

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

MOTION FOR ORAL ARGUMENT

COMES NOW Respondent Petco Petroleum Corporation (“Petco”), by and through its undersigned counsel, and pursuant to 35 Ill. Adm. Code 101.700, requests oral argument on Petco’s Motion to Dismiss Counts 62 Through 73 of the First Amended Complaint and Complainant’s Motion to Strike Respondent’s Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter. In support, Petco states as follows:

1. Section 101.700(a) provides that “[t]he Board may hear oral argument upon written motion of a party or the Board’s own motion. . . . The purpose of oral argument is to address legal questions.”

2. Petco is aware that the Board does not often grant oral argument, but a review of the long history of cases brought before the Board demonstrates that the distinct legal issues set forth in the Motion to Dismiss and the Motion to Strike repeatedly recur. This case presents the Board with the opportunity to provide clarity to litigants based on a review of the salient statutory text and applicable pleading standards.

3. Petco’s Motion to Dismiss presents a succinct legal issue that has not previously been presented to the Board and which it thus has not considered; namely, whether the text of the five-year statute of limitations in 735 ILCS 5/13-205 bars the twelve new civil enforcement counts

in the First Amended Complaint brought under the Environmental Protection Act, 415 ILCS 5/1, *et seq.*, which the State has lodged for the first time a full eight to nine years after the occurrence of the underlying events.

4. Despite this legal issue, the briefing on the Motion to Dismiss has gone on multiple tangents that are unrelated to the statutory text, injecting irrelevant matters into the legal analysis and reflecting substantial disagreement between the parties.

5. The statute of limitations issue is a case of first impression because the dispositive, governing text of Section 5/13-205, for unknown reasons until this case, have not been argued before the Board or in Illinois courts. Section 5/13-205 clearly and 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 (emphasis added). There is no dispute that 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.

6. Parties in prior cases instead have skipped over the statutory text and incorrectly assumed that they must show that applying the five-year statute of limitations does not harm the public interest based on the three-factor “public interest exception.” That exception can be found nowhere within the provisions of Section 5/13-205 or the Environmental Protection Act (it applies to common law causes of action for which the courts may craft judicial exceptions in contrast to the statutory cause of action at issue and crafted by the General Assembly here).

7. The resolution of the statute of limitations issue implicates many cases and the State’s responsibility to timely bring actions within the five-year limitations period. If the Board finds that Section 5/13-205 does not apply here, such a ruling would mean that civil enforcement claims do not have *any* statute of limitations and could be brought decades or centuries from the

date of the alleged release and violation. Such a rule defies sensibility and the reasonable limitations that the General Assembly has provided in Section 5/13-205.

8. Likewise, there is a finite legal issue presented by Complainant's Motion to Strike; namely, whether Petco's Answer, Affirmative and Additional Defenses sufficiently pleads facts supporting Petco's defenses and additional material responsive that are relevant to the First Amended Complaint pursuant to 35 Ill. Adm. Code 103.204(d) and Illinois case law.

9. The Motion to Strike does not merely seek an order to clean up the pleading prior to discovery (no discovery has been served, answered, or taken), but seeks to gut swaths of responsive information and defenses across Petco's entire Answer, Affirmative and Additional Defenses in lieu of prosecuting this case and proceeding with discovery. Nonetheless, Petco has met the requisite pleading standard.

10. The points raised in the parties' briefs on the Motion to Strike also implicate many cases before the Board, as the resolution of the issue will refine and enunciate the pleading standards with which parties in current and subsequent cases will need to comply.

11. Oral argument on these issues will be beneficial because it would provide an opportunity to the Board and parties to cut through the voluminous briefing on the two motions, focus on salient points and dispositive issues, and address any questions that the Board may have.

WHEREFORE, Respondent Petco Petroleum Corporation respectfully requests that the Board grant oral argument on Petco's Motion to Dismiss Counts 62 Through 73 of the First Amended Complaint and Complainant's Motion to Strike Respondent's Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter and issue an order scheduling oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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