

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant, )

v. )

INDIAN CREEK DEVELOPMENT COMPANY, )  
an Illinois Partnership, individually 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. )

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JUL 02 2014

PCB 2014-081 STATE OF ILLINOIS  
Pollution Control Board

ORIGINAL

NOTICE OF FILING

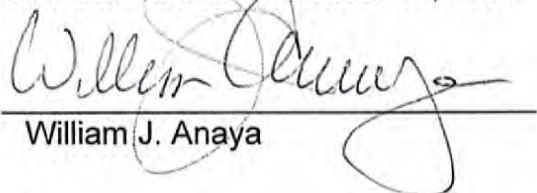
To: Sean Sullivan  
Pamela Nehring  
Daley Mohan Groble, P.C.  
55 West Monroe Street  
Suite 1600  
Chicago, IL 60606

PLEASE TAKE NOTICE that on **July 2, 2014**, we caused to be filed with the Clerk of the Illinois Pollution Control Board located at the James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, Illinois, **Respondents' Answers and Affirmative Defenses**, a copy of which is attached hereto and is hereby served upon you.

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Respectfully submitted,

Indian Creek Development Company, JB Industries, Inc., and Chicago Title and Trust Company, as Land Trustee under Trust No. 3291 dated December 15, 1981

By:   
William J. Anaya

**CERTIFICATE OF SERVICE**

William J. Anaya, an attorney, certifies that a true and correct copy of the foregoing **Notice of Filing and Respondents' Answers and Affirmative Defenses** was served upon the following counsel of record:

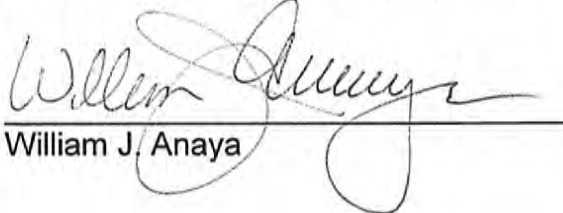
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Pollution Control Board

via U.S. Mail by depositing a copy thereof, enclosed in an envelope, in the United States Mail at 120 South Riverside Plaza, Chicago, Illinois, proper postage prepaid, at or about the hour of 5:00 p.m., on July 2, 2014.

  
\_\_\_\_\_  
William J. Anaya

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**RESPONDENTS' ANSWERS AND AFFIRMATIVE DEFENSES**

Respondents, Indian Creek Development Company and JB Industries, Inc., by counsel, hereby answer the Complaint filed by BNSF Railway Company ("Complainant" or "BNSF") entitled Complaint for Allocation of Proportionate Share Responsibility. In furtherance, Respondents state as follows:

1. Complainant Contact Information:

**ANSWER:** Admit.

2. Names and Addresses of Respondents:

**ANSWER:** Admit.

3. On February 9, 1996, BNSF entered into a Consent Decree with the People of the State of Illinois, the Attorney General and the Illinois Environmental Protection Agency ("IEPA") to provide for further investigation and remediation of locomotive diesel fuel that spilled on BNSF's property from a train collision occurring on January 20, 1993. A copy of the Consent Order is attached hereto as Exhibit A.

**ANSWER:** Admit.

4. In or about November 2000, ICDC completed excavations through the concrete floor of one of its buildings located on its property located to the south of BNSF's right-of-way near to the area of the 1993 train collision (the "ICDC Site"). The ICDC Site is located at the premises commonly known as 1500 Dearborn Avenue, Aurora, IL 60505. ICDC claims that when conducting the excavation, it discovered the presence of diesel fuel which it alleges to be fuel that migrated to its property from the original 1993 train collision and spill.

**ANSWER:** Admit, and further answering, in 2000 BNSF confirmed the presence of the diesel-impacted soil on the Indian Creek Property referred to above, and coordinated and paid for the disposal of that diesel-impacted soil excavated from the Indian Creek Property. Thereafter, BNSF requested that Illinois EPA and the Illinois Attorney General confirm closure of the site referred to in the Consent Order, but did not advise either of the of the presence of diesel-impacted soil on the Indian Creek Property. The request for closure was denied by Illinois EPA

5. On November 18, 2006, BNSF entered into an Amendment to the Consent Order. A copy of the Amendment to Consent Order is attached hereto as Exhibit B.

