BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-72
	)	(Water - Enforcement)
PETCO PETROLEUM CORPORATION, an Indiana corporation,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: *See Service List*

PLEASE TAKE NOTICE that on the 2nd day of January, 2025, the attached documents were filed with the Illinois Pollution Control Board, with true and correct copies attached hereto and which are hereby served upon you. The attached documents include the following:

- Notice of Filing
- Complainant's Response in Opposition to Respondent's Motion for Certification of Question for Interlocutory Appeal
- Service List and Certificate of Service

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL, Attorney General
of the State of Illinois

/s/ Natalie Long
NATALIE A. LONG #6309569
KEVIN BARNAI, #6329422
Assistant Attorneys General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62701
(217) 843-0572
Natalie.Long@ilag.gov
Kevin.Barnai@ilag.gov

Dated: January 2, 2025

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COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR CERTIFICATION OF QUESTION FOR INTERLOCUTORY APPEAL

NOW COMES COMPLAINANT, People of the State of Illinois, by KWAME RAOUL, Attorney General of the State of Illinois ("Complainant"), by and through its undersigned counsel pursuant to Section 101.500(d) of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 101.500(d), and hereby submits this Response in Opposition to Respondent's Motion for Certification of Question for Interlocutory Appeal ("Response"), stating as follows:

I. INTRODUCTION

Through its Motion for Certification of Question for Interlocutory Appeal ("Motion"), Respondent Petco Petroleum Corporation ("Respondent" or "Petco") unnecessarily delays the advance of the underlying litigation.

By way of procedural background, on August 31, 2022, Complainant filed its Motion for Leave to File First Amended Complaint ("Motion for Leave to Amend"). Petco did not object to the Motion for Leave to Amend, and on October 20, 2022, the Illinois Pollution Control Board ("Board") granted Complainant's Motion for Leave to Amend and accepted the First Amended Complaint. On January 18, 2023, four months after the Motion for Leave to Amend was filed and subsequently accepted by the Board, Petco decided it objected to the First Amended Complaint,

and filed a Motion to Dismiss Counts 62 through 73 of the First Amended Complaint ("Motion to Dismiss"), arguing that counts 62 through 73 were time-barred by the statute of limitations set forth in Section 13-205 of the Illinois Code of Civil Procedure, 735 ILCS 5/13-205 (2022) ("Section 13-205"). On March 10, 2023, Complainant filed a Response in Opposition to the Motion to Dismiss, with the parties filing subsequent replies thereafter.

On August 22, 2024, the Board denied Petco's Motion to Dismiss ("August 22, 2024 Order"), finding that because the underlying action is an "administrative proceeding", rather than a "civil action", the Section 13-205 statute of limitations does not apply. On September 16, 2024, Petco filed a Motion for Reconsideration of the Board's August 22, 2024 Order ("Motion for Reconsideration"), to which Complainant objected on September 30, 2024, and which the Board denied on December 5, 2024 ("December 5, 2024 Order").

Petco now seeks to prolong the underlying litigation by proposing a question for certification that does not rise to the standard set forth in Illinois Supreme Court Rule 308 for interlocutory appeal. Petco's Motion should be denied.

II. LEGAL STANDARD

The procedure for interlocutory appeal from a Board order is set forth in Section 101.908 of the Board's General Rules, 35 Ill. Adm. Code 101.908, which provides as follows:

> **Section 101.908 Interlocutory Appeal**
>
> Upon motion of any party, the Board may consider an interlocutory appeal consistent with Illinois Supreme Court Rule 308.

