BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

RESPONDENT'S OBJECTION TO COMPLAINANT'S MOTION FOR LEAVE TO AMEND COMPLAINT

NOW COMES Respondent, PETCO PETROLEUM CORPORATION, ("Petco"), by and through its attorneys, Sorling, Northrup, Hanna, Cullen and Cochran, Ltd., Charles J. Northrup of counsel, and hereby objects to a portion of Complainant's Motion for Leave to Amend Complaint for the reasons set forth below. In support, Petco states:

I. Background

1. On or about October 13, 2004, Complainant filed its six count Complaint against Respondent in this matter. Complaint alleged various violations of the Illinois Environmental Protection Act and associated regulations related to three release incidents.

2. On or about March 2, 2005, Respondent timely filed its Answer.

3. On or about April 11, 2005, Complainant filed its "Motion for Leave to Amend Complaint" seeking to correct certain regulatory citations but also to add alleged violations related to four additional release incidents. While three of those incidents occurred after the filing of the original Complaint in this matter, one of those incidents occurred well before the filing of the original Complaint.

II. Argument

4. Complainant has no absolute right to amend its Complaint. E.g. Hadley v. Ryan, 345 Ill.App.3d 297, 280 Ill.Dec. 818 (4th Dist. 2003). However, the determination to allow an amendment is discretionary with the tribunal and will not be reversed absent an abuse of discretion. Id. Respondent is cognizant of the factors that the Courts and the Board review to analyze the propriety of an amendment of pleadings. Such amendments, while liberally allowed, should not be allowed "where the matters asserted were known by the moving party at the time of the original pleading was drafted and for which no excuse is offered in explanation of the initial failure." Trans World Airlines, Inc. v. Martin Automatic, Inc., 215 Ill.App.3d 622, 159 Ill.Dec. 94 (2nd Dist. 1991).

5. In this matter, Respondent objects to the amendment of the Complaint with alleged violations resulting from the May 31, 2004 release incident. This incident occurred 5 months prior to the filing of the original Complaint. More importantly, Complainant's own Motion indicates this release was known to the Illinois EPA, on whose behalf this Complaint was brought. In light of the authority of the Trans World Airlines, Inc. case, this incident should not be allowed to be included in the proposed amended complaint.

6. Respondent also objects to the correction of regulatory violations "alleged in paragraph 22 of Count I". (See Mot., par. 4). No paragraph 22 of Count I exists.

7. Respondent does not object to the amendment of the Complaint as moved by Complainant with respect to the other proposed amendments. Respondent does, of course, reserve its right to file a responsive pleading attacking the Amended Complaint should it be allowed to be filed.

WHEREFORE Respondent respectfully requests that this objection be sustained in whole or part as described above.

Respectfully submitted

PETCO PETROLEUM CORPORATION,
Respondent

By: _____
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
E-Mail: cjnorthrup@sorlinglaw.com

PROOF OF SERVICE

The undersigned hereby certifies that an original and ten (10) copies of the foregoing document were served by Federal Express to:

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

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

Mr. Tom Davis
Illinois Attorney General's Office
Environmental Division
500 South Second Street
Springfield, IL 62706

and by depositing same in the United States mail in Springfield, Illinois, on the 22nd day of April, 2005, with postage fully prepaid.