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10 Attorneys for Plaintiff  
11 CALIFORNIA SPORTFISHING  
12 PROTECTION ALLIANCE

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15 CALIFORNIA SPORTFISHING  
16 PROTECTION ALLIANCE, a non-profit  
17 corporation,

18 Plaintiff,

19 vs.

20 INTERNATIONAL PAPER COMPANY, a  
21 New York corporation, PAUL GALEA, an  
22 individual and CLARK WEISS, an  
23 individual,

24 Defendants.

Case No. 2:11-CV-01126-JAM-DAD

**[PROPOSED] CONSENT AGREEMENT**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

23 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “CSPA”) is a  
24 non-profit public benefit corporation dedicated to the preservation, protection, and defense of the  
25 environment, wildlife, and natural resources of California’s waters;

26 **WHEREAS**, Defendant International Paper Company (hereinafter “IPC”) owns an  
27 approximately 5-acre paper recycling facility located at 1714 Cebrian St., in West Sacramento,  
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1 California (the “Facility” or “IPC’s Facility”), Defendant Mr. Paul Galea is the Plant Manager of IPC’s  
2 Facility, and Defendant Mr. Clark Weiss is the former Plant Manager of IPC’s Facility (collectively,  
3 “Defendants”);

4 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the “Parties;”

5 **WHEREAS**, the Facility collects and discharges storm water to the East River Canal and the  
6 East River Canal ultimately flows into the Sacramento River, and the Sacramento-San Joaquin Delta  
7 (a map of the Facility is attached hereto as **Exhibit A** and incorporated herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant  
9 to the National Pollutant Discharge Elimination System (“NPDES”), General Permit No. CAS000001  
10 [State Water Resources Control Board], Water Quality Order No. 91-13-DWQ (as amended by Water  
11 Quality Order 92-12 DWQ and 97-03-DWQ), issued pursuant to Section 402 of the Clean Water Act  
12 (the “Act”), 33 U.S.C. § 1342 (hereinafter “General Permit”);

13 **WHEREAS**, on or about February 25, 2011, Plaintiff provided notice of Defendants’  
14 violations of the Act (“Notice Letter”), and of its intention to file suit against Defendants, to the  
15 Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of  
16 EPA Region IX; the Executive Director of the State Water Resources Control Board (“State Board”);  
17 the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (“Regional  
18 Board”); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies  
19 of CSPA’s Notice Letter is attached as **Exhibit B** and incorporated herein by reference);

20 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notice Letter and  
21 maintain that they have complied at all times with the provisions of the General Permit;

22 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United States  
23 District Court, Eastern District of California, on April 27, 2011;

24 **WHEREAS**, for purposes of this Consent Agreement, the Parties stipulate that venue is proper  
25 in this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to enter this  
26 Consent Agreement;

27 **WHEREAS**, this Consent Agreement shall be submitted to the United States Department of  
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1 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall thereafter be  
2 submitted for approval by the Court, the date of which approval shall be referred to herein as the  
3 “Court Approval Date;”

4 **WHEREAS**, at the time the Consent Agreement is submitted for approval to the United States  
5 District Court, CSPA shall request a dismissal of the Complaint with prejudice and the Parties shall  
6 stipulate and request that the Court retain jurisdiction for the enforcement of this Agreement as  
7 provided herein;

8 **AND WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter  
9 without further litigation.

10 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**  
11 **PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:**

12 **I. COMMITMENT OF DEFENDANTS**

13 **1. Compliance With General Permit & Clean Water Act.** Throughout the term of this  
14 Consent Agreement, IPC shall commence all measures needed to operate the Facility in full  
15 compliance with the requirements of the General Permit and the Clean Water Act, subject to any  
16 defenses available under the law.

17 **2. IPC’s Implementation of Specific Storm Water Best Management Practices On Or**  
18 **Before October 1, 2011.** On or before October 1, 2011, IPC shall complete the implementations of  
19 the following storm water control measures/best management practices (“BMPs”):

20 (a) IPC shall install fence slats or netting around the outdoor operational area(s) of  
21 the Facility in a manner designed to significantly reduce the potential for wind to carry paper or  
22 other waste materials over and outside of the Facility’s borders;

23 (b) IPC shall amend the Storm Water Pollution Prevention Plan (“SWPPP”) for the  
24 Facility to reflect that the Facility’s warehouse doors shall be closed as operationally feasible in  
25 order to reduce the potential for wind to carry paper or other waste materials over and outside  
26 of the Facility’s borders;

27 (c) IPC shall equip the Facility with four (4) fully supplied portable spill kits and  
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shall store these spill kits at strategic locations throughout the Facility, as set forth in the Facility map attached hereto as **Exhibit A**;

(d) IPC shall install CleanWay® Adsorption Booms in front of the storm water outlets located in the wall separating the Facility’s truck scale area from the Facility’s bio-swale BMP;

(e) IPC shall install CleanWay® Storm Clean® catch basin filtration inserts in the storm water drains located in the Facility’s truck loading and unloading docks;

(f) IPC shall install CleanWay® Storm Clean® catch basin filtration inserts in the storm water drain located in the Facility’s employee parking lot;

(g) IPC shall create, use and maintain a visual inspection checklist for use during visual inspections of storm water and non-storm water discharges from the Facility;

(h) IPC shall perform regular maintenance of the Facility’s storm water drainage system in order to identify and remove any settled contaminants (e.g., paper waste) from the Facility’s storm water drains and conveyances;

(i) IPC shall regularly monitor and maintain the Facility’s storm water drainage system, BMPs and drop inlets; document such maintenance; and maintain records thereof with the Facility’s SWPPP as required by the terms of the General Permit. Further, IPC shall ensure that appropriate Facility personnel are properly trained in storm water management and that records of any such storm water management training shall also be maintained along with the Facility’s SWPPP.

