



COMPREHENSIVE CORRECTIVE ACTION PLAN SUBMITTED ON BEHALF OF INTERNATIONAL PAPER COMPANY

Introduction

Currently, International Paper Company (“IP”) is engaged in three regulatory processes with the Florida Department of Environmental Protection (“the Department”). First, since 2014, IP has had an application before the Department to renew its Industrial Wastewater / National Pollutant Discharge Elimination System permit (“NPDES Permit”). Second, IP has a Petition to Initiate Rulemaking seeking adoption of Site-Specific Alternative Criteria (“SSAC” and “SSAC Petition”) for pH and specific conductance within the existing Effluent Distribution System (“EDS”, as depicted in Figure 1). IP and the Department have been informed that the U.S. Environmental Protection Agency (“USEPA”) may not be likely to approve Department SSACs due to a change in federal regulations that occurred after the SSACs were made available in a previous consent order with IP. Third, IP remains subject to Consent Order 19-1453, executed by the Florida Department of Environmental Protection (“the Department”) on April 28, 2020 (“the Consent Order”) for exceeding the limits in its existing NPDES Permit for chronic whole effluent toxicity. The scientific studies required by the Consent Order have been completed and the results of those studies submitted to the Department. As a result of the scientific studies required by the Consent Order, IP has determined that the exceedances are due to variability from multiple sources, including the contributions from salt-ion toxicity and Emerald Coast Utility Authority (“ECUA”) effluent referenced in the Consent Order, although none of these sources is the sole cause of the exceedances. To resolve all outstanding regulatory matters, IP is proposing this Comprehensive Corrective Action Plan (“CCA Plan”), as indicated in its *Emerald Coast Utility Authority: Reclaimed Water Study Final Report*, submitted to the Department on November 1, 2021.

Subject to approval by the Department, and if the assumptions in this document are supported by further study and analysis in a detailed proposal (as explained below), and subsequent analysis under the applicable permitting regulations, this CCA Plan would allow IP to attain water quality standards for pH, specific conductance, and chronic whole effluent toxicity, and provide the basis for renewal of IP’s NPDES Permit.

Overview

Based on the belief that SSAC would be available, the Department and IP agreed to a prior consent order, effective in 2010 (“the 2010 Consent Order”). The 2010 Consent Order requires a series of corrective actions and recognized that, despite these corrective actions, IP may ultimately decide to pursue SSAC for several parameters, including pH and specific conductance. Based on the updated position of USEPA, however, SSACs may no longer be available to IP (despite a decade’s worth of restoration work and expenditures by IP of nearly \$100M).

This CCA Plan is alternative to SSACs that could have been implemented in the 2010 Consent Order and the CCA Plan was apparently considered by the Department and IP but rejected because of the greater complexity and because the only data showing IP’s compliance with water quality standards for nutrients was modeling, rather than real-world data.

Today, a decade's worth of monitoring has proven that the receiving waters of IP's effluent (EDS and Upper Perdido Bay) are achieving applicable numeric nutrient criteria. The CCA Plan can therefore be viewed as the plan IP and the Department would have selected in 2010, if they had foreknowledge of USEPA's change in position on SSACs like those proposed by IP, and with ten years of long-term monitoring data on nutrient impacts in Upper Perdido Bay, or lack thereof.

IP's CCA Plan is based on an expansion of the EDS footprint – IP believes through construction of a new berm south of the southernmost existing berm to the north of Tee and Wicker lakes (subject to the Detailed Proposal) – where the freshwater wetlands transition to marine waters. The berm would contain one or more discharge points into marine waters, and compliance with water quality standards would be measured against the Department's marine standards. IP would expect to provide mitigation for the entire EDS: the expanded wetland area as well as areas in the existing EDS for which there was no previous mitigation. As explained in more detail below, approval of the CCA Plan would occur in two or three phases: (a) submission of a detailed proposal; (b) submission of applications for an Environmental Resource Permit under s. 373.4131, Fla. Stat., ("ERP") and State 404 Program permit ("404 Permit") pursuant to s. 373.4146, Fla. Stat.; and (c) submission of a revised NPDES Permit application.

