

ILLINOIS POLLUTION CONTROL BOARD  
April 6, 2023

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 12-35  
) (Enforcement - Water)  
SIX M. CORPORATION INC., an Illinois )  
corporation, and THOMAS MAXWELL )  
)  
Respondent, )  
)  
and )  
)  
JAMES MCILVAIN, )  
)  
Necessary Party. )

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

On August 25, 2011, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Six M. Corporation (Six M.), William Maxwell, and Marilyn Maxwell. On October 6, 2011, the Board granted the People’s motion to join James McIlvain as a necessary party. On November 17, 2011, the Board dismissed decedent Marilyn Maxwell from the case. On September 20, 2018, the Board granted the People’s motion to amend the complaint by adding two counts and replacing William Maxwell with Thomas Maxwell and accepted the amended complaint. The amended complaint concerns Six M.’s gasoline service station located at 430 West Clinton Avenue in Farmer City, DeWitt County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties’ stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), the Attorney General and the State’s Attorneys may bring actions before the Board on behalf of the People to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/31 (2020); 35 Ill. Adm. Code 103. In this case, the People allege that:

- Count I: Six M. caused water pollution, in violation of Section 12(a) of the Act (415 ILCS 5/12(a) (2020)) and Sections 620.301(a), 620.405, and 620.410(d) of the Board’s Groundwater Quality Regulations (35 Ill. Adm. Code Sections 620.301(a), 620.405, 620.410(d));
- Count II: Thomas Maxwell caused water pollution, in violation of Section 12(a) of the Act (415 ILCS 5/12(a) (2020)) and Sections 620.301(a), 620.405, and 620.410(d) of the Board’s Groundwater

Quality Regulations (35 Ill. Adm. Code Sections 620.301(a), 620.405, 620.410(d));

Count III: Six M. failed to complete site investigation, in violation of Sections 57.6, 57.7(a)(4), and 57.7(a)(5) of the Act (415 ILCS 5/57.6, 57.7(a)(4), 57.7(a)(5) (2020)); and

Count IV: Six M. and Thomas Maxwell (respondents) failed to take corrective action, in violation of Sections 57.6(a), 57.7(a)(4), and 57.7(a)(5) of the Act (415 ILCS 5/57.6(a), 57.7(a)(4), 57.7(a)(5) (2020)) and Section 734.100(d) of the Board's Underground Storage Tank Regulations (35 Ill. Adm. Code Section 734.100(d)).

On January 24, 2023, the People and respondents filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2020)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2020)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Clinton Journal* on February 10, 2023. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2020); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondents' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2020)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondents do not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2020)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, respondents agree to pay a civil penalty of \$15,436 within 30 days after the date of this order. The People and respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

Finally, the parties have agreed to language allowing them to extend any compliance dates and modify the stipulation and proposed settlement. *See* Stipulation and Proposed Settlement at 14. The Board notes, however, that any modification made by the parties and not accepted by the Board in a subsequent Board order is not enforceable under the Act. *See, e.g., People v. Reliable Materials Lyons, LLC*, PCB 12-52, slip op. at 2 (Aug. 21, 2014).

This opinion constitutes the Board's findings of fact and conclusions of law.

**ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement. However, any modification of the stipulation and proposed settlement made by the parties will not be incorporated into this Board order and will not be enforceable under the Environmental Protection Act (415 ILCS 5 (2020)) unless accepted by the Board in a subsequent order.
2. Respondents must implement the Corrective Action Plan approved by the Agency on June 28, 2022, and obtain a No Further Remediation Letter, as described in the Stipulation and Proposed Settlement.
3. Respondents must pay a civil penalty of \$15,436 no later than Monday, May 8, 2023, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name and case number must appear on the certified check or money order.
4. Respondents must submit payment of the civil penalty to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Respondents must send a copy of the certified check or money order and any transmittal letter to:

Elizabeth Dubats, Assistant Attorney General  
Illinois Attorney General's Office  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2020)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2020)).
6. Respondents must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

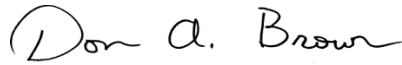
IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2020); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Illinois Attorney General's Office Environmental Bureau Attn.: Elizabeth Dubats, Asst. Atty. General 69 West Washington Street, Suite 1800 Chicago, Illinois 60602 Elizabeth.Dubats@ilag.gov	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 don.brown@illinois.gov
Illinois Environmental Protection Agency Division of Legal Counsel Attn.: Melanie Jarvis, Assistant Counsel 1021 North Grand Avenue East PO Box 19276 Springfield, Illinois 62794-9276 Melanie.Jarvis@illinois.gov	
Illinois Environmental Protection Agency Leaking Underground Storage Tank Section Attn.: Michael Piggush, Project Manager 1021 North Grand Avenue East PO Box 19276 Springfield, Illinois 62794-9276	
Six M. Corp. and Thomas Maxwell Attn.: Patrick Shaw Law Offices of Patrick Shaw 80 Bellerive Road Springfield, Illinois 62704 Pdshaw1law@gmail.com	

James McIlvain, Necessary Party Attn.: Phillip R. Van Ness Webber & Thies, P.C. 202 Lincoln Square PO Box 189 Urbana, Illinois 61803-0189 pvanness@webberthies.com	
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 6, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board