

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**)
)
Complainant,)
)
vs.)
)
INTERNATIONAL PAPER COMPANY,)
)
Respondent.)
_____)

IN THE OFFICE OF THE
NORTHWEST DISTRICT

OGC FILE NO. 08-0358

AMENDED CONSENT ORDER

This Amended Consent Order (Amended Order) is entered into between the State of Florida Department of Environmental Protection (Department or DEP) and the Respondent, International Paper Company (Respondent) to reach settlement of certain matters at issue between the Department and the Respondent. The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated thereunder. The Department administers Florida's National Pollutant Discharge Elimination System (NPDES) permitting and enforcement program under Sections 403.088 and 403.0885, F.S., and Chapters 62-4, 62-302, 62-620, 62-650 and 62-660, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Amended Order. This Amended Order is issued under the authority of Sections 403.061(8) and 403.088(2)(e) and (f), F.S.

2. Respondent is a "person" within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of International Paper Company's wastewater treatment plant (Facility) located at 375 Muscogee Road,

Cantonment, Escambia County, Florida (Property). Respondent owns the Property on which the Facility is located.

4. The Facility processes industrial wastewater, stormwater, and pretreated sanitary wastewaters associated with a Kraft process pulp and paper mill and discharges its wastewater to waters of the State located at approximately latitude 30° 34' 25" N, longitude 87° 19' 18" W. The Facility is subject to regulation under the Department's NPDES permitting and enforcement program. Respondent operates the Facility under Department Wastewater Permit No. FL0002526 -008-IW1S (Permit, attached and incorporated herein as Exhibit 1).

5. On September 11, 2014, Respondent timely applied to the Department for a renewal of the Permit (Renewal). The Permit remains in effect until a final decision is reached on the Renewal. Approval of the Renewal by the Department is contingent, in part, on compliance with the terms and conditions of this Amended Order.

6. On March 11, 2010 the Department and Respondent entered Consent Order No. 08-0358 (Consent Order) which mandated the completion of multiple complex projects to address the continuing exceedances of water quality criteria associated with the Respondent's wastewater discharge to Elevenmile Creek, a Class III freshwater creek. The Consent Order established enforceable deadlines for completion of corrective actions and compliance with the Permit conditions and applicable water quality standards.

7. Corrective Actions implemented by the Respondent pursuant to the Consent Order include but are not limited to: (i) the construction of improvements to the Facility's wastewater treatment system; (ii) the construction of an effluent transmission pipeline; (iii) the construction of a receiving wetland effluent distribution system; and (iv) and the implementation of surface water quality monitoring programs. Despite the Respondent's implementation of these corrective actions, full and continued compliance with the Permit's final effluent

limitations has not been achieved. More specifically, on thirteen occasions from 2015 to 2019 Respondent reported effluent quality monitoring results which failed to meet the Facility's permit limits for chronic whole effluent toxicity for the *Ceriodadphnia dubia* species IC₂₅ (hereinafter, Chronic Toxicity Exceedances) and which are each a violation of Permit Condition I.F.1, and Rules 62-302.530(20), 62-302.530(62), 62-620.610(7), 62-4.241(1) F.A.C., and Section 403.161(1)(b), F.S.,

8. As required by the Consent Order, Respondent has undertaken long-term comprehensive monitoring of the waters of Elevenmile Creek, Perdido Bay and the Effluent Distribution System to verify the effectiveness of the completed corrective actions and to demonstrate compliance with the Permit effluent limits. This long-term monitoring was undertaken, in part, to enable the Respondent to determine whether to propose the adoption of Type II Site Specific Alternative Criteria ("SSAC") pursuant to Rule 62-302.800(2), F.A.C., and pursue other moderating provisions if appropriate. If approved, the SSAC would replace the generally applicable Class III criteria identified in Rule 62-302.530, F.A.C., for pH, specific conductance, Dissolved Oxygen that would otherwise apply within the Effluent Distribution System, Tee and Wicker Lakes, and a downstream portion of Eleven Mile Creek.

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Having reached a resolution of the matter, Respondent and the Department mutually agree, and it is

ORDERED:

10. Except as specifically noted herein, this Amended Order supersedes the Consent Order.

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Placeholder for IPs SSAC language.

