

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney )  
General of the State of Illinois, )  
 )  
Complainant, )  
 )  
v. ) PCB No. 11-88  
 ) (Enforcement - Water)  
 )  
SUPER MIX, INC., an Illinois corporation, )  
 )  
Respondent. )

**NOTICE OF FILING**

To: See attached service list  
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Complainant's Motion to Deem Facts Admitted and for Summary Judgment Against Respondent Super Mix, Inc., a copy of which is attached hereto and herewith served upon you.

LISA MADIGAN  
Attorney General  
State of Illinois

  
JENNIFER A. VAN WIE

Dated: January 31, 2013

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**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**Service List**

**For Super Mix, Inc.**

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Assistant Clerk of the Board  
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**MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT  
AGAINST RESPONDENT SUPER MIX, INC.**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to 35 Ill. Adm. Code 101.618 and 101.516, requests that the Illinois Pollution Control Board (“Board”) deem material facts alleged against Respondent, SUPER MIX, INC. (“Super Mix”), to be admitted, and grant summary judgment in favor of Complainant and against Respondent Super Mix on all counts alleged in Complainant’s complaint. In support thereof, Complainant states as follows:

**I. REQUEST TO DEEM FACTS ADMITTED**

This action was brought on behalf of the People of the State of Illinois by the Attorney General of the State of Illinois, on her own motion, and upon the request of the Illinois Environmental Protection Agency (“Illinois EPA”) pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2010).

Complainant filed its complaint on May 31, 2011 (“Complaint”). See Complainant’s Complaint, attached hereto and incorporated herein as Exhibit 1. Service of the Complaint was made upon Super Mix’s registered agent, by certified mail, on June 2, 2011. See June 15, 2011

Proof of Service, attached hereto and incorporated herein as Exhibit 2. On July 21, 2011, Super Mix filed an Appearance and Answer to the Complaint (“Answer”). See Super Mix’s Appearance and Answer, attached hereto and incorporated herein as Exhibit 3.

On June 7, 2012, Complainant sent Super Mix, by certified mail, Complainant’s First Request for Admission of Facts and Genuineness of Documents (“Requests to Admit”), First Set of Interrogatories (“Interrogatories”), and First Request for Production of Documents, Objects, and Tangible Things (“Production Requests”). See Complainant’s Requests to Admit, attached hereto and incorporated herein as Exhibit 4; Complainant’s Interrogatories, attached hereto and incorporated herein as Exhibit 5; and Complainant’s Production Requests, attached hereto and incorporated herein as Exhibit 6. On June 12, 2012, Complainant received from Super Mix’s registered agent the signed certified mail green card. Certified mail green card, attached hereto and incorporated herein as Exhibit 7.

On July 19, 2012, Super Mix responded to Complainant’s Requests to Admit and Interrogatories. See Super Mix’s response to Complainant’s Requests to Admit, attached hereto and incorporated herein as Exhibit 8, and Super Mix’s response to Complainant’s Interrogatories, attached hereto and incorporated herein as Exhibit 9. To date, the Complainant has not received a written response to Complainant’s Production Requests from Super Mix.

Section 101.300(c) of the Board Procedural Rules, 35 Ill. Adm. Code 101.300(c), provides, in pertinent part, as follows:

Time of Service. . . . In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt.

Section 101.618 of the Board Procedural Rules, 35 Ill. Adm. Code 101.618, provides, in

pertinent part, as follows:

Section 101.618 Admissions

- a) General. All requests to admit must be served upon a party no later than 35 days before hearing. All answers or objections to requests to admit must be served upon the party requesting the admission within 28 days after the service of the request.

\* \* \*

- c) Request to Admit. Any party serving a request to admit in accordance with subsection (d) or (e) must include the following language in the first paragraph of the request. "Failure to respond to the following requests to admit within 28 days may have severe consequences. Failure to respond to the following requests will result in all the facts requested being deemed admitted as true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney."