**ANSWER:** Admit.

6. Under the Amendment to the Consent Order, the defined "site" for investigation and remediation was expanded to include "all properties and media . . . not owned or under the control of (BNSF) impacted by the diesel fuel release that resulted from the January 20, 1993 collision, including but not limited to, the property owned by (ICDC) which is on the southern boundary of the (BNSF railroad tracks) and the sediments of Indian Creek, but only to the extent such properties or media are impacted by diesel fuel contamination resulting from the January 20, 1993 collision."

**ANSWER:** Respondents admit that portions of the amended Consent Order referred to in this paragraph are accurately described in this paragraph.

7. Indian Creek runs in a generally east to west direction through the ICDC property, and eventually flows into the Fox River in Aurora, Illinois.

**ANSWER:** Respondents admit that the current configuration of Indian Creek meanders generally as described.

8. In February 2013, ICDC excavated a sanitary sewer line on the ICDC Site. ICDC claims that when so doing, it discovered the presence of diesel fuel which it alleges to be fuel that migrated to its property from the original 1993 train collision and spill.

**ANSWER:** Admit, and further answering, Respondents state that forensic chemistry data confirms that diesel fuel and related contamination was discovered in the sewer line and in soil proximal to the sewer line, and that the diesel fuel and related contamination originated from the January 20, 1993 release caused by the collision of trains on the BNSF tracks.

***Respondents Answer to BNSF's Allegations Concerning ICDC's Pending Actions***

9. On December 4, 2006, ICDC filed a complaint before the Illinois Pollution Control Board ("PCB") (the "PCB Complaint") in which it alleged that – as a result of the 1993 train collision and diesel release – BNSF violated §§ 12(a), 12(d) and 12(e) of the Illinois Environmental Protection Act (the "Act"). The PCB Complaint remains pending.

**ANSWER:** Admit.

10. In the PCB Complaint, ICDC requests, among other things: (1) that BNSF be required to remediate the ICDC Site "to background levels" and to a level not less than "applicable residential standards;" (2) that ICDC and its consultants be permitted to monitor the remediation of the BNSF property and the ICDC Site; and (3) that BNSF be required to reimburse ICDC for all costs and expenses incurred related to investigation and remediation of the BSF property and the ICDC Site, including fees of consultants and experts.

**ANSWER:** Respondents admit that selected portions of the Complaint referred to in this paragraph are accurately reproduced; further answering, Respondents state that BNSF is required to follow the law and the Illinois Environmental Protection Act.

11. On November 9, 2007, ICDC filed a complaint against BNSF in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois, in which it seeks damages and injunctive relief related to the 1993 train collision and diesel spill (the "State Court Lawsuit"). The State Court Lawsuit remains pending.

**ANSWER:** Respondents admit that a Complaint was filed, and that Indian Creek Development Company and Indaba Properties, LLC have since filed a Second

Amended Complaint; further answering, Respondents state that Complainant has answered the Second Amended Complaint.

12. JB Industries is an affiliate or related entity to ICDC (with common or overlapping ownership and control), and has been a principal tenant and occupier of the ICDC Site since 1982.

**ANSWER:** Deny.

***Respondent Denies that BNSF Is Entitled  
To The Request for Allocation of Responsibility***

13. Pursuant to the Consent Order and the Amendment to the Consent Order, BNSF has spent large sums of money to investigate the presence of locomotive diesel fuel resulting from the January 20, 1993 train collision on ICDC's property and remediate it. BNSF has paid large sums of money to obtain access to ICDC's property to do so; and it has paid or incurred large sums of money to consultants retained by ICDC to monitor BNSF's investigation. BNSF has also paid large sums of money to IEPA to reimburse IEPA for the costs of work it has performed as part of the investigation and remediation efforts. BNSF will be required to continue, well into the future, to pay large sums of money for investigation and remediation activities under the Consent Order and the Amendment to the Consent Order.

**ANSWER:** Respondents admit that BNSF is responsible for the diesel fuel and related contamination on the Indian Creek; further answering, Respondents admit that BNSF has paid some costs in removing diesel-impacted soil and related contamination that is located on the Indian Creek Property, and which migrated from the BNSF tracks from the 1993 train crash, but Respondents lack sufficient knowledge or information as to how much money BNSF has spent in response to the January 20, 1993 train crash, the environmental investigation or implementing any partial remedy addressing the contamination, and therefore, neither admit nor deny the allegations contained in Paragraph 13. Further answering, Respondents state that the costs referred to in this paragraph were incurred by BNSF as a direct result of BNSF's negligence and violations of the Illinois Environmental Protection Act, and in response to a Court Order issued in the enforcement action initiated by the State of Illinois and referred to above.

