

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

HON. MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASTE ACTION PROJECT,)	
)	Case No. 3:14-cv-00842-MJP
Plaintiff,)	
)	CONSENT DECREE
v.)	
)	
INTERNATIONAL PAPER CO.,)	
)	
Defendant.)	
_____)	

I. STIPULATIONS

Plaintiff Waste Action Project sent a sixty-day notice of intent to sue letter to defendant International Paper Co. dba International Paper Recycling ("International Paper") on or about April 2, 2014, and filed a complaint against International Paper on June 9, 2014, each of which alleged violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, relating to discharges of stormwater from International Paper's paper recycling facility, located at or about 1225 6th Ave. N., Kent, WA 98032 (the "Facility"), and seeking declaratory and injunctive relief, civil penalties, and attorneys' and consultant's fees and costs.

CONSENT DECREE - 1
No. 3:14-cv-00842-MJP

Smith & Lowney, p.l.l.c.
2317 east john street
Seattle, Washington 98112
(206) 860-2883

1 International Paper and Waste Action Project (the "Parties") agree, and this Court by
2 entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith,
3 that settlement of this matter will avoid prolonged and complicated litigation among the Parties,
4 and that this Consent Decree is fair, reasonable, and in the public interest.

5 Waste Action Project and International Paper stipulate to the entry of this Consent Decree
6 without trial, adjudication, or admission of any issues of fact or law regarding the claims and
7 allegations set forth in Waste Action Project's complaint and sixty-day notice of intent to sue
8 letter.
9

10 II. ORDER AND DECREE

11 THIS MATTER came before the Court upon the foregoing stipulations of the parties.
12 Having considered the stipulations and the terms and conditions set forth below, the Court
13 hereby ORDERS, ADJUDGES, and DECREES as follows:
14

- 15 1. This Court has jurisdiction over the parties and subject matter of this action.
- 16 2. Each signatory for the parties certifies for that party that he or she is authorized to
17 enter into the agreements set forth below.
- 18 3. This Consent Decree applies to and binds the parties and their successors and
19 assigns.
20
- 21 4. This Consent Decree applies to International Paper's operation and oversight of
22 the Facility that is subject to National Pollutant Discharge Elimination System Permit No.
23 WAR004422 (the "NPDES Permit"). This Consent Decree has no application with regard to any
24 issue at any other location where International Paper may conduct operations.
25

26
27 CONSENT DECREE - 2
28 No. 3:14-cv-00842-MJP
29

Smith & Lowney, p.l.l.c.
2317 east john street
Seattle, Washington 98112
(206) 860-2883

1 5. This Consent Decree is a full and complete settlement and release of all claims set
2 forth in the complaint, the sixty-day notice of intent to sue letter, and all other claims arising
3 from the facts alleged in the complaint and the sixty-day notice of intent to sue letter, known or
4 unknown, contingent or otherwise, relating to any acts or omissions, existing as of the date of
5 entry of this Consent Decree, that could be asserted against International Paper or its employees,
6 agents, successors, and assigns, under the Clean Water Act that arise from operations at the
7 Facility. These claims are released and dismissed with prejudice.
8

9
10 6. This Consent Decree is a settlement of disputed facts and law. It is not an
11 admission or adjudication regarding any allegations by Waste Action Project in this case or of
12 any fact or conclusion of law related to those allegations. It is not evidence of any wrongdoing or
13 misconduct on the part of International Paper.
14

15 7. Concurrent with Waste Action Project's filing of the notice letter and initiation of
16 this lawsuit, International Paper hired a stormwater consultant, updated its Stormwater Pollution
17 Prevention Plan ("SWPPP"), and implemented new best management practices ("BMPs").
18 Additional BMPs implemented at the Facility include sweeping the Facility twice weekly,
19 installing fabric screening and eco-blocks along the west boundary fence, installing catch basin
20 inserts with media, cleaning up paper particles on the pavement throughout the Facility, placing a
21 significant amount of paper and plastic bales under cover, and reducing the volume of paper and
22 plastic stored outside prior to baling. International Paper also increased sampling of stormwater
23 discharges from one to two distinct points of discharge at the Facility.
24
25
26

27 CONSENT DECREE - 3
28 No. 3:14-cv-00842-MJP
29

Smith & Lowney, p.l.l.c.
2317 east john street
Seattle, Washington 98112
(206) 860-2883

1 8. International Paper agrees to the following terms and conditions in full and
2 complete satisfaction of all the claims covered by this Consent Decree:

