

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – CHANCERY DIVISION**

The TOWN OF CICERO,)
an Illinois municipal corporation,)
)
Plaintiff,)
v.)
)
BNSF RAILWAY COMPANY,)
)
Defendant.)

14022991

Case No. 2021CH03397

**COMPLAINT FOR INJUNCTIVE RELIEF AND ABATEMENT OF
CONTINUING PUBLIC NUISANCE AND TRESPASS**

NOW COMES Plaintiff, the TOWN OF CICERO (“Town”), by and through its attorneys, Del Galdo Law Group, LLC., and for its Complaint against Defendant BNSF RAILWAY COMPANY (“BNSF”), states:

Common Facts

1. The Town is a home rule municipality located in the County of Cook, State of Illinois. At all relevant times, the Town operates and maintains a combined sewer system.
2. Portions of the Town’s combined sewer system are over 100 years old, such as large diameter brick piping dating back to 1911.
3. Because of the age of this system, it is a “combined” system in that it includes both sanitary and storm sewerage water.
4. BNSF is a railway company, that operates one of the largest railroad networks in North America, with 32,500 miles of rail across the western two-thirds of the United States. BNSF owns and operates an intermodal rail and

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maintenance yard at 5601 W. 26th Street in Cicero, Illinois, which bisects the Town and runs east-west in the area south of 26th Street.

5. The Subject Property sits on over 250 acres and occupies approximately 7% of the Town's total land. On information and belief, it is the largest private parcel of land in the Town.
6. This case arises from BNSF's development of the Subject Property, inclusive of filling and paving on its property, as well as raising the elevation several feet, which have had the effect of reducing the permeable surface and causing excessive runoff of stormwater into the Town and its system during rain events, flooding of the Town, and the degradation of the Town's combined system as further described in this Complaint.
7. Jurisdiction and venue are proper as all parties are located in or do business in Cook County, Illinois and all events complained of occurred in Cook County.
8. In 2020, the State of Illinois issued Bulletin 75, addressing rainfall data and describing a 13 percent increase in the 100 year – 24 hour storm. Broadly, this notification (adopted by the Metropolitan Water Reclamation District ("MWRD")) also coincides with observable increases in rainfall in recent years in Illinois, which have increased the stress on stormwater drainage systems both overall and with respect to particular weather events during which saturation of ground water may quickly increase.

9. The Town's combined system is particularly vulnerable to increases in stormwater given its age and original design and capacity.
10. On information and belief, BNSF's increasing of the elevation of its property by adding fill and the increased paving on the property has caused and continues to cause flooding in the Town and in some cases with surcharges of excessive stormwater sufficient to flood entire streets and create "waterfall" or "river" effects, as well as flooding the yards of residents and generally leading to standing water.
11. On information and belief, this flooding has particularly affected and continues to affect 31st Street and Ogden in the Town.
12. On information and belief, BNSF has no retention ponds or other drainage to address this excessive amount of stormwater runoff.
13. The Subject Property was previously largely soil or aggregate, and in an unraised condition – but has now been paved and filled to an increased elevation of approximately 2-3 feet, as evidenced by several layers of fill when digging on site has occurred and by only seeing the tops of previously existing fire hydrants on site.
14. On information and belief, increasing the elevation of a site increases the flow and amount of stormwater runoff from a property. Additionally, paving over surfaces leads to a larger amount of runoff as those surfaces are impermeable and unable to absorb runoff in the manner and at the rate of a soil or aggregate surface.

15. On information and belief, on and before the date of this Complaint, BNSF has engaged in backfilling, paving, and other grading on site that further disturbed the natural elevation and drainage of the Subject Property and damaged and continues to damage neighboring property through overflow of stormwater and flooding as further described herein.
16. On information and belief, BNSF purposefully increased the elevation, placed fill, engaged in backfilling and increased the amount of paving on its property in such a manner so that stormwater would run off BNSF's property and flood the streets and property of the Town and its residents.
17. The failure to appropriately provide for stormwater management does not comply with common law duties of property ownership and maintenance and leads to flooding and standing water of water to the Town and surrounding area, which is coming from a heavily industrial site that likely contains contaminants or other pollutants and damages the public health, safety and welfare of the Town and its residents.
18. These actions by BNSF will result in and continue to result in further encroachment and increasing amounts of overflow which will overwhelm Town utilities and interfere with the quiet enjoyment of properties around the Subject Property, notwithstanding that the Town and its residents have not assented to the placement of excess stormwater and contaminant matter upon their property and BNSF has not taken sufficient care to prevent the same or protect the public from resultant injury.

