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Joseph B. Roesch
7th Judicial Circuit
Sangamon County, IL
2025MR000446

IN THE CIRCUIT COURT FOR THE SEVENTH CIRCUIT
SANGAMON COUNTY, ILLINOIS

PETCO PETROLEUM CORPORATION, Plaintiff, v. ILLINOIS POLLUTION CONTROL, BOARD Serve: Don Brown Clerk of the Board Illinois Pollution Control Board 2520 W. Iles Avenue, Suite 100 Springfield, IL 62704 Defendant.	)	Case No. _____

COMPLAINT FOR MANDAMUS

COMES NOW Plaintiff Petco Petroleum Corporation ("Plaintiff" or "Petco"), by and through its undersigned counsel, and for its Complaint for Mandamus against the Defendant Illinois Pollution Control Board ("Defendant" or "Board"), states as follows:

Statement of the Case

1. This case arises from an environmental enforcement action pending before the Illinois Pollution Control Board ("Board"). In 2013, the Attorney General of Illinois filed the original complaint against Petco Petroleum Corporation ("Petco"), alleging violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq*. The Board, an administrative agency of the State, has quasi-judicial authority to adjudicate such enforcement proceedings, but, in doing so, is bound to apply governing law as enacted by the General Assembly.

2. In the enforcement action, the State alleges that Petco, through its oil and gas production operations in and near Fayette County, Illinois, released crude oil, salt water, and/or

brine in violation of the Act. The original complaint raised sixty-one (61) counts, with each count addressing separate and distinct release events that occurred between February 22, 2010 and May 17, 2013.

3. The enforcement action before the Board is equivalent to an enforcement action brought in circuit court; in either forum, the State seeks civil penalties and/or injunctive relief for alleged violations of the Act. The State of Illinois may elect to proceed in either forum.

4. In 2022, nearly a decade after filing its original complaint before the Board, the State filed a First Amended Complaint adding twelve new counts (Counts 62–73) for alleged releases occurring between May 28, 2013 and September 2, 2014. Each of those new alleged violations occurred more than five years before the filing of the First Amended Complaint. Petco moved the Board to dismiss those counts pursuant to the five-year statute of limitations at 735 ILCS 5/13-205, which unambiguously requires that "all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued."

5. On August 22, 2024, the Board denied Petco's Motion to Dismiss, finding that no statute of limitations applies when the State elects to file an enforcement action before the Board rather than in circuit court, reasoning that an action before the Board is outside the scope of Section 13-205 because it is an "administrative proceeding" rather than a "civil action." As such, the Board created a previously unrecognized distinction between Act enforcement actions filed in administrative versus judicial forums, which is a view neither the courts nor the Board had held.

6. This is a case of first impression in Illinois. No court has determined whether the five-year statute of limitations in Section 13-205 applies to environmental enforcement actions filed before the Board rather than in circuit court based on the plain and ordinary meaning of the statutory text. Instead, litigants before the Board and the courts have often assumed, incorrectly,

that the public interest exception automatically governs the applicability of the five-year statute of limitations, and have skipped directly to the three-factor analysis of that exception rather than beginning with the statute's plain language.

7. However, the State's action is created by statute (the Act), not by the common law. Common law exceptions are irrelevant unless the General Assembly has expressly codified them in the language of the substantive statute at issue or the applicable statute of limitations.

8. Here, the General Assembly did not provide for the common law public interest exception in the language of the Act or Section 13-205. Instead, the Act states: "all *civil actions* not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (emphasis added).

9. Civil enforcement actions seeking civil penalties under the Act *are* civil actions. The General Assembly *has* provided that the five-year statute of limitations applies to all *civil actions*, including the enforcement case pending before the Board.

10. The absence of direct Illinois precedent underscores both the importance of the question and the need for judicial resolution. This case, therefore, provides the Court with the opportunity to confirm that statutory limitations protections apply equally regardless of forum.

11. Petco pursued every available avenue to allow the Board to correct its orders. Petco filed a Motion for Reconsideration of the Board's August 22nd Order, which the Board denied in its December 5, 2024 order. Petco then filed a Motion for Certification of a question for interlocutory appeal regarding the statute of limitations issue, which the Board also denied in its March 6, 2025 Order.

12. Moreover, the Board compounded its error by going beyond the certification issue and inserting a finding that the "public interest exception" applied in its March 6, 2025 Order,

without undertaking the three-factor test required under Illinois law and even though it had previously declined to analyze the public interest exception. Petco again sought reconsideration due to this error, but the Board denied that Motion on June 26, 2025.

13. The Board's rulings leave Petco without an adequate remedy at law other than mandamus relief, because the Board has rejected every procedural mechanism offered to correct its mistake. What remains is a pure question of law appropriate for mandamus: whether the five-year statute of limitations applies to enforcement actions brought under the Act when the State chooses to file them before the Board rather than in circuit court. Petco thus seeks a writ of mandamus from this Court compelling the Board to apply Section 13-205 as written and dismiss Counts 62 through 73 of the First Amended Complaint.

14. Petco has a clear, affirmative right to the protections of the statute of limitations enacted by the General Assembly. Section 13-205 by its plain text applies to "all civil actions not otherwise provided for." The action before the Board is a civil action. It does not matter if the State chooses to file a civil enforcement action in court or before the Board as it has done here. The Board and circuit courts have concurrent jurisdiction to hear enforcement actions brought under the Act, and civil appeals of these actions must be taken to the Illinois appellate court in either instance.

