

LAWYERS FOR
CLEAN WATER INC.

June 15, 2007

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Central Valley Regional Water Quality Control Board
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VIA ELECTRONIC MAIL TO: dcarlson@waterboards.ca.gov

Re: Tentative Order 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") 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 both the Draft Permit and the CDO.

The Environmental Parties submit these comments in the hope that the Regional Board can adopt a permit and compliance order that is protective of water quality, and will end a 30-year pattern of NPDES permit non-compliance and pollution by Colfax. As explained briefly below, the Regional Board's efforts to date to obtain compliance by Colfax and to protect receiving waters have been an abject failure. Colfax completed construction on its wastewater treatment plant ("WWTP") in 1979. Immediately after completing construction on Pond #3 (a 212 acre-feet unlined storage pond meant to capture excess infiltration and inflow and storm water runoff), Colfax and the Regional Board determined that treated, but undisinfected, wastewater from the base of Pond #3 was seeping into an unnamed tributary to Smuther's Ravine, in violation of the permit. In 1985, the Regional Board renewed Colfax's original NPDES permit and authorized

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year-round discharges of seepage from Pond #3, with permit requirements to sample the seepage. In 1990, the Regional Board renewed the NPDES permit and included effluent limitations for total coliform organisms and chlorine residual for the seepage discharges. In 1995, the Regional Board again renewed the NPDES permit. The WWTP continued to discharge seepage from Pond #3, and in 1996 the Regional Board issued a Notice of Violation (“NOV”) to Colfax for discharging wastewater due to lack of storage capacity, failure to properly maintain the land irrigation sprinkler system, and violations of their influent flow limit. Colfax repaired the sprinkler system and improved the collection system, but did not increase storage capacity.

In February 2001, the Regional Board issued a NOV to Colfax for numerous violations related to capacity issues at the WWTP and inadequate disinfection of effluent discharged from Pond #3. The Regional Board also notified Colfax that it was going to renew the NPDES permit, but that the permit was going to include a schedule to correct the problems identified in the NOV. In June 2001, the Regional Board adopted current Permit (“2001 Permit”) with a CDO (“2001 CDO”). The 2001 Permit contained specific effluent limitations, and the 2001 CDO required Colfax to meet those effluent limitations by the end of the permit, or June 14, 2006. Colfax is not currently meeting those limits.

On August 5, 2003, the Regional Board conducted a review of the compliance history of the WWTP and adopted Administrative Civil Liability (“ACL”) Order number R5-2003-0167 assessing mandatory penalties for violations of the Permit in the amount of \$351,000 for violations beginning in 2000 and ending in March of 2003. Pursuant to California Water Code (“Water Code”) Section 13385(k), the ACL Order allowed Colfax to complete a project to achieve full compliance with the Permit by June 14, 2006 in lieu of paying the \$351,000 fine. The project that Colfax submitted to the Regional Board that would achieve compliance with the ACL was construction of the new wastewater treatment plant. Specifically, Colfax submitted a Facilities Plan to the Regional Board in 2004 that Colfax claimed would allow the City to comply with the 2001 Permit by the June 14, 2006 deadline. Colfax did not identify the interim treatment system as the project that would comply with the ACL. Colfax’s 2001 Permit expired on December 14, 2006. On March 20, 2007, the Regional Board sent a letter to Colfax demanding payment of the ACL penalty because the WWTP was not in compliance with the 2001 Permit and the 2001 CDO. On May 11, 2007, Colfax submitted a request for reconsideration of the Regional Board’s decision to levy the ACL fine. The Regional Board has not responded to Colfax’s request for reconsideration, but the CDO and the Draft Permit rescind the 2001 CDO and appear to forgive the ACL fines.

Although the Draft Permit asserts that the current treatment system is generally complying with its permit limits, Draft Permit, Fact Sheet p. F-10, in fact Colfax is not complying with its permit. If the current system achieved consistent compliance, Colfax would be required to spend over \$9 million to build a new treatment plant. The backdrop for this permitting and enforcement process is Colfax’s continuing spills and discharges of raw and partially treated sewage from its patently inadequate treatment plant and collection system onto the public and the environment.

