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 18 CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

19 **UNITED STATES DISTRICT COURT**  
 20 **EASTERN DISTRICT OF CALIFORNIA**

21 CALIFORNIA SPORTFISHING  
 22 PROTECTION ALLIANCE, a non-profit  
 23 corporation,

24 Plaintiff,

25 vs.

26 INTERNATIONAL PAPER COMPANY, a  
 27 New York corporation, PAUL GALEA, an  
 28 individual, and CLARK WEISS, an  
 individual,

Defendants,

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF AND CIVIL  
 PENALTIES

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

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (“CSPA”), by and  
 through its counsel, hereby alleges:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the  
 Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.* (the “Clean Water Act”  
 or “the Act”) against the International Paper Company, Mr. Paul Galea and Mr. Clark Weiss

1 (hereafter “Defendants”). This Court has subject matter jurisdiction over the parties and the  
2 subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. §  
3 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).  
4 The relief requested is authorized pursuant to 28 U.S.C. § 2201-02 (power to issue  
5 declaratory relief in case of actual controversy and further necessary relief based on such a  
6 declaration), 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief), and 33 U.S.C. § 1319(d),  
7 1365(a) (civil penalties).

8 2. On or about February 25, 2011, Plaintiff provided notice of Defendants’  
9 violations of the Act, and of its intention to file suit against Defendants, to the Administrator  
10 of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA  
11 Region IX; the Executive Director of the State Water Resources Control Board (“State  
12 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
13 Region (“Regional Board”); and to Defendants, as required by the Act, 33 U.S.C. §  
14 1365(b)(1)(A). A true and correct copy of CSPA’s notice letter is attached as **Exhibit A**,  
15 and is incorporated by reference.

16 3. More than sixty days have passed since notice was served on Defendants and  
17 the State and federal agencies. Plaintiff is informed and believes, and thereupon alleges, that  
18 neither the EPA nor the State of California has commenced or is diligently prosecuting a  
19 court action to redress the violations alleged in this complaint. This action’s claim for civil  
20 penalties is not barred by any prior administrative penalty under Section 309(g) of the Act,  
21 33 U.S.C. § 1319(g).

22 4. Venue is proper in the Eastern District of California pursuant to Section  
23 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located  
24 within this judicial district. Pursuant to Local Rule 120(d), intra-district venue is proper in  
25 Sacramento, California because the source of the violations is located within Yolo County.

26 **II. INTRODUCTION**

27 5. This complaint seeks relief for Defendants’ discharges of pollutants from an  
28 approximately 5-acre paper recycling facility (“the Facility”) owned and/or operated by

1 Defendants. The Facility discharges storm water to the East River Canal, which in turn  
2 drains to the Sacramento River, and the Sacramento-San Joaquin Delta. Defendants'  
3 discharges of pollutants from the Facility are in violation of the Act and the State of  
4 California's General Industrial Permit for storm water discharges, State Water Resources  
5 Control Board ("State Board") Water Quality Order No. 91-13-DWQ, as amended by Water  
6 Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ, National  
7 Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001  
8 (hereinafter "General Permit" or "Permit"). Defendants' violations of the filing, monitoring,  
9 reporting, discharge and management practice requirements, and other procedural and  
10 substantive requirements of the General Permit and the Act are ongoing and continuous.

11 6. The failure on the part of industrial facility operators such as Defendants to  
12 comply with the General Permit is recognized as a significant cause of the continuing decline  
13 in water quality of these receiving waters. The general consensus among regulatory agencies  
14 and water quality specialists is that storm water pollution amounts to more than half the total  
15 pollution entering the marine environment each year. With every rainfall event, hundreds of  
16 thousands of gallons of polluted storm water originating from industrial facilities discharge  
17 to the Sacramento River, and the Sacramento-San Joaquin Delta.

