

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,)	
)	
Respondents,)	
)	
and)	
)	
JAMES McILVAINE,)	
)	
Necessary Party-Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List


PLEASE TAKE NOTICE that on March 27, 2012, 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 RESPONSE TO MOTION FOR RECONSIDERATION, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

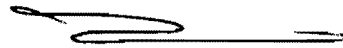
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
Thomas Davis, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on March 23, 2012, cause to be served by First Class Mail, 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 and RESPONSE TO MOTION FOR RECONSIDERATION upon the persons listed on the Service List.



Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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corporation, and WILLIAM MAXWELL,)
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PCB No. 12-35
(Enforcement – Water)

RESPONSE TO MOTION FOR RECONSIDERATION

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Motion for Reconsideration of the February 12, 2012 Order striking the affirmative defense pleaded in the Answer to the Complaint, and states as follows:

Respondents William Maxwell and Six-M Corporation Inc. filed their Answer on December 2, 2011 and raised therein an affirmative defense. Section 103.204(d) of the Board's Procedural Rules contains the following provision: "Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing." The People filed a response on December 7, 2011 and objected to the affirmative defense of "impossibility" being asserted in this enforcement matter. The People did not move to strike but rather responded to each of the

allegations of the affirmative defense. Nonetheless, the Board issued an Order on February 12, 2012 striking *sua sponte* the affirmative defense. By doing so the Board ignored the constraints of existing law as argued by the Respondents, and reconsideration is thus appropriate.

The People's December 7, 2011 response to the affirmative defense raised by the Respondents was not intended as a motion to strike nor did it request that the defense "be stricken as improper" as the Board noted in its Order [slip op. at 2]. Therefore, the ruling is erroneous to the extent that it is premised upon a request that was never made.

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that the Board reconsider and correct its February 12, 2012 Order striking the affirmative defense.

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: 

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Dated: 3/27/12