



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

**PEOPLE OF THE STATE OF ILLINOIS,)**  
                  **Complainant,                  )**  
                  **v.  )**    **PCB NO. 12-35**  
  **)**    **(Enforcement – Water)**  
**SIX-M CORPORATION, INC., and          )**  
**WILLIAM MAXWELL,                          )**  
                  **Respondents.                  )**

**RESPONDENT’S MOTION FOR EXTENSION OF TIME TO FILE  
REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AS TO WILLIAM MAXWELL INSTANTER**

NOW COMES Respondents, SIX-M CORPORATION, INC. and WILLIAM MAXWELL, pursuant to Section 101.516 of the Pollution Control Board’s procedural regulations (35 Ill. Adm. Code § 101.516), and hereby moves the Hearing Officer, for leave to file the attached Reply in Support of Motion for Summary Judgment as to William Maxwell instanter, stating as follows:

1. On July 19, 2017, Complainant filed Complainant’s Response to Respondents Motion for Summary Judgment..
2. Pursuant to the Hearing Officer Order of June 19<sup>th</sup>, Respondents were given until August 2, 2017 to file a reply.
3. The Hearing Officer is authorized to extend the deadline by written motion. (35 Ill. Adm. Code § 101.516)
4. From July 20<sup>th</sup> to July 24<sup>th</sup>, Respondents’ attorney was on family vacation and planned to have time to file a reply on returning.
5. Upon returning, however, Respondents’ attorney contracted the flu, and was

unable to meet other Board deadlines. See City of Benton Fire Department v. IEPA, PCB 2012-035 (motion for extension of deadline filed).

6. Subsequently, undersigned developed a middle ear infection and found it difficult to keep up with deadlines.

7. Undersigned counsel is not aware of any prejudice that would result from a delay of twelve days, and certainly did not intend to cause any inconvenience.

8. A copy of the response is filed herewith today.

WHEREFORE, Respondents, prays for an order authorizing the filing of the attached reply instanter, or for such other and further relief the Hearing Officer deems meet and just.

Respectfully submitted by  
SIX M. CORPORATION, INC. and WILLIAM  
MAXWELL, respondents,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Law Office of Patrick D. Shaw  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
[pdshaw1law@gmail.com](mailto:pdshaw1law@gmail.com)

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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

PEOPLE OF THE STATE OF ILLINOIS,) )  
Complainant, ) )  
v. ) ) PCB NO. 12-35  
 ) ) (Enforcement – Water)  
SIX-M CORPORATION, INC., and ) )  
WILLIAM MAXWELL, ) )  
Respondents. ) )

**RESPONDENTS’ REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AS TO WILLIAM MAXWELL**

NOW COME Respondents, Six-M Corporation, Inc., and William Maxwell, by their undersigned counsel, in reply in support of its motion for summary judgment as to William Maxwell, stating as follows:

**Introduction**

This motion was filed at the completion of discovery, and asserts there is no evidence by which William Maxwell violated the Act or otherwise actively participated in any violation. It was then and there the People’s burden to “produce some competent, admissible evidence which, if proved, would warrant entry of judgment for the opposing party.” Brown, Udell and Pomerantz, Ltd. v. Ryan, 369 Ill.App.3d 821, 824 (1<sup>st</sup> Dist. 2006). “Mere speculation, conjecture, or guess is insufficient to withstand summary judgment.” Carlson v. Chicago Transit Auth., 2014 IL App (1st) 122463, ¶ 23. Nor is a “mere scintilla of evidence” sufficient to defeat summary judgment, as the evidence must be sufficient to prove an issue as to which the nonmovant has the burden of proof at trial. Benner v. Bell, 236 Ill.App.3d 761, 768-69 (4<sup>th</sup> Dist. 1992). Since discovery is completed, the Board can and should expect to be presented with the

evidence that would be presented by the People at hearing to prove William Maxwell's acts or omissions, and it is simply insufficient to seek to try to raise questions and shift the burden away from itself.

**I. THERE IS STILL NO EVIDENCE THAT WILLIAM MAXWELL ACTIVELY PARTICIPATED IN ANY VIOLATION.**

William Maxwell can only be liable for violating the Act if evidence demonstrates his "active participation in the acts resulting in liability, not just that he had personal involvement or active participation in the management of the corporation." People ex rel. Madigan v. Tang, 346 Ill. App. 3d 277, 289 (1st Dist. 2004). The evidence produced by the People does not identify William Maxwell's acts which resulted in the violations, but instead points to potential legal relationships William Maxwell may have had with the property or the business at times, none of which meet the requirement of "active participation in the acts resulting in liability," but involve mere personal involvement in the business.

