

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

**PEOPLE OF THE STATE OF ILLINOIS,)**

**Complainant, )**

**v. )**

**PCB NO. 12-35  
(Enforcement – LUST/Water)**

**SIX M CORPORATION, INC., and )**

**THOMAS MAXWELL, )**

**Respondents, )**

**and )**

**JAMES MCILVAIN, )**

**Necessary Party. )**

**NOTICE OF FILING AND PROOF OF SERVICE**

To: Don Brown, Clerk  
Illinois Pollution Control Board  
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State of Illinois Building, Suite 11-500  
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board, an ANSWER AND AFFIRMATIVE DEFENSE OF SIX M. CORPORATION, INC. AND THOMAS MAXWELL, a copy of which is herewith served upon you.

The undersigned hereby certifies that a true and correct copy of this Notice and attached document were served upon the above counsel of record to this cause by electronic mail on November 26, 2018 before 5:00 p.m. The total number of pages in the transmission is 25.

Respectfully submitted,

SIX M. CORPORATION, INC. and THOMAS  
MAXWELL  
Respondents,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 12-35</b>
	)	<b>(Enforcement – LUST/Water)</b>
<b>SIX M CORPORATION, INC., and</b>	)	
<b>THOMAS MAXWELL,</b>	)	
<b>Respondents,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>JAMES MCILVAIN,</b>	)	
	)	
<b>Necessary Party.</b>	)	

**ANSWER AND AFFIRMATIVE DEFENSE OF SIX M. CORPORATION, INC. AND  
THOMAS MAXWELL**

NOW COME Respondents, Six-M Corporation, Inc. and Thomas Maxwell, by their undersigned counsel, and answer the First Amended Complaint, as follows:

**COUNT I  
WATER POLLUTION  
(As to Respondent SIX M. CORPORATION, INC.)**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General Of the State of Illinois, 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 (2016).

**Respondent denies compliance with 415 ILCS 5/31 (2016) concerning the March 8, 2016 incident, given that the Section 31 notices predate it, but otherwise admit the remaining allegations.**

2. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2016), and charged, *inter alia*, with the duty of enforcing the Act.

**Admit.**

3. At all times relevant to this First Amended Complaint, Respondent, SIX M. CORPORATION INC., was an Illinois corporation in good standing and authorized to do business in the State of Illinois. Its registered agent is listed in the Illinois Secretary of State's records as William Maxwell, 430 West Clinton Avenue, Farmer City, Illinois 61842.

**Admit.**

4. At all times relevant to this First Amended Complaint, Respondent, SIX M. CORPORATION INC., 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.

**Admit, but affirmatively state that Six M. Corporation, Inc. closed the gasoline service station in July 13, 2006, when the last underground storage tanks were removed.**

5. Groundwater is present at and in the vicinity of the Facility.

**Admit.**

6. Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), 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.

**Admit.**

7. Section 3.165 of the Act, 415 ILCS 5/3.165 (2016), contains the following definition:

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

**Admit.**

8. Section 3.545 of the Act, 415 ILCS 5/3.545 (2016), 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 waters 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.

**Admit.**

9. Section 3.550 of the Act, 415 ILCS 5/3.550 (2016), 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.

**Admit.**

10. The groundwater at, and in the vicinity of, the Facility is a "water" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2016).

**Admit.**

11. Section 620.15 of the Illinois Pollution Control Board ("Board") Groundwater Quality Regulations, 35 Ill. Adm. Code 620.115, provides as follows:

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.

**Admit.**

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

- (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.

**Admit.**

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

Code 620.302(c), provides as follows:

- 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.

**Admit.**

14. Section 620.405 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405, provides as follows:

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.

**Admit.**

15. Section 620.410(d) of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410(d), provides as follows:

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

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

\* Denotes a carcinogen.

**Admit.**

16. Section 620.210 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.210, defines Class I: Potable Resource Groundwater, in pertinent part, as follows:

Except as provided in Sections 620.230, 620.240, or 620.250, Potable Resource Groundwater is:

- (a) Groundwater located 10 feet or more below the land surface and within:
  - 1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of such well;

2) Unconsolidated sand, gravel or sand and gravel which is 5 feet or more in thickness and that contains 12 percent or less of fines (i.e., fines which pass through a No. 200 sieve tested according to ASTM Standard Practice D2487-06, incorporated by reference at Section 620.125);

3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; or

4) Any geologic material which is capable of a:

A) Sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or

B) Hydraulic conductivity of  $1 \times 10^{-4}$  cm/sec or greater using one of the following test methods or its equivalent:

i) Permeameter;

ii) Slug test; or

iii) Pump test.

**Admit.**

17. 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.

**Respondent admits the above allegations, but affirmatively states that Tank No. 4 was later determined to be 1000 gallons.**

18. 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 into soil and groundwater at the Facility. IEMA assigned Incident Number 960810 to the reported release.

**Admit.**

19. 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.

**Respondents admit that James McIlvain complained of gasoline odors in the house on or around May 11, 1996, but is without sufficient knowledge to admit or deny the nature and extent of the alleged OSFM investigation and accordingly denies the same, and affirmatively states that to the best of Respondents' knowledge said odor complaints had ceased by early 1997.**

20. On May 15, 1996, Respondent, SIX M. CORPORATION INC., excavated an interceptor trench at the Facility. The trench was dug approximately 20 feet west of and parallel to the McIlvain property. OSFM determined the excavated soil and groundwater 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.

**Respondents deny that any of the Respondents excavated any trench, but that upon notification of a suspected release, Six M Corporation, Inc. hired an environmental contractor to perform all necessary investigation and corrective action, which included trenches being constructed on facility and McIlvain property. Respondents are without sufficient knowledge to admit or deny the nature of the alleged OSFM investigation and accordingly denies the same.**

21. Respondent, SIX M. CORPORATION INC., retained a consultant, Armor Shield of Illinois, to remediate the release. On May 22, 1996, the consultant submitted to OSFM 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.

**Respondents admit these allegations, and affirmatively state that Tank Nos. 5 and 6 were later determined to be smaller upon removal.**



22. On June 5, 1996, the consultant for the Respondent, SIX M. CORPORATION, INC., 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.

**Tank No. 7 was identified as a 300 gallon heating oil tank taken out of operation sometime before January 2, 1974, but otherwise admit the allegations of this paragraph.**

23. On September 27, 1996 the consultant submitted to the Illinois EPA proposals for a site classification work plan and budget. On October 3, 1996, the Illinois EPA approved the proposals. On April 7, 1997, a site classification completion report was submitted, and on April 15, 1997, the Illinois EPA approved it.

**Admit.**

24. Slug test results in the April 7, 1997, site classification completion report showed the hydraulic conductivity of the native material below the invert elevation of the underground storage tank systems was  $6.49 \times 10^{-4}$  centimeters per second (cm/sec).

**Admit.**

25. On May 22, 1998, a high priority corrective action plan ("CAP") was submitted to the Illinois EPA on behalf of Respondent, SIX M. CORPORATION, INC. On June 3, 1998, the Illinois EPA requested modifications to the high priority CAP. On February 16, 1999, a high priority CAP was resubmitted. On March 17, 1999, the Illinois EPA requested modifications. On April 20, 1999, a high priority CAP was again resubmitted. On May 20, 1999, the Illinois EPA requested modifications. The high priority CAP was not resubmitted until four years later, on May 20, 2003. On June 12, 2003, the Illinois EPA denied the high priority CAP. On July 18, 2003, the high priority CAP was resubmitted. On September 25, 2003, the Illinois EPA again denied the high priority CAP. On February 17, 2004, the high priority CAP was resubmitted. On March 31, 2004, the Illinois EPA conditionally approved the high priority CAP with requested modifications. On October 8, 2007, the high priority CAP was resubmitted, and conditionally approved by the Illinois EPA on December 4, 2007.

**Admit.**

26. 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”).

**Respondents admit that a substantial amount of contaminated soils were removed from the facility and the McIlvain property in August and September of 2004, but Respondents are without sufficient knowledge to admit or deny the specific details of the remediation work performed by its former consultants, and therefore denies the same. Respondents deny that alleged concentrations triggered corrective action requirements or the need for additional remediation, but affirmatively state confirmation samples taken during the investigation were deemed by its consultants to justify additional soil borings in a limited area of the McIlvain property to fully evaluate any potential contamination remaining, and further affirmatively state that Farmer City has enacted a groundwater ordinance, prohibiting installation of potable water supplies.**

27. On March 8, 2006 Respondent, SIX M. CORPORATION, INC. 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.

**Respondents admit that Six M Corporation or its agents reported a suspected release and IEMA assigned Incident Number 20060291 to it, and affirmatively state that the OSFM investigation indicated that none of the tanks appear to have leaked, but a release was “suspected to be from spills/overfills, and a previous incident.”**

28. On April 24 and October 17, 2006 the Illinois EPA approved site investigation plans submitted on behalf of Respondent, SIX M. CORPORATION INC. On December 11, 2014, June 5, 2015, and January 7, 2016, the Illinois EPA approved additional site investigation plans addressing the March 8, 2006 release.

**Respondents admit the submittals were approved on the referenced dates, but deny any inference that these are the only site investigation plans submitted, and affirmatively state that on June 25, 2013, a site investigation plan was rejected and on October 17, 2018, and on October 17, 2018, an Amended Stage Three Site Investigation Plan was submitted, which the Illinois EPA has not responded to yet (and has until February 2019 to do so).**

29. As of the date of the filing of this First Amended Complaint, no site investigation completion report has been received by the Illinois EPA for the March 8, 2006 release, and neither the May 13, 1996 release nor the March 8, 2006 release has been fully remediated.

**Respondents admit a site investigation completion report has not been submitted, but deny the insinuation that one is currently required and affirmatively state that the Illinois EPA has not reviewed the Amended Stage Three Site Investigation Plan. Furthermore, Respondents deny the insinuation that further remediation is necessary, and that the results reported in the Amended Stage Three Site Investigation Plan give reason to believe that no further remediation will be necessary.**

30. The groundwater at and in the vicinity of the Facility is classified as Class I potable resource groundwater because the Facility contains geologic material with a hydraulic conductivity of  $6.49 \times 10^{-4}$  cm/sec.

**Respondents admit that relevant groundwater is classified as Class I potable groundwater, and affirmatively state that the Facility is subject to “a corrective action process approved by the Agency” within the meaning of 35 Ill. Adm. Code 620.250(a)(1).**

31. By causing or allowing the release of Benzene and BETX to the groundwater, the Respondent, SIX M. CORPORATION, INC., contaminated the groundwater, 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 Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a).

**Denies.**

32. By causing or allowing the release of Benzene and BETX to the groundwater in concentrations exceeding the water quality standards, Respondent, SIX M. CORPORATION INC., has violated Sections 620.405 and 620.410(d) of the Board's Groundwater Quality Standards, 35 Ill. Adm. Code 620.405 and 620.410(d).

**Denies.**

33. By causing or allowing the release of benzene and BETX to the groundwater so as to exceed the water quality standards, and by failing to remediate the May 13, 1996 and March 8, 2006 underground storage tank releases at Walker's Service Station, Respondent, SIX M. CORPORATION INC. has caused or allowed water pollution and has thereby violated Section 12(a) of the Act, 415 ILCS 12(a) (2016).

**Denies, and affirmatively states that access to neighboring property has been denied and there is no evidence of unremediated contamination at Walker's Service Station.**

**COUNT II**  
**WATER POLLUTION**  
**(As to Respondent THOMAS MAXWELL)**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to the terms and provisions of Section 31(d) of the Act, 415 ILCS 5/31(d) (2016).

**Admit.**

2-30. Complainant realleges and incorporates herein by reference paragraphs 2 through 30 of Count I as paragraphs 2 through 30 of this Count II.

**Respondent herein also incorporates for his answers to paragraphs 2 through 30 of Count I as paragraphs 2 through 30 of this Count II.**

31. Respondent, THOMAS MAXWELL, is a resident of De Witt County, Illinois.

**Admit.**

32. From at least May 13, 1996, until the date of the filing of this First Amended Complaint, Respondent, THOMAS MAXWELL, was the Secretary of Respondent, SIX M. CORPORATION, INC.

**Admit.**

33. From at least May, 1996, until the date of the filing of this First Amended Complaint, Respondent, THOMAS MAXWELL, managed the daily operations of Respondent, SIX M. CORPORATION INC., including oversight of the removal of underground storage tanks at the Facility, site investigation, and oversight of remediation activities under the high priority CAPs.

