BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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PLEASE TAKE NOTICE that on this 4th day of April, 2025, the attached Petco Petroleum Corporation's Motion for Reconsideration of the Board's March 6, 2025 Order, which is attached and herewith served upon you on behalf of Respondent.

Respectfully submitted,

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PETCO PETROLEUM CORPORATION,	)	
	)	
Respondent.	)	

MOTION FOR RECONSIDERATION OF THE BOARD'S MARCH 6, 2025 ORDER

COMES NOW Respondent Petco Petroleum Corporation ("Petco"), via its undersigned counsel, and, pursuant to 35 Ill. Adm. Code Sections 101.500, 101.520 and 101.902, submits this Motion for Reconsideration of the Board's March 6, 2025 Order, which denied Petco's Motion for Certification of Question for Interlocutory Appeal.[1] For its Motion, Petco states as follows:

INTRODUCTION

In denying Petco's Motion for Certification of Question for Interlocutory Appeal, the Board issued a ruling that underscores and confirms the basis for Petco's original motion to dismiss based on the statute of limitations. First, the March 6, 2025 Order erroneously presumes that the public interest exception applies without the Board having made such a prior finding in underlying Orders and, on top of that, the Board failing to conduct the required three-factor analysis. These are errors in the application of existing law that, at a minimum, merit reconsideration and correction. Specifically, in its August 22, 2024 Order, the Board expressly declined "to undertake the public rights exception analysis" because it chose to analyze and rule on only "the threshold

[1] On January 1, 2023, Petco filed its Motion to Dismiss Counts 62-73 of the First Amended Complaint. On August 22, 2024, the Board issued its Order denying the Motion to Dismiss. Petco filed its Motion for Reconsideration of the August 22nd Order, which the Board denied on December 5, 2024. Petco moved for Certification of Question for Interlocutory Appeal on December 19, 2025, which was denied in the March 6, 2025 Board Order.

question of whether a Section 31 enforcement action under the Act is a 'civil action' subject to the statute of limitations found in Section 13-205." (August 22nd Order at 4-5). Yet, in the March 6th Order, the Board improperly grafts a finding on the applicability of the public interest exception while ruling on the motion for interlocutory appeal, without analyzing any of the three requisite factors.[2] The Board may correct this error by: (1) striking the improper findings from the March 6th Order; (2) reopening the public interest exception issue for further review and briefing; or (3) making substantive findings applying the three-factor test based on facts and evidence provided previously. The Board's failure to apply requisite legal standards alone warrants reconsideration.

Second, the issue of the applicability of the statute of limitations presents substantial grounds for differences of opinion precisely because of clearly divergent holdings in other jurisdictions, when Illinois courts have not addressed the issue. The Board's reliance on *People v. Community Landfill Company, Inc.*, PCB 97-193 cons. 04-207 (Aug. 20, 2009) and *Bi-State Disposal, Inc., v. Illinois Environmental Protection Agency*, PCB 89-49 (June 8, 1989) is misplaced, as those cases different already-decided by Illinois courts, unlike the issue here of first impression which the Board expressly acknowledged in its August 22nd Order.

Third, again because this is a case of first impression, the Board issued a broad new rule that no statute of limitations applies to a State enforcement actions filed with the Board under Section 31 of the Illinois Environmental Protection Act ("Act"). Its conclusion rests on a miscast distinction between the same claims filed in different forums—in circuit court or with the Board.

Fourth, this case presents exceptional circumstances within the meaning of Rule 308. The implications of the Board's ruling are far-reaching, affecting the scope and timing of future

[2] The public interest exception requires a three-factor analysis: (1) the effect of the interest on the public; (2) the obligation of the government to act on behalf of the public; and (3) the extent to which public funds are involved. *City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264 (1st Dist. 2004).

enforcement actions, and removing any temporal limitation on the State's ability to bring enforcement actions before the Board. The March 6th Order's finding on the public interest exception absent analysis now presents an additional exceptional circumstance.

Fifth, resolving the statute of limitations question by interlocutory appeal would materially advance the ultimate termination of the litigation. Dismissing time-barred claims would streamline the proceeding and conserve the resources of the parties and the Board.

Finally, to the extent the Board and the State take issue with the framing of the certified question, Petco does not object to substituting the term "administrative proceeding" for "civil enforcement action" because the difference in terminology is immaterial to the legal analysis.

