MAY 1 2009

COMMONWEALTH of VIRGINIA

L. Preston Bryant, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT
ISSUED TO
FOSTER FUELS, INC.
FOR
An Un-permitted Discharge

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Foster Fuels, Inc. for the purpose of resolving certain violations of the State Water Control Law 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

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

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

5. "Foster Fuels" means Foster Fuels, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Foster Fuels is a "person" within the meaning of Va. Code § 62.1-44.3. Foster Fuels is assigned Federal Identification Number 54-0682048.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

8. "Regulations" means the VPDES Permit Regulations at 9 VAC 25-31-10 *et seq.*

9. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

10. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

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

12. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Foster Fuels, Inc. is a Virginia corporation incorporated in Virginia in 1960. The company transports petroleum products to customers via tractor trailer tankers.

2. On February 14, 2008, the DEQ BRRO received notification of a discharge of dyed diesel fuel and kerosene in the White Gate community of Giles County. Diesel fuel and kerosene are petroleum products, which are included in the definition of "oil" under Va. Code § 62.1-44.34:8.

3. A Foster Fuels tanker truck laden with approximately 7,500 gallons of dyed diesel fuel and kerosene overturned on a sharp curve, slid along the roadway and came to rest against several trees at the roadside, near a small spring. The force of the slide tore a large hole in the side of the tanker allowing most of the fuel load to drain quickly onto the ground and into the spring.

4. Emergency response personnel were able to pump approximately 360 gallons of the fuel load from the overturned tanker truck.

5. Based on observations by emergency response personnel and DEQ staff, it appears that most of the spilled fuel load soaked into the soil, identified as a sandy-loamy alluvium. This soil type exhibits the characteristics of being moderately to highly permeable.

6. On March 21, 2008, the Department issued Notice of Violation No. 08-03-WCRO-008 to Foster Fuels, Inc. for a discharge of oil to the environment.

7. On March 26, 2008, the Department conducted a benthic survey to determine the impact from the discharge. Department staff did not observe any effect on the benthic community.

8. On March 31, 2008, W.E.L. Incorporated ("WEL"), Foster Fuels' emergency contractor, submitted an Initial Abatement Report ("IAR") to the Department on behalf of Foster Fuels. This report provided information to the Department concerning the initial abatement activities conducted as part of spill abatement, risk assessment, and site restoration activities related to the petroleum discharge.

9. On April 8, 2008, Department enforcement staff met with representatives of Foster Fuels and WEL to discuss the accident, discharge, emergency response, spill control and clean-up, and future actions. Department staff requested that WEL provide additional information on the method used to calculate the petroleum recovered during the clean-up.

10. On May 13, 2008, WEL provided the Department with the requested information. According to the submittal, 7140 gallons were discharged, of which 4,513 gallons of petroleum product were recovered ; approximately 2,627 gallons remain in the environment.

11. Based on the foregoing information collected by DEQ, the State Water Control Board concludes that Foster Fuels violated Va. Code § 62.1-44.34:18 which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems.

12. Va. Code § 62.1-44.3 defines "state waters" to include all waters "on the surface and under the ground, wholly or partially within or bordering the Commonwealth". Walker Creek is a surface water located wholly within the Commonwealth and therefore is a "state water" under the statute.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders Foster Fuels, Inc., and Foster Fuels, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $20,420.40 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

Foster Fuels, Inc. shall include its Federal Employer Identification Number 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 Foster Fuels for good cause shown by Foster Fuels, or on its own motion pursuant to the Administrative Process Act 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, Foster Fuels neither admits nor denies the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Foster Fuels 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. Foster Fuels declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law 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 Foster Fuels 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. Foster Fuels 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 occurrence. Foster Fuels shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Foster Fuels 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 Foster Fuels intends 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, their 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 Foster Fuels. Nevertheless, Foster Fuels 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) Foster Fuels 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

    (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Foster Fuels.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Foster Fuels 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 Foster Fuels 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 Foster Fuels 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 Foster Fuels to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Foster Fuels.

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.

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15. By its signature below, Foster Fuels, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____
Steven A. Dietrich, Regional Director
Department of Environmental Quality

Foster Fuels, Inc. voluntarily agrees to the issuance of this Order.

Date: 4-29-09 By: Watt R Foster Jr, Vice President
Watt R. Foster, Jr.
Foster Fuels, Inc.

Commonwealth of Virginia
City/County of Campbell

The foregoing document was signed and acknowledged before me this 29 day of April, 2009, by Watt R. Foster, Jr. who is Vice President of Foster Fuels, Inc., on behalf of the corporation.

Jean C Hendricks
Notary Public

110697
Registration No.

My commission expires: Dec 31, 2009

Notary seal:

JEAN C. HENDRICKS
Notary Public
Commonwealth of Virginia
110697
My Commission Expires Dec 31, 2009

APPENDIX A
SCHEDULE OF COMPLIANCE

Foster Fuels shall:

1) Within 30 days of the effective date of the Order, begin quarterly sampling, to continue for a period not less than the time required to complete four quarterly sampling events, of the following:

- Wells and springs within 500 feet of the discharge site;
- The well at the Taylor property located at 302 Old Mill Dam Road;
- Walker Creek just downstream of the site of product entry to Big Walker Creek.

Samples from the above-referenced drinking water supplies should be analyzed at a laboratory certified by the Virginia Department of Health for drinking water analyses, using EPA Method 524.2 for Volatile Organics and EPA Method 525.2 for Semi-Volatile Organics. All results of the quarterly sampling shall be submitted to the Department for review and validation no later than 10 days following the end of the quarter (January 10, April 10, July 10, and October 10, as applicable).

2) Within 30 days of the effective date of the Order, install representative groundwater monitoring wells at the discharge accumulation and clean up site. A map showing the location of the monitoring wells shall be provided to the Department.

3) Within 60 days of the effective date of the Order, conduct quarterly sampling, for a period not less than the time required to complete four quarterly sampling events, of the groundwater monitoring wells installed at the discharge accumulation clean up site. Analytical methods for samples shall be the same as described in Appendix A, item #1. All results of the quarterly sampling shall be submitted to the Department for review and validation.

4) Submit written notification to the Department of the completion of all action items required by this Order **within 14 days of completion.** If completion of an item does not occur in accordance with this schedule, Foster Fuels shall submit written notification to the Department within 14 days of the due date that states when it plans to complete the item. Correspondence related to this Order shall be sent to:

Jerry R. Ford, Jr.
Enforcement Specialist – Senior
Department of Environmental Quality
Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

5) Any plans, reports, schedules or specifications attached hereto or submitted by Foster Fuels 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.

6) Analytical results exceeding action levels will require Foster Fuels to establish a corrective action plan, and to submit such plan to the Department, within 30-days of the date of such analytical results.