

STATE OF COLORADO

John W. Hickenlooper, Governor
Christopher E. Urbina, MD, MPH
Executive Director and Chief Medical Officer

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

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
Located in Glendale, Colorado (303) 692-3090

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



Colorado Department
of Public Health
and Environment

June 14, 2012

Rich Lamm, Registered Agent
Environmental Energy Partners, LLC
2221 Willow Ct.
Denver, CO 80238

Certified Mail Number: 7007 0220 0001 0163 1039

RE: Service of Notice of Violation/Cease and Desist Order, Number: SO-120614-1

Dear Mr. Lamm:

Environmental Energy Partners, LLC ("EEP") 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 EEP has violated the Act and/or a permit issued pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., EEP 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 EEP 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) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,



Michael Harris
Lead Enforcement Specialist
Water Pollution Control Compliance and Enforcement
WATER QUALITY CONTROL DIVISION

Enclosure(s)

ec: Clear Creek County Environmental/Health Department
Natasha Davis, EPA Region VIII
Dick Parachini, Watershed Program, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Nathan Moore, Permits Section, CDPHE
Tania Watson, Compliance Assurance, CDPHE



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

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: SO-120614-1

IN THE MATTER OF: ENVIRONMENTAL ENERGY PARTNERS, LLC
CDPS PERMIT NO. COR-010000
CERTIFICATION NO. COR-011432
CLEAR CREEK 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 alleged violations identified herein, Environmental Energy Partners, LLC ("EEP") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
2. EEP 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).

Operating Without a Stormwater Permit

3. 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.
4. 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.
5. Pursuant to 5 CCR 1002-61, §61.3(2)(e)(iii)(B), facilities classified within Standard Industrial Classification 24 are considered to be engaging in "industrial activity."

6. Pursuant to 5 CCR 1002-61, §61.4(3)(a)(i), facilities proposing a discharge of stormwater associated with industrial activity shall submit a permit application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity.
7. EEP owns and/or operates a wood pellet production facility located at 120 Main Street, in or near the Town of Silver Plume, Clear Creek County, Colorado (the "Facility").
8. EEP began operations at the Facility on or about August 8, 2010.
9. The Facility is classified within the Standard Industrial Classification code 24 and, as such, EEP is engaged in industrial activity that is subject to stormwater permitting requirements.
10. During rain and snowmelt events at the Facility, stormwater flows across pollution sources associated with EEP's industrial activity and into Clear Creek.
11. On March 8, 2011, the Division received an application from EEP for Facility coverage under the CDPS General Permit, Number COR-010000, for Stormwater Discharges Associated with Light Industrial Activity (the "Permit").
12. On March 25, 2011, the Division provided EEP Certification Number COR-011432 authorizing EEP to discharge stormwater from the industrial activities associated with the Facility to Clear Creek under the terms and conditions of the Permit. Certification Number COR-011432 became effective March 24, 2011, was set to expire on June 30, 2011, but was administratively continued and remains in effect until the Division issues a new permit or until EEP inactivates Permit coverage.
13. Clear Creek is "state waters" as defined by §25-8-103(19), C.R.S., and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
14. Division records establish that EEP did not have any permits authorizing discharges of stormwater from the Facility prior to March 24, 2011.
15. EEP's failure to obtain CDPS permit coverage for the Facility prior to March 24, 2011 constitutes violations of §25-8-501(1) C.R.S., 5 CCR 1002-61, §61.3(1)(a), 5 CCR 1002-61, §61.3(2), and 5 CCR 1002-61, §61.4(3)(a)(i).

Incomplete and/or Deficient Stormwater Management Plan

16. Pursuant to 5 CCR 1002-61, §61.8, EEP must comply with all the terms and conditions of the Permit and violations of such terms and conditions as specified in the Permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
17. Pursuant to Part I. B. of the Permit, EEP is required to prepare a Stormwater Management Plan ("SWMP") for the Facility that identifies Best Management Practices ("BMPs") that, when implemented, will meet the terms and conditions of the Permit. The SWMP is required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with industrial activity from the Facility. In addition, the SWMP is required to describe and ensure the implementation of

BMPs, which will be used to reduce the pollutants in stormwater discharges associated with industrial activity.

