

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

**PEOPLE OF THE STATE OF ILLINOIS)**

**Petitioner, )**

**v. )**

**PCB NO. 12-35**

**(Enforcement – Water)**

**SIX-M CORPORATION, INC., and )**

**WILLIAM MAXWELL, )**

**Respondents. )**

**NOTICE OF FILING AND PROOF OF SERVICE**

To: John T. Therriault, Acting Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
State of Illinois Building, Suite 11-500  
Chicago, IL 60601

Thomas Davis, Chief  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

Phillip R. Van Ness  
Webber & Thies, P.C.  
202 Lincoln Square  
P.O. Box 189  
Urbana, IL 61801

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East,  
P.O. Box 19274  
Springfield, IL 62794-9274

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Respondents' ANSWER AND AFFIRMATIVE DEFENSE OF SIX M. CORPORATION, INC. AND WILLIAM MAXWELL, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 2<sup>nd</sup> day of December, 2011.

Respectfully submitted,  
SIX M. CORPORATION, INC. and WILLIAM  
MAXWELL  
Respondents,

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

**PEOPLE OF THE STATE OF ILLINOIS)**

**Petitioner, )**

**v. )**

**PCB NO. 12-35**

**(Enforcement – Water)**

**SIX M CORPORATION, INC., and )**

**WILLIAM MAXWELL, )**

**Respondents. )**

**ANSWER AND AFFIRMATIVE DEFENSE OF SIX M. CORPORATION, INC. AND  
WILLIAM MAXWELL**

NOW COME Respondents, Six-M Corporation, Inc. And William Maxwell, by their undersigned counsel, and answers the Complaint, as follows:

**COUNT I**

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”) pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2010).

**Admit.**

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing th Act in proceedings before the Illinois Pollution Control Board.

**Admit.**

3. The Complaint is brought pursuant to to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

**Admit as to Six M Corporation, Inc., but deny as to the individual respondents.**

4. SIX M. CORPORATION INC. is an Illinois corporation in good standing and authorized to do business in the State of Illinois. Its registered agent is William Maxwell, 430 West Clinton Avenue, Farmer City, Illinois 61842.

**Admit.**

5. WILLIAM MAXWELL and MARILYN MAXWELL are residents of De Witt County, Illinois.

**Admit as to WILLIAM MAXWELL, but deny as to MARILYN MAXWELL, who is deceased.**

6. At all times relevant to this Complaint, the Respondents have owned and operated a gasoline service station (“facility”) doing business as “Walker’s Service Station” and located at 430 West Clinton Avenue, Farmer City, De Witt County, Illinois.

**Admit that until approximately July 13, 2006 Six M. Corporation, Inc. owned and operated a gasoline service station (“facility”) doing business under various assumed names, including “Walker’s Service Station” at the aforementioned address, affirmatively state that all motor fuel tanks were removed on or before said date and the facility has been and continues to be operated as a tire and auto service station, and furthermore deny that the individual Respondents owned and operated the facility at any time relevant to this Complaint.**

7. Section 12(a) of the Act, 415 ILCS 5/12 (2010), provides as follows:

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.

**Admit.**

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), contains the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.

**Admit.**

9. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), contains the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**Admit.**

10. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), contains the following definition:

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

**Admit.**

11. Section 620.15 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.115, provides:

No person shall cause, threaten or allow a violation of the Act, the IGPA or regulations adopted by the Board thereunder, including but not limited to this Part.

**Admit.**

12. Section 620.301(a) of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.301(a), provides:

General Prohibition Against Use Impairment of Resource Groundwater

a) No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that:

- 1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or
- 2) An existing or potential use of such groundwater is precluded.

**Admit.**

13. Section 620.302(c) of the Board's Groundwater Quality Regulations, 35 Ill. Adm.

Code 620.302(c), provides:

c) If a contaminant exceeds a standard set forth in Section 620.410 or Section 620.430, the appropriate remedy is corrective action and Sections 620.305 and 620.310 do not apply.

