

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois)	
)	
Complainant,)	
)	
v.)	PCB No. 12-035
)	(Enforcement – LUST/Water)
SIX M. CORPORATION INC., an Illinois,)	
corporation, and THOMAS MAXWELL,)	
an individual,)	
)	
Respondents,)	
)	
and)	
)	
JAMES MCILVAIN,)	
)	
Necessary Party.)	

**NOTICE OF FILING COMPLAINANT’S MOTION TO CANCEL HEARING DATE
AND TO RESCHEDULE HEARING**

PLEASE TAKE NOTICE that on September 5, 2019, I caused to be filed with the Clerk of the Illinois Pollution Control Board via “COOL” System the attached Cancel Hearing Date and to Reschedule Hearing.

Respectfully submitted,

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

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

BY: /s/ Elizabeth Dubats
Elizabeth Dubats
Environmental Bureau
Assistant Attorney General
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CERTIFICATE OF SERVICE

I, Elizabeth Dubats, do certify that I caused to be served this 5th day of September, 2019, Complainant’s Cancel Hearing Date and to Reschedule Hearing, upon the persons listed below by e-mail.

SERVICE LIST

Carol Webb
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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Patrick D. Shaw
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Don Brown
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/s/ Elizabeth Dubats

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**COMPLAINANT’S MOTION TO CANCEL
HEARING DATE AND TO RESCHEDULE HEARING**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and hereby moves, pursuant to Section 101.510 of the Illinois Pollution Control Board (“Board”) regulations, 35 Ill. Adm. Code 101.510, to cancel the Board Hearing set for October 10, 2019 in DeWitt County in the above captioned matter and to reschedule same hearing. In support of its motion, the Complainant states as follows:

1. The initial Complaint in this matter was filed on August 25, 2011 alleging violations of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (“Act”) for causing or allowing groundwater contamination from underground gasoline storage tanks (“UST”)’s at a gasoline service station doing business as "Walker's Service Station," located at 430 West

Clinton Avenue, Farmer City, De Witt County, Illinois (“Site” or “Walker Tire Station”), and violations of the Act’s Tiered Approach to Corrective Action, (“TACO”), 35 Ill. Adm. Code 742.100 *et seq.* remediation requirements. A First Amended Complaint was filed on September 27, 2018. Respondents Answered the First Amended Complaint on November 26, 2018. On August 12, 2019, this matter was set and noticed for hearing on Thursday, October 10, 2019 at 9:00 a.m.

2. The August 12, 2019 Hearing Officer Order also required pre-hearing document and witness disclosures to be submitted by September 6, 2019.

3. On August 29, 2016, David Myer, the Leaking Underground Storage Tank (“LUST”) Program Project Manager assigned to the Walker Tire Station site provided responses to Respondents’ first set of interrogatories and was disclosed in discovery as a potential witness for Complainant.

4. On June 30, 2019, David Myer retired from the Illinois Environmental Protection Agency (“Illinois EPA”) and is no longer available to testify on behalf of Illinois EPA as to the progress of the LUST remediation from the Agency’s perspective.

5. To date, the position of LUST Program Project Manager for the Walker Service Station site has yet to be reassigned. Upon reassignment, the new LUST Program Project Manager will need sufficient time to review the case file in order to prepare for hearing.

6. The initial release in this matter (Illinois Emergency Management Agency (“IEMA”) Incident No. 960810) was reported on May 13, 1996 and a subsequent release reported on March 8, 2006 (IEMA Incident Nos. 20060291 and 20060868). The Illinois EPA LUST project file on this matter includes over two decades worth of TACO submittals for two separate reported releases. For this reason, at least 120 days would be required for a new LUST

Project Manager to be assigned to the matter and to become adequately apprised of the issues.

7. Complainant would suffer material prejudice by the unavailability of a witness with access and familiarity with the LUST Program file for the Walker Tire Station site. Additionally, Respondents would be similarly prejudiced by the unavailability of such a witness for the purposes of cross-examination.