11. (a) To address the Chronic Toxicity Exceedances, beginning on the first day of the first full month after the effective date of this Amended Order and continuing for 36 months, Respondent shall conduct and continue to conduct monthly chronic toxicity testing for *Ceriodaphnia dubia* species (hereinafter CD Test) at the Facility. There shall be no less than 3 weeks and no more than 6 weeks between tests. The tests shall be conducted in accordance with the requirements as described in Exhibit 2 attached and incorporated to this Amended Order. Test data shall be submitted to the Department monthly utilizing the electronic reporting system EzDMR, along with the complete bioassay laboratory report for each analysis. If a monthly test for CD Test is invalid as established in EPA methods EPA-821-R-02-013 and EPA-821-R-02-014, another CD Test must be completed within 14 days after the last day of the invalid CD Test.

Respondent shall continue to conduct the testing on a monthly basis until such time Respondent demonstrates that twelve consecutive monthly samples have met the permit limits for chronic whole effluent toxicity for *Ceriodaphnia dubia*. The above-referenced demonstration with respect to twelve consecutive monthly samples shall be made within 36 months of the effective date of the Amended Consent Order. Within three years of the effective date of this Order, Respondent shall be in full compliance with Rules 62-4.262(a) and (b), 302.530(20), 62-302.530(62), and 62-620.610(7) F.A.C., regardless of any intervening events or alternative time frames imposed in this Amended Consent Order, other than those excused delays agreed to by the Department, as described in paragraph 17.

Respondent shall pay the Department stipulated penalties of \$10,000.00 for each valid CD Test that is not in compliance with the final Permit limit as listed in paragraph 1.a.(1) of Exhibit 1 for the three-year corrective action period contemplated by this Amended Consent Order. The Department may demand payment of stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's

issuance of written demand for payment and shall do so as further described in paragraph 24, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Amended Order or from filing suit in furtherance of any injunctive relief the Department deems necessary and appropriate.

In addition to completion of the corrective action for the Chronic Toxicity Exceedances, within 30 days of the effective date of this Amended Order, Respondent shall pay the Department \$131,000.00 for the reported effluent quality monitoring results that failed to meet the Facility's permit limits for chronic whole effluent toxicity. This amount includes \$130,000.00 for civil penalties and \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Amended Order.

(b) 1. In furtherance of Respondent's election to pursue SSAC for surface waters within the Facility's Effluent Distribution System ("EDS"), Tee and Wicker Lakes, and lower Eleven Mile Creek, within 30 days of the effective date of the Amended Order, Respondent shall petition the Department to initiate rulemaking to adopt Type II Site Specific Alternative Criteria as authorized by Rule 62-302.800(2), F.A.C. The petition to initiate rulemaking shall include the necessary information to demonstrate that the proposed criterion would fully maintain and protect the level of water quality necessary to protect human health and existing and designated beneficial uses.

(b) 2. Within 30 days of the effective date of the Amended Order, Respondent shall submit a Water Quality Based Effluent Limit (WQBEL) Level 1 Report in accordance with Rule 62-650.400 F.A.C., that proposes effluent limits for water quality parameters in 11. (b) 1. above, as well as for turbidity.

(c) Within 60 days of the effective date of this Amended Order, Respondent shall deposit \$1,000,000.00 into a Florida Department of Financial Services Escrow Account (Escrow

Account) in accordance with an Escrow Agreement signed by Respondent, the Department and the Florida Department of Financial Services (form of Escrow Agreement attached hereto as Exhibit 4). The Escrow Account may be used by the Department to finance projects in the region that support improvement of surface water quality. The Respondent and the Department do hereby declare that this Amended Order and Escrow Agreement do not create any obligation on the Department except as may be expressly stated herein or right for the Respondent or any other person to share in any potential remainder of the \$1,000,000.00 subsequent completion of any work contemplated or in any approved completed project pursuant to this Amended Order. The Department shall have sole discretion in the approval of disbursements from the Escrow Account.

If Respondent fails to make deposit of the full \$1,000,000.00 as required by this paragraph, Respondent consents to entry of a final judgment in the full amount of \$1,000,000.00 if and when the Department elects to file a Petition to enforce the terms of this Amended Order in Circuit Court. Entry of Final Judgment for the full amount of \$1,000,000.00 against Respondent shall be in addition to any stipulated penalties accrued pursuant to paragraphs 11. (a) and 23 of this Amended Order.