18 **III. PARTIES**

19 7. Plaintiff California Sportfishing Protection Alliance ("CSPA") is a non-profit  
20 public benefit corporation organized under the laws of the State of California with its main  
21 office in Stockton, California. CSPA has approximately 2,000 members who live, recreate  
22 and work in and around waters of the State of California, including the San Joaquin River,  
23 the Sacramento River, and the Sacramento-San Joaquin Delta. CSPA is dedicated to the  
24 preservation, protection, and defense of the environment, and the wildlife and the natural  
25 resources of all waters of California. To further these goals, CSPA actively seeks federal  
26 and state agency implementation of the Act and other laws and, where necessary, directly  
27 initiates enforcement actions on behalf of itself and its members.

28 8. Members of CSPA reside in California and use and enjoy California's

1 numerous rivers for recreation and other activities. Members of CSPA use and enjoy the  
2 waters of the San Joaquin River, the Sacramento River, and the Sacramento-San Joaquin  
3 Delta, into which Defendants have caused, are causing, and will continue to cause, pollutants  
4 to be discharged. Members of CSPA use these areas to fish, sail, boat, kayak, swim,  
5 birdwatch, view wildlife and engage in scientific study, including monitoring activities,  
6 among other things. Defendants' discharges of pollutants threaten or impair each of those  
7 uses or contribute to such threats and impairments. Thus, the interests of CSPA's members  
8 have been, are being, and will continue to be adversely affected by Defendants' ongoing  
9 failure to comply with the Clean Water Act. The relief sought herein will redress the harms  
10 to Plaintiff caused by Defendants' activities.

11 9. Continuing commission of the acts and omissions alleged above will  
12 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have  
13 no plain, speedy or adequate remedy at law.

14 10. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
15 International Paper Company is a corporation organized under the laws of the State of New  
16 York and that it operates the Facility under the business name of International Paper  
17 Recycling.

18 11. Plaintiff is informed and believes, and thereupon alleges, that Defendant Paul  
19 Galea is the superintendent and/or facility manager for the International Paper Company at  
20 the Facility and in these capacities he is ultimately responsible for operation of the Facility.

21 12. Plaintiff is informed and believes, and thereupon alleges, that Defendant  
22 Clark Weiss is the operations manager for the International Paper Company at the Facility  
23 and in that capacity he directs the operations and maintenance of the Facility.

24 13. Accordingly, Defendants own and/or operate the Facility.

25 **IV. STATUTORY BACKGROUND**

26 14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any  
27 pollutant into waters of the United States, unless such discharge is in compliance with  
28 various enumerated sections of the Act. Among other things, Section 301(a) prohibits

1 discharges not authorized by, or in violation of, the terms of an NPDES permit issued  
2 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3 15. Section 402(p) of the Act establishes a framework for regulating municipal  
4 and industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p).  
5 States with approved NPDES permit programs are authorized by Section 402(p) to regulate  
6 industrial storm water discharges through individual permits issued to dischargers and/or  
7 through the issuance of a single, statewide general permit applicable to all industrial storm  
8 water dischargers. 33 U.S.C. § 1342.

9 16. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of  
10 the U.S. EPA has authorized California's State Board to issue NPDES permits including  
11 general NPDES permits in California.

12 17. The State Board elected to issue a statewide general permit for industrial  
13 discharges. The State Board issued the General Permit on or about November 19, 1991,  
14 modified the General Permit on or about September 17, 1992, and reissued the General  
15 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33  
16 U.S.C. § 1342(p).

17 18. The General Permit contains certain absolute prohibitions. Discharge  
18 Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials  
19 other than storm water ("non-storm water discharges"), which are not otherwise regulated by  
20 an NPDES permit, to the waters of the United States. Discharge Prohibition A(2) of the  
21 General Permit prohibits storm water discharges and authorized non-storm water discharges  
22 that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water  
23 Limitation C(1) of the General Permit prohibits storm water discharges to any surface or  
24 ground water that adversely impact human health or the environment. Receiving Water  
25 Limitation C(2) of the General Permit prohibits storm water discharges that cause or  
26 contribute to an exceedance of any applicable water quality standards contained in a  
27 Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

28 19. In addition to absolute prohibitions, the General Permit contains a variety of

1 substantive and procedural requirements that dischargers must meet. Facilities discharging,  
2 or having the potential to discharge, storm water associated with industrial activity that have  
3 not obtained an individual NPDES permit must apply for coverage under the State's General  
4 Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing  
5 dischargers to file their NOIs before March 30, 1992.