15. The Board has a duty to apply statutes as written. The question of whether a statute of limitations applies is not a matter of discretion. When the Board ruled that Section 13-205 does not govern claims filed before it, the Board misinterpreted and misapplied the statute, thereby failing to perform its nondiscretionary duty to enforce Illinois law according to its plain terms.

16. The Board also has authority to comply with the relief sought. The Board may dismiss claims barred by the statute of limitations, or it may conform its orders by striking

improper findings such as its finding on the public interest exception. No further fact-finding is necessary for the Board to comply; the issue is purely legal.

17. This Court is the proper forum for mandamus relief. Mandamus lies in circuit court to compel state agencies and officers to perform nondiscretionary duties required by law. This Court's intervention does not substitute its discretion for that of the Board, but rather corrects a legal error that the Board lacked authority to make. Mandamus is especially appropriate here because the Board's rulings, if uncorrected, would strip Petco of statutory protections provided by the General Assembly and invite the State to evade statutes of limitations by funneling stale claims into administrative enforcement proceedings before the Board.

18. In sum, Petco's complaint seeks an extraordinary but appropriate remedy: a writ of mandamus compelling the Board to apply the five-year statute of limitations to Counts 62 through 73 of the First Amended Complaint, and to strike its improper public-interest findings. This relief is necessary to effectuate the plain text of Illinois law, to protect the rights of Petco and other defendants from allegations arising from events long past, and to restore consistency to the enforcement framework established by the Act.

Jurisdiction and Venue

19. This Court has jurisdiction over this action pursuant to Article VI, Section 9 of the Illinois Constitution and because the Petco seeks injunctive relief from this Court to compel Defendant to comply with non-discretionary duties imposed by statute. *Villarreal v. Vill. of Schaumburg*, 325 Ill. App. 3d 1157, 1160, 759 N.E.2d 76, 79 (2001); *see also Leetaru v. Bd. of Trs. of Univ. of Illinois*, 2015 IL 117485, ¶ 46-48, 32 N.E.3d 583, 596 (2015) ("this court and our appellate court have repeatedly reaffirmed the right of plaintiffs to seek injunctive relief in circuit court to prevent unauthorized or unconstitutional conduct by the State, its agencies, boards,

departments, commissions and agents or to compel their compliance with legal or constitutional requirements.").

20. Venue is proper in Sangamon County under 735 ILCS 5/2-101(1), because the Board resides at its office located at 2520 West Iles Avenue in Springfield, Illinois.

Parties

21. Plaintiff is an Indiana corporation in good standing and authorized to transact business in the State of Illinois.

22. The Board is an administrative agency of the State of Illinois established under the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (the "Act"). The Board exercises both quasi-judicial and quasi-legislative functions pursuant to Section 5 of the Act, 415 ILCS 5/5. The Board acts in its quasi-judicial capacity when it adjudicates administrative complaints alleging violations of the Act, such as administrative complaints filed by the Attorney General of the State of Illinois on behalf of the People of the State of Illinois. 415 ILCS 5/5(d); *see also Cnty. of Will v. Pollution Control Bd.*, 2019 IL 122798, ¶ 42, 135 N.E.3d 49, 60 (2019) (providing overview of Board functions).

Proceedings Before the Board

23. For the Court's reference, Petco summarizes below the procedural history of the enforcement action before the Illinois Pollution Control Board, styled *People of the State of Illinois v. Petco Petroleum Corporation*, PCB 2013-72. Each of the identified filings and Board orders is attached hereto as an exhibit, providing the Court with a complete record of the proceedings relevant to this mandamus action.[1]

[1] All filings in the Board action are also available on the Board's website at: https://pcb.illinois.gov/ClerksOffice/SearchCases. At that website, the filings can be accessed by searching for "2013-72" under the "Case #" field.

24. On or about August 31, 2022, the State filed its First Amended Complaint, which superseded the original complaint filed on June 21, 2013. A copy of the First Amended Complaint is attached hereto as **Exhibit 1**.

25. On or about January 18, 2023, Petco filed its Answer, Affirmative and Additional Defenses to the First Amended Complaint, a copy of which is attached hereto as **Exhibit 2**.

26. On or about January 18, 2023, Petco also filed its Motion to Dismiss Counts 62 Through 73 of the First Amended Complaint, a copy of which is attached hereto as **Exhibit 3**.

27. On or about March 10, 2023, the State filed its Response in Opposition to Petco's Motion to Dismiss Counts 62 Through 72 of the First Amended Complaint, a copy of which is attached hereto as **Exhibit 4**.

28. On or about April 19, 2023, Petco filed its Reply to the State's Response in Opposition to Petco's Motion to Dismiss Counts 62 Through 73 of the First Amended Complaint, a copy of which is attached hereto as **Exhibit 5**.

29. On or about June 1, 2023, the State filed its Sur-Reply to Petco's Reply to the State's Response in Opposition to Petco's Motion to Dismiss Counts 62 Through 73 of the First Amended Complaint, a copy of which is attached hereto as **Exhibit 6**.

30. On or about July 10, 2023, Petco filed its Sur-Sure-Reply to the State's Sur-Reply to Petco's Reply to the State's Response in Opposition to Petco's Motion to Dismiss Counts 62 Through 73 of the First Amended Complaint, a copy of which is attached hereto as **Exhibit 7**.

31. On or about August 22, 2024, the Board issued its Order denying Petco's Motion to Dismiss Counts 62 Through 73 of the First Amended Complaint, a copy of which is attached hereto as **Exhibit 8**.

32. On or about September 16, 2024, Petco filed its Motion for Reconsideration of the Board's August 22, 2024 Order, a copy of which is attached hereto as **Exhibit 9**.