(d) In addition to the conditions contained within Respondent's existing authorizations, within 12 months of the effective date of this Amended Order Respondent shall comply with the new effluent limits detailed in Exhibit 3 attached and incorporated to this Amended Order. As detailed in Exhibit 3, Respondent shall meet effluent limits for two new surface water quality criteria, Total Ammonia Nitrogen (TAN), Rule 62-302.530(3), F.A.C. and Enterococci, Rule 62-302.530(6)(c), F.A.C. (e) In addition to the conditions contained within Respondent's existing authorizations, within 12 months of the effective date of the Amended

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Greg, this form may change somewhat – working on obtaining most recent version.

Order, Respondent shall meet the revised effluent limits as detailed in Exhibit 3 attached and incorporated into this Amended Order. As detailed in Exhibit 3, Respondent shall meet the new lower effluent limits for Biochemical Oxygen Demand 5 (BOD5), Total Suspended Solids (TSS), Adsorbable Organic Halides (AOX), Inorganic Nitrogen, Ortho Phosphate, Total Phosphorus, and Chemical Oxygen Demand (COD).

12. Prior to the completion of the corrective actions described above, the industrial wastewater effluent from the Facility will not meet the water quality based effluent limitation and/or specific condition of its Permit for pH, Specific Conductance, Turbidity, and Dissolved Oxygen. As such, Respondent shall, after the effective date of this Amended Order and continuing for up to 36 months thereafter, meet the interim discharge limits set forth below in Table 1 for any discharge of wastewater from Outfall # D-003.

| Table 1 – Interim Limits D-003 | | | | | | |
|---------------------------------------|------------------------------|-------------------|----------------------|--------------------------------|-----------------------|---------------------|
| D-003 | Discharge Limitations | | | Monitoring Requirements | | |
| Parameters (units) | Monthly Avg. | Daily Max. | Other–specify | Frequency | Sample Type | Sample Point |
| pH (standard units) | NA | range 5.0-8.5 | NA | Daily | Grab or Instantaneous | EFF-3 |
| Specific Conductance (µmhos/cm) | Report | 2,500 | NA | 3/week | Instantaneous | EFF-3 |
| Turbidity (NTU) | 50 | Report | NA | 3/week | Grab | EFF-3 |
| Dissolved Oxygen (mg/l) | Report | Report | Report Minimum | 3/week | Instantaneous | EFF-4 |

13. During the effective period of interim discharge limits of Paragraphs 11. (d) and 12, Respondent shall complete and submit to the Department the applicable Interim Discharge Monitoring Reports (DMRs) issued by the Department. These reports shall be submitted to the

Department of Environmental Protection monthly utilizing the electronic reporting system EzDMR, as required by the permit.

14. The provisions of the Amended Consent Order notwithstanding, Respondent shall continue to comply with the corrective actions with respect to Long-Term Monitoring and Land Management Practices as required by paragraph 15(d) of the Consent Order.

15. The provisions of the Amended Consent Order notwithstanding, Respondent shall continue to comply with the corrective actions with respect to the Conservation Easement as required by paragraph 15(e) of the Consent Order.

16. In the event of a shutdown, sale or conveyance of the Facility or of the property upon which the Facility is located, if all of the requirements of this Amended Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such shutdown sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the Facility, and (3) provide a copy of this Amended Order with all attachments to the new owner. The sale or conveyance of the Facility, or the property upon which the Facility is located for uses similar to the Respondent's use of the Facility and property shall not occur prior to the transfer of the proposed permit and the agreement by the purchaser to comply with this Amended Order until the Department has approved in writing the transfer of responsibility to the purchaser, or operator, or person(s) in control of the Facility. Respondent shall provide notice to the Department of a shutdown of the Facility and shall be relieved of the obligations in this Amended Order upon cessation of operations, except for outstanding unpaid penalties.

17. If an event occurs that causes delay or the reasonable likelihood of delay in the achievement of the requirements of this Amended Order, Respondent shall have the burden of

proving that the delay was or will be caused by circumstances beyond its reasonable control that could not have been overcome by due diligence. Upon occurrence of such an event or upon such an event becoming likely Respondent shall within 7 days, notify the Department orally and as soon thereafter as possible in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If Respondent demonstrates that the delay or anticipated delay has been or will be caused by circumstances beyond its reasonable control, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

18. With regard to any agency action taken by the Department, the Respondent may file a petition for formal or informal administrative proceeding, pursuant to Sections 120.569 and 120.57, F.S., and Chapters 62-110 and 28-106, F.A.C., if it disagrees with or otherwise disputes the Department's agency action. The petition must conform to the requirement of Rule 62-110.106, F.A.C., and must be received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, within twenty-one (21) days after receipt of written notice from the Department of any determination that Respondent wishes to challenge. Failure to file a petition within this time period shall constitute a waiver by Respondent of its right to request an administrative proceeding under section 120.569 and 120.57, F.S.

