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OCT 13 2004

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

PC B05-66

October 7, 2004

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

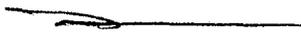
Re: ***People v. Petco Petroleum Corporation***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINT and APPEARANCE in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,


Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures

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OCT 13 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
PETCO PETROLEUM CORPORATION,)
an Indiana corporation,)
)
Respondent.)

PCB No. 0566
(Water-Enforcement)

NOTICE OF FILING

To: J. D. Bergman, R.A.
108 E. Ogden Avenue
Hinsdale, IL 60521-3572

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2002), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 7, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on October 7, 2004, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: J. D. Bergman, R.A.
108 E. Ogden Avenue
Hinsdale, IL 60521-3572

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 PETCO PETROLEUM CORPORATION,)
 an Indiana corporation,)
)
 Respondent.)

No. 05-66
(Water-Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, THOMAS DAVIS, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 7, 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

OCT 13 2004

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 PETCO PETROLEUM CORPORATION,)
 an Indiana corporation,)
)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-66
(Water-Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, PETCO PETROLEUM CORPORATION, an Indiana corporation, as follows:

COUNT I
WATER POLLUTION VIOLATIONS (MAY 24, 2004)

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. Petco Petroleum Corporation ("Petco") is an Indiana corporation authorized to do business in Illinois.

4. Petco is authorized to operate oil production and Class II UIC (injection) wells in accordance with permits issued by the Department of Natural Resources pursuant to Subsection 6(2) of the Illinois Oil and Gas Act, 225 ILCS 725/6(2) (2002).

5. Section 12 of the Act, 415 ILCS 5/12 (2002), provides in pertinent part that:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

* * *

- d. Deposit any contaminants upon the land in such place and manner as to create a water pollution hazard;

* * *

6. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002) provides:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

7. Section 3.395 of the Act, 415 ILCS 5/3.395 (2002) provides in pertinent part:

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

8. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002) provides:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

9. Section 3.550 of the Act, 415 ILCS 3.550 (2002) provides:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

10. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

11. Section 302.208(g) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.208(g), provides a general use water quality standard for chloride (total) of 500 milligrams per liter ("mg/L").

12. Section 304.105 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides:

Violations of Water Quality Standards

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard. . . .

13. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides:

Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

14. On May 24, 2004, Petco reported the release of approximately 50 barrels of salt water from a corrosion hole in a four-inch steel disposal pipeline at the R.T. Hopper lease near St. Elmo in Fayette County, Illinois.

15. The salt water is a produced fluid generated by Petco's oil production activities and contains a large concentration of chlorides and varying amounts of petroleum constituents, which are "contaminants" as that term is defined in the Act, 415 ILCS 5/3.165 (2002).

16. The salt water was deposited upon the land in such place and manner as to create a water pollution hazard in that it eventually flowed approximately 150 feet across the

ground before entering a small tributary to Big Creek. Approximately one-quarter of a mile of this stream was impacted.

17. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, Petco has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

18. The Illinois EPA investigated the spill on May 25, 2004, and observed the surface of the water in the stream to be discolored. Unnatural bottom deposits were also observed in the stream. Samples were collected from the stream and subsequently analyzed for chlorides; the results included 10,300 and 13,900 mg/L.

19. Petco's discharge of salt water to the small stream altered its physical and chemical properties so as to likely create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

20. By causing or allowing the discharge of salt water into the "waters" of the State, the Respondent has caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

21. Petco has previously been adjudicated in violation of Section 12 of the Act in Jefferson County Circuit Court No. 99-CH-55. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), and Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, PETCO PETROLEUM CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II
WATER QUALITY VIOLATIONS (MAY 24, 2004)

1-20. Complainant realleges and incorporates herein by reference paragraphs 1 through 20 of Count I as paragraphs 1 through 20 of this Count II.

21. Petco's discharge of salt water has caused offensive conditions in the tributary to Big Creek in that the waters contained bottom deposits and visible oil, and were discolored and turbid. Respondent has thereby violated 35 Ill. Adm. Code 302.203, 304.105, and 304.106.

22. Petco's discharge of salt water has caused the concentration of chlorides in the tributary to Big Creek to exceed the general use water quality standard of 500 mg/L.

Respondent has thereby violated 35 Ill. Adm. Code 302.203

23. By discharging contaminants into waters of the State so as to violate regulations or standards adopted by the Pollution Control Board under this Act, Petco has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

24. Petco has previously been adjudicated in violation of Section 12 of the Act in Jefferson County Circuit Court No. 99-CH-55. These presently alleged violations constitute

repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), and Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, PETCO PETROLEUM CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III
WATER POLLUTION VIOLATIONS (AUGUST 21, 2004)

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count III.

14. On August 21, 2004, Petco reported the release of approximately 200 barrels of salt water from a large corrosion hole in a steel pipeline at the Hopper Cummins #3 production well near St. Elmo in Fayette County, Illinois.

15. The salt water is a produced fluid generated by Petco's oil production activities and contains a large concentration of chlorides and varying amounts of petroleum constituents, which are "contaminants" as that term is defined in the Act, 415 ILCS 5/3.165 (2002).

