

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

To:	Don Brown	Carol Webb
	Assistant Clerk	Hearing Officer
	Illinois Pollution Control Board	Illinois Pollution Control Board
	100 W. Randolph Street	1021 North Grand Ave. East
	Suite 11-500	Springfield, IL 62794
	Chicago, IL 60601	P.O. Box 19274
	Don.Brown@illinois.gov	Carol.Webb@Illinois.gov
	Natalie Long	Kevin Barnai
	Assistant Attorney General	Assistant Attorney General
	Office of the Attorney General	Office of the Attorney General
	500 South Second St.	500 South Second St.
	Springfield, IL 62701	Springfield, IL 62701
	natalie.long@ilag.gov	kevin.barnai@ilag.gov

PLEASE TAKE NOTICE that on this 6th day of January, 2025, the attached Petco Petroleum Corporation's Amended Affirmative and Additional Defenses, which is attached and herewith served upon you on behalf of Respondent.

Respectfully submitted,

/s/ Paul T. Sonderegger

Paul T. Sonderegger, #6276829

Tim Briscoe, #6331827

One U.S. Bank Plaza

St. Louis, MO 63101

(314) 552-6000

FAX (314) 552-6154

[psonderegger@thompsoncoburn.com](mailto:psonderegger@thompsoncoburn.com)

[tbriscoe@thompsoncoburn.com](mailto:tbriscoe@thompsoncoburn.com)

OF COUNSEL:

THOMPSON COBURN LLP

*Attorneys for Respondent Petco Petroleum  
Corporation*

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**PETCO PETROLEUM CORPORATION'S**  
**AMENDED AFFIRMATIVE AND ADDITIONAL DEFENSES**  
**TO THE FIRST AMENDED COMPLAINT**

COMES NOW Respondent Petco Petroleum Corporation ("Petco"), by and through its undersigned counsel, and for its Amended Affirmative and Additional Defenses to the First Amended Complaint, states as follows:<sup>1</sup>

**AMENDED AFFIRMATIVE AND ADDITIONAL DEFENSES**

Petco's affirmative and additional defenses are set forth below. By setting forth these defenses, Petco does not assume the burden of proving any fact, issue or element of a claim for relief where such burden properly belongs to Complainant. Moreover, nothing stated herein is intended to be construed as an acknowledgment that any particular issue or subject matter is relevant to Complainant's claims in the above-captioned action.

A. Counts LXII through LXXIII (62 - 73) of the First Amended Complaint are barred by the five-year statute of limitations set forth in 735 ILCS 5/13-205.<sup>2</sup> Count LXII alleges

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<sup>1</sup> On December 5, 2024, the Board issued an Order denying Petco's Motion to Reconsider and directed Petco "to file its amended affirmative defenses by January 6 2025 . . ." This pleading thus is timely.

<sup>2</sup> On August 22, 2024, the Board issued its Order denying Petco's Motion to Dismiss based on the five-year statute of limitations in 735 ILCS 5/13-205 and struck the associated affirmative defense with prejudice. On December 5, 2024, the Board issued an Order that denied reconsideration and affirmed the denial of Petco's Motion to Dismiss. On December 19, 2024, Petco filed a Motion for Certification of

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. Each of these twelve counts alleges violations that occurred over nine years after Complainant filed the original Complaint in this action on June 21, 2013. Accordingly, these counts are untimely and barred by the five-year statute of limitations set forth in Section 13-205.

B. The claims in the First Amended Complaint are barred, in whole or in part, because Complainant cannot prove that Petco was the cause-in-fact and/or proximate cause of the alleged discharges alleged in the First Amended Complaint or that Petco had the capability of controlling such discharges. Specifically, in Count XXIV pertaining to the Edith Durbin Pit, Complainant acknowledges that the release was “potentially due to pressure caused by tree roots.” (First Am. Cmplt. at Count XXIV, ¶18). In Count XLII regarding the M.E. Hogan #11 Production Well,

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Question for Interlocutory Appeal. Petco herein reasserts this affirmative defense with additional specificity from the First Amended Complaint, so that Petco may preserve the potential viability of this affirmative defense while the Motion for Certification of Question for Interlocutory Appeal is pending and ultimately during appeal if certification is granted.

Complainant concedes that the release may have been “due to vandalism, and the pump jack continued to operate.” (*Id.* at Count XLII, ¶18). In Count LVII regarding the Birdie Kimbrell #3 Flowline, Complainant agrees that the release was caused “when high surface waters tore a tree free of the creek bank [and it later] dropped onto and broke the flow line at the creek crossing.” (*Id.* at Count LVII, ¶18). And, in Count VII regarding the Arnold Unit Tank Battery, Petco answered in part that a vent pipe broke due to a severe windstorm. (Answer to First Am. Compl., at Count VII, ¶18). These facts indicate that Petco did not have control over the source that caused, threatened, or allowed pollution as alleged in the First Amended Complaint.

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.

