

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

\_\_\_\_\_)  
 BNSF RAILWAY COMPANY, f/k/a The )  
 Burlington Northern and Santa Fe Railway )  
 Company, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 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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 DEC - 3 2014  
 STATE OF ILLINOIS  
 Pollution Control Board

PCB-14-081

 ORIGINAL

**NOTICE OF FILING**

TO: William J. Anaya  
 Matthew E. Cohn  
 Arnstein & Lehr LLP  
 120 South Riverside Plaza  
 Suite 1200  
 Chicago, IL 606

PLEASE TAKE NOTICE that on December 3, 2014, the undersigned filed with the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, James R. Thompson Center, Suite 11-500, Chicago, Illinois, **BNSF Railway Company's Reply to Affirmative Defenses**, a copy of which is herewith served upon you.

BNSF RAILWAY COMPANY

By:   
 One of Its Attorneys

Pam Nehring  
Sean M. Sullivan  
Jennifer Schuch  
DALEY MOHAN GROBLE, P.C.  
55 West Monroe Street  
Suite 1600  
Chicago, Illinois 60603  
(312) 422-9999

**CERTIFICATE OF SERVICE**

I, Sean M. Sullivan, an attorney, certify that I caused a true copy of the foregoing **BNSF's Notice of Filing** to be served upon the attorneys listed below, by electronic mail and U.S. mail on December 3, 2014:

William J. Anaya  
Matthew E. Cohn  
Arnstein & Lehr LLP  
120 South Riverside Plaza  
Suite 1200  
Chicago, IL 60606

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STATE OF ILLINOIS  
Pollution Control Board



Sean M. Sullivan

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

THE BURLINGTON NORTHERN SANTA FE )  
RAILWAY COMPANY, a Delaware )  
Corporation, )  
)  
)  
Complainant, )  
)  
)  
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, )  
)  
Respondent. )

PCB No.2014-081

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Pollution Control Board

**BNSF RAILWAY COMPANY'S REPLY TO AFFIRMATIVE DEFENSES**

Claimant, BNSF Railway Company ("BNSF"), by and through its attorneys, Daley Mohan Groble P.C., as and for its reply to the affirmative defenses of respondents Indian Creek Development Company and JB Industries, Inc., states 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.

**REPLY:** Denied.

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.

**REPLY:** Denied.


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.

**REPLY:** Denied.

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

**REPLY:** Denied.

BNSF RAILWAY COMPANY

By:   
One of Its Attorneys

Sean M. Sullivan  
DALEY MOHAN GROBLE, P.C.  
55 West Monroe Street  
Suite 1600  
Chicago, IL 60603  
(312) 422-9999

**CERTIFICATE OF SERVICE**

I, Sean M. Sullivan, an attorney, hereby certify that on the 3<sup>rd</sup> day of December 2014, I caused the foregoing BNSF RAILWAY COMPANY'S REPLY TO AFFIRMATIVE DEFENSES and NOTICE OF FILING to be served upon the following attorneys of record by depositing the same in the U.S. Post Office box located at 55 West Monroe, Chicago, Illinois, before the hour of 5:00 p.m., addressed as follows:

Stuart A. Petersen  
STUART A. PETERSEN LAW OFFICES  
601 N. Farnsworth Avenue  
Aurora, IL 60505  
Email: stuart@stulaw.com

William J. Anaya  
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Sean M. Sullivan