



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FOOT LEVELERS, INC.
FOR ITS
ROANOKE, VA FACILITY
Registration No. 21591**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Foot Levelers, Inc., regarding its Roanoke, Virginia facility, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and 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 State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
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. "Facility" means the Foot Levelers, Inc. Facility located at 518 Pocahontas Avenue in Roanoke, Virginia.
6. "FL" means Foot Levelers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. FL is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Permit" means a minor New Source Review (NSR) permit to operate and construct a manufacturing facility that fabricates custom orthotic shoe inserts. The Permit was issued under the Virginia Air Pollution Control Law and the Regulations to FL on September 24, 2015.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. FL owns and operates the Facility in Roanoke, Virginia that fabricates custom orthotic shoe inserts.
2. On March 26, 2015, the Department received a permit application from FL for permit approval for the construction that occurred in 2001. Prior to this permit application submittal, no other air permits had been issued for this Facility. DEQ staff performed an engineering analysis and determined that a permit to construct and operate would be required for the Facility.
3. The Department issued the Permit to FL on September 24, 2015 which authorizes FL to construct and operate a stationary source of air pollution.
4. 9 VAC 5-80-1120(A) states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not

construct or operate the stationary source or project contrary to the terms and conditions of that permit.

5. 9 VAC 5-80-1210(E) states that any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct and operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.
6. On March 17, 2016, based on the March 26, 2015 permit application and the Permit issuance on September 24, 2015, the Department issued Notice of Violation No. ABRRO000360 to FL for the violation described in paragraph C(2), above.
7. Based on the March 26, 2015 permit application and the Permit issuance on September 24, 2015, the Board concludes that FL has violated 9 VAC 5-80-1120(A) and 9 VAC 5-80-1210(E), as described in paragraph C(2), above.
8. By obtaining the Permit, FL has documented that the violation described in paragraph C(2), above, has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders FL, and FL agrees to pay a civil charge of **\$15,600** 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, FL shall be liable for attorneys' fees of 30% of the amount outstanding.

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

And it is so ORDERED this 26th day of April, 2017.



Robert J. Weld, Regional Director
Department of Environmental Quality

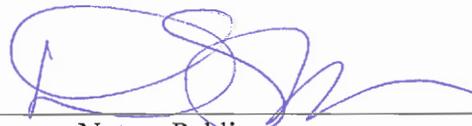
Foot Levelers, Inc. voluntarily agrees to the issuance of this Order.

Date: 4/25/17

By: Steve Stone

Steve Stone
Senior Vice President
Foot Levelers, Inc.

The foregoing document was signed and acknowledged before me this 25 day of April, 2017 by Steve Stone who is Senior Vice President of Foot Levelers, Inc., on behalf of the corporation.



Notary Public

7369537

Registration No.

My commission expires: 1.31.2018

Notary seal:

