

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 21st day of July, 2023, the attached documents were filed with the Illinois Pollution Control Board, with true and correct copies attached hereto and which are hereby served upon you. The attached documents include the following:

- Notice of Filing
- Complainant’s Response to Respondent’s Motion for Oral Argument
- Service List and Certificate of Service

Respectfully submitted,

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

/s/ Natalie Long
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Dated: July 21, 2023

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PEOPLE OF THE STATE OF ILLINOIS,)	
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**COMPLAINANT'S RESPONSE TO
RESPONDENT'S MOTION FOR ORAL ARGUMENT**

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(d) of the Illinois Pollution Control Board Regulations, 35 Ill. Adm. Code 101.500(d), and hereby submits this Response to Respondent's Motion for Oral Argument ("Motion"), stating as follows:

1. Through its Motion for Oral Argument, Respondent Petco Petroleum Corporation ("Respondent") seeks to further complicate the arrival of a decision on the pending motions, namely Respondent's Motion to Dismiss Counts 62 through 73 of the First Amended Complaint ("Motion to Dismiss") and Complainant's Motion to Strike Respondent's Affirmative and Additional Defenses to the First Amended Complaint and Immaterial Matter ("Motion to Strike").
2. Respondent provides no new information in its Motion that would warrant granting a request for oral argument on the Motion to Dismiss before the Illinois Pollution Control Board ("Board").

3. As discussed at length in Complainant's response and supporting sur-reply to the Motion to Dismiss, Respondent rests its argument in its Motion to Dismiss on a legal question that has already been settled.

4. The five-year statute of limitations set forth in Section 13-205, 735 ILCS 5/13-205 (2022) ("Section 13-205"), does not apply to a governmental entity acting in the public interest. Instead, the doctrine of governmental immunity, also known as the "public interest exception", applies to the statute of limitations. The courts have found this to be the case following the enactment of Section 13-205. *See, e.g., City of Chicago v. Latronica Asphalt & Grading, Inc.*, 346 Ill. App. 3d 264 (1st Dist. 2004).

5. The Board has additionally found that Section 13-205 does not apply when the State brings an enforcement action pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2022) ("Act"). *See, e.g., People of the State of Ill. v. John Crane, Inc.* (May 17, 2001), PCB 01-76, slip op. at 5.

6. Respondent likewise provides no new information in its Motion that would warrant granting a request for oral argument before the Board on the Motion to Strike.

7. Without exception, Respondent fails to meet the requisite pleading standards for its affirmative defenses, which must be both factually and legally sufficient. As set forth in the Motion to Strike and supporting reply brief, Respondent's affirmative defenses fail across the board to meet the standards set for pleading affirmative defenses.

8. Respondent additionally attempts to introduce material that is not properly pled in its Answer to the First Amended Complaint. As discussed in the Motion to Strike and supporting reply, the new matter that Respondent seeks to raise is inappropriate at this stage in the pleadings.

9. The briefing by both parties on the Motion to Dismiss and Motion to Strike is exhaustive. Based on the content of the briefings, Complainant doubts new information would be gleaned from oral argument, as the filings state and restate in multiple forms the arguments that are germane to both motions. Should the Board believe oral argument would be of value, however, Complainant would be glad to present its position on either or both of the motions to the Board.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that the Board deny Respondent's Motion for Oral Argument.

Respectfully submitted,

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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CERTIFICATE OF SERVICE

I, Natalie Long, an Assistant Attorney General, certify that on the 21st day of July, 2023, I caused to be served the foregoing Notice of Filing, Complainant's Response to Respondent's Motion for Oral Argument, and Service List and Certificate of Service on the parties named on the attached Service List, by email or electronic filing, as indicated on the attached Service List.

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