33. On or about September 30, 2024, the State filed its Response in Opposition to Petco's Motion for Reconsideration of the Board's August 22, 2024 Order, a copy of which is attached hereto as **Exhibit 10**.

34. On or about December 5, 2024, the Board issued its Order denying Petco's Motion for Reconsideration of the Board's August 22, 2024 Order, a copy of which is attached hereto as **Exhibit 11**.

35. On or about December 19, 2024, Petco filed its Motion for Certification of Question for Interlocutory Appeal, a copy of which is attached hereto as **Exhibit 12**.

36. On or about January 2, 2025, the State filed its Opposition to Petco's Motion for Certification of Question for Interlocutory Appeal, a copy of which is attached hereto as **Exhibit 13**.

37. On or about March 6, 2025, the Board issued its Order denying Petco's Motion for Certification of Question for Interlocutory Appeal, a copy of which is attached hereto as **Exhibit 14**.

38. On or about April 4, 2025, Petco filed its Motion for Reconsideration of the Board's March 6, 2025 Order, a copy of which is attached hereto as **Exhibit 15**.

39. On or about May 29, 2025, the State filed its Opposition to Petco's Motion for Reconsideration of the Board's March 6, 2025 Order, a copy of which is attached hereto as **Exhibit 16**.

40. On or about June 26, 2025, the Board filed its Order denying Petco's Motion for Reconsideration of the Board's March 6, 2025 Order, a copy of which is attached hereto as **Exhibit 17**.

Legal Argument

I. Standard For Mandamus Relief

41. A writ of mandamus is an extraordinary judicial remedy used to compel a governmental entity to perform a nondiscretionary duty. *Gassman v. Clerk of the Cir. Ct. of Cook Cnty.*, 2017 IL App (1st) 151738, ¶ 13. To obtain mandamus relief, a complainant must demonstrate: (1) a clear, affirmative right to the requested relief; (2) a clear duty of the defendant to act; and, (3) clear authority in the defendant to comply with the writ. *Villarreal v. Vill. of Schaumburg*, 325 Ill. App. 3d 1157, 1160 (2001).

42. A court will not issue a writ of mandamus "when its effect would be to substitute the court's judgment or discretion for that of the public official." *Clarke v. Cmty. Unit Sch. Dist.*, 303, 2012 IL App (2d) 110705, ¶ 24. But the question presented here is not one of discretion. A government entity's misinterpretation or refusal to apply a statute is not a discretionary act at all; it is a legal error. In such circumstances, mandamus is not only available, but essential, to compel the official or agency to follow the law as enacted by the General Assembly. *See Villarreal*, 325 Ill. App. 3d at 1160-61.

II. The General Assembly Has Mandated that Enforcement Actions Under the Act Must Be Brought Within Five Years of an Alleged Violation Pursuant to 735 ILCS 5/13-205.

43. The language of Section 13-205 is clear and unambiguous. Without exception, the General Assembly has provided that "all *civil actions* not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (emphasis

added). The dispositive question, therefore, is whether an enforcement action under the Act and filed before the Board is a "civil action." It is. Because Counts 62 through 73 were filed well outside five years from accrual, the five-year statute of limitations bars them.

44. Pursuant to Illinois law, civil enforcement actions under the Act are "civil actions." The term "civil action" is undefined in both Section 13-205 and the Act. The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. *See People v. Ramirez*, 214 Ill.2d 176, 179, 824 N.E.2d 232, 234 (Ill. 2005). The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. *See id.* Where the language is clear and unambiguous, courts apply the statute without resort to further aids of statutory construction. *See People v. Davison*, 233 Ill. 2d 30, 40, 906 N.E.2d 545, 551 (Ill. 2009). As here, when the statute contains undefined terms, it is entirely appropriate to employ a legal dictionary to ascertain the plain and ordinary meaning of those terms. *See People ex rel. Daley v. Datacom Sys. Corp.*, 146 Ill.2d 1, 15-16, 585 N.E.2d 51, 57 (Ill. 1991).

45. Courts and administrative tribunals routinely refer to Black's Law Dictionary when reviewing the meaning of an undefined statutory term. *See Ahmad v. Bd. of Educ. of City of Chicago*, 365 Ill. App. 3d 155, 165, 847 N.E.2d 810, 819, n.3 (1st Dist. 2006). Black's Law Dictionary defines "civil action" as "[a]n action brought to *enforce*, redress, or protect a private or civil right; a noncriminal litigation. — Also termed (if brought by a private person) *private action*; (if brought by a government) *public action.*" Black's Law Dictionary (12th ed. 2024) (emphasis in original and added). A civil enforcement action under the Act meets the definitional criteria of a "civil action" in Black's Law Dictionary. This civil enforcement case is both an action to *enforce* the Act and is brought by the *government* as a public action. The Illinois Supreme Court similarly recognizes that actions brought by the State to enforce provisions of the Act are "civil enforcement

actions." *People v. Stateline Recycling, LLC*, 2020 IL 124417, ¶ 1, 181 N.E.3d 887, 888–89 (Ill. 2020). In addition, it is not surprising that a civil enforcement case is a "civil action" under Illinois law because the State in its First Amended Complaint is seeking "a *civil penalty* of $50,000.00 for each violation of the Act and the Board's regulations, and an additional *civil penalty* of $10,000.00 for each day each violation continued." (**Ex. 1**, 1st Am. Comp. at 111, Prayer for Relief). As such, pursuant to the Act, "civil penalties" are expressly recoverable in a "civil action." *See People v. NL Indus.*, 152 Ill. 2d 82, 102–03, 604 N.E.2d 349, 358 (Ill. 1992).