**3. SWPPP Amendments/Additional BMPs.** Within 30 days of mutual execution of this Consent Agreement, IPC shall formally amend the SWPPP for the Facility to incorporate all of the relevant requirements of this Consent Agreement, as well as the revised Facility map attached hereto as Exhibit A.

**4. Sampling Frequency.** IPC shall collect and analyze samples from four (4) storm events, as qualified in the General Permit<sup>1</sup> for sampling purposes, in the first of the two Wet Seasons

<sup>1</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are

1 occurring during the term of this Consent Agreement (i.e., the 2011-2012 Wet Season). IPC shall  
2 collect and analyze samples from three (3) storm events, as qualified in the General Permit<sup>2</sup> for  
3 sampling purposes, in the second of the two Wet Seasons occurring during the term of this Consent  
4 Agreement (i.e., the 2012-2013 Wet Season). The storm water sample results shall be compared with  
5 the values set forth in **Exhibit C**, attached hereto, and incorporated herein by reference. If the results  
6 of any such samples exceed the parameter values set forth in **Exhibit C**, IPC shall comply with the  
7 “Action Memorandum” requirements set forth below.

8 **5. Sampling Parameters.** All samples shall be analyzed for each of the constituents  
9 listed in **Exhibit C** by a laboratory accredited by the State of California. All samples collected from  
10 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold time” is  
11 not exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual  
12 constituents at or below the values specified on **Exhibit C**. Sampling results shall be provided to  
13 CSPA within seven (7) days of IPC’s receipt of the laboratory report from each sampling event  
14 pursuant to the Notice provisions below.

15 **6. “Action Memorandum” Trigger; CSPA Review Of “Action Memorandum”; Meet-**  
16 **and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in Paragraph 4 above  
17 exceeds the evaluation levels set forth in **Exhibit C**, or if IPC fails to collect and analyze samples from  
18 four (4) storm events during the 2011-2012 Wet Season or fails to collect and analyze samples from  
19 three (3) storm events during the 2012-2013 Wet Season, as qualified in the General Permit, IPC shall  
20 prepare a written statement discussing the exceedance(s) and/or failure to collect and analyze samples  
21 from the required number of storm events (as set forth in Paragraph 4, above), the possible cause  
22 and/or source of the exceedance(s), and additional measures that will be taken to address and eliminate  
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24 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
25 occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
26 sampled; and (iii) the samples are collected during daylight operating hours.

27 <sup>2</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are  
28 preceded by at least three (3) working days during which no storm water discharges from the Facility have  
occurred; (ii) the samples are collected within the first hour that flow is observed at the Discharge Point being  
sampled; and (iii) the samples are collected during daylight operating hours.

1 the problem and future exceedances (“Action Memorandum”). The Action Memorandum shall be  
2 provided to CSPA not later than July 15 following the conclusion of each Wet Season. Recognizing  
3 that a SWPPP is an ongoing iterative process meant to encourage innovative BMPs, such additional  
4 measures may include, but are not limited to, taking confirmation samples, further material  
5 improvements to the storm water collection and discharge system, changing the frequency of Facility  
6 sweeping, changing the type and extent of storm water filtration media or modifying other industrial  
7 activities or management practices at the Facility. Such additional measures, to the extent feasible,  
8 shall be implemented immediately and in no event later than 60 days after the due date of the Action  
9 Memorandum. Within seven (7) days of implementation, the Facility SWPPP shall be amended to  
10 include all additional BMP measures designated in the Action Memorandum. CSPA may review and  
11 comment on an Action Memorandum and suggest any additional pollution prevention measures it  
12 believes are appropriate; however, CSPA’s failure to do so shall not be deemed to constitute  
13 agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA, IPC  
14 agrees to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the contents  
15 and sufficiency of the Action Memorandum.

16 **7. Inspections During The Term Of This Agreement.** In addition to any site  
17 inspections conducted as part of the meet-and-confer process concerning an Action Memorandum as  
18 set forth above, IPC shall permit representatives of CSPA to perform up to two (2) physical  
19 inspections of the Facility during the term of this Consent Agreement. These inspections shall be  
20 performed by CSPA’s counsel and consultant(s) and may include stormwater sampling,  
21 photographing, and/or videotaping and CSPA shall provide IPC with a copy of all sampling reports,  
22 photographs and/or video. CSPA shall provide at least forty-eight (48) hours advance notice of such  
23 physical inspection, except that IPC shall have the right to deny access if circumstances would make  
24 the inspection unduly burdensome and pose significant interference with business operations or any  
25 party/attorney, or the safety of individuals. In such case, IPC shall specify at least three (3) dates  
26 within the two (2) weeks thereafter upon which a physical inspection by CSPA may proceed. IPC  
27 shall not make any alterations to Facility conditions during the period between receiving CSPA’s  
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1 initial forty-eight (48) hour advance notice and the start of CSPA’s inspection that IPC would not  
2 otherwise have made but for receiving notice of CSPA’s request to conduct a physical inspection of  
3 the Facility, excepting any actions taken in compliance with any applicable laws or regulations.  
4 Nothing herein shall be construed to prevent IPC from continuing to implement any BMPs identified  
5 in the SWPPP during the period prior to an inspection by CSPA or at any time.

6 **8. IPC’s Communications To/From Regional and State Boards.** During the term of  
7 this Consent Agreement, IPC shall provide CSPA with copies of all documents submitted to or  
8 received from the Regional Board or the State Board concerning storm water discharges from the  
9 Facility, including, but not limited to, all documents and reports submitted to the Regional Board  
10 and/or State Board as required by the General Permit. Such documents and reports shall be provided  
11 to CSPA pursuant to the Notice provisions herein (at ¶ 24) and contemporaneously with IPC’s  
12 submission to such agencies.

13 **9. SWPPP Amendments.** IPC shall provide CSPA with a copy of any amendments to the  
14 Facility SWPPP made during the term of the Consent Agreement within fourteen (14) days of such  
15 amendment.

