



September 26, 2007

David C. Carlson, Ph.D.  
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Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive #200  
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**VIA ELECTRONIC MAIL TO: [dcarlson@waterboards.ca.gov](mailto:dcarlson@waterboards.ca.gov)**

**Re: Tentative Order (27 August 2007) for City of Colfax Wastewater Treatment Plant, NPDES No. CA0079529; Cease and Desist from Discharging Contrary to Requirements, Order No. R5-2007-XXXX.**

Dear Mr. Carlson and members of the Board:

Thank you for the opportunity to comment on the Central Valley Regional Water Quality Control Board's ("Regional Board") August 27, 2007, tentative order for the City of Colfax's National Pollution Discharge Elimination System ("NPDES") No. CA0079529 ("Draft Permit") and the accompanying cease and desist order requiring the City of Colfax's Wastewater Treatment Plant to Cease and Desist from Discharging Contrary to Requirements, Order No. R5-2007-XXXX ("Proposed CDO"). This comment letter is submitted by Allen Edwards, Nancy Edwards, and the Environmental Law Foundation (hereinafter referred to as the "Environmental Parties") and will provide comments on the Draft Permit and the CDO.

**I. The Environmental Parties Draft Permit Comments**

**A. Nitrate Effluent Limitations**

The Draft Permit contains an Interim Nitrate Nitrogen, Total (as N) Effluent Limitation of 16.76 mg/L (Draft Permit, Attachment F, p. F-50), and a Final Effluent Limitation of 10 mg/L monthly average (Draft Permit, Table 7, p. 11). The Draft Permit explains that in reaching the Interim Nitrate Effluent Limit, the Regional Board assumes that complete nitrification occurs in the existing wastewater treatment system, and that the new treatment plant may need a compliance schedule to meet the Final Effluent Limitation. See Draft Permit, Fact Sheet, p. F-50 & F-29 respectively. However, the

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Draft Permit fails to explain that the new wastewater treatment plant does not include de-nitrification as part of the new treatment plant design. The Draft Permit Final Effluent Limitation for Ammonia is a monthly average of 0.8 mg/L and maximum daily limit of 2.1 mg/L. *See* Draft Permit, Table 7, p11. These effluent limits essentially require complete nitrification. Compliance with the 10 mg/L Effluent Limit for Nitrate will in the presence of complete nitrification will require denitrification in the treatment plant. Therefore, the Draft Permit requires Colfax to meet a Final Effluent Limitation that is not included in the new wastewater treatment plant design specifications, and Colfax will almost certainly violate the Nitrate Final Effluent Limit immediately upon operation of the new wastewater treatment plant.

The Draft Permit and/or the Proposed CDO must include a requirement that Colfax immediately begin design to modify the new wastewater treatment plant to ensure compliance with the Nitrate Effluent Limitation and that the existing construction contract be modified through a change order to include de-nitrification. Failure to do so will result in an extended period of noncompliance with Interim Effluent Limitations while Colfax completes the new plant. Once the plant is completed Colfax will immediately begin to violate its Nitrate Final Effluent Limitation, and then have to begin the procurement, design, and bidding process to construct the necessary modifications to the plant.

Meanwhile, the Interim Permit Effluent Limits for ammonia and nitrate allow Colfax to operate its inadequate interim treatment plant in whatever manner it chooses. The interim ammonia limit is based on a data set that includes very high ammonia effluent values representing little nitrification *See* Draft Permit, Fact Sheet, pp. F-29, 39 & 50. The Draft Permit requires that Colfax operate the interim plant to nitrify to the maximum extent possible (*See* Draft Permit, p. 26 & Fact Sheet, p. F-62-63) but sets numerical effluent limits that allow for little or no nitrification. At the same time, the Draft Permit sets a Final Nitrate Effluent Limitation that reflects the Nitrate that would be discharged only if complete nitrification was achieved. *See* Draft Permit, Table 7, p. 11.

The Environmental Parties request that the effluent limitation for ammonia be revised to reflect operation of the new plant to nitrify to the maximum extent possible and suggest that limit be 5 mg/L based upon Best Professional Judgment. Further, the Draft Permit or the CDO should include a requirement that Colfax modify the design of the new treatment plant to ensure that it will not violate its Final Nitrate Effluent Limitation immediately upon completion of the new plant and have to modify the plant in the future to meet the Final Effluent Limitations.

**B. The Draft Permit's Deferral of Any Justification for a Compliance Schedule for Copper and Nitrates Does not Comply with the State Implementation Plan and the Clean Water Act**

The compliance schedule set forth in the Draft Permit for Copper and Nitrates fails to meet the requirements of the State's implementation plan for toxic pollutant control,

Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, Section 2, p. 20 (2005) ("SIP"). The SIP requires a discharger to submit documentation justifying the compliance schedule "before compliance schedules may be authorized in a permit." SIP Section 2.1, p. 19. Specifically, the discharger must (a) demonstrate that diligent efforts were made to quantify pollutant levels in the discharge; (b) explain the source control/pollution minimization efforts currently underway or completed; (c) include a proposed schedule for future control measures; and (d) demonstrate that the proposed schedule is as short as practicable. *Id.*

The Environmental Parties explained in their comments in June that Colfax's failure to provide the justification was in violation of the SIP and a compliance schedule for Copper should not be included in the Draft Permit. The hearing on the Draft Permit was postponed from June to October, and yet Colfax has still not submitted the required documents to justify a compliance schedule for Copper or Nitrates. *See* Draft Permit, p. 31. The adoption of the Draft Permit has therefore been deferred for over 90 days, or longer than the June draft permit gave Colfax to submit its justification for Copper. Colfax should have submitted its justification in the past 90 days and should not be granted another 90 days to submit its Copper and Nitrate justification.