16. The salt water was deposited upon the land in such place and manner as to create a water pollution hazard in that it eventually flowed approximately 50 feet across the ground before entering Little Moccasin Creek, which is a tributary to Big Creek. Approximately one-half of a mile of these streams were impacted.

17. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, Petco has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

18. The Illinois EPA investigated the spill on August 21, 2004, and observed the surface of the water in the stream to be discolored. Dead and dying fish were also observed in the stream. Samples were collected from the streams and subsequently analyzed for chlorides; the results included 26,000 mg/L in Little Moccasin Creek and 30,500 mg/L one-quarter of a mile downstream in Big Creek.

19. The Illinois EPA returned to the spill site to further its investigation on August 22 and 24, 2004. Samples were collected from the streams and subsequently analyzed for chlorides; the results included 8,990 mg/L in Little Moccasin Creek on August 22nd and 7,760 mg/L one-half of a mile downstream in Big Creek on August 24th.

20. Petco's discharge of salt water to the small stream altered its physical and chemical properties so as to likely create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

21. By causing or allowing the discharge of salt water into the "waters" of the State, the Respondent has caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

22. Petco has previously been adjudicated in violation of Section 12 of the Act in Jefferson County Circuit Court No. 99-CH-55. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), and Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, PETCO PETROLEUM CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT IV
WATER QUALITY VIOLATIONS (AUGUST 21, 2004)

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count IV.

14-19. Complainant realleges and incorporates herein by reference paragraphs 14 through 19 of Count III as paragraphs 14 through 19 of this Count IV.

20. Petco's discharge of salt water has caused offensive conditions in the tributary to Big Creek in that the waters were discolored and turbid. Respondent has thereby violated 35 Ill. Adm. Code 302.203, 304.105, and 304.106.

21. Petco's discharge of salt water has caused the concentration of chlorides in the Little Moccasin Creek and Big Creek to exceed the general use water quality standard of 500 mg/L. Respondent has thereby violated 35 Ill. Adm. Code 302.203.

22. By discharging contaminants into waters of the State so as to violate regulations or standards adopted by the Pollution Control Board under this Act, Petco has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

23. Petco has previously been adjudicated in violation of Section 12 of the Act in Jefferson County Circuit Court No. 99-CH-55. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), and Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, PETCO PETROLEUM CORPORATION:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate.

COUNT V
WATER POLLUTION VIOLATIONS (OCTOBER 4, 2004)

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count V.

14. On October 4, 2004, Petco reported the release of approximately 300 barrels of salt water from a pipeline from the Edith Durbin Sump to the Benny Shaw Water Flood Plant near St. Elmo in Fayette County, Illinois.

15. The salt water is a produced fluid generated by Petco's oil production activities and contains a large concentration of chlorides and varying amounts of petroleum constituents, which are "contaminants" as that term is defined in the Act, 415 ILCS 5/3.165 (2002).

16. The salt water was deposited upon the land in such place and manner as to create a water pollution hazard in that it eventually flowed through a previously dry creek bed before entering Little Creek. Approximately three-quarters of a mile of this stream was impacted.

17. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard, Petco has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

18. The Illinois EPA investigated the spill on October 4, 2004, and observed a black suspended precipitate on the bottom of Little Creek at locations one-half and three-quarters of a mile downstream of the discharge into the stream.

19. The Illinois EPA collected field samples for chlorides at locations one-half and three-quarters of a mile downstream of the discharge into the stream with respective results of 6,263 and 5,488 mg/L.

20. Petco's discharge of salt water to the small stream altered its physical and chemical properties so as to likely create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

21. By causing or allowing the discharge of salt water into the "waters" of the State, the Respondent has caused water pollution in the State of Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

22. Petco has previously been adjudicated in violation of Section 12 of the Act in Jefferson County Circuit Court No. 99-CH-55. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), and Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, PETCO PETROLEUM CORPORATION:

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- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate.

COUNT VI
WATER QUALITY VIOLATIONS (OCTOBER 4, 2004)

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count VI.

14-19. Complainant realleges and incorporates herein by reference paragraphs 14 through 19 of Count V as paragraphs 14 through 19 of this Count VI.

20. Petco's discharge of salt water has caused offensive conditions in Little Creek in that the waters were discolored and turbid. Respondent has thereby violated 35 Ill. Adm. Code 302.203, 304.105, and 304.106.

21. Petco's discharge of salt water has caused the concentration of chlorides in the Little Creek to exceed the general use water quality standard of 500 mg/L. Respondent has thereby violated 35 Ill. Adm. Code 302.203.

22. By discharging contaminants into waters of the State so as to violate regulations or standards adopted by the Pollution Control Board under this Act, Petco has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

23. Petco has previously been adjudicated in violation of Section 12 of the Act in Jefferson County Circuit Court No. 99-CH-55. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), and Complainant is authorized to seek attorney's fees and costs.

PRAYER FOR RELIEF

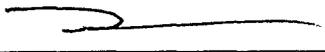
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- E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 10/07/04