3 a. International Paper will comply fully with all conditions of its
4 NPDES Permit No. WAR004422, and any successor, modified, or replacement permit for
5 the Facility;
6

7 b. Upon entry of this decree, International Paper will sample its
8 stormwater discharges from both discharge monitoring points at the Facility during
9 regular business hours at least once per month in each month with a discharge until it has
10 collected six stormwater samples. International Paper will have these samples analyzed
11 for pollutant concentrations in accordance with Condition S5 of the NPDES Permit and
12 will submit the results to the Department of Ecology on discharge monitoring report
13 forms to the extent required by law, and, within thirty days of receipt of laboratory
14 analysis results, transmit the forms and results to Waste Action Project;
15

16 c. Within three months of entry of this Consent Decree, International
17 Paper must evaluate and implement additional BMPs to address the following issues at
18 the facility:
19

20 1. oil staining and pooling on the pavement throughout the
21 parking and loading areas from leaking trucks and equipment;
22

23 2. migration of plastic and related debris from the plastic
24 collection area throughout the west side of the facility and beyond the berms in the
25
26

1 collection areas. International Paper retains discretion to determine what additional
2 BMPs to implement at the Facility but International Paper must design the additional
3 BMPs in good faith to address the issues identified in this paragraph II.8.C. Under no
4 circumstances may International Paper use its discretion to avoid implementation of
5 additional BMPs within three months of entry of the Consent Decree as required in this
6 paragraph II.8.C;
7

8 d. Within six months of the entry of this Consent Decree,
9 International Paper will clean up the paper, trash, and other debris that migrated outside
10 of the Facility into the ditch along the west side of the Facility;
11

12 e. For three years following entry of this Consent Decree,
13 International Paper will, on a quarterly basis, forward copies of all documents transmitted
14 to or received from the Department of Ecology concerning compliance with the NPDES
15 Permit to Waste Action Project, including but not limited to discharge monitoring reports
16 and the results of samples collected pursuant to sub-paragraphs (8)(b) of this Consent
17 Decree;
18

19 f. International Paper will allow Waste Action Project and its
20 expert(s) to inspect the facility at a mutually agreeable time within one year of the entry
21 of the Consent Decree to observe International Paper's implementation of this Consent
22 Decree, including compliance with the new SWPPP, BMPs, and the NPDES permits,
23 subject to an access agreement mutually agreed upon by the Parties. International Paper
24
25
26

1 will pay for the reasonable costs of Waste Action Project's expert(s) for this inspection,
2 not to exceed \$2,000, within fourteen (14) days of receipt of Waste Action Project's
3 invoice.

4
5 9. Within fifteen (15) days of entry of this Consent Decree, International Paper will
6 pay the sum of NINETY-FIVE THOUSAND DOLLARS (\$95,000.00) to Green River
7 Community College Foundation as described in Attachment A of this Consent Decree for
8 environmental benefit projects in the Green River watershed. Payment will be made to the order
9 of Green River Community College Foundation and delivered to George Frasier, 12401 SE
10 320th St., Auburn WA 98092-3622. Payment will include the following reference in a cover
11 letter or on the check: "Consent Decree, Waste Action Project v. International Paper."
12 International Paper agrees to provide a copy of the check and cover letter, if any, to Waste
13 Action Project and its counsel at the addresses identified in Paragraph 18, below.
14
15

16 10. Within fifteen (15) days of entry of this Consent Decree, International Paper shall
17 pay Waste Action Project TWENTY-NINE THOUSAND DOLLARS (\$29,000) as full and final
18 reimbursement for all litigation fees, expenses, and costs (including reasonable attorneys' and
19 consultant's fees) incurred in this matter by check payable and mailed to Smith & Lowney,
20 PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard Smith. International Paper's
21 payment shall be in full and complete satisfaction of any claims that Waste Action Project has or
22 may have, either legal or equitable, and of any kind or nature whatsoever, for fees (including
23 attorneys' and consultant's fees), expenses, and costs incurred in this matter.
24
25
26

1 11. "Force Majeure" for the purposes of this Consent Decree is defined as an event
2 arising from causes outside the reasonable control of International Paper which delays or
3 prevents the performance of any obligation required by this Consent Decree that cannot be cured
4 by due diligence. Delay in performance or failure to perform any requirement of this Consent
5 Decree caused by a Force Majeure event is not a failure to comply with the terms of this Consent
6 Decree, provided that International Paper notifies Waste Action Project of the event, the steps
7 that International Paper will take to perform the obligation, the projected time that will be needed
8 to complete performance, and the measures that have been taken or will be taken to prevent or
9 minimize any impacts to stormwater quality resulting from delay in performance of the
10 obligation.
11