16 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

17 **10. Mitigation Payment in lieu of Civil Penalties.** As mitigation of the Clean Water Act  
18 violations alleged in CSPA’s Complaint, IPC agrees to pay the sum of \$50,000 within ten (10)  
19 business days after the Court Approval Date to the Rose Foundation for Communities and the  
20 Environment (“Rose Foundation”) for projects to improve water quality in the East River Canal, the  
21 Sacramento River and/or the Sacramento-San Joaquin River Delta. Payment shall be provided to the  
22 Rose Foundation as follows: Rose Foundation, Attn: Tim Little, 6008 College Avenue, Oakland, CA  
23 94618.

24 **11. Compliance Monitoring Funding.** To defray CSPA’s reasonable investigative,  
25 expert, consultant and attorneys’ fees and costs associated with monitoring IPC’s compliance with this  
26 Consent Agreement, IPC agrees to contribute \$5,000 for each of the two years covered by this Consent  
27 Agreement (\$10,000 total for the life of the Consent Agreement), to a compliance monitoring fund  
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1 maintained by counsel for CSPA as described below. Compliance monitoring activities may include,  
2 but shall not be limited to, site inspections, review of water quality sampling reports, review of annual  
3 reports, discussions with representatives of IPC concerning the Action Memoranda referenced above,  
4 and potential changes to compliance requirements herein, preparation for and participation in meet-  
5 and-confer sessions, water quality sampling and analysis, and compliance-related activities. The  
6 combined payments in the amount of \$10,000 shall be made payable to the Law Offices of Andrew L.  
7 Packard Attorney-Client Trust Account within ten (10) days of the Court Approval Date.

8 **12. Attorneys' Fees and Costs.** IPC agrees to reimburse CSPA in the amount of \$25,000  
9 to defray CSPA's reasonable investigative, expert, consultant and attorneys' fees and costs, and all  
10 other costs incurred as a result of investigating the activities at the Facility, bringing the Action and  
11 negotiating a resolution in the public interest. Such payment shall be made to the Law Offices of  
12 Andrew L. Packard Attorney-Client Trust Account within 10 business (10) days after the Court  
13 Approval Date.

14 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

15 **13.** With the exception of the timelines set forth above for addressing exceedances of  
16 values specified on **Exhibit C** and Action Memoranda, if a dispute under this Consent Agreement  
17 arises, or either Party believes that a breach of this Consent Agreement has occurred, the Parties shall  
18 meet and confer within seven (7) days of receiving written notification from the other Party of a  
19 request for a meeting to determine whether a violation has occurred and to develop a mutually agreed  
20 upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet and  
21 confer, or the meet-and-confer does not resolve the issue, after at least seven days have passed after the  
22 meet-and-confer occurred or should have occurred, either Party shall be entitled to all rights and  
23 remedies under the law, including filing a motion with the District Court of California, Eastern  
24 District, which shall retain jurisdiction over the Action for the limited purposes of enforcement of the  
25 terms of this Consent Agreement. The Parties shall be entitled to seek fees and costs incurred in any  
26 such motion, and such fees and costs shall be awarded, pursuant to the provisions set forth in Section  
27 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such  
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1 provision.

2 **14. CSPA’s Waiver and Release.** Upon Court approval and entry of this Consent  
3 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns,  
4 directors, officers, agents, attorneys, representatives, and employees, releases Defendants and their  
5 officers, directors, employees, shareholders, parents, subsidiaries, and affiliates, and each of their  
6 predecessors, successors and assigns, and each of their agents, attorneys, consultants, and other  
7 representatives (each a “Released Defendant Party”) from, and waives all claims which arise from or  
8 pertain to the Action, including, without limitation, all claims for injunctive relief, damages, penalties,  
9 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or  
10 any other sum incurred or claimed or which could have been claimed in this Action, for the alleged  
11 failure of Defendants to comply with the Clean Water Act and General Permit at the Facility, up to the  
12 Effective Date of this Consent Agreement.

13 **15. Defendants’ Waiver and Release.** Defendants, on their own behalf and on behalf of  
14 those Released Defendant Parties under its control, releases CSPA (and its officers, directors,  
15 employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns, and  
16 its agents, attorneys, and other representative) from, and waives all claims which arise from or pertain  
17 to the Action, including all claims for fees (including fees of attorneys, experts, and others), costs,  
18 expenses or any other sum incurred or claimed or which could have been claimed for matters  
19 associated with or related to the Action.

20 **16.** Upon the Court Approval Date, the Parties shall file with the Court a Stipulation and  
21 Order that shall provide that:

22 a. the Complaint and all claims therein shall be dismissed with prejudice pursuant  
23 to Federal Rule of Civil Procedure 41(a)(2); and

24 b. the Court shall retain and have jurisdiction over the Parties with respect to  
25 disputes arising under this Consent Agreement. Nothing in this Consent Agreement shall be  
26 construed as a waiver of any Party’s right to appeal from an order that arises from an action to  
27 enforce the terms of this Consent Agreement.

1 **IV. MISCELLANEOUS PROVISIONS**

2 17. The Parties enter into this Consent Agreement for the purpose of avoiding prolonged  
3 and costly litigation. Nothing in this Consent Agreement shall be construed as, and Defendants  
4 expressly do not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,  
5 nor shall compliance with this Consent Agreement constitute or be construed as an admission by  
6 Defendants of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph  
7 shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under  
8 this Consent Agreement.

9 18. This Consent Agreement shall terminate on September 30, 2013.

10 19. This Consent Agreement may be executed in one or more counterparts which, taken  
11 together, shall be deemed to constitute one and the same document. An executed copy of this Consent  
12 Agreement shall be valid as an original.