Complainant served its Requests to Admit on Super Mix in accordance with Sections 101.300(c) and 101.618(a) and (c) of the Board Procedural Rules, 35 Ill. Adm. Code 101.300(c) and 101.618(a) and (c). See Exhibits 4 and 7. Super Mix did not respond to Complainant's Requests to Admit until July 19, 2012. See Exhibit 8. No actual service date was listed on the agent-signed certified mail green card, therefore Complainant will use the date it received the agent-signed certified mail green card – June 12, 2012 - as the date of service. See Exhibit 7. Assuming June 12, 2012 as the service date of the Complainant's Requests to Admit on Super Mix, a response was due no later than July 10, 2012. Complainant did not receive Super Mix's response to the Requests to Admit until July 19, 2012, approximately nine (9) days late.

As such, the Complainant therefore requests that the Board find, pursuant to Section 101.618(c) of the Board Procedural Rules, 35 Ill. Adm. Code 101.618(c), that all facts requested in Complainant's Requests to Admit are deemed to be admitted by Super Mix.

**II. MOTION FOR SUMMARY JUDGMENT ON ALL COUNTS**

In its Complaint, Complainant has alleged violations of the Act, Board Water Pollution Regulations, and Respondent's National Pollutant Discharge Elimination System ("NPDES") permit against Super Mix, specifically Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and (f) (2010), Section 309.204(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a), and Conditions C.1(a) and (b)(i) of Respondent's NPDES permit. If the Board deems material facts to be admitted, the facts alleged are sufficient to prove the violations.

**Count I: Water Pollution**

Complainant has alleged that Super Mix operates a ready mix concrete and aggregate business at 2203 Spring Ridge Drive, Spring Grove, McHenry County, Illinois, which Complainant has designated as the "Site" [Complaint, Count I, ¶¶ 4 and 5; Answer, ¶¶ 4 and 5]. On at least November 12, 2008 and continuing until a time better known to Super Mix, the northwest corner of the Site was being used as a truck washing area [Requests to Admit, Nos. 1 and 4, pgs. 4 and 5; Complaint, Ct. I, ¶ 9; Affidavit of Karen Katamay, attached hereto and incorporated herein as Exhibit 10, ¶ 6]. The wash water from the truck washout area may contain dirt, sediment, concrete dust, and other elements associated with industrial waste from a concrete mixing facility, such as iron, total suspended solids, aluminum, barium, chromium, copper, lead, magnesium, manganese, nickel, potassium, and zinc ("wash water discharges") [Complaint, Ct. I, ¶ 10; Affidavit of Karen Katamay, ¶ 7]. The northwest corner of the Site slopes in such a way that water runoff from the Site naturally flows into the settling basin on the south side of Spring Ridge Drive ("settling basin") [Requests to Admit, No. 2, pg. 4; Complaint, Ct. I, ¶ 11]. The settling basin is not self-contained, but rather is open on one side leading into a

storm water drainage ditch [Requests to Admit, Nos. 5 and 6, pg. 5; Complaint, Ct. I, ¶ 13; Affidavit of Karen Katamay, ¶ 6]. The storm water drainage ditch on the South side of Spring Ridge Drive (“South Ditch”) runs westward to a pipe that leads northward under Spring Ridge Drive and connects to a second storm water drainage ditch on the North side of Spring Ridge Drive (“North Ditch”) [Requests to Admit, No. 7, pg. 5; Complaint, Ct. I, ¶¶ 13 and 14; and Affidavit of Karen Katamay, ¶ 6]. The North Ditch is connected to a storm sewer pipe, which ultimately leads to Nippersink Creek (“off-site storm sewer pipe”) [Requests to Admit, No. 8, pg. 5; Complaint, Ct. I, ¶ 15].

On November 12, 2008, the Illinois EPA inspected the Site. At that time, there were brownish deposits from previous water flows from the Site in the South Ditch, the North Ditch, and near the off-site storm sewer pipe [Complaint, Ct. I, ¶¶ 16 and 17; Affidavit of Karen Katamay, ¶ 6; 11/12/08 Inspection Report, attached hereto and incorporated herein as Exhibit 11].

