



COLORADO

Department of Public
Health & Environment

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

March 4, 2015

Robert Rufenacht, Registered Agent
Re: Pinneo Feedlot, LTD
PO Box 384
Brush, CO 80723

Certified Mail Number: 70022410000101304377

RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-150304-1

Dear Mr. Rufenacht:

Pinneo Feedlot, LTD. Liability Company is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The 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 the NOV/CDO upon findings that Pinneo Feedlot, LTD. Liability Company has violated the Act and/or permit or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Pinneo Feedlot, LTD. Liability Company is required, within thirty (30) calendar days of receipt 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 Pinneo Feedlot, LTD. Liability Company 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 me by phone at (303) 692-2312 or by electronic mail at case.person@state.co.us.

Sincerely,



Christy Pickens, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Carmen Vandebark, Director NE Colorado Env Health Dept
Dick Parachini, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Christy Pickens, Compliance & Enforcement Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE
Chad DeVolin, Environmental Agriculture Program, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: CO-150304-1

IN THE MATTER OF: PINNEO FEEDLOT, LTD. LIABILITY COMPANY
UNPERMITTED
MORGAN COUNTY, COLORADO

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 is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605 C.R.S., 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 times relevant to the violations cited herein, Pinneo Feedlot, LTD. Liability Company ("Pinneo Feedlot") was a Colorado limited liability company in good standing.
2. Pinneo Feedlot is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing control regulation, 5 CCR 1002-81, §81.3(25).
3. Pinneo Feedlot owns and/or operates the Pinneo Feedlot facility located at 32295 Highway 34, approximately five (5) miles east of the City of Brush, Morgan County, Colorado ("the Facility"). The Facility is a Concentrated Animal Feeding Operation ("CAFO") as defined by 5 CCR 1002-81, §81.3(16).
4. Department records establish that the Facility has the capacity to stable or confine 46,000 head of cattle and therefore is a large CAFO as defined by 5 CCR 1002-81, §81.3(16). The Facility is currently registered with the Department as a CAFO under registration number CONPCO311.
5. The Facility was designed to capture and collect wastewater generated throughout the Facility and convey that wastewater to five impoundments:
 - a) West side impoundments:
 - i. The South Pond: receives open-lot wastewater runoff from the southwest pens and process wastewater that is piped to the impoundment from the mill and process barns.

- ii. The North Pond: receives open-lot wastewater runoff from the northwest pens, open-lot wastewater runoff from the mortality compost area, and process wastewater that is pumped to the impoundment from the truck wash pit. Wastewater from the South Pond can be pumped to the North Pond.
- b) Northeast side impoundments:
- i. Pond 8-9: receives open-lot wastewater runoff from the manure storage area and the pens directly to the south of the impoundment. Wastewater from the North Pond can be pumped to Pond 8-9 through an earthen conveyance ditch.
 - ii. Settling Pond: is positioned between Pond 8-9 and Pond 10-11. The Settling Pond receives open-lot wastewater runoff wastewater from pens to the south of the impoundment. Wastewater from Pond 8-9 can be pumped to the Settling Pond.
 - iii. Pond 10-11: receives wastewater from the Settling Pond.

Failure To Properly Design And Construct Impoundment

6. Pursuant to 5 CCR 1002-81, §81.6(1)(a)(i)(A), by no later than May 30, 2011, Pinneo Feedlot is required to develop, document in a Facility Management Plan (“FMP”), and implement the following design, construction, and performance requirements: all impoundments must be designed, constructed, and maintained to be capable of storing the volume of all manure and process wastewater, including the runoff resulting from a 25-year, 24-hour storm or chronic storm (whichever is greater), plus two (2) feet of freeboard.
7. Pursuant to 5 CCR 1002-81, §81.7(2)(a)(i), the seepage rate from an impoundment shall not exceed 1×10^{-6} cm/sec.
8. Department records establish that the North Pond was designed and constructed to a total depth of 16 feet. As stated in the January 2013 FMP progress report from Pinneo Feedlot to the Department Environmental Agriculture Program, the impoundment liner above 11.9 feet exceeds the seepage rate standard of 1×10^{-6} cm/sec and therefore the wastewater level in the North Pond must be kept below 11.9 feet deep. Because Pinneo Feedlot must keep the wastewater level below 11.9 feet deep, the North Pond does not have the capacity to store the volume of all manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or chronic storm, whichever is greater, plus two feet of freeboard.
9. Pinneo Feedlot’s failure to design and construct the North Pond to ensure that it is capable of storing the volume of all manure and process wastewater, including the runoff resulting from a 25-year, 24-hour storm or chronic storm (whichever is greater), plus two (2) feet of freeboard constitutes a violation of 5 CCR 1002-81, §81.6(1)(a)(i)(A).
10. Pinneo Feedlot’s failure to design and construct the North Pond to ensure the seepage rate from the North Pond does not exceed 1×10^{-6} cm/sec constitutes a violation of 5 CCR 1002-81, §81.7(2)(a)(i).

NOTICE OF VIOLATION

11. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that the Pinneo Feedlot has violated the following sections of the Colorado Water Quality Control Act’s implementing control regulations.

5 CCR 1002-81, §81.6(1)(a)(i)(A), which states in part, “All impoundments must be designed, constructed, and maintained to be capable of storing, the volume of all manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or Chronic Storm, whichever is greater, plus two feet of freeboard...”

5 CCR 1002-81, §81.7(2)(a)(i), which states in part, “The seepage rate from an impoundment shall not exceed 1×10^{-6} cm/sec.”

REQUIRED CORRECTIVE ACTION

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

12. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., and its implementing regulations promulgated thereto.

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

13. Within sixty (60) calendar days of receipt of this Order, Pinneo Feedlot shall provide documentation from a certified professional engineer, registered in Colorado, that the North Pond impoundment is designed and constructed to be capable of storing the volume of all manure and wastewater, including the runoff resulting from a 25-year, 24-hour storm or chronic storm, whichever is greater, plus two feet of freeboard. This documentation shall also include a certification that the seepage rate from the North Pond impoundment does not exceed 1×10^{-6} cm/sec.
14. If Pinneo Feedlot becomes aware of any situation or circumstances that cause Pinneo Feedlot to become unable to comply with any condition or time schedules set forth by this Order, Pinneo Feedlot shall provide written notice to the Division within five (5) calendar days of Pinneo Feedlot becoming aware of such circumstances. Pinneo Feedlot’s notice shall describe what, if any, impacts will occur on Pinneo Feedlot’s ability to comply with the Colorado Water Quality Control Act and its implementing regulations, any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
15. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Pinneo Feedlot shall revise the submitted document(s) to properly address the Division’s comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

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

Christy Pickens
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-3584
Email: christy.pickens@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 803, 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 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 3rd day of March 2015.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION