STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

http://www.cdphe.state.co.us

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

Colorado Department
of Public Health
and Environment

June 23, 2008

Ben McClellan
L.B. Foster Company
415 Holiday Drive
Pittsburgh, PA 15220

RE: Notice of Effective Date and Final Agency Action
Compliance Order on Consent and Order for Civil Penalty, Number: SC-080619-1

Dear Mr. McClellan:

On June 19, 2008, the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") executed the enclosed Compliance Order on Consent and Order for Civil Penalty, Number SC-080619-1, (the "Order") with L.B. Foster Company. Pursuant to paragraph 31 of the Order, the Order shall be fully effective, enforceable and constitute a final agency action upon the date it is signed by the authorized representative of the Division. Therefore, the effective date of the Order is June 19, 2008. Please note, pursuant to paragraph 20 of the Order, L.B. Foster Company has thirty (30) calendar days from the effective date of the Order to submit payment of the civil penalty.

For L.B. Foster Company's information, the Division has also enclosed its response to the public comments on the proposed, but now withdrawn, Expedited Settlement Agreement.

If you have any questions, please don't hesitate to contact me at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,

Michael Harris
Environmental Protection Specialist
Enforcement and Clean Water Compliance Assurance Unit
WATER QUALITY CONTROL DIVISION

cc: Pueblo Environmental Health Department

ec: Aaron Urdiales, EPA Region VIII
Kathy Dolan, Permits Section, CDPHE
Gary Soldano, WQCD SE Regional Office, CDPHE

Enclosure(s)

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT AND ORDER FOR CIVIL PENALTY | **NUMBER: SC-080619-1**

IN THE MATTER OF: **L. B. FOSTER COMPANY**
CDPS PERMIT NO. COR-011285
PUEBLO COUNTY, COLORADO

The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order") and Order for Civil Penalty, pursuant to the Division's authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of L. B. Foster Company ("L.B. Foster"). The Division and L.B. Foster may be referred to collectively as "the Parties."

STATEMENT OF PURPOSE

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the alleged violations cited herein.

DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §25-8-602 and 605, C.R.S., the Division has made the following determinations regarding L.B. Foster and L.B. Foster's compliance with the Act and its implementing regulations.

3. At all times relevant to the alleged violations cited herein, L.B. Foster was a Pennsylvania corporation and registered to conduct business in the State of Colorado.

4. L.B. Foster is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge.

6. Pursuant to 5 CCR 1002-61, §61.3(2)(e), stormwater discharges associated with industrial activity are point sources requiring Colorado Discharge Permit System ("CDPS") permit coverage.

7. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(K), facilities classified as Standard Industrial Classification 34 are considered to be engaging in "industrial activity."

8. In or around February 2000, L.B. Foster commenced operation of an industrial facility involved in manufacturing rail track panels on property located at 25 Carmen Place, in the City of Pueblo, Pueblo County, Colorado (the "Facility"). The Facility is classified within the Standard Industrial Classification code 3499.

9. On June 6, 2007, the Division sent L.B. Foster a Compliance Advisory informing L.B. Foster that its industrial activities at the Facility were subject to coverage under a CDPS permit for stormwater discharges, and had been subject to that permit coverage since operations at the Facility commenced.

10. In response to the June 6, 2007 Compliance Advisory, on June 26, 2007, the Division received an application from L.B. Foster for Facility coverage under the Colorado Discharge Permit System General Permit, Number COR-010000, for Stormwater Discharges Associated with Light Industrial Activity (the "Permit).

11. On June 26, 2007, the Division provided L.B. Foster Certification Number COR-011285, which authorized L.B. Foster to discharge stormwater from the industrial activities associated with the Facility to the Arkansas River under the terms and conditions of the Permit. Certification Number COR-011285 became effective June 26, 2007 and remained in effect until L.B. Foster ceased operations at the Facility and inactivated its permit coverage on February 4, 2008.

12. The Division records establish that L.B. Foster did not have any permits authorizing discharges of stormwater from the Facility prior to June 26, 2007.

