

**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
Chicago, IL 60601

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Illinois Pollution Control Board
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board, COMPLAINANT'S REPLY TO THE ANSWER AND AFFIRMATIVE DEFENSE OF SIX M. CORPORATION, INC. AND THOMAS MAXWELL, a copy of which is herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL
Attorney General of the State of Illinois

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

BY: Elizabeth Dubats
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CERTIFICATE OF SERVICE

I, Elizabeth Dubats, do certify that I caused to be served this 2nd day of May, 2019, COMPLAINANT'S REPLY TO THE ANSWER AND AFFIRMATIVE DEFENSE OF SIX M. CORPORATION, INC. AND THOMAS MAXWELL upon persons listed below via electronic mail with return receipt:

Carol Webb, Hearing Officer
Illinois Pollution Control Board
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**COMPLAINANT’S REPLY TO THE ANSWER AND AFFIRMATIVE DEFENSE OF
SIX M. CORPORATION, INC. AND THOMAS MAXWELL**

NOW COME Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME
RAOUL, Attorney General of the State of Illinois, and replies to the Answer of the First
Amended Complaint, as follows:

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

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.

Respondents: 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.

**Reply: Complainant lacks sufficient information to admit or deny the alleged date of
closure of business at Walker Service Station.**

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.

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

Reply: Complainant admits that Tank No. 4 was registered at 1,000 gallons.

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: 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.

Reply: Complainant lacks sufficient information to admit or deny the alleged timing of the end of odor complaints.

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: 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.

Reply: Complainant lacks sufficient information to admit or deny allegations as to the hiring of an environmental contractor by Six M. Corporation or any work performed by such contractor. Complainant admits that a trench was dug as part of the remedial response to the 1996 release.

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

Reply: Complainant admits that on September 17, 1996, OSFM received an amended tank removal registration listing Tank No. 5 as having a 500 gallon capacity and Tank No. 6 having a 200 gallon capacity.

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.

Respondents: 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.

Reply: Complainant admits the above underlined allegation of paragraph 22.

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: 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.

Reply: Complainant admits samples taken during the site investigation were deemed by Respondents to justify additional soil borings on the McIlvain property to fully evaluate any potential contamination remaining. Complainant admits 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: 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."

Reply: Complainant denies the allegation of paragraph 27 that none of the tanks appear to have leaked. Complainant admits that the UST removal log notes the 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: 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).

Reply: Complainant admits that on June 25, 2013, the Illinois EPA rejected a site investigation plan and on October 17, 2018 the Illinois EPA received an Amended Stage Three Site Investigation Plan. On December 13, 2018, Illinois EPA accepted the October 17, 2018 Amended Stage Three Site Investigation Plan with modifications.

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 6.49×10^{-4} cm/sec.

Respondents: 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).

Reply: Complainant does not reply to whether or not the Groundwater Management Zone provisions of 35 Ill. Adm. Code 620.250(a)(1) apply to corrective action taking place at the Facility as that is a legal conclusion. To the extent that paragraph 30 contains any factual allegations regarding the relevance of a Groundwater Management Zone to this matter, Complainant denies the same.

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).

Respondents: 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.

Reply: Complainant does not reply to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 33 contains any factual allegations regarding access to adjacent property, Complainant denies the same. Complainant denies the allegation of paragraph 33 that there is no evidence of unremediated contamination at the Walker's Service Station facility.

COUNT II
WATER POLLUTION
(As to Respondent THOMAS MAXWELL)

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.

Reply: Complainant realleges and incorporates herein by reference its replies to paragraphs 4, 17, 19, 20, 21, 22, 26, 27, 28 and 30 of Count I into this Count II.

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.

Respondents: 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.

Reply: Complainant does not reply to the allegations of paragraph 33 regarding the legal definition of management as that is a legal conclusion. Complainant lacks sufficient information to admit or deny the alleged details of how the Respondents delegated and designated specified management tasks associated with remediation of the Site.

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).

Respondents: 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.

Reply: Complainant does not reply to whether the McIlvains "denied access" to their property as that is a legal conclusion. To the extent that paragraph 36 contains any factual allegations regarding access to adjacent property, Complainant denies the same. Complainant denies the allegation of paragraph 36 that there is no evidence of unremediated contamination at the Walker's Service Station facility.

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.

Reply: Complainant realleges and incorporates herein by reference its replies to paragraphs 4, 17, 19, 20, 21, 22, 26, 27, and 28 of Count I into this Count III.

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.

Respondents: 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).

Reply: Complainant does not reply to Respondents' affirmative statement in paragraph 21, as the Board's Underground Storage Tank Regulations speak for themselves.

22. Respondent, SIX M. CORPORATION INC., has failed to compete 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).

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

Reply: Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 22 contains any factual allegations regarding access to adjacent property, Complainant denies the same.