For these reasons, the Board should reconsider its analysis, and, at a minimum, correct the error in the March 6th Order regarding the applicability of the public interest exception and find that the Section 13-205 five-year statute of limitations applies with equal weight to enforcement actions regardless of the forum in which they are filed.

LEGAL STANDARD

Section 101.520 of the Board's procedural rules provides that, in ruling on a motion for reconsideration, the Board "will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902. Consistent with Illinois caselaw, "the intended purpose of a motion for reconsideration is to bring to the [Board's] attention . . . errors in the [Board's] previous application of the existing law." ***Petition of Brickyard Disposal & Recycling, Inc. v. IEPA***, PCB 2016-66, 2017 WL 160287, at *1 (*citing Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992)).

Motions for Reconsideration must be filed within 35 days after the receipt of the Order in question. 35 Ill. Adm. Code 101.520(a). The Board Order here was filed on March 6, 2025.

ARGUMENT

I. The Board Erred in Improperly Assuming the Public Interest Exception Applies Without Making Requisite Findings in Prior Orders or Conducting the Three-Factor Analysis

The Board's conclusion that Section 13-205 does not apply now, for the first time, includes a finding that the public interest exception applies. No prior Order from the Board substantively analyzed or found that the public interest exception applies. In fact, the Board expressly passed on making such a finding. However, the March 6th Order now improperly makes such a finding that the public interest exception applies—in the context of considering the Motion to Certify a Question for Interlocutory Appeal based on prior Orders and the record on which they are based. In so doing, the Board compounded the error and failed to apply the necessary three-factor test determining whether the government is asserting a public or private right. That test considers: (1) the effect of the interest on the public; (2) the obligation of the government to act on behalf of the public; and (3) the extent to which public funds are involved. *See City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264 (1st Dist. 2004); *Champaign County Forest Preserve District v. King*, 291 Ill. App. 3d 197, 200, 683 N.E.2d 980, 982 (4th Dist. 1997), *citing Board of Education v. A, C, & S, Inc.*, 131 Ill.2d 428, 476, 546 N.E.2d, 580, 602 (Ill. 1989). In failing to apply the exception's test, the Board's finding rests on assumption rather than requisite analysis.

In its August 22nd Order denying the motion to dismiss, the Board elected to analyze only "the threshold question of whether a Section 31 enforcement action under the Act is a 'civil action' subject to the statute of limitations found in Section 13-205." (*Id.* at 4). The Board expressly declined to reach the question of the applicability of the exception, stating: "[l]astly, it is not necessary here for the Board to undertake the public interest exception analysis raised by the People to determine whether the counts of the Amended Complaint are subject to the Section 13-

205 statute of limitations." (*Id.* at 5). The Board could have used its ruling on the substantive statute of limitations issue to analyze the applicability of the public interest exception, but it chose not to do so. Yet, in the March 6th Order, Board improperly grafted a finding on the applicability of the public interest exception into its ruling on the motion for interlocutory appeal.

To the extent that the Board relies on *Pielet Bros. Trading, Inc. v. IEPA and IPCB*, 110 Ill. App. 3d 752, 442 N.E.2d 1374 (5th Dist. 1982), for the proposition that "the Appellate Court[s] have found that there is no statute of limitations that applies to enforcement actions brought by the State pursuant to Section 31 of the Act" so that the public interest exception no longer needs to be analyzed at all, this reliance is misplaced. *Pielet Bros.* analyzed the text of Section 14 of the Limitations Act, 735 ILCS 5/13-202, not Section 13-205. The statutes are materially different. Section 13-205 is a catchall provision that expressly applies to "all civil actions not otherwise provided for," whereas Section 5/13-202 contains no such language, but rather pertains to personal injury actions. *Pielet Bros.* did not interpret or apply Section 13-205, therefore its reasoning provides no guidance on the controlling question in this case. The Board's reliance on *Pielet Bros.*—both in its March 6th Order and previously in *People v. John Crane, Inc.*, PCB 01-76, slip op. at 5 (May 17, 2001)—is thus in error.

When properly presented and analyzed, Illinois courts have recognized that statutes of limitations govern enforcement actions unless a valid exception, like the public interest exception, applies. *See Latronica*, 346 Ill. App. 3d 264; *Champaign County Forest Preserve District*, 291 Ill. App. 3d 197, 200, 683 N.E.2d 980, 982; *Board of Education*, 131 Ill.2d 428, 476, 546 N.E.2d, 580, 602. The March 6th Order leaps over the public interest exception analysis and summarily announces that the exception applies. As such, reconsideration is warranted so that the Board may correct this error by: (1) striking the improper findings from the March 6th Order; (2) reopening

the public interest exception issue for further review and briefing; or (3) making substantive findings applying the three-factor test based on facts and evidence provided previously.