Primarily, Complainant relies on property ownership. First, it relies upon an exhibit that shows that William Maxwell deeded what the Complainant refers to as the "North side Property" in 1988. (Resp. Attach. C) The North side Property is the tire and auto service business; the property south of the road had the service station until the tanks were removed in July of 2006. With respect to the "South side Property," Complainant presents evidence that Claude Walker owned the property in the 1990s, that his daughter, Marilyn Maxwell had acquired the property by September of 2006, at which time she deeded half of the property to Six M Corporation.

(Resp. Attachs. D & E)<sup>1</sup> Marilyn Maxwell passed away on July 20, 2009, at the age of 77. (Mot. Ex. B, ¶ 5) A reasonable inference is that Marilyn Maxwell's interest was bequeathed to her husband, William Maxwell, some time thereafter. Complainant does not provide any information about what and when "the acts resulting in liability" occurred. That is because Complainant has no evidence of any acts.

In addition, it is argued that William Maxwell occupied a continuing management position over operations. Even if this is true, it is simply irrelevant that he maintained "personal involvement or active participation in the management of the corporation." " People ex rel. Madigan v. Tang, 346 Ill. App. 3d 277, 289 (1st Dist. 2004). No evidence has contradicted, Tom Maxwell's statement that he took over management of Walker Tire Service some time "prior to May 13, 1996, when I called the Illinois Emergency Management Agency to report a suspected release of gasoline from one or more underground storage tanks at the property." (Mot. Ex, B, ¶5 & ¶6) This date was selected because there is a substantial paperwork trail in the LUST file in which Tom Maxwell is the agent for Six-M Corporation that called in the initial incident and continued to sign the paperwork on behalf of Six-M Corporation. As stated in the subject motion, all of the documents in the LUST File are "signed by someone other than William Maxwell or mailed by the Illinois EPA to someone other than William Maxwell." (Mot. at p. 8) Complainant does not present any evidence to the contrary or explain why this the LUST files are irrelevant. It does suggest that Respondents are relying on "their" LUST file (Resp. at p.

---

<sup>1</sup> The quit claim deed transferred ownership of four parcels.

11), when in fact, we received the Agency's LUST file from Complainant. (Mot. Ex. A)<sup>2</sup>

The People argue that Respondents overlook that this case is not simply about the failure to complete the cleanup, but that William Maxwell "caused or allowed the release." (Resp. at p. 7) It is easy to overlook this assertion when the Complainant present no evidence on this issue, and conducted no discovery seeking to learn any. (Respondent's Ex. A hereto (all production requests directed towards post-release attempts to obtain access)) The lack of evidence though is not surprising. As pointed out in the subject motion underground releases can occur without any apparent cause. Malone v. Ware Oil Co., 179 Ill.App.3d 730, 737 (4<sup>th</sup> Dist. 1989). This is the primary reason that the LUST program was created, to address the unique risks and problems of undetected, slow leakage over many years, which can be greater than aboveground releases. Township of Harlem v. E.P.A., 265 Ill.App.3d 41, 44 (2nd Dist. 1994) (affirming Board's explanation of the differences with underground releases: "By nature, such leaks are difficult to spot, and often difficult to prevent. Once a tank is placed in the ground, the owner has little practical control over it.")

In summary, the response fails to state what William Maxwell did or did not do which caused a violation. The People's speculations about roles he may have had at different times are entirely irrelevant without evidence of acts or omissions. If the People did have such evidence, then Respondents could specifically address William Maxwell's role, or lack thereof, at the time in question. Without such evidence, the motion should be granted.

---

<sup>2</sup> Respondents have no objection if the Board wants to review the entire Agency Lust file. It contains over a hundred documents, so Respondents didn't want to burden the Board with every single document.

**II. THE BOARD SHOULD NOT SET ASIDE THE OFFICE OF THE STATE FIRE MARSHAL'S FINAL DECISIONS.**

There is no material question of fact that the registered owner/operator of the tanks is Six-M Corporation, doing business as Walker Tire. (Mot. Exs. A-2 & A-7) People argue that there is a question of fact concerning UST ownership, citing *inter alia* the case of Griffiths v. Office of the State Fire Marshall, 301 Ill. App. 3d 658, 661 (2nd Dist. 1998). Tellingly, that case is an administrative review appeal from a decision made by the Office of the State Fire Marshal (hereinafter "the OSFM"). Since the passage of Title XVI of the Illinois Environmental Protection Act (415 ILCS 5/57 *et seq.*, added by P.A. 88-496, § 15 (effective Sept. 13, 1993)), the OSFM has had sole responsibility to determine ownership or operation of tanks. Such determinations are final and appealable to the Board. (415 ILCS 5/57.9( c))

