BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-072
	)	(Water - Enforcement)
PETCO PETROLEUM CORPORATION, an Indiana corporation,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: *See Service List*

PLEASE TAKE NOTICE that on the 5th day of March, 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 Motion for Leave to File Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint
- Complainant's Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint
- 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
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Dated: March 5, 2025

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.	)	

COMPLAINANT'S MOTION FOR LEAVE TO FILE REPLY TO RESPONDENT'S RESPONSE IN OPPOSITION TO COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE AND ADDITIONAL DEFENSES TO THE FIRST AMENDED COMPLAINT

NOW COMES COMPLAINANT, People of the State of Illinois, by KWAME RAOUL, Attorney General of the State of Illinois, by and through its undersigned counsel pursuant to Section 101.500 of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 101.500, and hereby submits this Complainant's Motion for Leave to File Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint, stating as follows:

1. On October 20, 2022, by order of the Illinois Pollution Control Board ("Board"), the Board accepted Complainant's First Amended Complaint ("First Amended Complaint").

2. On January 18, 2023, Respondent filed its Answer, Affirmative, and Additional Defenses to the First Amended Complaint ("Answer and Defenses"), along with a Motion to Dismiss Counts 62 through 73 of the First Amended Complaint ("Motion to Dismiss").

3. On March 10, 2023, Complainant filed both a response to the Motion to Dismiss, and a Motion to Strike Respondent's Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter.

4. The parties filed responses, replies, and sur-replies on the motions.

5. On August 8, 2024, the Board entered an order ("August 8, 2024 Order"), striking Petco's alleged affirmative defenses C and L with prejudice; striking Petco's alleged affirmative defenses A, B, D, E, F, G, J, and K, and a portion of affirmative defense H without prejudice; and granting Petco leave to amend its affirmative defenses B, D, E, F, and I, as well as a portion of affirmative defense H.

6. On August 22, 2024, the Board entered an order striking with prejudice the portion of Affirmative Defense H pertaining to Petco's statute of limitations argument.

7. On January 6, 2025, Petco filed its Amended Affirmative and Additional Defenses ("Amended Defenses").

8. On February 5, 2025, Complainant filed its Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint ("Motion to Strike").

9. On February 19, 2025, Respondent filed its Response in Opposition to Motion to Strike Respondent's Amended Affirmative and Additional Defenses ("Response").

10. Respondent's Amended Defenses were both legally and factually deficient.

11. Respondent's Response fails to address the legal and factual deficiencies; mischaracterizes an interagency agreement; fails to attach necessary documentation to support its Amended Defenses and Response; and cites to distinguishable case law.

12. Complainant should be allowed to file Complainant's Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint ("Reply") to address the Response's failure to rectify the legal and factual deficiencies; to correct Respondent's mischaracterization of

an interagency agreement; to identify instances when Respondent failed to attach necessary documentation; and to distinguish the case law offered by Petco, as well as provide relevant case law that replies to Petco's Response.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order granting this motion, allowing the filing of Complainant's Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint, and granting such other relief as the Board deems proper.

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
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Assistant Attorney General
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Date: March 5, 2025

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-072
	)	(Water - Enforcement)
PETCO PETROLEUM CORPORATION, an Indiana corporation,	)	
	)	
	)	
Respondent.	)	

COMPLAINANT'S REPLY TO RESPONDENT'S RESPONSE IN OPPOSITION TO COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AMENDED AFFIRMATIVE AND ADDITIONAL DEFENSES TO THE FIRST AMENDED COMPLAINT

NOW COMES COMPLAINANT, People of the State of Illinois, by KWAME RAOUL, Attorney General of the State of Illinois, by and through its undersigned counsel pursuant to Section 101.500(e) of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 101.500(e), and hereby submits this Complainant's Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint ("Reply"), stating as follows:

I. INTRODUCTION

In its Response in Opposition to Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint ("Response"), Petco fails to distinguish between its affirmative defenses and its additional defenses, which is necessary for allocating the burden of proof; fails to provide sufficient factual support for its amended defenses; mischaracterizes an interagency agreement; fails to attach necessary documentation; and cites to distinguishable case law. Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint ("Motion") should be granted, and Petco's amended defenses should be stricken with prejudice.

