

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 25, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601 a COMPLAINT and MOTION FOR JOINDER, copies of which are attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2010), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

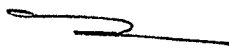
BY: 

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 14, 2011

CERTIFICATE OF SERVICE

I hereby certify that I did on October 14, 2011, cause to be served by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT and MOTION FOR JOINDER upon the persons listed on the Service List.



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Mr. Phillip Van Ness
Attorney at Law
P.O. Box 189
Urbana, IL 61803-0189

Mr. James McIlvain
407 West Clinton Avenue
Farmer City, IL 61842

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No. 12- 35
)	(LUST-Enforcement)
SIX M. CORPORATION INC., an Illinois)	
corporation, WILLIAM MAXWELL; and)	
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)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, SIX M. CORPORATION INC., an Illinois corporation, WILLIAM MAXWELL and MARILYN MAXWELL, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board.
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31

(2010), after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

4. SIX M. CORPORATION INC. is an Illinois corporation in good standing and authorized to do business in the State of Illinois. Its registered agent is William Maxwell, 430 West Clinton Avenue, Farmer City, Illinois 61842.

5. WILLIAM MAXWELL and MARILYN MAXWELL are residents of De Witt County, Illinois.

6. At all times relevant to this Complaint, the Respondents have owned and operated a gasoline service station ("facility") doing business as "Walker's Service Station" and located at 430 West Clinton Avenue, Farmer City, De Witt County, Illinois.

7. Section 12(a) of the Act, 415 ILCS 5/12 (2010), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), contains the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.

9. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), contains the following definition:

“Water Pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

10. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), contains the following definition:

“Waters” means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

11. Section 620.115 of the Board’s Groundwater Quality Regulations, 35 Ill. Adm. Code 620.115, provides:

Prohibition

No person shall cause, threaten, or allow a violation of the Act, the IGPA or regulations adopted by the Board thereunder, including but not limited to this Part.

12. Section 620.301(a) of the Board’s Groundwater Quality Regulations, 35 Ill. Adm. Code 620.301(a), provides:

General Prohibition Against Use Impairment of Resource Groundwater

- a. No person shall cause, threaten, or allow the release of any contaminant to a resource groundwater such that:
 - 1. Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or

2. An existing or potential use of such groundwater is precluded.

13. Section 620.302(c) of the Board's Groundwater Quality Regulations, 35 Ill. Adm.

Code 620.302(c), provides:

Applicability of Preventative Notification and Preventative Response Activities

- c. If a contaminant exceeds a standard set forth in Section 620.410 or Section 620.430, the appropriate remedy is corrective action and Sections 620.305 and 620.310 do not apply.

14. Section 620.405 of the Board's Groundwater Quality Regulations, 35 Ill. Adm.

Code 620.405, provides:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

15. Section 620.410(c) of the Board's Groundwater Quality Regulations, 35 Ill. Adm.

Code 620.410(c), provides:

Complex Organic Chemical Mixtures

Concentrations of the following organic chemical constituents of gasoline, diesel fuel, or heating fuel must not be exceeded in Class I groundwater:

<u>CONSTITUENT</u>	<u>STANDARD (mg/L)</u>
Benzene*	0.005
BETX	11.705

* Denotes a carcinogen.

16. On or about April 18, 1986 William Maxwell submitted to the Office of State Fire Marshal ("OSFM") a registration of ownership regarding four underground storage tanks in

operation at Walker's Service Station. Tank No. 1 was described as a 10,000 gallon tank used for gasoline fuel storage. Tank No. 2 was described as a 4,000 gallon tank used for gasoline fuel storage. Tank No. 3 was described as a 2,000 gallon tank used for diesel fuel storage. Tank No. 4 was described as a 250 gallon tank for the storage of used motor oil.

17. On May 13, 1996 a report was made to the Illinois Emergency Management Agency ("IEMA") that gasoline had been released from an underground storage tank at Walker's Service Station. IEMA assigned Incident Number 960810 to the reported release.

18. On May 15, 1996 OSFM investigated a complaint by James McIlvain of 407 West Clinton Avenue, Farmer City, regarding gasoline fumes in his basement. OSFM detected volatile petroleum fumes with a lower explosive limit of 100 per cent at the basement drains.

19. The Respondents excavated an interceptor trench at the facility on May 15, 1996. The trench was dug approximately 20 feet west of and parallel to the McIlvain property. OSFM determined the excavated soil to be heavily contaminated with petroleum products and detected volatile petroleum fumes with a lower explosive limit of 100 per cent. The trench contained free product at that time.