19. Nothing in this Amended Order shall prevent the Department from filing suit to specifically enforce any terms of this Amended Order. Any stipulated penalties assessed under paragraphs 11. (a) and 23 shall be in addition to the civil penalties assessed in paragraph 11. (a), Department costs and amounts in paragraph 11. (c) of this Amended Order.

20. Every calendar quarter after the effective date of this Amended Order, and continuing until all corrective actions have been completed, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects

being completed under this Amended Order, information as to compliance or noncompliance with the applicable requirements of this Amended Order including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work to be performed pursuant to this Amended Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each quarter. Quarterly reports shall be due as follows: January-March reports shall be submitted by April 30; April-June reports shall be submitted by July 30; July-September reports shall be submitted by October 30; and October-December reports shall be submitted by January 1 of the following year.

21. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraphs 11, 12, 13, 14, 15 within 3 years of the effective date of this Amended Order and be in full compliance with Rules 62-4.262(a) and (b), 302.530(20), 62-302.530(62), and 62-620.610(7) F.A.C., regardless of any intervening events or alternative time frames imposed in this Amended Order, other than those excused delays agreed to by the Department, as described in paragraph 17.

22. Within 90 days of the effective date of this Amended Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Amended Order to the Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

23. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 11. (b), 11. (c), 12, 13, 14, 15 of this Amended Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written

demand for payment and shall do so as further described in paragraph 24, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Amended Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties, Department costs and additional penalties agreed to in paragraphs 11. (a), and 11. (c) of this Amended Order.

24. Respondent shall make all payments required by this Amended Order by cashier's check, money Amended Order or on-line payment. Cashier's check or money Amended Order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Amended Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this Amended Order becomes final, effective and filed with the Clerk of the Department before online payment option is available.

25. Except as otherwise provided, all submittals and payments required by this Amended Order shall be sent to Assistant District Director, Department of Environmental Protection, Northwest District Office 160 West Government Street Suite 308 Pensacola, FL 32502.

26. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Amended Order and the rules and statutes administered by the Department.

27. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Amended Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations

described above up to the date of the filing of this Amended Order. This waiver is conditioned upon Respondent's complete compliance with all the terms of this Amended Order.

28. This Amended Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Amended Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Amended Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

29. In addition to any other reservations made herein, the Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Amended Order.

30. Respondent is fully aware that a violation of the terms of this Amended Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

31. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Amended Order. Respondent also acknowledges and waives its right to appeal the terms of this Amended Order pursuant to section 120.68, F.S.

32. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Amended Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

33. The terms and conditions set forth in this Amended Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Amended Order constitutes a violation of section 403.161(1)(b), F.S.

34. This Amended Order is a final Amended Order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Amended Order will not be effective until further Amended Order of the Department.

35. Respondent shall publish the following notice in a newspaper of daily circulation in Escambia County, Florida. The notice shall be published one time only within 30 days of the effective date of the Amended Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF AMENDED ORDER

The Department of Environmental Protection (“Department”) gives notice of agency action of entering an Amended Order with INTERNATIONAL PAPER COMPANY pursuant to section 120.57(4), Florida Statutes. The Amended Order addresses the industrial wastewater effluent quality issues at International Paper Company located at 375 Muscogee Road, Cantonment, Escambia County, Florida. The Amended Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Northwest District Office 160 W Government Street Suite 308 Pensacola, FL 32502.

Persons who are not parties to this Amended Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections

120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Amended Amended Order means that the Department's final action may be different from the position it has taken in the Amended Amended Order.

The petition for administrative hearing must contain all the following information:

- a) The OGC Number assigned to this Amended Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Amended Order;
- d) A statement of when and how the petitioner received notice of the Amended Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Amended Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Amended Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Amended Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days

of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Northwest District Office 160 W Government Street Suite 308 Pensacola, FL 32502. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Amended Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

36 Rules referenced in this Amended Order are available at

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT:
INTERNATIONAL PAPER COMPANY

By:

Name:

Title:

DONE AND AMENDED ORDERED this __ day of _____, 2019, in Escambia, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Emile Hamilton
Director
Northwest District

International Paper Company
Amended Order OGC No. 08-0358
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Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to:
Lea Crandall, Agency Clerk
Mail Station 35

