BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-72
	)	(Water - Enforcement)
PETCO PETROLEUM CORPORATION, an Indiana corporation,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: *See Service List*

PLEASE TAKE NOTICE that on the 10th day of March, 2023, the attached Notice of Filing, 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 were filed with the Illinois Pollution Control Board, with true and correct copies attached hereto and which are hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL, Attorney General
of the State of Illinois

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Dated: March 10, 2023

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COMPLAINANT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS COUNTS 62 THROUGH 73 OF THE FIRST AMENDED COMPLAINT

NOW COMES COMPLAINANT, People of the State of Illinois, by KWAME RAOUL, Attorney General of the State of Illinois, by and through its undersigned counsel pursuant to Section 101.500 of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 101.500, and hereby submits this Complainant's Response in Opposition to Respondent's Motion to Dismiss Counts 62 through 73 of the First Amended Complaint, stating as follows:

I. INTRODUCTION

The underlying case is one piece of a larger ongoing saga involving Respondent PETCO PETROLEUM CORPORATION ("Respondent" or "Petco"). Petco engages in operating mature oil and gas fields by operating wells, facilities, and proprietary pipelines in several counties within Illinois, among other states. In its operations, Petco produces fluids, including crude oil and salt water, also known as brine, all of which contain varying amounts of petroleum constituents.

Petco's operations are no stranger to environmental violations, and have been the subject of previous court and Board orders.[1] Yet despite the previous orders in place against Petco, Respondent's operations continued—and continue to date—to produce violations of the Act.

The original Complaint ("Complaint") in the underlying matter, filed on June 21, 2013, included sixty-one (61) counts, alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* ("Act"), and the accompanying Illinois Pollution Control Board ("Board") regulations, including Section 12(a) of the Act, 415 ILCS 5/12(a) (water pollution); Section 12(d) of the Act, 415 ILCS 5/12(d) (water pollution hazard); Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203 (creation of offensive conditions); Section 304.105 of the Board regulations, 35 Ill. Adm. Code 304.105 (violation of water quality standards); and Section 304.106 of the Board regulations, 35 Ill. Adm. Code 304.106 (offensive discharges).

Following the filing of the original Complaint, and as reflected by the docket for this case, the parties engaged in protracted settlement negotiations in an effort to achieve a "global settlement" to resolve all Petco-related violations—including both violations on file in multiple jurisdictions, and unfiled violations—with an eye toward developing and implementing a long-

[1] At the time the original Complaint in this matter was filed, Petco had previously been adjudicated to be in violation of Section 12 of the Act in Jefferson County Circuit Court, Case No. 1999-CH-55 (imposing $42,500 in penalties, awarding $14,000 in attorney's fees, and ordering Petco to submit a preventive maintenance plan); and for subsequent violations through a settlement approved by the Board, PCB No. 05-66 (February 2, 2006) (imposing $135,000 in penalties and ordering Petco to cease and desist from violations of the Act).

Likewise, in Sangamon County Circuit Court Case No. 2000-CH-458, Petco had been adjudicated to be in violation of the Illinois Oil and Gas Act, 225 ILCS 725/1 *et seq.*, and the Illinois Oil and Gas Regulations, 62 Ill. Adm. Code 240.10 *et seq.*, and ordered to pay $168,000 in penalties to the Illinois Department of Natural Resources ("Illinois DNR"). As injunctive relief, Petco was ordered to implement a "written oil and gas facilities operation maintenance plan," in which Petco was required to commit to, amongst other items, regular inspections and "replacement of equipment and steel lines impacted by wear and tear and corrosion which may likely contribute to spill events." *See People ex rel. Madigan v. Petco Petroleum*, 363 Ill. App. 3d 613 (4th Dist. 2006); Order after Remand, April 28, 2006.

Finally, in a Consent Order entered November 19, 2002 in Fayette County Circuit Court, 2001-MR-36, Petco agreed to pay $22,500 in penalties to resolve violations alleged by the Illinois Emergency Management Agency ("Illinois EMA") for Petco's failure to report several releases between July 16, 1999 and September 26, 2000.

term compliance plan for Petco's operations.[2] Violations continued to accrue during this period of negotiations,[3] however, and Complainant ultimately determined in 2021 that settlement negotiations had reached an impasse.

On August 31, 2022, Complainant submitted its Motion for Leave to File First Amended Complaint in this case, incorporating violations that had been the subject of settlement negotiations, but which had not yet been filed. Respondent offered no objection to that Motion, and on October 20, 2022, the Board accepted Complainant's First Amended Complaint ("First Amended Complaint") into the record.[4]

Now, through its Motion to Dismiss Counts 62 through 73 of the First Amended Complaint ("Motion to Dismiss"), Petco seeks to avoid being held fully accountable for its violations of the Act, and does so by premising its arguments on a significant misinterpretation of applicable law.

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[2] *People v. Petco Petroleum Corp.*, PCB 13-72 (docket available at https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=14644).

[3] New violations by Petco gave rise to new actions against Petco, including:

- Fayette County Circuit Court Case No. 2017-CH-28 (alleging violations of Sections 12(a) (water pollution) and 12(d) (water pollution hazard) of the Act, 415 ILCS 5/12(a) and 12(d), and Sections 302.203 (offensive conditions), 302.208(g) (violations of numeric standards for chloride), 304.105 (violations of water quality standards), and 304.106 (offensive discharges) of the Board's Water Pollution Regulations, 35 Ill. Adm. 302.203, 302.208(g), 304.105, and 304.106)); and

- Jefferson County Circuit Court Case No. 2017-CH-37 (alleging violations of Section 12(a) (water pollution) of the Act, 415 ILCS 5/12(a), and Sections 302.203 (offensive conditions), 304.105 (violations of water quality standards), and 304.106 (offensive discharges) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105, and 304.106).

[4] That same year, following the settlement negotiation impasse, two additional actions against Petco were filed in two separate circuit courts, namely:

- Fayette County Circuit Court Case No. 2022-CH-2 (alleging violations of Sections 12(a) (water pollution), 12(d) (water pollution hazard), 21(a) (open dumping of waste), and 21(e) (waste disposal at an improper site) of the Act, 415 ILCS 5/12(a), 12(d), 21(a), and 21(e), and Sections 302.203 (offensive conditions), 302.208(d) and (g) violation of numeric standards for chloride), and 304.105 (violation of water quality standards) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 302.208(d) and (g), and 304.105); and

- Sangamon County Circuit Court Case No. 2022-CH-8 (alleging violations of the Illinois Oil and Gas Act, 225 ILCS 725/1 *et seq.*, and the Illinois DNR's Oil and Gas Act Regulations, 62 Ill. Adm. Code 240.10 *et seq.*, and violations of final administrative orders entered by Illinois DNR).

In its Motion to Dismiss, Petco expends considerable energy dissecting and reconstructing the phrase "civil action," in an effort to reach a conclusion about the effect of Section 13-205 of the Illinois Code of Civil Procedure, 735 ILCS 5/13-205 (2020) ("Section 13-205") that simply is not supported by the case law.

The Board has previously found that statutes of limitations do not apply to the State when bringing an enforcement action pursuant to Section 31 of the Act. Absent an enforcement action brought pursuant to Section 31 of the Act, the case law has long held that when a government entity brings a lawsuit, a statute of limitations does not apply if the government entity acts in the public interest. A three-factor test helps determine if the government acts in the public interest by examining: (1) the effect of the interest on the public; (2) the obligation of the governmental entity to act on behalf of the public; and (3) the extent to which public funds must be expended.

In the present case, the First Amended Complaint, including its Counts 62 through 73, is brought on behalf of the People of the State of Illinois, by Kwame Raoul, the Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Act, and so no statute of limitations applies. Moreover, the First Amended Complaint meets the standard for governmental immunity, because it is brought due to its effect on the public interest and Complainant is obligated to protect the public health and the environment of the State of Illinois. Complainant should be allowed to proceed with all counts in its First Amended Complaint, and Petco's Motion to Dismiss should be denied.

II. LEGAL STANDARD

The Board looks to Illinois civil practice law for guidance when considering motions to dismiss. 35 Ill. Adm. Code 101.100(b). The Board's standard for determining motions to dismiss

is well-established in case law. The Board takes all well-pleaded allegations as true in determining a motion to dismiss. Dismissal of a complaint is proper only if it is clear that no set of facts could be proved that would entitle Complainant to relief. *Natural Res. Def. Council, et al., v. Illinois EPA, et al.*, PCB 13-65 (September 5, 2013).

III. ARGUMENT

A. Petco provides the incorrect legal standard of a "civil action" when arguing that the five-year statute of limitations set forth in 735 ILCS 5/13-205 (2020) should apply to the underlying case.

In its Motion to Dismiss, Petco argues that Section 13-205 provides that any and all civil actions in the State of Illinois are subject to the five-year statute of limitations. Section 13-205 provides as follows:

> Except as provided in Section 2-725 of the "Uniform Commercial Code", approved July 31, 1961, as amended, and Section 11-13 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and 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. Petco walks the reader through the rules of statutory construction and venue selection, dictionary definitions and civil penalties, to arrive at the conclusion that a civil environmental enforcement action brought pursuant to the Act is a "civil action", and therefore the five-year statutory limitation applies. In doing so, Petco entirely misses the mark.

Infusing fresh meaning into the phrase "civil action" does not give rise to the ability of a party to apply a statute of limitations defense to a governmental entity, acting in the public interest, particularly when the State brings an enforcement action pursuant to Section 31 of the Act. The case law is clear on this point, as discussed below.

B. <u>There is no statute of limitations that applies to enforcement actions brought by the State pursuant to Section 31 of the Act.</u>

The First Amended Complaint, including its Counts 62 through 73, is brought "on behalf of the People of the State of Illinois, by Kwame Raoul, the Attorney General of the State of Illinois, on his own motion and at the request of [IEPA]" pursuant to Section 31 of the Act. Previous cases have determined that, "[T]here is no statute of limitations that applies to enforcement actions brought by the State pursuant to Section 31 of the Act." *People of the State of Ill. v. John Crane Inc.* (May 17, 2001), PCB 01-76, slip op. at 5; *see also Pielet Bros. Trading, Inc. v. Pollution Control Bd.*, 110 Ill. App. 3d 752, 758 (5th Dist. 1982); *People v. Am. Disposal Co. and Consol. Rail Corp.* (May 18, 2000), PCB 00-67, slip op. at 3. Accordingly, Respondent's Motion to Dismiss should be denied.

C. <u>The Section 13-205 statute of limitations also fails to apply under the common law standard, where governmental immunity exists when a governmental entity brings an enforcement action in the public interest.</u>

The Section 13-205 statute of limitations also fails to apply to the First Amended Complaint, including Counts 62 through 73, under the common law standard. Governmental immunity to the application of statutes of limitations when a government entity is working in the public interest is well-established in the case law. Recognition of this doctrine dates back over a hundred and fifty years in Illinois legal history. *See, for example, Governor use of Thomas v. Woodworth,* 63 Ill. 253 (1872) (finding that when a State acts as a private entity, rather than a public entity, a statute of limitations may apply to its actions); *Brown v. Trs. of Schools*, 224 Ill. 184 (1906) (finding that the principle of statutes of limitation not running against the State also extends to minor municipalities respecting public rights as distinguished from private rights, the latter rendering governments subject to statutes of limitation to the same extent as individuals); *People use of Town of New Trier v. Hale*, 320 Ill. App. 645 (1st Dist. 1943) (finding that the statute

of limitations exemption for governments included counties, cities, towns, and minor municipalities in all matters respecting public rights, but as to matters involving private rights, governments were subject to statutes of limitations to the same extent as individuals).

The doctrine of governmental immunity, or what is also termed the "public interest exception" to the statute of limitations, still remains in place today. In *Pielet Bros. Trading, Inc. v. Pollution Control Bd.*, 110 Ill. App. 3d 752 (5th Dist. 1982), a corporation argued that the Board mistakenly considered evidence that should otherwise have been barred by a statute of limitations. The appellate court found that,

> Unless the terms of a statute of limitations expressly include the State, county, municipality or other governmental agencies, the statute, so far as public rights are concerned, as distinguished from private and local rights, is inapplicable to them. […] The question is whether the State (or its agency or subdivision) is asserting public rights on behalf of all the people of the State or private rights on behalf of a limited group. […] Here, the [Illinois Environmental Protection] Agency argues, and we agree, that what the Agency seeks is to protect the public's right to a clean environment.

Pielet Bros. Trading, Inc., 110 Ill. App. 3d at 758.

In a case brought pursuant to the Asbestos Abatement Act, wherein thirty-four school districts sought to recover removal and repair costs from defendants who were involved in the manufacture of asbestos materials, the Supreme Court found that the claims were not time-barred, stating that,

> In *Clare v. Bell* (1941), 378 Ill. 128 . . . we stated "that unless the terms of a Statute of Limitations expressly include the State, county, municipality, or other governmental agencies, the statute, so far as public rights are concerned, as distinguished from private and local rights, is inapplicable to them.

Bd. of Educ. v. A, C & S, Inc., 131 Ill. 2d 428, 476 (1989).

The court found that the statute of limitations in the Code of Civil Procedure contained "no express language including governmental entities in the statute, such as is found in other statutes,"

and that "[i]n the absence of a more specific manifestation of legislative intent, we refuse to read the statute so as to remove the common law immunity of these governmental entities". *Id.* at 477.

More recently, in *City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264 (1st Dist. 2004), the City of Chicago sought damages in connection with the City's cleanup of illegal waste disposed on a lot within city limits. The defendant corporation argued that the alleged dumping occurred more than five years prior to the filing of the complaint, and so the City was time-barred by Section 13-205 of the Code of Civil Procedure. The court disagreed. In a lengthy passage summarizing key points involved in governmental immunity to statutes of limitations, the court wrote,

> Under the common law, "the statute of limitations may not be asserted against the State or its county or municipal subdivisions as plaintiffs in actions involving 'public rights'." […] This doctrine of governmental immunity from statutes of limitation is supported "by the policy judgment that the public should not suffer as a result of the negligence of its officers and agents in failing to promptly assert causes of action which belong to the public." […] The doctrine emerges from the latin maxim "*nullum tempus occurit regi"* (hereinafter *nullum tempus),* which translates to "time does not run against the King." […]
>
> Whether the immunity doctrine applies depends on:
>
> > "Whether the right the governmental unit seeks to assert 'is in fact a right belonging to the general public, or whether it belongs only to the government or to some small and distinct subsection of the public at large.' Courts should consider who would benefit by the government's action and who would lose by its inaction. Three factors must be addressed when determining whether a governmental entity is asserting a public or private right: (1) the effect of the interest on the public; (2) the obligation of the governmental entity to act on behalf of the public; and (3) the extent to which public funds must be expended." […]
>
> However, when the entity is acting in a private capacity, its claim may be subject to a limitations defense. […] Further, "it is well established that where a statute of limitations does 'expressly include the State, county, municipality, or other governmental agencies,' common law governmental

> limitations immunity will not bar a limitations defense predicated on that statute." […]
>
> In the instant case, section 13-205 does not expressly include the state, county, municipality, or any other governmental agency within its purview. As a result, if the City is asserting a "public right" in the instant action, the trial court's dismissal order based on the limitations defense was improper. If, however, the City was acting in a private capacity, the statute of limitations may be asserted against it. Therefore, we must decide whether the City's action asserts a "public right" or a private one.

City of Chicago v. Latronica Asphalt & Grading, Inc., 346 Ill. App. 3d 264, 269-270 (1st Dist. 2004). When examining the three factors in *Latronica* to determine if the City was asserting a public right, the court found that the illegal dumping of waste could create a danger to the public health, and so there was no question that the City's cleanup of the site in question affected the interests of the general public; the City was authorized and obligated by law to clean up the subject property; and the City expended financial resources in so doing. *Id.* at 272-73.

Notably, when the defendant corporation in *Latronica* asserted that it had performed the bulk of the clean up at the subject property, thereby claiming that the doctrine of *nullum tempus* did not apply, the court found that,

> In our view, whether the Site was cleaned up is irrelevant to the question of whether the City is afforded immunity from the statute of limitations. Latronica offers no authority in support of this argument and we therefore reject it.

Id. at 274.

To summarize: when a governmental entity—including the State—is acting to protect public rights, that entity enjoys governmental immunity from statutes of limitations, be they in common law or created by statute—such as in Section 13-205—unless expressly stated otherwise in the governing statute. This is a well-established doctrine, flowing from the idea that the sovereign is not subject to being time-barred against bringing an action to defend the public's

rights. In order to determine if the right being vindicated is a public right, the trier of fact should consider who would benefit by the government's action, and who would lose by its inaction. That analysis is facilitated by considering three factors: (1) the effect of the interest on the public; (2) the obligation of the governmental entity to act on behalf of the public; and (3) the extent to which public funds must be expended.

