traveling to INDIAN CREEK's property, and its defective design allowed substantial diesel fuel to migrate and travel from the Site to INDIAN CREEK's Premises;
2. Failing to properly implement its remediation, containment and monitoring system and or work plan in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;
3. Improperly maintaining and failing to properly maintain its remediation, containment and monitoring system and or work plan by allowing the collection tank system to become in disrepair, not operate properly, and cease to function, all in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;
4. Improperly supervising and monitoring, and failing to properly supervise and monitor, its remediation, collection and monitoring system and or work plan, and failure to properly staff and inspect the collection and containment system in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;

5. Improperly controlling and failing to properly control its remediation system and or work plan in a manner that would prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises;
6. Failing to provide, implement and conduct adequate testing and sampling of soil and groundwater to detect, predict and prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises.
7. Failing to increase the capacity of the fuel containment system, increase ground and ground water sampling to adequately determine that the diesel fuel was migrating to INDIAN CREEK's Premises and to prevent such migration.
8. Failing to modify and adjust the fuel containment system on a monthly and yearly basis, and its work plan on a yearly basis to adequately detect, predict and prevent diesel fuel from migrating or traveling to INDIAN CREEK's Premises.
9. Failing to take and test samples quarterly from the monitoring wells installed on INDIAN CREEK's property in accordance with the plan thereby allowing diesel fuel to migrate to INDIAN CREEK's property.
10. Allowing the collection containment system to become inoperative, and not functioning and removing the collection system and failure to replace and maintain a collection system. Failing to provide for additional trenches to collect and remove diesel product. Failing to adequately, regularly and frequently test the ground and ground water at the Site to properly determine underground water flow rates and patterns to adequately predict the flow of diesel from the Site to INDIAN CREEK's property.

29. BURLINGTON's acts and omissions stated hereinbefore are of a continuing nature and INDIAN CREEK'S property and Premises are contaminated with diesel fuel, which continues to migrate and originate from the Site as BURLINGTON HAS ACTED negligently as set forth hereinabove.

30. As a direct and proximate cause of BURLINGTON's, acts and omissions, which are continuing in nature, INDIAN CREEK's Premises and property was injured, continues to be injured, stigmatized substantially damaged and marketability, use, value and worth of INDIAN CREEK'S property was substantially decreased and diminished.

31. As a result the failure of BURLINGTON, and its agents, to properly supervise, maintain, control and operate its remediation system without injuring or harming others or their property diesel fuel and contamination has moved from the Site to the Premises, damaging and injuring the Premises, and stigmatizing the Premises and damaging decreasing and diminishing the marketability, use, value and worth the Premises, all to the damage and injury of INDIAN CREEK in an amount in excess of \$8,000,000.00.

WHEREFORE, Plaintiff, INDIAN CREEK, request that this Court enter a judgment against the Defendant, jointly and several for an amount in excess of \$8,000,000.00, or such other amounts established by the proofs, enjoin Defendants from permitting and allowing the flow of diesel fuel and diesel contaminants from the Site and from the Defendant's property onto and under INDIAN CREEK's property and premises and order any other relief which is equitable and just under the circumstances as the Court deems equitable and just.

COUNT VI
BREACH OF CONTRACT
DEFENDANT BURLINGTON
(ORAL CONTRACT)

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN CREEK")**, by its attorney(s), Joseph Walczak P.C. and Law Office of Stuart A. Petersen, Ltd. complaining of Defendants, **THE BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BURLINGTON")**, BSNF Railway Company a Delaware corporation.

1-24. Paragraphs 1 through 24 of Count I are hereby re-alleged and incorporated by reference as paragraphs 1 through 24 of Count VI.

25. That as result of the Defendant(s) BURLINGTON obligations arising in a Consent Order known as Kane County case number CH KA 95-0527 the Defendants had the duty, responsibility and obligation to properly and accurately monitor and remediate all contamination, including but not limited, all contamination and diesel fuel moving, migrating and traveling from the Site to the Premises, if any, as a result of its actions stated herein and as set forth in attached Exhibit "A".

26. That BURLINGTON has an independent duty to INDIAN CREEK to contain the fuel spill, prevent the fuel from migrating to INDIAN CREEK's property and Premises and to remediate the diesel fuel and contamination from INDIAN CREEK's property and Premises.

27. That as a result of BURLINGTON'S obligations arising out of the Consent Order, in or about June of 1996, BURLINGTON'S employee and agent contacted INDIAN CREEK'S officer and agent and requested permission to place monitoring wells on INDIAN CREEK'S property.

28. In or about June of 1996, four years after the initial spill, and up until no earlier than October of year 2000, INDIAN CREEK had no knowledge that diesel fuel had migrated to its property or the Premises.

29. Upon information and belief, in or about June of 1996, four years after the initial spill, and up until October of year 2000, BURLINGTON had no knowledge that diesel fuel had migrated to its property or the Premises.

