



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Colfax PSD
Charles Sayre
P.O. Box 68
Colfax, WV 26566

DATE: February 17, 2016

ORDER NO.: 8437

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Colfax PSD.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Colfax PSD operates a wastewater collection and treatment system located in Colfax, Marion County, West Virginia. Colfax PSD was reissued WV/NPDES Water Pollution Control Permit No. WV0032131 on August 19, 2011.
2. On September 8, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Colfax PSD's WV/NPDES permit were observed and documented:
 - a. Appendix A.II.I-Colfax PSD failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, Colfax PSD was diverting all flow to one of two extended aeration chambers, due to a clarifier that was not operational.
 - b. Section C.19-Colfax PSD failed to submit a semi-annual written progress report detailing what had been performed in relation to the implementation and accomplishments of the inflow and infiltration elimination programs.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-JME-090814-002 and W-NW-JME-090814-003 were issued to Colfax PSD.

3. On September 8, 2014, WVDEP personnel conducted a review of facility records from January 2012 through July 2014. During this review, the following violations of the terms and conditions of Colfax PSD's WV/NPDES permit were observed:
 - a. Section A – Fifty-two (52) exceedances of Colfax PSD's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-twenty (20)
 - ii. Moderate violations-sixteen (16)
 - iii. Major violations-sixteen (16)

As a result of the aforementioned violations, NOV No. W-NW-JME-090814-001 was issued to Colfax PSD.

4. On June 12, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of Colfax PSD's WV/NPDES permit was observed and documented:
 - a. Appendix A.II.I-Colfax PSD failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, the Permittee was diverting all flow to one of two extended aeration chambers, due to a clarifier that was not operational.

As a result of the aforementioned violation, NOV No. W-NW-JME-061215-002 was issued to Colfax PSD.

5. On June 12, 2015, WVDEP personnel conducted a review of facility records from the time period of August 2014 through April 2015. During this review, the following violations of the terms and conditions of Colfax PSD's WV/NPDES permit were observed:
 - a. Section A – Twenty (20) exceedances of Colfax PSD's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-eight (8)
 - ii. Moderate violations-seven (7)
 - iii. Major violations-five (5)

As a result of the aforementioned violations, NOV No. W-NW-JME-061215-001 was issued to Colfax PSD.

6. On August 9, 2015, WVDEP personnel conducted a review of facility records from the time period of January 1, 2012 through June 30, 2015. During this review, the following violations of the terms and conditions of Colfax PSD's WV/NPDES permit were observed:

- a. Section A – Seventy-three (73) exceedances of Colfax PSD’s permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-twenty-eight (28)
 - ii. Moderate violations-twenty-three (23)
 - iii. Major violations-twenty-two (22)
7. On November 2, 2015, WVDEP personnel and representatives of Colfax PSD met to discuss the terms and conditions of the Order.
8. On November 21, 2015 and January 17, 2016, Colfax PSD submitted financial documents to WVDEP. The information was used to perform an economic analysis which evaluated Colfax PSD’s ability to pay a civil administrative penalty.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Colfax PSD shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within forty-five (45) days of the effective date of this Order, Colfax PSD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Colfax PSD will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0032131 and Order No. 8437. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Colfax PSD permit violations, Colfax PSD shall be assessed a civil administrative penalty of ten thousand dollars (\$10,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$833.33 due on or before April 1, 2016.
Payment 2 in the amount of \$833.33 due on or before May 1, 2016.
Payment 3 in the amount of \$833.33 due on or before June 1, 2016.
Payment 4 in the amount of \$833.33 due on or before July 1, 2016.
Payment 5 in the amount of \$833.33 due on or before August 1, 2016.
Payment 6 in the amount of \$833.33 due on or before September 1, 2016.
Payment 7 in the amount of \$833.33 due on or before October 1, 2016.
Payment 8 in the amount of \$833.33 due on or before November 1, 2016.
Payment 9 in the amount of \$833.33 due on or before December 1, 2016.
Payment 10 in the amount of \$833.33 due on or before January 1, 2017.
Payment 11 in the amount of \$833.33 due on or before February 1, 2017.
Payment 12 in the amount of \$833.37 due on or before March 1, 2017.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

