

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	PCB No.
CENTERPOINT PROPERTIES TRUST, a)	(Enforcement - Water)
real estate investment trust, and FCL)	
INVESTORS, INC., an Illinois corporation)	
formerly known as FCL BUILDERS, INC.,)	
)	
Respondent,)	

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

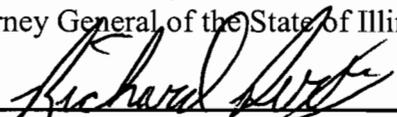
PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the following Complaint, a copy of which is attached and hereby served on you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office or an attorney.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental facilities financing act [20 ILCS 3515/1 et seq.] to correct the alleged pollution.

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the State of Illinois

By: 
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)	
Respondent.)	

COMPLAINT

The Complainant, the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of the Respondents, CENTERPOINT PROPERTIES TRUST, a real estate investment trust, and FCL INVESTORS, INC., an Illinois corporation formerly known as FCL BUILDERS, INC., as follows:

COUNT I
WATER POLLUTION

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency (the "Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/31 (2006).

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 (2006), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the federal

Clean Water Act ("CWA"), 33 U.S.C. § 1342(b)(7).

3. At all times relevant to this Complaint, Respondent CenterPoint Properties Trust ("CenterPoint") was and is a real estate investment trust.

4. At all times relevant to this Complaint, Respondent FCL Investors, Inc. ("FCL") was known as FCL Builders, Inc., and was and is an Illinois corporation in good standing with the State of Illinois.

5. At all times relevant to this Complaint, CenterPoint owned the "Center Point Business Center", a parcel of land of approximately 134 acres in size located at the northwest corner of the intersection of Interstate 94 and Washington Street in the Village of Gurnee in Lake County, Illinois (the "Site").

6. On June 7, 2006, the Illinois EPA sent violation notices to the Respondents alleging the violations of the Act described herein, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006). The Illinois EPA met with representatives of the Respondents on August 1, 2006. On September 21, 2006, the Illinois EPA sent notices to the Respondents rejecting their proposed compliance commitment agreements. On March 20, 2007, the Illinois EPA sent notices of intent to pursue legal action to the Respondents.

7. CenterPoint engaged in construction activities at the Site, and hired Respondent FCL as its construction contractor. FCL was responsible for conducting grading activities at the Site, and in the process of conducting grading activities FCL caused soil to be excavated and disturbed at the Site.

8. In its contract with CenterPoint, FCL was also specifically given the responsibility for complying with the Illinois EPA General Stormwater Permit that governed the Respondents' discharges at the Site, and for implementing the storm water pollution prevention

plan ("SWPPP") that the Illinois EPA's General Stormwater Permit required for the construction activities at the Site. Furthermore, Part. IV.F. of the General Stormwater Permit requires that the SWPPP clearly identify every contractor who will be implementing portions of the SWPPP, and that every such contractor must sign a certification statement in accordance with Part VI.G. of the General Stormwater Permit.

9. Stormwater run-off from the Site flows into an unnamed tributary of the Des Plaines River (hereafter termed the "Tributary"). The Tributary flows from the north along the western edge of the Site, and then flows through the southern part of the Site, and empties into the Des Plaines River approximately one (1) mile downstream from the Site.

10. Stormwater run-off from the Site also flows into an area of wetlands that is located near the southeast corner of the Site (the "Wetlands"). The Wetlands drain into the Tributary.

11. At all times relevant to this Complaint, the Site was divided into eleven (11) separate lots. Four lots, which were referred to by the Respondents as "Lot 3," "Lot 7," "Lot 8," and "Lot 9," are the subject of this Complaint. These lots total more than five (5) acres in size.

12. On April 3, 2006, and on other dates better known to the Respondents, the ground at Lot 3, Lot 7, Lot 8, and Lot 9 was disturbed and unstabilized, leaving exposed soil (i.e. soil not protected by vegetation or other stabilizing devices) at each of these areas.

13. During a period of time commencing no later than April 3, 2006, and continuing until at least May 12, 2006, and on other dates better known to the Respondents, the soil at Lot 3, Lot 8, and Lot 9 was in a disturbed and unstabilized state and soil was loose and exposed; large stockpiles of soil were present at Lot 3 and Lot 9; and silt fences and/or other barriers located at Lot 3, Lot 8, and Lot 9 provided only nominal and inadequate protection against this soil being

carried by stormwater into the Tributary and/or the Wetlands.

14. On information and belief, the Respondents created the stockpiles of soil and/or the presence of the other disturbed and exposed soil at Lot 3, Lot 8, and Lot 9 by depositing the soil there prior to April 3, 2006, on a date or dates better known to the Respondents.

