

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-66
)	
PETCO PETROLEUM CORPORATION,)	
an Indiana Corporation,)	
)	
Respondent.)	

**RESPONDENT'S RESPONSE TO COMPLAINANTS MOTION TO STRIKE
OBJECTIONS TO REQUEST FOR THE ADMISSION OF FACTS**

NOW COMES Respondent, Petco Petroleum Corporation, Inc. by and through its attorneys Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., Charles J. Northrup, of counsel, and hereby responds to, and requests the Hearing Officer to deny, Complainant's Motion to Strike Objections To Request For the Admission of Facts. In support, Respondent states:

I. Background

1. On or about April 12, 2005, Complainant caused to be mailed its "Request for Admission of Facts" to Respondent. On or about May 6, 2005, Respondent filed its "Answers and Objections to Complainant's Request for the Admission of Facts." Respondent objected to a number of specific Requests primarily on grounds that the Requests were vague and called for legal conclusions or opinions.

2. On or about July 11, 2005, Complainant filed its "Motion to Strike Objections to Request for the Admission of Facts."

3. Complainants Motion takes issue with Respondent's characterization of certain terms as vague and calling for opinions or conclusions of law. These terms are: "discolored," "turbid," "affected," "impacted," "unnatural bottom deposits," and "suspended precipitate."

II. Argument

4. As an initial argument, and the only argument for which case law is referenced, Complainant refers to the distinction between "ultimate facts" and "conclusions of law." The cases cited generally support the notion that there is a difference between these two categories of requested admissions. However, this case law is not helpful in this case. Respondent's objections are not primarily objections calling for distinguishing "ultimate facts" from "conclusions of law." Rather, Respondent's objections, particularly as to vagueness, are objections based upon the absence of discernable or identifiable facts.

A "fact" is defined as "a piece of information presented as having objective reality" (Merriam-Webster Online Definition 2005) or, alternatively, something that is "true and accurate" (The American Heritage Dictionary, Office Edition, 1983). Merely pronouncing something as "discolored," "unnatural," "impacted," "affected," or "turbid" does not establish the precision of definition required to be considered "objective reality" or accurate. Conversely, these terms are clearly vague in that they have no "precise meaning" (Merriam-Webster Online Dictionary 2005, definition of "vague"). As an example, if the Complainant wanted to establish facts related to discoloration, Complainant should have identified facts such as the water was blue or green or orange. These are facts that can be admitted. These are facts like the time and place of reported releases for which Complainant has requested admissions and which Respondent has admitted. Complainant's attempt to have Respondent admit as a legal matter

that water was “discolored” or “turbid” or “impacted” or “affected” interposes too much subjectivity and lacks the “objective reality” necessary to establish a fact.

“Unnatural Bottom Deposits”

5. Here too, the use of the term “unnatural bottom deposits” as vague, and calling for an opinion and/or conclusion of law, was properly objected to. What is or is not an “unnatural bottom deposit” is not a *fact* that can be admitted. A fact would be the identification of what the unnatural bottom deposit is, whether it be animal, vegetable or mineral. No where is the term “unnatural bottom deposit” identified or explained. The term has no “objective reality” to make simply saying it exists as a *fact*. It is, more accurately an opinion as to the condition of the particular waterway.

“Suspended Precipitate”

6. No where in the Request to Admit, the Act or the regulations is the term “suspended precipitate” defined. In the absence of such definition, it has no objective meaning. It is vague because it is subject to varying definitions. In addition, and in good faith, Respondent acknowledged the presence of a black substance on the bottom of the creeks in question (Ans. & Obj. par. 9). That is a fact that can be admitted. Respondent merely, and correctly, objected to that portion of the Request that sought to give the objective characterization some unknown and undefined meaning.

Ada Clow Sump Flooding Relevancy

7. Upon review and reconsideration of this particular Request related to prior flooding at the Ada Clow Sump, Respondent will withdraw its objection and respond consistent with the Hearing Officer’s Order resolving this Motion.

8. It should also be noted that Complainant has not moved to strike Respondents vagueness objections with respect to such terms as “typical” and “large” (See Ans. & Obj., par. 1). These terms, however, are analogous as such terms as “discolored”, “turbid”, “affected” or “impacted.” Complainant’s decision not to object to these terms and the consequential admission that such terms are not objectionable should be an indication to the Hearing Officer that even Complainant concedes the vagueness of the objectionable terms.

III. Conclusion

WHEREFORE, Respondent respectfully requests that the Hearing Officer deny Complainant’s Motion to Strike Objections to Request for the Admission of Facts.

Respectfully submitted

PETCO PETROLEUM CORPORATION,
Respondent

s/ Charles J. Northrup
One of Its Attorneys

Sorling, Northrup, Hanna,
Cullen & Cochran, Ltd.
Charles J. Northrup, of Counsel
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705
Telephone: (217) 544-1144
Facsimile: (217) 522-3173

PROOF OF SERVICE

The undersigned hereby certifies that the foregoing document was electronically filed with the Illinois Pollution Control Board:

and one copy to:

Ms. Carol Webb
Hearing Office
Illinois Pollution Control Board
1021 North Grand Ave. East
Post Office Box 19276
Springfield, IL 62794-9274

Thomas Davis, Chief
Environmental Bureau
Office of the Attorney General
500 South Second Street
Springfield, IL 62706

and by depositing same in the United States mail in Springfield, Illinois, on the ____ day of July, 2005, with postage fully prepaid.

/s/Charles J. Northrup_____