23. Respondent, SIX M. CORPORATION INC., has 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).

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

Reply: Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 23 contains any factual allegations regarding access to adjacent property, Complainant denies the same.

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).

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

Reply: Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 24 contains any factual allegations regarding access to adjacent property, Complainant denies the same.

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

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.

Reply: Reply: Complainant realleges and incorporates herein by reference its replies to paragraphs 4, 17, 19, 20, 21, 22, 26, 27, and 28 of Count I and paragraph 33 of Count II, into 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.

Respondents: 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).

Reply: Complainant does not reply to Respondents' affirmative statement in paragraph 24, as the Board's Underground Storage Tank Regulations speak for themselves.

25. Respondent, THOMAS MAXWELL, has failed to complete 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).

Respondents: 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.

Reply: Complainant does not reply as to whether or not Thomas Maxwell is not an owner or operator under Title XVI of the Act as that is a legal conclusion. Complainant does not reply to whether the McIlvains "denied access" to their property as that is a legal conclusion. To the extent that paragraph 25 contains any factual allegations regarding control over the Walker Service Station property or access to the adjacent McIlvain property, Complainant denies the same.

26. Respondent, THOMAS MAXWELL, has failed 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).

Respondents: 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.

Reply: Complainant does not reply as to whether or not Thomas Maxwell is not an owner or operator under Title XVI of the Act as that is a legal conclusion. Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 26 contains any factual allegations regarding control over the Walker Service Station property or access to the adjacent McIlvain property, Complainant denies the same.

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).

Respondents: 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.

Reply: Complainant does not reply as to whether or not Thomas Maxwell is not an owner or operator under Title XVI of the Act as that is a legal conclusion. Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 27 contains any factual allegations regarding control over the Walker Service Station property or access to the adjacent McIlvain property, Complainant denies the same.

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: 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.

Reply: Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 32 contains any factual allegations regarding access to adjacent property, Complainant denies the same. Complainant does not reply as to whether changes in fact and law have rendered highly unlikely that the approved corrective plan would ever be used today as that is pure conjecture and a legal conclusion. To the extent that paragraph 32 contains any factual allegations regarding completion of approved corrective action, Complainant denies the same.

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).

Respondents: 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.

Reply: Complainant does not reply as to whether or not Thomas Maxwell is not an owner or operator under Title XVI of the Act as that is a legal conclusion. Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 33 contains any factual allegations regarding control over the Walker Service Station property or access to the adjacent McIlvain property, Complainant denies the same.

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.

Reply: Complainant does not reply as to whether or not Thomas Maxwell is not an owner or operator under Title XVI of the Act as that is a legal conclusion. Complainant does not reply as to whether the McIlvains “denied access” to their property as that is a legal conclusion. To the extent that paragraph 34 contains any factual allegations regarding control over the Walker Service Station property or access to the adjacent McIlvain property, Complainant denies the same.

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.

Reply: Complainant admits the allegations of paragraph 1.

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

Reply: Complainant admits the allegations of paragraph 2 to the extent that Armor Shield is one of several environmental consultants that submitted documents pursuant to 35 Ill. Adm. Code Part 742 to the Illinois EPA on behalf of Walker Service Station. Complainant lacks sufficient information to admit or deny the allegations characterizing the scope of the agent/principal relationship between Respondents and Armor Shield.

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.

Reply: Complainant admits allegations of paragraph 3.

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

Reply: Complainant admits allegations of paragraph 4.

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

Reply: Complainant admits that Respondents' August 29, 1996 45-day report attributes the 1996 release to overfilling.

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.

Reply: Complainant admits that according to the 45-Day report submitted by Russel Goodiel, project manager for Envirotek Consultants, a recovery trench was dug in

response to the 1996 reported UST leak.

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.”

Reply: Complainant admits the allegations of paragraph 7.

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.

Reply: Complainant admits the allegations of paragraph 8.

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.”

Reply: Complainant admits the allegations of paragraph 9.

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.

Reply: Complainant admits the allegations of paragraph 10.

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.

Reply: Complainant admits the allegations of paragraph 11.

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.

Reply: Complainant lacks sufficient knowledge to admit or deny allegations as to Armor Shield's status as an operating business. Complainant admits that Applied Environmental Solutions submitted documents to Illinois EPA pursuant to the Board's Tiered Approach to Corrective Action Objectives, 35 Ill. Adm. Code Part 742 ("TACO") on behalf of Walker Service Station.

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.

Reply: Complainant admits that contaminated soil was removed from the Site in 2004. Complainant lacks sufficient information to admit or deny references characterizing the amount as "substantial," as that term is undefined.

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)).

Reply: Complainant admits that on February 1, 2006, a Notice of Intent to Pursue Legal Action was issued by the Illinois EPA and addressed to Walker's Service Station, Attn: Tom Maxwell. To the extent this conflicts with the allegations of paragraph 14, Complainant denies the same.