46. Likewise, it does not matter if the State chooses to file a civil enforcement action in court or before the Board. Circuit courts and the Board have concurrent jurisdiction to hear enforcement actions brought under the Act. *See id.*, 152 Ill. 2d at 99, 604 N.E.2d at 356; *People v. Donald Pointer*, PCB 96-64, 1998 WL 83188, at *1 (Feb. 19, 1998) ("It is well settled that the Board and the circuit courts have concurrent jurisdiction over most violations of the Act."); *M.I.G. Invest., Inc., & United Bank of Ill. v. Ill. Env'l Prot. Agency*, PCB 85-60, 1985 WL 21468, at *1 (Aug. 15, 1985) ("The Act has vested in the Board and the circuit court concurrent jurisdiction to hear enforcement actions."). Whether the State chooses to file in court or before the Board, therefore, is merely a question of venue selection. It does not impact the substantive nature of the claim and whether a civil enforcement action under the Act is a "civil action." And, regardless of the venue selected, civil appeals of these actions must be taken to the Illinois appellate court in either instance. *See* 415 ILCS 5/41(a); *FedEx Ground Package Sys., Inc. v. Pollution Control Bd.*, 382 Ill. App. 3d 1013, 1014–15, 889 N.E.2d 697, 699 (1st Dist. 2008). As a result, civil enforcement actions under the Act are "civil actions" to which Section 13-205 applies.

III. Circuit Courts and the Board Exercise Concurrent Jurisdiction Over Enforcement Actions Under the Act.

47. The text of the Act, Board decisions, and Illinois caselaw specify that the Board and circuit courts are both proper forums to adjudicate civil enforcement actions under the Act. 415 ILCS 5/31(d)(1) provides that "[a]ny person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order." Similarly, 415 ILCS 5/42 provides that the State's Attorney of the county in which an alleged violation occurred, or the Attorney General, may bring a civil action in circuit court against any person allegedly violating the Act. These Sections do not create different enforcement causes of action—they simply dictate who can bring enforcement actions under the Act and in which forums.

48. Again, the Act makes clear that the Board and circuit courts have concurrent jurisdiction to preside over enforcement actions. *See People v. Fiorini*, 143 Ill. 2d 318, 337–38, 574 N.E.2d 612, 619 (1991) ("concurrent jurisdiction exists in the circuit court and the [Board] for actions alleging violations of the Act"); *People v. Donald Pointer*, PCB 96-64, 1998 WL 83188, at *1 (Feb. 19, 1998) ("It is well settled that the Board and the circuit courts have concurrent jurisdiction over most violations of the Act."). Appeals from either forum must be taken to Illinois appellate courts. 415 ILCS 5/41(a); *FedEx Ground Package Sys., Inc. v. Pollution Control Bd.*, 382 Ill. App. 3d 1013, 1014–15, 889 N.E.2d 697, 699 (1st Dist. 2008). The Act simply permits the State and other authorized plaintiffs to file enforcement actions before the Board or in circuit court at their option.

49. Implicit in the Board's orders is an assumption that there are separate causes of action which can be filed before the Board or in circuit court. That is incorrect. The language of

the Act and the above-cited authorities show that the State may bring civil actions before the Board or a circuit court alleging violations of the Act. Here, the State's complaint focuses on alleged violations of Section 12 of the Act, 415 ILCS 5/12, concerning water pollution, a provision which can and has been prosecuted in circuit courts and before the Board. *E.g., People v. Buchanan Energy(s), LLC*, No. 2014 CH 001274, 2015 WL 10015821, at *2 (Ill. Cir. Ct. DuPage Cnty. Feb. 5, 2015) (circuit court action); *Paul Christian Pratapas v. Lexington Trace LLC*, PCB 24-42, 2024 WL 1543149, at *4 (Apr. 4, 2024) (Board action).

50. The enforcement cause of action brought—pursuing remedies for violations of the Act—is the same irrespective of the litigants or the selected forum. The nature of the cause of action does not change merely because the State chooses to file it before the Board instead of circuit court. Accordingly, the five-year statute of limitations for "all civil actions not otherwise provided for" (735 ILCS 5/13-205) should apply with equal measure to enforcement actions filed in either forum.

IV. Counts 62–73 Were Filed More Than Five Years After the Alleged Violations

51. The enforcement case before the Board has been pending since June 21, 2013. In the original Complaint's sixty-one (61) counts, the State alleged that Petco was responsible for mostly low volume releases of crude oil and/or salt water in Fayette and Jefferson Counties between February 22, 2010 and May 17, 2013 that violated the Act. (1st Am. Comp. at Count I, ¶18—Count LXI, ¶18). The First Amended Complaint does not substantively alter Counts 1 through 61. However, the First Amended Complaint adds eleven (11) counts for alleged violations at the same and similar facilities in Fayette County with more low volume releases of crude oil and/or salt water between May 28, 2013 and September 2, 2014. (**Ex. 1**, 1st Am. Comp. at Count LXII, ¶18 to Count LXXIII, ¶18).

52. Nowhere in the First Amended Complaint does the State contend that any of the now seventy-three (73) claimed violations were unknown or unreported. Consistent with these facts, all the alleged violations were reported and assigned 2010 through 2014 Illinois Emergency Management Agency ("IEMA") numbers. (*Id.* at ¶16). Similarly, nowhere does the State allege that the releases of the crude oil and/or salt water did not cease, lasted for any express length of time, or that any environmental impacts are unresolved and/or are ongoing. There is no dispute that the alleged releases in Counts 62 through 73 occurred and were known more than eight to nine years prior to filing the First Amended Complaint.

