

October 18, 2021

**VIA U.S. MAIL AND EMAIL**

Yvonne West, Director  
State Water Resources Control Board, Office of Enforcement  
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Sacramento, CA 95814  
yvonne.west@waterboards.ca.gov

Jayne Joy  
Executive Director  
Santa Ana Regional Water Quality Control Board  
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Riverside, CA 92501  
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CC:  
Chair Lana Peterson and Board Members  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501  
lana.peterson@waterboards.ca.gov

Dear Ms. West and Ms. Joy,

This whistleblower complaint is filed by the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), as well as the individual Kingspan employees signed below against Kingspan Light + Air (“Kingspan”). We ask that your offices (collectively, the “State Board”) investigate Kingspan’s compliance with its Storm Water Pollution Prevention Plan (“SWPPP”) at its manufacturing facility located in Santa Ana, California (“Facility”). Kingspan has a recent history of discharging metals and other substances into the stormwater above the levels permitted by law. It is currently under a Level 2 ERA Action Plan for aluminum, iron, and zinc and a Level 1 Action Plan for Total Suspended Solids. Kingspan revised its SWPPP as recently as December 2020 to reflect these action plans.

SMART is a union that represents sheet metal workers, welders, production employees and more in industries across the United States and Canada. The individuals signing this complaint are employees of Kingspan at the Facility and residents of neighborhoods that surround it. Based on interviews with Kingspan workers, our investigation has revealed that Kingspan has not adhered in enumerated ways to the Best Management Practices (“BMPs”) set out in the SWPPP and associated documents. Our investigation has also uncovered potential

sources of stormwater contamination that we believe should have been included and addressed in the SWPPP. We ask that your offices conduct an investigation into the following:

- Kingspan states in its SWPPP and associated documents that it has implemented as a BMP a system of daily industrial vacuum cleaning in exterior areas of the Facility. In reality, the worker assigned to perform that task over the summer of 2021 states that he did not use the vacuum during the summer of 2021 except a single time. Instead of vacuuming dust and debris as contemplated by the BMP, the worker actually operated a leaf blower to clean the exterior areas of the Facility. The vacuum sat inside a production building of the Facility mainly untouched until recently.
- Kingspan states in its SWPPP and associated documents that it has implemented a BMP of maintaining logs recording the regular use of the industrial vacuum described above. In fact, while the worker who operated the leaf blower in lieu of the vacuum did sign papers (papers that he could not read), he was not operating the vacuum during this time. After we suggested to a third party with the legal right to review such logs that they request copies of them, Kingspan management asked the worker to sign several papers at once (again, papers that he could not read).
- Kingspan states in its SWPPP and associated documents that it has implemented a BMP of covering a dumpster and trash bins that are a potential source of groundwater contamination. Workers state that this has not always happened, and we provide recent aerial photographs that appear to show dumpsters uncovered when the Facility was not operating.
- Kingspan identifies in its SWPPP and associated documents two dust and particulate generating activities conducted outside the production buildings: pallet construction and a sand berm located at the Facility. Kingspan fails to state that workers regularly engage in cutting fiberboard panels using a table saw in the outside areas of the Facility, a process that generates a great deal of dust. This task is performed outside as frequently as two to three times per week, according to workers.
- Kingspan has not listed all the industrial materials in its SWPPP that workers report are in use. Notably, workers state that they utilize galvanizing spray paint in the production process. Zinc is the primary ingredient in major brands of galvanized paint.
- Kingspan installed a gutter system in accordance with its SWPPP. In doing so, it used its own employees to fabricate and install the system based upon drawings provided by an outside company. One worker says that the gutter leaked after it first rained: his recollection of the timeline coincides with a recording of 0.19 inches of

rain at the Irvine, California weather station on August 11, 2021, or 0.04 inches of rain on August 21, 2021.

Kingspan has a history of stormwater discharges that exceed allowable levels of zinc and other contaminants. That will not change unless the company complies scrupulously with the BMPs that it has set out in its SWPPP. While your offices have heard from Kingspan's management and consultants regarding the company's good intentions, we believe it is time that you hear from its workers. Their lives are profoundly impacted by Kingspan's practices, not only because they work for the company but also because many of them reside in the neighborhoods that surround the Facility. We ask you thoroughly to investigate the claims and evidence set out herein.

## **I. Background**

Kingspan produces skylights for use in industrial and commercial facilities. It maintains an industrial facility located at 302 and 401 Goetz Avenue in Santa Ana, California. The Facility encompasses two buildings ("Building 302" and "Building 401") located on either side of Goetz Avenue. Stormwater from the Facility discharges directly to the Santa Ana Delhi Channel and is subject to the regulations in place to protect the impaired waterbodies of the San Diego Creek Watershed and the Newport Beach Watershed. The receiving waters are the Santa Ana Delhi Channel, the Upper Newport Bay, the Lower Newport Bay, and the Pacific Ocean.