I. Environmental Parties General Comments

As an initial comment, the Environmental Parties applaud Regional Board staff for making changes to the earlier circulated draft of the permit and imposing compliance dates for the final effluent limits in the Draft Permit. Environmental Parties initial comment on the Draft Permit – that the Draft Permit contained no compliance deadline – has therefore been addressed. As the Regional Board indicated in its letter of March 20, 2007 to the City, Colfax failed to comply with the 2001 CDO requirements. The Environmental Parties are again before this Regional Board commenting on another Draft Permit that strives to force Colfax to finally fix the problem and comply with the law. It is critical that the Draft Permit and the accompanying CDO contain firm deadlines for Colfax, and that those deadlines are actually enforced.

II. The Environmental Parties Draft Permit Comments

A. Bacteria Effluent Limitations

The Draft Permit contains a maximum effluent limitation for total coliform of 240 MPN/100 mL. The California Department of Food and Agriculture adopted guidelines in April 2007 for the production and harvest of lettuce and leafy greens. The guidelines set a maximum *E. coli* concentration of 235 MPN/100 mL. If any water source that contacts the leafy greens exceeds the 235 MPN/100 mL criterion, it could lead to the shutdown of harvesting those crops for human consumption. To ensure the safety of downstream agricultural uses, the Draft Permit must be amended to reflect the limits in the new Food and Agriculture guidelines. Because the maximum criteria is 235 MPN/100 mL, the new Total Coliform effluent limit of should be slightly under that criteria, such as 220-230 MPN/100.

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

Leaving aside for the moment the issue of the Regional Board's authority to issue compliance schedules, the compliance schedule set forth in the Draft Permit for Copper 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"). Colfax did not submit the required documents to justify a compliance schedule for Copper. *See* Draft Permit, Table 8, p. 13. 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 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. *Id.* 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 in the Draft Permit/Fact Sheet to allow for public comment. The Regional Board should not adopt the Copper 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.

C. The Draft Permit's Compliance Schedule for Copper is Contrary to the Basin Plan

The Water Quality Control Plan, Central Valley Region ("Basin Plan") does not provide a basis for the Draft Permit's compliance schedule for Copper. Unlike the California Toxics Rule ("CTR"), 40 C.F.R. § 131.38, and SIP, the Basin Plan contains provisions that ostensibly still allow the use of compliance schedules, albeit in limited situations. Point # 4 of the Basin Plan's "seven important points that apply to water quality objectives" authorizes compliance schedules to implement newly adopted objectives or standards. Basin Plan, pp. III-1.00 & 2.00. "This policy [authorizing compliance schedules] shall apply to water quality objectives and water quality criteria adopted after the effective date of this amendment to the Basin Plan." *Id.* Compliance schedules must implement new standards in the shortest practicable period of time, not to exceed ten years after adoption of the new objectives or standards. *Id.* The current Basin Plan's water quality objective for Copper has been in place since September 15, 1998 and is 0.0056 mg/L. Basin Plan, p. III-3.00. September 2008 is ten years from adoption of the water quality objective, and therefore this is the latest date for compliance with Copper WQBELs, and not December 3, 2008 as set forth in the Draft Permit.

The Regional Board's assertion in the Draft Permit that for CTR constituents, such as Copper, the compliance schedule is ten years from the date of SIP adoption is incorrect. *See* Draft Permit, Fact Sheet p. F-30. For purposes of determining the availability of compliance schedules, adoption of the SIP did not change or newly interpret underlying objectives set forth in the Basin Plan. *See* State Board Draft Order In the Matter of Own Motion Review of East Bay Municipal Utility District Wet Weather Permit, page 29 (January 12, 2007) (hereinafter "State Board Draft EBMUD Order"). As explained by the State Board, the SIP did not change or newly interpret underlying objectives, it merely established consistent procedures to implement existing standards. State Board Draft EBMUD Order at 29. Therefore, at a minimum the Draft Permit should correct the deadline for compliance for Copper to reflect the Basin Plan requirements and set the compliance deadline for September 15, 2008.