In Petco's Motion to Dismiss, Respondent relies on a statutory citation that does not expressly apply its statute of limitations to government entities. Respondent further provides the wrong standard for determining if a statute of limitations applies to a government action. Whether or not an action is a "civil action" is beside the point. The key question to consider is whether an action brought by a governmental entity involves a public right or a private right. The violations alleged in Counts 62 through 73 of the First Amended Complaint involve a public right, as discussed below, meaning governmental immunity applies and Petco's Motion to Dismiss should be denied.

D. <u>Complainant seeks to protect rights that are in the public interest. Governmental immunity therefore prevents the application of a statute of limitations.</u>

1. *Section 13-205 does not expressly apply its statute of limitations to governmental entities. The Board should refuse to extend its application to the State in this case.*

Taking the text of Section 13-205 on its face, this provision does not directly apply its statute of limitations to governmental entities. Section 13-205 instead appears to focus on private causes of action: contract disputes, issues in tort, and property damage in its varying forms. Noticeably absent from its language is any reference to any level of government, whether State or local.

The courts have repeatedly held that a statute of limitations does not apply to governmental entities when the statute of limitations does not expressly name governmental entities as being

subject to its conditions and the government is operating in the public interest. *Pielet* states that "Unless the terms of a statute of limitations expressly include the State . . . the statute, so far as public rights are concerned . . . is inapplicable to them." *Pielet Bros. Trading, Inc.*, at 758.

The court in *Board of Education v. A, C & S, Inc.*, found that absent more specific legislative intent to apply a statute of limitations to governmental entities, the court "refuse[d] to read the statute" in such as way as to remove governmental immunity from government. *Bd. of Educ. v. A, C & S, Inc.*, at 477.

In *Latronica,* the court directly examines Section 13-205, the provision referenced by Petco, finding that because "section 13-205 does not expressly include the state," the question that would determine whether the statute of limitations applied was whether the plaintiff sought to assert a public right or a private right. *City of Chicago v. Latronica Asphalt & Grading, Inc.*, at 270.

As in *Pielet, Board of Education,* and *Latronica,* the statute of limitations in Section 13-205 is quiet as to any application of its terms to governmental entities. As with the existing case law, the Board should refuse to read the statute of limitations of Section 13-205 as expanding to include the State. Instead, the Board should examine if Complainant is seeking to protect the public interest in its First Amended Complaint.

2. *The violations alleged in Counts 62 through 73 of Complainant's First Amended Complaint have an effect on the public interest.*

There is a strong public interest in protecting the public health and the environment. *People v. Conrail Corp.*, 251 Ill. App. 3d 550, 560 (4th Dist. 1993). Article XI, Section 1, of the Illinois Constitution, IL. CONST. ART. XI, Sec. 1, provides as follows:

> The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future

> generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Accordingly, statutes which were enacted for the protection and the preservation of public health are to be given extremely liberal construction for the accomplishment and maximization of their beneficial objectives. *Id.*; *see also* 415 ILCS 5/2(c) (2020) (providing that the Act is to be given liberal construction to effectuate its purposes).

Following its adoption, the Act itself provides in relevant part as follows:

> (a) The General Assembly finds:
>
> (i) that environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act;
>
> (ii) that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection and to cooperate fully with other States and with the United States in protecting the environment;
>
> (iii) that air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated and must be dealt with as a unified whole in order to safeguard the environment;
>
> * * *
>
> (b) It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.
>
> * * *

415 ILCS 5/2(a)-(b) (2020).

In enacting Section XI to the Illinois Constitution, and in adopting the Act, the General Assembly clearly set forth its position that addressing environmental damage, and maintaining a healthful environment, falls squarely within the public policy, and therefore public interest, of the

State as a whole. By virtue of passing the Act, the General Assembly determined that violations of the statute cause irreparable damage for which no adequate remedy exists. *People v. Mika Timber Co.*, 221 Ill. App. 3d 192, 193 (5th Dist. 1991). The First Amended Complaint, including Counts 62 through 73, seeks to address violations of the Act related to discharges of crude oil and salt water into the environment, which pose a risk to public health and the environment. The First Amended Complaint therefore seeks to protect the public interest.

Additionally, Petco mistakenly believes that by virtue of a violation's cessation, the State cannot pursue an enforcement action against an entity that has violated the Act. That is incorrect, and Petco does not cite any authority for that proposition. None of the cited sections of the Act or accompanying regulations provide any such limitation on the State's ability to bring an enforcement action following the cessation of relevant violations. For example, Section 12(a) of the Act (water pollution), provides 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.

415 ILCS 5/12(a) (2020). There is no requirement that the discharge be ongoing at the time of filing the Complaint. Interpreting such a requirement into the Act would render many crucial instances of environmental enforcement completely impossible, and defeat the purposes of the Act.

Petco also mistakenly perceives Complainant's intent in amending its complaint to "increase the amount of its requested civil penalties". This is a cynical view and one that finds no support in the record. Chief amongst Complainant's concerns is the fulfillment of the goals

discussed, above—namely, protecting the strong public interest that exists in safeguarding the public health and the environment.

3. *The State—including the Illinois EPA and the Illinois Attorney General's Office—is obligated to act on behalf of the public as relates to the violations alleged in Counts 62 through 73 of Complainant's First Amended Complaint.*

Section 4(e) of the Act, 415 ILCS 5/4(e) (2020), imposes a mandatory duty upon the Illinois EPA to investigate, issue citations, and take summary enforcement action of violations arising under the Act. Section 4(e) of the Act, 415 ILCS 5/4(e) (2020), provides as follows:

> (e) The Agency shall have the duty to investigate violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order; to issue administrative citations as provided in Section 31.1 of this Act; and to take such summary enforcement action as is provided for by Section 34 of this Act.

Section 30 of the Act, 415 ILCS 5/30 (2020), further expands on this mandatory duty, providing as follows:

> The Agency shall cause investigations to be made upon the request of the Board or upon receipt of information concerning an alleged violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and may cause to be made such other investigations as it shall deem advisable.

Enforcement of the provisions of the Act may occur in one of two ways: either through the process set forth in Section 31 of the Act, 415 ILCS 5/31 (2020), and subsequent referral of a case to the Illinois Attorney General's Office, or on the Illinois Attorney General's own motion. *People v. Sheridan Sand & Gravel,* PCB 06-177, slip op. at 14 (June 7, 2007); *People v. Atkinson Landfill Co.*, PCB 13-28, slip op. at 68-69 (January 9, 2014). As the Board has held, the Attorney General's role in protecting the public interest clearly extends to environmental matters. *Land & Lakes Co., JMC Operations, Inc. and NBC Trust Co. of Ill., as Tr. Under Trust No. 2624ED v. Vill. of Romeoville* (Feb. 7, 1991), PCT 91-7, slip op. at 2. As chief legal officer of the State of Illinois,

the Illinois Attorney General has the duty and authority to represent the interests of the People of the State to insure a healthful environment. *Id.; see also Pioneer Processing, Inc. v. EPA*, 102 Ill. 2d 119, 138-39 (1984).

The duties of both the Illinois EPA and the Illinois Attorney General are clear: the Illinois EPA investigates and issues citations for violations arising under the Act, and the Illinois Attorney General represents the interests of the People of the State of Illinois before the court or the Board. In the underlying matter, Complainant alleges violations of the Act by Respondent. In so doing, Complainant is fulfilling both the duties of the Illinois EPA and the Illinois Attorney General as set forth under the Act.

Petco argues in its Motion to Dismiss that various characteristics of the violations alleged in Counts 62 through 73 of the First Amended Complaint somehow negate or render inapplicable Complainant's statutory duties; this is not correct. Nothing regarding the characteristics of the violations nullifies Complainant's mandatory duties to protect the interests of the People of the State to a healthful environment. Indeed, and as noted above, by virtue of passing the Act, the General Assembly determined that violations of the statute cause irreparable damage for which no adequate remedy exists. *People v. Mika Timber Co.*, 221 Ill. App. 3d 192, 193 (5th Dist. 1991).

Moreover, Petco appears to be putting the proverbial cart before the horse, prematurely skipping ahead to arguing the facts of the case. Respondent appears to argue that "low volume releases" of crude oil and salt water present nonactionable instances. This is incorrect, for multiple reasons. First and foremost, the legal standards of the cited provisions in Complainant's First Amended Complaint do not hinge upon the volume of crude oil or salt water discharged. For example, the legal standard for water pollution, as set forth in Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), is whether the Respondent "[c]ause[d] or threaten[ed] or allow[ed] the discharge

of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois"; it says nothing about the number of barrels of oil or salt water released. Put another way, it is not a defensible position to argue that only a smidge of contaminants was discharged, and therefore there is no harm; quite the contrary. Whether the discharge is a smidge or a tsunami is not the legal standard for determining whether a violation of the Act has occurred, and whether liability may be found. Rather, the inquiry is case specific and relates to whether the discharge, regardless of volume, caused or tended to cause water pollution. The quantity of the release may indicate the gravity of the violation and thus the impact, and may go to the remedy or penalty that is sought by Complainant.

Second, Petco's assertion that the violations alleged in Counts 62 through 73 of the First Amended Complaint involve "low volume releases" is not supported by the facts as they are pled, with multiple counts involving releases of approximately 300 barrels of salt water or more. (*See, for example*, First Am. Compl., Cts. LXIII, LXIX, and LXXII).

Third, it bears considering that what Petco deems to be a "low volume release" may not be what Complainant considers to be a "low volume release". The matter may be context-dependent. Ultimately, it is a matter of evidentiary concern, and premature at this stage of the proceedings.

Petco likewise appears to believe mistakenly that liability cannot be found against it when a discharge of contaminants occurs through accidental means or through vandalism. A person may violate the Act without intent, or even knowledge of the pollution. "The Act is *malum prohibitum*; for a violation to be found, it is not necessary to prove guilty knowledge or *mens rea.*" *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 793 (5th Dist. 1993) (citing *Meadowlark Farms, Inc. v. Pollution Control Bd.*, 17 Ill. App. 3d 851 (5th Dist. 1974)). What must be shown is that "the alleged polluter has the capability of control over the pollution or that the alleged polluter was

in control of the premises where the pollution occurred." *A.J. Davinroy Contractors*, 249 Ill. App. 3d at 793 (citing *Phillips Petroleum Co. v. Pollution Control Bd.*, 72 Ill. App. 3d 217 (2d Dist. 1979)). This extends to incidents of vandalism; where the owner of the source of pollution has not taken extensive precautions to prevent vandalism or other intervening causes, a finding of liability may be appropriate. *Perkinson v. Pollution Control Bd.*, 187 Ill. App. 3d 689, 694-95 (3d Dist. 1989). Again, these are evidentiary questions, premature for this stage in the proceedings.

4. *The third factor involving public funds is irrelevant to the present case.*

The third factor, which was developed by courts in cases involving the loss of funds expended by the public entity, is irrelevant to the First Amended Complaint in the present matter which seeks civil penalties and does not involve a controversy pertaining to the expenditure of public revenues.

It is noteworthy, however, that the State has expended resources when handling the violations in the First Amended Complaint, including Counts 62 through 73. Intake of the violations, monitoring of compliance, performance of site inspections, and ultimately referral for litigation all involve the usage of public resources, as opposed to private finances.

E. Respondent's assertion that the Board has examined the five-year statute of limitations argument on a case-by-case basis is consistent with the above-outlined standards. Respondent misrepresents the conclusions in the *Bell* case.

Respondent appears to believe it is of some note that the Board has not taken a hardline stance on prohibiting the application of Section 13-205's statute of limitations on cases brought before the Board. Respondent appears to be making a mountain out of a molehill.

Each case that comes before the Board presents a unique set of facts. In the cases brought before the Board, an action may have been brought pursuant to Section 31, or on the Illinois Attorney General's own motion. The difference, being case-specific, may impact the application

of the Section 31 analysis outlined above. Likewise, if the Board examines the common law test for governmental immunity, the facts of each case will be novel, requiring the Board in each instance to determine if the State brings its action in the public interest, or more akin to a private actor. That the Board considers each case individually does not translate to a requirement that the Board apply the Section 13-205 statute of limitations; rather, it simply means the Board must consider this case individually as well.

Petco also appears to misread the *Bell* case. Respondent takes issue with the Board having previously cited *Bell* for the proposition that a statute of limitations does not apply to the State when asserting a public right, rather than a private right, unless the State is expressly included in the terms of the statute of limitations. Respondent appears to be creating controversy where there is none—the language of *Bell* does, in fact, stand for that proposition. *Clare v. Bell*, 378 Ill. 128, 130-31 (1941).

In *Bell*, the court declined to apply a statute of limitations to governmental entities, because the statute of limitations in question did not expressly state that it applied to governmental entities; that is the same situation as relates to Section 13-205, cited in Respondent's Motion to Dismiss, and which does not expressly state that it applies to governmental entities.

That the *Bell* court was sitting in equity at common law, and was examining a common law cause of action, also is of no moment. As detailed above, the common law public interest exception is well-established, both for causes of action under common law, and for statutory causes of action.

F. <u>Petco's own failure to comply with previous court orders, or to reach a settlement agreement, have resulted in the filing of the First Amended Complaint.</u>

Without repeating the extensive litigation history of Petco as recounted above, it cannot go without noting that Petco has been under orders, both by the courts and by the Board, to bring its operations into compliance with the Act. After years of good faith efforts on the part of the State

to work with Respondent to achieve a workable solution, both at its Loudon field specifically and for its operations in general, Petco has failed to accomplish the necessary steps. Had Petco performed the required work when ordered to do so, the underlying case would be non-existent. Unfortunately, that work was not performed, settlement negotiations have reached an impasse, and litigation appears to be the only avenue available to hold Petco accountable for its continued violations of the Act. Petco should not be allowed to evade responsibility for the violations it has committed under the Act.

IV. CONCLUSION

Because the First Amended Complaint is brought pursuant to Section 31 of the Act, the Section 13-205 statute of limitations does not apply. Likewise, under the common law standard of governmental immunity for enforcement actions brought in the public interest, Section 13-205 does not apply because: (i) Section 13-205 does not expressly apply to governmental entities; (ii) the alleged violations in the First Amended Complaint, including counts 62 through 73, have an effect on the public interest; (iii) the State, including the Illinois EPA and the Illinois Attorney General's Office, are obligated to act on behalf of the public as it relates to the violations alleged in the First Amended Complaint, including counts 62 through 73; and (iv) the issue of the expenditure of public funds is not at issue in this case.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board deny Respondent's Motion to Dismiss.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

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Dated: March 10, 2023

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-72
	)	(Water - Enforcement)
PETCO PETROLEUM CORPORATION, an Indiana corporation,	)	
	)	
	)	
Respondent.	)	

COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AFFIRMATIVE AND ADDITIONAL DEFENSES TO THE FIRST AMENDED COMPLAINT AND IMMATERIAL MATTER

NOW COMES COMPLAINANT, People of the State of Illinois, by KWAME RAOUL, Attorney General of the State of Illinois, by and through its undersigned counsel pursuant to Section 101.506 of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 101.506, and hereby submits this Complainant's Motion to Strike Respondent's Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter, stating as follows:

I. INTRODUCTION

On June 21, 2013, Complainant filed its original Complaint ("Complaint") in the underlying matter, setting forth sixty-one (61) counts alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* ("Act"), and the accompanying Illinois Pollution Control Board ("Board") regulations, including Section 12(a) of the Act, 415 ILCS 5/12(a) (water pollution); Section 12(d) of the Act, 415 ILCS 5/12(d) (water pollution hazard); Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203 (creation of offensive conditions); Section 304.105 of the Board regulations, 35 Ill. Adm. Code 304.105 (violation of water quality standards); and Section 304.106 of the Board regulations, 35 Ill. Adm. Code 304.106 (offensive discharges). The alleged violations stem from Respondent Petco Petroleum

Corporation's ("Petco") operation of mature oil and gas fields by operating wells, facilities, and proprietary pipelines in several counties within Illinois, among other states. In its operations, Petco produces fluids, including crude oil and salt water, also known as brine, all of which contain varying amounts of petroleum constituents.

At the time the original Complaint in this matter was filed, Petco had already been the subject of several adjudicated orders in varying jurisdictions. (*See* Complainant's Response in Opposition to Respondent's Motion to Dismiss Counts 62 through 73 of the First Amended Complaint ("Response") at 2.) Following the filing of the original Complaint, and as reflected by the docket for this case, the parties engaged in protracted settlement negotiations in an effort to achieve a "global settlement" resolving all Petco-related violations both filed and unfiled.[1]

After lengthy discussions spanning the course of years, and the accrual of many new violations of the Act by Petco, settlement negotiations reached an impasse. (*See* Response at 3, f.n. 3, 4.) On August 31, 2022, Complainant submitted its Motion for Leave to File First Amended Complaint in this case, incorporating violations that had been the subject of settlement negotiations, but which had not yet been filed. Respondent offered no objection to that Motion, and on October 20, 2022, the Board accepted Complainant's First Amended Complaint ("First Amended Complaint") into the record.