Pursuant to this determination, Six-M Corporation enrolled in the LUST remediation program and received reimbursements. In addition to receiving an eligibility determination from the OSFM, the Illinois EPA requires an identification of legal status and taxpayer identification number. (Resp. Ex. A-3) Given the extensive background of the cleanup overseen by the Illinois EPA (Resp. Attach. L), this meant that the Illinois EPA would have approved dozens of plans, budgets and applications for payment to Six-M Corporation. To suggest that the assumed name was confusing, does not give these state agencies sufficient credit and their determinations should not be subject to collateral attack. Nor is there any evidence that William Maxwell did business as an individual under this name, particularly as common sense dictates that the name "Walker" name derived from the late Claude Walker.

As one minor point of order to avoid potential confusion or error, the 1986 notification



document (Resp. Attach. G) was not a registration document at the time it was created. This document relates to a notification requirement imposed under RCRA to disclose the existence, age, size, type, location, and uses of each tank. (42 U.S.C. § 6991a) Based upon this notice each State was required to submit an inventory to the USEPA id., from which regulations were ultimately developed. It was only later that the OSFM decided to use the notifications as a registration document, thought not entirely satisfactorily. See Stroh Oil v. OSFM, 281 Ill.App.3d 121, 128 (4<sup>th</sup> Dist. 1996) (explaining how OSFM's reliance on the federal notification form as a registration document technically violated the state forms act). So while in retrospect the 1986 notification is important and is now considered a registration document, it was not necessarily considered such at the time. More importantly, nothing in that notice is not subject to change or clarification (other than whether it was timely given), so a single registration document is not determinative of anything, whether or not ambiguous.

Given the fact-intensive issues regarding whether someone is an owner or operator of underground storage tanks, it is clear from the information submitted that the People do not have evidence to undertake the analysis. The People improperly argue that there is no evidence of any formal lease (Resp. at p. 6), when in fact, the People do not know one way or the other whether there is a formal lease and are asking the Board to speculate as to business documents that it never sought.

The issues presented regarding the underground storage tanks properly destroyed over ten years ago do not relate to William Maxwell. The affidavit of the Project Manager for the LUST Program indicates that investigation and major remediation has been performed by Six-M. (Resp. Attach. L) Furthermore, while the Stage 2 Site Investigation has been performed for the

second incident, the Stage 3 Site Investigation has not. (Id. at ¶ 16) While the People imply that there is contamination on Six-M's property (Resp. at p. 9), the evidence submitted does not demonstrate this to be the case. The samples taken in the LUST Program are for purposes of identifying the extent of soil and groundwater contamination utilizing the most stringent standards, not necessarily the applicable site remediation objectives. The most obvious consideration is that Six-M's property is commercial and thus not subject to the most stringent remediation standards for complying with the Act,<sup>3</sup> but traditionally service station property is required to obtain use of a groundwater ordinance, engineered barriers and other mechanisms to eliminate exposure routes. Given all that, however, the issue apparent in the filings is that the neighbor wants compensation for site access. (Resp. Attach , at pp. 23-24) It cannot be questioned that site access is a prerequisite to conducting a Stage 3 Site Investigation. (35 Ill. Adm. Code § 734.325) This in turn means the issues are whether, access must be paid for by the owner/operator of the former underground storage tanks, or whether the owner/operator is required under the Board's regulations to obtain a limited No Further Remediation Letter. (35 Ill. Adm. Code § 734.350)<sup>4</sup>

The evidence before the Board is inadequate to attempt to answer these issues pertaining to site access, but these are the obvious issues presented in the pleadings, affidavits and exhibits

---

<sup>3</sup> The People argue that Section 12(a) of the Act is separate from the LUST Program provisions and not constrained by mere regulations. This misses the point as the LUST Program is in part a regulatory program, but it is also a remediation program and compliance with the LUST Program is designed to achieve compliance with the Act.

<sup>4</sup> It should be noted that the effect of a Limited No Further Remediation letter is ambiguous with respect to future LUST Fund eligibility, given the general bar to reimbursement following issuance of a No Further Remediation Letter and none of the relevant provisions specifically address applicability to limited letters. (35 Ill. Adm. Code § 734.632)

before the Board. And in no event, does William Maxwell have anything to do with them. Even blind acceptance of the People's insinuations and speculations, the evidence is that William Maxwell is retired and has been diagnosed with late onset Alzheimer's related dementia and suffers from memory loss. (Resp. Attach A, at pp. 7-8; and Respondent's Ex. B hereto, which was Exhibit 2 to the Deposition of Tom Maxwell). As the purpose of civil enforcement is not to punish past-wrongdoing, but to encourage compliance with the Act, it remains unexplained what purpose is served in proceeding against a person unquestionably not involved in operations. See Park Crematory v. Pollution Control Bd., 264 Ill.App.3d 498, 502 (1<sup>st</sup> Dist. 1994).