30. The oral agreement and license agreement described below were not entered into because INDIAN CREEK and BURLINGTON had knowledge that the diesel fuel had migrated to, or was likely to migrate to INDIAN CREEK'S property, but was entered into in furtherance of BURLINGTON'S system to ensure that diesel fuel does not migrate to INDIAN CREEK'S Premises in the future.

31. In or about January 1997, BURLINGTON entered into an oral agreement with INDIAN CREEK wherein BURLINGTON promised, covenanted and agreed to do the following:

A) Install five monitoring wells and sample the wells on INDIAN CREEK'S property along the railroad tracks immediately adjacent to the railroad tracks;

B) Regularly and continually, until notified otherwise by either of the parties to cease, test and monitor the wells for diesel contamination in a proper, effective, accurate and diligent manner, and in accordance with its obligations under the Consent Decree;

C) Timely provide INDIAN CREEK with any reports, studies, correspondence relating to any diesel fuel discovered upon the Premises at any time;

D) In the event any diesel fuel contamination was discovered at any time in said

monitoring wells or sampling or on the Premises, BURLINGTON agreed to remediate and remove, at its sole cost and expense, the diesel fuel and any contamination or environmental hazards on the Premises or any conditions which would be a violation of any environmental laws.

32. In consideration of BURLINGTON's aforesaid promises, covenants, and undertakings, INDIAN CREEK promised to provide BURLINGTON and its agent and contractor access to the Premises to conduct said monitoring and testing, and as additional consideration, INDIAN CREEK entered into a License Agreement with BURLINGTON's agent and contractor, REMEDIATION TECHNOLOGIES, INC., a/k/a RETEC. A true and correct copy of said License Agreement is attached hereto and incorporated herein as Exhibit B.

33. Without excuse, BURLINGTON failed to fulfill its promises, covenants and undertakings under the oral agreement with INDIAN CREEK by:

- A) Failing to regularly and continually test and monitor the wells for diesel contamination in a proper, effective, accurate and diligent manner, and in accordance with its obligations under the Consent Decree;
- B) Failing to timely provide INDIAN CREEK with any reports, studies, correspondence relating to any diesel fuel discovered upon the Premises;
- C) Failing to remediate and remove, at its sole cost and expense, the diesel fuel found on the Premises, and failing, at its sole cost and expense, to remediate and remove any contamination or environmental hazards on the Premises and conditions, which would be a violation of any environmental laws.

34. At no time did BURLINGTON or RETEC or any of their agents notify INDIAN CREEK that diesel fuel had been found on or migrated to INDIAN CREEK's Premises.

35. The aforesaid failures by BURLINGTON of its promises, covenants and undertakings was a breach of the oral contract between BURLINGTON and INDIAN CREEK.

36. As a result of BURLINGTON's aforesaid failures and breach of the contract, INDIAN CREEK's property and Premises was contaminated with diesel fuel and the diesel fuel contamination spread over a significant area of INDIAN CREEK's property and under buildings on INDIAN CREEK's property.

37. As a result of BURLINGTON's breach of the oral contract, INDIAN CREEK has been damaged in the amount of cost to clean up, remediate and remove the diesel fuel in, under and on INDIAN CREEK's Premises.

38. As a result of BURLINGTON's breach of the oral contract, INDIAN CREEK has been further damaged in that the Premises has been stigmatizing, decreased and diminished in value in the amount of at least \$8,000,000 and said damage and loss of value was foreseeable damage arising out of BURLINGTON's breach of the agreement.

WHEREFORE, Plaintiff, INDIAN CREEK, requests that this Court enter a judgment against BURLINGTON for an amount in excess of \$8,000,000.00, and for the costs of remediation, or such other amounts established by the proofs, enjoin Defendants from permitting and allowing the flow of diesel fuel and diesel contaminants from the Site and from the Defendant's property onto and under INDIAN CREEK's property and premises, order the defendant to clean-up, remediate, remove all of the diesel fuel under and on the Premises, and order any other relief which is equitable and just under the circumstances as the Court deems equitable and just.

COUNT VII
IN ALTERNATIVE
COUNT AGAINST RETEC

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN**

CREEK"), by its attorney(s), Joseph Walczak P.C. and Law Office of Stuart A. Petersen, Ltd. complaining of Defendant, REMEDIATION TECHNOLOGIES, INC. and THE RETEC GROUP, INC, a Corporation, states as follows:

1-24. Paragraphs 1 through 24 of Count I are hereby re-alleged and incorporated by reference as paragraphs 1 through 24 of Count VII.

25. That as result of the Defendant(s) BURLINGTON obligations arising in a Consent Order known as Kane County case number CH KA 95-0527 the Defendants had the duty, responsibility and obligation to properly and accurately monitor and remediate all contamination, including but not limited, all contamination and diesel fuel moving, migrating and traveling from the Site to the Premises, if any, as a result of its actions stated herein and as set forth in attached Exhibit "A".

26, REMEDIATION TECHNOLOGIES, INC. a/k/a and n/k/a THE RETEC GROUP, INC, a Corporation (here in after "RETEC") is and was doing business in Illinois at all relevant times to the issues herein.

27. On or about February 12, 1997, RETEC executed the License Agreement attached hereto and incorporated herein as Exhibit B.