**Admit.**

14. Section 620.405 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405, provides:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

**Admit.**

15. Section 620.410(c) of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410(c), provides:

Complex Organic Chemical Mixtures Concentrations of the following chemical constituents of gasoline, diesel fuel, or heating fuel must not be exceeded in Class I groundwater:

Constituent	Standard (mg/L)
Benzene*	0.005
BETX	11.705

\* Denotes a carcinogen.

**Admit.**

16. On or about April 18, 1986 William Maxwell submitted to the Office of State Fire Marshal ("OSFM") a registration of ownership regarding four underground storage tanks in operations at Walker's Service Station. Tank No. 1 was described as a 10,000 gallon tank used for gasoline fuel storage. Tank No. 2 was described as a 4,000 gallon tank used for gasoline fuel storage. Tank No. 3 was described as a 2,000 gallon tank used for diesel fuel storage. Tank No. 4 was described as a 250 gallon tank for the storage of used motor oil.

**Respondents deny any inference that said registration indicated that the tanks were owned by William Maxwell personally, but otherwise admit the allegations of paragraph 16 with the caveat that Tank No. 4 was later determined to be 1000 gallons.**

17. On May 13, 1996 a report was made to the Illinois Emergency Management Agency (“IEMA”) that gasoline had been released from an underground storage tank at Walker’s Service Station. IEMA assigned Incident Number 960810 to the reported release.

**Admit.**

18. On May 15, 1996 OSFM investigated a complaint by James McIlvain of 407 West Clinton Avenue, Farmer City, regarding gasoline fumes in his basement. OSFM detected volatile petroleum fumes with a lower explosive limit of 100 per cent at the basement drains.

**Respondents admit that James McIlvain complained of gasoline odors in the house on or around May 11, 1996, but is without sufficient knowledge to admit or deny the nature and extent of the alleged OSFM investigation and accordingly denies the same, and affirmatively states that to the best of Respondent’s knowledge said odor complaints had ceased by early 1997.**

19. The Respondents excavated an interceptor trench at the facility on May 15, 1996. The trench was dug approximately 20 feet west of and parallel to the McIlvain property. OSFM determined the excavated soil to be heavily contaminated with petroleum products and detected volatile petroleum fumes with a lower explosive limit of 100 per cent. The trench contained free product at that time.

**Respondents deny that any of the Respondents excavated any trench, but that upon notification of a suspected release, Six M Corporation, Inc. hired an environmental contractor to perform all necessary investigation and corrective action, which included trenches being constructed on facility and McIlvain property. Respondents are without sufficient knowledge to admit or deny the nature of the alleged OSFM investigation and accordingly denies the same.**

20. The Respondents retained a consultant, Armor Shield of Illinois, to remediate the release. The consultant submitted to OSFM on May 22, 1996 an amended registration regarding the underground storage tanks in operation at Walker’s Service Station. Tank No. 4 was then

described as a 1,000 gallon tank for the storage of used motor oil. Tank No. 5 was described as a 560 gallon tank for the storage of gasoline. Tank No. 6 was described as a 560 gallon tank for the storage of diesel fuel. The consultant also submitted to OSFM an application for a permit to remove Tank Nos. 4, 5 and 6.

**Respondents admits that Six M Corporation, Inc. retained said consultant, denies that the individual Respondents retained any consultant, but otherwise admits the remaining allegations of paragraph 20, and affirmatively states that Tank Nos. 5 and 6 were later determined to be smaller upon removal.**

21. On June 5, 1996 the consultant for the Respondents removed tank Nos. 4, 5 and 6 from the facility. Another tank, identified as Tank No. 7 and described as a 300 gallon tank previously used for storage of unspecified products, was also removed.

**Tank No. 7 was identified as a 300 gallon heating oil tank not in operation at anytime since January 1, 1974, but otherwise admit the allegations of this paragraph.**

22. On September 27, 1996 the consultant submitted to the Illinois EPA proposals for the site classification work plan and budget. On October 3, 1996 the Illinois EPA issued its approvals. The site classification completion report was submitted on April 7, 1997 and approved on April 15, 1997.