On November 18, 2018, Kingspan prepared a revised SWPPP to meet the requirements of the Industrial General Permit, as adopted April 1, 2014. (Kingspan's consultant Trinity Consultants prepared the revised SWPPP. For purposes of this letter, reference to actions taken by Trinity Consultant will be described as actions by Kingspan.)

On November 19, 2019, Kingspan revised the SWPPP based upon a Level 1 ERA report for aluminum, iron, and zinc. Kingspan reported average stormwater sampling results for reporting year 2018-2019 that exceeded the annual Numeric Action Level ("NAL") for aluminum (sampling = 1.2 mg/L; NAL = 0.75 mg/L), for iron (sampling 1.46 mg/L; NAL=1.0 mg/L), and for zinc (sampling = 2.66 mg/L; NAL = .26 mg/L).

On June 12, 2020, Orange County Coastkeeper ("Coastkeeper") served Kingspan with a Notice of Violation and Intent to File Suit Under the Clean Water Act, alleging that Kingspan was in violation of the IGB and the Clean Water Act. On August 12, 2020, Coastkeeper filed suit in the United States District Court for the Central District of California.

In December 2020, Kingspan revised the SWPPP to reflect a Level 2 ERA Action Plan for aluminum, iron, and zinc. The action plan reported average stormwater sampling results that again exceeded the NAL for aluminum (sampling = 3.8 mg/L; NAL = 0.75 mg/L), for iron (sampling = 4.1 mg/L; NAL=1.0 mg/L), and for zinc (sampling = 3.5 mg/L; NAL = .26 mg/L). Kingspan also revised the SWPPP to reflect updates based on a Level 1 ERA report for Total

Suspended Solids (“TSS”); average sampling results for reporting year 2019-20 indicated TSS at 118 mg/L (NAL=100 mg/L).

On April 30, 2021, Kingspan and Coastkeeper entered into a consent decree in settlement of the lawsuit. The consent decree provided that, in addition to maintaining the current BMPs described in the SWPPP, Kingspan would implement additional BMPs.

On May 21, 2021, Kingspan submitted to the Santa Ana Regional Water Quality Control Board a revised amendment to the Time Schedule Order (initially submitted June 30, 2020, and subsequently amended on November 6, 2020) (the “TSO.”) Explaining that “[z]inc is the main pollutant of concern at the Kingspan facility,” Kingspan requested an interim effluent limit of 4.115 mg/L for zinc as of December 2020 with graduated downward limits to meet compliance as of October 2022 owing to the staged implementation of various BMPs. (TSO, 4-1, 6-1–6.2.)

## **II. The State Board should investigate Kingspan’s compliance with its SWPPP.**

### **A. Kingspan did not implement regular vacuuming as a BMP during the summer of 2021.**

In its SWPPP, Kingspan stated that it had implemented or would implement the following “Minimum Best Management Practices”: “[v]acuum[ing] the areas that are subject to rainfall using industrial vacuum, daily at minimum” and “[k]eep[ing] a log to record when and where vacuuming has been performed each day.” (SWPPP, p. 3-5.) In an appendix to the SWPPP entitled “Best Management Practices,” Kingspan stated for both Building 302 and 401 “[v]acuum the areas that are subject to rainfall using industrial vacuum, daily at minimum” and “[a] log shall be maintained to record when and where vacuuming has been performed each day.” In addition, with respect to various exterior areas (Insulation Storage; Intermediate Products; Final Products; Outside Trash Bins; and Pallet and Miscellaneous Storage), Kingspan stated: “This area shall be vacuumed frequently.” (TSO, App. B.) Kingspan justified its request for an Interim Effluent Limit of 4.115 mg/L for zinc based in part of its implementation of a BMP of vacuuming. (TSO 6-2.)

In its TSO, Kingspan provided further details about the vacuuming BMP. It identified as a “recently implemented BMP” the implementation of an industrial vacuum system. Specifically, Kingspan described the plan to “[h]ire one full time employee who will be responsible for maintaining the BMP systems and performing parking lot/storage yard cleaning using an industrial vacuum system which is designed for parking lot cleaning.” (TSO 8-11.) It stated that “[g]iven the presence of suspended solids and particulates in the industrial areas of the Facility, Kingspan has purchased and commenced use of an industrial vacuum similar to the one depicted [in the TSO].” (TSO 8-12.) It repeated the BMPs set out in Appendix B of the SWPPP in an appendix entitled “*Existing BMPs*” (italics added).