On January 18, 2023, Respondent filed its Answer, Affirmative, and Additional Defenses to the First Amended Complaint ("Answer and Defenses"). Respondent included eleven (11) paragraphs, asserting what it purports to be affirmative defenses, some more comprehensible than others.

[1] *People v. Petco Petroleum Corp.*, PCB 13-72 (docket available at https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=14644).

Complainant now moves to strike Respondent's affirmative defenses in their entirety. Respondent's affirmative defenses fail to meet Illinois pleading standards. The defenses are all factually and/or legally insufficient, and should be stricken with prejudice, to avoid unnecessary discovery and litigation in what is, ultimately, a relatively straightforward—albeit sizeable—case of water pollution violations caused by Respondent's management of its oil wells. For the following reasons, the Board should strike Respondent's affirmative defenses with prejudice.

II. LEGAL STANDARDS

Section 103.204(d) of the Illinois Pollution Control Board's regulations, 35 Ill. Adm. Code 103.204(d), establishes the requirements for all affirmative defenses. Section 103.204(d) provides in relevant part as follows:

> (d) . . . Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

The Board defines an affirmative defense as the "respondent's allegation of 'new facts or arguments that, if true, will defeat . . . the government's claim even if all allegations in the complaint are true.'" *Cmty. Landfill*, PCB 97-193, slip op. at 3 (Aug. 6, 1998) (quoting Black's Law Dictionary). The Board has also defined an affirmative defense as a "response to a plaintiff's claim which attacks the plaintiff's legal right to bring an action, as opposed to attacking the truth of claim." *Farmer's State Bank v. Phillips Petroleum Co.*, PCB 97-100, slip op. at 2 n. 1 (Jan. 23, 1997) (quoting Black's Law Dictionary). The Illinois Appellate Court explained in *Worner Agency v. Doyle*, 121 Ill. App. 3d 219, 221 (4th Dist. 1984), that if the pleading attacks the sufficiency of the claim, and does not admit the opposing party's claim, it is not an affirmative defense. Likewise, a defense that merely attacks the sufficiency of a claim fails to be an affirmative defense. *Id.*, 121 Ill. App. 3d at 222-23. In other words, "[t]he test of whether a defense is affirmative and must be

pleaded by a defendant is whether the defense gives color to the opposing party's claim and then asserts new matter by which the apparent right is defeated." *Id.*, 121 Ill. App. 3d at 222. A true affirmative defense must offer new facts beyond those in the complaint that are capable of defeating an otherwise valid cause of action. *Pryweller v. Cohen*, 282 Ill. App. 3d 899, 907 (1st Dist. 1996). Mere defenses do not rise to the level of affirmative defenses, and accordingly should be stricken. *Id.*

The facts establishing an affirmative defense must be pleaded with the same degree of specificity required by a plaintiff to establish a cause of action. *Int'l Ins. Co. v. Sargent & Lundy*, 242 Ill. App. 3d 614, 630 (1st Dist. 1993). Sufficient facts must be alleged to satisfy each element of the affirmative defense. *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 20. An affirmative defense that is totally conclusory in nature and devoid of any specific facts supporting its conclusions is inappropriate and should be stricken. *Int'l Ins. Co.* at 635. *See also Farmers Auto. Ins. Ass'n v. Neumann*, 2015 IL App (3d) 140026, ¶ 16 ("the facts constituting the defense must be plainly set forth and the court will disregard any conclusions of law or fact not supported by allegations of specific fact"). The party pleading an affirmative defense need not set out evidence, so long as the party alleges the ultimate facts to be proven. *People v. Carriage 5 Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). However, legal conclusions that are not supported by allegations of specific facts are insufficient. *LaSalle National Trust N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 557.

The Board previously held that "[a] motion to strike an affirmative defense admits well-pled facts constituting the defense, as well as all reasonable inferences that may be drawn therefrom, and attacks only the legal sufficiency of the facts." *Elmhurst Mem'l Healthcare, et al. v. Chevron U.S.A., Inc., et al.*, PCB 09-066, slip op. at 21 (March 18, 2010), citing *Raprager v.*

Allstate Ins. Co., 183 Ill. App. 3d 847, 854 (2nd Dist. 1989). An affirmative defense should not be stricken "[w]here the well-pleaded facts [of an affirmative defense] . . . raise the possibility that the party asserting the defense will prevail . . . ." *Raprager*, 183 Ill. App. 3d at 854.

III. ARGUMENT

1. Respondent fails to meet the pleading requirements for affirmative defenses brought against a complaint before the Board.

Respondent fails to allege any cognizable affirmative defense with the specificity required by the Board's procedural rules for affirmative defenses, which expressly require that any facts constituting an affirmative defense must be set forth in the answer. 35 Ill. Adm. Code 103.204(d). Respondent is required to plead an affirmative defense with the same degree of specificity necessary for establishing a cause of action. *People v. Six M. Corp., Inc., et al.*, PCB 12-35, slip op. at 6-7 (February 12, 2012), citing *Int'l Ins. Co.*, 242 Ill. App. 3d 614, 630 (1st Dist. 1993). Rather than setting forth facts, many of Respondent's purported affirmative defenses are merely conclusory statements, lacking any factual support whatsoever.

By way of example, Affirmative Defense Paragraph B states in its entirety: "The First Amended Complaint fails to comply with and/or satisfy one or more statutory and/or regulatory prerequisites to file and maintain the State's action." (*See* Ans. (Defenses) at B). Respondent provides no additional factual support for its assertion, and Complainant and the Board are left to their own devices to examine the First Amended Complaint to determine which statutory and/or regulatory prerequisites were not complied with and/or satisfied. This is inappropriate and insufficient for the pleading requirements of affirmative defenses.

Similarly, Affirmative Defense Paragraph I states in its entirety: "The claims in the First Amended Complaint are barred, in whole or in part, by the doctrines of estoppel, collateral estoppel, waiver, release, res judicata, and/or laches." (*See* Ans. (Defenses) at I). The affirmative

defense fails on its face to provide the requisite factual support required by the regulations and supporting case law. No further factual information is provided, and both Complainant and the Board are left to do the work of interpreting which of these six affirmative defenses is applied to which count, if any, and why. This is inappropriate and insufficient for the pleading of affirmative defenses.

Additionally, Respondent's affirmative defenses are not appropriately identified; it is unclear which affirmative defense is being raised in many of the paragraphs. Likewise, in several purported affirmative defenses, Respondent does not state an actual affirmative defense, but merely a defense, which is inappropriate at this stage of the pleadings.

Rather than providing Complainant and the Board with clearly articulated, factually supported, affirmative defenses, Respondent has provided an assemblage of unsupported affirmative defenses; mere defenses which fail to give color to Complainant's claims; vague unsupported conclusory legal conclusions; and misstatements of law. None of the purported affirmative defenses are sufficient to support an affirmative defense that would defeat Complainant's claim, and Complainant requests the Board strike them in their entirety with prejudice.

2. Affirmative Defense A: Respondent fails to allege facts with specificity in support of Affirmative Defense A. Complainant has stated multiple claims against Petco upon which relief may be granted.

Respondent's Affirmative Defense A states that "[t]he First Amended Complaint fails to state a claim against Petco upon which relief can be granted." (*See* Ans. (Defenses) at A). Affirmative Defense A is factually and legally insufficient. Respondent provides no supporting factual information for its assertions, leaving others to discern how Complainant failed to state a

claim upon which relief might be granted. This total absence of any supporting facts is insufficient for an affirmative defense.

Complainant alleges seventy-three (73) counts in the First Amended Complaint. In each of the seventy-three counts, Complainant alleges that Respondent violated one or more of the following sections: Section 12(a) of the Act, 415 ILCS 5/12(a) (water pollution); Section 12(d) of the Act, 415 ILCS 5/12(d) (water pollution hazard); Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203 (creation of offensive conditions); Section 304.105 of the Board regulations, 35 Ill. Adm. Code 304.105 (violation of water quality standards); and Section 304.106 of the Board regulations, 35 Ill. Adm. Code 304.106 (offensive discharges).

Each of these sections is actionable. A violation of any one of these sections may give rise to an environmental enforcement action under the Act. If Respondent believes that Complainant has failed to prove its case, that is merely a defense—not an affirmative defense. Complainant requests the Board strike Affirmative Defense A with prejudice.

3. Affirmative Defense B: Respondent fails to allege facts with specificity in support of Affirmative Defense B. The First Amended Complaint complies with, and satisfies, the statutory and regulatory prerequisites to file and maintain Complainant's action.

Respondent's Affirmative Defense B is factually and legally insufficient. Respondent broadly claims that the First Amended Complaint "fails to comply with and/or satisfy one or more statutory and/or regulatory prerequisites to file and maintain the State's action". (*See* Ans. (Defenses) at B).

Respondent's affirmative defense is devoid of any supporting facts that might allow the reader to determine the basis for its assertion. Respondent fails to identify the statutory and/or regulatory prerequisite with which the Complainant allegedly fails to comply and/or satisfy. Respondent fails to identify the count, or counts, to which this assertion applies, or provide

Respondent's accompanying reasoning. Respondent neither provides the specificity necessary to determine where the purported defect lies in the First Amended Complaint, nor does Respondent provide any supporting facts. Respondent's Affirmative Defense B is factually and legally insufficient, and Complainant requests it be stricken with prejudice.

4. Affirmative Defense C: The First Amended Complaint may be, and is, brought both on the Attorney General's own motion and at the request of Illinois EPA pursuant to Section 31.

Respondent's Affirmative Defense C is factually and legally insufficient. Respondent asserts that Complainant's action is barred by failure to allege compliance with Section 31 of the Act for each count of the First Amended Complaint. (*See* Ans. (Defenses) at C).

Respondent offers a blanket statement without facts in support of its claim. Amongst other omissions, Respondent fails to assert the entity that purportedly failed to comply with Section 31, and Respondent fails to identify to which out of the 73 counts this statement applies. Respondent's Affirmative Defense C is therefore factually insufficient.

Moreover, compliance with Section 31 is not the only means by which to bring an action under the Act. Enforcement of the provisions of the Act may occur in one of two ways: either through the process set forth in Section 31 of the Act, 415 ILCS 5/31 (2020), and subsequent referral of a case to the Illinois Attorney General's Office, or on the Illinois Attorney General's own motion. *People v. Sheridan Sand & Gravel*, PCB 06-177, slip op. at 14 (June 7, 2007); *People v. Atkinson Landfill Co.*, PCB 13-28, slip op. at 68-69 (January 9, 2014).

Paragraph 1 of the First Amended Complaint states as follows:

> 1. This action is brought on behalf of the People of the State of Illinois, by Kwame Raoul, the Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("IEPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2020).

(*See* First Am. Compl., ¶ 1). In every subsequent count, the First Amended Complaint incorporates this paragraph, providing as follows:

> 1-17. Complainant incorporates by reference paragraphs 1 through 17 as if fully set forth herein as paragraphs 1 through 17 of this Count I.

(*See, for example,* First Am. Compl., Count I, ¶¶ 1-17).

The First Amended Complaint has alleged, in each count, that the Complaint is brought both by the Attorney General on his own motion, and on behalf of the Illinois EPA, pursuant to Section 31. Both mechanisms are appropriate under the Act. Respondent's Affirmative Defense C incorrectly states the applicable law, and should be stricken with prejudice.

5. <u>Affirmative Defense D: This action may be brought pursuant to the Illinois Environmental Protection Act.</u>

Respondent's Affirmative Defense D is legally insufficient. Respondent appears to assert that, because operation of an oil well in the State of Illinois is permissible only upon receipt of a permit from the Illinois Department of Natural Resources ("Illinois DNR") pursuant to the Illinois Oil and Gas Act ("IOGA"), a legal action that involves an oil well cannot be brought pursuant to the Act.

This is incorrect. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency established by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2020), and charged, *inter alia*, with the duty of enforcing the Act and Board's regulations promulgated thereunder. Illinois DNR is an administrative agency of the State of Illinois created by the Illinois General Assembly and charged, *inter alia,* with the duty of enforcing the IOGA and all rules and regulations promulgated thereunder, pursuant to Section 3 of the Act, 225 ILCS 725/3 (2020).

The Act and the IOGA relate to differing jurisdictions and competencies. Permitting, maintenance, and the lawful operation of oil and gas wells falls under the jurisdiction of Illinois DNR. Environmental harms that cause, threaten, or allow water pollution or the creation of a water pollution hazard in waters of the State; that cause offensive conditions in waters of the State; that cause offensive discharges in waters of the State; and that result in exceedances of the lawful numeric standards of chloride in waters of the State, are all violations that fall under the jurisdiction of the Act, as alleged in the First Amended Complaint.

The Act and the IOGA are two separate statutes, with their own distinct concerns, outlining two separate sets of violations. Indeed, Illinois EPA and Illinois DNR have a standing Memorandum of Agreement between the two agencies, whereby they explicitly delineate the enforcement responsibilities of the agencies under their respective legal authorities (attached as Ex. A). The present action is properly brought pursuant to the Act, and Complainant requests that Respondent's Affirmative Defense D be stricken with prejudice.

6. Affirmative Defense E: This action may be brought pursuant to the Illinois Environmental Protection Act.

Respondent's Affirmative Defense E is factually and legally insufficient. Once more, Respondent fails to provide any factual support for its claims, leaving many questions unanswered. Complainant is unable to identify which releases Petco is referencing, much less the payments purportedly made by Petco. Basic facts are absent from Respondent's Affirmative Defense E, rendering it factually insufficient.

Likewise, Petco fails to identify the affirmative defense it seeks to assert, rendering Affirmative Defense E legally insufficient.

Perhaps most critically, however, Affirmative Defense E is premised upon the same legal misconception set forth in Respondent's Affirmative Defense D. Respondent alleges that because

Illinois DNR investigated the majority of the violations cited in the First Amended Complaint, and subsequently made a determination regarding any liability on the part of Respondent, that the First Amended Complaint seeks to relitigate issues that have already been settled by Illinois DNR. (*See* Ans. (Defenses) at E). Respondent's Affirmative Defense E flows from its misapprehension as to the appropriate statute and corresponding administrative agency authorizing this lawsuit, as discussed above in response to Affirmative Defense D.

The Illinois EPA has authority to bring suit for violations of the Act. Any legal action that might be brought by Illinois DNR related to the underlying releases described in each count of the First Amended Complaint would be pursuant to the IOGA, not the Act. Each statute gives rise to different jurisdictions and competencies. The First Amended Complaint is properly brought pursuant to the Act, and Respondent requests the Board strike Affirmative Defense E with prejudice.

7. <u>Affirmative Defense F: Respondent fails to state an affirmative defense.</u>

Respondent's Affirmative Defense F is confusing, in addition to being factually and legally insufficient. Affirmative Defense F appears to be a defense, rather than an affirmative defense.

Respondent's argument appears to be the following: Petco was found liable in previous legal actions for violations at certain oil wells, and ordered to develop a plan to address systemic violations; some of the oil wells where previously adjudicated violations occurred are also oil wells where violations are alleged in the First Amended Complaint; Petco has been trying very hard to fix its leaking oil wells, but cannot seem to stop the discharges; Petco therefore should not be held responsible for new discharges from wells that it was previously ordered to fix. (*See* Ans. (Defenses) at F).

Petco fails both to provide any supporting facts for its allegations of Affirmative Defense F, and to state the theory of its affirmative defense. Respondent leaves Complainant and the Board to figure out the details for themselves, and thereby fails to provide sufficient facts to meet the pleading standard for an affirmative defense.

Moreover, the logic behind this argument is inscrutable. Petco acknowledges that it was previously ordered on multiple occasions to address violations of the Act occurring at its operations, including the development of a written oil and gas facilities operation maintenance plan. Petco then tacitly admits that discharges from its wells have continued to occur, despite prior orders that they cease. Petco then seems to conclude that because it believes it has made efforts to address the problem, that it should not be held accountable for new, repeat, or ongoing violations.

Trying hard to solve a violation, failing to do so, and creating new violations in the interim, is not an affirmative defense. The violations alleged in the First Amended Complaint are all novel, never having previously occurred nor been adjudicated. While they stem from Respondent's failure to comply with previously adjudicated orders, they are new, discrete occurrences, for which enforcement is proper. Any effort by Petco at attempts to achieve compliance may go to the determination of an acceptable penalty, but it is not a defense to liability in the first place. *See* 415 ILCS 5/42(h) (2020) (setting out penalty factors including the duration of the violations and the Respondent's diligence in correcting the violation). Respondent's Affirmative Defense F fails to understand the legal standards set forth in the Act.