While any party may make a motion for an interlocutory appeal, the requirements for such an appeal are stringent. Illinois Supreme Court Rule 308 sets forth a two-prong test for the consideration of a question to be certified for interlocutory appeal, providing in relevant part as follows:

> **Rule 308. Certified Questions**
>
> **(a) Requests.** When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

That is, for the Board to grant Rule 308 certification, the Board must determine if: (1) the Board's decision contains a question of law involving substantial ground for a difference of opinion; and (2) whether an immediate appeal may materially advance the ultimate termination of the litigation. *People v. Freeman United Coal Mining Co., LLC et al.*, PCB No. 10-61, 2013 WL 1776522, at *2, citing *Residents Against a Polluted Env't & the Edmund B. Thornton Found. v. County of LaSalle and Landcomp Corp.*, PCB 96-243 (Nov. 7, 1996); *People v. State Oil Co., et al.*, PCB 97-103 (May 16, 2002); and *E.R.1, LLC v. Erma Seiber et. al.*, PCB 8-30 (Apr. 21, 2011).

The Board's authority to certify interlocutory appeals is supported by judicial interpretation. *Freeman United Coal Mining Co., LLC* at *2, citing *People v. Pollution Control Bd.*, 129 Ill. App. 3d 958, 473 N.E.2d 452 (1st Dist. 1984); and *Getty Synthetic Fuel v. PCB*, 104 Ill. App. 3d 285, 432 N.E.2d 942 (1st Dist. 1982).

However, the Illinois Supreme Court has indicated that Rule 308 appeals are to be allowed only in certain exceptional circumstances. *Freeman United Coal Mining Co., LLC,* at *2, citing *People v. Pollution Control Bd.*, 473 N.E.2d at 456, citing *People ex. rel. Mosley v. Carey*, 74 Ill. 2d 527 (1979); *see also Assignee of Caseyville Sport*, PCB 08-30 at 4 (April 21, 2011); *People v. State Oil* Co., PCB 97-103 at 3 (May 16, 2002); *People v. Old World Indus*., PCB 97-168 at 3 (Jan.

7, 1999). Rule 308 therefore should be strictly construed and sparingly exercised. *Id.* at *2, citing *People v. Pollution Control Bd.*, 473 N.E.2d at 456.

As relates to the first element of the two-prong test, "[t]he contention that a question presents a matter of first impression does not automatically satisfy the first prong of the Board's test for granting Rule 308(a) certification. A question may be of first impression and yet may still not involve an issue on which there are substantial grounds for difference of opinion." *Freeman United Coal Mining Co., LLC* at *6.

With regard to the second element of the two-prong test, "[i]n order to establish that the exceptional relief of a Rule 308(a) interlocutory appeal is warranted, a movant must provide considerable evidence that a question will significantly advance the ultimate termination of the case before the Board." *Freeman United Coal Mining Co., LLC* at *6.

III. ARGUMENT

A. Petco's question for certification misstates the Board's August 22, 2024 Order.

When the appellate court reviews a question under Rule 308, the appellate court is limited to answering the legal questions certified. *Colunga v. Advocate Health & Hosps. Corp.*, 2023 IL App (1st) 211386 at *P2, citing *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 398 Ill. App. 3d 773, 778, 935 N.E.2d 949, 343 Ill. Dec. 721 (2009).

The question that Petco presents to the Board for certification is:

> Whether the five-year statute of limitations in 735 ILCS 5/13-205, which applies to 'all civil actions not otherwise provided for,' applies to civil enforcement actions filed before the Board pursuant to Section 5/31(d)(1) of the Act, 415 ILCS 5/31(d)(1).

(Mot. at 4.) This question must be rejected, because in the formulation of its question, Petco ignores the content of the Board's August 22, 2024 Order. In its August 22, 2024 Order, the Board

explicitly stated that the underlying action is an administrative proceeding, and not a civil action, and therefore the Section 13-205 statute of limitations does not apply. (Aug. 22, 2024 Order at 5.)

Petco does not ask in its proposed question whether the underlying litigation should be classified as an administrative proceeding or a civil action, which is the primary distinction upon which the finding of the August 22, 2024 Order rests. Instead, contrary to the Board's findings, Petco presumes in its question that the underlying action is a "civil enforcement action", and then seeks review of whether the Section 13-205 statute of limitations applies. By proposing the question in this fashion, Petco implicitly asks the Board to refute its August 22, 2024 Order classifying the underlying cause as an "administrative proceeding" via the process of certification. Petco's proposed question is inappropriate, and its Motion should be denied.