15. On April 3, 2006, and on other dates better known to the Respondents, stormwater runoff carried exposed soil from Lot 7 and Lot 8 through a series of conveyances (including trenches and storm drains) until it discharged from a storm sewer outfall (the "Basin B Outfall") into a detention basin that lies along the western edge of the Site and that was referred to by the Respondents as "Basin B".

16. Basin B is constructed out of the Tributary, and lies in the middle of the Tributary, with the Tributary flowing into and then out of Basin B. A turbidity barrier is located within Basin B, between the Basin B Outfall and the remainder of Basin B (the "Turbidity Barrier"). The Turbidity Barrier encloses or is intended to enclose an area of water around the Basin B Outfall (the "Basin B Outfall Area"). The Turbidity Barrier is intended to prevent contaminants that discharge from the Basin B Outfall and into Basin B from entering into the Tributary; the Turbidity Barrier therefore is intended to separate the Basin B Outfall Area from those parts of Basin B where the Tributary flows into and out of Basin B.

17. On April 3, 2006, and on other dates better known to the Respondents, the stormwater runoff from Lot 7 and Lot 8 was causing the Basin B Outfall Area to be filled with sediments.

18. On April 3, 2006, and on other dates better known to the Respondents, the stormwater runoff from Lot 7 and Lot 8 was causing the Basin B Outfall Area to have a strong creamy brownish color.

19. On April 3, 2006, and on other dates better known to the Respondents, the Turbidity Barrier was failing to keep the sediments brought by the stormwater runoff from Lot 7 and Lot 8 contained within the Basin B Outfall Area. Sediment-laden water was escaping the Basin B Outfall Area and entering the remainder of Basin B, and then was flowing into the Tributary.

20. Sediment-laden water from the Basin B Outfall Area caused turbidity and an alteration of the color of the water in the remainder of Basin B. Sediment-laden water from Basin B in turn caused turbidity and an alteration of the color of the water in the Tributary.

21. On April 3, 2006, and April 14, 2006, and on other dates better known to the Respondents, stormwater runoff carried exposed soil from Lot 9 into Detention Basin D ("Basin D").

22. The sediment-laden runoff from Lot 9 caused turbidity and an alteration of the color of the water in Basin D.

23. The Wetlands border Detention Basin D. Sediment-laden water was conveyed from Basin D and into the Wetlands through a series of conveyances, including a discharge device attached to Basin D.

24. The flow of sediment-laden water from Basin D into the Wetlands caused turbidity and an alteration of the color of the water in the Wetlands.

25. Lot 3, Lot 7, Lot 8, and Lot 9 were fully stabilized and stormwater violations had ceased by September 20, 2007.

26. Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in

Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

27. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition of the term "person":

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

28. Respondent CenterPoint is a company, corporation, trust, or some other legal entity, and is therefore a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

29. Respondent FCL, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

30. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides the following definition of the term "contaminant":

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

31. Soil and sediment, and stormwater runoff that contains soil and sediment, are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

32. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), contains the following definition of the term "waters":

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

33. The Tributary, the Wetlands, and Basin B are "waters" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

34. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides the following definition of the term “water pollution”:

“Water Pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

35. By failing to install adequate erosion and stormwater runoff control measures at the Site, the Respondents caused and/or allowed the discharge of excessive soil- and sediment-laden stormwater runoff from their soil grading and disturbing activities at the Site into the Tributary, the Wetlands, and Basin B. Such soil and sediment altered, or would tend to alter, the physical or biological properties of the Tributary, the Wetlands, and Basin B, in such a manner that the alteration would, or likely would, create a nuisance; or in such a manner that the alteration would, or likely would, render the Tributary, the Wetlands, and Basin B harmful, detrimental or injurious to public welfare; or to domestic, recreational, or other legitimate uses; or to wild animals, birds, fish, and other aquatic life. The Respondents therefore caused or allowed the discharge of contaminants so as to cause or tend to cause water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, CenterPoint and FCL, on this Count I:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);

3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);
4. Assessing against each of the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against each Respondent for each day of violation;
5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II
VIOLATION OF WATER QUALITY STANDARDS

1.-34. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I as paragraphs 1 through 34 of this Count II.

35. The Respondents' discharges at the Site are subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board (the "Board") pursuant to the Act. The Board's regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code ("Board Water Pollution Regulations").

36. Part 302, Subpart B, of the Board Water Pollution Regulations, 35 Ill. Adm. Code Part 302, Subpart B, establishes general use water quality standards for non-specified waters of the State of Illinois.

37. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating

debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin

38. The soil- and sediment-laden stormwater discharges from the Site that resulted from the Respondents' soil-disturbing activities caused unnatural turbidity and color in the Tributary, the Wetlands, and Basin B.

39. By causing or allowing the discharge of contaminants into the Tributary, the Wetlands, and Basin B that caused unnatural turbidity and color in the Tributary, the Wetlands, and Basin B, the Respondents have violated Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and have thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of the Complainant and against the Respondents, CenterPoint and FCL:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 302.203 the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 302.203 the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
4. Assessing against each Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act or the Board Water Pollution Regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against each Respondent for

each day of violation;

5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III
WATER POLLUTION HAZARD

1.-34. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I as paragraphs 1 through 34 of this Count III.

35. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:

No person shall:

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

36. By depositing soil on Lots 3, 8, and 9 as described in paragraphs 11-13 above, and by failing to implement adequate erosion and runoff control measures, resulting in soil and sediment being carried by stormwater runoff into the Tributary and/or the Wetlands and/or Basin B, Respondents created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, CenterPoint and FCL, on this Count III:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(d) of the Act, 415 ILCS

5/12(d) (2006);

3. Ordering the Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

4. Assessing against each Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) each for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against each Respondent for each day of violation;

5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

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

COUNT IV
VIOLATION OF THE TERMS AND CONDITIONS OF A NPDES PERMIT –
FAILURE TO SIGN THE SWPPP

1.-34. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I as paragraphs 1 through 34 of this Count IV.

35. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without a NPDES permit. The United States Environmental Protection Agency (“USEPA”) administers the NPDES program in each State unless the USEPA has delegated the authority to administer the NPDES program to the State.

36. The USEPA has delegated the authority to administer the NPDES program to the State of Illinois, conditioned upon its compliance with federal regulations. The State of Illinois issues NPDES permits through the Illinois EPA. The State of Illinois’ authority to issue NPDES permits includes issuing permits for the discharge of stormwater. Stormwater discharges are

regulated by 40 CFR § 122.26, which requires a person to obtain a NPDES permit and to implement a storm water pollution prevention plan (“SWPPP”) before discharging stormwater in the course of engaging in certain construction activities.

37. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), provides, in pertinent part, as follows:

No person shall:

* * * *

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program. . . .

38. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

39. Federal regulation 40 CFR § 122.26(a) provides in pertinent part as follows:

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

* * * *

(ii) A discharge associated with industrial activity...

40. Federal regulation 40 CFR § 122.26(b) provides in pertinent part as follows:

(b) Definitions.

* * * * *

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. . . . The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

* * * * *

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. . . .

41. Since the Respondents have engaged in construction activity at the Site that has involved clearing, grading, and excavation of soil and that has disturbed more than five acres of total land area, the Respondents' activities at the Site are an "industrial activity" within the definition of 40 CFR § 122.26(b), and the stormwater discharges from the Site are a "discharge associated with industrial activity" subject to 40 CFR § 122.26(a).

42. On May 30, 2003, the Illinois EPA issued a general stormwater permit identified as "General NPDES Permit No. ILR10" or "General NPDES Permit For Storm Water Discharges From Construction Site Activities" (the "General Stormwater Permit").

43. On July 1, 2006, the Illinois EPA issued to CenterPoint a Notice of Coverage, determining that CenterPoint's activities at the Site were covered by the General Stormwater Permit. The construction activities at the Site were governed by the General Stormwater Permit at all times relevant to this Complaint.

44. Part VI.A of the General Stormwater Permit governing the Respondent's activities at the Site provides as follows:

The permittee must comply with all conditions of this permit.

45. Part IV. of the General Stormwater Permit provides as follows:

A storm water pollution prevention plan shall be developed for each construction site covered by the permit. . . . Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

46. Part IV.B.1. of the General Stormwater Permit provides as follows:

The plan shall be signed in accordance with Part VI.G (Signatory Requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (Duty to Provide Information) of this permit.

47. Part VI.G. of the General Stormwater Permit further provides as follows:

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information. . . . that this permit requires be maintained by the permittee, shall be signed.

48. Part V.A. of the General Stormwater Permit provides as follows:

The permittee shall retain copies of storm water pollution prevention plans and all reports and notices required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the permit coverage expires or is terminated. . . .

49. At all times relevant to this Complaint, the permittee, Respondent CenterPoint, was required by Part V.A. of the General Stormwater Permit to retain copies of its SWPPP.

Since Part V.A. of the General Stormwater Permit requires that the permittee retain a copy of the SWPPP, the SWPPP is therefore a document that must be signed pursuant to Part VI.G. of the General Stormwater Permit.