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.

Reply: Complainant admits three USTs were removed from the Site in 2006. Complainant lacks sufficient information to admit or deny the reason for removal of those three USTs. Complainant admits the Log of Underground Storage Tank Removal dated July 12, 2006 contains the annotation "[r]elease is suspected to be from spills/ overfills, and a previous incident." Complainant denies 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.

Reply: Complainant does not reply to whether the McIlvains "denied access" to their property as that is a legal conclusion. Complainant lacks sufficient information to admit or deny the circumstances under which the McIlvains ceased allowing entrance onto

their property or the rationale given.

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

Reply: Complainant lacks sufficient information to admit or deny the whether or not Applied Environmental Solutions went out of business or the timing thereof.

Complainant admits that CSD Environmental has submitted documents on behalf of Respondents pursuant to the Board's TACO regulations, 35 Ill. Adm. Code Part 742.

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.

Reply: Complainant lacks sufficient information to admit or deny the allegations of paragraph 18 regarding the alleged actions of CSD Environmental.

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.

Reply: Complainant lacks sufficient information to admit or deny the allegations of paragraph 19 regarding the alleged actions of the McIlvains.

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.

Reply: Complainant does not reply as to whether access was needed to investigate the adequacy of the remediation efforts taken on the McIlvain's property prior to the 2006 incident as that is a legal conclusion. Complainant denies that there is no evidence that the 2006 incident contaminated the McIlvains' property. Complainant does not reply as to whether the demand for more money was inappropriate as that is a legal conclusion.

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.

Reply: Complainant admits CSD Environmental submitted a corrective active plan to the Illinois EPA dated October 16, 2007. The content of same corrective active plan speaks for itself.

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.

Reply: Complainant admits that on October 25, 2007, the McIlvains, through their attorney, submitted to Illinois EPA a number of comments and objections to the Phase IV Corrective Action Plan and Budget. The October 25, 2007 letter speaks for itself.

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

Reply: Complainant admits the allegations of paragraph 23.

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

Reply: Complainant lacks sufficient information to admit or deny the allegations of paragraph 24 regarding the alleged actions of CSD Environmental or its rationale for doing so.

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

Reply: Complainant lacks sufficient information to admit or deny the allegations of paragraph 25 regarding the alleged actions of CSD Environmental. Complainant admits that CW3M Company has submitted documents to the Illinois EPA on behalf of Respondents pursuant to the Board's TACO regulations, 35 Ill. Adm. Code Part 742.

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.

Reply: Complainant lacks sufficient information to admit or deny the allegations of paragraph 26 regarding the alleged actions of CW3M Company and the McIlvains' alleged actions in response.

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

Reply: Complainant does not reply as to whether performance of the approved corrective action plan has been rendered impossible as that is a legal conclusion. Complainant does not reply as to whether the McIlvains' have refused to provide access to their property as that is a legal conclusion.

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.

Reply: The text of 35 Ill. Admin. Code § 732.404(c) speaks for itself. Complainant lacks sufficient information to admit or deny the content of Respondents' alleged hopes. Complainant admits that Respondents have heretofore declined to use the available procedure to obtain an a No Further Remediation letter with or without grant of access to the McIlvain property.

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.

Reply: Complainant admits that on December 13, 2018 the Illinois EPA conditionally approved a Stage 3 Site Investigation Plan which proposes addressing both the 1996 and 2006 incidents concurrently as “the plumes may have comingled”.

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.

Reply: Complainant denies the allegations of paragraph 30 as they mischaracterize the findings of the Stage 3 Site Investigation Plan which Respondents submitted to the Illinois EPA on October 16, 2018. The Stage 3 Site Investigation Plan speaks for itself.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL
Attorney General of the State of Illinois
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
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BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
Complainant,)

v.)

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

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

and)

JAMES MCILVAIN,
Necessary Party.)

AFFIDAVIT OF

I, David R. Myers, certify under penalty of perjury, pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that, to the best of my knowledge, information and belief, the statement of insufficient knowledge of facts to form a belief as to the truth or falsity of the allegations set forth in the following paragraphs the Complainant's Reply to the Answer and Affirmative Defense of Six M. Corporation and Thomas Maxwell is true and correct.

1. Plaintiff's Reply to Defendant's Answer to Count I, ¶¶4, 19, and 20;
2. Plaintiff's Reply to Defendant's Answer to Count II, ¶33; and
3. Plaintiff's Reply to Defendant's First Affirmative Defense, ¶¶2, 12, 13, 15, 16, 17, 18, 19, 24, 25, 26, and 28.

FURTHER AFFIANT SAYETH NOT

David R. Myers

State of Illinois

County of Sangamon

Signed and sworn (or affirmed) to before me on 4/24/, 2019

by DAVID R. MYERS

Charles R. Gudgel Jr
NOTARY PUBLIC