13. The Division has concluded that L.B. Foster's failure to obtain CDPS permit coverage for the Facility prior to June 26, 2007 constitutes violation(s) of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a), and 5 CCR 1002-61, §61.3(2).

14. On December 13, 2007, the Division offered L.B. Foster an Expedited Settlement Agreement ("ESA") to resolve the matter of civil penalties for the alleged violations identified at the Facility for a penalty of Ten Thousand Five Hundred Dollars ($10,500.00). The ESA was offered after review of a May 17, 2007 U.S. Environmental Protection Agency report on the results of soil sampling conducted throughout the down gradient residential neighborhood, which found no pollutant contamination or other environmental damage from the industrial activities at the Facility. On January 10, 2008, L.B Foster accepted the proposed ESA.

15. On January 25, 2008, the Division published notice of the proposed ESA in the Denver Post – Rocky Mountain News classifieds. Additionally, notice of the public comment period was e-mailed to known interested parties. In response to comments received from the public, the Division and L.B. Foster agreed to withdraw from the proposed ESA and enter into this Consent Order.

16. On January 31, 2008, L.B. Foster closed the Facility and vacated the premises.

ORDER AND AGREEMENT

17. Based on the foregoing factual and legal determinations, pursuant to its authority under §25-8-602 and 605 C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein, the Division orders L.B. Foster to comply with all provisions of this Consent Order, including all requirements set forth below.

18. L.B. Foster agrees to the terms and conditions of this Consent Order. L.B. Foster agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. L.B. Foster also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by L.B. Foster against the Division:

    a. The issuance of this Consent Order;
    b. The factual and legal determinations made by the Division herein; and
    c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

19. Notwithstanding the above, L.B. Foster does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by L.B. Foster pursuant to this Consent Order shall not constitute evidence of fault by L.B. Foster with respect to the conditions of the Facility.

CIVIL PENALTY

20. Based upon the application of the Division's settlement policies and consistent with Departmental policies for violations of the Act, the Division orders and L.B. Foster agrees to pay Twenty One Thousand Dollars ($21,000.00) in civil penalties. L.B. Foster agrees to make the payment within thirty (30) calendar days of the date this Consent Order is signed by the authorized representative of the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

    Michael Harris
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-CADM-B2
    4300 Cherry Creek Drive South
    Denver, Colorado 80246-1530

SCOPE AND EFFECT OF CONSENT ORDER

21. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein.

22. This Consent Order constitutes a final agency order or action upon execution by L.B. Foster and the Division. Any violation of the provisions of this Consent Order by L.B. Foster, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

23. Notwithstanding paragraph 19 above, the violations alleged in this Consent Order will constitute part of L.B. Foster's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against L.B. Foster. L.B. Foster agrees not to challenge the use of the alleged violations for any such purpose.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

24. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations alleged herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.

25. This Consent Order does not grant any release of liability for any violations not specifically alleged herein.

26. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.

27. Upon the effective date of this Consent Order, L.B. Foster releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the alleged violations of the Act specifically addressed herein.

28. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

NOTICES

29. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-CADM-B2
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303.692.3598
E-mail: michael.harris@state.co.us

For L.B. Foster:

L. B. Foster Company
Attention: Ben McClellan
415 Holiday Drive
Pittsburgh, PA 15220

MODIFICATIONS

30. This Consent Order may be modified only upon mutual written agreement of the Parties.

NOTICE OF EFFECTIVE DATE

31. This Consent Order shall be fully effective, enforceable and constitute a final agency action on the date signed by the authorized representative of the Division.

BINDING EFFECT AND AUTHORIZATION TO SIGN

32. This Consent Order is binding upon L.B. Foster and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

FOR L. B. FOSTER COMPANY:

D.H. Voltz _____ Date: June 10, 2008

David Voltz, General Counsel

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

David Akers (FOR) Date: June 19, 2008

Steven H. Gunderson, Director
WATER QUALITY CONTROL DIVISION