II. ARGUMENT

1. Petco fails to distinguish between its affirmative defenses and its additional defenses, which is a necessary distinction for identifying which party bears the burden of proof.

In its Response, Petco once more fails to distinguish between its affirmative defenses and its additional defenses. As previously stated, the distinction matters.

Complainant's First Amended Complaint is brought pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2022). Section 31(e) of the Act provides as follows:

> e) In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof. If such proof has been made, the burden shall be on the respondent to show that compliance with the Board's regulations would impose an arbitrary or unreasonable hardship.

415 ILCS 5/31(e) (2022). Section 31(e) places the initial burden of proof on Complainant. If Respondent raises defenses to counter Complainant's efforts, the burden of proof still rests on the Complainant to demonstrate its claims.

When a party sets forth an affirmative defense, however, it is well-established that "the party who asserts an affirmative defense has the burden of proof and must establish it by a preponderance of the evidence". *Shackleton v. Fed. Signal Corp.*, 196 Ill. App. 3d 437, 444 (1st Dist. 1989) (citing *Lawrence v. Bd. of Education*, 152 Ill. App. 3d 187 (5th Dist. 1987)); *Baylor v. Thiess,* 2 Ill. App. 3d 582, 584 (2d Dist., 1971); *Krueger v. Dorr*, 22 Ill. App. 2d 513, 527 (2d Dist., 1959). See also *EPA v. Peter D. Giachini*, PCB No. 77-143, slip op. at 8 (May 24, 1979). A respondent must plead an affirmative defense with the same degree of specificity required by

complainant to establish a cause of action. *Hartmann Realtors v. Biffar,* 2014 IL App (5th) 130543, ¶ 20. See also *Int'l Ins. Co. v. Sargent & Lundy,* 242 Ill. App. 3d 614, 630 (1st Dist. 1993).

In order to prepare its case for hearing, Complainant needs to know where the burden of proof rests vis-à-vis the amended defenses that Respondent raises. If Respondent raises a defense, the burden of proof for the claims remains on Complainant. If Respondent raises an affirmative defense, the burden of proof then shifts to Respondent. If Respondent raises a mere defense but *claims* it is an affirmative defense, the defense should be stricken. *Pryweller v. Cohen*, 282 Ill. App. 3d 899, 901 (1st Dist. 1996). If Respondent pleads mitigation factors as either an affirmative defense or a defense, it should be stricken. See, e.g., *People v. Texaco Refining and Marketing, Inc.*, PCB 02-3, slip op. at 6, 7 (Nov. 6, 2003).

How Petco chooses to characterize its defenses, then, is critical; the Board and Complainant should not be required to divine the distinction on their own. Petco should be required to state forthrightly the nature of the defenses that it is presenting to the Board.

Moreover, it would be inappropriate to wait until the time of a hearing to determine which, if any, of Respondent's defenses are affirmative defenses or other defenses. In order to litigate its claims, Complainant needs to know from the outset which items it bears the burden of proving, and which items Respondent must shoulder.

The distinction between which of Petco's amended defenses are "affirmative defenses" or "additional defenses" therefore does matter, and should be resolved now, as opposed to later. Petco was presented a second chance to correct this deficiency in its amended defenses and failed to do so. Petco's amended defenses therefore should be stricken with prejudice for once more being legally insufficient.

2. Petco fails to plead sufficient facts to satisfy Illinois pleading standards.

It is well-established that Illinois requires fact pleading, rather than notice pleading. "Under 'fact pleading,' the pleader is required to set out ultimate facts which support his cause of action." *Lempa v. Finkel*, 278 Ill. App. 3d 417, 413 (2d Dist. 1996). "[T]he purpose of pleadings is to determine the issues to be tried". *Neff v. Davenport Packing Co.*, 131 Ill. App. 2d 791 (3rd Dist. 1971).