Counts 1 through 61 (Occurrences from Feb. 22, 2010 to May 17, 2013)

53. Of the 61 counts in the original Complaint counts that remain in the First Amended Complaint, 60 of them (Counts I – XLIII, XLV – LXI) involve releases alleged from Petco facilities and leases near St. Elmo in Fayette County. One claimed release (Count XLIV) occurred near Dix in Jefferson County. All of these alleged releases occurred from February 22, 2010 through May 17, 2013. (*Id.* at Counts I – LXI).

54. Most of the allegations involve low volume and unmeasured amounts of crude oil and/or salt water that were released. For example, in Count X at the George Durbin Pit, the State claims that "Petco discharged less than one barrel of crude oil and approximately two to three barrels of salt water" when a PVC drain line leaked. (1st Am. Comp. at Count X, ¶18). In Count XIX at the Richard Larimore Sump, the State alleges that "Petco discharged a small quantity of crude oil and approximately 200 to 250 barrels of salt water" when a buried steel flowline corroded. (*Id.* at Count XIX, ¶18). In Count XX at the Martha Terry #9 well, the State contends that "Petco discharged two barrels of crude oil and thirty barrels of salt water" from a flowline that became exposed. (*Id.* at Count XX, ¶18). In Count XXIV at the Edith Durbin Pit, the State alleges

that "Petco discharged [unquantified] crude oil and salt water." (*Id.* at Count XXIV, ¶18). And, in Count LV at the Mary Williams #1 Well, the State claims that "Petco discharged approximately one barrel of crude oil and five barrels of salt water to a private pond." (*Id.* at Count LV, ¶18).

55. While the State claims that the releases are "attributable to human error, corrosion, old equipment or other circumstances that could have been prevented," many of its allegations belie this contention. (*Id.* ¶17). For instance, in Count XXIV at the Edith Durbin Pit, the State acknowledges that the release was "potentially due to pressure caused by tree roots." (*Id.* at Count XXIV, ¶18). In Count XLII at the M.E. Hogan #11 Production Well, the State concedes that the release may have been "due to vandalism, and the pump jack continued to operate." (*Id.* at Count LII, ¶18). And, in Count LVII at the Birdie Kimbrell #3 Flowline, the State 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). In many circumstances, the State's attempt to fault Petco is misplaced.

New Counts 62 through 73 (Occurrences from May 28, 2013 to Sept. 2, 2014)

56. The First Amended Complaint was filed on August 31, 2022. The allegations contained in new Counts 62 through 73 also pertain to releases from Petco facilities and leases near St. Elmo in Fayette County. All of those claimed releases occurred from May 28, 2013 through September 2, 2014—over eight to nine years before the First Amended Complaint. (*Id.* at Counts LXII – LXXIII).

57. Like the first sixty-one (61) counts, the new twelve (12) counts mostly involve low volume releases of crude oil and/or salt water. For example, in Count LXII at the J.G. Main #4 Well, the State claims that "Petco discharged approximately 5 barrels of crude oil" due to an improperly affixed ring. (*Id.* at Count LXII, ¶18). In Count LXV at the First State Bank Sump

Line, the State alleges that "Petco discharged sixty (60) barrels of salt water" from a flowline. (*Id.* at Count LXV, ¶18). And, in Count LXVI at the Ed Harper Sump Tank Battery, the State contends that "Petco discharged ten (10) barrels of crude oil and ten (10) barrels of salt water" when a sump line malfunctioned. (*Id.* at Count LXVI, ¶18).

58. Again, contrary to the position that these releases all are "attributable to human error, corrosion, old equipment or other circumstances that could have been prevented," the State's allegations in Count LXV provide otherwise. (*Compare* Count LXV, ¶18 *with* Count LXVI, ¶18). The State acknowledges that, at the First State Bank Sump Line, the release was "due to accidental causes after a tree fell on the line." (*Id.* at Count LXV, ¶18).

V. The Board Has Not Previously Addressed Whether a Civil Enforcement Action Under the Act Is a "Civil Action" Under Section 13-205.

59. Petco has surveyed past Board decisions on the issue of whether the five-year statute of limitations in Section 13-205 is applicable to civil enforcement actions brought under the Act, and the Board has declined to dismiss cases involving statute of limitations arguments. *See, e.g.*, *People v. Amsted Rail Co., Inc.,* PCB No. 16-61, 2016 WL 758157, at *3 (Feb. 11, 2016); *Caseyville Sport Choice v. Seiber*, PCB 08-30, slip op. at 3-4 (Oct. 16, 2008); *Union Oil Co. of Cal. v. Barge-Way Oil Co.*, PCB 98-169, slip op at 4 (Feb. 14, 2001); PCB 98-169 slip op. at 5 (Jan. 7, 1999). But the parties in those cases did not present to the Board, and the Board did not consider, that the express language of Section 13-205 applies to civil enforcement actions under the Act when applying the canons of statutory construction.

60. In addition, the Board in prior decisions has declined to rule that Section 13-205 never applies to civil enforcement actions. To the contrary, the Board has recognized only that "the Board to date has declined to bar a claim under the five-year statute of limitation *based on the circumstances of the individual cases*." *People v. Amsted Rail Co., Inc.,* PCB No. 16-61, 2016 WL

4400840, at *3 (March 3, 2016) (emphasis added). In fact, in each of those cases, the Board has found a specific set of facts that are not present in the instant case from which to base its decision that Section 13-205 should not be applied. *See, e.g., Seiber*, PCB 08-30, slip op. at 3-4 (Oct. 16, 2008) (the Board was unconvinced of the date that complainant became aware of the alleged violations and did not apply Section 13-205); *Barge-Way Oil Co.*, PCB 98-169, slip op at 4 (Feb. 14, 2001); PCB 98-169 slip op. at 5 (Jan. 7, 1999) (the Board found insufficient information on when complainant should have been aware of the alleged violations and did not apply Section 13-205).