**Admit.**

23. The first high priority corrective action plan (“CAP”) was submitted on behalf of the Respondents on May 2, 1998; the Illinois EPA issued its required modifications on June 3, 1998. The high priority CAP was resubmitted on February 16, 1999; the Illinois EPA issued its required modifications on March 17, 1999. The high priority CAP was resubmitted again on April 20, 1999; the Illinois EPA issued its required modifications on May 20, 1999. The high priority CAP was not resubmitted until four years later on May 20, 2003. The Illinois EPA denied the high priority CAP on June 12, 2003. The high priority CAP was resubmitted on July 18, 2003; the Illinois EPA denied the high priority CAP again on September 25, 2003. The high priority CAP was resubmitted on February 17, 2004; the Illinois EPA issued its required modifications on March 31, 2004.

**Respondents admit, and affirmatively state that prior to August of 2004, the Illinois EPA approved various applications for payment and paid over \$500,000 from the LUST**



**Fund for work performed.**

24. During August and September 2004, a total of approximately 13,676 tons of contaminated soils were removed from the facility and the McIlvain property. The removal of contaminated soils continued until the excavation reached a depth of 14 feet. The analytical results of samples collected from within the excavation demonstrated the need for additional remediation. At this time, more than eight years after the release was reported, the concentrations of Benzene and BETX in the groundwater exceeds the standards set forth in Section 620.410(c) and thereby triggered the mandatory requirement of corrective action pursuant to Section 620.302(c). The soil sample results demonstrated that the soil contamination within the perimeter walls of the excavation exceeded the Tier I cleanup objectives provided by 35 Ill. Adm Code Part 742 (“TACO”).

**Respondents admit that a substantial amount of contaminated soils were removed from the facility and the McIlvain property in August and September of 2004, but Respondents are without sufficient knowledge to admit or deny the specific details of the remediation work performed by its former consultants, and therefore denies the same. Respondents deny that alleged concentrations triggered corrective action requirements or the need for additional remediation, but affirmatively states that samples taken during the investigation were deemed by its consultants to justify additional soil borings in a limited area of the McIlvain property to fully evaluate the potential contamination remaining, and further affirmatively state that Farmer City has by ordinance excluded the groundwater ingestion exposure route.**

25. On March 8, 2006 the Respondents reported to IEMA a subsequent release of gasoline and diesel fuels from underground storage tanks at Walker’s Service Station. IEMA assigned Incident Number 20060291 to the second reported release.

**Respondents admit that Six M Corporation or its agents reported a suspected release and IEMA assigned Incident Number 20060291 to it, and affirmatively state that the OSFM investigation indicated that none of the tanks appear to have leaked, but a**

release was “suspected to be from spills/overfills, and a previous incident.”

26. On April 24 and October 17, 2006 the Illinois EPA approved site investigation plans submitted on behalf of the Respondents. Claims were submitted on September 19, 2006 and reimbursement from the LUST Fund was approved on March 10, 2008. No further work has apparently been accomplished since 2006 and the second release has not been remediated.

**Respondents admit the accuracy of the first and second sentence, but affirmatively states that an amended corrective action plan and budget were approved by the Illinois EPA on February 13, 2008, and that claims were submitted on May 20, 2009 and paid by the LUST Fund on May 26, 2011, denies the third sentence, and affirmatively state that the McIlvains have denied access to their property since at least 2006.**

27. By causing or allowing the release of Benzene and BETX to the groundwater, the Respondents contaminated the groundwater and precluded possible use of that water and necessitate treatment of the groundwater to allow its use in the future, and have thereby violated Section 620.301(a) of the Board’s Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a).

**Denies.**

28. By causing or allowing the release of Benzene and BETX to the groundwater in concentrations exceeding the water quality standards, the Respondents have violated Sections 620.405 and 620.410(c) of the Board’s Groundwater Quality Standards, 35 Ill. Adm. Code 620.405 and 620.410(c).

**Denies.**

29. By failing to remediate the LUST releases at Walker’s Service Station, the Respondents have caused or allowed the discharge of Benzene and BETX to the groundwater so as to cause water pollution and to exceed the water quality standards, and have thereby violated Section 12(a) of the Act, 415 ILCS 12(a) (2010).

**Denies, and affirmatively states that access to neighboring property has been denied and there is no evidence of unremediated contamination at Walker’s Service Station.**

## COUNT II

1.-29. Complainant realleges and incorporates herein by reference paragraphs 1 through 29 of Count I as paragraphs 1 through 29 of this Count II.