II. The Statute of Limitations Issue Presents Substantial Grounds for Differences of Opinion Given Its Divergent Applications

The Board's categorical distinction between civil actions and administrative proceedings when determining the applicability of the five-year statute of limitations has not been recognized by Illinois courts. In its August 22nd Order, the Board found that no statute of limitations applies because the enforcement action was filed before the Board and not in circuit court. That conclusion hinges on the not-previously-recognized distinction between actions brought before the Board as "administrative proceedings" and those filed in court as "civil actions." According to the Board, because the State chose to proceed before the Board rather than in circuit court, Section 13-205 does not apply. This finding is in error.

Circuit courts and the Board have concurrent jurisdiction over Section 31 enforcement claims under the Act. Whether brought in court or before the Board, the State's cause of action arises under the same statutory enforcement authority. In both forums, the State seeks civil penalties and injunctive relief for alleged violations of the Act. The only difference is the forum, which cannot dictate whether a statute of limitations applies. Enforcement actions under the Act are indeed civil actions, regardless of forum, and are subject to the same statute of limitations. The concurrent jurisdiction and ability to file in either forum is precisely what the General Assembly prescribed in Section 31 of the Act. The Board's Orders seek to rewrite the text of the statute.

Unsurprisingly, this issue has been considered and ruled upon in divergent ways in other jurisdictions, which, in the absence of controlling Illinois precedent, demonstrates substantial grounds for differences of opinion. As the Connecticut Supreme Court reasoned in *Bouchard v. State Employees Retirement Commission*, 328 Conn. 345, 178 A.3d 1023 (2018), there is a clear

split among jurisdictions regarding whether and how statutes of limitations apply to administrative proceedings. *Bouchard* reviewed this divergence, acknowledging that while some courts narrowly construe "civil action" to exclude administrative proceedings, others recognize that the core policy rationale underlying statutes of limitations—fairness, evidentiary integrity, and finality—applies regardless of forum. *Id.* at 328 Conn. 359; 178 A.3d 1031. The *Bouchard* court adopted the latter approach, holding that even where a statute lacks an express limitations period, courts may borrow an analogous one, particularly where the cause of action is statutory and administrative review is the exclusive remedy. Footnote 7 of *Bouchard* highlights this divide across the states, citing cases on both sides of the issue, and concluding that the policy reasons for applying limitations periods apply "irrespective of whether the proceeding is initiated in a judicial or administrative forum." *Id.* at 328 Conn. 360-61; 178 A.3d 1031-32. *Bouchard* further emphasized that where a judicial cause of action would be subject to a statute of limitations, the same limitations period should govern a functionally identical administrative proceeding—especially when that proceeding culminates in appeal rights subject to strict statutory timeframes. *Id.* at 328 Conn. 364; 178 A.3d 1034. This reasoning aligns with Petco's position.

The March 6th Order attempted to distinguish *Bouchard* and the other decisions cited by Petco on the basis that those cases involved "contractual disputes or cases where reimbursement of funds were sought." (March 6th Order at 7). That is an arbitrary distinction. The legal question in *Bouchard* and the other cited cases was not the nature of the underlying relief, but whether a statutory limitations period applies equally to state-initiated administrative proceedings versus state court actions. In each case, the courts answered yes—and in doing so, emphasized universal policy concerns, which apply equally to enforcement, contractual disputes, and reimbursement

proceedings. The Board's narrow framing ignores the common principle at stake; litigants should not be subjected to indefinite liability simply because the state chooses the forum.

The other cited cases embrace this same logic. In *Suburban Home Health Care, Inc. v. Exec. Off. of Health & Human Servs.*, 488 Mass. 347, 173 N.E.3d 344 (2021), the Massachusetts Supreme Judicial Court applied a six-year statute of limitations to an administrative recovery action by the state, even though the statute did not explicitly reference administrative proceedings. The court explained that the policy objectives of limitations statutes—ensuring timely prosecution, preserving evidence, and preventing stale claims—apply equally in administrative forums. *Id.* at 488 Mass. 354-56; N.E.3d 351-52.