Moreover, all of the violations alleged in the First Amended Complaint prohibit someone from "causing" or "allowing" the underlying violation. Even if the violations alleged in the First Amended Complaint were ongoing violations that had been previously adjudicated, the term "allow" in the Act has been interpreted to "include[] present inaction on the part of the landowner

to remedy a previously caused violation." *Illinois Envtl. Prot. Agency v. Rawe*, PCB 92-5 (Oct. 16, 1992), slip op. at 6. Therefore, "[p]resent inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site, constitutes 'allowing' [a violation] in that the owner allows the illegal situation to continue." *Id.*

Petco's Affirmative Defense F is both legally and factually insufficient. Complainant requests that the Board strike Affirmative Defense F with prejudice.

8. <u>Affirmative Defense G: Respondent fails to state an affirmative defense.</u>

Respondent's Affirmative Defense G is factually and legally insufficient. Petco states that "[a]ny claims for equitable relief in the First Amended Complaint are barred because the State has adequate remedies at law". (*See* Ans. (Defenses) at G).

It is unclear if Petco is familiar with the equitable relief being sought by Complainant in the First Amended Complaint; in any event, Petco does not set forth what equitable relief being sought is objectionable, nor does Petco set forth any facts describing how remedies at law might suffice, and therefore preclude equitable relief from being pursued. All that Respondent provides is a blanket assertion that Complainant can accomplish its goals via remedies at law, and so should be prevented from seeking equitable relief.

Respondent sets forth nothing more than a conclusory statement. In its First Amended Complaint, the equitable relief sought by Complainant is contained in Paragraph C of its Prayer for Relief, namely: "Ordering Respondent to cease and desist from any further violations of the Act and associated regulations." (*See* First Am. Compl. (Prayer for Relief) at C).

While Complainant seeks civil penalties against Respondent, civil penalties cannot take the place of a Board order requiring Petco to cease and desist from future violations of the Act. Petco has demonstrated time and again its unreliability in complying with the law; the sheer

volume of counts brought against Petco in the First Amended Complaint attests to that fact. The history of adjudicated orders against Petco provides further support to that position. Civil penalties cannot take the place of a Board order requiring Petco to comply with the law moving forward; equitable relief must also be granted, in order to secure Complainant's interest in Respondent's future compliance with the Act and its regulations.

Respondent's Affirmative Defense G is factually and legally insufficient. Complainant requests that the Board strike Affirmative Defense G with prejudice.

9. Affirmative Defense H: No statute of limitations applies to the allegations brought in the First Amended Complaint.

Respondent's Affirmative Defense H is factually insufficient. Petco fails to identify which claims or counts it believes to be barred by a statute of limitations. Petco fails to explain why it believes those claims or counts are barred by a statute of limitations. Petco identifies a statute of limitations in Section 13-205 of the Illinois Code of Civil Procedure, 735 ILCS 5/13-205 ("Section 13-205"), but then also includes a generic catch-all statement, claiming to apply any statute of limitations set forth in any other "rule, regulation or doctrine requiring the filing and pursuit of the claim within a certain prescribed period of time or by a certain date". (*See* Ans. (Defenses) at H). Petco's failure to identify the claims or counts it believes are subject to a statute of limitations; to set forth the facts supporting that belief; and to identify which statute of limitations applies to which claim or count falls far short of the pleading requirements for an affirmative defense.

Moreover, no statute of limitations applies to bar the First Amended Complaint. Counts 1 through 61 of the First Amended Complaint deal with releases of crude oil or salt water that occurred between February 22, 2010 and May 17, 2013, within the four years prior to the filing of the original Complaint on June 21, 2013. A period of five years had not yet elapsed, and so Respondent's citation of the five-year statute of limitations on its face cannot apply.

As to Counts 62 through 73 of the First Amended Complaint, Complainant incorporates by reference into its Motion to Strike the arguments and responses Complainant sets forth in Complainant's Response in Opposition to Respondent's Motion to Dismiss Counts 62 through 73 of the First Amended Complaint ("Response in Opposition"), filed contemporaneously herewith.

Summarizing arguments set forth more expansively in Complainant's Response in Opposition to Respondent's Motion to Dismiss, previous cases have determined that "[T]here is no statute of limitations that applies to enforcement actions brought by the State pursuant to Section 31 of the Act." *People of the State of Ill. v. John Crane Inc.* (May 17, 2001), PCB 01-76, slip op. at 5; *see also Pielet Bros. Trading, Inc. v. Pollution Control Bd.*, 110 Ill. App. 3d 752, 758 (5th Dist. 1982); *People v. Am. Disposal Co. and Consol. Rail Corp.* (May 18, 2000), PCB 00-67, slip op. at 3.

Additionally, the common law standard for governmental immunity to statutes of limitation prevents application of any affirmative defense to the First Amended Complaint. The doctrine of governmental immunity, or what is also referred to as the "public interest exception" to the statute of limitations, still remains in place today. *Pielet Bros. Trading, Inc. v. Pollution Control Bd.*, 110 Ill. App. 3d 752 (5th Dist. 1982). Several factors help to determine if a government entity's actions are in the public interest, and therefore afforded governmental immunity to statutes of limitations. Those factors include: (1) the effect of the interest on the public; (2) the obligation of the governmental entity to act on behalf of the public; and (3) the extent to which public funds must be expended in its activities. *City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264, 269-270 (1st Dist. 2004). Courts additionally look to see whether or not an authorizing statute expressly applies a statute of limitations to government actors. *Bd. of Educ. v. A, C & S, Inc.*, 131 Ill. 2d 428, 476 (1989).

Neither the Act nor Section 13-205 expressly applies a statute of limitations to government entities. Seeking to hold Petco accountable for its violations of the Act falls squarely within the public interest. *See People v. Conrail Corp.*, 251 Ill. App. 3d 550, 560 (4th Dist. 1993); IL. CONST. ART. XI, Sec. 1. *See also People v. Mika Timber Co.*, 221 Ill. App. 3d 192, 193 (5th Dist. 1991) (finding that by virtue of passing the Act, the General Assembly determined that violations of the statute cause irreparable damage for which no adequate remedy exists). Both the Illinois EPA and the Illinois Attorney General are fulfilling obligations set forth in the Act and case law. *See* Sections 4(e), 30, and 42 of the Act, 415 ILCS 5/4(e), 30, and 42 (2020). *See also Land & Lakes Co., JMC Operations, Inc. and NBC Trust Co. of Ill., as Tr. Under Trust No. 2624ED v. Vill. of Romeoville* (Feb. 7, 1991), PCT 91-7, slip op. at 2; *Pioneer Processing, Inc. v. EPA*, 102 Ill. 2d 119, 138-39 (1984). The expenditure of public funds is irrelevant to the present case, but—in any event—the State has expended resources when addressing the violations outlined in the First Amended Complaint. Complainant therefore enjoys governmental immunity to any statute of limitations that Respondent may seek to apply to the First Amended Complaint.

Affirmative Defense H is factually and legally insufficient. Complainant requests the Board strike Affirmative Defense H with prejudice.

10. Affirmative Defense I: Estoppel, collateral estoppel, waiver, release, res judicata, and/or laches do not bar Complainant's action.

Respondent's Affirmative Defense I is factually insufficient. Respondent provides a laundry list of six affirmative defenses, failing to allege any facts in support of any the same. Complainant is neither unable to identify which affirmative defenses apply to which counts, nor any accompanying reasoning for their purported application. Respondent sets forth no facts in support of its conclusory laundry list of six affirmative defenses, rendering Affirmative Defense I factually insufficient.

Affirmative Defense I is also legally insufficient. By combining multiple defenses under a single catch-all heading without reference to the relevant counts to which they apply, Respondent has failed to identify which defenses it is pleading to defeat which causes of action alleged in the First Amended Complaint.

A. Estoppel does not bar Complainant's action.

The doctrine of estoppel precludes "a party from benefiting from its own wrongdoing." *Tegler v. Industrial Comm'n*, 173 Ill. 2d 498, 505 (1996). To establish equitable estoppel, a party must demonstrate that:

> (1) the other person misrepresented or concealed material facts; (2) the other person knew at the time he or she made the representations that they were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other person intended or reasonably expected that the party claiming estoppel would act upon the representations; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her detriment; and (6) the party claiming estoppel would be prejudiced by his or her reliance on the representations if the other person is permitted to deny the truth thereof.

Geddes v. Mill Creek Country Club, Inc., 196 Ill. 2d 302, 313-14 (2001). As discussed in greater detail below, "public policy disfavors application of equitable estoppel to bar state action." *McDonald v. Illinois Dept. of Human Services*, 406 Ill. App. 3d 792, 803 (4th Dist. 2010).

To sufficiently plead an estoppel defense, Respondent would first need to plead specific facts showing that a State agency knowingly made a misrepresentation to, or concealed material facts from, Respondent. *Geddes*, 196 Ill. 2d at 313. Respondent's affirmative defense does not include any such allegations. This is insufficient to meet the requirements of an estoppel defense.

Moreover, putting aside Respondent's failure to comply with the pleading standards, estoppel does not generally apply to governmental entities except in extreme circumstances. *McDonald*, 406 Ill. App. 3d at 803. "Estoppel will only be applied against the State if '(1) doing

so would be necessary to prevent fraud and injustice and (2) the state itself induced a private actor's reliance.'" *Id.* The inducement "must be the act of the State itself, such as legislation, rather than the unauthorized acts of a ministerial office." *Deford-Goff v. Dep't of Pub. Aid*, 281 Ill. App. 3d 888, 893 (4th Dist. 1996).

Courts have taken an especially dim view of estoppel claims against the State government in environmental enforcement actions. *See Tri-County Landfill Co. v. Illinois Pollution Control Bd.*, 41 Ill. App. 3d 249, 255 (2d Dist. 1976) (rejecting estoppel defense because "[t]o allow estoppel here would be to permit the people of Illinois to be denied their constitutional right to a healthful environment . . . .") (citing ILL. CONST. ART. XI).

The First Amended Complaint in this case alleged violations of the Act and Board regulations, and was filed in the name of the People of the State of Illinois, on the Attorney General's own motion and at the request of the Illinois EPA. The First Amended Complaint concerns the protection of the environment, public health, and welfare. Here, clearly, the enforcement of statutes and regulations relating to water pollution, water pollution hazards, offensive conditions, offensive discharges, and exceedances of the numeric standards of chloride involves public rights. In light of this, any estoppel claims by Respondent must be viewed in light of the "strong public policy disfavoring the imposition of equitable estoppel against the State." *Deford–Goff,* 281 Ill. App. 3d at 893.

Not only does Respondent fail to allege any facts to establish that any State agency misrepresented or concealed material facts from Respondent, much less that a State agency did so knowingly, Petco certainly fails to allege any facts that rise to the level of an extreme circumstance wherein estoppel would be warranted against a government entity. Complainant requests the Board strike Affirmative Defense I with prejudice.

B. Collateral Estoppel does not bar Complainant's action.

The Illinois Supreme Court has set three minimum threshold requirements for applying collateral estoppel: (1) the issue decided in the prior adjudication is identical with the one presented in the instant matter; (2) there was a final judgment on the merits in the prior adjudication; and (3) the party against whom estoppel is asserted was a party or a party in privity with a party to the prior adjudication. *People v. Cmty. Landfill Co., Inc., et al.*, PCB 03-191, slip op. at 4-5 (October 16, 2003), *citing ESG Watts, Inc. v. IEPA,* PCB 96-181 and 97-210, slip op. at 2-3 (July 23, 1998), *citing Talarico v. Dunlap*, 177 Ill. 2d 185, 191 (1997).

Application of the doctrine of collateral estoppel must be narrowly tailored to fit the precise facts and issues that were clearly determined in the prior judgment. *People v. State Oil Co., et al.*, PCB 97-103, slip op. at 24 (March 20, 2003), *citing Kessinger v. Frefco, Inc.*, 173 Ill. 2d 447, 467, 672 N.E.2d 1149, 1158 (1996). Collateral estoppel is an equitable doctrine. *Id.*, *citing DuPage Forklift Serv., Inc. v. Material Handling Serv., Inc.*, 195 Ill. 2d 71, 77 (2001). Even where the threshold elements of the doctrine are satisfied, collateral estoppel must not be applied to preclude parties from presenting their claims or defenses unless it is clear that no unfairness results to the party being estopped. *Am. Family Mut. Ins. Co. v. Savickas*, 193 Ill. 2d 378, 388 (2000). In deciding whether the doctrine of collateral estoppel is applicable in a particular situation, a court must balance the need to limit litigation against the right of a fair adversary proceeding in which a party may fully present his case. In determining whether a party has had a full and fair opportunity to litigate an issue in a prior action, those elements which comprise the practical realities of litigation must be examined. *Id., citing Talarico v. Dunlap*, 177 Ill. 2d 185, 192 (1997).

Respondent fails to plead any facts in its Affirmative Defense I setting forth what issue it believes to be identical with a previously adjudicated matter; Respondent further fails to identify

which final judgment on the merits it believes resolved an issue presented in the First Amended Complaint. Respondent therefore fails to plead Affirmative Defense I with sufficient factual specificity.

Respondent's Affirmative Defense I is also legally insufficient. The First Amended Complaint in this case alleged violations of the Act and Board regulations within the context of seventy-three (73) counts. Each count details a discrete discharge that has not previously been the subject of an environmental enforcement action. No final judgment has been reached on any of the violations outlined in Counts 1 through 73. Petco fails to allege any facts that rise to a showing of a prior adjudication of an issue identical with the issues set forth in the First Amended Complaint. Complainant requests the Board strike Affirmative Defense I with prejudice.

C. Waiver does not bar Complainant's action.

The case law indicates that "[a] waiver is the intentional relinquishment of a known right, and there must be both knowledge of the existence of the right and the intention to relinquish it." *Podbielniak v. Podbielniak,* 38 Ill. App. 2d 451, 460 (1st Dist. 1962).

Complainant has not intentionally relinquished any rights against Respondent. Respondent fails to allege any facts that demonstrate that any State agency "intentionally relinquished" any right of the State against Respondent. This is insufficient on its face to meet the requirements of a waiver defense. Complainant requests the Board strike Affirmative Defense I with prejudice.

D. Release does not bar Complainant's action.

Case law provides that when a defendant seeks to bring an affirmative defense of release, the defendant bears the burden of setting forth facts that establish a *prima facie* affirmative defense for release. Thereafter, the burden shifts to the plaintiff to prove the release was invalid by clear and convincing evidence. *O'Keefe v. Greenwald*, 214 Ill. App. 3d 926, 934-35 (1st Dist. 1991).

Respondent fails to set forth any facts that would give rise to an affirmative defense of release. Complainant has not released Respondent from any of the alleged violations in the First Amended Complaint. Respondent's affirmative defense is therefore factually and legally insufficient for the pleading of an affirmative defense of release. Complainant requests the Board strike Affirmative Defense I with prejudice.

E. *Res judicata* does not bar Complainant's action.

Case law sets forth that the doctrine of *res judicata* provides that once a court has decided a cause of action, that same cause of action cannot be retried between the same parties. *Cole Taylor Bank v. Rowe Indus., Inc., et al.*, PCB 01-173, slip op. at 18-19 (June 6, 2002). The three elements of a *res judicata* affirmative defense include: "(1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties, or privity between subsequent parties and the original parties." *Id., citing People v. Jersey Sanitation Corp.*, PCB 97-2, slip op. at 4-5 (April 4, 2002).

Respondent fails to set forth any facts in support of its affirmative defense of *res judicata*. Petco fails to assert which final judgment it believes triggers a *res judicata* affirmative defense. Petco fails to assert which cause of action in the underlying First Amended Complaint is purportedly identical to a previously adjudicated cause of action. Petco fails to set forth an identity of parties. These failures leave Complainant and the Board to do the work of reading meaning into Petco's affirmative defense. Petco's failure to allege the necessary supporting facts renders the *res judicata* affirmative defense factually insufficient.

None of the violations alleged in the First Amended Complaint have been the subject of a previously adjudicated decision. All of the violations alleged in the First Amended Complaint deal with incidents that have not been fully adjudicated before the Board or a circuit court. There are

no final judgments as to any of the underlying counts in the First Amended Complaint, meaning a *res judicata* affirmative defense is legally insufficient. Complainant requests the Board strike Affirmative Defense I with prejudice.