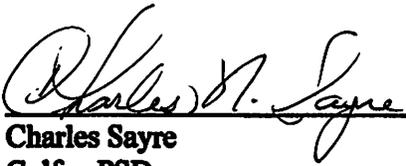
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Colfax PSD hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Colfax PSD agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Colfax PSD does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Colfax PSD other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Colfax PSD shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or

contributed to by the lack of sufficient funding. Within three (3) working days after Colfax PSD becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Colfax PSD shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Colfax PSD intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Colfax PSD (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Colfax PSD of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Colfax PSD to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Colfax PSD, its successors and assigns.
7. This Order shall terminate upon Colfax PSD's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


 Charles Sayre
 Colfax PSD

April 29th 2016
 Date

Public Notice begin:

 Date

Public Notice end:

 Date

 Scott G. Mandirola, Director
 Division of Water and Waste Management

 Date

RECEIVED

MAY 04 2016

ENVIRONMENTAL
ENFORCEMENT

revised March 2013



Photo 1: Out of service clarifier; September 8, 2014



Photo 2: Out of service Clarifier; June 12, 2015

Table One: Colfax PSD WV0032131 DMR Exceedance Summary

AVG MONTHLY Outlet 001 DMR Exceedances 1/1/12 through 6/30/15						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
December 2013	BOD-5	mg/l	30.00	34.0000	13%	X	-	-
February 2013	BOD-5	mg/l	30.00	31.0000	3%	X	-	-
February 2014	BOD-5	mg/l	30.00	31.0000	3%	X	-	-
May 2015	BOD-5	mg/l	30.00	31.0000	3%	X	-	-
November 2012	BOD-5	mg/l	30.00	31.9000	6%	X	-	-
August 2012	Copper	mg/l	0.0069	0.0150	117%	-	X	-
February 2012	Copper	mg/l	0.0069	0.0070	1%	X	-	-
July 2012	Copper	mg/l	0.0069	0.0340	393%	-	-	X
July 2014	Copper	mg/l	0.0069	0.0215	212%	-	X	-
June 2012	Copper	mg/l	0.0069	0.0090	30%	X	-	-
May 2015	Copper	mg/l	0.0069	0.0090	30%	X	-	-
November 2013	Copper	mg/l	0.0069	0.0094	36%	X	-	-
October 2012	Copper	mg/l	0.0069	0.0160	132%	-	X	-
October 2013	Copper	mg/l	0.0069	0.0084	22%	X	-	-
September 2012	Copper	mg/l	0.0069	0.0100	45%	-	X	-
September 2014	Copper	mg/l	0.0069	0.0163	136%	-	X	-
April 2013	Fecal Coliform	c/100 ml	200.00	6000.0000	2900%	-	-	X
April 2015	Fecal Coliform	c/100 ml	200.00	2420.0000	1110%	-	-	X
December 2013	Fecal Coliform	c/100 ml	200.00	968.0000	384%	-	-	X
January 2014	Fecal Coliform	c/100 ml	200.00	968.0000	384%	-	-	X
March 2014	Fecal Coliform	c/100 ml	200.00	2420.0000	1110%	-	-	X
March 2015	Fecal Coliform	c/100 ml	200.00	793.0000	297%	-	X	-
May 2015	TKN	mg/l	18.0000	18.6000	3%	X	-	-
July 2012	Zinc	mg/l	0.073	0.1270	74%	-	X	-
September 2014	Zinc	mg/l	0.073	0.1280	75%	-	X	-

MAX DAILY Outlet 001 DMR Exceedances 1/1/12 through 6/30/15						Degree of non-compliance		
Date	Parameter	Units	Permitted MaxDaily	Reported MaxDaily	% Exceedance	Min	Mod	Maj
July 2012	Copper	mg/l	0.0213	0.0340	60%	-	X	-
July 2014	Copper	mg/l	0.0213	0.0215	1%	X	-	-
January 2012	Fecal Coliform	c/100 ml	400.00	1200.0000	200%	-	X	-
November 2012	Fecal Coliform	c/100 ml	400.00	600.0000	50%	-	X	-
January 2013	Fecal Coliform	c/100 ml	400.00	760.0000	90%	-	X	-
February 2013	Fecal Coliform	c/100 ml	400.00	1200.0000	200%	-	X	-
March 2013	Fecal Coliform	c/100 ml	400.00	6000.0000	1400%	-	-	X
April 2013	Fecal Coliform	c/100 ml	400.00	6000.0000	1400%	-	-	X
December 2013	Fecal Coliform	c/100 ml	400.00	2419.0000	505%	-	-	X
January 2014	Fecal Coliform	c/100 ml	400.00	968.0000	142%	-	X	-
February 2014	Fecal Coliform	c/100 ml	400.00	2420.0000	505%	-	-	X
March 2014	Fecal Coliform	c/100 ml	400.00	2420.0000	505%	-	-	X
March 2015	Fecal Coliform	c/100 ml	400.00	2420.0000	505%	-	-	X
April 2015	Fecal Coliform	c/100 ml	400.00	2420.0000	505%	-	-	X
June 2015	Fecal Coliform	c/100 ml	400.00	2420.0000	505%	-	-	X

