

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 30th day of September, 2024, 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 to Respondent's Motion for Reconsideration of the Board's August 22, 2024 Order
- 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
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Dated: September 30, 2024

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)	(Water - Enforcement)
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**COMPLAINANT'S RESPONSE TO
RESPONDENT'S MOTION FOR RECONSIDERATION
OF THE BOARD'S AUGUST 22, 2024 ORDER**

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(d) of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 101.500(d), and hereby submits this Response to Respondent's Motion for Reconsideration of the Board's August 22, 2024 Order ("Motion"), stating as follows:

1. Through its Motion, Respondent Petco Petroleum Corporation ("Respondent") seeks to complicate the arrival of a final decision on the recently decided motions, namely, Respondent's Motion to Dismiss Counts 62 through 73 of the First Amended Complaint ("Motion to Dismiss") and Complainant's Motion to Strike Respondent's Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter ("Motion to Strike").

2. On August 22, 2024, the Illinois Pollution Control Board ("Board") entered an order ("Order") denying Respondent's Motion to Dismiss, and striking with prejudice a portion of Respondent's Affirmative Defense as sought in Complainant's Motion to Strike.

3. In its Motion, Respondent incorrectly cites 35 Ill. Adm. Code 101.520 for the proposition that 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". (Mot. at 2.)

Respondent presumably intended to cite 35 Ill. Adm. Code 101.902, which states as follows:

In ruling upon 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. (See also Section 101.520.) A motion for reconsideration of a final Board order is not a prerequisite to appealing the final Board order.

4. Respondent's citation error notwithstanding¹, Respondent's Motion offers neither new evidence nor a change in the law to support its request for reconsideration of the Order. Respondent apparently simply disagrees with the Board's decision. Respondent's disagreement is insufficient to warrant the Board's reconsideration of its Order.

5. At the heart of its argument, Respondent claims that by virtue of the Board finding that an action filed before it is an "administrative proceeding" rather than a "civil action", the Board: (a) creates a scenario where a statute of limitations defense applies only if the State elects to bring an action in circuit court rather than before the Board; (b) incentivizes the State to file "stale" claims before the Board, rather than the circuit court, thereby circumventing the protections afforded by a statute of limitations defense; and (c) affords different levels of legal protection for a Respondent seeking to raise a statute of limitations defense depending on the forum.

6. Respondent fails to acknowledge what Complainant has set forth in its filings—namely, that the circuit courts have routinely found that the five-year statute of limitations set forth in Section 13-205, 735 ILCS 5/13-205 ("Section 13-205"), does not apply to a governmental entity acting in the public interest. Instead, the courts have found that the doctrine of governmental immunity, also known as the "public interest exception", defeats any statute of limitations. The

¹ Complainant notes that Respondent also errs in claiming that private parties can bring an action pursuant to the Illinois Environmental Protection Act, 415 ICLS 5/1 *et seq.* (2022), in circuit court. (Mot. at 4.) Respondent is incorrect. Section 42(e) of the Act accordingly authorizes the State of Illinois—not individual private citizens—to seek injunctive relief to address violations of those laws in circuit courts.

circuit courts have explicitly found this to be the case following the enactment of Section 13-205. *See, e.g., City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264 (1st Dist. 2004).

7. The Board, in its Order, does not take up the question of the applicability of the public interest exception in this case, but rather addresses a question prior to that issue, finding that the Section 13-205 statute of limitations does not apply to an “administrative proceeding”. (Order at 5.)

8. While the circuit courts and the Board approach Section 13-205 from different angles, the result is the same: Section 13-205’s statute of limitations does not apply to the State in either forum when it brings actions in the public interest for violations that occurred five years or more prior to the filing of the complaint. Respondent’s concerns regarding forum-shopping and disparate levels of legal protection afforded to responding parties therefore are moot.

9. Respondent also expresses policy concerns regarding the Board’s Order, namely, that the Board’s decision eliminates the certainty afforded by the application of a statute of limitations defense on causes of action dating back more than five (5) years, and creates evidentiary difficulties for the Respondent when mounting a defense to violations which occurred longer than five (5) years ago.

10. The Board’s decision creates no additional burden not already encountered in the circuit court when the public interest exception is applied to defeat the Section 13-205 statute of limitations. Respondent’s policy concerns likewise therefore are moot.

11. In the event the Board should choose to reconsider its Order, however, the Respondent’s desired outcome—namely, the application of the Section 13-205 statute of limitations—would still be inappropriate. If the Board chose to reconsider its Order, the Board

would still need to take up Complainant's arguments in favor of the application of governmental immunity when a governmental entity brings an enforcement action in the public interest. Were that the case, Respondent's Motion to Dismiss should still be denied due to the public interest exception to the statute of limitations set forth in Section 13-205.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board deny Respondent's Motion for Reconsideration of the Board's August 22, 2024 Order.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
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Date: September 30, 2024

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CERTIFICATE OF SERVICE

I, Natalie Long, an Assistant Attorney General, certify that on the 30th day of September, 2024, I caused to be served the foregoing Notice of Filing, Complainant's Response to Respondent's Motion for Reconsideration of the Board's August 22, 2024 Order, 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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