6 20. Effluent Limitation B(3) of the General Permit requires dischargers to reduce  
7 or prevent pollutants in its storm water discharges through implementation of the Best  
8 Available Technology Economically Achievable ("BAT") for toxic and nonconventional  
9 pollutants and the Best Conventional Pollutant Control Technology ("BCT") for  
10 conventional pollutants. BAT and BCT include both nonstructural and structural measures.  
11 General Permit, Section A(8).

12 21. EPA has established Benchmark Levels as guidelines for determining  
13 whether a facility discharging industrial storm water has implemented the requisite BAT and  
14 BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). The following benchmarks have been  
15 established for pollutants discharged by Defendants: pH – 6.0-9.0; total suspended solids –  
16 100 mg/L; oil & grease – 15.0 mg/L; chemical oxygen demand – 120 mg/L; aluminum –  
17 0.75 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; zinc – 0.117 mg/L.  
18 The State Water Quality Control Board has proposed adding a benchmark level for specific  
19 conductance of 200  $\mu$ mhos/cm.

20 22. Dischargers must develop and implement a Storm Water Pollution  
21 Prevention Plan ("SWPPP") before October 1, 1992. The SWPPP must comply with the  
22 BAT and BCT standards. (Section B(3)). The SWPPP must include, among other elements:  
23 (1) a narrative description and summary of all industrial activity, potential sources of  
24 pollutants and potential pollutants; (2) a site map showing facility boundaries, the storm  
25 water conveyance system, associated points of discharge, direction of flow, areas of  
26 industrial activities, and areas of actual and potential pollutant contact; (3) a description of  
27 storm water management practices, best management practices ("BMPs") and preventive  
28 maintenance undertaken to avoid storm water contamination that achieve BAT and BCT; (4)

1 the location where Significant Materials are being shipped, stored, received and handled, as  
2 well as the typical quantities of such materials and the frequency with which they are  
3 handled; (5) a description of potential pollutant sources including industrial processes,  
4 material handling and storage areas, dust and particulate generating activities; (6) a summary  
5 of storm water sampling points; (7) a description of individuals and their responsibilities for  
6 developing and implementing the SWPPP (Permit, Section A(3)); (8) a description of  
7 potential pollutant sources including industrial processes, material handling and storage  
8 areas, and dust and particulate generating activities; (9) a description of significant spills and  
9 leaks; (10) a list of all non-storm water discharges and their sources, and (11) a description  
10 of locations where soil erosion may occur (Section A(6)). The SWPPP must also include an  
11 assessment of potential pollutant sources at the Facility and a description of the BMPs to be  
12 implemented at the Facility that will reduce or prevent pollutants in storm water discharges  
13 and authorized non-storm water discharges, including structural BMPs where non-structural  
14 BMPs are not effective (Section A(7), (8)).

15 23. The SWPPP must be re-evaluated annually to ensure effectiveness and must  
16 be revised where necessary (Section A(9),(10)). Section C(3) of the General Permit requires  
17 a discharger to prepare and submit a report to the Regional Board describing changes it will  
18 make to its current BMPs in order to prevent or reduce any pollutant in its storm water  
19 discharges that is causing or contributing to an exceedance of water quality standards. Once  
20 approved by the Regional Board, the additional BMPs must be incorporated into the  
21 Facility's SWPPP. The report must be submitted to the Regional Board no later than 60 days  
22 from the date the discharger first learns that its discharge is causing or contributing to an  
23 exceedance of an applicable water quality standard. Section C(4)(a). Section C(11)(d) of  
24 the General Permit's Standard Provisions also requires dischargers to report any  
25 noncompliance. *See also* Section E(6). Lastly, Section A(9) of the General Permit requires  
26 an annual evaluation of storm water controls including the preparation of an evaluation  
27 report and implementation of any additional measures in the SWPPP to respond to the  
28 monitoring results and other inspection activities.