D. The Draft Permit Cannot Not Include Compliance Schedules for Ammonia, Copper, and 4,4-DDE

The CWA forbids the Regional Board from issuing compliance schedules which delay the effective date of Water Quality Based Effluent Limitations (“WQBELs”) past July 1, 1977. Several Regional Boards have asserted that provisions in the CWA and U.S. Environmental Protection Agency (“EPA”) regulations governing compliance schedules (33 U.S.C. § 1313(e)(3)(A), (F); 40 C.F.R. §§ 130.5(b)(1), (6), 131.38(e), 122.47) authorize using compliance schedules to delay the effective date of WQBELs in certain circumstances. The Draft Permit continues this pattern by asserting that compliance schedules are authorized in the circumstances specified by (1) the CTR, 40 C.F.R. § 131.38; (2) the SIP; and/or (3) Basin Plan. *See* Draft Permit, p. 4-5.

The CTR and the SIP, however, cannot provide the basis for the compliance schedules in the Draft Permit. While the CTR contains a provision allowing schedules of compliance when dischargers need time to achieve WQBELs based on CTR criteria, this provision expired by its own terms on May 18, 2005. 40 C.F.R. § 131.38(e). The SIP also purports to authorize compliance schedules for WQBELs based on CTR criteria, however, the SIP can no longer lawfully do so. When it promulgated the CTR, EPA explicitly stated that compliance schedules for CTR criteria can be issued after May of 2005 only if (1) the State Board adopts and EPA approves, a Statewide and/or regional policy authorizing compliance schedules, and (2) EPA acts to “stay the authorizing compliance schedule provisions in [the CTR].” 65 Fed. Reg. 31704-5. Although EPA has partially approved the SIP provisions relating to CTR-based compliance schedules, it has not acted to amend the Federal regulations prohibiting the use of compliance schedules after 2005. Because the CTR compliance schedule provision has expired and EPA has not acted to amend the CTR, the Regional Board may not issue compliance schedules for WQBELs based on CTR criteria.

E. The Draft Permit Violates the Clean Water Act’s Prohibition on Backsliding

The Draft Permit violates the anti-backsliding policy by relaxing the permit limits for several constituents. The Clean Water Act’s anti-backsliding policy was adopted to implement the CWA’s “national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.” 33 U.S.C. § 1251; 49 Fed. Reg. 37,898, 38,019 (September 26, 1984) (emphasis added). This policy prohibits a reissued permit from containing an effluent limit that is less stringent than that in the previous permit. 33 U.S.C. § 13429(o), 40 C.F.R. § 122.4(l)(1).

1. Discharge Prohibition

The 2001 Permit was a no discharge permit except for seepage under the dam. Each of the permits adopted by the Regional Board since the inception of the WWTP were no discharge permits, except for seepage under the dam. The 2001 Permit contained inflow limits based on the actual capacity of the plant, and requirements to

discharge excess wastewater via land irrigation. The Draft Permit prohibits land irrigation and is an outflow permit that turns an ephemeral stream into an effluent dominated stream. The Draft Permit therefore backslides and authorizes a significant change in the manner of discharge by Colfax by allowing a large increase in the discharge to a water of the United States. This backsliding is contrary to the Clean Water Act.

