

ILLINOIS POLLUTION CONTROL BOARD
May 15, 2014

BNSF RAILWAY COMPANY, f/k/a The)	
Burlington Northern and Santa Fe Railway)	
Company,)	
)	
Complainant,)	
)	
v.)	PCB 14-81
)	(Citizen's Enforcement - Water, Land)
INDIAN CREEK DEVELOPMENT)	
COMPANY, an Illinois Partnership, individual)	
and as beneficiary under trust 3291 of the)	
Chicago Title and Trust Company dated)	
December 15, 1981 and the Chicago Title &)	
Trust Company, as trustee under trust 3291,)	
dated December 15, 1981, and JB)	
INDUSTRIES, INC.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by D. Glosser):

On December 10, 2013, BNSF Railway Company (BNSF) filed a complaint against Indian Creek Development Company (ICDC) and JB Industries, Inc. (JB Industries) (collectively, respondents). The complaint (Comp.) alleges that respondents violated Sections 12(a), 12(d), and 21(e) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/12(a), 12(d), and 21(e) (2012)). The complaint also alleges that BNSF incurred costs for its environmental response work on ICDC's property regarding petroleum constituents not related to a 1993 collision and diesel fuel spill on BNSF's property. BNSF seeks "judgment in its favor and against respondents in an amount commensurate with respondents' comparative responsibility for the presence of contaminants on the ICDC site." The ICDC site is located at 1500 Dearborn Avenue, Aurora, Kane County.

On March 20, 2014, the Board denied respondents' motion to dismiss finding that the complaint sufficiently pleads a violation of the Environmental Protection Act (Act). The Board further found that the complaint was properly filed with the Board under Section 31(d) of the Act (415 ILCS 5/31(d) (2012)). On April 10, 2014, respondents filed a motion (Mot.) asking the Board to reconsider its March 20, 2014 order denying respondents' motion to dismiss. On May 1, 2014, BNSF Railway Company (BNSF) timely filed a response (Resp.) in opposition to the motion to reconsider. On May 6, 2014, respondents filed a motion for leave to file a reply, which the Board grants. For the reasons discussed below, the Board denies the motion to reconsider.

The Board has reviewed respondents' arguments in its motion to reconsider. However, the Board is unconvinced that it should reconsider the March 20, 2014 order. In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board finds that respondents provided no new evidence or a change in the law that would indicate the Board's March 20, 2014 decision denying the motion to dismiss was in error. Therefore, the motion to reconsider is denied.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 15, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board