8. Respondents and Necessary Party James McIlvain do not object to this Motion.

Wherefore, Complainant, for the above stated reasons, respectfully requests that the Illinois Pollution Control Board enter an Order:

1. Granting this Motion to Cancel Hearing Date and to Reschedule Hearing, canceling the hearing currently scheduled for Thursday, October 10, 2019 at 9:00a.m. and rescheduling the Board hearing on this matter for Monday, January 13, 2020 at 9:00a.m., or other future date agreeable to the parties, the Hearing Officer and the Board.
2. Striking the September 6, 2019 deadline for disclosure of documents and witnesses with new deadlines to be set at a future date nearer to the January 13, 2020 hearing date.

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

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

BY: /s/ Elizabeth Dubats
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AFFIDAVIT OF PAUL B. BAUER

I, Paul B. Bauer certify under penalty of perjury pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements set forth in this affidavit are true and correct, and further state that if called upon to testify in this matter, I would competently testify as follows:

1. I am a Project Manager with the Bureau of Land at the Illinois Environmental Protection Agency ("Illinois EPA").
2. I am currently employed as a Project Manager with the Illinois EPA and have held this position since April 16, 1992. I have been employed by the Illinois EPA since April 16, 1992.
3. As a Project Manager for the Illinois EPA, my duties and responsibilities include acting as lead worker for the LUST Claim Unit.

4. On June 30, 2019, David Myer, the Leaking Underground Storage Tank ("LUST") Program Project Manager assigned to the Walker Tire Station site, retired from the Illinois EPA and is no longer available to testify on behalf of Illinois EPA as to the progress of the LUST remediation from the Agency's perspective.

5. To date the position of LUST Program Project Manager for the Walker Service Station site has yet to be reassigned.

6. The initial release in this matter (Illinois Emergency Management Agency ("IEMA") Incident No. 960810) was reported on May 13, 1996 and a subsequent release reported on March 8, 2006 (IEMA Incident Nos. 20060291 and 20060868). The Illinois EPA LUST project file on this matter includes over two decades worth of Tiered Approach to Corrective Action, ("TACO"), 35 Ill. Adm. Code 742.100 *et seq.* submittals for two separate reported releases, therefore significant time would be required for a new LUST Project Manager to be assigned to the matter and adequately apprised of the facts.

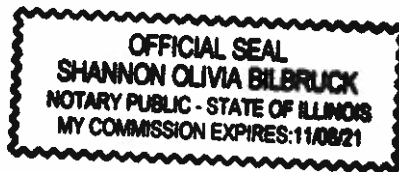
FURTHER AFFIANT SAYETH NOT.

David P. Bauer

Subscribed and sworn to before
me this 5th day
of September, 2019

Shannon Olivia Beltrick

Notary Public
[Firm name, address, phone]



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PROPOSED ORDER

THIS CAUSE now coming before the Board on the Motion of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, to Cancel Hearing Date and to Reschedule Hearing, and the Hearing Officer being fully apprised in the premises, makes the following findings:

1. Complainant and Respondents would suffer material prejudice by the unavailability of a witness prepared to testify as to progress of the LUST remediation at the Walker Tire Station site.
2. Additional time is needed by the parties to prepare for Board Hearing. Once a replacement is assigned for Project Manager David Myer, who retired on June 30, 2019.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Complainant's Motion to Cancel Hearing Date and to Reschedule Hearing is granted.
2. The hearing currently scheduled for Thursday, October 10, 2019 at 9:00 a.m. is canceled and the Board hearing on this matter is rescheduled for Monday, January 13, 2020 at 9:00 a.m., or other future date agreeable to the parties, the Hearing Officer and the Board.
3. The September 6, 2019 deadline for disclosure of documents and witnesses with new deadlines is also stricken and to be rescheduled at a future date, agreeable to the hearing officer and parties, nearer to the January 13, 2020 hearing date.

IT IS SO ORDERED.

Carol Webb
Hearing Officer
Illinois Pollution Control Board
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P.O. Box 19274
Springfield Illinois 62794-9274
217/524-8509
Carol.Webb@illinois.gov