

ILLINOIS POLLUTION CONTROL BOARD  
September 7, 2017

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

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

On two occasions, suspected releases of petroleum products from underground storage tanks (USTs) at the facility known as the Walker Service Station were reported to the Illinois Emergency Management Agency (IEMA). The Walker Service Station is located at 430 West Clinton Avenue in Farmer City, Dewitt County. The first report was made in 1996 and the second was made in 2006.

In 2011, the Office of the Attorney General, on behalf of the People of Illinois (People), filed a complaint alleging that Six M Corporation, Inc. and William Maxwell violated the water pollution and corrective action requirements of the Environmental Protection Act (Act) and associated Board regulations by failing to take required action to remediate the UST leaks. Compl. at ¶¶ 27–29, 32–34, *citing* 415 ILCS 5/12(a) (2016) (water pollution); 35 Ill. Adm. Code 620.301(a), 620.405, 620.410(c) (groundwater quality standards); 415 ILCS 5/57.6(a), 57.7(a)(4) (2016) (site investigation requirement). The People allege that Six M and William Maxwell own and operate the Walker Service Station. Compl. at ¶ 6.

On March 6, 2017, the respondents moved for summary judgment only as to William Maxwell. They argue that the evidentiary record shows that William Maxwell did not own the Walker Service Station and therefore did not violate the Act. Mot. at 3. The People’s response, filed July 19, 2017, argues that the evidentiary record shows William Maxwell did own the Walker Service Station. The People argue in their response that the motion for summary judgment should be denied due to this genuine issue of material fact. Resp. at 2.

The Board finds that whether William Maxwell owned the Walker Service Station is a genuine issue of material fact. The Board therefore denies the motion for summary judgment.

The Board begins by providing background on undisputed facts, applicable laws, and the case's procedural history. Next, the Board discusses the issue of fact that precludes summary judgment. The Board concludes by directing the hearing officer to proceed to hearing.

## **BACKGROUND**

### **Undisputed Facts**

Two suspected releases of petroleum products at the Walker Service Station have been reported to IEMA. Answer ("Ans.") at ¶¶ 17, 25. The first suspected release was reported on May 13, 1996. *Id.* at ¶ 17. As of that date, the Walker Service Station held at least seven USTs used to store gasoline, diesel, motor oil, and heating oil. *Id.* at ¶¶ 16, 21. On May 15, 1996, the Office of the State Fire Marshal (OSFM) investigated a claim of gasoline odors in the basement at a nearby property. *Id.* at ¶ 18. A consultant hired by the respondents began to investigate and remediate the release by removing four USTs on June 5, 1996 and by removing contaminated soil from the site and the nearby property in August and September 2004. *Id.* at ¶¶ 21, 24.

The second suspected release was reported to IEMA on March 8, 2006. *Id.* at ¶ 25. The Illinois Environmental Protection Agency (Illinois EPA) approved site investigation plans submitted on behalf of the respondents on April 24, 2006 and October 17, 2006. *Id.* at ¶ 26.

### **Statutes and Regulations**

#### **Water Pollution**

The Act prohibits a person from allowing the discharge of contaminants as to cause water pollution or violate standards adopted by the Board. 415 ILCS 5/12(a) (2016). The Board's standards limit, among other things, concentrations of organic chemical constituents of petroleum fuels in groundwater. *E.g.*, 35 Ill. Adm. Code 620.410(c). The Board's rules specifically prohibit violating groundwater quality standards and impairing resource groundwater. 35 Ill. Adm. Code 620.301(a) (impairment of resource); 35 Ill. Adm. Code 620.405 (violation of groundwater quality standards).

#### **Failure to Take Corrective Action**

UST owners or operators must comply with reporting and response requirements when a release from a tank is confirmed and corrective action begins. 415 ILCS 5/57.6(a) (2016). For any required site investigation of a tank release, the owner or operator must submit a site investigation plan to Illinois EPA. When Illinois EPA approves the plan, the Act requires the owner or operator to carry it out. 415 ILCS 5/57.7(a)(4) (2016).

#### **Summary Judgment**

Under the Board's procedural rules, summary judgment is appropriate when "the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that

there is no genuine issue of material fact” and “that the moving party is entitled to judgment as a matter of law.” 35 Ill. Adm. Code 101.516(b).

This standard mirrors the standard that applies in Illinois trial courts, so cases interpreting Illinois’ summary judgment standard can inform how the Board interprets its own standard. Illinois courts have held that when “ruling on a motion for summary judgment, pleadings, depositions, and affidavits must be considered strictly against the movant and in favor of the opposing party . . . . The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine question of material fact exists.” Illinois Env’tl Prot. Agency v. Illinois Pollution Control Bd., 386 Ill. App. 3d 375, 391 (3d Dist. 2008) (citations omitted). Summary judgment “is a drastic means of disposing of litigation, and therefore, should be granted only when the right of the moving party is clear and free from doubt.” Adames v. Sheahan, 233 Ill. 2d 276, 296 (2009).