1           24.       The General Permit requires dischargers to eliminate all non-storm water  
2 discharges to storm water conveyance systems other than those specifically set forth in  
3 Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth  
4 in Special Condition D(1)(b).

5           25.       The General Permit requires dischargers commencing industrial activities  
6 before October 1, 1992 to develop and implement an adequate written Monitoring and  
7 Reporting Program no later than October 1, 1992. Existing facilities covered under the  
8 General Permit must implement all necessary revisions to their monitoring programs no later  
9 than August 1, 1997.

10          26.       The General Permit also requires dischargers to submit “Annual Reports” to  
11 the Regional Board. As part of their monitoring program, dischargers must identify all storm  
12 water discharge locations that produce a significant storm water discharge, evaluate the  
13 effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control  
14 measures set out in the SWPPP are adequate and properly implemented. Dischargers must  
15 then conduct visual observations of these discharge locations for at least one storm per  
16 month during the wet season (October through May) and record their findings in their  
17 Annual Report. Dischargers must also collect and analyze storm water samples from at least  
18 two storms per year. Section B requires dischargers to sample and analyze during the wet  
19 season for basic parameters such as pH, total suspended solids (“TSS”), specific  
20 conductance, and total organic carbon (“TOC”) or oil and grease (“O&G”), certain industry-  
21 specific parameters, and toxic chemicals and other pollutants likely to be in the storm water  
22 discharged from the facility. Section B(5) and Table D of the General Permit requires  
23 dischargers whose industrial activities fall within Standard Industrial Classification (“SIC”)  
24 Code 5093 to analyze their storm water discharge samples for total suspended solids, iron,  
25 lead, aluminum, copper, zinc and chemical oxygen demand. Dischargers must also conduct  
26 dry season visual observations to identify sources of non-storm water pollution. The  
27 monitoring and reporting program requires dischargers to certify, based upon the annual site  
28 inspections, that the facility is in compliance with the General Permit and report any non-

1 compliance, and contains additional requirements as well.

2 27. In order to discharge storm water lawfully in California, industrial  
3 dischargers must comply with the terms of the General Permit or have obtained and  
4 complied with an individual NPDES permit.

5 28. The term “discharge of pollutants” means “any addition of any pollutant to  
6 navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to  
7 include, among other examples, industrial waste, chemical wastes, biological materials, heat,  
8 rock, and sand discharged into water. 33 U.S.C. § 1362(6).

9 29. A point source is defined as “any discernable, confined and discrete  
10 conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . .  
11 from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

12 30. “Navigable waters” means “the waters of the United States.” 33 U.S.C. §  
13 1362(7). Waters of the United States include tributaries to waters that are navigable in fact.  
14 Waters of the United States include man-made water bodies that are tributary to waters that  
15 are navigable in fact. Waters of the United States include ephemeral waters that are tributary  
16 to waters that are navigable in fact.

17 31. Section 505(a)(1) and Section 505(f) of the Act provide for citizen  
18 enforcement actions against any “person,” including individuals, corporations, or  
19 partnerships, for violations of NPDES permit requirements and for unpermitted discharges of  
20 pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under  
21 the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an  
22 assessment of civil penalties of up to \$32,500 per day for violations that occurred between  
23 March 15, 2004 and January 12, 2009, and an assessment of civil penalties of up to \$37,500  
24 per day for violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of  
25 the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

26 32. The Regional Board has established water quality standards for the  
27 Sacramento River, and the Sacramento-San Joaquin Delta in the Water Quality Control Plan  
28 for the Sacramento River and San Joaquin River Basins, generally referred to as the Basin

1 Plan.

2 33. The Basin Plan includes a narrative toxicity standard which states that “[a]ll  
3 waters shall be maintained free of toxic substances in concentrations that produce  
4 detrimental physiological responses in human, plant, animal, or aquatic life.”

