



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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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. 7th Street

Los Angeles, CA 90017

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

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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
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

Date	Sampling Location	Parameter	Concentration in Discharge	Proposed Benchmark Value
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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
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

Date	Sampling Location	Parameter	Concentration in Discharge	EPA Benchmark Value
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

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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,



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.