2. Groundwater

The 2001 Permit prohibited discharges from degrading groundwater quality. *See* 2001 Permit, Groundwater Limitations E.1. To ensure compliance with the groundwater limitation in the 2001 Permit, the permit required a groundwater monitoring and reporting program. The results of that program indicates that the Colfax treatment plant negatively impacts area groundwater. *See* Draft Permit, Fact Sheet F-37. The Draft Permit backslides and allows further degradation of groundwater by permitting the discharge of pollutants provided they are not above background levels. However, rather than rely on data produced from the 2001 Permit's groundwater monitoring program, the Draft Permit again requires monitoring and then submittal of a study 24 months from permit adoption setting forth the background levels. This allows Colfax to pollute, and likely increase those background levels, when the groundwater results are known from previous monitoring. The Draft Permit should not backslide by providing a 24 month window to pollute, but instead should again prohibit discharges from degrading groundwater, and use the monitoring information gathered in the last six years.

3. Chlorine Residual

The 2001 CDO required Colfax to begin continuous Chlorine monitoring on June 14, 2006 if they chose to meet the requirement for upgrading the plant with a tertiary plant. Colfax installed a continuous Chlorine monitor. The Draft Permit requires only one grab sample per day rather than continuous monitoring. This backslides from the requirements of the 2001 Permit and the 2001 CDO and should be amended to require continuous Chlorine Residual monitoring.

F. The Draft Permit Provisions Relating to the Proposed Sewage Treatment Facility Should More Appropriately be in the CDO

The Draft Permit contains numerous details and descriptions regarding Colfax's proposed new wastewater treatment plant ("New WWTP") that should instead be included in the CDO. *See* Draft Permit, p. 30, and Fact Sheet pp. F-14, F-35, F-46 and F-66. Requiring Colfax to build the New WWTP to meet specific parameters or requirements set forth in the Draft Permit may qualify as effluent limits pursuant to the Clean Water Act, but that argument might be difficult to argue and enforce. To streamline enforcement the Regional Board should simply move most of the discussion and description of the New WWTP to the CDO. Colfax has a demonstrated pattern of non-compliance with its prior NPDES permits, and Colfax's new permit and CDO should allow for swift enforcement for violations of the permit or CDO. This would be more

easily accomplished if the CDO contained specific requirements and deadlines for compliance.

G. Factual Inaccuracies in the Draft Permit and the Fact Sheet

The Environmental Parties provide the following comments to ensure that the facts stated in the Draft Permit are accurate. Provided is a bullet point list of factual comments:

- The Draft Permit, Page C-1, includes flow schematics for the interim system. The design description is incorrect, because as the Department of Health Services (“DHS”) indicated in a letter to the Regional Board, the treatment train is backwards and dechlorination actually comes after the filters rather than as shown. The chlorination and polymer are simultaneous. .
- Information available to the Environmental Parties indicates that Pond #3 continues to leak around the interim treatment system to surface waters.
- Pond #3 continues to percolate to groundwater, which is not adequately reflected in the Draft Permit.
- Draft Permit, p. F-4, section C and A.1. These statements are factually incorrect. The Regional Board granted Colfax’s request to upgrade the current system with tertiary components for the sole purpose of dewatering the main storage pond in order to line the pond. Permission was not requested and has never been granted by the Regional Board, until the Draft Permit, to use this facility as an interim compliance facility. The Fact Sheet must be modified to reflect that Colfax has been discharging effluent since August 2005 without authorization from the Regional Board.
- Fact Sheet p. F-7, table F-2. The Fact Sheet and table incorrectly list violations only through October 2005. The table should included all violations at the plant, including that the plant has been operating an incorrect treatment train since August 2005 without authorization.

H. Drafting Errors and Omissions

The Environmental Parties note the following typographical errors, drafting errors, or obvious omissions in the Draft Permit:

- In the Fact Sheet on page F-52, the data used are summarized but the calculation isn’t shown. This doesn’t allow the public to determine whether the calculations are correct.
- Page 11 – 2.a: strike “...for discharges from the new treatment plant...”