**Respondent admits that he managed operations of Six M Corporation Inc. during said period, but denies the characterization of his management role, and affirmatively states that with respect to the issues here, management primarily has meant retaining an environmental consultant to perform the work, and signing any necessary paperwork on behalf of Six-M Corporation, Inc. necessary for reimbursement from the LUST Fund or for otherwise complying with the business' regulatory obligations.**

34. By causing or allowing the release of Benzene and BETX to the groundwater, the Respondent, THOMAS MAXWELL, contaminated the groundwater, 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 Groundwater Quality Standards, 35 Ill. Adm. Code 620.301(a).

**Denies.**

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

**Denies.**

36. By causing or allowing the release of benzene and BETX to the groundwater so as to exceed the water quality standards, and by failing to remediate the May 13, 1996 and March 8, 2006 underground storage tank releases at Walker's Service Station, Respondent, THOMAS MAXWELL, has caused or allowed water pollution and has thereby violated Section 12(a) of the Act, 415 ILCS 12(a) (2016).

**Denies, and affirmatively states that access to neighboring property has been denied and there is no evidence of unremediated contamination at Walker's Service Station.**

**COUNT III**  
**FAILURE TO COMPLETE SITE INVESTIGATION**  
**(As to Respondent SIX M. CORPORATION INC.)**

1.-18. Complainant realleges and incorporates herein by reference paragraphs 1 through 5, and 17 through 29 of Count I as paragraphs 1 through 18 of this Count III.

**Respondent herein also incorporates for its answers to paragraphs 1 through 5, and 17 through 29 of Count I as paragraphs 1 through 18 of this Count III.**

19. Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2016), 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.

**Admit.**

20. Section 57.7(a) of the Act, 415 ILCS 5/57.7(a) (2016), provides in pertinent part as follows:

- (a) Site investigation.

\* \* \*

- (4) Upon the Agency's approval of a corrective action plan, or as otherwise directed by the Agency, the owner or operator shall proceed with corrective action in accordance with the plan.
- (5) Within 30 days after the completion of a corrective action plan that achieves applicable remediation objectives the owner or operator shall submit to the Agency for approval a corrective action completion report.

\* \* \*

**Admit.**

21. As of the date of the filing of this First Amended Complaint, Respondent, SIX M. CORPORATION INC. has not submitted a site investigation completion report to the Illinois EPA for the March 8, 2006 release.

**Respondent denies the insinuation that there is a present duty to submit a site**

**investigation completion report, but otherwise admit that one has not been submitted, and affirmatively state that the Board Underground Storage Tank Rules require completion of the Stage 3 site investigation before proceeding to submit a site investigation completion report. (35 Ill. Adm. Code 734.325)**

22. Respondent, SIX M. CORPORATION INC., has failed to complete a site investigation regarding the March 8, 2006 release at Walker's Service Station. Respondent, SIX M. CORPORATION INC., has thereby violated Section 57.7(a)(4) of the Act, 415 ILCS 5/57.7(a)(4) (2016).

**Denies, and affirmatively states that access to neighboring property has been denied.**

23. Respondent, SIX M. CORPORATION INC., ha failed to submit to submit a site investigation completion report for the March 8, 2006 release. Respondent, SIX M. CORPORATION INC., has thereby violated Section 57.7(a)(5) of the Act, 415 ILCS 5/57.7(a)(5) (2016).

**Denies, and affirmatively states that access to neighboring property has been denied.**

24. By failing to complete a site investigation of the March 8, 2006 release in accordance with the approved plans and failing to submit a site investigation completion report, Respondent, SIX M. CORPORATION INC., has failed 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) (2016).

**Denies, and affirmatively states that access to neighboring property has been denied.**

**COUNT IV**  
**FAILURE TO TAKE CORRECTIVE ACTION**  
**(As to Respondents SIX M. CORPORATION INC. and THOMAS MAXWELL)**

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS,

by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to the terms and provisions of Section 31(d) of the Act, 415 ILCS 5/31(d) (2016).

**Admit.**

2-23. Complainant realleges and incorporates herein by reference paragraphs 2 through 5, and 17 through 29 of Count I, paragraphs 31 through 33 of Count II, and paragraphs 19 and 20 of Count III as paragraphs 1 through 23 of this Count IV.

**Respondents herein also incorporate for their answers to paragraphs 2 through 5, and 17 through 29 of Count I, paragraphs 31 through 33 of Count II, and paragraphs 19 and 20 of Count III as paragraphs 1 through 23 of this Count IV.**

24. As of the date of the filing of this First Amended Complaint, Respondent, THOMAS MAXWELL, has not submitted a site investigation completion report to the Illinois EPA for the March 8, 2006 release.