12
13 International Paper will notify Waste Action Project of the occurrence of a Force Majeure
14 event as soon as reasonably possible but, in any case, no later than fifteen (15) business days
15 after the occurrence of the event. In such event, the time for performance of the obligation will
16 be extended for a reasonable period of time following the Force Majeure event.
17

18 By way of example and not limitation, Force Majeure events include:

- 19
- 20 a. Acts of God, war, insurrection, or civil disturbance;
 - 21 b. Earthquakes, landslides, fire, floods, drought;
 - 22 c. Actions or inactions of third parties over which International Paper has no
23 control;
 - 24 d. Restraint by court order or order of public authority;
- 25
26

1 e. Strikes;

2 f. Litigation, arbitration, or mediation that causes delay.

3
4 12. Unless otherwise expressly provided for in this Consent Decree, the dispute
5 resolution procedures of this paragraph shall be the exclusive mechanism to resolve disputes
6 arising under or with respect to this Consent Decree. The Court will retain jurisdiction over this
7 matter and allow this case to be reopened without filing fee for the purpose of enabling the
8 parties to apply to the Court for any further order that may be necessary to construe, carry out,
9 enforce compliance, or resolve any substantive dispute regarding the terms or conditions of this
10 Consent Decree until termination of the Consent Decree per paragraph 14.

11
12 In the event of a substantive dispute regarding interpretation of, implementation of, or
13 compliance with, this Consent Decree, the parties will work to resolve the dispute as follows:

14 a. Written Notice: The parties must first attempt to resolve the dispute by
15 serving a written notice that identifies the alleged dispute and requested resolution.

16 b. In-Person Meeting: Upon the request of either party, an in-person meeting
17 between the parties must take place within thirty (30) days of service of the written notice
18 or as soon as reasonably possible. At the in-person meeting, the parties will make a good
19 faith attempt to resolve the dispute.
20
21

22 c. Court Action: If no resolution is reached within thirty (30) days from the
23 date of the in-person meeting, or sixty (60) days from service of the written notice,
24
25

1 whichever is earlier, a party may file a motion with the Court seeking an order to resolve
2 the dispute.

3 13. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
4 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
5 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S.
6 Attorney General and the Administrator of the U.S. EPA. Therefore, upon the filing of this
7 Consent Decree by the parties, Waste Action Project will serve copies of it upon the
8 Administrator of the U.S. EPA and the U.S. Attorney General, with copy to International Paper.
9

10
11 14. This Consent Decree will take effect upon entry by this Court. It terminates three
12 year after entry of this Consent Decree.

13
14 15. Both parties have participated in drafting this Consent Decree.

15 16. This Consent Decree may be modified only upon the approval of the Court.

16
17 17. If for any reason the Court should decline to approve this Consent Decree in the
18 form presented, this Consent Decree is voidable at the discretion of either party. The parties
19 agree to continue negotiations in good faith in an attempt to cure any objection raised by the
20 court to entry of this Consent Decree.
21

22 18. Notifications required by this Consent Decree must be in writing. The sending
23 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
24 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
25

26
27 CONSENT DECREE - 9
28 No. 3:14-cv-00842-MJP
29

Smith & Lowney, p.l.l.c.
2317 east john street
Seattle, Washington 98112
(206) 860-2883

1 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other
2 communication regarding this decree to be valid, it must be delivered to the receiving party at the
3 one or more addresses listed below or to any other address designated by the receiving party in a
4 notice in accordance with this paragraph 18;

5
6
7 **if to Waste Action Project:**

8 Greg Wingard
9 Waste Action Project
10 P.O. Box 4832
11 Seattle, WA 98194
12 gwingard@earthlink.net

13 **and to:**

14 Elizabeth Zultoski
15 Smith & Lowney, PLLC
16 2317 E. John St.
17 Seattle, WA 98112
18 elizabethz@igc.org

19 **if to International Paper:**

20 Keri England
21 International Paper, Kent Recycling Facility
22 1225 6th Ave N
23 Kent, WA 90832
24 keri.england@ipaper.com

