

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 06 2011

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 SIX M. CORPORATION INC., an Illinois)
 corporation, WILLIAM MAXWELL, and)
 MARILYN MAXWELL,)
 Respondents.)


PCB No. PCB No. 12-35
(Enforcement-Water)

NOTICE OF FILING

ORIGINAL

TO: ALL PERSONS ON SERVICE LIST

PLEASE TAKE NOTICE that on the 1st day of December, 2011, I filed with the Clerk of the Pollution Control Board the ANSWER TO COMPLAINT BY THIRD-PARTY RESPONDENT McILVAIN, on behalf of JAMES McILVAIN, a true and correct copy of which is attached and served upon you.

BY: 
Phillip R. Van Ness
One of his attorneys

Phillip R. Van Ness
WEBBER & THIES, P.C.
202 Lincoln Square
Urbana, IL 61801
(217) 367-1126

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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ANSWER TO COMPLAINT BY THIRD-PARTY RESPONDENT McILVAIN

Now Comes Third-Party Respondent, JAMES McILVAIN ["McIlvain"], by his attorneys, Webber & Thies, P.C. and hereby responds to the Complaint as follows:

COUNT I

- 1. Admit
- 2. Admit
- 3. Admit

4. McIlvain has insufficient information to admit or deny the corporate status of Respondent Six M Corporation, or the identity of its registered agent.

- 5. Admit

6. McIlvain has insufficient information to admit or deny the relationship between the corporate Respondent, Six M Corporation, and William Maxwell and Marilyn Maxwell.

- 7. Section 12(a) of the Act speaks for itself.
- 8. Section 3.165 of the Act speaks for itself.
- 9. Section 3.545 of the Act speaks for itself.
- 10. Section 3.550 of the Act speaks for itself.
- 11. 35 Ill. Adm. Code 620.115 speaks for itself.
- 12. 35 Ill. Adm. Code 620.301(a) speaks for itself.

13. 35 Ill. Adm. Code 620.302(c) speaks for itself.

14. 35 Ill. Adm. Code 620.405 speaks for itself.

15. 35 Ill. Adm. Code 620.410(c) speaks for itself.

16. McIlvain has insufficient information to admit or deny the allegations of paragraph 16 of the Complaint.

17. Admit

18. McIlvain admits making a complaint to the OSFM regarding gasoline fumes and admits that OSFM personnel investigated, but has insufficient information to admit or deny the remaining allegations of paragraph 18 of the Complaint.

19. McIlvain denies that the first interceptor trench [see also McIlvain's Answer to par. 24, below] was west of the McIlvain property, insofar as the entirety of said first interceptor trench was within the McIlvain property, as was a prior shallow excavation immediately west of the McIlvain residence. Answering further, McIlvain personally observed free product in the first interceptor trench by sight and olfactory evidence.

20. McIlvain has insufficient information to admit or deny the allegations of paragraph 20 of the Complaint.

21. McIlvain has insufficient information to admit or deny the allegations of paragraph 21 of the Complaint.

22. McIlvain has insufficient information to admit or deny the allegations of paragraph 22 of the Complaint.

23. McIlvain has insufficient information to admit or deny the allegations of paragraph 23 of the Complaint.

24. McIlvain has insufficient information to admit or deny the allegations of paragraph 19 of the Complaint. Answering further, Mcilvain admits that during the months of August and September of 2004, the Respondents' consultant dug a second trench that originated on the Respondents' property but which traversed the northern and eastern portions of the McIlvain property for a distance of approximately 140 feet. This second trench appeared to exceed 12 feet in depth and 4 feet in width along its entire length.

25. Admit

26. McIlvain has insufficient information to admit or deny the allegations of paragraph 26 of the Complaint, except to the extent that McIlvain is aware of the 2006 release and of the fact that no further work, other than removal of 4 additional underground storage tanks from the Respondents' property in 2006, has been accomplished on his property since that time.

27. Paragraph 27 states a legal conclusion to which McIlvain declines to make response.

28. Paragraph 28 states a legal conclusion to which McIlvain declines to make response.

29. Paragraph 29 states a legal conclusion to which McIlvain declines to make response.

COUNT II

1-29. McIlvain incorporates by reference herein his Answers to paragraphs 1-29 of Count I.

30. Section 57.6(a) of the Act speaks for itself.

31. Section 57.7 of the Act speaks for itself.

32. McIlvain admits that the Respondents have failed to conduct a site investigation regarding the release reported on March 8, 2006. Answering further, the remainder of Paragraph 32 states a legal conclusion to which McIlvain declines to make response.

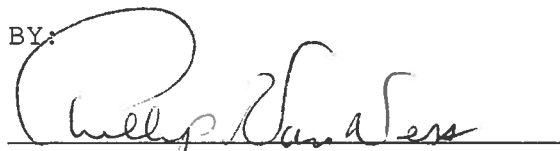
33. McIlvain has insufficient information to admit or deny the allegations of paragraph 33 regarding preparation or submission of a site investigation completion report to the Agency. Answering further, the remainder of Paragraph 33 states a legal conclusion to which McIlvain declines to make response.

34. Paragraph 34 states a legal conclusion to which McIlvain declines to make response.

RESPECTFULLY SUBMITTED,

JAMES McILVAIN

BY:



PHILLIP R. VAN NESS
One of his attorneys

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McILVAIN\ANSWER.PCB

Case No. PCB 12-35

CERTIFICATE OF SERVICE BY UNITED STATES MAIL

I, Phillip R. Van Ness, hereby certify that I delivered the foregoing ANSWER TO COMPLAINT BY THIRD-PARTY RESPONDENT McILVAIN upon:

John T. Therriault, Assistant Clerk
IL Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, IL 60601

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STATE OF ILLINOIS
Pollution Control Board

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

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Chief, Environmental Bureau
Office of the Illinois Attorney General
500 South Second Street
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ORIGINAL

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by placing a true and correct copy of said documents in the U.S. mail at Lincoln Square Mall, Urbana, Illinois, at or about the

hour of 5:00 p.m. on the 1st day of December, 2011, with proper postage prepaid.



SUBSCRIBED AND SWORN to before me
this 1st day of December, 2011.



Notary Public

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December 1, 2011

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STATE OF ILLINOIS
Pollution Control Board

WRITER'S E-MAIL ADDRESS:
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ORIGINAL

John T. Therriault, Assistant Clerk
IL Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, IL 60601

Re: People of State of Illinois v. SIX M et al
PCB No. 12-35 (Enforcement-Water)

Dear Mr. Therriault:

Enclosed please find the original and one copy of our Answer to Complaint by Third-Party Respondent McIlvain and the Notice of Filing. Please return a file stamped copy of each document to our office in the enclosed return envelope.

If you have any questions, please do not hesitate to call.

Sincerely,

WEBBER & THIES, P.C.

By *Kathleen Ronk*
Kathleen Ronk
Legal Assistant

Encls.