- Compliance Schedule – page 30, if the Regional Board adopts the compliance schedules:
 - 7.a.i should read: The Discharger shall complete construction of the new wastewater treatment plant and comply with Special Provision VI.C.6 ***and the effluent limitations contained in Section 2*** by no later than 1 January 2009.
 - Shouldn't 7.a.ii require timely submittal of such changes and approval by the Regional Board
- Table E-8, page E-11: The water level monitoring (freeboard and water elevation) in the treatment ponds has been reduced from once per day to once per week. The Fact sheet page 59 says once per week, but no rationale is given.
- Table E-10, page E-15. The Environmental Parties cannot understand the compliance schedule reporting for ammonia and 4,4-DDE. In the Order itself, it appears that DDE and ammonia have final effluent limits required by 1/1/09, and this table doesn't address reporting on compliance measures for copper.
- The Draft Permit, p. E-3, Table E-3 has been changed from monitoring Ammonia twice a week to once a week without explanation. Also, the footnote attached to table makes no sense and needs further clarification.
- The Draft Permit, p. E-9, Table E-6 removed the once per year priority pollutant analysis without explanation.
- The Draft Permit, p. E-9, table E-6 has been changed from monitoring Ammonia twice a week to once a week without explanation.

III. Environmental Parties Comments Regarding the Proposed CDO

A. General CDO Comments

The purpose of a Cease and Desist is to compel compliance with permit limits or other requirements of State and Federal law. Unfortunately, the CDO as drafted fails to do so. This pattern of inadequate enforcement by the Regional Board regarding Colfax extends back to at least 1979, and must be corrected now.

While wastewater leaking from the interim treatment system is only one of the myriad of serious issues with the Colfax system, and it is the only problem addressed by the CDO. Other problems ignored by the CDO include:

- 1) the reversed installation of the interim tertiary treatment system, which guarantees inadequate disinfection;
- 2) continued leakage to groundwater from Pond 3;

- 3) regular discharges over the spillway from Pond 3;
- 4) regular SSOs from the Colfax collection system;
- 5) ongoing high levels of infiltration and inflow, creating capacity problems resulting in spills and other permit exceedances.

Thus, despite undisputed ongoing permit violations, a severely inadequate system, and identified problem areas and remedies, which the Regional Board has acknowledged and made some effort to address for at least 10 years, the current draft CDO addresses only one of the many problems with Colfax's system, and fails completely to order a comprehensive solution.

The Environmental Parties and the public now find themselves in the same position as in 2001, when the Regional Board adopted a permit and CDO. The 2001 Permit and the 2001 CDO provided mechanisms to force Colfax to fully comply with its permit and the Clean Water Act, and set a compliance deadline of June 14, 2006. As of June 2007, Colfax still cannot comply with the terms of the 2001 CDO, and now Regional Board staff proposes to give Colfax *another* extension to come into compliance—apparently without any penalty for the prior non-compliance. Rewarding the defiance of Colfax with continued extensions undermines the enforcement authority of the Regional Board, and is contrary to the basic mandate of the agency—to protect water quality and public health.

B. The Regional Board Must Adopt a CDO that Requires Colfax Install and Effective Treatment Train

The new CDO must order a solution to Colfax's inadequate interim treatment system. As noted in the Draft Permit, DHS has found that the treatment system as currently constructed cannot provide adequate disinfection. *See* Draft Permit, Fact Sheet pp. 10. Colfax must modify the treatment system to conform with industry practices and ensure that discharges from the treatment plant are protective of water quality. By not requiring Colfax to fix the treatment train and comply with the tertiary treatment limits until January 1, 2009, the Regional Board is authorizing the discharge of wastewater that negatively impacts beneficial uses and does not comply with the Clean Water Act.

C. The CDO Should Require Lining of Pond #3

The CDO addresses possible leakage from the interim treatment to surface waters of the United States but it does not require Colfax to prevent seepage to area groundwater. The CDO contains a factual error regarding Pond #3. It claims 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 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.

