# *COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF ENVIRONMENTAL QUALITY**
Blue Ridge Regional Office
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Robert J. Weld
Regional Director

**Lynchburg Office**
7705 Timberlake Road
Lynchburg, Virginia 24502
(434) 582-5120
Fax (434) 582-5125

**Roanoke Office**
3019 Peters Creek Road
Roanoke, Virginia 24019
(540) 562-6700
Fax (540) 562-6725


# VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FOOT LEVELERS, INC. FOR FOOT LEVELERS EPA ID No. VAR000502823

## SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Foot Levelers, Inc., regarding the Foot Levelers facility in Roanoke, Virginia, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

## SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "BRRO" means the Blue Ridge Regional Offices of DEQ, located in Roanoke and Lynchburg, Virginia.

3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" or "Site" means the Foot Levelers, Inc. Facility located at 518 Pocahontas Avenue in Roanoke, Virginia.

7. "FL" means Foot Levelers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Foot Levelers, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.

8. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

9. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

11. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.

13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

14. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).

15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

## SECTION C: Findings of Fact and Conclusions of Law

1. FL owns and operates the Facility in Roanoke, Virginia. The Facility manufactures custom orthotic shoe inserts. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

2. FL submitted a RCRA Subtitle C Site Identification Form (received 01/11/2002) that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. FL was issued EPA ID No. VAR000502823for the Facility.

3. At the Facility, FL generates spent toluene from nozzle cleaning operations and from a parts washer which are solid wastes. These wastes are also hazardous wastes assigned waste code F005. Regulated waste generated at the Facility includes universal waste lamps.

4. On February 26, 2014, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. FL uses acetone and toluene for cleaning purposes, including cleaning spray nozzles and the spray booths on the assembly lines. Spray nozzles are soaked nightly in a flammable liquids safety can ("dip tank") with toluene. Toluene is also used in a parts washer located in the maintenance shop. The spent toluene from the "dip tank" and parts washer is evaporated in the "Adhesives Room."

    b. Acetone and toluene, when used for cleaning, are listed hazardous wastes carrying the hazardous waste codes F003 and F005, respectively. Evaporation of spent solvents is a form of treatment constituting disposal, and is prohibited by the regulations.

    c. The debris (e.g., waste adhesive and other solid materials) from the cleaning of spray booths and lines are placed in the solid waste dumpster and sent to a sanitary landfill for disposal.

    d. The hazardous waste codes attach to any solid waste generated during cleaning activities. Consequently, the discarded materials removed by the solvents may be considered F003 and F005 hazardous wastes.

    e. Spent fluorescent lamps were observed stored stacked against the wall in a corner of the loading dock. FL was accumulating the lamps until a recycler was found. Most of the spent lamps were not in a container. Boxes containing spent lamps were observed to be open.

f. The boxes containing spent lamps were not labeled with the words "Universal Waste - Lamps" or "Waste Lamps" or "Used Lamps."

g. FL representatives stated that the spent fluorescent bulbs had been accumulated for a period of approximately two years.

h. FL has not trained employees on the proper handling and emergency procedures appropriate to the universal waste managed at the Facility.

i. 40 CFR § 262.11 requires a person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using either analytical testing or generator knowledge.

j. 40 CFR § 268.40, Land Disposal Restrictions, requires that generators of hazardous waste must determine whether the hazardous waste is subject to land disposal restrictions, conduct treatment prior to land disposal, and determine the treatment meets the treatment standard. The generator must prepare a one-time written notice to the receiving facility for wastes that do not meet treatment standards.

k. 40 CFR § 273.13(d)(1) requires that a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

l. 40 CFR § 273.14(e) requires that each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste – Lamps", "Used Lamps", or "Waste Lamps".

m. 40 CFR § 273.15 (a) requires that a small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated.

n. 40 CFR § 273.16 requires that a small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

5. On March 7, 2014, based on the inspection, the Department issued Notice of Violation No. NOV-14-02-BRRO-004 to FL for the violations described in paragraphs C(4), above.

6. Based on the results of the February 26, 2014 inspection, the Board concludes that FL has violated 40 CFR § 262.11, 40 CFR § 273.13(d)(1), 40 CFR § 273.14(e), 40 CFR § 273.15 (a), and 40 CFR § 273.16 , as described in paragraph C(4), above.

7. FL has submitted documentation, received by the Department on April 30, 2014, that verifies that the violations described in paragraphs C(4), above, have been corrected.

## SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders FL, and FL agrees to pay a civil charge of **$15,937** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

FL shall include its Federal Employer Identification Number (FEIN) 54-1481060 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

## SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of FL for good cause shown by FL, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only FL admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. FL consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. FL declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial

review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by FL to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. FL shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. FL shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FL shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and FL. Nevertheless, FL agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after FL has completed all of the requirements of the Order;

b. FL petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FL.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FL from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by FL and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of FL certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind FL to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FL.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, FL voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of August, 2014

Robert J. Weld, Regional Director
Department of Environmental Quality

Foot Levelers, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/25/14 By: Dwayne A Bennett, President
Dwayne Bennett
Foot Levelers, Inc.

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 25th day of June, 2014, by Dwayne Bennett who is President of Foot Levelers, Inc. on behalf of the corporation.

Treva W. Fleming
Notary Public

317098
Registration No.

My commission expires: 10-31-2014

Notary seal:

TREVA W. FLEMING
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #317098
My Commission Expires 10-31-2014