

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Larry Wolk, MD, MSPH  
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.  
Denver, Colorado 80246-1530  
Phone (303) 692-2000  
Located in Glendale, Colorado  
[www.colorado.gov/cdphe](http://www.colorado.gov/cdphe)



Colorado Department  
of Public Health  
and Environment

December 3, 2013

Rosalie Bianco  
Environmental Energy Partners, LLC  
P.O. Box J  
Silver Plume, CO 80476

**RE: Compliance Order on Consent, Number: SC-131203-1**

Dear Ms. Bianco:

Enclosed for Environmental Energy Partners, LLC's ("EEP") records, you will find EEP's copy, with original signatures, of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 38). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed to place the assigned Order Number on the final document.

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](mailto:michael.harris@state.co.us).

Sincerely,

Michael Harris, Manager  
Clean Water Compliance & Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Natasha Davis, EPA Region VIII  
Clear Creek County Public and Environmental Health  
Nicole Rowan, Watershed Section, CDPHE  
Michael Beck, Grants and Loans Unit, CDPHE  
Doug Camrud, Engineering Section, CDPHE  
Kelly Jacques, Field Services Section, CDPHE  
Nathan Moore, Compliance Unit 2, CDPHE  
Tania Watson, Data Management, CDPHE



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

---

**COMPLIANCE ORDER ON CONSENT**

**NUMBER: SC-131203-1**

---

**IN THE MATTER OF: ENVIRONMENTAL ENERGY PARTNERS, LLC**  
**CDPS PERMIT NO. COR-010000**  
**CERTIFICATION NO. COR-011432**  
**CLEAR CREEK 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"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S., of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Environmental Energy Partners, LLC ("EEP"). The Division and EEP 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 civil penalties associated with alleged violations cited herein and in the Notice of Violation / Cease and Desist Order, Number: SO-120614-1 (the "NOV/CDO"), that the Division issued to EEP on June 14, 2012.

**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 EEP and EEP's compliance with the Act and a stormwater discharge permit.
3. At all times relevant to the alleged violations identified herein, EEP was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
4. 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**

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)(B), facilities classified within Standard Industrial Classification 24 are considered to be engaging in “industrial activity.”
8. 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.
9. 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”).
10. EEP began operations at the Facility on or about August 8, 2010.
11. 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.
12. During rain and snowmelt events at the Facility, stormwater flows across pollution sources associated with EEP’s industrial activity and into Clear Creek.
13. 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”).
14. 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. On July 1, 2012, Certification Number COR-011432 was terminated and EEP’s authorization to discharge was transferred to Certification Number COR-900605 for coverage under CDPS General Permit, Number COR-900000.
15. 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).
16. Division records establish that EEP did not have any permits authorizing discharges of stormwater from the Facility prior to March 24, 2011.
17. 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**

18. 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.
19. 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.
20. 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 of 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.
21. 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.
22. During the August 26, 2011 inspection, the Inspector reviewed the Facility’s SWMP and identified the following deficiencies, as described in paragraphs 22 (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.

23. The Division has determined that EEP failed to prepare and maintain a complete and accurate SWMP for the Facility.
24. 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**

25. 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.
26. 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.
27. 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 27 (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 uncompact 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.

28. 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 28 (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.
29. The Division has determined that EEP failed to implement and maintain BMPs to protect stormwater quality at the Facility.
30. 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.

## ORDER AND AGREEMENT

31. 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 and in the NOV/CDO, the Division orders EEP to comply with all provisions of this Consent Order, including all requirements set forth below.
32. EEP agrees to the terms and conditions of this Consent Order. EEP 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. EEP also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by EEP 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.
33. Notwithstanding the above, EEP does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by EEP pursuant to this Consent Order shall not constitute evidence of fault and liability by EEP with respect to the conditions of the Facility.

## CIVIL PENALTY

34. Based upon the application of the Division's Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, EEP shall pay Ten Thousand Dollars (\$10,000.00) in civil penalties. The Division intends to petition the Executive Director, or her designee, to impose the Ten Thousand Dollar (\$10,000.00) civil penalty for the above violation(s) and EEP agrees to make the payment through seven installment payments as described in the table below:

<b>Payment</b>	<b>Amount</b>	<b>Due Date</b>
1	\$500.00	Within thirty (30) calendar days of issuance of a Penalty Order by the Executive Director or her designee
2	\$500.00	March 1, 2014
3	\$1,800.00	September 1, 2014
4	\$1,800.00	March 1, 2015
5	\$1,800.00	September 1, 2015
6	\$1,800.00	March 1, 2016
7	\$1,800.00	September 1, 2016

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-CWE-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

35. Failure to submit full payment of any installment by the due date described in paragraph 34 above shall be deemed a violation of this Consent Order.
36. In the event that EEP fails to comply with any of the terms or provisions of this Consent Order relating to payment of the civil penalty, EEP shall be liable for payment of the outstanding balance of the civil penalty within thirty (30) days of receipt of written demand by 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 the address specified in paragraph 34 above.

#### **SCOPE AND EFFECT OF CONSENT ORDER**

37. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the NOV/CDO.
38. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and EEP each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
39. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or her designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by EEP, 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.
40. Notwithstanding paragraph 33 above, the violations described in this Consent Order will constitute part of EEP'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 EEP. EEP agrees not to challenge the use of the cited violations for any such purpose.

#### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

41. 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 cited herein and in the NOV/CDO. 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.

42. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
43. 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.
44. Upon the effective date of this Consent Order, EEP 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 violations of the Act specifically addressed herein.
45. 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

46. 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-CWE-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 EEP:

Rosalie Bianco  
Environmental Energy Partners, LLC  
P.O. Box J  
Silver Plume, Colorado 80476  
Telephone: 312.917.6976  
E-mail: rosalieeep@gmail.com

### MODIFICATIONS

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

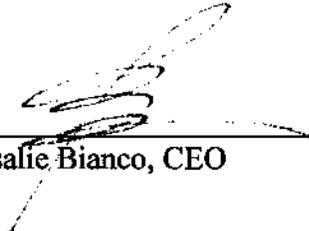
**NOTICE OF EFFECTIVE DATE**

48. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or her designee imposes the civil penalty following closure of the public comment period referenced in paragraph 38. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

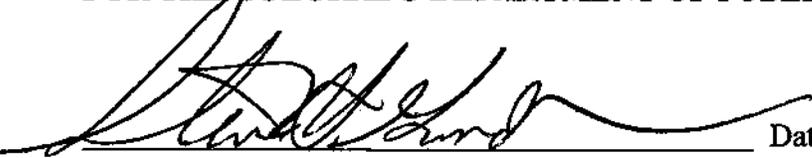
49. This Consent Order is binding upon EEP and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party 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 ENVIRONMENTAL ENERGY PARTNERS, LLC:**

  
\_\_\_\_\_  
Rosalie Bianco, CEO

Date: Nov 15, 2013

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

  
\_\_\_\_\_  
Steven H. Gunderson, Director  
WATER QUALITY CONTROL DIVISION

Date: 12/2/13