

# 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

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Colorado Department  
of Public Health  
and Environment

August 18, 2009

Corporation Service Company  
Seaboard Foods LLC  
1560 Broadway Suite 2090  
Denver, CO 80202

Certified Mail Number: 7005 1820 0000 3212 8281

**RE: Service of Notice of Violation/Cease and Desist Order, Number: HO-090818-1**

Dear Registered Agent:

Seaboard Foods LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). This NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S. of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases this NOV/CDO upon findings that Seaboard Foods LLC has violated Permit regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

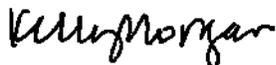
Pursuant to §25-8-603, C.R.S., Seaboard Foods LLC is required, within thirty (30) calendar days of issuance of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S. to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.

Should you or representatives of Seaboard Foods LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Kelly Morgan of this office by phone at (303) 692-3634 or by electronic mail at [kelly.morgan@state.co.us](mailto:kelly.morgan@state.co.us).

Sincerely,



Kelly Morgan  
Compliance Assurance Section  
Enforcement Unit  
WATER QUALITY CONTROL DIVISION

cc: Yuma County Health Department  
MS-3 File

ec: Aaron Urdiales, EPA Region VIII  
David Kurz, DE, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Carolyn Schachterle, OPA  
Phyllis Woodford, Environmental Agriculture Program, CDPHE  
Ron Jepson, Environmental Agriculture Program, CDPHE

*Enclosure(s)*



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
DIVISION OF ADMINISTRATION  
WATER QUALITY CONTROL DIVISION**

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**NOTICE OF VIOLATION / CEASE AND DESIST ORDER**

**NUMBER: HO-090818-1**

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**IN THE MATTER OF: SEABOARD FOODS LLC  
PERMIT NUMBER COH-008000  
YUMA COUNTY, COLORADO**

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Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority has been delegated to the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. At all time relevant to the violations cited herein Seaboard Foods LLC ("Seaboard"), or its predecessor in name (Seaboard Foods LP), was a foreign (Oklahoma) limited partnership in good standing and registered to conduct business in the State of Colorado.
2. Seaboard is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Pursuant to §25-8-501.1(2)(b) C.R.S. and 5 CCR 1002-61, §61.2(40), a Housed Commercial Swine Feeding Operation ("HCSFO") is defined as a housed swine feeding operation that is capable of housing eight hundred thousand pounds or more of live animal weight of swine at any one time or is deemed a commercial operation under local zoning or land use regulations
4. Seaboard owns and/or operates the Housed Commercial Swine Feeding Operation ("HCSFO") facility identified as Farm 166 (the "Facility"), located at or near 27266 County Road 54, near the Town of Holyoke, Yuma County, Colorado.
5. The Facility is classified as a HCSFO and it is covered under the Colorado Discharge Permit System, Individual Permit Number COH-008000 (the "Permit"). The Permit was transferred to Seaboard's predecessor Seaboard Farms, Inc. on April 18, 2000, was amended on December 30, 2003, and was modified

on July 18, 2005 to change the permittee's name to Seaboard Foods, LLC. The Permit was scheduled to expire on July 31, 2004, but has been administratively extended.

6. The Permit authorizes Seaboard to operate and discharge from the Facility in accordance with the terms and conditions of the Permit. The Permit authorizes Seaboard to apply swine feeding process wastewater to land application sites Field GB1 (NW ¼ quarter and a portion of the NE ¼ of Section 4, T4N, R44W) and field GB2 (East ½ SE ¼ of Section 31, T5N, R44W).

#### **Exceedance of Agronomic Rate of Application**

7. Pursuant to 5 CCR 1002-61, §61.8 and Part II.A.1. of the Permit, a permittee must comply with all the terms and conditions of a permit and violations of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.
8. Pursuant to Part II.A.3. of the Permit, Seaboard is required at all times to properly operate and maintain all facilities and systems of treatment and control used by Seaboard to achieve compliance with the conditions of the Permit.
9. Pursuant to Part I.B.8(c) of the Permit, the permittee shall comply with the approved Swine Waste Management Plan ("SWMP"). Pursuant to §61.13(3)(f), a SWMP shall include sufficient site-specific hydrologic and agronomic information, supplemented by other scientifically supported information, to document that land application of all residual solids and swine feeding process wastewater will be conducted and sustained at or below the agronomic rate of application for crops or vegetation to be grown on the application site(s).
10. The permittee's March 2002 SWMP was approved on April 25, 2002, with the condition that the permittee submit a permit amendment for the purpose of updating the Permit to have it be consistent with the SWMP. Subsequent revisions to this SWMP were approved April 8, 2003, August 13, 2003, and December 30, 2003 (the date Permit Amendment No. 1 was issued). As a result, the March 2002 SWMP as revised was approved by the Department on December 30, 2003.
11. Pursuant to 5 CCR 1002-61, §61.13(4)(k)(ii) and Part I.B.3(a) of the Permit, Seaboard is prohibited from applying to any sites or land, swine feeding process wastewater and residual solids that exceed, in amount or duration, the agronomic rate of application.
12. On January 31, 2007, the Department received the Facility's Quarterly Monitoring Report (the "QMR") for the 4<sup>th</sup> Quarter 2006. Department review of the QMR identified the following exceedances of the agronomic rate of application on Field GB1(North portion) and Field GB2(South portion) at the Facility:

Field ID	Date of Application of Swine Feeding Process Wastewater (lbs N/acre)	Plant Available Nitrogen ("PAN") Applied (lbs N/acre)	Agronomic Rate of Application (lbs PAN/acre)	Agronomic Rate Exceedance (lbs PAN/acre)
Field GB1 (North portion)	9/25/2006 through 10/23/2006	49	0	49
Field GB2 (South portion)	10/5/2006 through 10/16/2006	18	0	18

13. Seaboard's exceedance of the agronomic rate of application by 49 lbs PAN/acre on Field GB1 (North portion) constitutes a violation of Part I.B.3(a), Part I.B.8(c) and Part II.A.3 of the Permit.
14. Seaboard's exceedance of the agronomic rate of application by 18 lbs PAN/acre on Field GB2 (South portion) constitutes a violation of Part I.B.3(a), Part I.B.8(c) and Part II.A.3 of the Permit.

#### **Failure to Provide Noncompliance Notification**

15. Pursuant to Part II.B.2(a) of the Permit, Seaboard is required to provide the Department with a non-compliance notification if, for any reason, the Facility is or will be in violation of the agronomic rate of application. At a minimum, the non-compliance notification shall include the following information:
  - a. A description of the cause of violation.
  - b. The period of violation, including the anticipated time the Facility will return to compliance.
  - c. Steps being taken to reduce, eliminate, and prevent recurrence of the violation.
16. The 4<sup>th</sup> Quarter 2006 QMR establishes that Seaboard exceeded the agronomic rate of application on Field GB1 (North Portion) and Field GB2 (South Portion). Department records further establish that Seaboard failed to submit the required noncompliance notification.
17. Seaboard's failure to submit the required noncompliance notification constitutes a violation of Part II.B.2(a) of the Permit

#### **NOTICE OF VIOLATION**

18. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Seaboard has violated the following sections of the Permit.

**Part II.A.3 of the Permit**, which states in part, "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

**Part I.B.3(a) of the Permit**, which states in part, "Swine feeding process wastewater or residual solids shall not be applied to any sites or lands at a rate that exceeds, in amount or duration, the agronomic rate of application."

**Part II.B.2(a) of the Permit**, which states “If, for any reason, the permittee is or will be in violation of agronomic application rate requirements specified in this permit, the permittee shall, at a minimum, provide the Division with the following information: i) A description of the cause of the violation; ii) The period of violation, including the anticipated time when the operation will return to compliance; and iii) Steps being taken to reduce, eliminate, and prevent recurrence of the violation.

**Part I.B.8(c) of the Permit**, which states in part, “The permittee shall comply with the approved Swine Waste Management Plan.”

### **REQUIRED CORRECTIVE ACTION**

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Seaboard is hereby ordered to:

19. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-703, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Seaboard to comply with the following specific terms and conditions of this Order:

20. Within thirty (30) calendar days of receipt of this Order, Seaboard shall submit to the Division a detailed written statement outlining the standard procedures Seaboard will undertake to ensure that the approved Swine Waste Management Plan is fully implemented at the Facility and appropriate staff is trained accordingly. The statement should also specifically include certification that Seaboard has reviewed and understands Part II.A.3., Part I.B.3(a), and Part II.B.2(a) of the Permit.

### **NOTICES AND SUBMITTALS**

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, the Seaboard shall submit an original and an electronic copy to the Division at the following address:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-B2  
Compliance Assurance and Data Management Section  
Attention: Kelly Morgan  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
kelly.morgan@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **OBLIGATION TO ANSWER AND REQUEST FOR HEARING**

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

### **FALSIFICATION AND TAMPERING**

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

### **POTENTIAL CIVIL AND CRIMINAL PENALTIES**

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the “Act”), §§25-8-101 to 703, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any

permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

**RELEASE OR DISCHARGE NOTIFICATION**

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

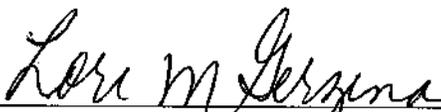
**EFFECT OF ORDER**

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 703, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 17<sup>th</sup> day of August, 2009.

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**



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Lori M. Gerzina, Section Manager  
Compliance Assurance Section  
WATER QUALITY CONTROL DIVISION