The Regional Board cannot include limits in a permit that are *contingent* on the discharger providing its justification following permit adoption, effectively shutting the public out of the process and relying on private staff determinations. *See* SIP Section 2.1, p. 19. The Regional Board is required to provide notice and allow comments on the Draft Permit requirements. *See* 40 C.F.R. § 124.10 (Public notice of actions and public notice of comment period). The Regional Board must include the results of Colfax's justification for Copper and Nitrates in the Draft Permit/Fact Sheet to allow for public comment. The Regional Board should not adopt the Copper and Nitrate compliance schedule until Colfax submits the documents required by the SIP, and the Regional Board properly determines the need for a compliance schedule in the Draft Permit.

## **II. Environmental Parties Comments Regarding the Proposed CDO**

### **A. The CDO Must Include Regional Board Oversight and Appropriate Milestones that Ensure Compliance with the Permit Limitations Regarding Infiltration and Inflow**

The Proposed CDO explains that Infiltration and Inflow ("I&I") problems with the Colfax collection system will require the Colfax plant to discharge 0.5 million gallons a day ("mgd") of treated effluent in order to process the excess winter I&I flows stored in pond #3. The Proposed CDO requires Colfax to design and then implement a Capital Improvement Plan ("CIP") to address the Colfax collection system I&I problems, and sets forth a time schedule for Colfax to meet the flow requirements in the Draft Permit. *See* Proposed CDO, Order, ¶ 1. Until the CIP program designed and implemented by Colfax is completed in 2013, the Proposed CDO authorizes Colfax to discharge 0.5 mgd

while the existing treatment plant is operational and 0.65 mgd following completion of the new treatment plant. *Id.* The proposed time schedule includes dates for submittal of the CIP and annual reports updating the Regional Board regarding CIP implementation. *Id.* Finally, the Proposed CDO sets 1 October 2013 as the deadline for submittal of a summary report regarding overall compliance with the flow limits in the Draft Permit. *Id.*

The Environmental Plaintiffs initial comment is that the order of I&I compliance dates is incorrect and must be reversed. *See* CDO Order ¶ 1. The Proposed CDO requires Colfax to develop a CIP and implement the CIP and then install flow monitors at key locations to evaluate I&I problem areas. The Proposed CDO should require Colfax to install and monitor the I&I problem areas, and then develop a CIP that will address each of the key I&I problems. Compliance and implementation should not come before identification of the problems and the dates should be modified.

Further, the Proposed CDO structure does not contain any oversight by the Regional Board to ensure that Colfax's I&I issue is properly addressed. A major concern, as explained in the Environmental Parties' previous comments to the Regional Board, is that Colfax has a history of non-compliance with prior NPDES Permits and CDO's. To ensure that Colfax's CIP will actually improve I&I in the Colfax collection system, the Proposed CDO should require plan submittal and approval by Regional Board staff prior to implementation. Without oversight by the Regional Board, Colfax can and likely will continue its history of implementing failed programs and/or projects that do not ensure compliance with its permit. The Proposed CDO must include oversight by Regional Board staff and/or the public to allow comments on the proposed CIP to ensure that work proposed will actually reduce I&I and will move Colfax towards compliance with its permit.

The Proposed CDO's date for completion of the I&I work (1 October 2013) is too much time given the size of the Colfax collection system. The collection system is only a little over 11 miles of pipes and should not require 6-years of capital improvements prior to reduction of I&I to a level sufficient to allow Colfax to meet its flow limits in the permit. Colfax has under funded its CIP program for the past thirty (30) years and should not be granted another six (6) years to comply with its permit limits. The Environmental Plaintiffs propose a three (3) year CIP program that should allow Colfax to improve I&I sufficiently to meet its permit flow limits.

Finally, the Proposed CDO should include actual milestones that Colfax must meet rather than mere submittal of updates to the Regional Board with no mechanism for the Regional Board to order Colfax to change or improve the CIP. The Environmental Parties propose that Colfax reduce I&I by 33% a year over the 3 year CIP, which would allow Colfax to meet its flow limits by 2010.

**B. The Regional Board Must Confirm the Size of Pond #3 to Ensure That Overtopping of the Spillway Does Not Occur**

The Proposed CDO references the size of pond #3 as 69 million gallons. However, documents submitted by Colfax and discussions with Regional Board staff indicates that pond #3 may actually have a capacity of 51 million gallons. Obviously, the size of pond #3 is critical in determining the appropriate flow requirements of the existing and new wastewater treatment plants. Pond #3 overtopped the spillway in 2006 and discharged raw or partially treated sewage during wet weather. Prior to adoption of the Proposed CDO, the Regional Board should confirm the size of pond #3 and use that number to determine whether Colfax's proposed CIP will ensure reduction of I&I to meet the proposed permit flow limits.

**C. The CDO Should Require Lining of Pond #3**

The CDO addresses I&I and possible leakage from the interim treatment plant to surface waters of the United States (Proposed CDO, Finding ¶ 6 & Order ¶ 2) but it does not require Colfax to prevent seepage to area groundwater. Further, the CDO contains a factual error regarding Pond #3. It continues to assert that Colfax has not dewatered Pond #3, but information available to the Environmental Parties indicates that Colfax dewatered Pond #3 in the summer of 2005 and 2006. Lining Pond #3 will prevent seepage to groundwater if done correctly. The Regional Board should comply with its mandate to protect water quality and require that Colfax complete the project Colfax proposed originally in its March 2004 request to the Regional Board to dewater and line the pond and stop the seepage from the Pond #3 to surface water and groundwater.

Thank you in consideration of these comments. Please contact me if you have any questions.

Dated: September 26, 2007

Sincerely Yours,

/s/ Michael J. Chappell

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Foundation