18. Pursuant to Part I. B. of the Permit, the SWMP shall include, at a minimum, the following items:
 - a. Industrial Activity Description – The SWMP shall include a narrative description of the industrial activity taking place at the site.
 - b. Site Map – The SWMP shall include a site map indicating areas of industrial activity, locations of outfalls, an outline of the drainage area of each stormwater outfall, each existing structural control measure to reduce pollutants in stormwater runoff, locations surface water bodies, locations of all potential pollutant sources, and the location of each sampling point.
 - c. Stormwater Management Controls – The SWMP shall include a description of stormwater management controls and shall address the following minimum components:
 - i. SWMP Administrator – The SWMP shall identify a specific individual(s) who is responsible for developing the SWMP and assisting the plant manager in its implementation, maintenance, and revision.
 - ii. Identification of Potential Pollutant Sources and Best Management Practices – The SWMP shall identify potential sources of pollutants and describe BMPs to reduce the potential of these sources to contribute pollutants to stormwater discharges. The description of BMPs shall include stormwater diversions, materials handling and spill prevention, sediment and erosion prevention, and other pollution prevention measures.
 - iii. Sampling Information – The SWMP shall include a summary of any existing discharge sampling data describing pollutants in stormwater discharges and a description of each proposed sampling point, should monitoring be required.
 - iv. Preventive Maintenance – The SWMP shall include a preventive maintenance program that involves inspection and maintenance of stormwater management devices, as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.
 - v. Good Housekeeping – The SWMP shall address cleaning and maintenance schedules, trash collection and disposal practices, grounds maintenance, etc.
 - vi. Spill Prevention and Response Procedures – The SWMP shall identify areas where potential spills can occur, with their accompanying drainage points. Procedures for cleaning up spills shall be identified.

- vii. Employee Training – The SWMP shall include procedures for conducting employee training that addresses topics such as spill response, good housekeeping, material management practices, and plant operation and design features. The SWMP shall identify periodic dates for such training.
 - viii. Identification of Discharges other than Stormwater – The SWMP shall include a description of the results of any evaluation for the presence of discharges other than stormwater, the method used, the date of the evaluation, and the onsite drainage points that were directly observed.
- d. Comprehensive Inspections – The SWMP shall identify qualified personnel that will inspect designated equipment and plant areas. Each SWMP shall specify the procedures and intervals of the comprehensive inspections.
 - e. Consistency with Other Plans – SWMPs may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Clean Water Act, or BMP Programs otherwise required by a CDPS permit, but the relevant sections of such plans must be available as part of the SWMP.
19. On August 26, 2011 and March 15, 2012, a representative from the Division (the “Inspector”) conducted an on-site inspection of the Facility pursuant to the Division’s authority under §25-8-306, C.R.S., to determine EEP’s compliance with the Water Quality Control Act and the Permit. During the inspections, the Inspector interviewed Facility representatives, conducted a review of the Facility’s stormwater management system records, and performed a physical inspection of the Facility.
20. During the August 26, 2011 inspection, the Inspector reviewed the Facility’s SWMP and identified the following deficiencies, as described in paragraphs 20 (a-e) below:
- a. The site map did not identify all areas where industrial activities occur, including where outdoor wood chipping and loading/unloading occur.
 - b. The site map did not include the locations of stormwater outfalls and an approximate outline of the area draining to each outfall.
 - c. The site map did not include the locations of all surface water bodies located in or next to the facility, including the surface expression of groundwater that was observed at the northwest corner of the property.
 - d. The site map did not include the location of all potential pollutant sources, including loading and unloading areas, outdoor storage of wood chips, dumpsters, and portable toilets.
 - e. The SWMP did not include a description of the results of an evaluation for the presence of discharges other than stormwater, the method used, the date of the evaluation, nor the on-site drainage points that were evaluated.