On March 31, 2009, the Illinois EPA again inspected the Site. At that time, deposits from the Site were entering the settling basin [Complaint, Ct. I, ¶¶ 19 and 20; Affidavit of Karen Katamay, ¶ 7; 3/31/09 Inspection Report, attached hereto and incorporated herein as Exhibit 12]. A water sample from the settling basin taken by the Illinois EPA indicated the presence of total suspended solids, iron, and several other contaminants associated with industrial waste from concrete mixing (“industrial wastes”) [Requests to Admit, Nos. 9 and 11, pgs. 5 and 6; Complaint, Ct. I, ¶¶ 21-23; Affidavit of Karen Katamay, ¶ 7; 3/31/09 Inspection Report].

On August 17, 2010, the Illinois EPA again inspected the Site. At that time, there were brownish deposits in the settling basin, the South Ditch, and the North Ditch (“industrial waste

storm water discharges”) [Complaint, Ct. I, ¶¶ 24-25; Affidavit of Karen Katamay, ¶ 8; 8/17/10 Inspection Report, attached hereto and incorporated herein as Exhibit 13]. Also, an on-Site storm sewer inlet was unprotected and there were white and brown deposits at the location where the on-Site storm sewer discharges into a road ditch leading to the settling basin and South Ditch [Requests to Admit, No. 17, pg. 7; Complaint, Ct. I, ¶¶ 26 and 27; Affidavit of Karen Katamay, ¶ 8; 8/17/10 Inspection Report].

On December 11, 2012, the Illinois EPA again inspected the Site. At that time, many of the conditions present in 2008, 2009, and 2010 persisted. Water runoff and materials were in the road ditch leading to the settling basin and in the settling basin [Affidavit of Karen Katamay, ¶ 9; 12/11/12 Inspection Report, attached hereto and incorporated herein as Exhibit 14].

Section 12(a) of the Act, 415 ILCS 5/12(a) (2010) prohibits any person from causing, threatening, or allowing the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois. “Person” includes any corporation, such as Super Mix, Inc. [See 415 ILCS 5/3.315 (2010); Complaint, Ct. I, ¶¶ 29 and 30; Answer, Ct. I, ¶¶ 29 and 30]. “Water Pollution” includes the discharge of any contaminant into any waters of the State. [See 415 ILCS 5/12(a) (2010); Complaint, Ct. I, ¶ 35; Answer, Ct. I, ¶ 35]. Total suspended solids, iron, aluminum, barium, chromium, copper, lead, magnesium, manganese, nickel, potassium, and zinc are each a “contaminant”. [See 415 ILCS 5/3.165 (2010); Complaint, Ct. I, ¶¶ 22, 23, 31, and 32]. “Waters” includes all accumulations of water which are wholly within Illinois. [See 415 ILCS 5/3.550 (2010); Complaint, Ct. I, ¶¶ 33 and 34; Answer, Ct. I, ¶ 33].

As a person causing, threatening, and allowing the discharge of wash water and industrial



waste storm water from the Site into the settling basin, the South Ditch, the North Ditch, the off-Site storm sewer pipe, and on-Site storm sewer inlet, Super Mix caused, threatened, and allowed water pollution in violation of 415 ILCS 5/12(a) (2010). Complainant has proved the violations alleged against Respondent Super Mix in Count I.

**Count II: Failure to Obtain a National Pollutant Discharge Elimination System ("NPDES") Permit for Point Source Discharges**