13 20. In the event that any one of the provisions of this Consent Agreement is held by a court  
14 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15 21. The language in all parts of this Consent Agreement, unless otherwise stated, shall be  
16 construed according to its plain and ordinary meaning. This Consent Agreement shall be construed  
17 pursuant to California law, without regarding to conflict of law principles.

18 22. The undersigned are authorized to execute this Consent Agreement on behalf of their  
19 respective parties and have read, understood and agreed to be bound by all of the terms and conditions  
20 of this Consent Agreement.

21 23. All agreements, covenants, representations and warranties, express or implied, oral or  
22 written, of the Parties concerning the subject matter of this Consent Agreement are contained herein.  
23 This Consent Agreement and its attachments are made for the sole benefit of the Parties, and no other  
24 person or entity shall have any rights or remedies under or by reason of this Consent Agreement,  
25 unless otherwise expressly provided for therein.

26 24. **Notices.** Any notices or documents required or provided for by this Consent  
27 Agreement or related thereto that are to be provided to CSPA pursuant to this Consent Agreement  
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1 shall be hand-delivered, sent by U.S. Mail or commercial delivery service (FedEx or UPS), postage  
2 prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to  
3 the email addresses listed below:

4 Bill Jennings, Executive Director  
5 California Sportfishing Protection Alliance  
6 3536 Rainier Avenue  
7 Stockton, CA 95204  
8 E-mail: DeltaKeep@aol.com

9 With copies sent to:

10 Andrew L. Packard  
11 Erik M. Roper  
12 Law Offices of Andrew L. Packard  
13 100 Petaluma Boulevard North, Suite 301  
14 Petaluma, CA 94952  
15 Tel: (707) 763-7227  
16 E-mail: Andrew@packardlawoffices.com; and,  
17 Erik@packardlawoffices.com

18 And to:

19 Robert J. Tuerck, Esq.  
20 Jackson & Tuerck  
21 P.O. Box 148  
22 429 W. Main Street, Suite C  
23 Quincy, CA 95971  
24 Tel: 530-283-0406  
25 Fax: 530-283-0416  
26 E-mail: Bob@JacksonTuerck.com

27 Any notices or documents required or provided for by this Consent Agreement or related thereto that  
28 are to be provided to Defendants pursuant to this Consent Agreement shall be sent by U.S. Mail,  
postage prepaid, or commercial delivery service (FedEx or UPS) and addressed as follows or, in the  
alternative, shall be sent by electronic mail transmission to the email addresses listed below:

Plant Manager, International Paper Company, d.b.a. International Paper Recycling  
1714 Cebrian St  
West Sacramento, CA 95691  
Tel: 916.371.4634 ext. 227

With copies sent to:

Brian E. Heim, Chief Counsel, Environmental Law  
International Paper Company  
Legal Department  
International Place III  
6400 Poplar Avenue

1 Memphis, TN 38197  
Tel: (901) 419-3824  
2 Fax.: (901) 214-1235  
E-mail: brian.heim@ipaper.com

3 Each Party shall promptly notify the other of any change in the above-listed contact information.

4 **25.** Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

5 **26.** No Party shall be considered to be in default in the performance of any of its obligations  
6 when a failure to perform is due to a “Force Majeure.” A Force Majeure event is any circumstances  
7 beyond the Party’s control, including, without limitation, any act of God, war, fire, earthquake, flood,  
8 and restraint by court order or public authority. A Force Majeure event does not include normal  
9 inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability  
10 to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it  
11 could not reasonably have been expected to avoid, and which by exercise of due diligence has been  
12 unable to overcome, the Force Majeure.

13 **27.** If for any reason the Court should decline to approve this Consent Agreement in the  
14 form presented, the Parties shall use their best efforts to work together to modify the Consent  
15 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to  
16 modify this Consent Agreement in a mutually acceptable manner, this Consent Agreement shall  
17 become null and void.

18 **28.** This Consent Agreement shall be deemed to have been drafted equally by the Parties,  
19 and shall not be interpreted for or against any Settling Party on the ground that any such party drafted  
20 it.

21 **29.** This Consent Agreement and the attachments contain all of the terms and conditions  
22 agreed upon by the Parties relating to the matters covered by the Consent Agreement, and supersede  
23 any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and  
24 communications of the Parties, whether oral or written, respecting the matters covered by this Consent  
25 Agreement. This Consent Agreement may be amended or modified only by a writing signed by the  
26 Parties or their authorized representatives, and then by order of the Court.

27 **30.** Except in case of an emergency but subject to the regulatory authority of any applicable  
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1 governmental authority, any breach of or default under this Consent Agreement capable of being cured  
2 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,  
3 or within such other period approved in writing by the Party making such allegation, which approval  
4 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or,  
5 if the breach or default can be cured but is not capable of being cured within such five (5) day period,  
6 has commenced and is diligently pursuing to completion such cure.

7 The Parties hereto enter into this Consent Agreement and respectfully submit it to the Court for  
8 its approval and entry as an Order and Final Judgment.

9  
10 Dated: 7/19/2011 California Sportfishing Protection Alliance  
11  
12 By: Bill Jennings  
13 Bill Jennings, Executive Director

14 Dated: \_\_\_\_\_ International Paper Company  
15  
16 By: \_\_\_\_\_  
17 William Gardner  
18 General Manager, IPG - Recycling

19  
20 Dated: \_\_\_\_\_ Paul Galea  
21  
22 By: \_\_\_\_\_  
23 Paul Galea

24 Dated: \_\_\_\_\_ Clark Weiss  
25  
26 By: \_\_\_\_\_  
27 Clark Weiss  
28

1 governmental authority, any breach of or default under this Consent Agreement capable of being cured  
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Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

Dated: 7-19-2011 International Paper Company

By:   
William Gardner  
General Manager, IPG - Recycling

Dated: \_\_\_\_\_ Paul Galea

By: \_\_\_\_\_  
Paul Galea

Dated: \_\_\_\_\_ Clark Weiss

By: \_\_\_\_\_  
Clark Weiss

1 governmental authority, any breach of or default under this Consent Agreement capable of being cured  
2 shall be deemed cured if, within five (5) days of first receiving notice of the alleged breach or default,  
3 or within such other period approved in writing by the Party making such allegation, which approval  
4 shall not be unreasonably withheld, the party allegedly in breach or default has completed such cure or,  
5 if the breach or default can be cured but is not capable of being cured within such five (5) day period,  
6 has commenced and is diligently pursuing to completion such cure.