### **Procedural History**

The People filed their complaint on August 25, 2011. The complaint alleged that Six M and William Maxwell violated the Act by causing water pollution, exceeding water quality standards, and failing to conduct a site investigation. The respondents answered the complaint on December 2, 2011. They denied the alleged violations.

Progress toward a hearing then stalled for reasons immaterial to this opinion, but resumed when the parties agreed to a discovery schedule on June 2, 2016. Discovery closed on November 15, 2016, but was later reopened for the limited purpose of conducting depositions. William Maxwell moved for summary judgment on March 6, 2017; the People responded on July 19, 2017; and Mr. Maxwell replied on August 14, 2017.

### **DISCUSSION**

Summary judgment is appropriate when the record shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. William Maxwell argues that no evidence in the record shows he owned the Walker Service Station; evidence only shows that Six M owned the site. However, the People argue to the contrary: there is evidence in the record that indicates William Maxwell owned the site. For the reasons below, the Board finds that a genuine issue of material fact precludes summary judgment.

#### **The Record Shows a Genuine Issue on Ownership**

Evidence in the record indicates that William Maxwell owns the Walker Service Station. First, the People deposed the current operator of Walker Service Station, William Maxwell’s son Thomas Maxwell. At deposition, Thomas Maxwell stated that William Maxwell owns the Walker Service Station. Resp. at Attachment A (Tr. 12:24–13:7). Additionally, public property records indicate that William Maxwell owned the Walker Service Station when the alleged releases occurred. Resp. at Attachments C, D, E.

William Maxwell argues that evidence in the record conflicts with the evidence that the People present. The evidence he cites instead indicates that Six M owns the Walker Service Station. For instance, an October 17, 2011 affidavit from Thomas Maxwell states that Six M owns the Walker Service Station. Mot. at Exh. B. Furthermore, IEMA, Illinois EPA, and OSFM records appear to list an entity known as the “Walker Service Station” as the owner of the site. Mot. at Exh. A-4–A-9. However, this conflicting evidence shows that there is a genuine issue of fact.

The Board will not weigh conflicting evidence to resolve a genuine issue of fact when deciding a motion for summary judgment. Construing the evidence against the party moving for summary judgment, the Board finds that the record presents a genuine issue of fact concerning ownership of the Walker Service Station.

### **Ownership Is Material to the Claims**

#### **Ownership Is Material to the Water Pollution Claim**

Section 12(a) of the Act states that “no person” shall “allow” the discharge of any contaminants so as to cause water pollution or violate a Board-created standard. 415 ILCS 5/12(a) (2016). Illinois case law states that an owner with control of a site where water pollution occurs is considered to have allowed the discharge under Section 12(a) of the Act. Meadowlark Farms, Inc. v. Illinois Pollution Control Bd., 17 Ill. App. 3d 851, 861 (5th Dist. 1974). Therefore, whether William Maxwell owned the property when the alleged pollution occurred is material to the People’s water pollution claim.

#### **Ownership Is Material to the Corrective Action Claim**

The Act’s site investigation requirement in Section 57.7 provides that “the owner or operator shall conduct a site investigation in accordance with a plan” that Illinois EPA has approved. 415 ILCS 5/57.7(a)(4) (2016). The definitions that apply to this requirement state that the term “owner” takes a meaning provided in federal law: “any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances.” *See* 415 ILCS 5/57.2 (2016), 42 U.S.C. § 6991 (2016).<sup>1</sup>

A second definition of the term “owner” also applies to Section 57.7. A person who elects to proceed under the Act’s UST provisions and has an ownership interest in a site where tanks have been removed, but where Illinois EPA has not granted a no further remediation letter is also considered an “owner.” 415 ILCS 57.2 (2016). William Maxwell argues that because William Maxwell is not the “owner” under the alternative definition, then he cannot be found liable. However, this alternative definition only supplements the primary definition; it does not negate it.

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<sup>1</sup> Section 57.2 of the Act references “Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580).” The quoted provision of federal law is the definition of owner for a tank in use after 1984.

William Maxwell also argues that he cannot be liable as a corporate officer of Six M because no evidence shows he actively participated in allowing pollution. However, the People allege that William Maxwell is individually liable as the owner of the Walker Service Station, not as a corporate officer of the entity that owns the Walker Service Station. Ownership is material for liability, so the People do not need to produce evidence showing active participation to defeat a motion for summary judgment.

### **CONCLUSION**

Summary judgment is only appropriate when the movant's right to relief is clear and free from doubt. That is not the case here. Construing the evidence in favor of the party opposing summary judgment, the Board finds that whether William Maxwell owned the Walker Service Station is a genuine issue of material fact. Therefore, the Board denies Mr. Maxwell's motion for summary judgment. The hearing officer is directed to proceed to hearing.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 7, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board