50. Respondent CenterPoint's SWPPP was not signed as of April 14, 2006.

51. By failing to sign its SWPPP, Respondent CenterPoint violated Part IV.B.1. of the General Stormwater Permit. By violating a condition of the General Stormwater Permit, the Respondent CenterPoint thereby also violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent CenterPoint on this Count IV:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Part IV.B.1. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to cease and desist from any further violations of Part IV.B.1. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT V
VIOLATION OF TERMS AND CONDITIONS OF A NPDES PERMIT –
FAILURE TO STABILIZE THE CONSTRUCTION SITE AFTER CONSTRUCTION
ACTIVITIES HAVE HALTED

1.-34. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I as paragraphs 1 through 34 of this Count V.

35.-45. Complainant realleges and incorporates by reference herein paragraphs 35

through 45 of Count IV as paragraphs 35 through 45 of this Count V.

46. Part IV.D.2.a.(i) of the General Stormwater Permit provides, in pertinent part, as follows:

* * * *

Except as provided in paragraphs (A) and (B) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

47. Construction activities at Lot 3, Lot 8, and Lot 9 of the Site had temporarily or permanently ceased by April 3, 2006 or an earlier date better known to the Respondent, and these construction activities remained temporarily or permanently ceased until at least April 14, 2006 or a later date better known to the Respondent.

48. On information and belief, stabilization measures were not initiated at Lot 3, Lot 8, and Lot 9 as soon as practicable after the temporary or permanent cessation of construction activities at these locations.

49. CenterPoint failed to commence stabilization measures at Lot 3, Lot 8, and Lot 9 as soon as practicable after the temporary or permanent cessation of construction activities at these locations constitutes a violation of Part IV.D.2.a.(i) of the General Stormwater Permit. Compliance with Part IV.D.2.a.(i) is a condition of the Permit. By violating a condition of the General Stormwater Permit, the Respondent also thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent CenterPoint on this Count V:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Part IV.D.2.a.(i) of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to cease and desist from any further violations of Part IV.D.2.a.(i) of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing against the Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VI
VIOLATION OF TERMS AND CONDITIONS OF A NPDES PERMIT –
FAILURE TO CARRY OUT REQUIRED INSPECTIONS AND FILE
NONCOMPLIANCE REPORTS

1.-34. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I as paragraphs 1 through 34 of this Count VI.

35.-45. Complainant realleges and incorporates by reference herein paragraphs 35 through 45 of Count IV as paragraphs 35 through 45 of this Count VI.

46. Part IV.D.4. of the General Stormwater Permit provides in pertinent part, as follows:

Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater or equivalent snowfall. . . .

* * * * *

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. . . .

* * * * *

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph b above shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the permit coverage expires or is terminated. The report shall be signed in accordance with Part VI.G (Signatory Requirements) of this permit.

d. The permittee shall complete and submit within 5 days an "Incidence of Noncompliance" (ION) report for any violation of the storm water pollution prevention plan observed during an inspection conducted, including those not required by the Plan. . . .

* * * * *

47. On April 14, 2006, and on May 5, 2006, the Respondent submitted to the Illinois EPA a set of the inspection reports required to be kept by the permittee under Part IV.D.4.c. of the General Storm Water Permit (the "Inspection Reports").

48. The Inspection Reports submitted to the Illinois EPA by the Respondent provided no documentation showing that at any time prior to April 4, 2006, qualified personnel had

conducted inspections of the disturbed areas in Lot 3, Lot 8, and Lot 9, as required by Part IV.D.4. of the Respondent's General Stormwater Permit.

49. On information and belief and based on the submitted Inspection Reports, the Respondent failed to have qualified personnel conduct inspections of the disturbed areas in Lot 3, Lot 8, and Lot 9 at any time prior to April 4, 2006.

50. By failing to have disturbed areas of the Site inspected by qualified personnel, and document such inspections, the Respondent violated Part IV.D.4. of their General Stormwater Permit.

51. On information and belief and based on the submitted Inspection Reports, at no time prior to May 5, 2006 did the Respondent have qualified personnel inspect the accessible discharge points at Detention Basin B or the Wetlands to determine whether the erosion control measures in the SWPPP were effective in preventing runoff pollution.

52. By failing to have qualified personnel inspect accessible discharge points and document such inspections, the Respondent violated Part IV.D.4.a. of their General Stormwater Permit.

53. The Respondent failed to properly sign the Inspection Reports as they were required to do by Part IV.D.4.c. of their General Stormwater Permit.