On October 13, 2005, Super Mix obtained coverage under the General NPDES Permit for Storm Water Discharges from Industrial Activity for the Site ("General NPDES Permit"), attached hereto and incorporated herein as Exhibit 15. [Requests to Admit, No. 14, pg. 6 and Document Nos. 2 and 3, pg. 8; Complaint, Ct. II, ¶ 36; Answer, Ct. II, ¶ 36]. Section C.1 of Super Mix's General NPDES Permit provides that all discharges covered by Super Mix's permit shall be composed entirely of storm water and that discharges of material other than storm water must be in compliance with an NPDES permit other than the General NPDES Permit for Storm Water Discharges from Industrial Activities [General NPDES Permit, § C.1, pg. 4; Complaint, Ct. II, ¶ 37; Answer, Ct. II, ¶ 37]. The wash water discharges and industrial waste storm water discharges from the Site are not covered by Super Mix's General NPDES Permit because they include discharges of material other than storm water [Complaint, Ct. II, ¶ 38]. On November 12, 2008, March 31, 2009, August 17, 2010, and December 11, 2012, discharges other than those composed entirely of storm water were leaving the Site [11/12/08 Inspection Report; 3/31/09 Inspection Report; 8/17/10 Inspection Report; 12/11/12 Inspection Report; Affidavit of Karen Katamay, ¶¶ 3-6]. Super Mix does not have any additional NPDES permits for the Site (other than the General NPDES Permit) [Requests to Admit, No. 15, pg. 6; Complaint, Ct. II, ¶ 45].

Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), prohibits any person from causing,

threatening, or allowing the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges. “Person” includes any corporation, such as Super Mix, Inc. [See 415 ILCS 5/3.315 (2010); Complaint, Ct. II, ¶¶ 29 and 30; Answer, Ct. II, ¶¶ 29 and 30]. Wash water discharges and industrial waste storm water discharges are each a “pollutant” as that term is defined in Section 1362(6) of the CWA, 33 U.S.C.A. § 1362(6) (2010) [Complaint, Ct. II, ¶ 40]. The settling basin and South Ditch are each a discernible, confined and discrete conveyance, and therefore constitute a “point source” as that term is defined in Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14) (2010) [Complaint, Ct. II, ¶ 41]. The settling basin and South Ditch are each “navigable waters” as that term is defined in Section 1362(7) of the CWA, 33 U.S.C.A. § 1362(7) (2010) [Complaint, Ct. II, ¶ 42]. The addition of wash water discharges and industrial waste storm water discharges to navigable waters from a point source constitutes a “discharge of pollutants” as that term is defined in Section 1362(12) of the CWA, 33 U.S.C.A. § 1362(12) (2010) [Complaint, Ct. II, ¶ 43].

As a person discharging wash water discharges and industrial waste storm water discharges from the Site into the settling basin and the South Ditch without a site-specific NPDES permit, Super Mix caused, threatened, and allowed the discharge of contaminants into the waters of the State without an NPDES permit for point source discharges in violation of 415 ILCS 5/12(f) (2010) and Conditions C.1(a) and (b)(i) of Super Mix’s General NPDES Permit. Complainant has proved the violations alleged against Respondent Super Mix in Count II.

**Count III: Failure to Comply with Storm Water Pollution Prevention Plan (“SWPPP”) Requirements of the General NPDES Permit**

Many of the same facts presented in Count II are applicable to a finding of violation for this Count III. Pursuant to Section E of Super Mix’s General NPDES Permit, the Respondent

was required to develop and implement a SWPPP for the Site [Complaint, Ct. III, ¶ 37; General NPDES Permit, § E, pg. 6]. On March 31, 2009, an Illinois EPA inspector reviewed the Site's SWPPP and found it failed to contain the information required by Sections 5(a, c, d, e, and f), 6, 7, 8, 9, and 11 of the General NPDES Permit [3/31/09 Inspection Report; Complaint, Ct. III, ¶ 38; General NPDES Permit, §§ E.5(a, c, d, e, and f), 6, 7, 8, 9, and 11; Affidavit of Karen Katamay, ¶ 7].

Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), prohibits any person from causing, threatening, or allowing the discharge of any contaminant into the waters of the State in violation of any term or condition imposed by such [NPDES] permit. "Person" includes any corporation, such as Super Mix, Inc. [See 415 ILCS 5/3.315 (2010); Complaint, Ct. III, ¶¶ 29 and 30; Answer, Ct. III, ¶¶ 29 and 30]. Total suspended solids, iron, aluminum, barium, chromium, copper, lead, magnesium, manganese, nickel, potassium, and zinc are each a "contaminant". [See 415 ILCS 5/3.165 (2010); Complaint, Ct. III, ¶¶ 22, 23, 31, and 32]. "Waters" includes all accumulations of water which are wholly within Illinois. [See 415 ILCS 5/3.550 (2010); Complaint, Ct. III, ¶¶ 33 and 34; Answer, Ct. III, ¶ 33].