In summary, the administrative determinations that Six-M is the owner/operator of the former underground storage tanks should not be set aside by the Board, and in any event, the People have not presented evidence from which the Board could decide that William Maxwell is the owner/operator of the former underground storage tanks.

WHEREFORE, Respondents, SIX M. CORPORATION, INC. and WILLIAM MAXWELL, pray for an order granting William Maxwell summary judgment in full, or for such further relief as the Board deems meet and just.

Respectfully submitted by

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

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Law Office of Patrick D. Shaw  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
[pdshaw1law@gmail.com](mailto:pdshaw1law@gmail.com)

THIS FILING IS SUBMITTED ON RECYCLED PAPER

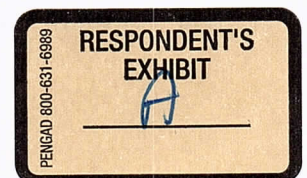
**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB No. 12-035  
 ) (Enforcement – Water)  
 SIX M. CORPORATION, INC., an Illinois, )  
 corporation, and WILLIAM MAXWELL, )  
 )  
 Respondents, )  
 )  
 and )  
 )  
 JAMES MCILVAINE, )  
 )  
 Necessary Party. )

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO RESPONDENTS**

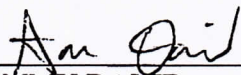
COMES NOW the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Supreme Court Rule 214, hereby requests that the Respondents, SIX M CORPORATION, INC. and WILLIAM MAXWELL, produce the following documents:

1. Any and all documents related to negotiations for gaining access to the McIlvaine's property for investigation and remediation.
2. Any and all correspondence between Respondent and the McIlvaines regarding access to the McIlvane's property for investigation and remediation.



3. Any and all correspondence between Respondent and CW<sup>3</sup>M Company, Inc. regarding the investigation and remediation to be performed on the McIlvaine's property.

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN,  
Attorney General of the State of Illinois

BY:   
SAMMY DAVID  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, IL 60602  
(312) 814-3816  
Primary email: [sdavid@atg.state.il.us](mailto:sdavid@atg.state.il.us)  
Secondary email: [mcacaccio@atg.state.il.us](mailto:mcacaccio@atg.state.il.us)  
Secondary email: [cgrant@atg.state.il.us](mailto:cgrant@atg.state.il.us)

Dated: April 8, 2016

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 12-035
	)	(Enforcement – Water)
SIX M. CORPORATION, INC., an Illinois,	)	
corporation, and WILLIAM MAXWELL,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
JAMES MCILVAINE,	)	
	)	
Necessary Party.	)	

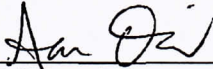
**COMPLAINANT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**  
**DIRECTED TO RESPONDENTS**

COMES NOW the Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Supreme Court Rule 214, hereby requests that the Respondents, SIX M CORPORATION, INC. and WILLIAM MAXWELL, produce the following documents:

1. Any and all documents related to the access agreement allowing Respondent access to the McIlvaine's property for investigation and remediation of the 1996 release at the Walker's Service Station.

2. Any and all correspondence between Respondent and the McIlvaines regarding access to the McIlvane's property for investigation and remediation of the 1996 release at the Walker's Service Station.

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN,  
Attorney General of the State of Illinois

BY:   
\_\_\_\_\_  
SAMMY DAVID  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, IL 60602  
(312) 814-3816  
Primary email: [sdavid@atg.state.il.us](mailto:sdavid@atg.state.il.us)  
Secondary email: [mcacaccio@atg.state.il.us](mailto:mcacaccio@atg.state.il.us)  
Secondary email: [cgrant@atg.state.il.us](mailto:cgrant@atg.state.il.us)

Dated: July 14, 2016





1230 George Rock Drive  
Farmer City, IL 61842  
Phone: (309)928-9192  
Fax: (309)928-5316

05/31/2017

To whom it may concern,

William Maxwell is a patient currently under my care. At the request of Mr Maxwell's son, Tom, our office is providing this letter informing you that Mr Maxwell has a diagnosis of late onset Alzheimer's related dementia and suffers from memory loss. In my opinion, he would not be able to recall past events.

Sincerely,

*Kara Moody APN, CNP*

Provider: Kara Moody ANP CNP 5/31/2017

Document generated by: Christie L. Dobbs 05/31/2017 12:25 PM

