



May 5, 2011

Ron Falkowski
CRWQCB
415 Knollcrest Drive, Suite 100
Redding, California 96002

Re: Pactiv Corporation – Red Bluff, California – Comments on Tentative NPDES
Order No. R5-2011-xxxx

Dear Mr. Falkowski:

Pactiv appreciates the assistance of the Central Region staff on the substantial revisions to the renewal of Pactiv's NPDES Permit for its Red Bluff plant. While we have been able to resolve many issues, there are several remaining items in the draft which require further attention before the permit is issued and the Board adopts the proposed order.

1. Groundwater monitoring.

During the 2004 renewal of this permit, the Central Region staff first raised the possibility of requiring monitoring wells around the settling ponds then used in our wastewater treatment process (Ponds 1, 2 and 3 and the aeration basin). As you know, Pactiv used recycled paper and some virgin hardwood pulp to make plates, bowls and foodservice containers. At the time, Pactiv was exiting another product line (egg cartons) and decided to investigate whether it could redesign its wastewater treatment process to reduce the number of ponds. The Board preferred that Pactiv stop using its oldest ponds (Ponds 1, 2 and 3 and the related aeration basin) in favor of using only Pond 4, a then unused emergency pond with its original clay liner. In 2004, the Board renewed the Pactiv NPDES permit without groundwater monitoring of the Ponds 1, 2, 3 and the aeration basin pending the results of Pactiv's investigation of the wastewater treatment alternatives for moving to Pond 4.

The current draft order requires Pactiv to install monitoring wells around Ponds 1, 2, 3 and the aeration basin and then stop using those ponds within one year. (P. 23). The draft order requires Pactiv to move from those ponds and begin using only Pond 4.

It makes no sense to monitor those ponds now if they are to be taken of service. As required by the 2004 permit, Pactiv performed various studies and provided the results to

the Board for review. Pactiv has prepared to redesign its wastewater system to accommodate shifting to the use of Pond 4. In preparation for making that change, Pactiv installed monitoring wells around Pond 4, sampled those wells for 2 years to establish baseline groundwater conditions before the changeover. Pactiv also designed the new treatment, electrical and pumping systems necessary for the shift, all at an estimated remaining cost of approximately \$350,000.

Pactiv was surprised to see for the first time in the new draft permit requirements that Pactiv add monitoring wells around Ponds 1, 2, 3 and the aeration basin and regularly monitor those wells even while exiting those ponds as part of the wastewater treatment plant re-design.

These costs are unnecessary and eliminate the reasons for several years of effort to move to Pond 4. Pactiv asks again that the Board remove the requirement to install groundwater wells around Ponds 1, 2, 3 and the aeration basin. (assuming Pactiv moves to Pond 4 within 18 months).

If the Board continues to insist that Pactiv install and monitor Ponds 1, 2, 3 and the aeration basin, Pactiv is unlikely to complete its planned move to Pond 4. The funds needed for monitoring Ponds 1, 2, 3 and the aeration basin will be taken from those planned for the costs of transferring wastewater treatment to Pond 4. Pactiv will require additional time to make a final decision but is not inclined to move to Pond 4 if it still must incur the costs to install and monitor wells around the other ponds to be taken out of service.

Accordingly, under the circumstances, Pactiv request that the Board revise the tentative order as follows:

1. on page 23, revise the order to read as follows:
 - (ii). decide whether to continue with modifications to Pond 4 and use Pond 4 for wastewater treatment or remain using Ponds 1 through 3 and aeration pond (within one year following order adoption)
 - (iii). install monitoring wells around the ponds to be used in the future following decision in task (ii). If using Pond 4, complete modifications to Pond 4, commence use of Pond 4 for wastewater treatment, and discontinue discharges of processed wastewater to Ponds 1 through 3 and aeration pond (within one year after following the implementation of task (ii)).
 - (iv) submit technical report summarizing groundwater monitoring results for applicable ponds including evaluation of effectiveness of the ponds and recommending additional measures as necessary to achieve full compliance by the full compliance date (within one year following implementation of task (iii)).

In addition, on E-4 and E-11, revise the monitoring requirements for GW-001, GW-002, and GW-003 to make them contingent upon the use of Pond 4. There also will need to be conforming changes to the textual discussion on pages 21, 23, C-2, E-4, E-11-12, F-8, F-11, F-41 and F-54-55.

2. Definition of Waste Constituents. In the discussion of the groundwater monitoring around the ponds on pages 13, 21 and F-54, there are references to “waste constituents.” In Table E-7 on Page E-12, there is a list of parameters to be monitored which, based on our discussions to date, is the list of “waste constituents.” For clarity, we suggest adding a definition of “waste constituents” to the definitions in Appendix A which would reference the parameters to be monitored as follows:

Waste constituents means the list of chemical parameters and minerals to be monitored as set out in Table E-7 on Page E-12.

3. Pond Monitoring Locations. Table E-1 at Page E-4 describes sampling locations LND 001-005 as locations for “wastewater sampling.” As explained later in the tentative order at Page E-9, however, these are locations for Pactiv to monitor freeboard in the ponds and any odors. No wastewater samples are taken at these locations and Table E-1 at Page E-4 should be revised accordingly.

4. Dilution Credit Study. Pactiv submitted dilution credit studies in 2004 and 2009 showing the assimilative capacity of the Sacramento River. Although no change in that capacity is expected, Pactiv is updating the study for copper, zinc and chronic toxicity and will submit it to the Board prior to the June, 2011 meeting. Pactiv requests that the Board revise the Tentative Order to incorporate the necessary adjustments to those limits before adoption.

