

ILLINOIS POLLUTION CONTROL BOARD
October 6, 2011

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 12-035
) (Enforcement - Water)
SIX M. CORPORATION, INC., an Illinois)
Corporation, WILLIAM MAXWELL, AND)
MARILYN MAXWELL,)
)
Respondents,)
)
and)
)
JAMES MCILVAINE,)
)
Necessary Party-Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

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, William Maxwell, and Marilyn Maxwell (respondents). The complaint concerns respondents' gasoline service station (Facility or Walker's Service Station) at 430 West Clinton Avenue, Farmer City, De Witt County, Illinois. The two-count complaint alleges that benzene and BETX were released from an underground storage tank on the property, and charges respondents with, *inter alia*, groundwater pollution and failure to take corrective action.

By order of October 8, 2011, the Board accepted the complaint for hearing. The Board reserved ruling on the People's motion accompanying the complaint. The People seek joinder of James McIlvain as a necessary party (Mot.) under the Board's procedural rules at 35 Ill. Adm. Code 101.403. In the motion, the People recite that

James McIlvain owns property adjacent to "Walker's Service Station" and located at 407 West Clinton Avenue, Farmer City. As alleged in the Complaint, the McIlvain property was contaminated by the May 13, 1996 LUST incident and this off-site contamination has not been corrected due to the failure of the Respondents to complete corrective action and to comply with all applicable statutory and regulatory response requirements.

Section 22.2c of the Act, 415 ILCS 5/22.2c (2010), authorizes a party to seek judicial relief in order to accomplish the remediation of an adjacent site:

If remediation of real property contaminated by hazardous substances or petroleum products cannot be reasonably accomplished without entering onto land adjoining the site from which those substances were released, and if the owner of the adjoining land refuses to permit entry onto the adjoining land for the purpose of effecting remediation, then the owner or operator of the site may bring an action to compel the owner of the adjoining land to permit immediate entry for purposes relating to the remediation of the site, the adjoining land, and any other real property that may be contaminated with the hazardous substances or petroleum products. The court shall prescribe the conditions of the entry and shall determine the amount of damages, if any, to be paid to the owner of the adjoining land as compensation for the entry. The court may require the owner or operator who is seeking entry to give bond to the owner of the adjoining land to secure performance and payment.

Counsel for the Respondents has informed the Attorney General's Office that, after the corrective action plan was approved, work on delineating the existence and extent of the contamination on the neighboring property was halted by "lack of cooperation from the neighboring property owner in providing needed access." However, upon information and belief, the Complainant states that the Respondents have taken no action pursuant to Section 22.2c of the Act to obtain a court order regarding site access.

Upon information and belief, the Complainant states that James McIlvain is also represented by counsel and may have exercised his rights and privileges pursuant to legal advice, and that any purported "lack of cooperation" may be justified.

James McIlvain should be added pursuant to Section 101.403 as a necessary party to this enforcement action because a complete determination of any controversy cannot be had without his presence, he has an interest that the Board's adjudicatory order may affect, and it may be necessary for the Board to impose some condition on him regarding site access in order for the Respondents to complete the remediation of this adjacent site. Mot. at 1-3.

The certificate of service of the motion and complaint shows service on the named respondents, but also a "regular mail courtesy copy" to four other persons: Mr. McIlvain, a Springfield attorney, an Urbana attorney, and a Springfield Agency attorney employed by the Illinois Environmental Protection Agency. In addition to the named parties, the Board has served Mr. McIlvaine and these three attorneys with copies of its September 8, 2011 order accepting the complaint and the September 8, 2011 hearing officer order setting the first

telephonic status conference for October 3, 2011. None of these attorneys has filed an appearance in this proceeding. No responses have been filed concerning the People's August 25, 2011 motion.

The Board's hearing officer held a telephonic status conference concerning this case on October 3, 2011, as memorialized in a 1-page hearing officer order of the same date. The October 3, 2011 hearing officer order notes that there is no response from James McIlvaine, but also reports that "[r]espondents do not object to the motion". Neither Mr. McIlvaine, nor any of the attorneys who received courtesy copies of the complaint and motion, participated at the status conference (although each was served with the September 8, 2011 hearing officer order setting the October 3, 2011 telephonic status conference as stated above.

The Board grants the People's unopposed August 25, 2011 motion to join James McIlvaine as a necessary party. As the People believe "it may be necessary for the Board to impose some condition on him regarding site access", the Board believes Mr. McIlvaine is appropriately aligned at this time as a party-respondent," as indicated in the caption to this order. The parties are free to move the Board for realignment of Mr. McIlvaine's party status as appropriate.

As Mr. McIlvaine is joined at the request of the People, the Board directs the People to make formal service of the complaint on him as required by 35 Ill. Adm. Code 101.304(c) and 103.204 on or before October 21, 2011; proof of service may be filed with the Board thereafter as necessary. In so ordering, the Board wishes to enable participation of all parties, including Mr. McIlvaine or any attorney representing him, at the next telephonic status conference with the hearing officer scheduled at 10:30 a.m. on November 3, 2011.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 6, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board