5 34. The Basin Plan establishes a standard for electrical conductivity in the Delta  
6 of 0.7  $\mu\text{mhos/cm}$  from April 1 through August 31 and 1.0  $\mu\text{mhos/cm}$  from September 1  
7 through March 31.

8 35. The Basin Plan provides that “[w]aters shall not contain chemical constituents  
9 in concentrations that adversely affect beneficial uses.”

10 36. The Basin Plan provides that “[a]t a minimum, water designated for use as  
11 domestic or municipal supply (MUN) shall not contain concentrations of chemical  
12 constituents in excess of the maximum contaminant levels (MCLs).” The waters of the  
13 Sacramento River and the Delta have been designated by the State Board for use as  
14 municipal and domestic supply.

15 **V. STATEMENT OF FACTS**

16 37. Defendants operate the Facility, an approximately 5-acre paper recycling  
17 facility located at 1714 Cebrian Street, in West Sacramento, California. The Facility  
18 discharges storm water to the East River Canal, which in turn drains to the Sacramento  
19 River, and the Sacramento-San Joaquin Delta.

20 38. The Facility is classified under Standard Industrial Classification (“SIC”)  
21 Code 5093 (“Scrap Recycling Facilities”). Industrial activities occur throughout the Facility.  
22 The Facility is primarily used as a paper recycling facility. Other current industrial activities  
23 occurring at the Facility involve the use and storage of motorized vehicles, including trucks  
24 used to haul materials to, from and within the Facility. Many of these activities occur  
25 outside in areas that are exposed to storm water and storm flows due to the lack of overhead  
26 coverage, functional berms and other storm water controls. Plaintiff is informed and  
27 believes that Defendants’ storm water controls, to the extent any exist, fail to achieve BAT  
28 and BCT standards.

1           39.       The management practices at the Facility are wholly inadequate to prevent  
2 the sources of contamination described above from causing the discharge of pollutants to  
3 waters of the United States and fail to meet BAT and BCT. The Facility lacks essential  
4 structural controls such as grading, berming and roofing to prevent rainfall and storm water  
5 flows from coming into contact with these and other sources of contaminants, thereby  
6 allowing storm water to flow over and across these materials and become contaminated prior  
7 to leaving the Facility. In addition, the Facility lacks structural controls to prevent the  
8 discharge of water once contaminated. The Facility also lacks an adequate filtration system  
9 to treat water once it is contaminated.

10           40.       During rain events storm water laden with pollutants flows from the Facility  
11 and into the East River Canal, which then drains to the Sacramento River, and the  
12 Sacramento-San Joaquin Delta.

13           41.       Information available to Plaintiff indicates that as a result of these practices,  
14 storm water containing pollutants harmful to fish, plant and bird life, and human health are  
15 being discharged from the Facility directly to these waters during significant rain events.

16           42.       The Sacramento River, and the Sacramento-San Joaquin Delta are waters of  
17 the United States.

18           43.       Information available to Plaintiff indicates that Defendants have not fulfilled  
19 the requirements set forth in the General Permit for discharges from the Facility due to the  
20 continued discharge of contaminated storm water.

21           44.       Plaintiff is informed and believes, and thereupon alleges, that Defendants  
22 have failed to develop and implement an adequate Storm Water Pollution Prevention Plan.

23           45.       Information available to Plaintiff indicates the continued existence of  
24 unlawful storm water discharges at the Facility.

25           46.       Plaintiff is informed and believes, and thereupon alleges, that Defendants  
26 have failed to develop and implement adequate monitoring, reporting and sampling  
27 programs for the Facility. Plaintiff is informed and believes, and thereupon alleges, that  
28 Defendants have not sampled with adequate frequency, have not conducted visual

1 monitoring, and have not analyzed the samples collected for the required pollutant  
2 parameters.