21. The Division has determined that EEP failed to prepare and maintain a complete and accurate SWMP for the Facility.
22. EEP's failure to prepare and maintain a complete and accurate SWMP for the Facility constitutes violations of Part I. B. of the Permit.

Failure to Install, Maintain, or Properly Select Best Management Practices

23. Pursuant to Part I. B. 3. b. of the Permit, EEP is required to identify potential sources of pollutants at the Facility and implement BMPs in accordance with good engineering practices to reduce the potential of these sources to contribute pollutants to stormwater discharges. The Permit specifies that where stormwater pollution potential exists, appropriate preventative measures must be taken and documented.
24. Pursuant to Part I. C. 1. b. of the Permit, EEP is required to implement secondary containment or equivalent protection to contain all spills from bulk storage structures for petroleum products or other chemicals.
25. During the August 26, 2011 inspection, the Inspector identified the following deficiencies with EEP's installation and maintenance of BMPs at the Facility, as described in paragraphs 25 (a-c) below:
 - a. The Inspector observed disturbed ground associated with the loading/unloading and log storage areas located on the west and southwest side of the Facility adjacent to Clear Creek. Stormwater runoff in this area of the Facility flows to the south through the disturbed loading/unloading area, across the disturbed log storage area, and into Clear Creek. A perimeter berm constructed of wood chips was implemented directly adjacent to Clear Creek; however, the berm was not designed and implemented in accordance with good engineering practices, as the berm was constructed of an uncompacted pollutant source (i.e., wood chips) and the berm was implemented so that it concentrated stormwater flow down gradient along the length of the berm, thus increasing the potential for erosion and sediment discharge. No other BMPs were implemented to stabilize the disturbed areas or to prevent sediment and wood chips from discharging to Clear Creek. Consequently, the Inspector observed a discharge of sediment to Clear Creek.
 - b. The Inspector observed disturbed ground and wood chips associated with the wood chipping, log storage and access road areas on the east half of the Facility. Stormwater runoff in this area of the Facility flows to the southeast before entering Clear Creek. No BMPs were observed in place to stabilize the disturbed areas, to divert stormwater away from the materials handling and storage areas, or to prevent sediment and wood chips from discharging to Clear Creek.
 - c. The Inspector observed a surface expression of groundwater flowing across the disturbed log storage and pallet storage areas on the west end of the facility, and across the disturbed access road on the east end of the facility. The surface expression of groundwater originated from an adjacent mine. No BMPs were observed in place to prevent the run-on water from coming into contact with potential pollutant sources (i.e., sediment and wood chips) at the Facility.

26. During the March 15, 2012 inspection, the Inspector identified the following deficiencies with EEP's installation and maintenance of BMPs at the Facility, as described in paragraphs 26 (a-e) below:
- a. The Inspector observed disturbed ground located west of the pallet storage area at the Facility. Stormwater runoff in this area of the Facility flows to the south and into Clear Creek. No BMPs were observed in place to stabilize the disturbed area or to prevent sediment or other pollutants from discharging to Clear Creek.
 - b. The Inspector observed disturbed ground associated with the loading/unloading and log storage areas located on the west and southwest side of the Facility adjacent to Clear Creek. Stormwater runoff in this area of the Facility flows to the south through the disturbed loading/unloading area, across the disturbed log storage area, and into Clear Creek. A perimeter berm constructed of wood biomass bedding was implemented directly adjacent to Clear Creek; however, the berm was not designed and implemented in accordance with good engineering practices, as the berm was constructed of an uncompacted pollutant source (i.e., wood biomass bedding) and the berm was implemented so that it concentrated stormwater flow down gradient along the length of the berm, thus increasing the potential for erosion and sediment discharge. No other BMPs were implemented to stabilize the disturbed areas or to prevent sediment and wood biomass bedding from discharging to Clear Creek. Consequently, the Inspector observed a discharge of wood biomass bedding to Clear Creek.
 - c. The Inspector observed a wood chipping area located southeast of building 2 at the Facility. Wood chips had been pushed and spread out toward the bank of Clear Creek to create a flat area for truck access. Stormwater runoff in this area flows across the wood chipping area and into Clear Creek. No BMPs were observed in place to prevent wood chips from being discharged to Clear Creek. Consequently, the Inspector observed a discharge of wood chips to Clear Creek.
 - d. The Inspector observed disturbed ground associated with the log storage area located on the southeast side of the Facility adjacent to Clear Creek. Stormwater runoff in this area of the Facility flows across the log storage area and into Clear Creek. A silt fence was observed in place along the bank of Clear Creek; however, the silt fence fabric was not fastened to the wood posts and was lying on the ground. No other BMPs were observed in place to stabilize the disturbed ground or to prevent sediment and wood chips from discharging to Clear Creek.
 - e. The Inspector observed an oil and fuel storage area located on the north side of the Facility. Secondary containment or equivalent protection was not in place.
27. The Division has determined that EEP failed to implement and maintain BMPs to protect stormwater quality at the Facility.
28. EEP's failure to implement and maintain BMPs to protect stormwater quality at the Facility constitutes violation(s) of Part I. B. 3. b. and Part I. C. 1. b. of the Permit.