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8 its approval and entry as an Order and Final Judgment.

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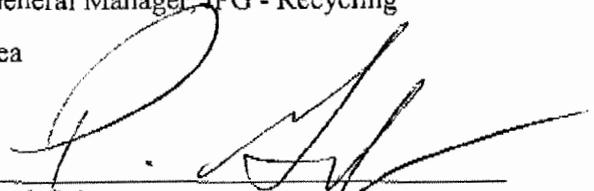
Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

By: \_\_\_\_\_  
Bill Jennings, Executive Director

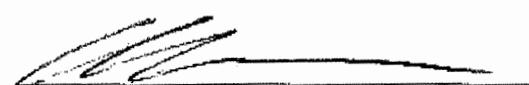
Dated: \_\_\_\_\_ International Paper Company

By: \_\_\_\_\_  
William Gardner  
General Manager, IPG - Recycling

Dated: 7/19/11 Paul Galea

By:   
Paul Galea

Dated: 7 19 11 Clark Weiss

By:   
Clark Weiss

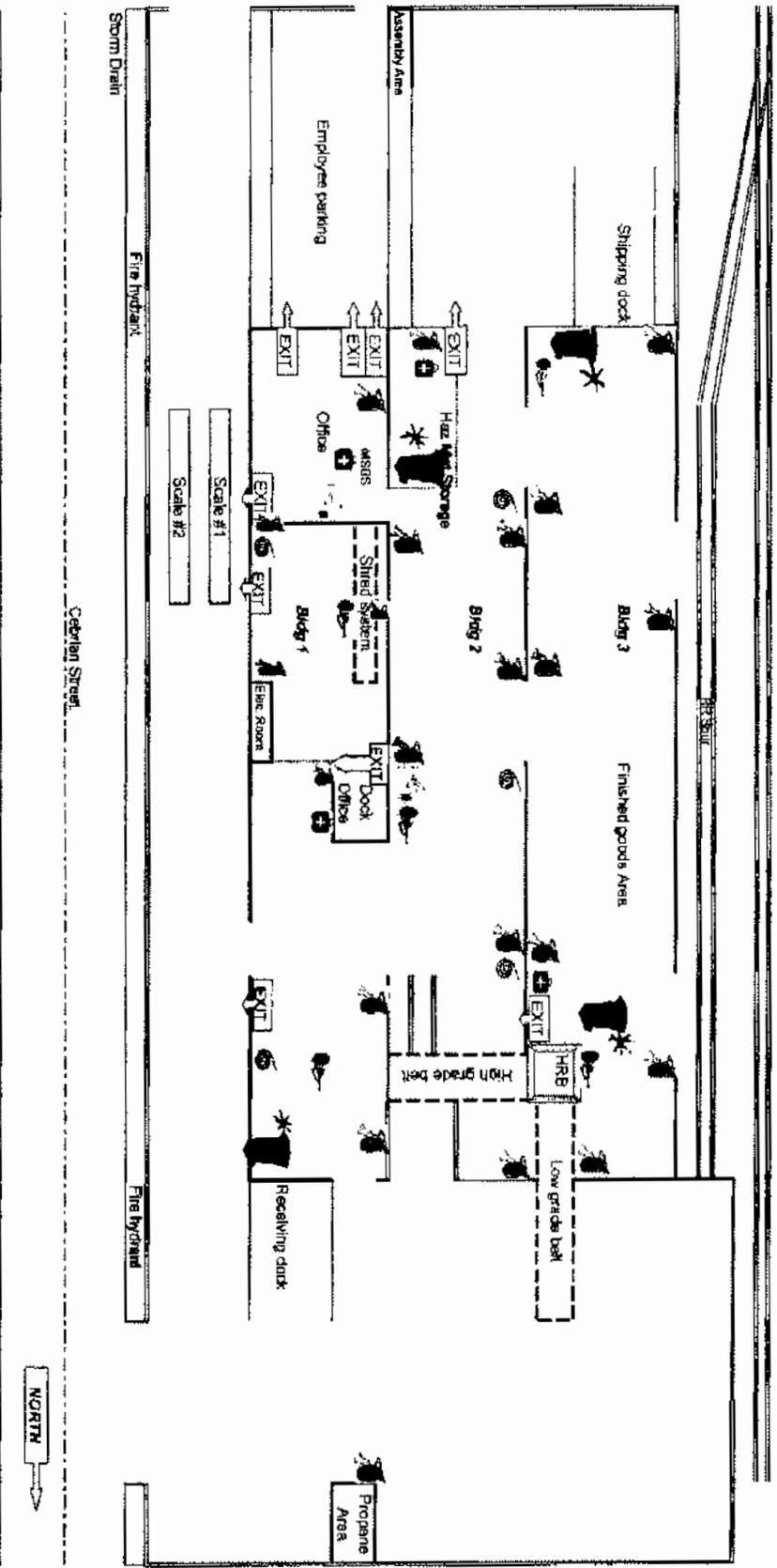
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**EXHIBIT A – Facility Site Map**

**INTERNATIONAL PAPER**

1714 Cebrion St. West Sacramento, CA 95691

Revised: 6/3/2011



- Legend:
- Fire Extinguishers →
  - Fire Hoses →
  - Eye Wash →
  - First Aid Kit →
  - Fire Horns →
  - Fire Hydrant →
  - Scale #1 →
  - Scale #2 →
  - Storm Drain →
  - Cebrion Street →
  - Fire Hydrant →
  - North →