D. Any injunctive relief which may be granted to Complainant in this action should be limited by and consistent with an agreement already reached between the Illinois Department of Natural Resources (“IDNR”) and Petco concerning operations of wells and associated facilities subject to the First Amended Complaint. On or about the last week of February 2016, IDNR and Petco reached an agreement involving numerous pending IDNR Director’s Decisions and Notices of Violation (“NOVs”) sent to the Director involving Petco’s operation of an oil field in Fayette County, Illinois, named the “Loudon Field.” The Loudon Field includes wells and associated facilities subject to counts in the First Amended Complaint. The terms of the agreement included that Petco would retain a consultant acceptable to IDNR to perform an investigation of the Loudon Field and recommend actions necessary to reduce the number and frequency of spills in the Loudon Field. In reliance on the settlement agreement, Petco retained Blackshare Consulting, and on

October 5, 2016, it issued a report setting forth recommendations of actions to be taken at the Loudon Field to reduce the number and frequency of the spills. Petco has implemented and continues to implement Blackshare's compliance recommendations, including but not limited to:

- 1) identifying and burying all exposed creek, stream, or ravine flowline crossings used by Petco in compliance with 62 Ill. Adm. Code §240.820;
- 2) installing valves on all gravity flowlines and all disposal lines upstream of sumps as necessary to ensure that flow can be isolated in the event of a power failure;
- 3) instituting a tank level indicator inspection program;
- 4) identifying, replacing, and burying any transit piping exposed in a roadway;
- 5) installing inserts between the top joint and swedge on the majority of the class II injection wells with 1.5 inch tubing on wells that did not have inserts, and, for the remaining wells, instituted a plan that requires the inspection of all injection wells at the time the well is pulled for maintenance to determine if an insert is present, and if an insert is not present, to then install inserts between the top joint and swedge;
- 6) replacing a majority of the top joints on the operational production wells identified by Petco to be without a packer with aluminum bronze material or with stainless steel top joints, and, for the remaining wells, instituted a plan that requires the inspection operational production wells when pulled for maintenance and replace or install a new top joint of aluminum bronze material or stainless steel, if needed;
- 7) within thirty-six (36) months of a temporarily abandoned production well's return to service, replacing the well's top joint with aluminum bronze material or stainless steel material, if needed;

- 8) replacing the majority of the steel nipples with stainless steel on aluminum/bronze pumping tees and, for the remaining wells, instituted a plan to inspect the operational production well when pulled for maintenance and replace any existing carbon nipple with stainless steel on aluminum/bronze pumping tees;
- 9) replacing the majority of carbon-steel headers with stainless steel or fiberglass headers, and, for the remaining headers, instituted a plan to replace the remaining carbon steel headers;
- 10) removing and properly disposing of all excess fluids within all containment areas, including, but not limited to all sumps, pits, production well sites, injection well sites, and tank battery sites enclosed by an earthen dike or berm, concrete barrier, or other structure designed to prevent fluids released from oil field facilities into the environment;
- 11) instituting a plan that includes a visual check of the sump pumps to verify they are working correctly at each containment area that has a sump pump;
- 12) instituting a Protocol for Pigging of all disposal lines that require pigging and are physically capable of being pigged;
- 13) putting in place a herbicide application plan, consistent with all applicable laws and regulations, to apply herbicides within the perimeter of all containment areas enclosed by an earthen dike, berm, or other structure in which vegetation normally grows or reasonably may grow;
- 14) implementing a water sampling and treatment program for the Loudon Field to reduce the corrosiveness of water circulating and thereby reduce corrosion of piping and fittings; and



- 15) requiring that personnel are physically present onsite at the Loudon field twenty-four (24) hours a day, seven (7) days per week to ensure that operations and conditions are regularly and frequently viewed.

E. Any monetary penalties which may be assessed against Petco in this action should be set off by the costs which Petco has already expended on repair, replacement, and upgrade of wells and associated facilities pursuant to Blackshare's compliance recommendations detailed above. Petco has expended over \$2 million not including labor costs to upgrade and replace field equipment and facilities in these four categories: 1) injection well inserts; 2) header replacements; 3) top joint replacements; and 4) nipple replacements. Implementing the Blackshare recommendations has had the desired impact of achieving greater consistency and compliance, and the associated costs to Petco are significant. Accordingly, any civil penalties assessed in this action should take into account the significant investments which Petco has taken in improving and attaining compliance.