**Respondents herein also incorporate for their answers to paragraphs 1 through 29 of Count I as paragraphs 1 through 29 of this Count II.**

30. Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2010), provides as follows:

Owners and operators of underground storage tanks shall, in response to all confirmed releases, comply with all applicable statutory and regulatory reporting and response requirements.

**Admit.**

31. Section 57.7 of the Act, 415 ILCS 5/57.7 (2010), provides in pertinent part as follows:

(a) Site investigation.

\* \* \*

(4) Upon the Agency's approval of a corrective action plan, or as otherwise directed by the Agency, the owner or operator shall proceed with corrective action in accordance with the plan.

(5) Within 30 days after the completion of a corrective action plan that achieves applicable remediation objectives the owner or operator shall submit to the Agency for approval a corrective action completion report.

\* \* \*

**Admit.**

32. The Respondents have failed to conduct a site investigation regarding the March 8, 2006 release at Walker's Service Station. The Respondents have thereby violated Section 57.7(a)(4) of the Act, 415 ILCS 5/57.7(a)(4) (2010).

**Denies, and affirmatively states that access to neighboring property has been denied.**

33. Alternatively, if a site investigation were in fact conducted in accordance with the plans approved in 2006, the Respondents have subsequently failed to submit to the Agency for approval a site investigation completion report. The Respondents have thereby violated Section 57.7(a)(5) of the Act, 415 ILCS 5/57.7(a)(5) (2010).

**Denies, and affirmatively states that access to neighboring property has been denied.**

34. By failing to conduct a site investigation in accordance with the approved plans or by failing to report on the completion of the site investigation, the Respondents have failed to take corrective action and to comply with all applicable statutory and regulatory reporting and response requirements, and have thereby violated Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2010).

**Denies, and affirmatively states that access to neighboring property has been denied.**

**AFFIRMATIVE DEFENSE**  
**(Impossibility)**

**1. On May 13, 1996, a suspected leak or spill was reported from underground storage tanks at service station property operated by Six M Corporation, Inc. (hereinafter “Six M”) in Farmer City, Illinois.**

**2. In response Six M hired an environmental consultant, Armor Shield of Illinois (hereinafter “Armor Shield”), to provide the legally required response.**

**3. On May 17, 1996, Armor Shield applied for permission from the Office of the State Fire Marshall to remove the unnecessary or unused tanks from the property, explaining that a gasoline and diesel release was suspected.**

**4. On June 5, 1996, four tanks were removed from the service station property,**

leaving three active tanks.

5. As best that could be determined, underground storage tanks had experienced an overflow or spill from the fill pipes since the soils beneath the fill pipes had some staining and gasoline vapors.

6. Thereafter, Armor Shield installed an approximately 295 foot groundwater recovery trench across the properties of Six M and the neighboring property owned by James and Deborah McIlvain (hereinafter “the McIlvains”). This trench was used to collect any contaminated groundwater using an ongoing pump and treat method of remediation.

7. On July 25, 1997, “the McIlvains” filed a lawsuit against Six M in DeWitt County, Illinois, alleging negligent trespass and nuisance as a result of a release of petroleum from underground storage tanks onto their neighboring property. Their complaint alleged *inter alia* that the release had created and continued to create substantial intrusions on their property, including “the noise and distraction from time to time of activities (including drilling, digging and monitoring) associated with the evaluation or removal of contamination on Plaintiffs’ property.”

8. On or before August 2, 1999, the McIlvains and Six M reached a settlement, which included *inter alia* a payment of \$17,000 to the McIlvains without admission of negligence on the part of Six M, but with admission that the release of petroleum from Six M tanks has and would continue to cause damages to the McIlvains, including from future remediation activities.

9. Also on or before August 2, 1999, the McIlvains and Six M entered into an

access agreement which “sets forth the conditions upon which the McIlvains will continue to permit access by [Six M] to certain real property belonging to the McIlvains . . . to facilitate the identification, treatment and removal of petroleum contamination . . . of the Property originating from a leaking underground storage tank system located on adjacent property belong to Six-M.”

