

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2018

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 MCILVAINE,)
)
Necessary Party – Respondent.)

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

On August 25, 2011, the Office of Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Six M. Corp., Inc. (Six M.), William Maxwell, and Marilyn Maxwell (Comp.). The complaint concerns leaking petroleum underground storage tanks (USTs) at the Walker Service Station in Farmer City, Dewitt County. On July 2, 2018, the People filed a motion for permission to file an amended complaint, attaching the first amended complaint. The amendments sought by the People would replace William Maxwell with Thomas Maxwell and allege violations occurring after the original complaint was filed.

The Board’s procedural rules allow for filing an amended complaint with the Board’s permission. *See* 35 Ill. Adm. Code 103.206(d). But the rules specify that the amended complaint must be served on all respondents in any of three ways: “by U.S. Mail with a recipient’s signature recorded, a third-party commercial carrier with a recipient’s signature recorded, or personal service.” (*id.* at 103.206(e)(2)). The amended complaint must also include specified language providing notice to the respondent of the 60-day deadline to answer the complaint. 35 Ill. Adm. Code 103.204(f); *see* 35 Ill. Adm. Code 103.206(e)(2).

The People did not serve the first amended complaint on respondents in any of the required ways. The People instead served it by email. Nor did the People include the mandatory notice language. Serving an amended complaint in one of the required ways and providing the mandatory notice language are a prerequisite to filing. 35 Ill. Adm. Code 103.206(e) (“The pleading *sought to be filed* under subsection (d) must . . .” (emphasis added)). Until the People file proof of the required service and notice on all respondents (*see* 35 Ill. Adm. Code

101.304(d)), the Board reserves ruling on the merits of the People's motion for permission to file the first amended complaint.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2018, 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, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board