

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>PCB No. 09-2</b>
<b>CENTERPOINT PROPERTIES TRUST, a</b>	)	<b>(Enforcement - Water)</b>
<b>real estate investment trust, and FCL</b>	)	
<b>INVESTORS, INC., an Illinois corporation</b>	)	
<b>formerly known as FCL BUILDERS, INC.,</b>	)	
	)	
<b>Respondent,</b>	)	

NOTICE OF FILING

TO:

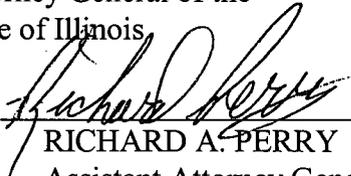
Bryan E. Keyt  
Bryan Cave LLP  
161 North Clark Street, Suite 4300  
Chicago, IL 60601

(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that on the 14<sup>th</sup> day of November, 2008, I filed with the Clerk of the Illinois Pollution Control Board a Motion to Request Relief From Hearing Requirement and a Stipulation and Proposal for Settlement with CenterPoint Properties Trust and FCL Investors, Inc., copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the  
State of Illinois

By: 

---

RICHARD A. PERRY  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-2069

Date: November 14, 2008

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
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<b>INVESTORS, INC., an Illinois corporation</b>	)	
<b>formerly known as FCL BUILDERS, INC.,</b>	)	
	)	
<b>Respondent,</b>	)	

**MOTION TO REQUEST RELIEF  
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On July 3, 2008, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On November 14, 2008, a Stipulation and Proposal for Settlement with CenterPoint Properties Trust and FCL Investors, Inc. was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a

hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

3. No hearing is currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the

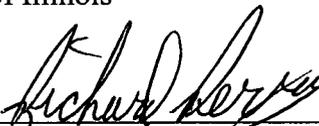
Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2), effective November 14, 2008.

Respectfully submitted,

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

By: \_\_\_\_\_



RICHARD A. PERRY  
Assistant Attorney General

Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-2069

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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<b>INVESTORS, INC., an Illinois corporation</b>	)	
<b>formerly known as FCL BUILDERS, INC.,</b>	)	
	)	
<b>Respondent,</b>	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH CENTERPOINT PROPERTIES TRUST AND FCL INVESTORS, INC.**

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 the Respondents, CENTERPOINT PROPERTIES TRUST, a real estate investment trust (“CenterPoint”), and FCL INVESTORS, INC. (“FCL”), an Illinois corporation formerly known as FCL BUILDERS, INC., (CenterPoint and FCL together “Respondents”) 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.* (2006), and the Board’s Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On July 3, 2008, 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 (2006), against the Respondents.

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).

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

4. At all times relevant to this Complaint, Respondent 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 those portions of the "Center Point Business Center," a parcel of land located at approximately the northwest corner of the intersection of Interstate 94 and Washington Street in the Village of Gurnee in Lake County, Illinois (the "Site"), where construction activities were taking place between April 3, 2006 and May 12, 2006.

6. CenterPoint engaged in construction activities at the Site and hired Respondent FCL as its construction contractor. CenterPoint contracted with FCL to perform and oversee construction and grading activities at the Site. Complainant alleges that in the process of conducting grading activities, FCL caused soil and sediment to be excavated and disturbed at certain sections of the Site. Complainant further alleges that between April 3, 2006 and May 12, 2006, on dates better known to the Respondents, the disturbed soil and sediment at the Site was

carried by storm water into an unnamed tributary of the Des Plaines River and into an area of wetlands that is located near the southeast corner of the Site.

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA allege that the Respondents have violated the following provisions of the Act and Board regulations:

- Count I: Causing, threatening or allowing water pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).
- Count II Causing, threatening or allowing a violation of water quality standards, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.
- Count III: Creating a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).
- Count IV: Failure to sign a stormwater pollution prevention plan in violation of the terms of a NPDES storm water permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).
- Count V: Failure to stabilize a construction site in violation of the terms of a NPDES stormwater permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).
- Count VI: Failure to carry out required inspections and file noncompliance reports in violation of the terms of a NPDES stormwater permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).
- Count VII: Failure to obtain contractor certifications in violation of the terms of a NPDES stormwater permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).
- Count VIII: Discharging in violation of a water quality standard, Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

Respondents neither admit nor deny the violations alleged in the Complaint filed in this matter and referenced within Section III.B herein.

**D. Compliance Activities to Date**

The portions of the Site relevant to the Complaint were fully stabilized and the alleged violations ceased by September 20, 2007.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents 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 the Respondent 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 (2006).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2006), 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 this Stipulation state the following:

1. The alleged violations potentially threatened human health and the environment by discharging contaminants into the waters of the State.
2. The Respondents' construction activities had a social and economic benefit.
3. The Site was suitable for the area in which it is located.
4. It is both technically practicable and economically reasonable to implement adequate erosion control measures at the Site in compliance with the Act and Board regulations.
5. The Respondents have subsequently complied with the Act and the Board Regulations and addressed each of the alleged violations.

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

Section 42(h) of the Act, 415 ILCS 5/42(h) (2006), 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; and
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.

In response to these factors, the parties to this Stipulation state as follows:

1. Complainant has alleged that violations continued at the Site from at least April 3, 2006 until at least May 12, 2006.
2. The Respondents were diligent in responding to the alleged violations and complying with the Act, and Board regulations, once the Illinois EPA notified it of its alleged noncompliance.
3. The penalty obtained exceeds any economic benefit realized by the Respondents as a result of the alleged noncompliance.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a combined penalty of Twenty Thousand Dollars (\$20,000.00) to be paid per the terms of Section V will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, neither Respondent has had any prior enforcement action brought against them under the Act.

6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

The Respondents shall pay a civil penalty totaling Twenty Thousand Dollars (\$20,000) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

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

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, Respondents 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.

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

### **C. Payment Procedures**

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

1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and a Respondent's federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Richard A. Perry  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Floor  
Chicago, Illinois 60602

**D. Future Compliance**

1. 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 Site 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.

2. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of Respondents' payment of a \$20,000.00 penalty and commitment to

cease and desist as contained in Section V.D.3, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges both Respondents 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 July 3, 2008, neither does it extend to any other person other than the signatory to this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

**F. Enforcement of Stipulation**

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.

**G. Execution of Stipulation**

The undersigned representatives for each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY: Rose Marie Cazeau (a)  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY: Robert A. Messina  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 10-29-08

DATE: 10/27/08

CENTERPOINT PROPERTIES TRUST

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FCL INVESTORS, INC.

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

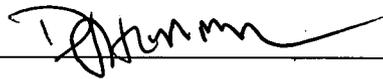
BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
ROBERT A. MESSINA  
Chief Legal Counsel

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

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

CENTERPOINT PROPERTIES TRUST

BY: 

DATE: 10-23-08

Name: D. HEMMER

Title: SVP / GEN. COUNSEL

FCL INVESTORS, INC.

BY: 

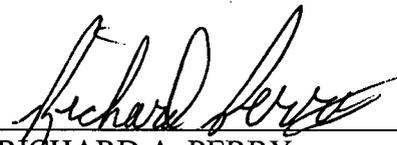
DATE: 10-20-2008

Name: Christopher Linn

Title: Vice President

**CERTIFICATE OF SERVICE**

I, RICHARD A. PERRY, an Assistant Attorney General in this case, do certify that I caused to be served this 14th day of November, 2008, the foregoing Motion to Request Relief From Hearing Requirement, Stipulation and Proposal for Settlement with CenterPoint Properties Trust and FCL Investors, Inc., and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
\_\_\_\_\_  
RICHARD A. PERRY