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**EXHIBIT B – Notice of Violation**



**California Sportfishing Protection Alliance**

*"An Advocate for Fisheries, Habitat and Water Quality"*

3536 Rainier Avenue, Stockton, CA 95204

Tel: 209-464-5067, Fax: 209-464-1028, E: [deltakeep@aol.com](mailto:deltakeep@aol.com)

February 25, 2011

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Clark M. Weiss, Operations Manager  
Paul Galea, Facility Manager / Superintendent  
International Paper Company, dba International Paper Recycling  
1714 Cebrian Street  
West Sacramento, CA 95691

C T Corporation System, Agent for Service of Process  
International Paper Company  
818 W. 7<sup>th</sup> Street  
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act**

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Dear Mssrs. Galea and Weiss:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the International Paper Company dba International Paper Recycling ("IPC") paper and scrap materials recycling facility located at 1714 Cebrian Street in West Sacramento, California ("the Facility"). The WDID identification number for the Facility is 5S57I022094. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Sacramento River and other California waters. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, IPC, Clark Weiss and Paul Galea shall hereinafter be collectively referred to as IPC.

This letter addresses IPC's unlawful discharges of pollutants from the Facility to the Sacramento River and the Sacramento-San Joaquin Delta. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“the EPA”), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, IPC, Clark Weiss and Paul Galea are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against IPC, Clark Weiss and Paul Galea under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

## **I. Background.**

IPC owns and operates a paper and scrap materials recycling facility located in West Sacramento, California. The Facility is used to receive, store, handle and transport paper and various scrap and waste materials to other facilities for recycling. Other activities at the Facility include the use, storage and maintenance of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility.

Industrial facilities subject to regulation under the General Permit are required to file a Notice of Intent to Comply with the terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). CSPA notes that IPC signed and filed its NOI for the Facility at the Central Valley Regional Water Quality Control Board office in Rancho Cordova on or about January 28, 2009. The Facility is classified in that NOI as a facility that receives, processes, stores and/or transports scrap and waste materials under Standard Industrial Classification (“SIC”) Code 5093 (“Processing, Reclaiming and Wholesale Distribution of Scrap and Waste Materials”). IPC collects and discharges storm water from its approximately 5-acre industrial site through at least one (1) discharge point to the eastern canal of the Sacramento River and the Sacramento-San Joaquin Delta (“the Delta”). The Delta and the Sacramento River are waters of the United States within the meaning of the Clean Water Act.

The Central Valley Regional Water Quality Control Board (the “Regional Board” or “Board”) has established water quality standards for the Sacramento River and the Delta in the “Water Quality Control Plan for the Sacramento River and San Joaquin River Basins,” generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” For the Delta, the Basin Plan establishes standards for

several metals, including (at a hardness of 40 mg/L): arsenic – 0.01 mg/L; copper – 0.01; iron – 0.3 mg/L for iron; and zinc – 0.1 mg/L. *Id.* at III-3.00, Table III-1. The Basin Plan states that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/L.” *Id.* at III-3.00. The Basin Plan also provides that “[t]he pH shall not be depressed below 6.5 nor raised above 8.5.” *Id.* at III-6.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-5.00

The Basin Plan also provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs).” *Id.* at III-3.0. The EPA has issued a recommended water quality criteria for aluminum for freshwater aquatic life protection of 0.087 mg/L. EPA has established a secondary MCL, consumer acceptance limit for aluminum of 0.05 mg/L to 0.2 mg/L. EPA has established a secondary MCL, consumer acceptance limit for zinc of 5 mg/L. EPA has established a primary MCL, consumer acceptance limit for the following: chromium – 0.1 mg/L; copper – 1.3 mg/L; and lead – 0.0 (zero) mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. The California Department of Health Services has also established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 (secondary); iron – 0.3 mg/L; and zinc – 5 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

EPA has also issued numeric receiving water limits for certain toxic pollutants in California surface waters, commonly known as the California Toxics Rule (“CTR”). 40 CFR §131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has also identified waters of the Delta as failing to meet water quality standards for unknown toxicity, electrical conductivity, numerous pesticides, and mercury. *See* <http://www.swrcb.ca.gov/tmdl/docs/2002reg5303dlist.pdf>. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at \*3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by IPC: pH – 6.0-9.0; total suspended solids – 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; iron – 1.0 mg/L; aluminum – 0.75 mg/L; zinc – 0.117 mg/L; and, copper – 0.0636 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; cyanide – 0.0636 mg/L; lead – 0.0816 mg/L; mercury – 0.0024 mg/L; and, silver – 0.0318 mg/L.

## **II. IPC is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States**

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.21(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Sacramento River and the Delta are waters of the United States. Thus, IPC’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that IPC has discharged and is discharging pollutants from the Facility to waters of the United States every day that there has been or will be any measurable flow of water from the Facility for the last five years. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, IPC is subject to penalties for violations of the Act since January 28, 2009.

### **III. Pollutant Discharges in Violation of the NPDES Permit.**

IPC has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan.

As recently as October 14, 2010, the Regional Water Quality Control Board, Region 5, sent IPC a letter (“the October 2010 letter”) conveying its conclusion that, among other things, IPC’s 2009-2010 Annual Report contained evidence that the BMPs then in effect at the Facility were not sufficient to reduce pollutant concentrations below EPA benchmark levels. The October 2010 letter informed IPC that its 2009-2010 Annual

Report indicated storm water samples in excess of US EPA benchmark values for certain parameters. Based on this evidence, the Board ordered IPC to: (1) Review previously submitted Annual Reports and identify the number of consecutive years that the Facility has exceeded benchmark levels; (2) Identify sources of pollutants at the Facility that contributed to the exceedances; (3) Review current BMPs; (4) Modify existing BMPs or implement additional BMPs to reduce or eliminate discharge of pollutants; and (5) modify the SWPPP and Monitoring Plan for the Facility and maintain a copy of these required documents at the Facility. Finally, the Board ordered IPC to respond to these concerns by providing the Board a written response by no later than November 19, 2010.

