

ILLINOIS POLLUTION CONTROL BOARD

January 8, 2009

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 09-2  
) (Enforcement – Water)  
CENTERPOINT PROPERTIES TRUST, a )  
real estate investment trust, and FCL )  
INVESTORS, INC., an Illinois corporation )  
formerly known as FCL BUILDERS, INC., )  
)  
Respondents. )

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On July 3, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed an eight-count complaint against CenterPoint Properties Trust, a real estate investment trust, and FCL Investors, Inc., an Illinois corporation formerly known as FCL Builders, Inc. (respondents). The complaint concerns respondents’ construction activities at a 134-acre parcel of land known as the “Center Point Business Center,” located on the northwest corner of the intersection of Interstate 94 and Washington Street in the Village of Gurnee, Lake County. For the reasons below, the Board accepts the parties’ stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Attorney General and the State’s Attorneys may bring actions before the Board on behalf of the People to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 12(a), (d), and (f) of the Act (415 ILCS 5/12(a), (d), (f) (2006)), Sections 302.203 and 309.102(a) of the Board’s water pollution regulations (35 Ill. Adm. Code 302.203, 309.102(a)), and numerous conditions of the National Pollutant Discharge Elimination System (NPDES) general stormwater permit. The People allege that respondents violated these provisions by (1) causing or tending to cause water pollution by failing to install adequate erosion and stormwater runoff control measures, causing or allowing the discharge of excessive soil- and sediment-laden stormwater runoff into waters of the State, including wetlands and an unnamed tributary of the Des Plaines River; (2) causing or allowing the discharge of soil- and sediment-laden stormwater, causing unnatural turbidity and color in waters of the State; (3) creating a water pollution hazard by depositing soil upon land without implementing adequate erosion and runoff control measures; (4) failing to sign the “storm water pollution prevention plan” (SWPPP); (5) failing to commence stabilization measures as soon as practicable after the temporary or permanent cessation of construction activities; (6) failing to submit “Incidence of Noncompliance” reports after observing violations of the SWPPP; (7) failing to include contractor or subcontractor certification in the SWPPP; and

(8) discharging stormwater that caused or contributed to a violation of an applicable water quality standard.

On November 14, 2008, the People and respondents filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), which requires that the public have an opportunity to request a hearing whenever the State and a respondents propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Gurnee Press/Pioneer Press* on December 4, 2008. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2006); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondents do not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Respondents agreed to pay a civil penalty of \$20,000. The People and respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Respondent must pay a civil penalty of \$20,000 for the alleged violations no later than February 9, 2009, which is the first business day following the 30th day after the date of this order. Respondent must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and respondents' Federal Tax Identification Numbers must appear on the face of the certified check or the money order.
3. Respondent must submit payment of the civil penalty to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276

Springfield, Illinois 62794-9276

Respondent must send Attorney General's a copy of the certified check or money order and any transmittal letter to:

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

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 8, 2009, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board