

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 12-35
)
 SIX M. CORPORATION INC., an Illinois) (Enforcement-Water)
 corporation, WILLIAM MAXWELL, and)
 MARILYN MAXWELL,)
 Respondents,)
)
 and)
)
 JAMES McILVAIN,)
)
 Necessary Party-Respondent)

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 APR 06 2012
 STATE OF ILLINOIS
 Pollution Control Board

NOTICE OF FILING

TO: ALL PERSONS ON SERVICE LIST

PLEASE TAKE NOTICE that on the 4th day of April, 2012, I filed with the Clerk of the Pollution Control Board the NECESSARY-PARTY RESPONDENT McILVAIN'S RESPONSE TO MOTION FOR RECONSIDERATION, on behalf of JAMES McILVAIN, a true and correct copy of which is attached and served upon you.

BY: Phillip R. Van Ness
 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

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 corporation, WILLIAM MAXWELL, and)
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 JAMES McILVAIN,)
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 Necessary Party-Respondent)

PCB No. 12-35
(Enforcement-Water)

NECESSARY-PARTY RESPONDENT McILVAIN'S
RESPONSE TO MOTION FOR RECONSIDERATION

Now Comes Necessary-Party Respondent, JAMES McILVAIN
[“McIlvain”], by his attorneys, Webber & Thies, P.C. and hereby
responds to the Respondent’s Motion for Reconsideration of the
Board’s Order dated February 12, 2012, as follows:

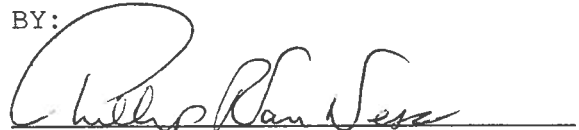
Mr. McIlvain does NOT agree with the People’s assertion, in
their March 27, 2012, Response to the Motion for Reconsideration,
that in deciding *sua sponte* to strike the Affirmative Defense,
the Board “ignored the constraints of existing law as argued by
the Respondents”. McIlvain believes the Board had ample
authority to issue such an Order on its own motion if it
concluded that no such affirmative defense can be raised as a
matter of law. However, McIlvain agrees with the People that
neither the People’s response nor McIlvain’s response to the
Affirmative Defense requested that the Affirmative Defense be
stricken.

WHEREFORE, Necessary Party-Respondent respectfully requests that the Board reconsider its February 12, 2012, Order and strike the alleged Affirmative Defense only if the Board concludes that, as a matter of law, Respondent cannot avail itself to such an affirmative defense.

RESPECTFULLY SUBMITTED,

JAMES McILVAIN

BY:

A handwritten signature in cursive script, appearing to read "Phillip R. Van Ness", is written over a horizontal line.

PHILLIP R. VAN NESS
One of his attorneys

PHILLIP R. VAN NESS
Webber & Thies, P.C.
202 Lincoln Square
P.O. Box 189
Urbana, IL 61801
Telephone: 217/367-1126
Telefax: 217/367-3752

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McILVAIN\RESPONSE TO MOT TO RECONSIDER.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 NECESSARY-PARTY RESPONDENT McILVAIN'S RESPONSE TO MOTION FOR RECONSIDERATION upon:

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

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APR 06 2012

**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

Thomas Davis
Chief, Environmental Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62706

SIX M CORPORATION INC.
%William Maxwell, R.A.
430 West Clinton Ave.
Farmer City, IL 61842

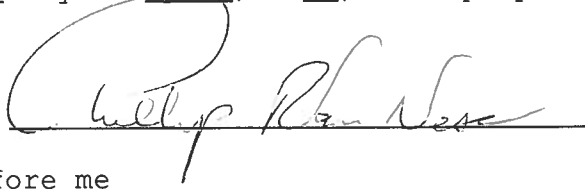
William and Marilyn Maxwell
430 West Clinton Ave.
Farmer City, IL 61842

Patrick Shaw, Esq.
Mohan, Alewelt, Prillaman & Adami
1 North Old State Capitol Plaza, Suite 325
Springfield, IL 62794-9276

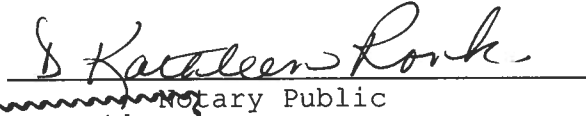
Kyle Davis, Esq.
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East, P.O. Box 19276
Springfield, IL 62794-9276

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 4 day of April, 2012, with proper postage prepaid.



SUBSCRIBED AND SWORN to before me
this 4th day of April, 2012.



Notary Public



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WEBBER & THIES, P.C.
ATTORNEYS AT LAW
202 LINCOLN SQUARE
P.O. Box 189
URBANA, ILLINOIS 61803-0189

RICHARD L. THIES
CARL M. WEBBER
DAVID C. THIES
HOLTEN D. SUMMERS
JOHN E. THIES
PHILLIP R. VAN NESS
KARA J. WADE
J. AMBER DREW
J. MATTHEW ANDERSON
JAMES R. SHULTZ

WEBSITE:
<http://www.webberthies.com/>

April 4, 2012

CHARLES M. WEBBER
(1903-1991)
CRAIG R. WEBBER
(1936-1998)

TELEPHONE
(217) 367-1126
TELECOPIER
(217) 367-3752
(217) 367-3752

WRITER'S E-MAIL ADDRESS:
pvanness@webberthies.com

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

Dear Mr. Therriault:

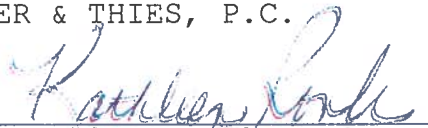
Enclosed please find the original and one copy of Necessary-Party Respondent McIlvain's Response to Motion for Reconsideration. Please return a file stamped copy of each document to our office in the enclosed return envelope.

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

Sincerely,

WEBBER & THIES, P.C.

By


Kathleen Ronk
Legal Assistant

Encls.