

ILLINOIS POLLUTION CONTROL BOARD  
January 18, 2024

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, | ) |                       |
|                                  | ) |                       |
| Complainant,                     | ) |                       |
|                                  | ) |                       |
| v.                               | ) | PCB 13-72             |
|                                  | ) | (Enforcement - Water) |
| PETCO PETROLEUM CORPORATION,     | ) |                       |
|                                  | ) |                       |
| Respondent.                      | ) |                       |

ORDER OF THE BOARD (by J. Van Wie):

On July 10, 2023, Petco Petroleum Corporation (Petco) filed its Motion for Oral Argument requesting 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 (Mot.). On July 21, 2023, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed its response to Petco’s Motion for Oral Argument (Resp.). For the reasons detailed below, the Board denies Petco’s Motion for Oral Argument.

**BACKGROUND**

On June 21, 2013, the People filed a 61-count complaint against Petco. The complaint concerns Petco’s operation of oil production facilities located in or near Fayette County, including production wells, injection wells, and pipelines. On July 11, 2013, the Board accepted the complaint for hearing. On August 31, 2022, the People filed Complainant’s Motion for Leave to File First Amended Complaint, which, among other things, added Counts 62 through 73. On October 20, 2022, the Board granted the People’s motion and accepted the amended complaint for hearing.

On January 18, 2023, Petco filed its Motion to Dismiss Counts 62 through 73 of the First Amended Complaint, along with its Answer, Affirmative and Additional Defenses. On March 10, 2023, the People filed Complainant’s Response in Opposition to Respondent’s Motion to Dismiss Counts 62 through 73 of the First Amended Complaint, Complainant’s Motion to Strike Respondent’s Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter, and Complainant’s Reply to Respondent’s Answer to the First Amended Complaint.

Petco requests oral argument to address the “distinct legal issues set forth in the Motion to Dismiss and the Motion to Strike [that] repeatedly occur” and to provide the Board “with the opportunity to provide clarity to litigants based on a review of the salient statutory text and applicable pleading standards.” Mot. at 1.

## DISCUSSION

Pursuant to Section 101.700 of the Board's procedural rules, “[t]he Board may hear oral argument upon written motion of a party or the Board’s own motion.” 35 Ill. Adm. Code 101.700(a). Additionally, “[i]n considering a motion for oral argument, the Board will consider, but is not limited to considering, the uniqueness of the issue or proceeding and whether the issue or proceeding involves a conflict of law.” 35 Ill. Adm. Code 101.700(b).

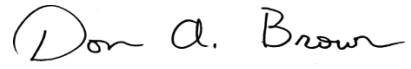
Specifically, Petco requests oral argument on “whether the text of the five-year statute of limitations in 735 ILCS 5/13-205 bars the twelve new civil enforcement counts in the First Amended Complaint” “because the dispositive, governing text of Section 5/13-205, for unknown reasons until this case, have not been argued before the Board or in Illinois courts.” Mot. at 1-2. It also requests oral argument on the “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.” Mot. at 3. Petco states that “[o]ral argument 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.” Mot. at 3.

The People responded to Petco’s Motion for Oral Argument by stating that “Respondent provides no new information in its Motion that would warrant granting a request for oral argument on the Motion to Dismiss” and that “Respondent rests its argument in its Motion to Dismiss on a legal question that has already been settled [Sec. 13-205].” Resp. at 1-2. Additionally, the People state that “Respondent likewise provides no new information in its Motion that would warrant granting a request for oral argument before the Board on the Motion to Strike.” Resp. at 2. The People claim that the “briefing by both parties on the Motion to Dismiss and Motion to Strike is exhaustive” and that “[b]ased on the contents of the briefings, Complainant doubts new information would be gleaned from oral argument.” Resp. at 3.

The Board’s authority to decide whether to grant a request for oral argument is discretionary, as indicated by the use of the term “may” in Section 101.700(a). 35 Ill. Adm. Code 101.700(a). As noted by the parties, the briefing on Petco’s Motion to Dismiss and Complainant’s Motion to Strike has been voluminous and exhaustive. The Board finds that the issues presented by the parties in their briefing do not require additional argument and that oral argument would not further aid the Board in its deliberations on these motions. Accordingly, Petco’s Motion for Oral Argument is denied.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 18, 2024, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The letters are fluid and connected, with a large initial "D" and "B".

Don A. Brown, Clerk  
Illinois Pollution Control Board