Sequence and Description of Events

Detailed Proposal

The Detailed Proposal would include the first complete articulation of the proposal including a high-level design prepared by qualified contractors, a regulatory plan, preliminary information related to the ERP and 404 permit applications, and specific deadlines for subsequent phases.

Because qualified engineers have only recently been engaged, no preliminary assessment is possible in this CCA Plan of the level of design or potential supporting documents that would be included in the Detailed Plan related to design and construction, other than the inclusion of such documents in the Detailed Plan.

IP anticipates collaborating with the Department on the regulatory plan before including it in the Detailed Proposal. At a minimum, the regulatory portion of the Detailed Proposal would include proposed locations for measuring compliance with marine water quality standards and address whether any water requiring a 404 Permit are waters for which the U.S. Army Corps of Engineers ("USACE") retains permitting jurisdiction under the River and Harbors Act.¹

At this time, IP anticipates the following activity would be included in the Detailed Proposal related to the ERP and 404 permit applications.

¹ It is not currently known whether the berm location and point of compliance will occur within the 300-foot buffer retained by the USACE around tidal waters.

- Preliminary Delineation of the Jurisdictional Area of the EDS: A preliminary delineation of the jurisdictional impact area of the EDS will need to be completed through a combination of remote sensing, unmanned aerial reconnaissance, and some ground truthing. The jurisdictional area includes all freshwater EDS areas that currently receive effluent that were jurisdictional wetlands prior to initiation of this proposed project. This area would exclude pre-effluent delineated uplands and any areas within the EDS that were previously mitigated for under the June 28, 2010 404 permit. A desktop approximation of the predominantly freshwater and predominantly marine waters is provided in Figure 1. The approximate total area of the freshwater portion of the EDS presented in Figure 1 is 906 acres, of which approximately 42 acres was delineated as upland. The final jurisdictional impact area will depend on the alternative that is chosen. For instance, construction of a fifth berm with a single outlet point would reduce the total jurisdictional impact area from what is currently impacted. The total compensatory mitigation needed to offset proposed impacts will be based on a variety of factors, including previously conducted mitigation measures associated with historical 404 permit and ERP specifications.
- Draft Purpose and Need: The Detailed Proposal will include a background synopsis that details the 2010 Consent Order, removal of effluent from Elevenmile Creek and diversion into the EDS, and why pH and specific conductivity water quality standards cannot be achieved. The results of the investigation into the chronic whole effluent toxicity exceedances will be summarized. Development of the purpose and need will be an intentional process as the statement will guide the alternatives analysis. IP anticipates that the need and the purpose is to meet state water quality standards for pH, specific conductance, and chronic whole effluent toxicity.
- Draft Alternatives Analysis: The draft alternatives analysis is needed for the pre-application meeting, so extensive analyses would not be necessary at the Detailed Proposal stage. Within each alternative there will be a discussion of the anticipated direct, secondary, and cumulative impacts of the alternative as well as avoidance and minimization efforts, a comparison of impacts among the alternatives, and an explanation for how the alternative meets or does not meet the purpose and need. Because no other alternatives are currently known to IP that would achieve state water quality standards, it is possible that the alternatives analysis only includes a preferred alternative and a no-action alternative.
- Environmental Considerations: The joint permit application (62-330.060(1) Sec.D) requires a detailed environmental considerations evaluation. Several of these considerations were evaluated during the initial permitting process but may need to be updated depending on the alternative selected for implementation. Many of these evaluations were completed during the initial 404 permitting process, and IP proposes to rely upon several historical studies and determinations to support the preferred alternative; updates to historical studies will be conducted as necessary.
 - Avoidance and Minimization
 - Fish, Wildlife, Listed Species, and their Habitats
 - Water quantity impacts to wetlands and other surface waters
 - Public Interest Test
 - Water Quality

- Secondary Impacts
- Cumulative Impacts
- Mitigation Plan

IP proposes submission of the Detailed Proposal no later than **March 31, 2022**. IP anticipates that Departmental approval would be necessary before proceeding with the next phase.