In the alternative, the Board should revise the order to expressly provide for revising the order for copper and chronic toxicity once the Board reviews the new dilution study. We understand that the Board is not yet ready to incorporate dilution credits for zinc (see below).

5. Time Schedule Order. Pactiv requests two revisions to the time schedule order. First, the order should state that the copper limit is subject to revision based on the dilution credit study. Pactiv urges that the Board not set a limit until it has evaluated and included the dilution credit study. The copper limit is new in this permit. Pactiv has not had a full opportunity to evaluate potential sources of copper in its discharge.

Pactiv also urges the Board to delay setting a final average monthly copper limit until the end of the five year period which would provide Pactiv with sufficient time to evaluate the source of the copper. In the alternative, the Board should delay setting the final monthly limit for copper until it has considered and evaluated the dilution credit study to be submitted by Pactiv.

6. Zinc limit. The proposed permit order would sharply change Pactiv's zinc limit for reasons unrelated to Pactiv's facility. According to Board staff, an unrelated upstream facility had a breach of a sediment pond wall during a storm event which allowed zinc laden sediment to flush into the Sacramento River. Pactiv's regular monthly sampling of the receiving water body detected the input from this malfunction.

Based solely on that event, obviously beyond Pactiv's control and unrelated to its facility, the Board tentatively is proposing to eliminate the dilution credit which has been in Pactiv's permit for many years for zinc and to reduce the zinc limit to levels which are likely unachievable, thereby endangering the compliance status of Pactiv's facility.

These two readings related to the upstream discharger's malfunction are anomalous in light of the history of sampling of the Sacramento River conducted by Pactiv. They are the only two samples found by Pactiv in any of the sampling programs over more than a decade which exceeded the zinc water quality standard for the river (17mg/L). For example, during the prior permit period, zinc sampling of the river never exceeded 11mg/L. The two samples are not representative of the quality of the Sacramento River or its ability to assimilate any zinc present in Pactiv's discharge.

According to the Board's staff, the position taken in the tentative permit is based upon the state's implementation plan (SIP). According to SIP plan, the Board should discard the data that is not representative. See Section 1.2. Examples included in the SIP plan specifically mention discarding data when seasonal sampling variations or rain events make it appropriate to do so. As set out in more detail in Section 1.4.3.1 of the SIP, when calculating the ambient receiving water background level based upon an observed maximum concentration, the "RWCQB shall have discretion to consider samples to be invalid that have been taken during peak flows of significant storm events". As Pactiv understands it from the Board staff, a significant storm event caused the upstream dike breach that released the zinc laden sediment detected by Pactiv in the upstream samples in the river.

The source of the water discharged by the Pactiv facility is naturally occurring groundwater beneath the plant. Pactiv pumps the groundwater to the surface and uses it in its paper making process. The natural occurring well water meets all drinking water criteria and is in fact the source of potable water for the Pactiv facility. However, the natural condition of the drinking water is that it has zinc in the range of 5 to 6 mg/L. The Board is proposing to set a limit on Pactiv's discharge of just 10mg/L for the monthly average and 17mg/L for the daily maximum. While Pactiv might be able to meet the daily maximum, its ability to meet the monthly average number is in serious question given the level of naturally occurring zinc in the groundwater.

Pactiv also notes that there are case by case procedures for exception in the SIP. It appears that the one most applicable is for variances to procedure which would allow the Board to set the observed maximum without regard to the two unusual storm event related discharges from the upstream facility. Securing a case by case exception is a long multi-year process requiring a CEQA analysis as well as USEPA signoff. If the Board is

unwilling to adjust the zinc limit by any other means, Pactiv wishes to apply for a case by case exception. That process will be far more expensive, however, and should be avoided unless absolutely necessary.

If the Board pushes Pactiv to pursue a case by case exception, then the time schedule order and the tentative order should be revised to reflect that the zinc limit will not be set until such time as that case by case exception request is resolved. At a minimum, the list of potential reopeners in the tentative order on Page 18 should include any changes to Pactiv's zinc limit required by the ruling on the case by case exception petition. If the Board requires Pactiv to pursue a case by case exception, Pactiv will prepare and submit the initial filings in a timely manner. Pactiv also would be willing to conduct an additional study on the river to establish normal and representative zinc levels uninfluenced by the one-time upstream malfunction event.

Another alternative would be to raise the monthly average currently proposed to be 10mg/L to 17mg/L. The goal of the limit is to make certain that Pactiv does not cause an increase in the zinc level in the Sacramento River above the water quality limit of 17mg/L. Pactiv could discharge at a monthly average of that number and have no impact on the river. Alternatively, the Board could set the monthly average at a number between 10 and 17mg/L and leave the daily maximum at 17mg/L. This would at least provide some additional room for Pactiv to maintain compliance.

Pactiv cannot stress enough; however, that it is uncertain whether it can comply under the terms of the proposed order. At a minimum, Pactiv would urge the Board to delay setting any average monthly zinc limit until the end of the five year permit period to allow Pactiv to fully study its options in the event that the Board refuses to change the limit. This could be done with or without deleting the daily maximum of 17mg/L.

If you have any questions, please give me a call at (562) 673-3453.

Sincerely yours,

A. Ben Bacon

A. Ben Bacon
Regional Environmental Manager

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File – 95(d) NPDES Permit Application and Support Documentation