Table One: Colfax PSD WV0032131 DMR Exceedance Summary

% Removal Outlet 001 DMR Exceedances 1/1/12 through 6/30/15						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly min.	Reported avg. monthly	% Exceedance	Min	Mod	Maj
April 2015	BOD	%	85.00	58.0000	47%	-	X	-
August 2012	BOD	%	85.00	82.0000	4%	X	-	-
August 2013	BOD	%	85.00	50.0000	70%	-	X	-
December 2013	BOD	%	85.00	0.1000	84900%	-	-	X
December 2014	BOD	%	85.00	55.0000	55%	-	X	-
February 2013	BOD	%	85.00	55.0000	55%	-	X	-
February 2014	BOD	%	85.00	21.0000	305%	-	-	X
February 2015	BOD	%	85.00	61.0000	39%	X	-	-
January 2013	BOD	%	85.00	69.0000	23%	X	-	-
January 2015	BOD	%	85.00	75.0000	13%	X	-	-
June 2014	BOD	%	85.00	17.0000	400%	-	-	X
March 2013	BOD	%	85.00	65.0000	31%	X	-	-
March 2014	BOD	%	85.00	61.0000	39%	X	-	-
March 2015	BOD	%	85.00	0.1000	84900%	-	-	X
May 2014	BOD	%	85.00	0.1000	84900%	-	-	X
May 2015	BOD	%	85.00	82.0000	4%	X	-	-
November 2012	BOD	%	85.00	51.0000	67%	-	X	-
October 2013	BOD	%	85.00	83.0000	2%	X	-	-
April 2014	TSS	%	85.00	81.0000	5%	X	-	-
April 2015	TSS	%	85.00	42.0000	102%	-	X	-
August 2013	TSS	%	85.00	83.0000	2%	X	-	-
December 2012	TSS	%	85.00	83.0000	2%	X	-	-
December 2013	TSS	%	85.00	16.0000	431%	-	-	X
December 2014	TSS	%	85.00	68.0000	25%	X	-	-
February 2014	TSS	%	85.00	50.0000	70%	-	X	-
February 2015	TSS	%	85.00	37.0000	130%	-	X	-
January 2013	TSS	%	85.00	83.0000	2%	X	-	-
March 2013	TSS	%	85.00	44.0000	93%	-	X	-
March 2014	TSS	%	85.00	65.0000	31%	X	-	-
March 2015	TSS	%	85.00	0.1000	84900%	-	-	X
May 2014	TSS	%	85.00	0.1000	84900%	-	-	X
November 2014	TSS	%	85.00	76.0000	12%	X	-	-
October 2013	TSS	%	85.00	80.0000	6%	X	-	-

Totals	Degree of non-compliance		
	Min	Mod	Maj
	28	23	22

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Colfax PSD

Receiving Stream:

Tygart River

Treatment System Design Maximum Flow: 0.07 MGD

Treatment System Actual Average Flow: 0.08725 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#													
			2a	2b	4a	6ai	6aii	6aii								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	0	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	0	1	1	1	1								
d)	Length of Time	1 to 3	1	1	2	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	0	1	1	1	1								
Average Potential for Harm Factor			1	0.4	1.2	1	1	1	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	3	3	1	2	3								

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly, >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$7,940
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)		5	(\$3,970)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$7,940)
6.2.b.3 - Cooperation with the Secretary		10	(\$7,940)
6.2.b.5 - Ability to Pay		72.443	(\$57,520)
Penalty Adjustments			(\$69,400)
Penalty =			\$10,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments: Economic benefit considered but not applied.	