61. By contrast, the State here concedes that the new eleven alleged violations were reported and known eight to nine years before the First Amended Complaint was filed. (**Ex. 1**, 1st Am. Comp. at ¶16). The unique circumstances in the other Board decisions are not present in this case and do not preclude dismissal of Counts 62 through 73 based on Section 13-205.

62. Moreover, the parties in the prior Board cases have assumed incorrectly that they must demonstrate that applying the five-year statute of limitations does not harm the public interest. They then have leaped straight to a three-factor analysis of the public interest exception to applying the statute of limitations. *See, e.g., People v. Amsted Rail Co., Inc.,* PCB No. 16-61, 2016 WL 4400840, at *2 (respondent "notes barring this enforcement action based on the statute of limitation will not harm the public interest [and] identifies three factors used to determine whether a governmental entity is protecting a public interest."). With due respect to those parties and the Board's prior considerations of the arguments presented, the public interest exception should not have been argued as a primary issue and was misapplied. The Board itself has cited *Clare v. Bell*, 378 Ill. 128, 130-131 (Ill. 1941) as one of the original cases holding that "a statute of limitation is not applicable to the State when it is asserting a public right, as distinguished from

a private right, unless the terms of a statute of limitation expressly include the State." *Id.*, PCB No. 16-61, 2016 WL 4400840, at *4. But that is not the context and substance of what the Illinois Supreme Court analyzed and held in *Bell*.

63. The plaintiff property owner in *Bell* sought an injunction in equity to restrain the Will County Collector of Revenue from forcing her to pay additional taxes, interest, and penalties on real estate. *Bell*, 378 Ill. at 129-30. The Court considered two issues: 1) whether the statute of limitations for "statutory penalties" was applicable to penalties on delinquent property taxes; and 2) whether equitable estoppel was operative to prevent the county from collecting the penalties based on neglect or omission of county tax personnel. *See id.* at 130, 132. The *Bell* Court held that: a) based on the statutory text, "it does not follow that an action for the collection of penalties on real estate taxes is an action for a 'statutory penalty' within the contemplation of section 14 of the Statute of Limitations"; and b) "[p]ublic policy forbids the application of the doctrine of estoppel to a sovereign State where the public revenues are involved." *Id.* at 131-32. Therefore, as Petco is requesting the Board to do here, the *Bell* Court analyzed and applied language of the statute of limitations at issue and determined that real estate tax penalties do not fit within the broader category of statutory penalties.

64. Another key difference is that the *Bell* Court was sitting in equity at common law, and it was not analyzing a statutory cause of action that the General Assembly created with limitations, as is the case here. In equity, a court also has authority to judicially determine the parameters and limits of a claim, which is precisely what the *Bell* Court did in holding that equitable estoppel was unavailable to the plaintiff property owner. In comparison, the Board does not have the ability to remove a statute of limitations that the General Assembly has prescribed to

all civil claims under the Act. The *Bell* opinion and associated decisions[2] are inapposite to the present situation.

65. As a result, common law exceptions do not apply and are irrelevant unless the General Assembly expressly has codified a specific common law exception into the language of the substantive statute at issue or the statute of limitations. Here, the General Assembly *did not* provide for the common law public interest exception in the language of the Act or Section 13-205. Without exception, "all *civil actions* not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (emphasis added). Civil enforcement actions seeking civil penalties under the Act *are* civil actions. The General Assembly *has* provided that the five-year statute of limitations applies to *all civil actions*, including this case.

66. If the Court finds that Section 13-205 does not apply here, such a ruling would mean that civil enforcement claims do not have *any* statute of limitations and could be brought 50, 100, 150, or 500 years from the date of the alleged release and violation. Such a finding would undermine the purposes of statute of limitations and the reasonable limitations that the General Assembly has provided in Section 13-205.

[2] The *Amsted Rail Co., Inc.,* PCB No. 16-61, decision is not the only one that has leaped to analysis of the common law public interest exception. The Fifth District Appellate Court in *Pielet Bros. Trading v. Pollution Control Bd*., referencing *Bell*, recited that the statute of limitations must expressly include the State "so far as public rights are concerned," although it held that the claim at issue under the Act did not "pertain to personal actions" contemplated within the text of the two-year statute of limitations. 110 Ill. App. 3d 752, 758, 446 N.E.2d 1379, 1379 (5th Dist. 1982). Similarly, the Illinois Supreme Court in *City of Shelbyville v. Shelbyville Restorium, Inc.*, again referencing *Bell*, held that the Illinois Constitution's and the Court's abrogation of sovereign immunity did not likewise abrogate the common law common interest exception to certain statutes of limitation. 96 Ill.2d 457, 459, 463, 451 N.E.2d 874, 875, 878 (Ill. 1983). On the other hand, consistent with the straightforward statutory interpretation that Petco urges here, the Illinois Supreme Court in *Du Page County. v. Graham, Anderson, Probst & White, Inc.*, again citing *Bell*, did find that the broad category of "person" set forth in the two-year statute of limitations for construction claims expressly did apply to the county government and barred the claim. 109 Ill. 2d 143, 151-52, 485 N.E.2d 1076, 1079-80 (1985).