Petco fails to allege sufficient facts in its Amended Defenses C, D, and E. In its Response regarding Amended Defense C, Petco argues that Complainant is asking for a heightened pleading standard. Petco is incorrect. Complainant simply wants to know *how* Petco was purportedly prejudiced by the passage of time; *how* Complainant purportedly lacked due diligence; and *why* Petco believes extraordinary circumstances exist in this case that might warrant the application of laches against a government entity. Petco sets forth conclusory statements, but no facts, in support of its defense. Amended Defense C therefore lacks sufficient factual support to meet Illinois pleading standards, and should be stricken with prejudice.

Regarding Amended Defense D, Petco fails to set forth *how* the remediation steps enumerated in its laundry list of purported actions relate, in any way, to the specific sites and equipment that are the subject of Complainant's First Amended Complaint. The list is detached from the factual circumstances of the First Amended Complaint, and does not help Complainant to know what Respondent's defense, if any, will be to a given count. The lack of specific facts to support Petco's defense therefore renders Amended Defense D factually insufficient, and it should be stricken with prejudice.

Regarding Amended Defense E, the same factual issues that exist in Amended Defense D extend to Amended Defense E. Petco claims it expended funds to upgrade its operations, but fails

to explain which purported expenditures relate to which counts in the First Amended Complaint. It is unclear how Complainant is supposed to reply to a defense that apparently even Petco is unsure if, and how, it applies. The purpose of the pleadings is to determine the issues to be tried, something which Amended Defense E fails to do. Amended Defense E therefore should be stricken with prejudice.

3. Petco cites to case law regarding the issue of "control" over the source of pollution that is distinguishable and inapposite.

In its Response discussing Amended Defense B, Petco argues it should not be held liable because it did not exert the "control" necessary for a finding of a violation of the Act. In support of its argument, Petco cites in its Response to *Phillips Petroleum Co. v. Pollution Control Board*, 72 Ill. App. 3d 217 (2d Dist. 1979).[1]

The case *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788 (5th Dist. 1993) helpfully examines the *Phillips* case alongside another illustrative case, *Perkinson v. Pollution Control Board*, 187 Ill. App. 3d 689 (3rd Dist. 1989). Although Phillips Petroleum owned a tank car, the tank car was under the complete control of the railroad company at the time of derailment, and so the appellate court found that Phillips was not liable under Section 12(a) of the Act. However, in *Perkinson*, vandals caused pollution at a landowner's hog-farming operation. Because there was no indication that the landowner had taken any precautions to prevent the actions of the vandals, the landowner was found to be liable.

The control, therefore, that is needed to prove a violation under the Act is not, as Petco claims in Amended Defense B, "cause-in-fact and/or proximate cause". Petco operated the equipment in Counts XXIV, XLII, LVII, and VII from which discharges occurred and at the time

[1] In Amended Defense B, Petco cites "*Phillips Petroleum Co. v. Ill. Env't Prot. Agency* [sic], 72 Ill App. 3d 217, 220, 390 N.E.2d 620, 623 (2nd Dist. 1979)", which is apparently a typographical error.

the discharges occurred. The appropriate standard for liability is set forth under the Act, and is not the causation standard used for liability under tort. Amended Defense B therefore should be stricken with prejudice.

4. Respondent mischaracterizes the division of duties and competencies set forth in the interagency Memorandum of Agreement.

The Memorandum of Agreement ("MOA") that Petco references in Amended Defense D was attached to Complainant's Motion to Strike Respondent's Affirmative and Additional Defenses, filed on March 10, 2023. Complainant attaches the same MOA to this Reply as Exhibit A for ease of reference.

In its Response, Petco argues that the Illinois Environmental Protection Agency ("Illinois EPA") and the Illinois Department of Natural Resources ("Illinois DNR") have overlapping jurisdiction pursuant to the MOA. Respondent's arguments in its Response show that Petco continues to conflate the competencies of Illinois EPA and Illinois DNR.