D. Colfax Has Not Secured Final Funding for Building the WWTP

The CDO must contain compliance dates regarding Colfax building the new WWTP. As the Draft Permit explains, Colfax has not secured final funding and State Board approval for building the WWTP. Draft Permit, Fact Sheet p. The Draft Permit requires Colfax to build the plant and meet final effluent limits by January 1, 2009, however the 2001 Permit required Colfax to build a treatment system that achieves full compliance with the permit by June 14, 2006 and six years later Colfax still has not begun building a plant that will comply with that mandate.

The Regional Board must insert specific dates for construction of the WWTP into the CDO, and the CDO should then include heavy stipulated penalties for not meeting those dates. As explained above, Colfax has a thirty-year history of non-compliance with its NPDES permits, and all enforcement attempts by the Regional Board have failed to bring Colfax into compliance with its permit and the Clean Water Act. The CDO should set forth specific construction dates and easily enforceable penalties for non-compliance. As currently drafted, the Draft Permit and the CDO do not adequately protect water quality and the environment because the CDO does not contain severe penalties for non-compliance by Colfax. The CDO must do what the 2001 Permit, the 2001 CDO, and the 2003 ACL did not do, ensure that Colfax build a WWTP that complies with the terms of its permit and the Clean Water Act.

E. The Colfax Collection System Spills Raw Sewage and Colfax is Not Addressing the Infiltration and Inflow Issues that Create Capacity Issues at the Plant

Information available to the Environmental Parties indicates that many of the Colfax spills at the WWTP occur because of excess infiltration and inflow ("I&I") from Colfax's collection system. Although the Draft Permit contains a prohibition on spills from the collection system, it does not require Colfax to address I&I issues. Even if Colfax finally builds a plant that complies with its permit, Colfax will still discharge to waters of the United States via its collection system. The CDO should set a compliance schedule that requires Colfax to make significant capital improvements to the collection system to address I&I and comply with the Clean Water Act.

Further, the Colfax WWTP has capacity related spills during the wet season, including a 17-day spill over the spillway on Pond #3 in April 2006. The Draft Permit will not ensure that Colfax will not continue to have capacity related spills. The CDO should institute a hookup moratorium on new hookups until the new plant is built and can demonstrate that the new plant will not have capacity related spills.

F. The Regional Board Should Require that Colfax Pay the Fine from the 2003 ACL

The Draft Permit asserts that the current treatment system was built to meet the requirements of the ACL, which required full compliance with requirements of the 2001 Permit. Draft Permit, Fact Sheet p. 6. The interim treatment facility does fully comply with the 2001 Permit, the 2001 CDO, and the 2003 ACL, and therefore the Regional Board should require full payment of the ACL fine. Further, the system was not built to comply with the ACL and therefore it was not money spent towards completion of a compliance project pursuant to Water Code Section 13385(k).

Information available to the Environmental Parties indicates in March 2004, in a letter from Colfax to the Regional Board, Colfax requested a modification of its effluent limits for Biochemical Oxygen Demand (“BOD”) and Total Suspended Solids (“TSS”) to allow the facility to dewater Pond #3, to allow Colfax to line the pond to prevent the seepage under the pond. In response to Colfax’s request, the Regional Board authorized a *temporary* modification of the BOD and TSS limits in Colfax’s Permit to allow Colfax to dewater Pond #3 and line the pond to prevent future seepage under the pond. The Regional Board notified Colfax that the remaining limitations in the Permit still apply and exceedences of those limits would be a violation of the Permit. Colfax applied the Regional Board’s temporary modification as though it was a permanent modification, and the Draft Permit supports that fiction. Draft Permit, Fact Sheet p. 6. The Regional Board’s letter authorizing a temporary modification of the effluent limits in the Permit was not a permanent modification. Any such modification would require notice and comment as required by the Clean Water Act and Porter Cologne. *See* 40 C.F.R. § 122.63 & § 124.10. Therefore, the interim facility was not built to comply with the ACL and the \$351,000 fine should still be assessed against Colfax because it still has not complied with the 2001 CDO and the ACL.

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

Dated: June 15, 2007

Sincerely Yours,

/s/ Michael J. Chappell

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