B. Petco's question for certification fails to present an issue where there is substantial ground for difference of opinion, and therefore fails to meet the first element of the Rule 308 two-prong test.

Apart from the poor formulation of Petco's question, Petco still fails to present an issue where there is "substantial ground for difference of opinion".

In the August 22, 2024 Order, the Board acknowledges that, for the first time, it examines whether a case brought to it is a "civil action" for the purposes of Section 13-205. (Aug. 22, 2024 Order at 4.) In its Motion, Petco argues that by virtue of the issue being one of first impression, a substantial ground for difference of opinion exists that warrants appellate review. (Mot. at 4-6.) Petco is incorrect. The mere fact that a question presents a matter of first impression does not mean the first prong of the Rule 308 test is satisfied. *Freeman United Coal Mining Co., LLC* at *6.

To bolster its assertion, Petco offers a host of policy reasons that purport to show why this particular issue of first impression warrants interlocutory review. Broadly speaking, Petco argues that by virtue of the Board's characterization of the underlying litigation as an administrative

proceeding, rather than a civil action subject to 13-205, the floodgates have been opened for the State to file with the Board any litigation that otherwise would be time-barred in the circuit courts. Petco's concerns are misplaced, and ignore existing case law.

As set forth in extensive detail in the underlying record, the Board has previously found that the Section 13-205 statute of limitations does not apply to actions brought by the State before the Board pursuant to Section 31 of the Act. *People of the State of Ill. v. John Crane Inc.* (May 17, 2001), PCB 01-76, slip op. at 5; *see also Pielet Bros. Trading, Inc. v. Pollution Control Bd*., 110 Ill. App. 3d 752, 758 (5th Dist. 1982); *People v. Am. Disposal Co. and Consol. Rail Corp.* (May 18, 2000), PCB 00-67, slip op. at 3. *See also Complainant's Resp. in Opp. to Respondent's Mot. to Dismiss Cts. 62 through 73 of the First Am. Compl.*, at 6 (March 10, 2023). Moreover, it is well-established law that the Section 13-205 statute of limitations ***does not*** apply to a governmental entity acting in the public interest, whether before the circuit court or the Board. Instead, the courts have found that the doctrine of governmental immunity, also known as the "public interest exception", defeats any statute of limitations. *See, e.g., City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264 (1st Dist. 2004). *See also, generally, Complainant's Resp. in Opp. to Respondent's Mot. to Dismiss Cts. 62 through 73 of the First Am. Compl*. (March 10, 2023) and *Complainant's Sur-Reply to Respondent's Reply to Complainant's Resp. in Opp. to Respondent's Mot. to Dismiss Cts. 62 through 73 of the First Am. Compl*. (June 1, 2023).

Petco's proposed question seeks to relitigate an issue that is not in doubt—namely, whether the Section 13-205 statute of limitations applies to actions brought by the State acting in the public interest, whether before the circuit court or the Board. Although the circuit courts and the Board's August 22, 2024 Order approach Section 13-205 from different angles, the result is the same: Section 13-205's statute of limitations would not apply to this case in either forum. Section 13-205

does not apply to this State action before the Board because it is an "administrative proceeding". Section 13-205 likewise does not apply to this State action before the circuit court due to the public interest exception. The Board's decision creates no additional burden on Respondent not already encountered in the circuit court when the public interest exception is applied to defeat Section 13-205. Petco's policy concerns are therefore moot; regardless of the forum, Section 13-205 does not apply, albeit for differing reasons.

Petco further relies upon case law from Massachusetts, Kentucky, Florida, and Connecticut to argue that a substantial ground for difference of opinion exists. Petco's reliance upon these cases is misplaced. It goes without saying that appellate law from Massachusetts, Kentucky, Florida, and Connecticut is not binding precedent on the Board or Illinois courts. Petco notably does not cite any Illinois case law in support of its position. Beyond that, the cases are either distinguishable, or supportive of Complainant's opposition to Petco's Motion.

