

ILLINOIS POLLUTION CONTROL BOARD  
January 8, 2015

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., )

Complainant, )

v. )

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

Respondents. )

PCB 07-44  
(Citizen's Enforcement - Water, Land)

---

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

Complainant, )

v. )

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. )

PCB 14-81  
(Citizen's Enforcement - Water, Land)  
(Consol.)

ORDER OF THE BOARD (by D. Glosser):

On December 4, 2006, Indian Creek Development Company (Indian Creek), 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 and JB Industries, Inc. (JB Industries) filed a citizens enforcement case against the Burlington Northern Santa Fe Railway Company, a Delaware corporation (BNSF).

In the complaint, Indian Creek and JB Industries allege that BNSF violated Sections 12(a), (d); and 21(e), of the Environmental Protection Act (Act) (415 ILCS 5/12(a),(d); and 21(e) (2004)). Indian Creek and JB Industries further allege that BNSF committed these violations by causing and allowing the discharge of diesel fuel contaminants on BNSF's property in 1993; threatened, caused and allowed the discharge of diesel fuel contaminants through migration to other parts of the property; threatened and eventually caused and allowed the ongoing discharge of contaminants onto the soil and into the groundwater; causing and allowing the deposited contaminants to move, migrate, and deposit onto other portions of the property.

On March 15, 2007, the Board accepted Indian Creek and JB Industries' complaint.

On December 10, 2013, BNSF filed a complaint against Indian Creek and JB Industries. The complaint alleges that Indian Creek and JB Industries violated Sections 12(a), 12(d), and 21(e) of the 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 Indian Creek'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 Indian Creek and JB Industries in an amount commensurate with Indian Creek and JB Industries comparative responsibility for the presence of contaminants on the Indian Creek's site. The Indian Creek site is located at 1500 Dearborn Avenue, Aurora, Kane County.

On March 20, 2014, the Board accepted BNSF's complaint.

On December 3, 2014, BNSF filed a motion asking that the Board consolidate PCB 14-81 with the related case Indian Creek Development Company, and JB Industries Inc. v. The BNSF Railway Company, PCB 07-44. BNSF argues that consolidation is appropriate as the two cases have the same issues, the "determination of the nature, source, and responsibility for contaminants on the" Indian Creek site. Mot. at 4. BNSF argues that no prejudice will occur by virtue of consolidation. *Id.*

Indian Creek and JB Industries have not filed a response to the motion. The Board's rules state:

Within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion . . . 35 Ill. Adm. Code 101.500(d).

The Board finds that Indian Creek and JB Industries have waived objection to granting the motion.

Section 101.406 of the Board's rules states:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

The Board finds that the consolidation of these two cases is in the interest of convenient, expeditious and complete determination of the claims. Therefore, the Board grants the motion to consolidate.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 8, 2015, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

---

John T. Therriault, Clerk  
Illinois Pollution Control Board