54. By failing to properly sign the Inspection Reports, the Respondent violated Part IV.D.4.c. of their General Stormwater Permit.

55. On information and belief, the Respondent had observed violations of their SWPPP at least five (5) days before April 3, 2006.

56. The Respondent did not submit any Incidence of Noncompliance reports on or prior to April 3, 2006, as they were required to do by Part IV.D.4.d. of their General Stormwater

Permit.

57. By failing to submit Incidence of Noncompliance reports after observing violations of their SWPPP, the Respondent thereby violated Part IV.D.4.d. of their General Stormwater Permit. By violating a condition of the General Stormwater Permit, Respondent CenterPoint also thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent CenterPoint on this Count VI:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondent has violated Parts IV.D.4., 4.a., 4.c., and 4.d. of the General Stormwater Permit, Section 12(f) of the Act, and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to cease and desist from any further violations of Parts IV.D.4., 4.a., 4.c., and 4.d. of the General Stormwater Permit, Section 12(f) of the Act, and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing against the Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VII
DISCHARGE OF A CONTAMINANT INTO WATERS OF THE STATE IN
VIOLATION OF TERMS AND CONDITIONS OF A NPDES PERMIT –
FAILURE TO HAVE REQUIRED CONTRACTOR CERTIFICATIONS

1.-34. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I as paragraphs 1 through 34 of this Count VII.

35.-45. Complainant realleges and incorporates by reference herein paragraphs 35 through 45 of Count IV as paragraphs 35 through 45 of this Count VII.

46. Part IV.F.1. of the General Stormwater Permit provides as follows:

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) or subcontractors(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in paragraph 2 below in accordance with Part VI.G (Signatory Requirements) of this permit. All certifications must be included in the storm water pollution prevention plan except for owners that are acting as contractor.

47. As of April 14, 2006, the Respondent had failed to include contractor and subcontractor certifications in their SWPPP.

48. By failing to include contractor or subcontractor certification in the SWPPP, the Respondent CenterPoint thereby violated Part IV.F.1. of the General Stormwater Permit. By violating a condition of the General Stormwater Permit, the Respondent also thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent CenterPoint on this Count VII:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

2. Finding that the Respondent has violated Part IV.F.1. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering the Respondent to cease and desist from any further violations of Part IV.F.1. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing against the Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

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

COUNT VIII
VIOLATION OF TERMS AND CONDITIONS OF A NPDES PERMIT –
DISCHARGES VIOLATING AN APPLICABLE WATER QUALITY STANDARD

1.-34. Complainant realleges and incorporates by reference herein paragraphs 1 through 34 of Count I as paragraphs 1 through 34 of this Count VIII.

35.-45. Complainant realleges and incorporates by reference herein paragraphs 35 through 45 of Count IV as paragraphs 34 through 44 of this Count VIII.

46. Part III.B. of the General Stormwater Permit provides as follows:

Discharges covered by this permit, alone or in combination with other sources, shall not cause or contribute to a violation of any applicable water quality standard.

47. Because the stormwater discharges from the Site caused or contributed to a change in the color of the Tributary, the Wetlands, and Basin B, and an increase in the turbidity

of the Tributary, the Wetlands, and Basin B, during a period commencing no later than April 3, 2006, and continuing until at least May 12, 2006, and on dates better known to the Respondents, the stormwater discharges from the site caused or contributed to a violation of the water quality standard set forth in Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 302.203

48. By violating an applicable water quality standard, the Respondents also violated Part III.B. of the General Stormwater Permit, and thereby also violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, CenterPoint and FCL, on this Count VIII:

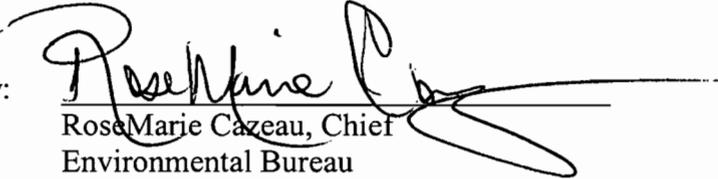
1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Part III.B. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondents to cease and desist from any further violations of Part III.B. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing against each of the Respondents, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN,
Attorney General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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By:


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CERTIFICATE OF SERVICE

I, RICHARD A. PERRY, an Assistant Attorney General, do certify that I caused to be mailed this 3rd day of July, 2008, the foregoing Complaint and Notice of Filing upon the persons listed on said notice, by certified mail.

A handwritten signature in black ink, appearing to read "Richard A. Perry", is written over a horizontal line.

RICHARD A. PERRY
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, IL 60602
312-814-2069