67. The idea that no statute of limitations can apply against the State in the absence of expressly referring to the government also is erroneous. The criminal statutes of limitation likewise do not expressly refer to the government—they reference the term "prosecution" only. *See, e.g.*, 720 ILCS 5/3-5, *et seq*. Even in that context, the General Assembly has not remained silent and has expressly provided that certain serious crimes, like first degree murder, "may be commenced at any time." 720 ILCS 5/3-5(a). And, both the government and citizen parties may pursue criminal and citizen enforcement claims in certain environmental claim contexts, meaning they both "prosecute." *See, e.g.*, 62 Ill. Adm. Code 1700.13 (state mining act citizen's suit).

68. In short, when passing Section 13-205, the General Assembly meant "all civil actions" without exception in stating that the five-year limitations period applies to "*all* civil actions" to which no other limitations period expressly applies. The Board should have applied Section 13-205 in accordance with its clear and unambiguous language and dismissed new Counts 62 through 73 of the First Amended Complaint.

VI. The Board Erred by Creating a New Rule That Undermines Uniform Application of the Statute of Limitations and Creates an Unjustifiable Forum Distinction With Serious Policy Consequences

69. Recognizing that prior cases analyzing Section 13-205 have not squarely addressed the meaning of "civil action" in the statute, the Board "acknowledge[d] Petco's initial point that, when considering Section 13-205 in the past, the Board has not decided 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." (**Ex. 8**, Aug. 22, 2025 Board Order at 4). The Board, therefore, found it appropriate to rule on whether an enforcement action filed before the Board was a "civil action" within the meaning of Section 13-205. Notably, the State's briefs did not squarely address Petco's point that enforcement actions under Section 31 of the Act are civil actions. (*See*

Ex. 4, State's Response in Opposition to Motion to Dismiss at 5 ("Infusing fresh meaning into the phrase "civil action" does not give rise to the ability of a party to apply a statute of limitations defense to a governmental entity, acting in the public interest, particularly when the State brings an enforcement action pursuant to Section 31 of the Act.") and 10 ("Whether or not an action is a 'civil action' is beside the point. The key question to consider is whether an action brought by a governmental entity involves a public right or a private right."); **Ex. 6**, State's Sur-Reply at 2 ("Whether or not this case is a 'civil action' is of no moment.")).

70. Nonetheless, the Board moved past the parties' briefs and found that "filing a complaint with the Board under Section 31 initiates an administrative proceeding—not a 'civil action,' which is brought in court." (**Ex. 8**, Aug. 22, 2025 Board Order at 4). Applying this distinction between an administrative proceeding and an action in court, the Board held that the five-year statute of limitations applicable to "all civil actions not otherwise provided for" (735 ILCS 5/13-205) does not apply to actions filed with the Board.

71. In holding that an enforcement action brought under Section 31 of the Act before the Board is not subject to the five-year statute of limitations in Section 13-205, the Board has created a scenario where the limitations period could only apply if the State, at its sole option, elects to file the enforcement action in circuit court rather than before the Board. Yet, as discussed above, circuit courts and the Board have concurrent jurisdiction to hear enforcement actions brought under the Act. *See Fiorini*, 143 Ill. 2d at 337–38, 574 N.E.2d at 619; *Donald Pointer*, PCB 96-64, 1998 WL 83188, at *1.

72. The policy implications of the Board's finding are significant. The decision allows the government to circumvent the statute of limitations by merely electing to file before the Board, rather than in circuit court. It undermines the clarity which statutes of limitations afford potential

defendants regarding the timeframe during which legal actions can be brought against them based on past events, ensuring that claims are diligently pursued within a defined period. *See Milnes v. Hunt*, 311 Ill. App. 3d 977, 981, 725 N.E.2d 779, 782 (2000) ("Statutes of limitations are designed to prevent recovery on stale demands [and] require diligence in initiating actions.").

73. Statutes of limitations also provide a fundamental legal protection designed to ensure timely resolution of disputes and to prevent parties from facing stale claims where evidence has diminished or lost over time, witnesses are no longer reasonably accessible or deceased, and relevant documents may no longer be available due to conventional document retention policies or other circumstances. *See Doe v. Hastert*, 2019 IL App (2d) 180250, ¶ 54, 133 N.E.3d 1249, 1260 (*citing United States v. Kubrick*, 444 U.S. 111, 117 (1979)); *Softcheck v. Imesch*, 367 Ill. App. 3d 148, 157, 855 N.E.2d 941, 948 (2006) ("Statutes of limitations exist for very legitimate reasons. Memories fade; witnesses disappear; documents are lost or destroyed. The law recognizes the injustice of requiring one to defend against stale claims.").

74. Moreover, taken to its logical extreme, the Board's finding unwittingly allows the State to exhume long-dead notices of violation, sent decades ago under different executive, administrative, and/or legal leadership of the State, by filing enforcement actions with the Board instead of circuit court. The Board's finding ensures the probability of filing a deluge of enforcement cases that heretofore were inactive and final due to inaction.

75. In sum, allowing the statute of limitations to be applied differently depending on the government's selected forum undermines fundamental protections and creates arbitrarily different outcomes. Stale enforcement actions are stale whether they are filed with the Board or in circuit court.

VII. Other State Courts Have Explicitly Recognized That Statutes of Limitations Apply Equally to Administrative and Judicial Forums.

76. Unsurprisingly, this issue has been considered and ruled upon in divergent ways in other jurisdictions, which, in the absence of controlling Illinois precedent, demonstrates the need for mandamus relief from this Court. As the Connecticut Supreme Court reasoned in *Bouchard v. State Employees Retirement Commission*, 328 Conn. 345, 178 A.3d 1023 (2018), there is a 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 on the operation of Section 13-205 in light of the concurrent jurisdiction between the Board and circuit courts over civil enforcement actions.