14. On information and belief, to the extent that there have been, or will be, positive findings of petroleum constituents in excess of IEPA standards found on the ICDC Site, they are likely to be from sources other than the January 20, 1993 collision and diesel fuel spill on BNSF's property, including sources for which Respondents are responsible.

**ANSWER:** Deny. Further answering, Respondents state that diesel fuel, diesel impacted soil and groundwater and related contamination at or under the Indian Creek Property originated from the January 20, 1993 train crash on the BNSF tracks; further answering, Respondents acknowledge that BNSF has yet to fully investigated the nature and extent of such diesel fuel, diesel-impacted soil and groundwater, and related contamination associated with the 1993 train crash; further answering, Respondents deny that BNSF has cleaned up such diesel fuel and contamination in the soil and groundwater at the Indian Creek Property, but that BNSF is required to fully investigate and remedy its contamination at the Indian Creek Property; further answering, Respondents acknowledge that the presence of diesel fuel in the presence of free product caused by the 1993 train crash on BNSF's tracks is located at the Indian Creek Property, and constitutes "petroleum constituents in excess of IEPA standards."

15. In this action, BNSF seeks an allocation of Respondents' proportionate share of responsibility for costs associated with contaminants present on the ICDC Site.

**ANSWER:** Respondents acknowledge that BNSF seeks a remedy that is not timely, available or proper under the law, and deny that the requested relief described is timely, available or proper under the law; further answering, Respondents state that BNSF has a legal duty under the Consent Order referred to above and the Illinois Environmental Protection Act, to investigate and remediate all diesel fuel and contamination on the Indian Creek Property that originated from the January 20, 1993

train crash at the BNSF tracks, and that the requested relief is an improper, premature and unlawful means to seek purported contribution.

***Respondent's Answer to BNSF's Alleged  
History and Environmental Events at ICDC Site***

16. Pursuant to the Consent Order and the Amendment to the Consent Order, BNSF continues to investigate the presence and sources of petroleum constituents and other contaminants at the ICDC Site, and has thereby gained knowledge concerning certain present and historical uses of the ICDC Site, as well as records of environmental releases or events occurring on the site.

**ANSWER:** Respondents lack sufficient knowledge or information to form a belief as to the undisclosed knowledge of BNSF referred to in this paragraph, and therefore deny the allegations contained in Paragraph 16; further answering, Respondents state that BNSF has a legal obligation to investigate and remediate its diesel fuel and contamination on the Indian Creek Property originating from the January 20, 1993 train accident according the Consent Order referred to above and the Illinois Environmental Protection Act; further answering, Respondents state that over 20 years after the train crash on BNSF's tracks, diesel fuel and contamination from that crash remains on and under the Indian Creek Property.

17. The ICDC property has a history of heavy industrial activity for over a century that included blacksmithing, machine shops, wood working, grinding, polishing, a coal house, steaming, bonding, lumber storage and dry kiln, warehouses, erecting houses, pump house paint shops, tools shops, various staging and storage areas, sand blasting, welding, dust collection, assembly and shipping buildings. Recent historical investigations of the property reveal the presence of oil tanks, gas tanks and oil reservoirs over the years.

**ANSWER:** Respondents admit that portions of the Indian Creek Property have been used for industrial purposes, but deny that the industrial purposes referred to in this paragraph have adversely impacted BNSF, or that BNSF is entitled to any relief



from Respondents related to those industrial activities; further answering, Respondents deny the remainder of the allegations contained in Paragraph 17.

18. The ICDC Site is currently occupied by tenants engaged in light to heavy industrial activities including, but not limited to, auto repair and service centers, metal fabrication, welding, car detailing, painting, resin and plastics manufacturing including color additive technology, lawn and garden equipment service center, warehousing and assembly.

**ANSWER:** Respondents admit that portions of the Indian Creek Property have been used for industrial purposes, but deny that the industrial purposes referred to in this paragraph have adversely impacted BNSF, or that BNSF is entitled to any relief from Respondents related to those industrial activities; further answering, Respondents deny the remainder of the allegations contained in Paragraph 18.