3 47. Plaintiff is informed and believes, and thereupon alleges, that all of the  
4 violations alleged in this Complaint are ongoing and continuing.

5 **VI. CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**  
7 **Discharges of Contaminated Storm Water**  
8 **in Violation of Permit Conditions and the Act**  
9 **(Violations of 33 U.S.C. §§ 1311(a), 1342)**

10 48. Plaintiff incorporates the allegations contained in the above paragraphs as  
11 though fully set forth herein.

12 49. Discharge Prohibition A(2) of the General Permit requires that storm water  
13 discharges and authorized non-storm water discharges shall not cause or threaten to cause  
14 pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the  
15 General Permit require that storm water discharges and authorized non-storm water discharges  
16 shall not adversely impact human health or the environment, and shall not cause or contribute  
17 to a violation of any water quality standards contained in a Statewide Water Quality Control  
18 Plan or the applicable Regional Board's Basin Plan.

19 50. Plaintiff is informed and believes, and thereupon alleges, that since at least  
20 October 1, 1992, Defendants have been discharging polluted storm water from the Facility to  
21 the East River Canal, the Sacramento River, and the Sacramento-San Joaquin Delta in  
22 violation of the General Permit.

23 51. During every significant rain event, storm water flowing over and through  
24 materials at the Facility becomes contaminated with pollutants, flowing untreated from the  
25 Facility to the East River Canal, the Sacramento River, and the Sacramento-San Joaquin  
26 Delta.

27 52. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
28 of contaminated storm water are causing pollution and contamination of the waters of the  
United States in violation of Discharge Prohibition A(2) of the General Permit.

1 53. Plaintiff is informed and believes, and thereupon alleges, that these  
2 discharges of contaminated storm water are adversely affecting human health and the  
3 environment in violation of Receiving Water Limitation C(1) of the General Permit.

4 54. Plaintiff is informed and believes, and thereupon alleges, that these discharges  
5 of contaminated storm water are contributing to the violation of the applicable water quality  
6 standards in the Statewide Water Quality Control Plan and/or the applicable Regional Board's  
7 Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

8 55. Plaintiff is informed and believes, and thereupon alleges, that every day since  
9 March 30, 1992, Defendants have discharged and continue to discharge polluted storm water  
10 from the Facility in violation of the General Permit. Every day Defendants have discharged  
11 and continue to discharge polluted storm water from the Facility in violation of the General  
12 Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).  
13 These violations are ongoing and continuous.

14 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

17 56. Plaintiff incorporates the allegations contained in the above paragraphs as  
18 though fully set forth herein.

19 57. Section A and Provision E of the General Permit requires dischargers of  
20 storm water associated with industrial activity to develop and implement an adequate Storm  
21 Water Pollution Prevention Plan ("SWPPP") no later than October 1, 1992.

22 58. Defendants have failed to develop and implement an adequate SWPPP for  
23 the Facility. Defendants' ongoing failure to develop and implement an adequate SWPPP for  
24 the Facility is evidenced by, *inter alia*, Defendants' outdoor storage of industrial materials,  
25 including waste materials, without appropriate best management practices; the continued  
26 exposure of significant quantities of industrial material to storm water flows; the failure to  
27 either adequately treat storm water prior to discharge or to implement effective containment  
28 practices; and the continued discharge of storm water pollutants from the Facility at levels in

1 excess of EPA benchmark values and other applicable water quality standards.

2 59. Defendants have further failed to update the Facility's SWPPP in response to  
3 the analytical results of the Facility's storm water monitoring as required by the General  
4 Permit.

5 60. Each day since October 1, 1992 that Defendants have failed to develop and  
6 implement an adequate SWPPP for the Facility in violation of the General Permit is a separate  
7 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

8 61. Defendants have been in violation of the SWPPP requirement every day since  
9 October 1, 1992. Defendants continue to be in violation of the Act each day that they fail to  
10 develop and fully implement an adequate SWPPP for the Facility.