The MOA recognizes the jurisdictions that correspond to each governmental agency, setting forth that:

> This MOA acknowledges that the Parties have appropriate roles to play with regard to releases of crude oil or brine from oil production sites or permitted gathering lines within Illinois. IEPA's role arises from its responsibilities under the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq. ("IEP Act") and Title 35 of the Illinois Administrative Code to inspect and enforce against violations of the IEP Act, including, but not limited to, the *causing, allowing or threatening of water pollution or the creation of a water pollution hazard*. IDNR's role arises from its responsibilities under the Illinois Oil and Gas Act, 225 ILCS 725/1, et seq. ("IOG Act") and Title 62 of the Illinois Administrative Code *to issue permits to oil production facilities and enforce against permit violations*.

Exh. A, MOA at 1 (emphasis added).

It is clear from the MOA that the events that give rise to a violation warranting a response from the Illinois EPA are separate and distinct than those warranting a response from Illinois DNR.

Illinois EPA responds in the event of a threat caused or posed to a water of the State; Illinois DNR responds based on violations of an oil production permit that it issued to a permittee.

While an individual oil spill may encompass both a threat to a water of the State and a violation of an oil production permit, the violations that cause both agencies to respond are distinct, arising under different statutes, presenting different causes of action, necessitating different remedies, and warranting different damages.

Petco's effort to limit Illinois EPA's enforcement of the Act to the framework of any enforcement actions already taken by Illinois DNR, if allowed, would hamstring Illinois EPA in its efforts to seek compliance and damages for impacts to waters of the State under the Act—something which the MOA on its face clearly did not intend. Illinois EPA is entitled to obtain relief for the People of the State of Illinois for violations that fall under the Agency's purview.

5. Respondent's Amended Defenses D, E, and potentially F and G fail to comply with Section 2-606 of the Code of Civil Procedure.

In its Amended Affirmative and Additional Defenses ("Amended Defenses"), Petco references on four occasions the existence of an "agreement" between Petco and Illinois DNR, specifically with regard to Amended Defense D. In its Response, Petco again references the existence of an "agreement" between Petco and the Illinois DNR: twice in relationship to Amended Defense D, and twice in relationship to Amended Defense E. It also appears that Amended Defenses F and G may be related to the purported "agreement", though it is unclear from Petco's filings if that is the case.

In any event, Section 2-606 of the Code of Civil Procedure, 735 ILCS 5/2-606 (2022), provides that:

> Exhibits. If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his

> or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her. * * *

Respondent refers to the existence of an "agreement" as the basis for Amended Defenses D, E, and possibly also F and G. Respondent did not attach a copy of the "agreement". Respondent did not include an affidavit stating facts showing that instrument was not available to it. Respondent, therefore, has failed to comply with Section 2-606, and Amended Defenses D, E, F, and G should be stricken with prejudice.

6. Setoff is not an appropriate affirmative defense, and Petco cites to case law regarding setoff that is inapplicable.

In Amended Defenses E and F, Petco argues that the funds it has purportedly spent in upgrading its operations and the administrative penalties assessed by another State agency should be "set off" against a civil penalty in this case.

In its Response, Petco cites to *Lake County Grading Co. v. Advance Mechanical Contractors*, 275 Ill. App. 3d 452, 462 (2d Dist. 1995) and *Decker v. St. Mary's Hospital*, 266 Ill. App. 3d, 523, 528 (5th Dist. 1994) in support of its Amended Defenses. Petco's case law is readily distinguishable from the present case.

Generally speaking, a request for a "setoff" appears as a counterclaim pursuant to Section 2-608 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-608 (2022), which provides in part as follows:

> Counterclaims.
> (a) Any claim by one or more defendants against one or more plaintiffs, or against one or more codefendants, whether in the nature of setoff, recoupment, cross claim or otherwise, and whether in tort or contract, for liquidated or unliquidated damages, or for other relief, may be pleaded as a cross claim in any action, and when so pleaded shall be called a counterclaim.