As a person causing, threatening, and allowing the discharge of contaminants from the Site into the settling basin, the South Ditch, the North Ditch, the off-Site storm sewer pipe, and on-Site storm sewer inlet in violation of its General NPDES Permit requirements for a SWPPP, Super Mix violated 415 ILCS 5/12(f) (2010). Complainant has proved the violations alleged against Respondent Super Mix in Count III.

**Count IV: Operation of a Treatment Works Without an Operating Permit**

Many of the same facts presented in Count I are applicable to a finding of violation for

this Count IV. The settling basin allows for deposits from the wash water discharges and industrial waste storm water discharges from the Site to settle out and accumulate on the bottom of the settling basin [Requests to Admit, No. 9, pg. 5; Complaint, Ct. IV, ¶ 40]. Super Mix removes the accumulated dirt, sediment, concrete dust and other deposits from the settling basin with an excavator [Requests to Admit, No. 10, pg. 6; Complaint, Ct. IV, ¶ 41]. Super Mix does not have an Illinois EPA operating permit to operate or excavate the settling basin [Requests to Admit, No. 12, pg. 6; Complaint, Ct. IV, ¶ 42; Affidavit of Karen Katamay, ¶ 10].

Section 309.204(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a), provides, in pertinent part, that no person shall cause or allow the use or operation of any treatment works without an operating permit issued by the Illinois EPA [Complaint, Ct. IV, ¶ 37; Answer, Ct. IV, ¶ 37]. “Person” includes any corporation, such as Super Mix, Inc. [See 415 ILCS 5/3.315 (2010); Complaint, Ct. IV, ¶¶ 29 and 30; Answer, Ct. IV, ¶¶ 29 and 30]. The settling basin is a “treatment works” as that term is defined by section 301.415 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.415, because it is used for the collection and disposal of wash water discharges and industrial waste storm water discharges from the Site [Requests to Admit, No. 9, pg. 5; Complaint, Ct. IV, ¶ 39].

As a person causing and allowing the use and operation of the settling basin, a treatment works, without an operating permit issued by the Illinois EPA, Super Mix violated Section 309.204(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a). By violating Section 309.204(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a), Super Mix thereby caused, threatened, and allowed the discharge of contaminants into the environment so as to violate regulations or standards adopted by the Board in violation

of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010). Complainant has proved the violations alleged against Respondent Super Mix in Count IV.

### **III. REQUESTED REMEDY**

The Board should consider ordering appropriate relief without a formal hearing. In this case, Complainant requests that the Board order the Respondent to cease and desist from violations of the Act, Board Water Pollution Regulations, and conditions of its General NPDES Permit and assess a penalty in the amount of Fifty Thousand Dollars (\$50,000.00) against Super Mix.

#### **A. Cease and Desist**

Plaintiff brought this action pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010). Section 33(b) of the Act, 415 ILCS 5/33(b) (2010), provides, in pertinent part, as follows:

- (b) Such [Board final] order may include a direction to cease and desist from violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and/or the imposition by the Board of civil penalties in accord with Section 42 of this Act . . .

As set forth in the Complaint and described above, the Respondent has violated, and continues to violate, the Act, Board Water Pollution regulations, and conditions of its General NPDES Permit by discharging wash water and industrial waste storm water from the Site. Accordingly, it is necessary and appropriate, pursuant to Section 33(b) of the Act, 415 ILCS 5/33(b) (2010), for the Board to order Respondent to cease and desist as follows:

- a. Truck washing of any kind (including tires) in areas of the Site not specifically designed and designated for such purpose;
- b. All non-storm water runoff from the Site;

- c. All non-storm water discharges to the drainage ditch adjacent to the settling basin; and
- d. All violations of the Act, Board Water Pollution Regulations, and conditions of Super Mix's General NPDES Permit.