NOTICE OF VIOLATION

29. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined EEP has violated the following sections of the Colorado Water Quality Control Act, its implementing permit regulations, and the Permit.

Section 25-8-501(1), C.R.S., which states in part, “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, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.”

5 CCR 1002-61, §61.3(1)(a), which states in part, “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...”

5 CCR 1002-61, §61.3(2), which states in part, “...discharges of stormwater as set forth in 61.3(2) and 61.4(3) are point sources requiring a permit,” and “The following discharges composed entirely of stormwater are required to obtain a permit... (ii) A stormwater discharge associated with industrial activity.”

5 CCR 1002-61, §61.4(3)(a)(i), which states in part, “Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity.”

Part I. B. of the Permit, which states in part, “A Stormwater Management Plan (SWMP) shall be developed for each facility covered by this permit. SWMPs shall include BMPs that are selected, installed, implemented and maintained in accordance with good engineering practices... The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.”

Part I. B. 3. b. of the Permit, which outlines that a permittee shall identify potential sources of pollutants at the site and assess the potential of these sources to contribute pollutants to stormwater discharges, and states in part, “In each case where stormwater pollution potential exists, appropriate preventive measures must be taken and documented.”

Part I. C. 1. b. of the Permit, which states, “Bulk storage structures for petroleum products and any other chemicals shall have secondary containment or equivalent adequate protection so as to contain all spills and prevent any spilled material from entering State waters.”

REQUIRED CORRECTIVE ACTION

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

30. 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 EEP to comply with the following specific terms and conditions of this Order:

31. EEP shall immediately evaluate the Facility's SWMP and implement necessary measures to ensure the SWMP contains all of the elements required by the Permit, including the identification and an assessment of all potential pollutant sources at the Facility, as well as the identification of functional and effective BMPs for those pollutant sources. EEP shall ensure the SWMP is effective in managing pollutant discharges from the Facility. Within thirty (30) calendar days of receipt of this Order, EEP shall submit a written certification to the Division stating that a complete, effective, and up-to-date SWMP has been fully developed and implemented at the Facility.
32. EEP shall immediately implement necessary measures to ensure that adequate BMPs are in place to control pollutant discharges from the Facility. This includes ensuring that all BMPs at the Facility are selected, installed, implemented, and maintained following good engineering, hydrologic, and pollution control practices. Within thirty (30) calendar days of receipt of this Order, EEP shall evaluate and modify all existing BMPs at the Facility to ensure the BMPs meet the design requirements specified in the Facility's complete and up-to-date SWMP. Within forty-five (45) calendar days of receipt of this Order, EEP shall submit photographs to the Division documenting the current conditions at the site and the associated BMPs implemented at the Facility.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, EEP 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-CAS
Compliance Assurance Section
Attention: Michael Harris
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: michael.harris@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.

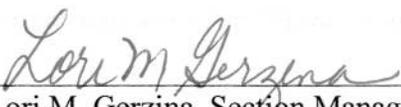
EFFECT OF ORDER

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 14th day of June 2012.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



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