In the Massachusetts case *Suburban Home Health Care, Inc. v. Executive Office of Health & Human Services,* 488 Mass. 347 (Mass. 2021), the Massachusetts supreme court found that a statute of limitations may apply to <u>certain</u> (not all) administrative proceedings, with "actions of contract" being one such scenario. *Suburban Home Health Care, Inc.*, at 347. The court found that government payments of Medicaid funds to healthcare providers were essentially "actions of contract," and that waiting over a decade to recover the government's overpayment of Medicaid funds was barred by a statute of limitations that dealt with "actions of contract". *Id.* The underlying case is readily distinguishable. In the present action, the State neither seeks to recover funds that it expended, nor to recover under a theory of contract law. On the contrary, the State here brings an environmental enforcement action before the Board, seeking to hold Petco accountable for actions that Petco committed in violation of State environmental law, which is both statutory and

constitutional in nature. *See, generally,* 415 ILCS 5/1 *et seq.* (2022); *see also* IL. CONST. ART. XI, Sec. 1 (establishing the right to a "healthful environment for the benefit of this and future generations"). An environmental enforcement action brought by the State before the Board is distinct from an action of contract, which might be brought before a different type of administrative body, and—in any event—falls squarely within the public interest exception to the Section 13-205 statute of limitations.

Likewise, in *Commonwealth of Kentucky, et al. v. Kentucky Insurance Guaranty Association*, 972 S.W.2d 278 (Ky. Ct. App. 1997), the Court of Appeals found that a statute of limitations applied to a bond forfeiture proceeding, holding that a "bond forfeiture proceeding is simply an administrative counterpart to a common law contract action against a surety". *Kentucky Ins. Guaranty Ass'n*, at 281. Again, the underlying case is neither a bond forfeiture proceeding nor a contract action; it is a State environmental enforcement action, and one which falls within the public interest exception to the Section 13-205 statute of limitations.

In the Florida case *Hames v. City of Miami Firefighters' & Police Officers' Trust*, 980 So. 2d 1112 (Fla. Dist. Ct. App. 2008), the Court of Appeal examined whether a statute of limitations applied to an administrative disciplinary proceeding, finding that it did not. Once more, the issue of monetary remuneration comes into play. The appellant, a retired police officer, was found guilty by a federal court of giving false and misleading sworn statements regarding the circumstances surrounding a shooting. *Hames* at 1113. As a consequence, a trust fund that operated to provide retirement benefits to retired police officers initiated a proceeding to discontinue Hames' retirement benefits and to order the return of amounts he had received in excess of his accumulated contributions. *Id.* at 1114. The Court of Appeal found that no statute of limitations applied to the actions of the trust fund, and that the trust fund was entitled to revoke the appellant's retirement

benefits, because the trust fund was undertaking an administrative disciplinary proceeding. *Id.* at 1116. While the underlying case differs from *Hames* in that the State is not seeking to recoup expended funds from Petco, but instead hold Petco liable for its violations of Illinois environmental law, insofar as *Hames* stands for the proposition that a statute of limitations does not apply when a government actor seeks to hold a person or entity accountable for its actions, *Hames* supports Complainant's position that Section 13-205 does not apply to the present case.

In the Connecticut case *Roger J. Bouchard, et al. v. State Employees Retirement Commission*, 328 Conn. 345 (Conn. 2018), the Supreme Court of Connecticut examined whether retired State employees could challenge the commission's methods for calculating retirement benefits decades after the retirees began to receive such benefits. *Bouchard* at 366. The court concluded that the retirees' claims were analogous to a contract action, and accordingly found that a statute of limitations for contract actions applied to the retirees' claims. *Id.* at 367. Again, this is distinguishable from the present case, where the State is not seeking to recoup expended monies, but to bring a State environmental enforcement action. As such, the Section 13-205 statute of limitations does not apply, particularly in light of the public interest exception.[1]

To summarize: the cases upon which Petco relies all concern monetary disputes, which are distinguishable from a State environmental enforcement action, grounded in statutory and constitutional law. Petco's case law does not offer the support it claims.

[1] It is worth noting, too, that the court in *Bouchard* went out of its way to recognize that not all jurisdictions apply statutes of limitations to administrative proceedings, stating: "We recognize that courts in some jurisdictions have not applied analogous statutes of limitations to administrative proceedings when such statutes refer to a 'civil action' or an 'action', as do ours, because the common meaning ascribed to those terms refers to judicial proceedings. See, e.g., *Oakland v. Public Employees' Retirement System*, 95 Cal. App. 4th 29, 48, 115 Cal. Rptr. 2d 151 (2002); *Matter of Wage & Hour Violations of Holly Inn, Inc.*, 386 N.W.2d 305, 307-308 (Minn. App. 1986); *Guthmiller v. North Dakota Dept. of Human Services*, 421 N.W.2d 469, 471 (N.D. 1988); *Morgan v. Dept. of Commerce*, 2017 UT App 225, 414 P.3d 501, 2017 WL 6154336, *3 (Utah App. 2017)." *Bouchard* at 365.

There is no substantial ground for a difference of opinion as to whether the Section 13-205 statute of limitations applies. Petco's Motion therefore fails to meet the first element of the Rule 308 two-prong test. Petco's Motion therefore should be denied.

C. Petco's question for certification will not materially advance the ultimate termination of the litigation, and therefore fails to meet the second element of the Rule 308 two-prong test.

Because the question posed by Petco fails to meet the first element of the Rule 308 two-prong test, the Board need not consider the second element. Nevertheless, Petco's question likewise fails to meet the second element of the Rule 308 two-prong test, because it will not materially advance the ultimate termination of the litigation.

In its Motion, Petco puts the cart before the horse. Petco claims an appeal would determine the scope of discovery, motion practice, evidentiary presentation, and Board findings required to conclude this case. This is incorrect. Petco appears to reach this conclusion by relying on its poorly worded question, which—as discussed in Section III.A, *supra*—seeks to circumvent the finding of the Board's August 22, 2024 Order that the underlying case is an "administrative proceeding", rather than a "civil action". Contrary to Petco's claims, interlocutory appeal of a rightly worded question based on the August 22, 2024 Order would only determine if the underlying case is best characterized as an "administrative proceeding" or a "civil action" for the purposes of considering Section 13-205. If the appellate court determined that the underlying case is a "civil action", this decision alone would not resolve whether Section 13-205 is applicable. Instead, the Board then would need to consider whether the public interest exception applies to defeat the Section 13-205 statute of limitations, this being a question the Board has not yet examined in this case. (Aug. 22, 2024 Order at 5.) As already extensively discussed in Section III.B, *supra*, the Section 13-205 statute of limitations does not apply in this case.

Petco also argues that, were the number of counts to be reduced as a result of an appeal, that would expedite reaching a conclusion in the case. Petco is incorrect. The initial complaint in this action consisted of 61 counts. The amended complaint consists of 73 counts. While the circumstances of each count are distinct, in the aggregate the 73 counts focus on relatively similar violations surrounding discrete oil and brine discharges. A difference between 61 counts and 73 counts, all of a similar pattern, is not so great that it will significantly contribute to a lessened burden for the parties in discovery or argument, or for the Board's consideration of what the parties submit, or allow for a significantly expedited presentation and consideration of the same. Even if Petco were to prevail on its question through interlocutory appeal, only 12 of 73 counts would be affected. A penalty hearing on each of the other violations would still be necessary, and thus the ultimate termination of these proceedings would in no way be affected if interlocutory appeal were granted on this question. *See, e.g., People v. Freeman United Coal Mining Co., LLC, et al.*, PCB No. 10-61, 2013 WL 1776522, at *8.