77. The Board's March 6, 2025 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." (**Ex. 14**, 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.

78. 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.

79. 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.

80. 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.

81. 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. This Court can and should resolve this legal issue with significant implications for enforcement actions across Illinois. Where the text of Section 13-205 is clear and unambiguous, no Illinois court has spoken, and persuasive authority from other jurisdictions is on point, the Court should afford that authority due weight, particularly where the out-of-state cases address similar statutory language and reflect on public policy considerations.

VIII. The Board Erred in Its March 6, 2025 Order by Invoking the Public Interest Exception Without Prior Findings or the Required Three-Factor Analysis.

82. The Board's March 6, 2025 Order denying Petco's motion for certification of question for interlocutory appeal marked the first time the Board asserted that the public interest exception applies in this case, even though it had previously declined to make such a finding. 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. (*Compare* **Ex. 14,** Mar. 6, 2025 Board Order, at 6 ("Illinois law has established that when a government entity brings a cause of action under Section 31 of the Act, the applicability of a statute of limitations to that action is a question of whether the State was acting in the public interest under the public interest exception analysis. The Board and the Appellate Court 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."), *with* **Ex. 8**, Aug. 22, 2024 Board Order, at 5 ("it is not necessary here for the Board to undertake the public rights 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.").

83. The March 6th Order improperly makes 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 and analyze the requisite factors, the Board's finding rests on assumption rather than necessary analysis.

84. 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, the Board improperly grafted a finding on the applicability of the public interest exception into its ruling on the motion for interlocutory appeal, without conducting the requisite analysis.

85. The Board's reliance 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" 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 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.

86. 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.

87. In sum, the Board's March 6, 2025 Order compounded its earlier legal errors by invoking the public interest exception without authority and without applying the governing legal test. In this decision and its decision finding that Section 13-205 does not apply to enforcement

action filed with the Board, the Board has departed from its nondiscretionary duty to apply Illinois law as written, leaving Petco without an effective remedy other than mandamus.

COUNT I
(Mandamus for Failure to Apply Statute of Limitations)

88. Petco incorporates Paragraphs 1 through 87 above by reference as if set forth fully herein.

89. Section 13-205 of the Illinois Code of Civil Procedure unambiguously provides that "all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205.

90. Enforcement actions under the Illinois Environmental Protection Act are civil in nature. They are "civil actions" within the meaning of Section 13-205 whether filed in circuit court or before the Board, which exercises concurrent jurisdiction with the courts.

91. The State's new Counts 62 through 73 in the First Amended Complaint allege violations occurring between May 2013 and September 2014, all more than five years before the amended pleading was filed on August 31, 2022.

92. By refusing to apply Section 13-205 to bar those stale counts, the Board misinterpreted Illinois law and failed to carry out its nondiscretionary duty to enforce statutes as enacted.

93. As with all other defendants in enforcement actions initiated before the Board or in circuit court, Petco has a clear, affirmative right to the protections of the five-year statute of limitations.

94. The Board has a clear duty to apply that statute according to its terms. The Board also has clear authority to dismiss claims barred by limitations.

WHEREFORE, Plaintiff Petco Petroleum Corporation respectfully prays that the Court enter judgment in its favor and against Defendant Illinois Pollution Control Board and issue a writ of mandamus compelling the Board to apply Section 13-205 and bar Counts 62 through 73 of the State's First Amended Complaint in *People of the State of Illinois v. Petco Petroleum Corporation*, PCB 2013-72, and granting such further relief as the Court deems just and proper.

COUNT II
(Mandamus for Improper Finding on Applicability of the Public Interest Exception)

95. Petco incorporates Paragraphs 1 through 94 above by reference as if set forth fully herein.

96. In its March 6, 2025 Order denying Petco's motion for certification of a question for interlocutory appeal, the Board for the first time grafted into its ruling a finding that the "public interest exception" applied, even though it had previously declined to analyze that issue in its August 22, 2024 order.

97. The Board adopted this finding without applying the established three-factor test that Illinois courts require to determine whether the State is asserting a public right. That test examines (1) the effect of the interest on the public, (2) the government's obligation to act on behalf of the public, and (3) the extent to which public funds are involved.

98. Neither the Act nor Section 13-205 codifies a public interest exception. Absent legislative authorization, the Board lacks discretion to apply such an exception. However, even if an exception did apply, the Board must at minimum conduct the required three-factor analysis.

99. The Board's action exceeded its authority and deprived Petco of a proper adjudication of the public interest exception. The Board failed to perform its nondiscretionary duty to apply Illinois law correctly.

100. As with all other defendants in enforcement actions initiated before the Board or in circuit court, Petco has a clear, affirmative right to the protections of the five-year statute of limitations.

101. The Board has a clear duty to either (a) rescind its public interest exception finding, or (b) if it persists in relying on the exception, conduct the requisite three-factor analysis. The Board has clear authority to correct its orders accordingly.

WHEREFORE, Plaintiff Petco Petroleum Corporation respectfully prays that the Court enter judgment in its favor and against Defendant Illinois Pollution Control Board and issue a writ of mandamus compelling the Board to either rescind its public interest finding in the March 6, 2025 Order, or, in the alternative, to conduct the requisite three-factor analysis under Illinois law, with respect to Counts 62 through 73 of the State's First Amended Complaint in *People of the State of Illinois v. Petco Petroleum Corporation*, PCB 2013-72, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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