25 **and to:**

26 Athena Kennedy
27 Van Ness Feldman LLP
28 719 Second Avenue, Suite 1150
29 Seattle, WA 98104
amk@vnf.com

CONSENT DECREE - 10
No. 3:14-cv-00842-MJP

Smith & Lowney, p.l.l.c.
2317 east john street
Seattle, Washington 98112
(206) 860-2883

1 A notice or other communication regarding this Consent Decree will be effective when
2 received unless the notice or other communication is received after 5:00 p.m. on a business day,
3 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the
4 next business day. A notice or other communication will be deemed to have been received: (a) if
5 it is delivered in person or sent by registered or certified mail or by nationally recognized
6 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
7 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a
8 change in address for which no notice was given, then upon that rejection, refusal, or inability to
9 deliver; or (c) for notice provided via e-mail, upon receipt of a response (other than an automatic
10 response) by the party providing notice or other communication regarding this Consent Decree.
11
12

13
14 DATED this 15 day of April 2015,

15 

16 HONORABLE MARSHA J. PECHMAN
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26

27 CONSENT DECREE - 11
28 No. 3:14-cv-00842-MJP
29

Smith & Lowney, p.l.l.c.
2317 east john street
Seattle, Washington 98112
(206) 860-2883

1 PRESENTED BY:

2 VAN NESS FELDMAN LLP

SMITH & LOWNEY PLLC

3
4 By: /s/

5 Athena M. Kennedy, WSBA # 39561
6 Attorney for International Paper
7 719 Second Avenue, Suite 1150
8 Seattle, WA 98104
9 (206) 623-9372
10 Fax: (206) 623-4986
11 amk@vnf.com

By: /s/

12 Elizabeth H. Zultoski, WSBA # 44988
13 Richard A. Smith, WSBA # 21788
14 Attorneys for Plaintiff
15 2317 E. John St.
16 Seattle, WA 98112
17 (206) 860-2883
18 Fax: (206) 860-4187
19 elizabethz@igc.org
20 rasmithwa@igc.org

21 WASTE ACTION PROJECT

INTERNATIONAL PAPER

22 Signature:

Greg Wingard

Signature:

Thomas A. Cloves (THOMAS A. CLOVES)

23 Title:

Director, Waste Action Project

Title:

Vice President + GM Contaminated + Recycling

24 Dated:

Feb. 19, 2015

Dated:

2.17.15

25
26
27 CONSENT DECREE - 12
28 No. 3:14-cv-00842-MJP
29

Smith & Lowney, p.l.l.c.
2317 east john street
Seattle, Washington 98112
(206) 860-2883



Green River
COMMUNITY COLLEGE
FOUNDATION

12401 SE 320th St., Auburn WA 98092-3622
Phone: (253) 288-3330 • Fax: (253) 288-3420
E-mail: foundation@greenriver.edu

January 6, 2015

Re: Waste Action Project Vs. International Paper Company, Case No. 3:14-cv-00842-MJP

To Whom It May Concern:

Green River Community College Foundation is an institutionally related Foundation and is a stand-alone 501 C 3 nonprofit, EIN 51-0168649. Within the mission of the Foundation, providing resources to assist Green River College in achieving educational excellence, are the four strategic priorities: to increase access and retention, support student success, and provide capacity and flexibility for the college to fulfill its mission. The Green River College Natural Resources Program is a career and technical program of Green River, and Natural Resources Students are engaged in a variety of experiential learning projects that have value to the natural resources and ecological welfare in our community.

We have reviewed the draft consent decree that provides payment to the Green River Community College Foundation. The funding provided will be used to pay for projects focused on improved water quality in the Green River watershed. Work may include invasive plant control, native planting, and other stewardship activities conducted by or through the Green River College Natural Resources Department. This work will be carried out in partnership with existing conservation organizations, and local governments engaged in water quality related conservation projects in the middle Green River, and its tributaries.

All money received as part of this agreement will be used for this project and materials. No money will be spent on political lobbying activities. This project will benefit water quality through discrete conservation projects, building on similar projects students are already engaged in, and planning in the watershed. Partnering with area conservation organizations and local governments will assure project success, and maximize the opportunity to further leverage resources to increase benefits to water quality specifically and the environment in general.

Green River Community College Foundation will report back to the parties, including the Court, Department of Justice, International Paper Company and Waste Action Project, upon completion of the described project.

Please do not hesitate to contact us with questions or for additional information.

Sincerely,

A handwritten signature in cursive script that reads "George P. Frasier".

George P. Frasier,

Executive Director

Green River Community College Foundation