10. On November 3, 1999, Six M requested reimbursement of the \$17,000 settlement payment from the LUST Fund pursuant to Section 57.8(c)(2) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(c)(2)). The request included *inter alia* a copy of the complaint, the settlement agreement and the access agreement.

11. The Illinois Attorney General approved payment of the \$17,000 settlement as reasonable and the settlement payment was reimbursed to Six M from the LUST Fund on or about July 14, 2000.

12. Sometime in or around 2003, Armor Shield of Illinois went out of business and was dissolved on April 1, 2004. Applied Environmental Solutions thereafter replaced it as the consultant.

13. In late 2004, substantial contaminated soil was removed from the property of the McIlvains and Six M. Sampling following the removal identified a limited area, in which samples exceeded Tier 2 objectives for residential ingestion and inhalation, as well as for construction worker inhalation.

14. In 2005, the Agency issued a notice of intent letter to Six M, pursuant to Section 33(c) of the Act. (415 ILCS 5/31(a))

15. In 2006, the remaining underground storage tanks were removed for the

reason that they would no longer be selling petroleum. During the tank pull, a representative of the Office of the State Fire Marshall observed contamination in the floor, walls and piping trench and reported that a “[r]elease is suspected to be from spills/ overfills, and a previous incident.” There was no evidence that any of the tanks themselves had leaked.

16. Beginning in early 2006, the McIlvains denied access to their property for any further remediation work on the grounds that there has been a new release, and it is not covered by the existing access agreement.

17. Sometime in 2006, Applied Environmental Solutions went out of business. CSD Environmental thereafter replaced it as consultant.

18. On or about November 8, 2006, CSD Environmental wrote to the McIlvains to explain that they would be proposing seven (7) soil borings around the perimeter of their house to evaluate the extent of potential contamination remaining around and/or beneath the residence after removal of the bulk soil in 2004 and of their understanding that the McIlvains did not object to the taking soil borings closer to their house.

19. In response, the McIlvains, by their attorney, reiterated that access was being denied for the 2006 incident, and demanding a new access agreement be entered into, which *inter alia* would provide additional monetary compensation to the McIlvains, payment of their legal fees, payment of their cost to hire their own environmental consultant.

20. Since the access was need to investigate the adequacy of the remediation efforts taken on the McIlvain’s property prior to the 2006 incident, and there was no

evidence that the 2006 incident contaminated the McIlvains' property, the demand for more money was inappropriate.

21. On October 16, 2007, CSD Environmental submitted a corrective action plan to the Agency for the 1996 incident which *inter alia* proposed further investigation of any contamination remaining near the residence following the 2004 excavation.

22. On October 25, 2007, the McIlvains, through their attorney, objected to the corrective action plan to the Agency, stating that Six M did not have authority to access the property, and that the Agency should deny it.

23. On February 13, 2008, the Agency approved the corrective action plan and budget.

24. Thereafter, CSD Environmental sought weather conditions that would permit investigative drilling on the McIlvains' property under the approved corrective action plan.

25. Sometime in 2011, CSD Environmental withdrew from offering consulting services for this project. CWM thereafter replaced it as consultant.

26. CWM approached the McIlvains this year to seek access to perform the approved corrective action plan, which was rejected on the grounds that the existing access agreement did not authorize it.

27. Performance of the approved corrective action plan has been rendered impossible by the McIlvains' refusal to provide access to their property.

28. While the Board regulations do not require performance of corrective action on an adjoining or off-site property where access is denied, 35 Ill. Admin. Code §



**732.404(c), Six M hopes that access will eventually be provided and therefore has so far declined to use the available procedure.**

WHEREFORE, Respondents, SIX M. CORPORATION, INC. and WILLIAM MAXWELL, pray for an order dismissing the complaint, or for such further relief as the Board deems meet and just.

SIX M. CORPORATION, INC. and WILLIAM  
MAXWELL,  
Respondents,

By their attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 N. Old Capitol Plaza, Ste. 325  
Springfield, IL 62701  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER

\\Patrick\My Documents\Six M\AnswerAffDef.wpd/lck 12/2/11 2:11 pm