**B. Civil Penalty**

Complainant is seeking a finding that Respondent violated the statutory and regulatory provisions alleged in Counts I through IV of its Complaint. Section 33(b) of the Act, 415 ILCS 5/33(b) (2010), allows the Board to impose civil penalties in accord with Section 42 of the Act. Section 42(a) and (b) of the Act, 415 ILCS 5/42(a) and (b) (2010), provide, in pertinent part, as follows:

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues . . .
- (b) Notwithstanding the provisions of subsection (a) of this Section:
  - (1) Any person that violates Section 12(f) of this Act or any NPDES permit or term or condition thereof, or any filing requirement, regulation or order relating to the NPDES permit program, shall be liable to a civil penalty of not to exceed \$10,000 per day of violation.

**1. An Evaluation of the Section 33(c) Factors Indicates that a Civil Penalty is Appropriate**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), provides, in pertinent part, as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

- (ii) the social and economic value of the pollution source;
- (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance.

Complainant believes that Sections 33(c)(i) through (iv) of the Act, 415 ILCS 5/33(c)(i) through (iv) (2010), strongly support assessment of a civil penalty.

- (i) *the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people*

The continued discharge of wash water and industrial waste storm water from the Site and its off-site impacts on the settling basin, South Ditch, the North Ditch, and the off-Site storm sewer pipe continue to cause injury to waters of the State. Failure to comply with the General NPDES Permit and treatment works operating permit requirements also continue to interfere with the protection of the health and general welfare of the people by the Illinois EPA.

- (ii) *The social and economic value of the pollution source*

There is social and economic value to the Super Mix facility.

- (iii) *The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved*

The Super Mix facility is suitable to the area in which it is located.

- (iv) *the technical practicability and economic reasonableness of reducing or eliminated the emissions, discharges or deposits resulting from such pollution source*

The technical practicability and economic reasonableness of managing off-site discharges and complying with necessary NPDES permitting is not so onerous such that Super Mix could not achieve compliance.

(v) *Any subsequent compliance*

As of the date of the filing of this Motion, the Respondent remains out of compliance.

Complainant believes that an evaluation of the Section 33(c) factors indicates that assessment of a civil penalty against Respondent is appropriate.

Pursuant to Section 42(a) of the Act, Complainant would be entitled to a maximum civil penalty against the Respondent of up to \$50,000 for each violation and up to \$10,000 per day for each violation for Counts I and IV of the Complaint. Pursuant to Section 42(b) of the Act, Complainant would be entitled to a maximum civil penalty of \$10,000 per day of violation for Counts II and III of the Complaint. Applying Section 42(a) and (b) of the Act, 415 ILCS 5/42(a) and (b) (2010), the civil penalty that may be imposed against the Respondent is calculated as follows:

Count I: [1 statutory violation x \$50,000] plus [1,542 days of violation (November 12, 2008 thru January 31, 2013) x \$10,000] = **\$15,470,000.00**

Count II: 1,542 days of violation (November 12, 2008 thru January 31, 2013) x \$10,000 = **\$15,420,000.00**

Count III: 1,542 days of violation (November 12, 2008 thru January 31, 2013) x \$10,000 = **\$15,420,000.00**

Count IV: [1 statutory violations x \$50,000] plus [1,542 days of violation (November 12, 2008 thru January 31, 2013) x \$10,000] = **\$15,470,000.00**

**2. The Section 42(h) Factors Support Assessment of a \$50,000.00 Civil Penalty**

The Board looks to the factors in Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), to determine the amount of an appropriate civil penalty. Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a),



(b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
- (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
- (6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;
- (7) whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
- (8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent.