F. Laches does not bar Complainant's action.

As to the affirmative defense of laches, the courts have found that:

> Generally, principles of *laches* are applied when a party's failure to timely assert a right has caused prejudice to the adverse party . . . The two fundamental elements of *laches* are lack of due diligence by the party asserting the claim and prejudice to the opposing party.
>
> * * *
>
> There is considerable reluctance to impose the doctrine of *laches* to the actions of public entities unless unusual or extraordinary circumstances are shown. This is so because *laches* "may impair the functioning of the [governmental body] in the discharge of its government functions, and * * * valuable public interests may be jeopardized or lost by the negligence, mistakes, or inattention of public officials." Although "the reluctance to apply equitable principles * * * does not amount to absolute immunity * * * from *laches* and estoppel under all circumstances," it has been recognized that *laches* does not apply to the exercise of governmental powers except under "compelling circumstances."

Van Milligan v. Bd. of Fire & Police Comm'rs, 158 Ill. 2d 85, 89–91 (1994) (internal citations omitted). In short, not only must Respondent show both 1) a lack of due diligence by Complainant, and 2) prejudice to Respondent, but also—given that Complainant is exercising its governmental law enforcement powers—3) that "compelling circumstances" exist that might warrant the application of laches. Respondent fails to provide such information on all three elements.

Respondent's affirmative defense sets forth no facts whatsoever demonstrating a lack of due diligence by Complainant, prejudice to Respondent, or the existence of "compelling circumstances" that might warrant the imposition of laches in the current case against the State. Complainant request the Board strike Affirmative Defense I with prejudice.

11. <u>Affirmative Defense J: Respondent fails to state an affirmative defense; costs spent on remediation do not warrant a reduction in civil penalty.</u>

Respondent's Affirmative Defense J is both factually and legally insufficient. Once more, Respondent fails to plead the necessary facts for an affirmative defense. Petco states that, "To the extent that the State has already received payments for any of the alleged damages and/or penalties alleged in the First Amended Complaint, the full amount of such payments should be credited to reduce the costs that the State seeks to recover against Petco in this action." (*See* Ans. (Defenses) at J).

Petco does not identify what payments it is referencing; the amount of these payments; the date of these payments; the recipient of these payments; the purpose of these payments—nothing concrete is provided to help either Complainant or the Board identify what funds Respondent is referencing in Affirmative Defense J. Without more facts to identify the payments in question, Complainant and the Board are left to do the guesswork for themselves, making Affirmative Defense J factually insufficient.

Moreover, Petco has not tendered any payment to the Illinois EPA for any of the violations brought in the First Amended Complaint. Previous civil penalties paid by Petco in previous legal actions are of no relevance to an enforcement action for new violations under the Act, as is the case in the First Amended Complaint.

Additionally, there is no provision for set-off under the Act. If Respondent is referencing costs that it has incurred for work performed to remedy the violations alleged in the First Amended Complaint, expenditures made by a respondent on remediation do not warrant any reduction in a civil penalty under the Act. Section 42(h) of the Act, 415 ILCS 5/42(h) (2020), lays out the factors the Board may, in its discretion, consider when calculating a civil penalty, including the gravity and duration of the violation; the presence or absence of due diligence in remediating the

contamination; any economic benefits accrued by the respondent because of a delay in compliance; the amount of penalty which will deter future violations; the number, proximity in time, and gravity of previously adjudicated violations of the Act against the respondent; and any self-disclosure on the part of the respondent, amongst other factors. 415 ILCS 5/42(h) (2020). Compliance with the law is required, whatever the cost. Costs involved in fixing the problem for which Respondent is responsible is not a factor that could lower Respondent's penalty under the Act.

Finally, seeking a reduction in costs is not an affirmative defense. Vague references to unidentified payments do not amount to Respondent "giv[ing] color to the opposing party's claim and then assert[ing] new matter by which the apparent right is defeated." *Ferris Elevator Co., Inc. v. NEFFCO, Inc.*, 285 Ill. App. 3d 350, 354 (3d Dist. 1996) (citing *Condon v. Am. Tel. and Tel. Co.*, 210 Ill. App. 3d 701 (1991)). Arguing that actions taken by Respondent should result in a reduced civil penalty is a defense, not an affirmative defense, and therefore is inappropriate at this stage in the proceedings. Complainant requests the Board strike Affirmative Defense J with prejudice.

12. **Affirmative Defense K: Respondent argues an incorrect standard of liability. The standard for liability under the Act is whether Respondent caused, threatened, or allowed the discharge of contaminants into the environment, not the standards for tort liability.**

Respondent relies upon incorrect standards for liability for its Affirmative Defense K, which as a result is legally insufficient. Liability is not based in tort, as Respondent appears to believe. Per Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), a respondent incurs liability when its actions:

> (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. (emphasis added)

The test for liability is if a respondent's actions cause, threaten, or allow a discharge of contaminants, in whole or in part, with liability being joint and several. "[I]t is no defense that another party may have been partially responsible for the pollution." *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 795 (5th Dist. 1993).

Affirmative Defense K appears to allege that the State will not be able to disprove that some other unknown entity may have contributed to the underlying discharge, and so Respondent is therefore relieved of liability. This is incorrect. Section 12(a) of the Act clearly sets forth that any contamination caused by a respondent, whether it be the entirety of the contamination or merely a portion, renders a respondent liable under the Act. The *Davinroy* case reinforces that position.

In the First Amended Complaint, each count identifies a source of contamination that is under Petco's control. Petco is therefore liable under the Act and Board regulations. *See Davinroy*, 249 Ill. App. 3d at 793 ("The State must show that the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred."). Respondent cannot displace its liability onto unidentified third parties under the Act. Neither a cause-in-fact standard, nor a proximate cause standard, are appropriate for violations brought under the Act; tort liability is the incorrect standard of liability for the case at hand pursuant to the Act. Complainant requests the Board strike Respondent's Affirmative Defense K with prejudice.

IV. ARGUMENT REGARDING RESPONDENT'S OTHER IMMATERIAL MATTER

In its Answer, Respondent has pled immaterial matter in response to certain of Complainant's allegations that includes information apparently intended to show either subsequent

compliance with the Act or to cast doubt on Respondent's own water sampling. (*See* Ans. at Ct. I, ¶¶ 18, 22, 24, 25, 27, 29; Ct. III, ¶¶ 18, 21, 22; Ct. VI, ¶ 18; Ct. VII, ¶ 18; Ct. VIII, ¶ 18; Ct. IX, ¶ 18; Ct. X, ¶ 18; Ct. XI, ¶¶ 18, 21, 22; Ct. XII, ¶ 18; Ct. XIII, ¶ 18; Ct. XIV, ¶ 18; Ct. XV, ¶¶ 18, 21; Ct. XVI, ¶ 18; Ct. XVII, ¶ 18; Ct. XVIII, ¶ 18; Ct. XIX, ¶ 18; Ct. XX, ¶ 18; Ct. XXI, ¶ 18; Ct. XXII, ¶ 18; Ct. XXX, ¶ 18; Ct. XXXIV, ¶ 18; Ct. XXXVIII, ¶ 18; Ct. XXXIX, ¶ 18; Ct. XLV, ¶ 18; Ct. XLVI, ¶¶ 20, 21, 22, 26, 27; Ct. XLVIII, ¶ 19; Ct. XLIX, ¶¶ 19, 20; Ct. LI, ¶ 18; Ct. LII, ¶ 18, 22, 23; Ct. LIII, ¶ 18, 20; Ct. LIV, ¶¶ 22, 23, 24; Ct. LVI, ¶ 18, 19; Ct. LVII, ¶ 18; Ct. LVIII, ¶ 18; Ct. LIX, ¶ 18; Ct. LX, ¶ 18).

The Board regulations require a Respondent in an answer to admit, deny, or state that it lacks knowledge sufficient to form a belief. Section 103.204(d) of the Board regulations, 35 Ill. Adm. Code 103.204(d), provides in relevant part as follows:

> d) […] All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

The Board regulations are silent as to the inclusion of immaterial matter in an Answer filed by a Respondent. The Board regulations allow for application of the Illinois Code of Civil Procedure when the Board regulations are silent on a given point of law. Section 101.100(b) of the Board regulations, 35 Ill. Adm. Code 101.100(b), provides as follows:

> b) Except when the Board's procedural rules provide otherwise, the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not apply to proceedings before the Board. However, the

> Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when the Board's procedural rules are silent.

Section 2-615(a) of the Illinois Code of Civil Procedure allows for motions to strike of immaterial matter, providing in relevant part as follows:

> (a) All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: […] that designated immaterial matter be stricken out, […] and so forth.

Respondent included in its Answer immaterial matter that neither constitutes an admission, a denial, or a statement of lack of knowledge. (*See* Ans. at Ct. I, ¶¶ 18, 22, 24, 25, 27, 29; Ct. III, ¶¶ 18, 21, 22; Ct. VI, ¶ 18; Ct. VII, ¶ 18; Ct. VIII, ¶ 18; Ct. IX, ¶ 18; Ct. X, ¶ 18; Ct. XI, ¶¶ 18, 21, 22; Ct. XII, ¶ 18; Ct. XIII, ¶ 18; Ct. XIV, ¶ 18; Ct. XV, ¶¶ 18, 21; Ct. XVI, ¶ 18; Ct. XVII, ¶ 18; Ct. XVIII, ¶ 18; Ct. XIX, ¶ 18; Ct. XX, ¶ 18; Ct. XXI, ¶ 18; Ct. XXII, ¶ 18; Ct. XXX, ¶ 18; Ct. XXXIV, ¶ 18; Ct. XXXVIII, ¶ 18; Ct. XXXIX, ¶ 18; Ct. XLV, ¶ 18; Ct. XLVI, ¶¶ 20, 21, 22, 26, 27; Ct. XLVIII, ¶ 19; Ct. XLIX, ¶¶ 19, 20; Ct. LI, ¶ 18; Ct. LII, ¶ 18, 22, 23; Ct. LIII, ¶ 18, 20; Ct. LIV, ¶¶ 22, 23, 24; Ct. LVI, ¶ 18, 19; Ct. LVII, ¶ 18; Ct. LVIII, ¶ 18; Ct. LIX, ¶ 18; Ct. LX, ¶ 18). All immaterial matter in Respondent's Answer should therefore be stricken and/or dismissed with prejudice.

Similarly, "[e]very answer and subsequent pleading shall contain an explicit admission or denial of each allegation of the pleading to which it relates." 735 ILCS 5/2-610(a). Section 2-610(a) does not provide for explanatory statements that seek to limit an admission or denial. 735 ILCS 5/2-610(a). As such, Defendant's immaterial statements also fail to comply with Section 2-610 of the Illinois Code of Civil Procedure.

Additionally, such immaterial matter is not separately pleaded, designated, numbered, or divided into consecutively numbered paragraphs and thereby fails to comply with the requirements

of Sections 2-603(b) and 2-613(a) of the Illinois Code of Civil Procedure. 735 ILCS 5/2-603(b) and 2-613(a).

Further, Plaintiff cannot adequately determine whether Defendant's immaterial statements constitute a valid affirmative defense requiring objection or an argument not requiring a reply.

For the aforementioned reasons, Defendant's other immaterial matter set forth in its Answer at Count I, ¶¶ 18, 22, 24, 25, 27, 29; Count III, ¶¶ 18, 21, 22; Count VI, ¶ 18; Count VII, ¶ 18; Count VIII, ¶ 18; Count IX, ¶ 18; Count X, ¶ 18; Count XI, ¶¶ 18, 21, 22; Count XII, ¶ 18; Count XIII, ¶ 18; Count XIV, ¶ 18; Count XV, ¶¶ 18, 21; Count XVI, ¶ 18; Count XVII, ¶ 18; Count XVIII, ¶ 18; Count XIX, ¶ 18; Count XX, ¶ 18; Count XXI, ¶ 18; Count XXII, ¶ 18; Count XXX, ¶ 18; Count XXXIV, ¶ 18; Count XXXVIII, ¶ 18; Count XXXIX, ¶ 18; Count XLV, ¶ 18; Count XLVI, ¶¶ 20, 21, 22, 26, 27; Count XLVIII, ¶ 19; Count XLIX, ¶¶ 19, 20; Count LI, ¶ 18; Count LII, ¶ 18, 22, 23; Count LIII, ¶ 18, 20, Count LIV, ¶¶ 22, 23, 24; Count LVI, ¶ 18, 19; Count LVII, ¶ 18; Count LVIII, ¶ 18; Count LIX, ¶ 18; Count LX, ¶ 18 should be stricken and/or dismissed with prejudice.

V. CONCLUSION

Respondent's affirmative defenses fail to meet Illinois pleading standards. The defenses are all factually and/or legally insufficient, and should be stricken with prejudice. The immaterial matter submitted by Respondent in its Answer is inappropriate, and fails to comply with the pleading standards under the Board regulations and the Illinois Code of Civil Procedure, and should be stricken and/or dismissed with prejudice.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board enter an order striking the defenses and immaterial matter alleged by Respondent, PETCO

PETROLEUM CORPORATION, pursuant to Section 101.506, 35 Ill. Adm. Code 101.506 with prejudice, and granting Complainant such other relief that the Board deems appropriate and just.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

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Dated: March 10, 2023

MEMORANDUM OF AGREEMENT
FOR RESPONSE, NOTIFICATION AND COMPLIANCE ASSURANCE
RELATIVE TO OIL PRODUCTION SITES AND GATHERING LINE SYSTEMS
Between
Illinois Environmental Protection Agency and
Illinois Department of Natural Resources

I. PURPOSES

This Memorandum of Agreement ("MOA") is entered into between the Illinois Environmental Protection Agency ("IEPA") and the Illinois Department of Natural Resources ("IDNR") who, hereinafter, will be referred to collectively as the "Parties." IEPA and IDNR enter into this MOA for the following purposes:

- to allocate appropriate roles and responsibilities for IEPA and IDNR relative to crude oil or brine releases from oil production sites or permitted gathering lines, within a cooperative framework;
- to ensure appropriate response to all crude oil or brine releases, such that they do not constitute a threat to human health or the environment; and
- to promote education of oil producers and gathering line operators as to IEPA and IDNR expectations and criteria for spill clean-up, prevention and notification.

II. DESIGNATED REPRESENTATIVES AND ALTERNATES

The Directors of IEPA and IDNR will each designate a representative and an alternate to be the central points of contact for their respective agencies for all matters dealing with or arising under this MOA. Each Director may change a representative or alternate at any time by so notifying the other in writing.

III. APPROPRIATE ROLES AND RESPONSIBILITIES OF IEPA AND IDNR AND JOINT SPILLS HANDLING PROTOCOL

This MOA acknowledges that the Parties have appropriate roles to play with regard to releases of crude oil or brine from oil production sites or permitted gathering lines within Illinois. IEPA's role arises from its responsibilities under the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq. ("IEP Act") and Title 35 of the Illinois Administrative Code to inspect and enforce against violations of the IEP Act, including, but not limited to, the causing, allowing or threatening of water pollution or the creation of a water pollution hazard. IDNR's role arises from its responsibilities under the Illinois Oil and Gas Act, 225 ILCS 725/1, et seq. ("IOG Act") and Title 62 of the Illinois Administrative Code to issue permits to oil production facilities and enforce against permit violations.

EXHIBIT A

The Parties have developed a Joint Spills Handling Protocol which reflects the appropriate roles and responsibilities of each Agency relative to crude oil or brine releases from oil production sites or permitted gathering lines. This Protocol, dated October 7, 1999, is attached to and incorporated by reference into this MOA. The Protocol describes the practical division of labor agreed to between IEPA and IDNR for responding to crude oil or brine spills, notifying each other of information and activities, and assurance compliance from responsible parties.

IV. IMPLEMENTATION OF THIS MOA

A. Each Party will take necessary steps to implement this MOA relative to oil production sites including the following:

1. The designated representatives of IEPA and IDNR and appropriate other staff will hold regular quarterly meetings to coordinate the on-going implementation of this MOA; to share data on releases of crude oil or brine; to develop practical procedures for notification; to collaborate on regulatory development relative to the subject matter of this MOA; and to coordinate educational and informational efforts to oil producers, gathering lines operators and the public.

2. The designated representatives of IEPA and IDNR will jointly prepare an annual progress report on implementation of this MOA, with recommendations for improvement and/or enhancement of this MOA, where appropriate, for evaluation by the Directors of IEPA and IDNR.

3. The Parties will work cooperatively to develop necessary statutory or regulatory proposals to enable IDNR to grant permits to gathering lines 6.5 inches in diameter or less (outside diameter). It is the understanding of the Parties that this MOA will apply only to those gathering lines which may be eventually permitted by IDNR, after they have received permits from IDNR.

4. Each Party agrees to notify the other's designated representative in writing within three business days of that Party's receipt of a request under the Freedom of Information Act or a request for production under subpoena related to a release of crude oil or brine from a production site or permitted gathering line, or other information reasonably related to this MOA.