That is, a "setoff" is usually sought when a defendant has a potentially independent suit that it can bring against a plaintiff. See, e.g., *Vieweg v. Friedman*, 173 Ill. App. 3d 471 (2d Dist. 1988).

The situation of a potential counterclaim is the scenario that occurs in *Lake County Grading Co.*, the first case upon which Petco relies for support. In *Lake County Grading Co.*, an initial contract existed between a plaintiff and a defendant, obligating the plaintiff to install a sewer line in a specific location. Unfortunately, the plaintiff installed the sewer line in the wrong location. The defendant then contacted the plaintiff, asking for a price quote to relocate the sewer line, apparently unaware that the fault for the mistake rested with the plaintiff. When it became known to the defendant that plaintiff was at fault, the defendant paid for the original sewer line installation, but refused to pay the costs for the relocation of the sewer line. The plaintiff filed suit, and the defendant claimed a defense of setoff.

The differences between *Lake County Grading Co.* and the present case are readily apparent. In the former, the defendant had a potential cause of action against plaintiff due to plaintiff's failure to perform under the terms of their original negotiated contract. In the present case, no settlement agreement, and certainly no contract, exists between the parties regarding upgrades to Petco's operations. Any funds that Petco expended in the field to bring its operations into compliance with State law, or in response to Illinois DNR administrative proceedings, do not form the basis for an independent legal action for Petco against the State. They are simply expenditures made in the course of remediation or undertaking a legal proceeding. The *Lake County Grading Co.* case fails to offer Petco the support that Petco claims it represents.

The second case that Petco relies upon, *Decker v. St. Mary's Hospital*, 266 Ill. App. 3d 523 (5th Dist. 1994), is likewise distinguishable. In the *Decker* case, the defendant uses the term "setoff" in a less common fashion, essentially as alternative language for seeking mitigation of damages. The court in *Decker* recognized that while a "setoff" is often raised in the context of counterclaims, in this instance it was raised where the defendant sought to reduce damages.

Decker, 266 Ill. App. 3d at 528. At issue was a settlement agreement that the defendant had reached with a codefendant, and which the defendant claimed warranted a reduction in the final damages amount for which it was liable.

In the present case, there are no codefendants sharing the limelight with Petco, and there are no settlement agreements from which a civil penalty might be reduced. As previously stated, pleading mitigation factors is not an affirmative defense. See, *e.g.*, *People v. Texaco Refining and Marketing, Inc.*, PCB 02-3, slip op. at 6, 7 (Nov. 6, 2003); *People v. Midwest Grain Products of Illinois, Inc.*, PCB 97-179, slip op. at 5 (Aug. 21, 1997); *People v. QC Finishers, Inc.*, PCB 01-07, slip op. at 5 (June 19, 2003); *People v. Geon Co., Inc.*, PCB 97-62, slip op. at 4 (Oct. 2, 1997). A request for limiting the scope of the remedy is inappropriately advanced at this stage, and therefore should be stricken.

III. CONCLUSION

Respondent's Amended Defenses fail to meet Illinois pleading standards. The defenses are all legally and/or factually insufficient and should be stricken with prejudice.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter an order striking with prejudice the amended affirmative and additional defenses alleged by Respondent, PETCO PETROLEUM CORPORATION, pursuant to Section 101.506, 35 Ill. Adm. Code 101.506, and granting Complainant such other relief that the Board deems appropriate and just.

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
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Date: March 5, 2025

MEMORANDUM OF AGREEMENT
FOR RESPONSE, NOTIFICATION AND COMPLIANCE ASSURANCE
RELATIVE TO OIL PRODUCTION SITES AND GATHERING LINE SYSTEMS
Between
Illinois Environmental Protection Agency and
Illinois Department of Natural Resources

I. PURPOSES

This Memorandum of Agreement ("MOA") is entered into between the Illinois Environmental Protection Agency ("IEPA") and the Illinois Department of Natural Resources ("IDNR") who, hereinafter, will be referred to collectively as the "Parties." IEPA and IDNR enter into this MOA for the following purposes:

- to allocate appropriate roles and responsibilities for IEPA and IDNR relative to crude oil or brine releases from oil production sites or permitted gathering lines, within a cooperative framework;
- to ensure appropriate response to all crude oil or brine releases, such that they do not constitute a threat to human health or the environment; and
- to promote education of oil producers and gathering line operators as to IEPA and IDNR expectations and criteria for spill clean-up, prevention and notification.