**Respondent denies the insinuation that there is a present duty to submit a site investigation completion report or that Thomas Maxwell is the owner or operator, but otherwise admit that one has not been submitted, and affirmatively state that the Board Underground Storage Tank Rules require completion of the Stage 3 site investigation before proceeding to submit a site investigation completion report. (35 Ill. Adm. Code 734.325)**

25. Respondent, THOMAS MAXWELL, has failed to compete a site investigation regarding the March 8, 2006 release at Walker's Service Station. Respondent, THOMAS MAXWELL, has thereby violated Section 57.7(a)(4) of the Act, 415 ILCS 5/57.7(a)(4) (2016).

**Denies, and affirmatively states that Thomas Maxwell is not an owner or operator under Title XVI of the Act and that access to neighboring property has been denied.**

26. Respondent, THOMAS MAXWELL, ha failed to submit to submit a site investigation completion report for the March 8, 2006 release. Respondent, THOMAS MAXWELL, has thereby violated Section 57.7(a)(5) of the Act, 415 ILCS 5/57.7(a)(5) (2016).



**Denies, and affirmatively states that Thomas Maxwell is not an owner or operator under Title XVI of the Act and that access to neighboring property has been denied.**

27. By failing to complete a site investigation of the March 8, 2006 release in accordance with the approved plans and failing to submit a site investigation completion report, Respondent, THOMAS MAXWELL, has failed 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) (2016).

**Denies, and affirmatively states that that Thomas Maxwell is not an owner or operator under Title XVI of the Act and access to neighboring property has been denied.**

28. Section 57.7(b) of the Act, 415 ILCS 5/57.7(b) (2016), provides in pertinent part as follows:

(b) Corrective action.

(1) If the site investigation confirms none of the applicable indicator contaminants exceed the proposed remediation objectives, within 30 days after completing the site investigation the owner or operator shall submit to the Agency for approval a corrective action completion report in accordance with this Section.

(2) If any of the applicable indicator contaminants exceed the remediation objectives approved for the site, within 30 days after the Agency approves the site investigation completion report the owner or operator shall submit to the Agency for approval a corrective action plan designed to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release. The plan shall describe the selected remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the site. At a minimum, the report shall include all of the following:

- (A) Executive summary.
- (B) Statement of remediation objectives.
- (C) Remedial technologies selected.
- (D) Confirmation sampling plan.
- (E) Current and projected future use of the property.
- (F) Applicable preventive, engineering, and institutional controls including long-term reliability, operating, and maintenance plans, and monitoring procedures.
- (G) A schedule for implementation and completion of the plan.

\* \* \*

(4) Upon the Agency's approval of a corrective action plan, or as otherwise directed by the Agency, the owner or operator shall proceed with corrective action in accordance with the plan.

(5) Within 30 days after the completion of a corrective action plan that achieves applicable remediation objectives the owner or operator shall submit to the Agency for approval a corrective action completion report. The report shall demonstrate whether corrective action was completed in accordance with the approved corrective action plan and whether the remediation objectives approved for the site, as well as any other requirements of the plan, have been achieved.

(6) If within 4 years after the approval of any corrective action plan the applicable remediation objectives have not been achieved and the owner or operator has not submitted a corrective action completion report, the owner or operator must submit a status report for Agency review. The status report must include, but is not limited to, a description of the remediation activities taken to date, the effectiveness of the method of remediation being used, the likelihood of meeting the applicable remediation objectives using the current method of remediation, and the date the applicable remediation objectives are expected to be achieved.

(7) If the Agency determines any approved corrective action plan will not achieve applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit to the Agency for approval a revised corrective action plan. If the owner or operator intends to seek payment from the Fund, the owner or operator must also submit a revised budget.

**Admit that this is current language.**

29. Section 732.100( c) of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 732.100( c) (repealed March 19, 2012), provided in pertinent part as follows:

- c) Owners or operators subject to this Part by law or by election shall proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Illinois EPA may use its authority pursuant to the Act 35 Ill. Adm. Code 732.105 to expedite investigative, preventive, or corrective action by an owner or operator or to initiate action.