B. The Parties will also conduct a cooperative evaluation of the appropriateness and continuing usefulness of this MOA one year after its effective date.

V. ISSUE RESOLUTION

In the event that issues arise between the Parties with regard to the subject matter of this MOA, the Parties will negotiate informally to reach a resolution of the issues, with appropriate escalation from the designated representatives of the IEPA and IDNR through the Directors of IEPA and IDNR, as necessary.

VI. RESERVATION OF RIGHTS

This MOA does not create nor shall it be construed to create any claim, right or cause of action for the benefit of any person not a Party to this MOA against either Party hereto, the State of Illinois, or any officers, agents or employees of any of them.

VII. LIMITATION

Nothing in this MOA shall be construed as obligating either Party, the State of Illinois, or any officers, agents or employees of any of them to expend any funds in excess of allocations or appropriations authorized by law.

VIII. MODIFICATION AND TERMINATION OF THIS MOA

This MOA may be modified in writing upon approval of both Parties hereto. Either Party may withdraw from and terminate this MOA at any time, following ten days advance written notice to the other Party.

Illinois Environmental Protection Agency

by Thomas V. Skinner, Director

7-12-00

Date

Illinois Department of Natural Resources

by Brent Manning, Director

24 Jul 00

Date

APPROVED FOR EXECUTION
Date: 7-17-00
Legal Counsel:

ljl:rakfiles:moaoilproduction

JOINT SPILLS HANDLING PROTOCOL FOR OIL PRODUCTION SITES AND GATHERING LINES

This protocol has been jointly developed for handling spills from oil production sites and gathering lines in accordance with applicable law. This protocol addresses roles and responsibilities for spills and the respective agencies, expectations for cleanup criteria and geographic applicability of regulatory authorities.

Effective October 7, 1999, this protocol includes the following principal components:

I. IDNR-DO&G (Illinois Department of Natural Resources, Div. Of Oil and Gas) will respond to spills of crude oil or brine from permitted oil exploration and production sites and permitted gathering lines (less than 6.5 inches) regulated by IDNR-DO&G per this protocol document. IDNR regulations will govern at these sites as further specified below.

II. IDNR-DO&G will also initially respond whenever spills from such regulated sites enter designated waters of the State or create an oil sheen or when a sensitive area (as defined in IV.B.2) is impacted. IDNR-DO&G shall also immediately notify the IEPA Duty Officer of the situation and the spiller's response actions thereafter.

Under this protocol, "designated waters" means those surface waters (i.e. perennial or intermittent, "blue line" waterways, ponds, lakes, and wet lowland areas) shown on current USGS topographical maps and potable and special resource groundwater as defined in 35 Ill. Ad. Code 620.

III. IDNR-DO&G will advise IEPA when IDNR contractors are activated to achieve control of a spill at a site. This notification will occur by fax (217-524-4036) during normal business hours and by telephone (IEPA Duty Officer) during other times.

IV. Compliance criteria for handling spill incidents from these regulated sites shall be applied as follows:

A. Except as provided in subsection (b), IDNR-DO&G will implement compliance criteria specified in 62 Ill. Adm. Code 240. Such criteria shall be applied, enforced and demonstrated by sampling at any spills which occur on permitted lease areas and any contiguous land areas affected by the spill, or on grass waterways and roadside ditches beyond designated waters of the State.

B. IEPA will implement compliance criteria specified in 35 Ill. Adm. Code 302, 620 and 742. Such criteria shall be applied, enforced and demonstrated by sampling at spills that enter:

1. Designated waters of the State or otherwise cause a sheen; or

2. Sensitive areas with: 200 feet of private drinking water wells, residences, playgrounds, or parks; 400 feet of community drinking water wells; 100 feet inland of where a spill enters an intermittent designated water; or 200 feet inland of where a spill enters a perennial designated water.

V. IEPA will notify IDNR-DO&G upon receipt of citizen or local official complaints about spill situations that have not otherwise been reported to IEMA.

VI. IEPA and IDNR-DO&G will jointly develop a user-friendly guide or workbook for spillers that clearly explains what is expected in various pill circumstances and provides explicit instructions on regulatory expectations and how to comply with the expectations including examples of acceptable practices and documentation.

VII. IEPA and IDNR-DO&G will proceed with necessary administrative actions to initiate use of this protocol within 30 days after adoption. Longer term regulatory changes to address gathering lines will also be pursued in a timely and cooperative manner.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-72
	)	(Water - Enforcement)
PETCO PETROLEUM CORPORATION, an Indiana corporation,	)	
	)	
	)	
Respondent.	)	

COMPLAINANT'S REPLY TO
RESPONDENT'S ANSWER TO THE FIRST AMENDED COMPLAINT

NOW COMES COMPLAINANT, People of the State of Illinois, by KWAME RAOUL, Attorney General of the State of Illinois, by and through its undersigned counsel, and hereby submits this Complainant's Reply to Respondent's Answer to the First Amended Complaint ("Reply"), stating as follows:

1. Complainant submits contemporaneously with this Reply a Motion to Strike Respondent's Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter ("Motion to Strike").

2. As argued in Complainant's Motion to Strike, all immaterial matter pled by Respondent Petco Petroleum Corporation ("Petco") in its Answer to the First Amended Complaint should be stricken and/or dismissed with prejudice.

3. In the event the immaterial matter is not stricken and/or dismissed with prejudice, Complainant submits this Reply, and further states as follows:

COUNT I
MARY RHODES #1 PRODUCTION WELL
IEMA Incident #2010-0157

18. On or about February 22, 2010, Petco discharged approximately two (2) barrels of crude oil and an unknown amount of salt water from a corroded two-inch steel flow line located

approximately three feet underground at the Mary Rhodes #1 production well in or near St. Elmo, Illinois. The released fluids flowed through a natural spring-fed creek and drained into a low-lying wetland of cane grass, located on the residential property of Mr. Bruce Dilley.

ANSWER: Petco admits that, on or about February 22, 2010, a discharge of crude oil and salt water occurred at the Mary Rhodes #1 production well near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count I, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Answering further, Petco states that new polymer flow lines and headers have been installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether new polymer flow lines and headers have been installed at this location.

22. On February 25 and 26, 2010, due to difficulty remediating the released fluids in freezing temperatures, Petco conducted controlled burns of the cane grass field.

ANSWER: Petco admits the allegations contained in Count I, paragraph 22. Answering further, Petco states that it sought proper permitting for the controlled burns.

REPLY: Complainant lacks information sufficient to form a belief as to whether Petco sought proper permitting for the controlled burns.

24. Petco tested the creek from February 26, 2010 through March 10, 2010, with chloride concentrations exceeding 500 mg/l as follows:

Date	**2/26/10**	**3/1/10**	**3/3/10**	**3/4/10**	**3/10/10**
Chloride Concentration (mg/l)	3246	3556	3556	2900	2507

ANSWER: Petco admits that preliminary on-site chloride concentration test results totaled 3556 mg/l on March 3, 2010, 2900 mg/l on March 4, 2010, and 2507 mg/l on March 10, 2010. Petco states that it is without information that is sufficient to admit or deny the remaining allegations contained in Count I, paragraph 24, and, therefore, denies the same.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

25. On March 13, 2010, following a rain event, Petco tested the creek with a result of 984 mg/l of chloride.

ANSWER: Petco admits the allegations contained in Count I, paragraph 25. Answering further, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

27. On April 6, 2010, Petco tested the creek with a result of 646 mg/l of chloride.

ANSWER: Petco admits the allegations contained in Count I, paragraph 27. Answering further, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

29. On April 27, 2010, Petco tested the creek with a result of 298 mg/l of chloride.

ANSWER: Petco admits that it conducted preliminary on-site testing of the creek. Answering further, Petco states that it is without information that is sufficient to admit or deny the remaining allegations contained in Count I, paragraph 29, and, therefore, denies the same.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT III
CHAS. McCOLLUM TANK BATTERY
IEMA Incident #2010-0223

18. On or about March 11, 2010, Petco discharged crude oil and approximately five (5) to twenty (20) barrels of salt water when a three-inch PVC riser pipe to an oil water separator broke off from the Charles McCollum tank battery in or near St. Elmo, Illinois. The crude oil stayed in the secondary containment berm, but the salt water seeped through the dike and migrated downhill, damaging the residential property of Mr. Evan Schaefer, and into an unnamed creek that serves as a tributary to Hog Creek.

ANSWER: Petco admits that, on or about March 11, 2010, crude oil and salt water was discharged when a three-inch PVC riser pipe to an oil water separator broke off from the Charles McCollum tank battery near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count III, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Answering further, Petco states that the riser pipe has been properly repaired.

REPLY: Complainant lacks information sufficient to form a belief as to whether the riser pipe has been properly repaired.

21. On March 11, 2010, Petco tested the creek with a result of 4311 mg/l of chloride.

ANSWER: Petco admits that it conducted preliminary on-site testing of the creek for chlorides. Petco states that it is without information that is sufficient to admit or deny the allegation that the chloride test results totaled 4311 mg/l, and, therefore, denies the same.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

22. On March 16, 2010, Petco tested the creek with a result of 490 mg/l of chloride.

ANSWER: Petco admits the allegations contained in Count III, paragraph 22. Answering further, Petco states that its chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT VI
JOHN TUCKER SALT WATER DISPOSAL LINE
IEMA Incident #2010-0311

18. On or about April 1, 2010, Petco discharged approximately 300 to 500 barrels of salt water into a dry unnamed tributary to Wolf Creek when a three-inch buried pressurized fiberglass salt water disposal line connecting the John Tucker station to the Rosie Seelock injection system in or near St. Elmo, Illinois failed. The line was operating at approximately 1000 psi when it failed and the discharged salt water traveled approximately one-third of a mile in the tributary.

ANSWER: Petco admits that, on or about April 1, 2010, salt water was discharged when a three-inch fiberglass disposal line connecting the John Tucker station to the Rosie Seelock injection system failed in or near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count VI, paragraph 18 and any implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Answering further, Petco states that new fiberglass disposal lines have been installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether new fiberglass disposal lines have been installed at this location.

COUNT VII
ARNOLD UNIT TANK BATTERY
IEMA Incident #2010-0322

18. On or about April 5, 2010, Petco discharged approximately 500 barrels of salt water when a two-foot vertical PVC salt water vent pipe at the Arnold Unit tank battery broke at a brass valve near ground level. The head pressure caused all the salt water contained within the tanks to erode the secondary containment berm and discharge, draining from the site. The discharged salt water traveled downhill and entered an unnamed tributary to the South Fork Kaskaskia River northwest of St. Elmo, Illinois, and traveled approximately one-third of a mile within the tributary.

ANSWER: Petco admits that, on or about April 5, 2010, salt water was discharged when a vertical PVC salt water vent pipe at the Arnold Unit tank battery broke at a brass valve near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count VII, paragraph 18 and any

implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Answering further, Petco states that the vent pipe broke due to a severe windstorm, and Petco has since secured all vent pipes at its tank batteries.

REPLY: Complainant lacks information sufficient to form a belief as to whether the vent pipe broke due to a severe windstorm. Complainant further lacks sufficient information to form a belief as to whether Petco has since secured all vent pipes at its tank batteries.

COUNT VIII
QUADE SUMP TRANSITE PIPELINE
IEMA Incident #2010-0363

18. On or before April 12, 2010, Petco discharged crude oil and at least 200 barrels of salt water into a mostly dry unnamed intermittent tributary to the South Fork Kaskaskia River in or near St. Elmo, Illinois, when the soil within a steep ravine gave way and broke out a four foot section of a six-inch transite pipeline operating under approximately 20 psi from the Quade sump to the Mary Welker sump. The discharged salt water traveled approximately one-third of a mile in the tributary, and an unknown amount of salt water entered the South Fork Kaskaskia River.

ANSWER: Petco admits that, on or before April 12, 2010, crude oil and salt water was discharged in or near St. Elmo, Illinois, when the soil within a steep ravine gave way and broke out a six-inch transite pipeline from the Quade sump to the Mary Welker sump. However, Petco denies the remaining allegations in Count VIII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Answering further, Petco states that the transite pipelines at this location have been replaced by PVC pipelines.

REPLY: Complainant lacks information sufficient to form a belief as to whether the transite pipelines at this location have been replaced by PVC pipelines.

COUNT IX
T.C. CLOW #12 PRODUCTION WELL
IEMA Incident #2010-0384

18. On or about April 15, 2010, Petco discharged approximately two to four barrels of crude oil and twenty-five to thirty barrels of salt water from the T.C. Clow #12 production well in or near St. Elmo, Illinois, when the pump jack pulled the pumping "T" from the stuffing box affixed to the well casing as a result of corrosion. The discharged fluids pumped onto the ground, flowed downhill and entered an unnamed tributary to Little Creek.

ANSWER: Petco admits that, on or about April 15, 2010, crude oil and salt water was discharged from the T.C. Clow #12 production well in or near St. Elmo, Illinois, when the pump jack pulled the pumping "T" from the stuffing box affixed to the well casing. However, Petco denies the remaining allegations in Count IX, paragraph 18 and any implication that Petco discharged such

oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Answering further, Petco states that Bronze aluminum stuffing boxes have been installed with polished rods that prevent wear and corrosion.

REPLY: Complainant lacks information sufficient to form a belief as to whether bronze aluminum stuffing boxes have been installed with polished rods that prevent wear and corrosion.

COUNT X
MAIN INJECTION STATION TO GEORGE DURBIN PIT
IEMA Incident #2010-0539

18. On or about May 20, 2010, Petco discharged less than one barrel crude oil and approximately two to three barrels of salt water when a four-inch PVC drain line connecting the Main Injection Station and the George Durbin Pit in or near St. Elmo, Illinois, leaked directly into Wolf Creek, a tributary of Big Creek.

ANSWER: Petco admits that, on or about May 20, 2010, crude oil and salt water was discharged when a four-inch PVC drain line leaked that connects the Main Injection Station and the George Durbin Pit in or near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count X, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Answering further, Petco states that new polymer lines have been installed underneath the creek bed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether new polymer lines have been stalled underneath the creek bed at this location.

COUNT XI
CYNTHIA HOPPER #2 INJECTION LINE
IEMA Incident #2010-0544

18. On or about May 21, 2010, Petco discharged approximately ten (10) barrels of crude oil and 200 to 300 barrels of salt water into a dry ditch when a new six-inch fiberglass injection line ruptured at the Cynthia Hopper #2 well in or near St. Elmo, Illinois, when a thread joint sank in the soil. The spill traveled 100 yards on soil until it reached and entered Wolf Creek, a tributary to Big Creek.

ANSWER: Petco admits that, on or about May 21, 2010, salt water was discharged when a new six-inch fiberglass injection line ruptured at the Cynthia Hopper #2 well in or near St. Elmo, Illinois due to a thread joint sinking in the soil. Petco denies the remaining allegations contained in Count XI, paragraph 18 and any implication that Petco discharged salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. In addition, Petco specifically denies that oil was released during this incident. Answering further, Petco states that new injection lines have been installed at the location of this incident, which are now supported by gravel and sand.

REPLY: Complainant lacks information sufficient to form a belief as to whether new injection lines have been installed at the location of this incident, which are now supported by gravel and sand.

21. On May 26, 2010, Petco tested the water in the ditch with a result of 1664 mg/l of chloride.

ANSWER: Petco admits the allegations contained in Count XI, paragraph 21. Answering further, Petco states that its chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

22. On June 2, 2010, Petco tested the water in the ditch with a result below 298 mg/l of chloride.

ANSWER: Petco admits the allegations contained in Count XI, paragraph 22. Answering further, Petco states that its chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT XII
GEORGE DURBIN PIT
IEMA Incident #2010-0636

18. On or about June 14, 2010, Petco discharged approximately five (5) barrels of crude oil and 200 barrels of salt water when the variable drives that control the amount of salt water on the pumps at the George Durbin Pit in or near St. Elmo, Illinois, stopped working during a power outage and did not restart. No alarms were working because of the power outage. The discharged fluids overflowed onto the ground for approximately 50 to 100 feet before entering Wolf Creek and then Big Creek.

ANSWER: Petco admits that, on or about June 14, 2010, crude oil and salt water were discharged when the variable drives that control the amount of salt water on the pumps at the George Durbin Pit in or near St. Elmo, Illinois stopped working during a power outage and no resulting alarms sounded. However, Petco denies the remaining allegations in Count XII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Answering further, Petco states that battery backups have been installed in the new alarm system throughout Loudan [sic] field to prevent future occurrences.

REPLY: Complainant lacks information sufficient to form a belief as to whether battery backups have been installed in the new alarm system throughout Louden field to prevent future occurrences.