20. The Respondents retained a consultant, Armor Shield of Illinois, to remediate the release. The consultant submitted to OSFM on May 22, 1996 an amended registration regarding the underground storage tanks in operation at Walker's Service Station. Tank No. 4 was then described as a 1,000 gallon tank for the storage of used motor oil. Tank No. 5 was described as a 560 gallon tank for the storage of gasoline fuel. Tank No. 6 was described as a 560 gallon tank for the storage of diesel fuel. The consultant also submitted to OSFM an application for a permit to remove Tank Nos. 4, 5 and 6.

21. On June 5, 1996 the consultant for the Respondents removed Tank Nos. 4, 5 and 6 from the facility. Another tank, identified as Tank No. 7 and described as a 300 gallon tank previously used for storage of unspecified products, was also removed.

22. On September 27, 1996 the consultant submitted to the Illinois EPA proposals for the site classification work plan and budget. On October 3, 1996 the Illinois EPA issued its approvals. The site classification completion report was submitted on April 7, 1997 and approved on April 15, 1997.

23. The first high priority corrective action plan ("CAP") was submitted on behalf of the Respondents on May 22, 1998; the Illinois EPA issued its required modifications on June 3, 1998. The high priority CAP was resubmitted on February 16, 1999; the Illinois EPA issued its required modifications on March 17, 1999. The high priority CAP was resubmitted again on April 20, 1999; the Illinois EPA issued its required modifications on May 20, 1999. The high priority CAP was not resubmitted until four years later on May 20, 2003. The Illinois EPA denied the high priority CAP on June 12, 2003. The high priority CAP was resubmitted on July 18, 2003; the Illinois EPA denied the high priority CAP again on September 25, 2003. The high priority CAP was resubmitted on February 17, 2004; the Illinois EPA issued its required modifications on March 31, 2004.

24. During August and September 2004, a total of approximately 13,676 tons of contaminated soils were removed from the facility and the McIlvain property. The removal of contaminated soils continued until the excavation reached a depth of 14 feet. The analytical results of samples collected from within the excavation demonstrated the need for additional remediation. At this time, more than eight years after the release was reported, the concentrations

of Benzene and BETX in the groundwater exceeded the standards set forth in Section 620.410(c) and thereby triggered the mandatory requirement of corrective action pursuant to Section 620.302(c). The soil sample results demonstrated that the soil contamination within the perimeter walls of the excavation exceeded the Tier I cleanup objectives provided by 35 Ill. Adm Code Part 742 ("TACO").

25. On March 8, 2006 the Respondents reported to IEMA a subsequent release of gasoline and diesel fuels from underground storage tanks at Walker's Service Station. IEMA assigned Incident Number 20060291 to the second reported release.

26. On April 24 and October 17, 2006 the Illinois EPA approved site investigation plans submitted on behalf of the Respondents. Claims were submitted on September 19, 2006 and reimbursement from the LUST Fund was approved on March 10, 2008. No further work has apparently been accomplished since 2006 and the second release has not been remediated.

27. By causing or allowing the release of Benzene and BETX to the groundwater, the Respondents contaminated the groundwater and precluded possible use of that water and necessitated treatment of the groundwater to allow its use in the future, and have thereby violated Section 620.301(a) of the Board's Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a).

28. By causing or allowing the release of Benzene and BETX to the groundwater in concentrations exceeding the water quality standards, the Respondents have violated Sections 620.405 and 620.410(c) of the Board's Groundwater Quality Standards, 35 Ill. Adm. Code 620.405 and 620.410(c).

29. By failing to remediate the LUST releases at Walker's Service Station, the Respondents have caused or allowed the discharge of Benzene and BETX to the groundwater so

as to cause water pollution and to exceed the water quality standards, and have thereby violated Section 12(a) of the Act, 415 ILCS 12(a) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondents, SIX M. CORPORATION INC., WILLIAM MAXWELL and MARILYN MAXWELL:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that this Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), and the regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose upon the Respondents a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

COUNT II
FAILURE TO TAKE CORRECTIVE ACTION

1-29. Complainant realleges and incorporates herein by reference paragraphs 1 through 29 of Count I as paragraphs 1 through 29 of this Count II.

30. Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2010), provides as follows:

- (a) Owners and operators of underground storage tanks shall, in response to all confirmed releases, comply with all applicable statutory and regulatory reporting and response requirements.