**Admit.**

30. Section 734.100(d) of the Board Underground Storage Tank Regulations, 35 Ill.

Adm. Code 734.100(d) (effective March 19, 2012), provides in pertinent part as follows:

- d) Owners or operators subject to this Part by law or by election must proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site for purposes of this Part. The Agency may use its authority pursuant to the Act and Section 734.125 of this Part to expedite investigative, preventive, or corrective action by an owner or operator or to initiate such action.

**Admit.**

31. On December 4, 2007, the Illinois EPA approved a corrective action plan for the May 13, 1996.

**Admit.**

32. As of the date of the filing of this First Amended Complaint, corrective action has not been completed and no corrective action completion report has been submitted to the Illinois EPA.

**Respondents deny the insinuation that there is a present duty to perform corrective action or submit a corrective action completion report, but otherwise admit that the December 4, 2007 corrective action plan has not been performed, nor a corrective action completion report submitted, but affirmatively state that site access has been denied to perform said corrective action work, and the Illinois EPA has approved a plan to perform site investigation activities with respect to the 2006 incident first. Furthermore, by reason and belief, changes in fact and law have rendered highly unlikely that the approved corrective plan would ever be used today.**

33. By failing to proceed with corrective action in accordance with the Illinois EPA-approved corrective action plan, Respondents, SIX M. CORPORATION INC. and THOMAS MAXWELL, have violated and continue to violate Section 57.7(b) of the Act, 415 ILCS 5/57.7(b) (2016).

**Deny, and affirmatively state that that Thomas Maxwell is not an owner or operator**

**under Title XVI of the Act and access to neighboring property has been denied.**

34. By failing to complete corrective action from at least March 12, 2012 through the date of filing this First Amended Complaint, Respondents, SIX M. CORPORATION INC. and THOMAS MAXWELL, have failed to proceed expeditiously to comply with all requirements of the Act and the regulations and to obtain the No Further Remediation Letter signifying final disposition of the site, in violation of Section 734.100(d) of the Board Underground Storage Tank Regulations, 35 Ill. Adm. Code 734.100(d), and thereby also violated Section 57.6(a) of the Act, 415 ILCS 5/57.6(a) (2016).

**Deny, and affirmatively state that that Thomas Maxwell is not an owner or operator under Title XVI of the Act and access to neighboring property has been denied.**

**AFFIRMATIVE DEFENSE**  
**(Impossibility)**

1. On May 13, 1996, a suspected leak or spill was reported from underground storage tanks at service station property operated by Six M Corporation, Inc. (hereinafter "Six M") in Farmer City, Illinois.

2. In response Six M hired an environmental consultant, Armor Shield of Illinois (hereinafter "Armor Shield"), to provide the legally required response.

3. On May 17, 1996, Armor Shield applied for permission from the Office of the State Fire Marshall to remove the unnecessary or unused tanks from the property, explaining that a gasoline and diesel release was suspected.

4. On June 5, 1996, four tanks were removed from the service station property, leaving three active tanks.

5. As best that could be determined, underground storage tanks had experienced an overflow or spill from the fill pipes since the soils beneath the fill pipes had some staining and gasoline vapors.

6. Thereafter, Armor Shield installed an approximately 295 foot groundwater recovery trench across the properties of Six M and the neighboring property owned by James and Deborah McIlvain (hereinafter “the McIlvains”). This trench was used to collect any contaminated groundwater using an ongoing pump and treat method of remediation.

7. On July 25, 1997, “the McIlvains” filed a lawsuit against Six M in DeWitt County, Illinois, alleging negligent trespass and nuisance as a result of a release of petroleum from underground storage tanks onto their neighboring property. Their complaint alleged *inter alia* that the release had created and continued to create substantial intrusions on their property, including “the noise and distraction from time to time of activities (including drilling, digging and monitoring) associated with the evaluation or removal of contamination on Plaintiffs’ property.”

8. On or before August 2, 1999, the McIlvains and Six M reached a settlement, which included *inter alia* a payment of \$17,000 to the McIlvains without admission of negligence on the part of Six M, but with admission that the release of petroleum from Six M tanks has and would continue to cause damages to the McIlvains, including from future remediation activities.

9. Also on or before August 2, 1999, the McIlvains and Six M entered into an access agreement which “sets forth the conditions upon which the McIlvains will continue to permit access by [Six M] to certain real property belonging to the McIlvains . . . to facilitate the identification, treatment and removal of petroleum contamination . . . of the Property originating from a leaking underground storage tank system located on adjacent

property belong to Six-M.”