COUNT XIII
LIZZIE FITCHMAN #1 FLOWLINE
IEMA Incident #2010-0643

18. On or about June 16, 2010, Petco discharged approximately five to ten barrels of crude oil and 100 barrels of salt water from a hole in a collar clamp on the Lizzie Fitchman #1 flowline in or near St. Elmo, Illinois, when a hole corroded in the flowline at an old repair collar clamp. The discharged fluids traveled on grassy land to eventually reach Wolf Creek, impairing the same portion of Wolf Creek as IEMA Incident #2010-0636, which had occurred several days prior. See Count XII.

ANSWER: Petco admits that, on or about June 16, 2010, crude oil and salt water were discharged from a hole in a collar clamp on the Lizzie Fitchman #1 flowline in or near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XIII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Answering further, Petco states that all clamps in Loudan [sic] field have been or are going to be replaced with stainless steel bolts to prevent future occurrences. The flow line at this location has also been replaced.

REPLY: Complainant lacks information sufficient to form a belief as to whether all clamps in the Louden field have been or are going to be replaced with stainless steel bolts to prevent future occurrences. Complainant further lacks sufficient information to form a belief as to whether the flow line at this location has also been replaced.

COUNT XIV
CYNTHIA HOPPER #2 INJECTION WELL
IEMA Incident #2010-0681

18. On or about June 24, 2010, Petco discharged crude oil and approximately 400 barrels of salt water when a six-inch fiberglass pipeline located just north of Wolf Creek in or near St. Elmo, Illinois, blew the threads out of the collar clamp at the Cynthia Hopper #2 injection well – the same spill site as IEMA Incident #2010-0544, which had occurred just a month earlier. See Count XI. Saltwater flowed into a drainage ditch and emptied into Wolf Creek.

ANSWER: Petco admits that, on or about June 24, 2010, crude oil and salt water were discharged when a collar clamp failed on a six-inch fiberglass pipeline located just north of Wolf Creek in or near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XIV, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. In addition, Petco specifically denies that the release on or around June 23, 2010, occurred at "the same spill site as IEMA Incident #2010-0544." Answering further, Petco states that a new collar was installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new collar was installed at this location.

COUNT XV
CYNTHIA HOPPER #2 FLOWLINE
IEMA Incident #2010-0799

18. On or about July 25, 2010, Petco failed to close flowline valves at a creek crossing and discharged approximately two to three barrels of crude oil from a two-inch steel sleeved flowline at the Cynthia Hopper #2 well in or near St. Elmo, Illinois, after installation of a new pump jack and new piping at the well head. Rising water due to heavy rainfall submerged the broken flowline, allowing liquids to discharge from the flow line sleeve directly into Wolf Creek. This spill site is the same as IEMA Numbers 2010-0544 and 2010-0681. See Counts XI and XIV.

ANSWER: Petco admits that, on or about July 25, 2010, Petco failed to close flowline valves at a creek crossing and discharged approximately two to three barrels of crude oil from a two-inch steel sleeved flowline at the Cynthia Hopper #2 well in or near St. Elmo, Illinois, after installation of a new pump jack and new piping. However, Petco denies the remaining allegations in Count XV, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. In addition, Petco specifically denies that the release, on or around July 25, 2010, occurred at the same spill site as IEMA #s 2010-544 and 2010-681. Answering further, Petco states that new fiberglass lines were installed underneath the creek bed from well to header at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether new fiberglass lines were installed underneath the creek bed from well to header at this location.

21. Wolf Creek and Big Creek were flowing at a rate that made containment in and recovery from the creeks difficult, given Petco's limited spill response resources. Petco did not have enough skirt or hard containment boom to deploy across either Wolf Creek or Big Creek to prevent migration of the discharged fluids throughout the high velocity waters. The July 25, 2010 spill contaminated a total area of approximately 308 acres.

ANSWER: Petco denies the allegations contained in Count XV, paragraph 21. Answering further, Petco states that the allegation that 308 acres were "contaminated" appears to be a typo, as it is likely the First Amended Complaint was intended to state 3.8 acres, not 308 acres.

REPLY: Complainant admits that the July 25, 2010 spill contaminated a total area of approximately 3.8 acres, rather than 308 acres.

COUNT XVI
SARA CLOW #8W INJECTION WELL
IEMA Incident #2010-0981

18. On September 7, 2010, Petco discharged approximately eighty (80) barrels of salt water into an unnamed creek when a valve to the injection line from the Sara Clow #8W injection well in or near St. Elmo, Illinois was activated. The spill traveled for one-half mile.

ANSWER: Petco admits that, on September 7, 2010, sale [sic] water was discharged when a valve to the injection line from the Sara Clow #8W injection well in or near St. Elmo, Illinois was activated. However, Petco denies any implication the remaining allegations in Count XVI, paragraph 18 and any implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Further answering, the injection line at this location has been plugged.

REPLY: Complainant lacks information sufficient to form a belief as to whether the injection line at this location has been plugged.

COUNT XVII
DIAL/DURBIN DISPOSAL LINE
IEMA Incident #2010-1160

18. On or about October 25, 2010, Petco discharged approximately 100 barrels of salt water into the headwaters of Riley Run Creek when a break occurred at a joint in the Dial/Durbin disposal pipeline, a six-inch PVC gravity salt water transfer line in or near St. Elmo, Illinois. The spill traveled for over one-half mile.

ANSWER: Petco admits that, on or about October 25, 2010, salt water was discharged when a break occurred at a joint in the Dial/Durbin disposal pipeline in or near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XVII, paragraph 18 and any implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Further answering, the entire disposal line at this location has been replaced with a polymer line.

REPLY: Complainant lacks information sufficient to form a belief as to whether the entire disposal line at this location has been replaced with a polymer line.

COUNT XVIII
LEROY CUMMINGS #10W INJECTION WELL
IEMA Incident #2010-1293

18. On or about November 29, 2010, Petco discharged approximately one barrel of crude oil and 200 to 250 barrels of salt water when a six-inch pipeline failed due to old threads that stripped on a T-joint to an injection line near the Leroy Cummings #10W injection well in or near St. Elmo, Illinois. The salt water drained onto the soil of a cattle pasture area and flowed into an unnamed tributary of Little Creek.

ANSWER: Petco admits that, on or about November 29, 2010, crude oil and salt water were discharged when a six-inch pipeline failed due to a stripped T-joint near the Leroy Cummings #10W injection well in or near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XVIII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water"

of the State. Further answering, a new T-joint and valve were installed at this location to allow for faster containment.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new T-joint and valve were installed at this location to allow for faster containment.

COUNT XIX
RICHARD LARIMORE SUMP
IEMA Incident #2010-1328

18. On or about December 7, 2010, Petco discharged a small quantity of crude oil and approximately 200 to 250 barrels of salt water when a buried ten-inch steel flowline at the Richard Larimore sump near St. Elmo, Illinois, split approximately six feet longitudinally due to corrosion. The salt water, along with crude oil, breached the inadequate containment berm, flowed into a roadside ditch, continued into an unnamed tributary of Wolf Creek, and then flowed directly into the fast-moving waters of Wolf Creek. The discharged fluids traveled approximately 500 feet over land and contaminated an area of approximately 6600 square feet before entering Wolf Creek.

ANSWER: Petco admits that, on or about December 7, 2010, salt water was discharged when a buried ten-inch steel flowline split at the Richard Larimore sump near St. Elmo, Illinois. However, Petco denies the remaining factual allegations contained in Count XIX, paragraph 18 and any implication that Petco discharged salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Answering further, Petco specifically denies that any crude oil was released or that an amount of 200 to 250 barrels of salt water was released. Petco further denies that its containment berm was "inadequate," that the waters of Wolf Creek were "fast-moving," or that any area was "contaminated." Finally, Petco further answers that the flowline at this location has been replaced with a PVC line.

REPLY: Complainant lacks information sufficient to form a belief as to whether the flowline at this location has been replaced with a PVC line.

COUNT XX
M. TIRREY #9 FLOWLINE
IEMA Incident #2010-1329

18. On or about December 8, 2010, Petco discharged approximately two barrels of crude oil and thirty barrels of salt water from a two-inch PVC flowline serving the Martha Terry #9 well in an area where the line ran through a creek crossing near St. Elmo, Illinois. The flowline became exposed at a crossing due to soil erosion, and cracked when the banks of the creek gave way due to rain and contaminated an area of approximately 5000 square feet.

ANSWER: Petco admits that, on or about December 8, 2010, crude oil and salt water were discharged from a two-inch PVC flowline serving the Martha Terry #9 well near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XX, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt

water were discharged into or near a "water" of the State. Petco specifically denies that any area was "contaminated." Finally, Petco further answers that the fiberglass flowline has been installed at this location underneath the creek bed.

REPLY: Complainant lacks information sufficient to form a belief as to whether a fiberglass flowline has been installed at this location underneath the creek bed.

COUNT XXI
OLA HARPER #5 FLOWLINE
IEMA Incident #2010-1336

18. On or about December 9, 2010, Petco discharged approximately two to four barrels of crude oil and 300 to 400 barrels of salt water when an underground PVC flowline serving the Ola Harper #5 production well near St. Elmo, Illinois failed approximately sixty feet north of the well due to a sudden increase in well pressure. Crude oil impacted a farm field while the salt water flowed nearly two miles to enter the South Fork Kaskaskia River.

ANSWER: Petco admits that, on or about December 9, 2010, crude oil and salt water were discharged when an underground PVC flowline serving the Ola Harper #5 production well failed near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XXI, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. In addition, Petco specifically denies the allegations that more than approximately two barrels of oil and more than approximately two hundred barrels of salt water were released on or around December 9, 2010. Petco further denies that any farm fields were "impacted" by the alleged release. Finally, Petco answers that polymer flowline has been installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether a polymer flowline has been installed at this location.

COUNT XXII
JENNY BRAUER #10 FLOWLINE
IEMA Incident #2010-1400

18. On or about December 24, 2010, Petco discharged approximately two to four barrels of crude oil and five barrels of salt water when Petco restarted production of the Jenny Brauer #10 well in or near St. Elmo, Illinois. A two-inch flowline along the bank of a ditch had previously been damaged by drilling crews and was not repaired prior to the resumption of production of the well. The discharged fluids entered the snow-covered ditch and flowed approximately 100 feet into a Petco quarry pond.

ANSWER: Petco admits that, on or about December 24, 2010, crude oil and salt water were discharged from a flowline associated with the Jenny Brauer #10 well in or near St. Elmo, Illinois. However, Petco denies the remaining allegations contained in Count XXII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such

oil and salt water were discharged into or near a "water" of the State. In addition, Petco specifically denies that its own drilling crews damaged the two-inch flow line. Finally, Petco further answers that an underground fiberglass flow line has been installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether an underground fiberglass flow line has been installed at this location.

COUNT XXX
LEANDER WOOD #15B7 INJECTION WELL
IEMA Incident #2011-0626

18. On or about June 13, 2011, Petco discharged approximately twenty barrels of salt water when a drain valve on the top cylinder at the Leander Wood #15B7 injection well located in a fenced horse area in or near St. Elmo, Illinois was opened. Some of the salt water entered into an approximately 80 by 100 foot pond; what did not make it to the pond soaked into the soil of a mostly dry creek that was approximately 100 feet long from the injection well to the pond.

ANSWER: Petco admits that, on or about June 13, 2011, salt water was discharged when a drain valve opened at the Leander Wood #15B7 injection well located near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XXX, paragraph 18 and any implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Petco further states that the drain valve at this location is enclosed by a guard.

REPLY: Complainant lacks information sufficient to form a belief as to whether the drain valve at this location is enclosed by a guard.

COUNT XXXIV
CHARITY McCLAIN DISPOSAL LINE
IEMA Incident #2011-1041

18. On or about September 28, 2011, Petco discharged an unknown amount of salt water into an intermittent drainage tributary to Little Creek when an older non-stainless steel clamp failed where the Charity McClain six-inch gravity drain salt water disposal pipeline connects underground to the Hobbs Sump pipeline on the T.C. Clow lease in Fayette County near St. Elmo, Illinois. The release occurred on the property of Mr. and Mrs. Gary Bartel and traveled over one-quarter of a mile in the tributary, very near to Little Creek.

ANSWER: Petco admits that, on or about September 28, 2011, salt water was discharged where the Charity McClain six-inch gravity drain salt water disposal pipeline connects underground to the Hobbs Sump pipeline on the T.C. Clow lease near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XXXIV, paragraph 18 and any implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Finally, Petco specifically denies that denies that the clamp was

"older." Further answering, the clamps and bolts at this location are now stainless steel, and the steel lines have been changed to polymer and PVC.

REPLY: Complainant lacks information sufficient to form a belief as to whether the clamps and bolts at this location are now stainless steel, and the steel lines have been changed to polymer and PVC.

COUNT XXXVIII
J.B. DREES #13 FLOWLINE
IEMA Incident #2012-0130

18. On or about February 19, 2012, Petco discharged approximately five barrels of crude oil and fifty barrels of salt water into Wolf Creek, a tributary to Big Creek, when a steel-sleeved fiberglass crude oil flowline serving the J.B. Drees #13 well broke where it crossed Wolf Creek and beneath the northern creek bank in or near St. Elmo, Illinois. The release traveled one-quarter of a mile in Wolf Creek before two log jams trapped a majority of the oil.

ANSWER: Petco admits that, on or about February 19, 2012, crude oil and salt water were discharged when a steel-sleeved fiberglass crude oil flowline serving the J.B. Drees #13 well broke near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XXXVIII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Further answering, the flowlines at this location are now fiberglass, a new header has been installed, and a new pumpover line has been installed underneath the creek bed.

REPLY: Complainant lacks information sufficient to form a belief as to whether the flowlines at this location are now fiberglass, a new header has been installed, and a new pumpover line has been installed underneath the creek bed.

COUNT XXXIX
KENNETH STUBBLEFIELD #1 FLOWLINE
IEMA Incident #2012-0264

18. On or about March 24, 2012, Petco discharged approximately five barrels of crude oil and forty barrels of salt water from a hole caused by corrosion in the two-inch steel flowline serving the Kenneth Stubblefield #1 production well in or near St. Elmo, Illinois. The release had traveled approximately 200 feet down a hillside to an intermittent drainage way and then approximately one-half mile to reach Wolf Creek, a tributary of Big Creek, before Petco discovered it on March 27, 2012. The release contaminated an area of approximately 3.2 acres.

ANSWER: Petco admits that, on or about March 24, 2012, crude oil and salt water were discharged from a hole in the two-inch steel flowline serving the Kenneth Stubblefield #1 production well near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XXXIX, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water"

of the State. Further answering, the flowline at this location is now fiberglass from the well to the header.

REPLY: Complainant lacks information sufficient to form a belief as to whether the flowline at this location is now fiberglass from the well to the header.

COUNT XLV
LIZZIE SMITH TANK BATTERY DISPOSAL LINE
IEMA Incident #2012-0528

18. On or about May 25, 2012, Petco discharged approximately twenty (20) barrels of salt water from a corroded gravity drain disposal line to the Hobbs Sump from the Lizzie Smith tank battery located on a hillside in or near St. Elmo, Illinois. The release was contained in a farm field and intermittent creek that was dry at the time of the release, contaminating an area of approximately 4090 square feet.

ANSWER: Petco admits that, on or about May 25, 2012, salt water was discharged from a disposal line to the Hobbs Sump from the Lizzie Smith tank battery near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count XLV, paragraph 18 and any implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Further answering, Petco denies that an area was "contaminated." Petco states that the disposal line at this location has been replaced with a PVC line.

REPLY: Complainant lacks information sufficient to form a belief as to whether the disposal line at this location has been replaced with a PVC line.