Moreover, the burden on the movant is to provide *considerable evidence* that a question will significantly advance the ultimate termination of the case. *People v. Freeman United Coal Mining Co., LLC, et al.*, PCB No. 10-61, 2013 WL 1776522, at *6. Petco does not provide any such evidence; it merely offers conclusory statements, without supporting its conclusions. This lack of support cannot rise to the standard required of the movant to meet the second element of the Rule 308 two-prong test.

Petco's question for certification will not materially advance the ultimate termination of the litigation. Petco's Motion therefore fails to meet the second element of the Rule 308 two-prong test. Petco's Motion therefore should be denied.

D. Petco fails to establish that "exceptional circumstances" exist that warrant the certification of its question.

The case law is clear that Rule 308 appeals are to be allowed only in exceptional circumstances. *People v. Freeman United Coal Mining Co., LLC, et al.*, PCB No. 10-61, 2013 WL 1776522, at *2. By extension, Rule 308 should be strictly construed and sparingly exercised. *Id.*

Petco does not claim the underlying case is one of "exceptional circumstances". This omission is correct on Petco's part, because the underlying litigation indeed does not present "exceptional circumstances". In fact, after Complainant filed its Motion for Leave to File First Amended Complaint on August 31, 2022, Petco did not file a response objecting to Complainant's motion. It was four months later, on January 18, 2023, well after the Board had accepted the First Amended Complaint, that Petco decided it had objections to the First Amended Complaint, setting them forth in its Motion to Dismiss.

There is nothing extraordinary in the present case that would warrant the use of a power that is only to be exercised sparingly. Respondent fails to meet the burden required to exercise the considerable power of an interlocutory appeal. Petco's Motion therefore should be denied.

E. Petco cites policy concerns that are irrelevant and moot.

As outlined in Section III.B, *supra*, Petco raises policy concerns that are irrelevant and moot. Petco argues that by virtue of characterizing the underlying case as an "administrative proceeding", rather than a "civil action", the Board has thrown open the doors to the State, incentivizing the State to bring claims to the Board that would otherwise be time-barred in the circuit courts. As already discussed, Section 13-205 neither applies to this case before the Board or before the circuit court. Respondent's policy concerns are therefore moot.

F. Petco incorrectly seeks leave to appeal its question in venues that are inappropriate.

In addition to the other fatal defects in Petco's Motion, Petco further fails to identify the appropriate venue for an interlocutory appeal. In its Motion, Petco indicates that if the Board certifies Petco's question, Petco would seek leave to appeal in the First, Fourth, or Fifth Districts. (Mot. at 1.) Appeal to the First and Fourth Districts would be inappropriate for this case.

While both 35 Ill. Adm. Code 101.908 and Illinois Supreme Court Rule 308 are silent as to the question of venue for an interlocutory appeal from a Board decision, the law nevertheless gives guidance as to appropriate venue selection.

Section 3-104 of the Administrative Review Act, 735 ILCS 5/3-104 (2022), normally provides three potential venues for an appeal of a final decision in an administrative action, setting forth in relevant part as follows:

> If the venue of the action to review a final administrative decision is expressly prescribed in the particular statute under authority of which the decision was made, such venue shall control, but if the venue is not so prescribed, an action to review a final administrative decision may be commenced in the Circuit Court of any county in which (1) any part of the hearing or proceeding culminating in the decision of the administrative agency was held, or (2) any part of the subject matter involved is situated, or (3) any part of the transaction which gave rise to the proceedings before the agency occurred.

735 ILCS 5/3-104 (2022).[2] However, Section 41(a) of the Illinois Environmental Protection Act, 415 ILCS 5/41(a), sets forth the procedures for appeal of a final Board decision, authorizing the Appellate Court for the District in which the cause of action arose to hear the appeal, providing in relevant part as follows:

> (a) Any party to a Board hearing . . . any party adversely affected by a final order or determination of the Board . . . may obtain judicial review, by filing a petition for review within 35 days from the date that a copy of the order or other final action sought to be reviewed was served upon the party

[2] Section 3-113 of the Administrative Review Act, 735 ILCS 5/3-113 (2022), also discusses direct review of final administrative orders by the appellate court, but is silent on the question of venue.