19. Various petroleum products (predominantly lubricating oils) are present at the ICDC Site. Hazardous materials present at the site include: Mono Ethanol Amine; Derakane Momentum 411-350 Epoxy (Vinal Ester Resin); Industrial Purple Cleaner and Degreaser; Mobil DTE Oil (lubricating oil); Mobil Velocite Oil (lubricating oil); Leahy-Wolf AW Hydraulic Lubricants #32, 46, 68, 100, 150 and 220; Styrene; Methyl methacrylate; Phosphoric acid; Hydroflouric acid; Sodium hydroxide; Wallover Oil Company WS7350 (coolant/lubricant) and ECOBase Waterproofing membrane.

**ANSWER:** Respondents admit that portions of the Indian Creek Property have been used for industrial purposes, but deny that the materials referred to in this paragraph are found to exist in the soil or groundwater at the Indian Creek Property or have adversely impacted BNSF, or that BNSF is entitled to any relief from Respondents related to those materials; further answering, Respondents deny the remainder of the allegations contained in Paragraph 19.

20. Tenants at the ICDC Site include, or recently included, the following:

(a) JB Industries manufactures equipment used in the installation of air conditioning equipment. Their processes include machining, paint, brazing, assembly, caustic cleaning and screw machine operations.

(b) Craftsman Tool manufactures injection molding dies, molds and equipment. Its process include metal working, polishing, EDM, welding and finishing.

(c) Action Metals is a custom metal cutting shop. Its processes include flame cutting, abrasive cutting, metal working and various finishing processes.

(d) Hevco MFG manufactures aftermarket mower decks. Its processes include metal working, grinding, abrasive finishing, paint and assembly.

(e) Barnco fabricates metal sheds for farms and industry. Its processes include metal cutting, iron working, assembly and finishing.

(f) R&R Iron Works is an iron fabricator. Its processes include cutting, abrasive blasting, welding, brazing, soldering and painting.

**ANSWER:** Respondents admit that portions of the Indian Creek Property have been used for industrial purposes by the entities described in this paragraph, but deny that the entities referred to in this paragraph have adversely impacted BNSF, or that BNSF is entitled to any relief from Respondents related to the actions or omission of those entities; further answering, Respondents deny the remainder of the allegations contained in Paragraph 20.

21. Historical records available to date disclose numerous environmental releases at the ICDC Site including, but not limited to, the following:

(a) Mid-States Express Trucking Company, March 2006: release of diesel fuel;

(b) Universal Equipment, February 1988: blue waste paint or solvent leak;

(c) Best Blast Corporation, September 1990: improper handling of paint wastes and hazardous materials;

(d) Clark Equipment, May 1974: air emissions for 10,000-gallon diesel fuel tank and 15,000-gallon hydraulic oil tank.

**ANSWER:** Respondents admit that portions of the Indian Creek Property have been used for industrial purposes, but deny that the alleged releases referred to in this paragraph have adversely impacted BNSF, or that BNSF is entitled to any relief from Respondents related to those alleged (and not admitted) releases; further answering,

Respondents lack sufficient information to admit or deny the remainder of the allegations contained in Paragraph 21, and therefore deny them.

22. BNSF or its consultants have observed widespread staining and numerous pools of what appeared to be petroleum and/or hazardous substances throughout several of the tenant spaces of the ICDC Site. Heavy staining was observed throughout the concrete surface in the main manufacturing area along the northern portion of the ICDC Site. The concrete ground surface in those areas displayed various patches and cracks and "Oil Absorbent" was placed on the concrete surface surrounding equipment, drum, totes and tanks in the areas.

**ANSWER:** Respondents lack sufficient information or knowledge to admit or deny what BNSF or BNSF's consultants purport to have observed, and therefore deny the allegations in this paragraph related thereto; further answering, Respondents deny that the alleged presence of an undisclosed material referred to by BNSF as "Oil Absorbent" is relevant or accurate, or that the purported presence of any such, unknown and undisclosed material, has adversely impacted BNSF, or that BNSF is entitled to any relief from Respondents related thereto.

***Respondents Answer To BNSF's Claim That The Alleged Petroleum Constituents at the ICDC Site Did Not Come From the 1993 Collision***

23. BNSF's investigation pursuant to the Consent Order and the Amendment to the Consent Order has established that petroleum constituents and other contaminants present at the ICDC Site are not diesel fuel and/or otherwise did not come from the 1993 train collision.