II. DESIGNATED REPRESENTATIVES AND ALTERNATES

The Directors of IEPA and IDNR will each designate a representative and an alternate to be the central points of contact for their respective agencies for all matters dealing with or arising under this MOA. Each Director may change a representative or alternate at any time by so notifying the other in writing.

III. APPROPRIATE ROLES AND RESPONSIBILITIES OF IEPA AND IDNR AND JOINT SPILLS HANDLING PROTOCOL

This MOA acknowledges that the Parties have appropriate roles to play with regard to releases of crude oil or brine from oil production sites or permitted gathering lines within Illinois. IEPA's role arises from its responsibilities under the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq. ("IEP Act") and Title 35 of the Illinois Administrative Code to inspect and enforce against violations of the IEP Act, including, but not limited to, the causing, allowing or threatening of water pollution or the creation of a water pollution hazard. IDNR's role arises from its responsibilities under the Illinois Oil and Gas Act, 225 ILCS 725/1, et seq. ("IOG Act") and Title 62 of the Illinois Administrative Code to issue permits to oil production facilities and enforce against permit violations.

EXHIBIT A

The Parties have developed a Joint Spills Handling Protocol which reflects the appropriate roles and responsibilities of each Agency relative to crude oil or brine releases from oil production sites or permitted gathering lines. This Protocol, dated October 7, 1999, is attached to and incorporated by reference into this MOA. The Protocol describes the practical division of labor agreed to between IEPA and IDNR for responding to crude oil or brine spills, notifying each other of information and activities, and assurance compliance from responsible parties.

IV. IMPLEMENTATION OF THIS MOA

A. Each Party will take necessary steps to implement this MOA relative to oil production sites including the following:

1. The designated representatives of IEPA and IDNR and appropriate other staff will hold regular quarterly meetings to coordinate the on-going implementation of this MOA; to share data on releases of crude oil or brine; to develop practical procedures for notification; to collaborate on regulatory development relative to the subject matter of this MOA; and to coordinate educational and informational efforts to oil producers, gathering lines operators and the public.

2. The designated representatives of IEPA and IDNR will jointly prepare an annual progress report on implementation of this MOA, with recommendations for improvement and/or enhancement of this MOA, where appropriate, for evaluation by the Directors of IEPA and IDNR.

3. The Parties will work cooperatively to develop necessary statutory or regulatory proposals to enable IDNR to grant permits to gathering lines 6.5 inches in diameter or less (outside diameter). It is the understanding of the Parties that this MOA will apply only to those gathering lines which may be eventually permitted by IDNR, after they have received permits from IDNR.

4. Each Party agrees to notify the other's designated representative in writing within three business days of that Party's receipt of a request under the Freedom of Information Act or a request for production under subpoena related to a release of crude oil or brine from a production site or permitted gathering line, or other information reasonably related to this MOA.

B. The Parties will also conduct a cooperative evaluation of the appropriateness and continuing usefulness of this MOA one year after its effective date.

V. ISSUE RESOLUTION

In the event that issues arise between the Parties with regard to the subject matter of this MOA, the Parties will negotiate informally to reach a resolution of the issues, with appropriate escalation from the designated representatives of the IEPA and IDNR through the Directors of IEPA and IDNR, as necessary.

VI. RESERVATION OF RIGHTS

This MOA does not create nor shall it be construed to create any claim, right or cause of action for the benefit of any person not a Party to this MOA against either Party hereto, the State of Illinois, or any officers, agents or employees of any of them.

VII. LIMITATION

Nothing in this MOA shall be construed as obligating either Party, the State of Illinois, or any officers, agents or employees of any of them to expend any funds in excess of allocations or appropriations authorized by law.

