



**Service List**

For Super Mix, Inc.

Super Mix, Inc.

c/o Donald C. Stinespring, Agent

5414 Hill Road, Suite 382

Richmond, Illinois 60071

(By certified mail, return receipt requested)

Illinois Environmental Protection Agency

Charles Gunnarson

Division of Legal Counsel

Illinois Environmental Protection Agency

1021 North Grand Avenue East

P.O. Box 19276

Springfield, Illinois 62794-9276

(By First Class U.S. Mail)

Illinois Pollution Control Board

Bradley P. Halloran

Hearing Officer

Illinois Pollution Control Board

100 W. Randolph Street, Suite 11-500

Chicago, Illinois 60601

(By email at [Brad.Halloran@Illinois.gov](mailto:Brad.Halloran@Illinois.gov))

John Therriault

Assistant Clerk of the Board

Illinois Pollution Control Board

100 W. Randolph Street, Suite 11-500

Chicago, Illinois 60601

(By electronic filing)



5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



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: May 24, 2013

**CERTIFICATE OF SERVICE**

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 24<sup>th</sup> day of May 2013, I caused to be served to the parties named on the attached Service List by the methods specified on the Service List, the foregoing Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Notice of Filing.



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

**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.	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Super Mix, Inc., an Illinois corporation (“Respondent” or “Super Mix”), (collectively “Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1, *et seq.* (2012), and the Board’s regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On May 31, 2011, a Complaint was filed 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 upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2012), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2012).

3. At all times relevant to the Complaint, Super Mix was and is an Illinois corporation in good standing with the Illinois Secretary of State.

4. Super Mix operates a ready mix concrete and aggregate facility located at 2203 Spring Ridge Drive, Spring Grove, McHenry County, Illinois ("Facility").

5. On October 13, 2005, Super Mix obtained coverage under the General National Pollutant Discharge Elimination System ("NPDES") Permit for Storm Water Discharges from Industrial Activities, Permit Number ILR006479 ("NPDES Permit").

**B. Allegations of Non-Compliance**

Complainant contends that Super Mix has violated the following provisions of the Act, Board regulations, and Respondent's NPDES Permit:

- Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
- Count II: Failure to Obtain a NPDES Permit for Point Source Discharges, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Conditions C.1(a) and (b)(i) of Respondent's NPDES Permit;
- Count III: Failure to Comply with Storm Water Pollution Prevention Plan ("SWPPP") Requirements of the NPDES Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012); and
- Count IV: Operation of a Treatment Works Without an Operating Permit, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 309.204(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204(a).

**C. Non-Admission of Violations**

Super Mix neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

**D. Compliance Activities to Date**

1. On October 4, 2011, Super Mix submitted a work plan to the Illinois EPA for review and approval ("Work Plan").
2. On October 4, 2011, the Illinois EPA approved the Work Plan.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. Super Mix shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against Super Mix in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2012).

Super Mix shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation.



**III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), provides 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:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. 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;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Super Mix failed to control stormwater containing contaminants, thereby threatening human health and the environment.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility was and is suitable for the area in which it is located.
4. Controlling wash water and industrial waste storm water discharges and compliance with the terms and conditions of the NPDES Permit is both technically practicable and economically reasonable.
5. Super Mix has not yet fully complied with the Act, the Board regulations, and its NPDES Permit conditions.

**IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2012), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . 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 response to these factors, the Parties to the Stipulation state as follows:

1. From at least November 12, 2008, Super Mix allowed wash water and industrial

storm water discharges to leave the Facility in violation of the Act and its NPDES Permit, without obtaining a site-specific NPDES permit for point source discharges. From at least November 12, 2008, or a date better known to Super Mix, Super Mix used a settling basin to collect and dispose of wash water discharges and industrial waste storm water discharges without an Illinois EPA operating permit for a treatment works. From at least March 31, 2009, Super Mix failed to develop and implement a SWPPP in conformance with the requirements of its NPDES Permit.

2. Super Mix has not demonstrated due diligence in attempting to resolve the violations of the Act, Board regulations and its NPDES Permit. The alleged violations remain outstanding.

3. Super Mix has gained an economic benefit of approximately \$3,673.00 by delaying the cost of installing stormwater control facilities necessary to prevent wash water and industrial waste storm water discharges from the Facility. This economic benefit will be recouped as part of the civil penalty amount of Ten Thousand Dollars (\$10,000.00).

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Super Mix has no previously adjudicated violations of the Act.

6. Super Mix did not self-disclose the violations.

7. The settlement of this matter does not include a supplemental environmental project.

8. A Compliance Commitment Agreement was proposed by Respondent, but rejected by the Illinois EPA.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Stipulated Penalties, Interest and Default**

1. If Super Mix fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, Super Mix shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$30.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon Super Mix for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve Super Mix of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Super Mix knows or should have known of its noncompliance with any provision of this Stipulation.