Similarly, in *Commonwealth of Kentucky, Natural Resources & Environmental Protection Cabinet v. Kentucky Insurance Guaranty Association*, 972 S.W.2d 276 (Ky. Ct. App. 1997), the Kentucky Court of Appeals held that a seven-year limitations period applied to bond forfeiture actions brought by the state in administrative proceedings. The court noted that allowing an action that would be time-barred in every other tribunal "would be an absurd result," and reaffirmed that "the legislative preference for prompt resolution of claims . . . is equally compelling whether the forum is a court or a quasi-judicial tribunal." *Id.* at 280.

Lastly, in *Hames v. City of Miami Firefighters' & Police Officers' Trust*, 980 So. 2d 1112 (Fla. Dist. Ct. App. 2008), the Florida District Court of Appeal rejected the notion that administrative and civil forums should be treated differently for limitations purposes. The court held that unless an administrative action is penal or quasi-criminal in nature, it is subject to the same limitations period as its civil counterpart. *Id.* at 1115–16.

These cases reflect a consensus among a substantial number of states that the applicability of limitations periods should not turn on the mere fact that the state initiates proceedings before an

administrative body rather than a court. Illinois courts have not weighed-in on this issue, and so the division among jurisdictions constitutes a substantial ground for difference of opinion that warrants interlocutory appeal under Rule 308. The absence of controlling Illinois precedent is not a reason to deny certification. It is a reason to grant it. The Appellate Court can and should resolve an open legal question with significant implications for enforcement actions across Illinois.

The Board's citation to *People v. Community Landfill Co.*, PCB 97-193 (Aug. 20, 2009) and *Bi-State Disposal, Inc. v. IEPA*, PCB 89-49 (June 8, 1989), to minimize the relevance of out-of-state case law, is misplaced. In *Community Landfill*, the Board declined to credit out-of-state decisions because the legal issue before it—the liability of corporate officers under the Illinois Environmental Protection Act—already had been addressed by Illinois courts. Similarly, in *Bi-State*, the Board declined to follow an out-of-state decision interpreting the term "currently permitted" because that statutory language had already been construed by the Illinois Supreme Court in *Kozak v. Retirement Board*, 95 Ill. 2d 211, N.E.2d 394 (1983). In each case, the Board recognized it was bound by existing Illinois precedent. Here, by contrast, the question of whether Section 13-205 applies to administrative enforcement actions under Section 31 of the Act is one of first impression. Where no Illinois court has spoken, and persuasive authority from other jurisdictions is on point, the Board should afford that authority due weight, particularly where the out-of-state cases address similar statutory language and reflect on public policy considerations.

III. The Board's Order Announces a Broad Rule that No Statute of Limitations Applies to Section 31 Actions, Which Merits Judicial Review

The March 6th Order denying certification proceeds the Board's August 22nd Order denying Petco's Motion to Dismiss Counts 62 through 73 of the First Amended Complaint. As Petco previously briefed, those counts should be time-barred under the five-year statute of limitations in Section 13-205 of the Code of Civil Procedure. The claims involve alleged violations

that occurred more than eight years before the First Amended Complaint was filed and were reported to the State at the time. Petco's position, grounded in the plain statutory text and reinforced by Illinois precedent, is that Section 13-205 indeed governs these claims.

As set forth above, the Board concluded that no statute of limitations applies because the enforcement action was filed before the Board and not in circuit court. That holding distinguishes between actions brought before the Board as "administrative proceedings" and those brought in court as "civil actions." Because the State elected to proceed before the Board rather than file in circuit court, the Board held that Section 13-205 does not apply. Again, this reasoning is erroneous, functionally unjust, and inconsistent with the statutory scheme that allows enforcement of the Act in either forum. It creates a broad rule whereby the statute of limitations applies only if the State elects to file suit in circuit court, not before the Board, which defeats the uniform application of Section 13-205. It rewards the State's unexcused delay in filing its claims.

Furthermore, this bifurcated regime invites forum shopping and undermines the statutory protections inherent in limitations periods, such as fairness, finality, and the preservation of evidence. The Board's ruling allows the State to resurrect allegations indefinitely, without regard for the integrity of records, availability of witnesses, or the equitable considerations that justify statutes of limitations in the first place. In effect, the Board has declared that Section 13-205 can never apply to actions before the Board, contradicting the letter of Section 13-205 and the purposes of statutes of limitations. While the Board now characterizes Section 31 actions as "administrative," it has not explained why administrative enforcement actions should be immune from limitations principles, particularly given the well-documented public policy benefits of such statutes—certainty, fairness, and repose.