11 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

12 **THIRD CAUSE OF ACTION**

13 **Failure to Develop and Implement the Best Available**  
14 **And Best Conventional Treatment Technologies**  
**(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

15 62. Plaintiff incorporates the allegations contained in the above paragraphs as  
16 though fully set forth herein.

17 63. The General Permit's SWPPP requirements and Effluent Limitation B(3)  
18 require dischargers to reduce or prevent pollutants in their storm water discharges through  
19 implementation of BAT for toxic and nonconventional pollutants and BCT for conventional  
20 pollutants.

21 64. Defendants have failed to implement BAT and BCT at the Facility for their  
22 discharges of aluminum, copper, iron, specific conductance, total suspended solids, zinc and  
23 unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

24 65. Each day since February 25, 2006 that Defendants have failed to develop and  
25 implement BAT and BCT in violation of the General Permit is a separate and distinct violation  
26 of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

27 66. Defendants have been in violation of the BAT and BCT requirements every day  
28 since at least February 25, 2006. Defendants continue to be in violation of the BAT and BCT

1 requirements each day that it fails to develop and fully implement an adequate BAT and BCT  
2 for the Facility.

3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Develop and Implement an Adequate Monitoring and Reporting Program**  
6 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 67. Plaintiff incorporates the allegations contained in the above paragraphs as  
8 though fully set forth herein.

9 68. Section B of the General Permit requires dischargers of storm water associated  
10 with industrial activity to develop and implement a monitoring and reporting program  
11 (including, among other things, sampling and analysis of discharges) no later than October 1,  
12 1992.

13 69. Defendants have failed to develop and implement an adequate monitoring  
14 and reporting program for the Facility. Defendants' ongoing failures to develop and  
15 implement adequate monitoring and reporting programs are evidenced by, *inter alia*, their  
16 continuing failure to analyze storm water samples for all toxic chemicals and other pollutants  
17 likely to be present in the Facility's storm water discharges in significant quantities, and their  
18 failure to file required Annual Reports with the Regional Board which provide all required  
19 information concerning the Facility's visual observations and storm water sampling and  
20 analysis.

21 70. Each day since October 1, 1992 that Defendants have failed to develop and  
22 implement an adequate monitoring and reporting program for the Facility in violation of the  
23 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. §  
24 1311(a). These violations are ongoing and continuous.

25 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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27 //

28 //

**FIFTH CAUSE OF ACTION**

**False Certification of Compliance in Annual Report  
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

71. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

72. Defendants have falsely certified compliance with the General Permit in each of the Annual Reports submitted to the Regional Board since February 25, 2006.

73. Each day since at least February 25, 2006, that Defendants have falsely certified compliance with the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the General Permit's verification requirement each day that they maintain their false certification of its compliance with the General Permit.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

**VII. RELIEF REQUESTED**

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- a. Declare Defendants to have violated and to be in violation of the Act as alleged herein;
- b. Enjoin Defendants from discharging pollutants from the Facility and to the surface waters surrounding and downstream from the Facility;
- c. Enjoin Defendants from further violating the substantive and procedural requirements of the General Permit;
- d. Order Defendants to pay civil penalties of \$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, for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a) and 40 C.F.R. §§ 19.1 - 19.4 (pp. 200-202) (Dec. 31, 1996);
- e. Order Defendants to take appropriate actions to restore the quality of navigable waters impaired by their activities;
- f. Award Plaintiff's costs (including reasonable attorney, witness, and

1 consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,  
2 g. Award any such other and further relief as this Court may deem appropriate.

3  
4 Dated: April 27, 2011

Respectfully Submitted,  
LAW OFFICES OF ANDREW L. PACKARD

5  
6 By: /s/ Erik Roper  
7 Erik M. Roper  
8 Attorneys for Plaintiff  
9 CALIFORNIA SPORTFISHING  
10 PROTECTION ALLIANCE  
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**EXHIBIT A**



**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").

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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

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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).

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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.

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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

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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

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**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

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(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

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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

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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

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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  
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100 Petaluma Boulevard, Suite 301  
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## **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  
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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.