2. If Super Mix fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Super Mix shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount

owed by Super Mix not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

**C. Payment Procedures**

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services #2  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. Upon approval of this Stipulation by the Board, Super Mix shall implement the following work plan ("Work Plan"):

- a. Ensure that all work areas at the Facility have a concrete or asphalt surface;
- b. Within thirty (30) days of entry of this Stipulation, remove the yard hydrant located in the front of the Facility. Super Mix shall ensure that mixer truck washout is placed in the washout recycle plant. Absolutely no truck washing of any kind (including tires) will be done in the front parking lot;
- c. At least once per month, the paved parking lot shall be swept to minimize surface dirt runoff from the Facility;
- d. Within thirty (30) days of entry of this Stipulation, install and maintain a filter basket on the catch basin located at the Facility south of the shop and north of the truck washout recycle plant;
- e. Maintain the current settling basin so there is a safety void to catch any dirt runoff. All accumulated silt shall be removed at least once every two (2) years from the basin or as needed to maintain the integrity of the basin;
- f. Within thirty (30) days of entry of this Stipulation, install a three (3) inch ditch check at the outlet of the settling basin (at least ten feet) with a top elevation of approximately 24 inches below the pavement elevation;
- g. Maintain the ditch adjacent to the settling basin for the next 150 feet downstream with a flat bottom, no pitch, and with current vegetated plants to work as a final filter for storm water;
- h. Immediately remove any cement dust deposited on the pavement at the Facility. Maintain the concrete plants centralized dust collection system to keep all cement dust sealed in the plant silos or trucks;
- i. Inspect the Facility daily to ensure that the above actions (a-h) are being maintained properly;
- j. Within thirty (30) days of entry of this Stipulation, the triple basin located inside the building at the Facility shall be filled with concrete to ensure

that it is no longer connected to the storm sewer system. The Respondent shall notify the Village of Spring Grove (Stephen Bicking) and Illinois EPA (Karen Katamay) 48 hours (2 business days) in advance of the date of filling so that representatives may be present to witness and document the filling; and

- k. Within thirty (30) days of entry of this Stipulation, the Respondent shall cease all truck washing activities at the Facility.
2. Within sixty (60) days of entry of this Stipulation, Super Mix shall submit to the Illinois EPA a report detailing the work completed pursuant to the Work Plan.
3. Super Mix shall incorporate into its SWPPP the actions being undertaken pursuant to the Work Plan.
4. Super Mix shall at all times comply with the terms and conditions of NPDES Permit ILR006479.
5. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.
6. This Stipulation in no way affects the responsibilities of Super Mix to comply with any other federal, state or local laws or regulations, including but not limited to the Act, the Board Regulations, and its NPDES Permit.
7. Super Mix shall cease and desist from future violations of the Act, Board Regulations, and its NPDES Permit that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$10,000.00 penalty and any specified costs and accrued interest, its commitment to cease and desist as contained in Section V.D.7 above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Super Mix from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on May 31, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Super Mix with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Super Mix's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Super Mix.

**F. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this



Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

Charles Gunnarson  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, Mailcode #21  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Karen Katamay  
Division of Water Pollution Control  
Illinois Environmental Protection Agency  
Des Plaines Regional Office  
9511 West Harrison Street  
Des Plaines, Illinois 60016

As to the Respondent

Jack Pease, President  
Super Mix, Inc.  
2203 Spring Ridge Drive  
Spring Grove, Illinois 60081

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.
2. The Parties to the Stipulation may, by mutual written consent, agree to extend any

compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

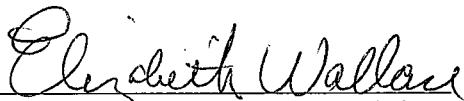
PEOPLE OF THE STATE OF ILLINOIS

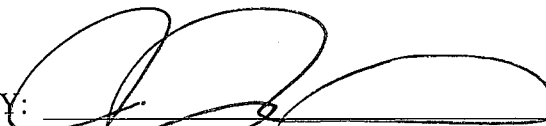
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

LISA BONNETT, Director  
Illinois Environmental Protection Agency

BY:   
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY:   
JOHN L. KIM  
Chief Legal Counsel

DATE: 5/15/13

DATE: 5/17/13

SUPER MIX, INC.

BY: \_\_\_\_\_

Its: \_\_\_\_\_

DATE: \_\_\_\_\_

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
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BY: \_\_\_\_\_  
ELIZABETH WALLACE, Chief  
Assistant Attorney General  
Environmental Bureau

BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SUPER MIX, INC.

BY: \_\_\_\_\_  
Its: \_\_\_\_\_

DATE: 5-17-13