Based on its review of available public documents, CSPA is informed and believes: (1) that IPC failed to provide the Board the ordered written response by November 19, 2010; (2) that IPC continues to discharge these very same pollutants in excess of benchmarks; and, (3) that IPC has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. IPC's ongoing violations are discussed further below.

**A. IPC Has Discharged Storm Water Containing Pollutants in Violation of the Permit.**

IPC has discharged and continues to discharge stormwater with unacceptable levels of Specific Conductivity (SC), Aluminum (Al), Copper (Cu), Iron (Fe) and Zinc (Zn) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. IPC's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

**1. Discharges of Storm Water Containing Specific Conductivity (SC) at Levels in Excess of Proposed EPA Benchmark Value**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
02/05/2009	"East drain at swale"	SC	311 µmhos/cm	200 µmhos/cm

**2. Discharges of Storm Water Containing Iron (Fe) at Concentrations in Excess of Applicable EPA Benchmark Value**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/25/2010	“East drain at swale”	Fe	1.07 mg/L	1.0 mg/L
02/05/2009	“East drain at swale”	Fe	1.3 mg/L	1.0 mg/L
04/07/2009	“East drain at swale”	Fe	2.1 mg/L	1.0 mg/L

**3. Discharges of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>Proposed Benchmark Value</b>
01/25/2010	“East drain at swale”	Al	2.28 mg/L	0.75 mg/L

**4. Discharges of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/25/2010	“East drain at swale”	Zn	0.578 mg/L	0.117 mg/L
10/13/2009	“East drain at swale”	Zn	0.34 mg/L	0.117 mg/L

**5. Discharges of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark Value**

<b>Date</b>	<b>Sampling Location</b>	<b>Parameter</b>	<b>Concentration in Discharge</b>	<b>EPA Benchmark Value</b>
01/25/2010	“East drain at swale”	Cu	1.37 mg/L	0.0636 mg/L

CSPA’s investigation, including its review of IPC’s analytical results documenting pollutant levels in the Facility’s storm water discharges well in excess of EPA’s benchmark values and the State Board’s proposed benchmark for specific conductivity, indicates that IPC has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity (SC), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc

(Zn) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. IPC was required to have implemented BAT and BCT by no later than October 1, 1992 of the start of its operations. Thus, IPC is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that IPC has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least January 28, 2009. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since January 28, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that IPC has discharged storm water containing impermissible levels of Specific Conductivity (SC), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of stormwater containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, IPC is subject to penalties for violations of the General Permit and the Act since January 28, 2009.

**B. IPC Has Failed to Implement an Adequate Monitoring & Reporting Plan.**

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.”

Based on its investigation, CSPA is informed and believes that IPC has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that IPC has

failed to collect storm water samples during at least two qualifying storm events (as defined by the General Permit) during each of the past five years. Second, based on its review of publicly available documents, CSPA is informed and believes that IPC has failed to analyze the Facility's storm water discharges for: (1) Chemical Oxygen Demand (also often referred to as COD) as required by Table D of the General Permit; and, (2) "[t]oxic chemicals and other pollutants that are likely to be present" therein during each of the past five years. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, IPC is subject to penalties for violations of the General Industrial Storm Water Permit and the Act since January 28, 2009. These violations are set forth in greater detail below:

**1. IPC Has Failed to Analyze Its Storm Water for All Pollutants Required by the General Permit.**

In addition to the standard pollutant parameters for which IPC must analyze the Facility's storm water discharges, Table D of the General Permit additionally requires IPC to analyze such samples for Aluminum, Chemical Oxygen Demand, Copper, Iron, Lead and Zinc. Notably, IPC has completely failed to analyze the Facility's samples of storm water discharges for Chemical Oxygen Demand as required by the General Permit for the last two (2) Wet Seasons (i.e., the 2008-2009 Wet Season; and, the 2009-2010 Wet Season).

Further, based on its investigation, CSPA is informed and believes that IPC has failed to monitor for other pollutants likely to be present in storm water discharges in significant quantities. IPC's failure to monitor these pollutants extends back to at least January 28, 2009. IPC's failure to monitor these mandatory parameters has caused and continues to cause multiple separate and ongoing violations of the General Permit and the Act.

**2. IPC Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since January 28, 2009.**

CSPA is informed and believes that available documents demonstrate IPC's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, IPC is subject to penalties for these violations of the General Permit and the Act since January 28, 2009.

**C. IPC Has Failed to Implement BAT and BCT.**

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that IPC has not implemented BAT and BCT at the Facility for its discharges of Specific Conductivity (SC), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, IPC must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum IPC must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. IPC has failed to adequately implement such measures.

IPC was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, IPC has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. IPC is subject to penalties for violations of the General Permit and the Act occurring since January 28, 2009.

**D. IPC Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.**

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and

their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of available documents regarding conditions at the Facility indicate that IPC has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. IPC has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, IPC has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. IPC is subject to penalties for violations of the Order and the Act occurring since January 28, 2009.

**E. IPC Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.**

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report

any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, IPC is discharging elevated levels of Specific Conductivity (SC), Aluminum (Al), Copper (Cu), Iron (Fe), Zinc (Zn) and other unmonitored pollutants (e.g., Chemical Oxygen Demand) that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, IPC was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, IPC was aware of high levels of these pollutants prior to January 28, 2009. Likewise, IPC has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). IPC has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since January 28, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. IPC is subject to penalties for violations of the General Permit and the Act occurring since January 28, 2009.