The Detailed Proposal would include specific deadlines for IP to submit applications for ERP and 404 Permits and to submit a revised NPDES Permit application. IP proposes that the Consent Order would be modified after receipt of the Detailed Proposal to incorporate the specific deadlines for submitting the ERP and 404 Permit Applications and submitting a revised NPDES Permit application. Such a modification would be necessary before August 13, 2022, the current completion date required in the Consent Order.²

IP's timeline would be based on the number of days from the pertinent Departmental action, such as approval of the Detailed Proposal or final agency action on permit applications, rather than a fixed dates. For example, a deadline for IP to submit ERP and 404 applications would be stated as "Within XX days of the Department's approval of the Detailed Proposal, IP shall submit the ERP and 404 permit applications described in the Detailed Proposal." If the Department believes fixed dates are necessary, then any delay by the Department would trigger a commensurate delay (i.e., a day-for-day delay) of subsequent IP deadlines, without the requirement for notification under the applicable force majeure provision, as found in paragraph 37 of the Consent Order. IP anticipates that any delay by IP in meeting deadlines imposed under a modification to the Consent Order would subject IP to penalties, as found in paragraph 29.b. of the Consent Order.

ERP and 404 Permit Applications

ERP and 404 permit applications would be submitted after one or more pre-application meetings. IP would compile any data and information needed for permit applications. Data will include jurisdictional delineations, previous permits, previous consultations with agencies, especially U.S. Fish and Wildlife Service, and identification of available mitigation. Any required consultations will be conducted.

IP anticipates submitting the permit application utilizing form 62-330.060, F.A.C. Once the permit is submitted and is considered "Administratively Complete", a public notice of the permit request will be sent out. This public notice will be sent directly to the USEPA, State Historic Preservation

² This date is based on a 224-day period between the petition filed challenging the Consent Order on July 21, 2020, through the Department's publication of the Final Order resolving the challenge on March 2, 2021. Other approaches to modifying the timeline in the Consent Order are possible, but because the CCA Plan includes Departmental actions beyond the control of IP and potentially beyond the control of the Department (if the 404 Permit must be obtained from the USACE), any such alternate approach would require extension of the interim limits in paragraph 21, Table 1, of the Consent Order through the Department's final agency action on the revised NPDES Permit application.

Office, Florida Fish and Wildlife Conservation Commission, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the State of Alabama for review and comment.

Until a Detailed Proposal is complete, a precise schedule is difficult to provide.

Revised NPDES Permit Application

IP anticipates that following approval of the ERP and 404 permits by the Department (and possibly including the USACE), IP would submit a revised NPDES permit application to reflect compliance with marine water quality standards and an updated point of compliance located immediately downstream of the expanded EDS. IP anticipates that the ERP and 404 permits would provide reasonable assurance for meeting marine water quality standards, and that the NPDES Permit would include a new consent order requiring completion of the expanded EDS and achievement of the marine water quality standards by a specific date. The existing permit limits, including the existing interim limits for pH, specific conductance, turbidity, and dissolved oxygen, would remain in place until completion of the construction, commencement of discharges in the new location, and a possible period for grow-in and testing.

It is possible that IP and the Department could decide to submit the revised NPDES Permit application simultaneously with the ERP and 404 Permit applications, but the Detailed Proposal will provide more information to make such a decision.

Until a Detailed Proposal is complete, a precise schedule is difficult to provide.

Conclusion

IP provides this CCA Plan for Department review and requests the Department's response.