IV. This Case Does Present Exceptional Circumstances Justifying Certification

The Board's conclusion that this matter does not present exceptional circumstances sufficient to warrant certification misconstrues both the scope and impact of the legal question presented. The issue presented is a matter of first impression that carries significant implications for the timing and manner of future enforcement actions under the Act. The Board's decision effectively establishes a precedent that permits the State to bring enforcement actions without temporal limitation—a drastic departure from the long-standing function of statutes of limitation. The absence of Illinois precedent on this issue only heightens the importance of appellate review. Courts in other jurisdictions have weighed-in; it is precisely because Illinois courts have not done so that certification is not only justified but necessary. This matter presents legal novelty, statewide policy implications, and issues of fundamental fairness that Rule 308 is intended to address.

In addition, to the extent the Board refuses to correct its error in finding that the public interest exception applies without analyzing any of the three requisite factors required to make such a determination, that unsupported and unanalyzed new holding independently presents additional exceptional circumstances meriting judicial review. Such a finding is incompatible with the existing legal framework on the public interest exception because there cannot simultaneously be an exception to a rule and a new rule doing away with the exception. If this finding stands absent further analysis or correction, an appellate court should weigh-in on this issue as well to clarify the law of the public interest exception.

V. An Interlocutory Appeal Would Materially Advance the Ultimate Termination of This Litigation

The Board's assertion that an interlocutory appeal would not materially advance the ultimate termination of this litigation is incorrect and overlooks the practical and legal significance

of resolving the statute of limitations issue now. If the Illinois Appellate Court were to determine that Section 13-205 applies and bars the twelve claims added by the First Amended Complaint, those claims would be dismissed, streamlining the issues for discovery, motion practice, hearing, and penalty determination. This is not a case where preexisting claims were merely amended. Rather, twelve entirely new claims regarding allegations of additional releases from different areas were added. Reducing the litigation from seventy-three counts to sixty-one, effectively returning the case to the scope of the original complaint, would materially conserve the resources of both the parties and the Board.

Resolution of the statute of limitations question will also shape the legal contours of the remainder of the litigation, including the defenses available to Petco regarding each count and the evidentiary burdens on both parties. The statute of limitations question is thus central. An interlocutory ruling would avoid duplicative litigation and provide clarity regarding time-barred claims spanning nearly a decade.

The Board's suggestion that Petco must wait for a final decision on the merits before raising the issue on appeal ignores the case management value of Rule 308 certification. That rule exists precisely to prevent the parties and the tribunal from expending time and resources on claims that may ultimately be foreclosed as a matter of law. Certification is appropriate here, where the question presented is legal and outcome-determinative as to a significant set of the State's claims.

VI. The Question for Certification May Replace "Civil Enforcement Actions" With "Administrative Proceedings" Because It Is a Distinction Without a Difference When Analyzing the Governing Statutes

The State and the Board posit that Petco's question for which certification is sought is improper because it uses the term "civil enforcement action" rather than "administrative proceeding." This is a distinction without a difference. Whether framed as a "civil enforcement

action" or an "administrative proceeding," the underlying issue and cause of action here remains the same: whether Section 13-205 applies to State-initiated enforcement actions brought before the Board under Section 31 of the Act. The nature of the enforcement cause of action does not change simply because the State chooses to file before the Board rather than in circuit court. To the extent clarity is needed, it is acceptable to reformulate the question to substitute "administrative proceedings" for "civil enforcement actions." The certified question would be: 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 administrative proceedings filed before the Board pursuant to Section 5/31(d)(1) of the Act, 415 ILCS 5/31(d)(1). As set forth herein, Section 12-205 bars Section 31 enforcement claims regardless of whether the State elects to file them in court or before the Board. Therefore, the wording on the question presented is not impactful and may be phrased either way.

CONCLUSION

For the foregoing reasons, Respondent Petco Petroleum Corporation respectfully requests that the Illinois Pollution Control Board grant this Motion and reconsider the Board's March 6, 2025 Order denying Petco's Motion for Certification of Question for Interlocutory Appeal and grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on April 4, 2025, the foregoing was filed with the Illinois Pollution Control Board and served upon the following persons by email:

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