#### **F. IPC Has Failed to File Timely, True and Correct Reports.**

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that IPC has failed to file timely, true and correct Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the 2009-2010 Annual Report filed by IPC for the Facility reports that on January 25, 2010, a qualifying storm event occurred at the Facility within the meaning of the General Permit. Recall that under the General Permit, a qualifying storm event is one which results in the discharge of storm water during scheduled facility operating hours and that is preceded by at least three (3) days without a storm water discharge. However, based on CSPA's review of publicly available rainfall data, CSPA believes that January 25, 2010 was not a qualifying storm event because the storm event that occurred on that date at the Facility was not directly preceded by three

days without a storm water discharge occurring at the Facility. To wit, publicly available rainfall data reveal that on January 23, 2010, 0.13” of rain fell on the Facility. Further, CSPA notes that in its 2008-2009 Annual Report, IPC reported that the first qualifying storm event it could collect a storm water discharge sample from that season occurred at the Facility on February 5, 2009. Publicly available rainfall data indicate that on February 5, 2009, 0.12” of rain fell on the Facility.

Thus, assuming that 0.12” of rainfall is enough to generate a storm water discharge at the Facility, January 25, 2009 was not a qualifying storm event because storm water discharged from the Facility on January 23, 2009. This is only one example of how IPC has failed to file timely, true and accurate reports.

As indicated above, IPC has failed to comply with the Permit and the Act consistently since at least January 28, 2009. Therefore, IPC has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time IPC submitted an incomplete or incorrect annual report that falsely certified compliance with the Act. IPC’s failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. IPC is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since January 28, 2009.

#### **IV. Persons Responsible for the Violations.**

CSPA puts International Paper Company, Clark Weiss and Paul Galea on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts International Paper Company, Clark Weiss and Paul Galea on notice that it intends to include those persons in this action.

#### **V. Name and Address of Noticing Party.**

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

#### **VI. Counsel.**

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard  
Erik M. Roper  
Law Offices of Andrew L. Packard  
100 Petaluma Boulevard, Suite 301  
Petaluma, CA 94952  
Tel. (707) 763-7227

Fax. (707) 763-9227  
E-mail: Andrew@PackardLawOffices.com  
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And to:

Robert J. Tuerck  
Jackson & Tuerck  
P.O. Box 148  
429 W. Main Street, Suite C  
Quincy, CA 95971  
Tel: 530-283-0406  
Fax: 530-283-0416  
E-mail: Bob@JacksonTuerck.com

## **VII. Penalties.**

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects International Paper Company, Clark Weiss and Paul Galea to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against International Paper Company and its agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", written in a cursive style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance

## **SERVICE LIST**

Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jared Blumenfeld  
Administrator, U.S. EPA – Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Eric Holder  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Dorothy R. Rice, Executive Director  
State Water Resources Control Board  
1001 I Street Sacramento, CA 95814  
P.O. Box 100  
Sacramento, CA 95812-0100

Pamela Creedon, Executive Officer  
Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

**ATTACHMENT A**  
**Notice of Intent to File Suit, International Paper Company (West Sacramento, CA)**  
**Significant Rain Events,\* January 28, 2009 - February 25, 2011**

Feb. 05 2009	Mar. 03 2010	Feb. 25 2011
Feb. 06 2009	Mar. 12 2010	
Feb. 11 2009	Mar. 31 2010	
Feb. 13 2009	April 02 2010	
Feb. 15 2009	April 04 2010	
Feb. 16 2009	April 11 2010	
Feb. 17 2009	April 12 2010	
Feb. 22 2009	April 20 2010	
Feb. 23 2009	April 21 2010	
Feb. 26 2009	April 27 2010	
Mar. 01 2009	May 10 2010	
Mar. 02 2009	May 25 2010	
Mar. 03 2009	May 26 2010	
Mar. 04 2009	May 27 2010	
April 07 2009	Oct. 23 2010	
April 09 2009	Oct. 24 2010	
May 01 2009	Nov. 07 2010	
May 02 2009	Nov. 19 2010	
May 03 2009	Nov. 20 2010	
Oct. 13 2009	Nov. 21 2010	
Oct. 14 2009	Nov. 24 2010	
Oct. 19 2009	Nov. 29 2010	
Nov. 20 2009	Nov. 30 2010	
Dec. 06 2009	Dec. 02 2010	
Dec. 07 2009	Dec. 03 2010	
Dec. 11 2009	Dec. 04 2010	
Dec. 12 2009	Dec. 05 2010	
Dec. 13 2009	Dec. 06 2010	
Dec. 16 2009	Dec. 08 2010	
Dec. 27 2009	Dec. 14 2010	
Jan. 01 2010	Dec. 17 2010	
Jan. 12 2010	Dec. 18 2010	
Jan. 13 2010	Dec. 19 2010	
Jan. 17 2010	Dec. 21 2010	
Jan. 18 2010	Dec. 22 2010	
Jan. 19 2010	Dec. 25 2010	
Jan. 20 2010	Dec. 28 2010	
Jan. 21 2010	Jan. 01 2011	
Jan. 23 2010	Jan. 02 2011	
Jan. 25 2010	Jan. 12 2011	
Feb. 04 2010	Jan. 13 2011	
Feb. 05 2010	Jan. 29 2011	
Feb. 06 2010	Jan. 30 2011	
Feb. 09 2010	Feb. 02 2011	
Feb. 23 2010	Feb. 16 2011	
Feb. 26 2010	Feb. 17 2011	
Feb. 27 2010	Feb. 18 2011	
Mar. 02 2010	Feb. 19 2011	

\* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

**EXHIBIT C**

<b>Parameter</b>	<b>Value</b>
pH	6.0 – 9.0
Specific Conductivity	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Iron	1.0 mg/L
Lead	0.0816 mg/L
Aluminum	0.75 mg/L
Copper	0.0636 mg/L
Zinc	0.117 mg/L
Chemical Oxygen Demand	120 mg/L

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