VIII. MODIFICATION AND TERMINATION OF THIS MOA

This MOA may be modified in writing upon approval of both Parties hereto. Either Party may withdraw from and terminate this MOA at any time, following ten days advance written notice to the other Party.

Illinois Environmental Protection Agency

by Thomas V. Skinner, Director

7-12-00

Date

Illinois Department of Natural Resources

by Brent Manning, Director

24 Jul 00

Date

APPROVED FOR EXECUTION
Date: 7-17-00
Legal Counsel:

ljl:rakfiles:moaoilproduction

JOINT SPILLS HANDLING PROTOCOL FOR OIL PRODUCTION SITES AND GATHERING LINES

This protocol has been jointly developed for handling spills from oil production sites and gathering lines in accordance with applicable law. This protocol addresses roles and responsibilities for spills and the respective agencies, expectations for cleanup criteria and geographic applicability of regulatory authorities.

Effective October 7, 1999, this protocol includes the following principal components:

I. IDNR-DO&G (Illinois Department of Natural Resources, Div. Of Oil and Gas) will respond to spills of crude oil or brine from permitted oil exploration and production sites and permitted gathering lines (less than 6.5 inches) regulated by IDNR-DO&G per this protocol document. IDNR regulations will govern at these sites as further specified below.

II. IDNR-DO&G will also initially respond whenever spills from such regulated sites enter designated waters of the State or create an oil sheen or when a sensitive area (as defined in IV.B.2) is impacted. IDNR-DO&G shall also immediately notify the IEPA Duty Officer of the situation and the spiller's response actions thereafter.

Under this protocol, "designated waters" means those surface waters (i.e. perennial or intermittent, "blue line" waterways, ponds, lakes, and wet lowland areas) shown on current USGS topographical maps and potable and special resource groundwater as defined in 35 Ill. Ad. Code 620.

III. IDNR-DO&G will advise IEPA when IDNR contractors are activated to achieve control of a spill at a site. This notification will occur by fax (217-524-4036) during normal business hours and by telephone (IEPA Duty Officer) during other times.

IV. Compliance criteria for handling spill incidents from these regulated sites shall be applied as follows:

A. Except as provided in subsection (b), IDNR-DO&G will implement compliance criteria specified in 62 Ill. Adm. Code 240. Such criteria shall be applied, enforced and demonstrated by sampling at any spills which occur on permitted lease areas and any contiguous land areas affected by the spill, or on grass waterways and roadside ditches beyond designated waters of the State.

B. IEPA will implement compliance criteria specified in 35 Ill. Adm. Code 302, 620 and 742. Such criteria shall be applied, enforced and demonstrated by sampling at spills that enter:

1. Designated waters of the State or otherwise cause a sheen; or

2. Sensitive areas with: 200 feet of private drinking water wells, residences, playgrounds, or parks; 400 feet of community drinking water wells; 100 feet inland of where a spill enters an intermittent designated water; or 200 feet inland of where a spill enters a perennial designated water.

V. IEPA will notify IDNR-DO&G upon receipt of citizen or local official complaints about spill situations that have not otherwise been reported to IEMA.

VI. IEPA and IDNR-DO&G will jointly develop a user-friendly guide or workbook for spillers that clearly explains what is expected in various pill circumstances and provides explicit instructions on regulatory expectations and how to comply with the expectations including examples of acceptable practices and documentation.

VII. IEPA and IDNR-DO&G will proceed with necessary administrative actions to initiate use of this protocol within 30 days after adoption. Longer term regulatory changes to address gathering lines will also be pursued in a timely and cooperative manner.

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CERTIFICATE OF SERVICE

I, Natalie Long, an Assistant Attorney General, certify that on the 5th day of March, 2025, I caused to be served the foregoing Notice of Filing, Complainant's Motion for Leave to File Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint, Complainant's Reply to Respondent's Response in Opposition to Complainant's Motion to Strike Respondent's Amended Affirmative and Additional Defenses to the First Amended Complaint, 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
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