COUNT XLVI
EDITH DURBIN #5 INJECTION PIPELINE
IEMA Incident #2012-0550

20. Petco constructed a total of four siphon dams and tested surface water at each of the siphon dams and the Hobbs Low Water Bridge from June 4, 2012 through June 8, 2012, with chloride concentrations exceeding 500 mg/l as follows:

LOCATION	6/4/12	6/5/12	6/6/12	6/7/12	6/8/12
Siphon Dam #1 (mg/l)	6559	5828	5828	4685	3834
Siphon Dam #2 (mg/l)	6559	6559	5828	5212	5212
Siphon Dam #3 (mg/l)	2060	2060	2660	2241	1369
Siphon Dam #4 (mg/l)	2660	2440	2440	1747	1610
Behind Dam #4 (mg/l)	6559	6559	5828	5828	5828

Hobbs Low Water Bridge (mg/l)	6559	5828	5212	4685	3834

ANSWER: Petco admits the allegations contained in Count XLVI, paragraph 20. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

21. Petco tested surface water at each of the siphon dams and the Hobbs Low Water Bridge from June 11, 2012 through June 19, 2012, with chloride concentrations exceeding 500 mg/l as follows:

LOCATION	**6/11/12**	**6/12/12**	**6/13/12**	**6/14/12**	**6/15/12**	**6/18/12**	**6/19/12**
Siphon Dam #1 (mg/l)	1369	1072	1164	1610	1610	1369	1262
Siphon Dam #2 (mg/l)	5828	988	1262	538	2241	5212	5212
Siphon Dam #3 (mg/l)	1262	988	1484	1747	1896	5486	3486
Siphon Dam #4 (mg/l)	3834	645	1610	1747	2660	3129	2905
Behind Dam #4 (mg/l)	5828	645	1610	1747	1610	2905	2660
Hobbs Low Water Bridge (mg/l)	2905	988	1484	1896	1610	2660	2660

ANSWER: Petco denies that preliminary on-site chloride concentration testing results totaled 5486 mg/l and 3129 mg/l at Siphon Dam #3 and Siphon Dam #4, respectively, on June 18, 2012. Petco admits the remaining allegations contained in Count XLVI, paragraph 21.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

22. Petco tested surface water at each of the siphon dams and the Hobbs Low Water Bridge from June 20, 2012 through June 26, 2012, with chloride concentrations exceeding 500 mg/l as follows:

LOCATION	**6/20/12**	**6/21/12**	**6/22/12**	**6/23/12**	**6/24/12**	**6/25/12**	**6/26/12**
Siphon Dam #1 (mg/l)	704	4515	4068	5034	1806	871	1111
Siphon Dam #2 (mg/l)	5212	5034	4515	4068	4068	3680	4068

Siphon Dam #3 (mg/l)	2660	2538	2538	2774	2538	2135	2326
Siphon Dam #4 (mg/l)	2660	2538	2538	2774	2538	2538	4068
Behind Dam #4 (mg/l)	1262	2538	2538	1963	1664	1305	1111
Hobbs Low Water Bridge (mg/l)	1164	2538	2538	945	1664	1305	1534

ANSWER: Petco denies that preliminary on-site chloride concentration testing results totaled 1963 mg/l at Behind Dam #4 on June 23, 2012. Petco admits the remaining allegations contained in Count XLVI, paragraph 22.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

26. Petco tested surface water at the siphon dams and the Hobbs Low Water Bridge from July 15, 2012 through July 19, 2012, with chloride concentrations exceeding 500 mg/l as follows:

LOCATION	**7/15/12**	**7/16/12**	**7/17/12**	**7/18/12**	**7/19/12**	**7/21/12**
Siphon Dam #2 (mg/l)	2774	2538	2538	2774	2774	2538
Siphon Dam #3 (mg/l)	871	871	737	737	-	-
Siphon Dam #4 (mg/l)	2774	2538	2326	676	-	-
Behind Dam #4 (mg/l)	-	-	516	737	-	-
Hobbs Low Water Bridge (mg/l)	-	-	516	-	-	-

ANSWER: Petco admits the allegations contained in Count XLVI, paragraph 26. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

27. Petco tested surface water at siphon dam #2 from July 22, 2012 through July 28, 2012, with chloride concentrations exceeding 500 mg/l as follows:

7/22/12	**7/23/12**	**7/24/12**	**7/25/12**	**7/26/12**	**7/28/12**
2538 mg/l	2538 mg/l	1963 mg/l	1025 mg/l	1025 mg/l	871 mg/l

ANSWER: Petco states that it is without information that is sufficient to admit or deny the allegations contained in Count XLVI, paragraph 27 regarding any preliminary on-site chloride concentration testing results at Siphon Dam #2 on July 24, 2012, and, therefore, denies the same. Petco admits the remaining allegations contained in Count XLVI, paragraph 27.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT XLVIII
ARNOLD UNIT DISPOSAL LINE
IEMA Incident #2012-0713

19. Petco tested the surface water at the site of the release and at a large hole in the unnamed creek on July 13, 2012 and July 15, 2012, with chloride concentrations exceeding 500 mg/l as follows:

LOCATION	7/13/12	7/15/12
Release Site	2774 mg/l	619 mg/l
Creek Hole	801 mg/l	-

ANSWER: Petco admits the allegations contained in Count XLVIII, paragraph 19. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT XLIX
LOUDON #22 C-7 INJECTION WELL
IEMA Incident #2012-0823

19. On August 8, 2012, Petco tested the surface water at the site of the release and downstream with results of 1415 mg/l and 871 mg/l of chloride, respectively.

ANSWER: Petco admits the allegations contained in Count XLIX, paragraph 19. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

20. On August 9, 2012, Petco tested the water at the site of the release with results of 586 mg/l of chloride and 619 mg/l of chloride.

ANSWER: Petco admits the allegations contained in Count XLIX, paragraph 20. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT LI
KATIE OWENS PIT
IEMA Incident #2012-0956

18. On or about September 10, 2012, Petco discharged approximately five barrels of crude oil and twenty barrels of salt water into Big Creek when Petco lost electrical power at the Katie Owens cement containment pit in or near St. Elmo, Illinois, and the pit overflowed. The release traveled approximately one-eighth of a mile, from a ditch into Big Creek.

ANSWER: Petco admits that, on or about September 10, 2012, crude oil and salt water were discharged electrical power was lost at the Katie Owens cement containment pit near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LI, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Further answering, a new sump has been built at this location which releases into a separate pit, and new polymer lines have been installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new sump has been built at this location which releases into a separate pit, and new polymer lines have been installed at this location.

COUNT LII
J.G. MAIN #P15
IEMA Incident #2012-1222

18. On or about November 20, 2012, Petco discharged approximately fifty barrels of crude oil and eighty barrels of salt water into an unnamed creek from a broken two-inch PVC flowline that was underwater across the bottom of the creek in or near St. Elmo, Illinois. The release was reported to Petco and IEPA by a citizen and detected by Petco on November 21, 2012, by which time it had traveled approximately one-quarter mile, so that the leading edge of the release was found at the Emery Hopper #1 well.

ANSWER: Petco admits that, on or about November 20, 2012, crude oil and salt water were discharged from a broken PVC flowline near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Further answering, a new fiberglass line has been bored underneath the creek bed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new fiberglass line has been bored underneath the creek bed at this location.

22. Petco tested surface water at siphon dam #1 from November 27, 2012 through December 2, 2012, with chloride concentrations exceeding 500 mg/l as follows:

11/27/12	**11/28/12**	**11/29/12**	**11/30/12**	**12/1/12**	**12/2/12**
2273 mg/l	2273 mg/l	1638 mg/l	1512 mg/l	1512 mg/l	747 mg/l

ANSWER: Petco admits the allegations contained in Count LII, paragraph 22. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

23. Petco tested surface water at siphon dam #1 from December 3, 2012 through December 7, 2012, with chloride concentrations exceeding 500 mg/l as follows:

12/3/12	**12/4/12**	**12/5/12**	**12/6/12**	**12/7/12**
934 mg/l	-	934 mg/l	791 mg/l	506 mg/l

ANSWER: Petco admits that it tested surface water at siphon dam #1. However, Petco denies that preliminary on-site chloride concentration test results totaled 791 mg/l on December 6, 2012. Further answering, Petco is without information that is sufficient to admit or deny the remaining allegations contained in Count LII, paragraph 23, and, therefore, denies the same.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT LIII
T.C. CLOW DISPOSAL LINE
IEMA Incident #2012-1272

18. On or about December 11, 2012, Petco discharged approximately twenty barrels of crude oil and 300 barrels of salt water from a hole in a six-inch steel spool where steel and plastic sections of the T.C. Clow disposal line met in or near St. Elmo, Illinois. The crude oil was contained in a pasture, but the salt water traveled through the pasture and entered Little Creek.

ANSWER: Petco admits that, on or about December 11, 2012, crude oil and salt water were discharged from a hole where steel and plastic sections of the T.C. Clow disposal line met in or near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LIII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Further answering, a new polymer disposal line has been installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new polymer disposal line has been installed at this location.

20. Petco tested surface water at the Hobbs Low Water Bridge from December 13, 2012 through December 15, 2012, with chloride concentrations exceeding 500 mg/l as follows:

12/13/12	**12/14/12**	**12/15/12**
934 mg/l	791 mg/l	727 mg/l

ANSWER: Petco admits the allegations contained in Count LIII, paragraph 20. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT LIV
MARY WILLIAMS PUMP OVERLINE LEASE
IEMA Incident #2013-0110

22. On February 6, 2013, Petco was washing crude oil from the release down to siphon dam #1. Five vacuum trucks were recovering crude oil and salt water and flushing the tributary with fresh water. Petco tested the water at each siphon dam, with results of 1099 mg/l of chloride at siphon dam #1 and 1775 mg/l of chloride at siphon dam #2.

ANSWER: Petco admits the allegations contained in Count LIV, paragraph 22. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

23. On February 7, 2013, six vacuum trucks were recovering crude oil and salt water and flushing the tributary with fresh water. Clean-up crew members were attempting to recover the remaining oil between the two siphon dams before an impending rainfall. Petco tested the water at each siphon dam, with results of 1014 mg/l of chloride at siphon dam #1 and 1512 mg/l at siphon dam #2.

ANSWER: Petco admits the allegations contained in Count LIV, paragraph 23. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

24. On February 8, 2013, four vacuum trucks were recovering crude oil and flushing the tributary with fresh water. Petco tested the water at each siphon dam, with results of 666 mg/l of chloride at siphon dam #1 and 727 mg/l of chloride at siphon dam #2.

ANSWER: Petco admits the allegations contained in Count LIV, paragraph 24. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT LVI
ROCK QUARRY INJECTION PLANT FLOWLINE
IEMA Incident #2013-0309

18. On or about March 30, 2013, Petco discharged approximately 100 barrels of salt water into Riley Run Creek when a three-inch fiberglass flowline that feeds the Rock Quarry Injection Plant pulled out at a "T" connection on the Mary Dunaway Lease in or near St. Elmo, Illinois. The spill traveled approximately 1800 feet in Riley Run Creek.

ANSWER: Petco admits that, on or about March 30, 2013, salt water was discharged when fiberglass flowline that feeds the Rock Quarry Injection Plant pulled out at a "T" connection on the Mary Dunaway Lease near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LVI, paragraph 18 and any implication that Petco discharged such salt water intentionally or negligently, or that such salt water was discharged into or near a "water" of the State. Further answering, a new "T" connection has been installed at this location.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new "T" connection has been installed at this location.

19. On March 30, 2013, Petco constructed a siphon dam at the leading edge of the release, approximately one-quarter of a mile downstream, and six vacuum trucks were recovering salt water. Petco tested the surface water upstream of the siphon dam with a result of 800 mg/l of chloride.

ANSWER: Petco admits the allegations contained in Count LVI, paragraph 19. Further answering, Petco's chloride testing was on-site and preliminary.

REPLY: Complainant lacks information sufficient to form a belief as to what Petco means by characterizing its chloride testing as "preliminary".

COUNT LVII
BIRDIE KIMBRELL #3 FLOWLINE
IEMA Incident #2013-0436

18. On or about April 23, 2013, Petco discharged approximately ten barrels of crude oil and thirty barrels of salt water into Wolf Creek when high surface waters tore a tree free of the creek bank and carried it over a two-inch flowline serving the Birdie Kimbrell #3 well in or near St. Elmo, Illinois. When the creek receded, the tree dropped onto and broke the flowline at the creek crossing. The release traveled approximately one-tenth of a mile in Wolf Creek, a tributary to Big Creek.

ANSWER: Petco admits that, on or about April 23, 2013, crude oil and salt water were discharged when surface waters tore a tree free of the creek bank and carried it over a flowline serving the Birdie Kimbrell #3 well near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LVII, paragraph 18 and any implication that Petco discharged such oil and salt water intentionally or negligently, or that such oil and salt water were discharged into or near a "water" of the State. Further answering, a new fiberglass flowline has been installed at this location underneath the creek bed.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new fiberglass flowline has been installed at this location underneath the creek bed.

COUNT LVIII
IVA MILLER #2 WELL
IEMA Incident #2013-0498

18. On or about May 3, 2013, Petco discharged approximately ten barrels of crude oil from the Iva Miller #2 well in or near St. Elmo, Illinois when a Petco employee forgot to close the valve. The release was approximately one foot wide and traveled approximately one-tenth of a mile in an unnamed creek until it collected in a pond located in a pasture.

ANSWER: Petco admits that, on or about May 3, 2013, crude oil was discharged from the Iva Miller #2 well near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LVIII, paragraph 18 and any implication that Petco discharged such oil intentionally or negligently, or that such oil was discharged into or near a "water" of the State. Further answering, Petco specifically denies that a Petco employee forgot to close the valve and that the release collected in a "pond." Petco states that a new fiberglass flowline has been installed at this location underneath the creek bed.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new fiberglass flowline has been installed at this location underneath the creek bed.

COUNT LIX
ROBERT MCCLOY #8 FLOWLINE
IEMA Incident #2013-0536

18. On or about May 9, 2013, Petco discharged approximately two barrels of crude oil and twenty barrels of salt water when the Robert McCloy #8 flowline ruptured near St. Elmo, Illinois, due to a cracked polyline fuse at the weld. The release traveled approximately one-third of a mile, going over a hillside and entering a small creek that serves as a tributary to Riley Run Creek.

ANSWER: Petco admits that, on or about May 9, 2013, crude oil and salt water were discharged from the Robert McCloy #8 flowline near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LIX, paragraph 18 and any implication that Petco discharged such oil intentionally or negligently, or that such oil was discharged into or near a "water" of the State.

Further answering, anew [sic] fiberglass flowline has been installed at this location underneath the creek bed.

REPLY: Complainant lacks information sufficient to form a belief as to whether a new fiberglass flowline has been installed at this location underneath the creek bed.

COUNT LX
LEMUEL LILLY TANK BATTERY
IEMA Incident #2013-0537

18. On or about May 9, 2013, Petco discharged approximately thirty to fifty barrels of crude oil when the Lam Lilly tank battery lost power and overflowed near St. Elmo, Illinois. None of the alarms worked so the crude oil tank continued to fill and overflow into the containment berm. The oil breached the berm, travelled down a hill and then entered a tributary to Little Moccasin Creek. Approximately one barrel of crude oil entered Little Moccasin Creek, which was running bank full.

ANSWER: Petco admits that, on or about May 9, 2013, crude oil was discharged when the Lam Lilly tank battery lost power and overflowed near St. Elmo, Illinois. However, Petco denies the remaining allegations in Count LX, paragraph 18 and any implication that Petco discharged such oil intentionally or negligently, or that such oil was discharged into or near a "water" of the State. Further answering, all alarms in Louden field are constantly being upgraded.

REPLY: Complainant lacks information sufficient to form a belief as to whether all alarms in Louden field are constantly being upgraded.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
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Dated: March 10, 2023

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-72
	)	(Water - Enforcement)
PETCO PETROLEUM CORPORATION, an Indiana corporation,	)	
	)	
	)	
Respondent.	)	

VERIFICATION

I, YERIC YARRINGTON, certify as follows:

1. I am currently employed by the Illinois Environmental Protection Agency in the Office of Emergency Response as a Public Service Administrator in Springfield, Illinois.

2. I have been employed in the Office of Emergency Response since October of 2001. I started employment with the Illinois EPA in April of 1994.

3. As relevant to the First Amended Complaint, the duties and responsibilities of my position include managing all compliance activities within the Office of Emergency Response, including review of the remediation efforts for each incident reported to the Office.

4. In my employment with the Illinois EPA, I have obtained direct and personal knowledge of the conditions arising from the violations alleged in the Amended Complaint.

5. I have read the foregoing Complainant's Reply to Respondent's Answer to the First Amended Complaint ("Reply"), and I am aware of the contents thereof.

6. Pursuant to Section 2-610 of the Code of Civil Procedure, 735 ILCS 5/2-610, I lack sufficient knowledge to form a belief as to the specified facts alleged within Petco Petroleum Corporation's Answer to the First Amended Complaint as identified in Complainant's Reply, with the exception of Count XV, Paragraph 21.

7. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in the Complainant's Reply to Respondent's Answer to the First Amended Complaint and in this Verification are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

FURTHER AFFIANT SAYETH NOT

Yeric Yarrington
Public Service Administrator
Office of Emergency Response
Illinois Environmental Protection Agency

3/10/23
Date

SERVICE LIST

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CERTIFICATE OF SERVICE

I, Natalie Long, an Assistant Attorney General, certify that on the 10th day of March, 2023, I caused to be served the foregoing Notice of Filing, 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 on the parties named on the attached Service List, by email or electronic filing, as indicated on the attached Service List.

/s/ Natalie Long
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