**ANSWER:** Deny.

24. On July 11, 2011, as part of its investigation under the Amendment to the Consent Order, consultants retained by BNSF recovered samples of sediment from Indian Creek at four locations on ICDC property (labeled S-7, S-8, S-9 and S-10), and at locations both upstream and downstream from ICDC's property. Three of the four samples taken on ICDC property contained concentrations of polynuclear aromatic hydrocarbons (PAHs) in excess of the IEPA's Baseline Sediment Clean-up Objectives for Petroleum Products. In particular, sediment samples S-07, located at the east end of ICDC's property across from an industrial building, and S-09, located near the exit points of four culverts from two different ICDC buildings, contained concentrations of PAHs of up to 11 and 17 PAHs in excess of Baseline Remediation Objectives.

**ANSWER:** Respondents admit that portions of the Indian Creek Property have been used for industrial purposes, but deny that the compounds alleged to be present in the samples referred to in this paragraph have adversely impacted BNSF, or that BNSF is entitled to any relief from Respondents related to those compounds; further answering, Respondents lack sufficient information to admit or deny the remainder of the allegations contained in Paragraph 24, and therefore deny them.

25. The PAHs found in the sediment samples taken from Indian Creek on ICDC property could not have migrated from the January 20, 1993 diesel fuel spill on BNSF's property. The locations where the sediment samples were taken are up-gradient and/or cross-gradient from the location of the January 20, 1993 diesel fuel spill. Additionally, numerous soil samples have been taken from the ground, and numerous groundwater monitoring wells have been installed, at locations between the area of the January 20, 1993 diesel fuel spill and the location of the sediment samples from Indian Creek on ICDC's property; but none of those locations have revealed concentrations of PAHs that exceed applicable IEPA environmental clean-up objectives.

**ANSWER:** Respondents deny that the compounds alleged to be present in the samples referred to in this paragraph have adversely impacted BNSF, or that BNSF is entitled to any relief from Respondents related to those compounds; further answering, Respondents lack sufficient information to admit or deny the remainder of the allegations contained in Paragraph 25, and therefore deny them; further answering, Respondents state that BNSF's rail yard, where petroleum products are used and stored and were released, is located up-stream of the Indian Creek Property. Further answering, the absence of PAHs above cleanup objectives is evidence of Complainant's lack of liability for diesel fuel and contamination on the Indian Creek Property; further answering, that diesel fuel and related contamination at the Indian Creek Property is pervasive, with free product found in numerous locations at various times; further answering, Complainant and its environmental consultants installed many improperly screened monitoring wells, and more than 20 years after the January 20, 1993 train

accident, Complainant and its environmental consultant have still failed to identify the full nature and extent of diesel fuel and contamination on the Indian Creek Property caused by the train accident.

26. Forensic chemical analysis of liquid and soil samples from the ICDC Site indicates that the petroleum constituents found at the site are heavy fuel oil, not diesel fuel. For example:

(a) Liquid samples taken from monitoring wells over various periods exhibit biomarkers that are found in heavy fuel oil, but do not exist in diesel fuel because they are removed from diesel during distillation.

(b) Liquid samples taken from monitoring wells over various periods exhibit hydrocarbon ranges consistent with heavy fuel oil and not diesel fuel.

(c) Variations in the heavy fuel oil constituents found in soil samples taken from various locations on the site indicate that they come from different releases.

(d) Soil samples taken from the sanitary sewer line excavation exhibit compositions that are consistent with heavy fuel oil and not diesel fuel.

**ANSWER:** Deny; further answering, forensic chemistry establishes the presence of Complainant's diesel fuel and contamination on and under the Indian Creek Property; further answering, the January 20, 1993 train crash released diesel fuel, lubricating oil and hydraulic oil.

27. Upon review of the forensic chemical analysis submitted by BNSF, IEPA has acknowledged that "it is clear there is a heavy fuel oil present at the site." IEPA, however, has required BNSF to conduct further investigation because of the possibility that a fraction of the petroleum constituents at the site could be "weathered diesel fuel."

**ANSWER:** Respondents admit that a portion of the letter from Illinois EPA has been accurately reported in this paragraph, deny the remainder of the allegations contained in Paragraph 27; further answering, Illinois EPA has also inquired about other non-diesel fuel petroleum products that were released incident to the January 20, 1993 train crash at the BNSF tracks.