F. Any monetary penalties which may be assessed against Petco in this action should be set off by the amounts which Petco has posted as bond in administrative appeals of IDNR Director's Decisions in relation to alleged violations of the Illinois Oil and Gas Act, 225 ILCS 725. Under 62 Ill. Adm. Code 240.180, any person seeking to contest a Director's Decision in which a civil penalty has been assessed must submit the assessed amount to IDNR in order to appeal the Director's Decision. Defendant has tendered to IDNR over Eight Hundred Thousand Dollars (\$800,000) pursuant to Section 240.180 related to Director's Decisions issued to Petco through September 1, 2019 in Director's Decisions, including, but not limited to, Nos. 45880, 45882, 45883, 45884, 45885, 45889, 45930, 45943, 45971, 45990, 46003, 46004, 46091, 46092, 46093, 46094, 46095, 46096, 46097, 46115, 46117, 46118, 46120, 46121, 46122, 46323, 46324,

46325, 46326, 46360, 46361, 46363, 46364, 46365, 46366, 46367, 46368, 46369, 46370, 46388, 46389, 46390, 46407, 46408, 46439, 46524, 46550, 46551, 46552, 46566, 46572, 46574, 46575, 46592, 46618, 46643, 46644, 46652, 46655, 46699, 46700, 46720, 46721, 46724, 46725, 46748, 46782, 46822, 46826, 46878, 46879, 46897, 46898, 46925, 46955, 46960, 46961, 46964, 46965, 46968, 46973, 46984, 46987, 47006, 47016, 47032, 47033, 47034, 47035, 47036, 47038, 47039, 47051, 47052, 47057, 47083, 47084, 47142, 47143, 47144, 47149, 47169, 47245, 47283, 47321, 47328, 47329, 47337, 47410, 47411, 47422, 47530, 47606, 47719, 47800, 47867, 47984, 47985, 47987, 47989, 47990, 48046, 48076, 48080, 48118, 48138, 48164, 48181, 48218, 48245, 48246, 48263, 48303, 48437, 48479, 48483, 48780, 48781, 48783, 48799, 48831, 48832, 48833, 48834, 48835, 48836, 48837, 48971, 48979, 48980, 48981, 48982, 48983, 48984, 48987, 48988, 49075, 49094, 49095, 49096, 49100, 49101, 49102, 49287, 49333, 49414, 49440, 49441, 49561, 49562, and 49563.

G. Under the doctrine of accord and satisfaction, any monetary penalties which may be assessed against Petco in this action should be reduced by the amounts which Petco has posted as bond in administrative appeals of IDNR Director's Decisions, including, but not limited to, Nos. 45880, 45882, 45883, 45884, 45885, 45889, 45930, 45943, 45971, 45990, 46003, 46004, 46091, 46092, 46093, 46094, 46095, 46096, 46097, 46115, 46117, 46118, 46120, 46121, 46122, 46323, 46324, 46325, 46326, 46360, 46361, 46363, 46364, 46365, 46366, 46367, 46368, 46369, 46370, 46388, 46389, 46390, 46407, 46408, 46439, 46524, 46550, 46551, 46552, 46566, 46572, 46574, 46575, 46592, 46618, 46643, 46644, 46652, 46655, 46699, 46700, 46720, 46721, 46724, 46725, 46748, 46782, 46822, 46826, 46878, 46879, 46897, 46898, 46925, 46955, 46960, 46961, 46964, 46965, 46968, 46973, 46984, 46987, 47006, 47016, 47032, 47033, 47034, 47035, 47036, 47038, 47039, 47051, 47052, 47057, 47083, 47084, 47142, 47143, 47144, 47149, 47169, 47245, 47283,

47321, 47328, 47329, 47337, 47410, 47411, 47422, 47530, 47606, 47719, 47800, 47867, 47984, 47985, 47987, 47989, 47990, 48046, 48076, 48080, 48118, 48138, 48164, 48181, 48218, 48245, 48246, 48263, 48303, 48437, 48479, 48483, 48780, 48781, 48783, 48799, 48831, 48832, 48833, 48834, 48835, 48836, 48837, 48971, 48979, 48980, 48981, 48982, 48983, 48984, 48987, 48988, 49075, 49094, 49095, 49096, 49100, 49101, 49102, 49287, 49333, 49414, 49440, 49441, 49561, 49562, and 49563, which as discussed above total over Eight Hundred Thousand Dollars (\$800,000). Petco made these payments to IDNR based on an honest dispute between the parties as to any amounts due as penalties for alleged violations of the Oil and Gas Act with the understanding that these amounts could constitute payment of IDNR's demands during the pendency of the appeals.

WHEREFORE, Respondent Petco Petroleum Corporation respectfully request that the First Amended Complaint and claims asserted therein be dismissed, that judgment be entered in its favor and against Complainant, and that Petco Petroleum Corporation be granted any other any further relief as the Board deems proper under the circumstances.

Respectfully submitted,

/s/ Paul T. Sonderegger

Paul T. Sonderegger, #6276829

Tim Briscoe, #6331827

One U.S. Bank Plaza

St. Louis, MO 63101

(314) 552-6000

FAX (314) 552-6154

psonderegger@thompsoncoburn.com

tbriscoe@thompsoncoburn.com

OF COUNSEL:

THOMPSON COBURN LLP

*Attorneys for Respondent Petco Petroleum Corporation*

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on January 6, 2025, the foregoing was filed with the Illinois Pollution Control Board and served upon the following persons by e-mail:

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

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Ave. East  
Springfield, IL 62794  
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Natalie Long  
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kevin.barnai@ilag.gov

/s/ Paul T. Sonderegger