31. Section 57.7 of the Act, 415 ILCS 5/57.7 (2010), provides in pertinent part as

follows:

(a) Site investigation.

* * *

- (4) Upon the Agency's approval of a site investigation plan, or as otherwise directed by the Agency, the owner or operator shall conduct a site investigation in accordance with the plan.
- (5) Within 30 days after completing the site investigation, the owner or operator shall submit to the Agency for approval a site investigation completion report.

* * *

32. The Respondents have failed to conduct a site investigation regarding the March 8, 2006 release at Walker's Service Station. The Respondents have thereby violated Section 57.7(a)(4) of the Act, 415 ILCS 5/57.7(a)(4) (2010).

33. Alternatively, if a site investigation were in fact conducted in accordance with the plans approved in 2006, the Respondents have subsequently failed to submit to the Agency for approval a site investigation completion report. The Respondents have thereby violated Section 57.7(a)(5) of the Act, 415 ILCS 5/57.7(a)(5) (2010).

34. By failing to conduct a site investigation in accordance with the approved plans or by failing to report on the completion of the site investigation, the Respondents have failed to take corrective action and to comply with all applicable statutory and regulatory reporting and response requirements, and have thereby violated Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully

request that the Board enter an Order against Respondents, SIX M. CORPORATION INC.,
WILLIAM MAXWELL and MARILYN MAXWELL:

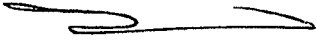
- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that this Respondents have violated Sections 57.6(a) and 57.7(a) of the Act, 415 ILCS 5/57.6(a) and 57.7(a) (2010);
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose upon the Respondents a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

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500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 8/25/11

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MARILYN MAXWELL,)	
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MOTION FOR JOINDER

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves pursuant to Section 101.403 of the Board's Procedural Rules to add James McIlvain as a party to this enforcement action, and states as follows:

1. A Complaint is being filed against Respondents, SIX M. CORPORATION INC., an Illinois corporation, WILLIAM MAXWELL and MARILYN MAXWELL, regarding releases from underground storage tanks at "Walker's Service Station" located at 430 West Clinton Avenue, Farmer City, De Witt County, Illinois.
2. James McIlvain owns property adjacent to "Walker's Service Station" and located at 407 West Clinton Avenue, Farmer City. As alleged in the Complaint, the McIlvain property was contaminated by the May 13, 1996 LUST incident and this off-site contamination has not been corrected due to the failure of the Respondents to complete corrective action and to comply with all applicable statutory and regulatory response requirements.

3. Section 22.2c of the Act, 415 ILCS 5/22.2c (2010), authorizes a party to seek judicial relief in order to accomplish the remediation of an adjacent site:

If remediation of real property contaminated by hazardous substances or petroleum products cannot be reasonably accomplished without entering onto land adjoining the site from which those substances were released, and if the owner of the adjoining land refuses to permit entry onto the adjoining land for the purpose of effecting remediation, then the owner or operator of the site may bring an action to compel the owner of the adjoining land to permit immediate entry for purposes relating to the remediation of the site, the adjoining land, and any other real property that may be contaminated with the hazardous substances or petroleum products. The court shall prescribe the conditions of the entry and shall determine the amount of damages, if any, to be paid to the owner of the adjoining land as compensation for the entry. The court may require the owner or operator who is seeking entry to give bond to the owner of the adjoining land to secure performance and payment.

4. Counsel for the Respondents has informed the Attorney General's Office that, after the corrective action plan was approved, work on delineating the existence and extent of the contamination on the neighboring property was halted by "lack of cooperation from the neighboring property owner in providing needed access." However, upon information and belief, the Complainant states that the Respondents have taken no action pursuant to Section 22.2c of the Act to obtain a court order regarding site access.

5. Upon information and belief, the Complainant states that James McIlvain is also represented by counsel and may have exercised his rights and privileges pursuant to legal advice, and that any purported "lack of cooperation" may be justified.

6. James McIlvain should be added pursuant to Section 101.403 as a necessary party to this enforcement action because a complete determination of any controversy cannot be had without his presence, he has an interest that the Board's adjudicatory order may affect, and it may be necessary for the Board to impose some condition on him regarding site access in order for the

Respondents to complete the remediation of this adjacent site.

WHEREFORE, the Complainant respectfully seeks to add James McIlvain as a necessary party to this enforcement action.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

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Dated: 8/25/11