> affected by the order or other final Board action complained of, under the provisions of the Administrative Review Law, as amended and the rules adopted pursuant thereto, except that review shall be afforded directly in the Appellate Court for the District in which the cause of action arose and not in the Circuit Court.

415 ILCS 5/41(a) (2022). Where jurisdiction is conferred by statute, the general rule is that the legislature may place such conditions on the ability of the court to hear the matter as it deems fit. *Willowbrook Motel Partnership v. Pollution Control Bd.,* 135 Ill. App. 3d 343, 346 (1985), *citing Brown v. Van Keuren* (1930), 340 Ill. 118, 172 N.E. 1; *McCue v. Brown* (1974), 22 Ill. App. 3d 236, 317 N.E.2d 398. The Appellate Court has previously found that Section 41 of the Illinois Environmental Protection Act vests jurisdiction in "the Appellate Court" and establishes venue in "the District in which the cause of action arose." *Id.* citing *Cf. Kane County Defenders, Inc. v. Pollution Control Bd.*, No. 84–1518.

While Section 41(a) deals with appeals of final administrative decisions, it would be inconsistent for an interlocutory appeal of a Board order to be afforded a greater host of venue options than those available to an appeal of a final Board decision. Venue, then, for an interlocutory appeal of the August 22, 2024 Order would be limited to the Fifth District, which is where the causes of action arose. If the Board does choose to certify Petco's question for interlocutory appeal, appeal should be limited to venue in the Fifth District.

IV. CONCLUSION

Petco's proposed question for certification misstates the Board's August 22, 2024 Order. Petco's proposed question fails to present an issue where there is substantial ground for difference of opinion, and therefore fails to meet the first element of the Rule 308 two-prong test. Petco's proposed question will not materially advance the ultimate termination of the litigation, and therefore fails to meet the second element of the Rule 308 two-prong test. Petco fails to

demonstrate that "exceptional circumstances" exist that would warrant certification of Petco's question. Petco cites policy concerns that are irrelevant and moot. Petco's Motion for Motion for Certification of Question for Interlocutory Appeal therefore should be denied.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board deny Respondent's Motion for Certification of Question for Interlocutory Appeal.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: /s/ Natalie Long
NATALIE LONG
Assistant Attorney General
Environmental Bureau, Springfield

Of Counsel:
NATALIE LONG, #6309569
KEVIN BARNAI, #6329422
Assistant Attorneys General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62701

Telephone: (217) 843-0572
Facsimile: (217) 524-7740
E-mail: Natalie.Long@ilag.gov
Kevin.Barnai@ilag.gov

Date: January 2, 2025

SERVICE LIST

Don Brown
Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph Street
Suite 11-500
Chicago, IL 60601
Don.Brown@illinois.gov
(by electronic filing)

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
Carol.Webb@illinois.gov
(by email)

Paul T. Sonderegger
Tim Briscoe
Thompson Coburn LLP
One U.S. Bank Plaza
St. Louis, MO 63101
psonderegger@thompsoncoburn.com
tbriscoe@thompsoncoburn.com
(by email)

CERTIFICATE OF SERVICE

I, Natalie Long, an Assistant Attorney General, certify that on the 2nd day of January, 2025, I caused to be served the foregoing Notice of Filing, Complainant's Response in Opposition to Respondent's Motion for Certification of Question for Interlocutory Appeal, and Service List and Certificate of Service on the parties named on the attached Service List, by email or electronic filing, as indicated on the attached Service List.

/s/ Natalie Long
NATALIE LONG
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62701
Ph.: 217-843-0572
Natalie.Long@ilag.gov
ARDC No. 6309569