***Respondents Answer to BNSF's Allegations That  
Respondents' Violation of the Illinois Environmental Protection Act***

28. Section 21(e) of the Act, 415 ILCS 5/21(e), provides that no person shall "dispose, treat, store or abandon any waste . . . except at a site or facility which meets the requirements of the Act and of regulations and standards thereunder."

**ANSWER:** Paragraph 28 is a statement of a law, and no response is necessary.

29. "Waste" is defined in the Act to include any "discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations . . ." 45 ILCS 5/3.535.

**ANSWER:** Paragraph 29 is a statement of a law, and no response is necessary.

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

Cause or threaten to 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.

415 ILCS 5/12(a).

**ANSWER:** Paragraph 30 is a statement of a law, and no response is necessary.

31. 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 cause a water pollution hazard." 415 ILCS 5/12(d).

**ANSWER:** Paragraph 31 is a statement of a law, and no response is necessary.

32. Liability for pollution of land or water under the Act extends to any person who has control of the source of the pollution or who owns or controls the premises where the pollution occurs.

**ANSWER:** Paragraph 32 is a statement of a law, and no response is necessary.

33. Respondents have caused or allowed contaminants as described previously in the sediments of Indian Creek on its property and is therefore in violation and liable under the aforesaid provisions Act.

**ANSWER:** Deny.

34. Respondents have, on information and belief, caused or allowed other contaminants into the ground, soil and ground water on the ICDC Site alone or in combinations with contaminants from other sources; and are therefore in violation and liable under the aforesaid provisions Act.

**ANSWER:** Deny.

35. The presence of environmental contaminants caused or allowed by Respondents on the ICDC Site is a continuing violation and will continue unless and until abated by order of the Pollution Control Board.

**ANSWER:** Deny.

***Respondents' Answer to BNSF's Allegations of  
Respondents' Liability for Contribution***

36. Section 22.2d(f) of the Act provides that

“any person may seek contribution from any other person who is liable for the costs of response actions under this Section. In resolving contribution claims, the Board or court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate.”

415 ILCS 5/22.2d(f).

**ANSWER:** Paragraph 36 is a statement of a law, and no response is necessary.

37. BNSF has been wrongfully required by IEPA to investigate and remediate contaminants on the ICDC Site when, in fact, Respondents are the parties responsible for the presence of those contaminants; and, BNSF has expended substantial sums of money to do so.

**ANSWER:** Deny.

38. BNSF is entitled to a judgment in its favor and against Respondents in an amount equal to all costs that BNSF has incurred to investigate and remediate the ICDC Site. Alternatively, BNSF is entitled to a judgment in its favor and against Respondents in an amount commensurate with Respondents' comparative responsibility for the presence of contaminants on the ICDC Site.

**ANSWER:** Deny.

WHEREFORE, Respondents respectfully request that judgment be entered in their favor and that BNSF be denied the relief requested and for such other and further relief as equity deems just.

### **AFFIRMATIVE DEFENSES**

Respondents, Indian Creek Development Company and JB Industries, Inc. state their affirmative defenses to BNSF Railway Company's Complaint as follows:

1. Complainant has a legal duty to the State of Illinois to investigate and remediate all of the diesel fuel and contamination resulting from the January 20, 1993 train accident and therefore is not entitled to the requested proportionate share determination, or contribution.

2. Complainant lacks standing to initiate the purported cause of action alleged in the Complaint, therein referring to alleged (and denied) violations of the Illinois Environmental Protection Act.

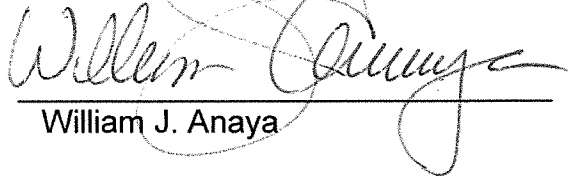
3. Complainant has admitted that its diesel fuel and related contamination has migrated to, and is on and under the Indian Creek Property, and thus Complainant may not deny the same for purposes of its Complaint.



4. Complainant has unclean hands, and is not entitled to seek the relief requested.

Respectfully submitted,

Indian Creek Development Company, JB Industries, Inc., and Chicago Title and Trust Company, as Land Trustee under Trust No. 3291 dated December 15, 1981

By:   
William J. Anaya

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