

JAN 15 2007

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

vs.)

The BURLINGTON NORTHERN 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:

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PLEASE TAKE NOTICE that on January 16, 2007, the attached document, Complainant's Motion to Set Briefing Schedule, 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 16th day of January, 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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN 18 2007

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MOTION TO SET BRIEFING SCHEDULE

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 move the board to set a briefing schedule in order that Indian Creek may file a response to the motion to dismiss and the memorandum in support thereof which have been filed by the Respondent, the Burlington Northern Santa Fe Railway Company ("BNSF"). In support thereof, Indian Creek states as follows:

1. This matter involves a release of diesel fuel on January 20, 1993 on property owned and operated by the BNSF ("BNSF Property").

2. 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.

3. In 1996, Prosecutors filed a civil enforcement action in Circuit Court and obtained a consent decree against the BNSF which expressly precludes enforcement by third parties such as Indian Creek. A copy of the Consent Decree is attached to Indian Creek’s complaint as Exhibit A thereto.

4. 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 and after contamination was discovered on the Indian Creek Property the BNSF recently attempted to close the incident without informing the Agency of the contamination found on Indian Creek’s property, despite the BNSF’s actual knowledge of said contamination.

5. Now, 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 ANY right to enforce the Act and protect its property from ongoing environmental harm in ANY forum despite the legislative dictate found in Section 2(c) of the Act 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:¹

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

¹ Of course, citizen enforcement actions may not normally be filed in Circuit Court.

6. While the Board must make a Section 30(d)(1) duplicative/frivolous determination, Indian Creek finds it imperative to respond to the motion to dismiss and misleading memorandum filed by the BNSF before that determination is made.

7. Counsel for Indian Creek is simultaneously attempting represent the applicant in a landfill sitting outside the Chicago area and draft a CERCLA brief in Federal Court and accordingly requests the relief set forth below.

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

A. Grant Indian Creek twenty-one (21) days up to and including February 6, 2007, to respond to the motion to dismiss and memorandum filed by the BNSF; and,

B. 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: *Glenn C. Sechen*

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