10. On November 3, 1999, Six M requested reimbursement of the \$17,000 settlement payment from the LUST Fund pursuant to Section 57.8(c)(2) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(c)(2)). The request included *inter alia* a copy of the complaint, the settlement agreement and the access agreement.

11. The Illinois Attorney General approved payment of the \$17,000 settlement as reasonable and the settlement payment was reimbursed to Six M from the LUST Fund on or about July 14, 2000.

12. Sometime in or around 2003, Armor Shield of Illinois went out of business and was dissolved on April 1, 2004. Applied Environmental Solutions thereafter replaced it as the consultant.

13. In late 2004, substantial contaminated soil was removed from the property of the McIlvains and Six M. Sampling following the removal identified a limited area, in which samples exceeded Tier 2 objectives for residential ingestion and inhalation, as well as for construction worker inhalation.

14. In 2005, the Agency issued a notice of intent letter to Six M, pursuant to Section 33(c) of the Act. (415 ILCS 5/31(a))

15. In 2006, the remaining underground storage tanks were removed for the reason that they would no longer be selling petroleum. During the tank pull, a representative of the Office of the State Fire Marshall observed contamination in the floor, walls and piping trench and reported that a “[r]elease is suspected to be from spills/ overfills, and a previous incident.” There was no evidence that any of the tanks themselves

had leaked.

16. Beginning in early 2006, the McIlvains denied access to their property for any further remediation work on the grounds that there has been a new release, and it is not covered by the existing access agreement.

17. Sometime in 2006, Applied Environmental Solutions went out of business. CSD Environmental thereafter replaced it as consultant.

18. On or about November 8, 2006, CSD Environmental wrote to the McIlvains to explain that they would be proposing seven (7) soil borings around the perimeter of their house to evaluate the extent of potential contamination remaining around and/or beneath the residence after removal of the bulk soil in 2004 and of their understanding that the McIlvains did not object to the taking soil borings closer to their house.

19. In response, the McIlvains, by their attorney, reiterated that access was being denied for the 2006 incident, and demanding a new access agreement be entered into, which *inter alia* would provide additional monetary compensation to the McIlvains, payment of their legal fees, payment of their cost to hire their own environmental consultant.

20. Since the access was needed to investigate the adequacy of the remediation efforts taken on the McIlvain's property prior to the 2006 incident, and there was no evidence that the 2006 incident contaminated the McIlvains' property, the demand for more money was inappropriate.

21. On October 16, 2007, CSD Environmental submitted a corrective action plan to the Agency for the 1996 incident which *inter alia* proposed further investigation of any

contamination remaining near the residence following the 2004 excavation.

22. On October 25, 2007, the McIlvains, through their attorney, objected to the corrective action plan to the Agency, stating that Six M did not have authority to access the property, and that the Agency should deny it.

23. On February 13, 2008, the Agency approved the corrective action plan and budget.

24. Thereafter, CSD Environmental sought weather conditions that would permit investigative drilling on the McIlvains' property under the approved corrective action plan.

25. Sometime in 2011, CSD Environmental withdrew from offering consulting services for this project. CWM thereafter replaced it as consultant.

26. CWM approached the McIlvains to seek access to perform the approved corrective action plan, which was rejected on the grounds that the existing access agreement did not authorize it.

27. Performance of the approved corrective action plan has been rendered impossible by the McIlvains' refusal to provide access to their property.

28. While the Board regulations do not require performance of corrective action on an adjoining or off-site property where access is denied, 35 Ill. Admin. Code § 732.404(c), Six M hopes that access will eventually be provided and therefore has so far declined to use the available procedure.

29. Following the 2006 incident, CWM proposed, and the Agency approved, a plan to complete site investigation of the 2006 incident, before completing corrective action



**and then based upon the information accumulated for the site investigation completion report, address any corrective action activities for both incidents together.**

**30. The initial Stage 3 Site Investigation work detected no soil contamination on the McIlvain property for gasoline or diesel constituents, but further site investigation activities have been proposed and are under Agency review.**

WHEREFORE, Respondents, SIX M. CORPORATION, INC. and THOMAS MAXWELL, pray for an order dismissing the complaint, or for such further relief as the Board deems meet and just.

Respectfully submitted,

SIX M. CORPORATION, INC. and THOMAS  
MAXWELL  
Respondents,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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