Complainant's evaluation of these factors follows:

1. *the duration and gravity of the violation*

The facts show Respondent has been out of compliance with the Act, its General NPDES Permit, and Board regulations from at least November 12, 2008, when the Illinois EPA inspected

the Site and first noticed the violations, to the filing date of this Motion. Since March 31, 2009, and continuing to the filing date of this Motion, the Respondent has been out of compliance with the SWPPP requirements of its General NPDES Permit.

2. *the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act*

Respondent has not demonstrated any due diligence in attempting to return to compliance.

3. *any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance*

Respondent has delayed the cost of installing storm water control facilities needed to prevent wash water and industrial waste storm water discharges from the Site. Additionally, Respondent has avoided obtaining coverage under the appropriate NPDES permit. An estimated economic benefit of \$3,673.00 has been realized by Respondent for its violations.

4. *the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act*

Complainant believes that its recommended penalty of \$50,000.00 will serve to deter violations by Respondent and by other persons similarly subject to the Act, General NPDES Permit requirements, and Board regulations.

5. *the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent*

Complainant is not aware of any previously adjudicated violations by Super Mix, Inc.

6. *whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency*

Respondent did not self-disclose its noncompliance.

7. *whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform*

No supplemental environmental project has been proposed by Respondent.

8. *whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint*

In a letter dated June 8, 2009, Respondent submitted a Compliance Commitment Agreement ("CCA"). On June 29, 2009, the Illinois EPA rejected the CCA on the basis of the nature and seriousness of the alleged violations.

After a consideration of the statutory factors set forth in Sections 33(c) and 42(h) of the Act, Complainant is seeking a civil penalty of \$50,000.00 from the Respondent for all counts alleged in the Complaint.

#### **IV. CONCLUSION**

Respondent failed to timely respond to Complainant's Requests to Admit. Therefore, pursuant to Section 101.618(c) of the Board Procedural Rules, 35 Ill. Adm. Code 101.618(c), the Board should find that all facts requested in Complainant's Requests to Admit are deemed to be admitted by Super Mix. Complainant has sufficiently alleged violations of Sections 12(a) and 12(f) of the Act, 415 ILCS 5/12(a) and (f) (2010), Conditions C.1(a) and C.1(b)(i) of Respondent's General NPDES Permit, and Section 309.204(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a), and the Board should grant summary judgment in

favor of Complainant and against Respondent on Counts I, II, III, and IV.

Complainant requests that the Board, after consideration of the penalty factors described in Sections 33(c) and 42(h) of the Act, assess a civil penalty against Respondent in the amount of \$50,000.00 and require Respondent to return to compliance with the Act, the NPDES permit requirements, and the Board regulations. In the alternative, Complainant requests that the Board order a hearing against Super Mix on the sole issue of civil penalty.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board issue an order in favor of Complainant and against Respondent SUPER MIX, INC.:

1. Deeming all facts requested in Complainant's Requests to Admit to be admitted;
2. Granting summary judgment in favor of Complainant and against Respondent on Counts I, II, III, and IV of the Complaint;
3. Ordering the Respondent to cease and desist as detailed in Section III.A of this Motion;
4. Requiring Respondent to return to compliance with the Act, the NPDES permit requirements, and the Board regulations by a specified date;
5. Requiring Respondent to cease and desist from further violations of the Act, its General NPDES Permit, and Board regulations;
6. Assessing a civil penalty of \$50,000.00 against Respondent;
7. Alternatively, setting a date for hearing on the issue of penalty in this matter; and

8. Granting such other relief as the Board deems appropriate and just.

RESPECTFULLY SUBMITTED:

PEOPLE OF THE STATE OF ILLINOIS  
*ex rel.* LISA MADIGAN, Attorney General  
of the State of Illinois

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


BY:

A handwritten signature in black ink that reads "Jennifer A. Van Wie". The signature is written over a horizontal line.

JENNIFER A. VAN WIE  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached Motion to Deem Facts Admitted and for Summary Judgment Against Respondent Super Mix, Inc. and Notice of Filing, by U.S. Certified Mail (return receipt requested), unless otherwise noted, upon the persons listed on the service list.

  
JENNIFER A. VAN WIE  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609

Date: January 31, 2013