

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 REPLY TO
RESPONDENT'S AMENDED AFFIRMATIVE DEFENSES**

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, and hereby submits this Complainant's Reply to Respondent's Amended Affirmative Defenses, stating as follows:

1. On January 6, 2025, Respondent Petco Petroleum Corporation ("Respondent") filed its Amended Affirmative Defenses in this matter.
2. On April 3, 2025, the Illinois Pollution Control Board ("Board") entered a Board Order:
 - a. striking with prejudice Amended Affirmative Defense A;
 - b. striking with prejudice Amended Affirmative Defenses B, D, and E as affirmative or other defenses, while granting Respondent leave to raise its arguments at a future point in the proceedings as mitigation factors as they pertain to the Board's Section 33(c) and 42(h) analysis;
 - c. striking with prejudice Amended Affirmative Defenses F and G; and
 - d. denying Complainant's Motion to Strike Amended Affirmative Defense C.

3. Because the Board struck Respondent's Amended Affirmative Defenses A, B, D, E, F, and G with prejudice, no reply is required. To the extent that Respondent raises the contents of Amended Affirmative Defenses B, D, and E as mitigation factors at a future point in time, Complainant reserves the right to object and respond to the same at that time.

4. Complainant further submits this Reply to Respondent's surviving Amended Affirmative Defense C, stating as follows:

Amended Affirmative Defense C

C. The claims in the First Amended Complaint are barred by the doctrine of laches. Complainant filed the original Complaint in this action on June 21, 2013. Then, after nine years, complainant filed its First Amended Complaint on August 23, 2022. No discovery has been served, answered, or conducted in this case. The substantial time over which this case has drawn out demonstrates a lack of due diligence on the part of Complainant in bringing these claims to a conclusion through prosecution before the Board or through a negotiated settlement. Petco is prejudiced by these circumstances because the passage of time risks compromising evidence that may support Petco's defense by rendering witnesses no longer accessible and/or diminishing the completeness of witness memories, and leading to the loss of pertinent information and/or documents. Moreover, Counts LXII through LXXIII (62 - 73) of the First Amended Complaint again were filed over nine years after the alleged incident occurred and, at the time of this pleading, occurred approximately eleven to twelve years ago (depending on the particular event). Count LXII alleges discharges from the J.G. Main #4 Well on or about May 28, 2013. Count LXIII alleges discharges from the Roy Miller Disposal Line on or about August 20, 2013. Count LXIV alleges discharges from the M.E. Hogan Disposal Line on or about August 27, 2013. Count LXV alleges discharges from the First State Bank Sump Line on or about December 31, 2013. Count LXVI alleges discharges from the Ed Harper Sump Tank Battery on or about February 26, 2014. Count LXVII alleges discharges from the Arnold Unit #1 on February 28, 2014. Count LXVIII alleges discharges from the first State Bank Pump Overline on April 20, 2014. Count LXIX alleges discharges from the Arnold Unit Disposal Line on or about June 5, 2014. Count LXX alleges discharges from the Edith Durbin Sump Line on or about June 23, 2014. Count LXXI alleges discharges from the Sarah Clow #5 on or about July 23, 2014. Count LXXII alleges discharges from the Cynthia Hopper Lease on or about August 12, 2014. Count LXXIII alleges discharges from the Ed Harper Sump on or about September 2, 2014. Petco, like any other respondent in a State enforcement action, should not be subjected to an action that stretches well over a decade concerning significantly dated, yet fact-intensive claims. These facts and factors present the circumstances in which the doctrine of laches applies.

REPLY: Amended Affirmative Defense C consists of legal conclusions, to which no reply is required. To the extent any reply is required, Complainant admits the original Complaint was filed on June 21, 2013. Complainant denies that the First Amended Complaint was filed on August 23, 2022. Complainant admits that no discovery has been served or conducted in the underlying matter.

Complainant admits that Count LXII alleges that discharges occurred from the J.G. Main #4 Well on or about May 28, 2013 as described in the First Amended Complaint.

Complainant admits that Count LXIII alleges that discharges from the Roy Miller Disposal Line occurred on or about August 20, 2013 as described in the First Amended Complaint.

Complainant admits that Count LXIV alleges that discharges occurred from the M.E. Hogan Disposal Line on or about August 27, 2013 as described in the First Amended Complaint.

Complainant admits that Count LXV alleges that discharges occurred from the First State Bank Sump Line on or about December 31, 2013 as described in the First Amended Complaint.

Complainant admits that Count LXVI alleges that discharges occurred from the Ed Harper Sump Tank Battery on or about February 26, 2014 as described in the First Amended Complaint.

Complainant admits that Count LXVII alleges that discharges occurred from the Arnold Unit #1 on February 28, 2014 as described in the First Amended Complaint.

Complainant admits that Count LXVIII alleges that discharges occurred from the First State Bank Pump Overline on April 20, 2014 as described in the First Amended Complaint.

Complainant admits that Count LXIX alleges that discharges occurred from the Arnold Unit Disposal Line on or about June 5, 2014 as described in the First Amended Complaint.

Complainant admits that Count LXX alleges that discharges occurred from the Edith Durbin Sump Line on or about June 23, 2014 as described in the First Amended Complaint.

Complainant admits that Count LXXI alleges that discharges occurred from the Sarah Clow #5 on or about July 23, 2014 as described in the First Amended Complaint.

Complainant admits that Count LXXII alleges that discharges occurred from the Cynthia Hopper Lease on or about August 12, 2014 as described in the First Amended Complaint.

Complainant admits that Count LXXIII alleges that discharges occurred from the Ed Harper Sump on or about September 2, 2014 as described in the First Amended Complaint.

Complainant denies the statement “Moreover, Counts LXII through LXXIII (62 - 73) of the First Amended Complaint again were filed over nine years after the alleged incident occurred and, at the time of this pleading, occurred approximately eleven to twelve years ago (depending on the particular event)” to the extent that the time frames calculated by the Respondent are inaccurate, and Complainant further notes that the time frames are obvious on their face as calculated from the dates pled in the First Amended Complaint.

Complainant denies the remainder of Respondent's allegations, and, consistent with Section 2-602 of the Code of Civil Procedure, 735 ILCS 6/2-602 (2022), denies that Respondent's Affirmative Defense C constitutes a legally sufficient defense.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
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Date: May 29, 2025

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CERTIFICATE OF SERVICE

I, Natalie Long, an Assistant Attorney General, certify that on the 29th day of May, 2025, I caused to be served the foregoing Notice of Filing, Complainant's Reply to Respondent's Amended Affirmative Defenses, 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.

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