28. Under the License Agreement, RETEC promised to conduct testing and monitoring of wells on INDIAN CREEK's property and promised to deliver all reports, studies and correspondence to INDIAN CREEK as more fully set forth therein.

29. Under the License Agreement, RETEC agreed to remediate and diesel fuel and contamination, and environmental hazards, which resulted from or arose out of the diesel spill on the Site.

30. INDIAN CREEK provided consideration for the agreement by entering into the agreement, permitting the placement of wells on its property and permitting sampling of its

soil and making the promises contained in the License Agreement.

31. RETEC breached the License Agreement by:

- A) failing to adequately, regularly, and properly test the wells and soil;
- B) failing to provide INDIAN CREEK with reports, studies, correspondence and testing results of samples and wells;
- C) failing to remediate and remove the diesel fuel and contamination on INDIAN CREEK's property, which arose out of the diesel fuel spill at the Site.

32. As a result of RETEC's aforesaid breaches, diesel fuel migrated from the Site and contaminated INDIAN CREEK's Premises.

33. As a result of RETEC's aforesaid breaches, INDIAN CREEK has been damaged in the amount of the cost to clean-up, remediate and remove the diesel fuel in, under and on INDIAN CREEK's Premises.

34. As a result of RETEC's aforesaid breaches, INDIAN CREEK has been further damaged in that the Premises has been stigmatizing, decreased and diminished in value in the amount of at least \$8,000,000 and said damage and loss of value was foreseeable damage arising out of RETEC's breach of the agreement.

WHEREFORE, Plaintiff, INDIAN CREEK, requests that this Court enter a judgment against REMEDIATION TECHNOLOGIES, INC. a/k/a and n/k/a THE RETEC GROUP, INC, for an amount in excess of \$8,000,000.00, and for the costs of remediation, or such other amounts established by the proofs, order the defendant to clean-up, remediate, remove all of the diesel fuel under and on the Premises, and order any other relief which is equitable and just under the circumstances as the Court deems equitable and just.

COUNT VIII
INJUNCTIVE RELIEF
DEFENDANT BURLINGTON

Plaintiff, **INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership, and INDIAN CREEK DEVELOPMENT COMPANY, an Illinois Partnership as beneficiary of Chicago Land Trust Company Trust No 3291 dated December 15 1981 and Chicago Land Trust Company as Trustee of Trust No 3291 dated December 15 1981 ("INDIAN CREEK")**, by its attorney, Joseph J. Walczak, P.C. and Law Office of Stuart A. Petersen, Ltd., complaining of defendant, **THE BURLINGTON NORTHERN RAILWAY n/k/a THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("BURLINGTON")**, (collectively sometimes referred to as "Defendants") states as follows:

1. Paragraphs 1 through 24 of Count I are hereby re-alleged and incorporated by reference as paragraphs 1 through 24 of Count VII.

25. The Plaintiff's Premises Property will continue to suffer damage as a result of the source Site, Burlington's property, as the contamination and drainage gradient causes said diesel fuel to continually to migrate onto the Plaintiff's property and will continue to do so in the future if the current course of conduct is allowed. That there is no adequate remedy at law.

26. That Burlington has failed to perform as ordered under the Consent Order and under the Consent Order and Licensing Agreement has failed to remediate the source Site of the diesel fuel spill, which is located on Burlington's property. The source Site must be remediated to prevent further damage and injury to the Premises and the Defendant Burlington has failed, omitted and refused to remediate said source Site of the diesel fuel.

27. The damage and injury caused to the Premises and INDIAN CREEK by the Burlington's conduct and failure to act and continual contamination of the Premises by the Burlington's diesel fuel has and will continue to cause irreparable injury for which the Plaintiff has no adequate remedy at law to prevent further and continual contamination of the Plaintiff's property by the Burlington's diesel fuel, and INDIAN CREEK is likely to prevail on the merits.

WHEREFORE, Plaintiff, INDIAN CREEK, requests that this Honorable Court enter a Judgment against the Defendant BURLINGTON and its agents and each of them be restrained, enjoined and ordered to immediately cease, desist and stop from permitting and allowing any further movement and migrations of diesel fuel from the Site onto and under the Premises, that BURLINGTON be required to clean-up, remove and remediate the diesel fuel and contamination on the Premises, and that the Court such enter other order or grant INDIAN CREEK any other relief which is equitable and just under the circumstances.

INDIAN CREEK DEVELOPMENT COMPANY

By: Its Attorney

Law Office of Stuart A. Petersen, Ltd.
Attorney Stuart A. Petersen
601 N. Farnsworth Ave.
AURORA, IL. 60505
630-898-6612
ARDC#620-5815

Joseph J. Walczak, P.C.
Attorney Joseph J. Walczak
14045 S. 88th Avenue
Orland Park, IL. 60462
708-349-6908
ARDC#06199796

This Pleading complies with Supreme Court Rule 137.

Attorney Stuart A. Petersen
601 N. Farnsworth Ave.
AURORA, IL. 60505
630-898-6612
ARDC#620-5815