Count I – Trespass

19. The Town realleges and incorporates the above paragraphs as if fully stated here.
20. BNSF at all times relevant had a duty not to trespass upon Town land and property, whether directly or by causing diversion of excessive stormwater upon neighboring property and into the Town's storm and sewer system, so as to interfere with the use and enjoyment of the land and property.
21. In violation of the duty aforesaid, BNSF directed or failed to prevent the entry of large quantities of excessive stormwater to neighboring properties and the Town's storm and sewer system, thereby causing damaging and polluted liquids to be deposited on and/or corrode the integrity of nearby land and property, compromising their integrity, capacity for quiet enjoyment and/or causing great damage to the same.
22. These violations were undertaken without permission, consent, or other privilege to divert stormwater unnaturally and in excessive amounts so as to overwhelm and tax the Town's system as well as flood the surrounding area of the Town.
23. As a result, the Town has been damaged in a taxing of resources by the excess stormwater, flooding, damage to public health, safety and welfare, and resultant harms.

WHEREFORE, Plaintiff, the TOWN OF CICERO, prays that this Honorable Court enter judgment in its favor and against Defendants and in so doing further order any and all such relief as is just and proper, including but not limited to:

- (a) Ordering that BNSF construct appropriate detention ponds or other drainage system apparatuses sufficient to address and retain stormwater runoff;
- (b) Ordering that BNSF otherwise demonstrate through studies or other submissions that it has remediated the flow of stormwater during weather events to a level consistent with naturally occurring overflow;
- (c) That BNSF otherwise abate and remediate so as to prevent stormwater runoff from its property invading the property of the Town and its residents.
- (d) Enjoin BNSF from further directing stormwater runoff into the Town's system as well as causing the system to be overwhelmed and causing any flooding to surrounding property within the Town.

Count II – Public Nuisance

- 24. The Town realleges and incorporates the above paragraphs as if fully stated here.
- 25. The citizens of the Town and the general public have a right to the quiet enjoyment of public property surrounding the Subject Property and to the preservation of resources, including but not limited to sewer and storm water lines, without unnecessary diversion.

26. The depositing of excessive stormwater into neighboring property from the Subject Property constitutes a substantial and unreasonable interference of these rights by BNSF, in that, without limitation, it causes and proximately causes a substantial annoyance, inconvenience, and injury to the public through damage to neighboring property and degradation as well as overwhelming of storm and sewer lines, which endangers the public health.
27. Further, the depositing of such stormwater when mixed with pollutants and other industrial runoff from the Subject Property, or with sewerage backup caused by capacity overloads, further causes and constitutes a health hazard and an injury to the public which would otherwise not be forced to endure the same exposure to such materials and contaminants intended to be contained in subsurface lines.
28. Further still, this excessive amount of stormwater runoff and flooding created by BNSF causes and proximately causes the fundamental right of the Town and its residents to a healthful environment pursuant to Article XI of the Illinois Constitution to be impaired.
29. Said injury is of an ongoing and periodically repeating nature and will continue unrestrained in the absence of intervention to remediate drainage issues at and extending from the Subject Property.

WHEREFORE, Plaintiff, the TOWN OF CICERO, prays that this Honorable Court enter judgment in its favor and against Defendants and in so doing further order any and all such relief as is just and proper, including but not limited to:

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- (c) That BNSF otherwise abate and remediate so as to prevent stormwater runoff from its property invading the property of the Town and its residents.
- (d) Enjoin BNSF from further directing stormwater runoff into the Town's system as well as causing the system to be overwhelmed and causing any flooding to surrounding property within the Town.

Respectfully submitted,
The TOWN OF CICERO

By: /s/ Cynthia S. Grandfield
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