Despite these representations, Kingspan workers state that the company did not vacuum in accordance with this BMP during the summer of 2021 and likely before that time. According

to Kingspan employee Jose Millan, Kingspan hired Millan through a temporary agency on or about June 2021. Millan's supervisor was Miguel Fernandez. At one point, Fernandez showed him the industrial vacuum and demonstrated how to use it. Millan tried to use it but found it too difficult to operate and control. Fearful of running into cars, Millan only ended up using it once. Throughout the rest of the time, Millan used only a leaf blower to blow dust and debris on the property, and he used a broom and dustpan to collect trash. Millan stated that he signed paperwork each Friday for the preceding week. He did not know what the paperwork said because he does not read (in English or Spanish). Millan was certain that Fernandez was aware that he was simply using a leaf blower instead of the vacuum because Fernandez saw him regularly. Moreover, as discussed below, the vacuum was stored in the assembly area during this time and was not moved). In August 2021, following a conflict with Fernandez over other matters, Millan was reassigned to work in Kingspan's assembly operations.

Kingspan employee Israel Maldonado stated that the vacuum was stored in his work area in Building 401 ever since the company acquired it. He recalled that to have been in or about December 2020. He never saw it taken from his work area, except for the brief period that Millan used it in about June 2021. Millan also stated that he saw it there when he was assigned to work in assembly in August 2021. A copy of the photo of the vacuum taken on September 16, 2021, is attached in the Appendix as Photo 1.

On or about September 10, 2021, we encouraged Coastkeeper to request Kingspan to provide copies of the vacuuming logs for review in accordance with the federal consent decree. Thereafter, on or about September 13, 2021, Fernandez asked Millan to complete several papers. Fernandez stated the papers were for "the court." Millan states that soon after, Kingspan hired a new employee to clean outside. Millan observed this employee taking the vacuum from where it was stored in the assembly department and using it from that point.

Based on the foregoing, we believe that Kingspan's statements regarding its implementation of the vacuum BMP were incomplete and inaccurate. It did not use the vacuum from June 2021 until sometime around September 14, 2021, and based on Maldonado's observations, it had not been used since it was purchased in late 2020. Not only did Kingspan not engage in regular vacuuming as per the SWPPP, Millan used a leaf blower to blow dust and debris. Blowing dust and debris would seem to amount to the exact opposite of vacuuming it. While Kingspan may recently have started using the vacuum in response to inquiries by Coastkeeper, its failure to do so when it not under such scrutiny raises concerns about the ongoing viability of this BMP.

Moreover, the content of logs that Kingspan created to document to record when and where vacuuming took place over the summer of 2021 should be investigated. If such logs indicate that industrial vacuuming was performed during periods of time when Millan actually engaged only in leaf blowing, further enforcement action should be taken to address such false statements.

**B. Kingspan has not consistently adhered to the BMP of covering dumpsters.**

In the SWPPP, Kingspan lists among “material handling and storage areas that could potentially result in the pollution” the following sources:

Uncovered Dumpster (Source ID #401-9). An uncovered dumpster is located in the northeast corner of the 401 E. Goetz facility. This dumpster can result in debris and particulate pollution when being handled and emptied. In addition, the loading of the trash can result in potential pollution.

(SWPPP, p. 4-3.) In addition, Kingspan identified outside trash bins, as follows:

Outside Trash Bins (Source ID #302-4, 401-1). Outside trash bins are located outside the west side of the 302 E. Goetz building, near the pallet construction area outside the west side of the 401 E. Goetz building, and on the northeast corner outside of the 401 E. Goetz building. These trash bins can result in debris and particulate pollution when being handled and emptied. In addition, the loading of the trash can result in potential pollution.

To address these potential sources of pollution, Kingspan described as a “minimum” BMP in the SWPPP: “[a]dd a lid to the uncovered dumpster located in the northeast corner of the 401 E. Goetz facility.” (SWPPP, p. 3-6.) In the TSO, Kingspan stated that “[a]ctivity associated with the trash bins can contribute to zinc discharges to the stormwater. As an interim BMP, this dumpster will be covered when not in use to minimize potential pollution associated with debris and particulates.” (TSO p. 4-1.) Furthermore, as a justification for the requested extended time schedule to meet effluent limits, Kingspan stated that the “existing trash bins and dumpster will be covered as an interim BMP.” (TSO, p. 7-1.)

However, Kingspan workers have stated that they have witnessed that the dumpsters are not consistently covered when not in use. To follow up on these accounts, SMART obtained aerial photographs of the Facility. (See Appendix, photos 2-3.) These photographs were taken on September 20, 2021, shortly after 7 p.m., after production hours. They depict what appear to be dumpsters located on the northeast corner outside of the 401 E. Goetz building that are not covered.

**C. Kingspan installed a gutter system per its SWPPP, but it leaked during the first rain.**

In its TSO, Kingspan identifies a Downspout Filtration System to address run off from the roof. In its letter accompanying the TSO, Kingspan states that “[t]he non-industrial contribution from roofing material will be addressed with downspout filtration. Each building will have a centralized gutter system that will route through downspout filters.” According to the “Critical Path Timeline” set out in the TSO, the system included a Gutter System Design assigned to the “Roofing Company” and a Gutter System Installation assigned to “Roofing Company/Kingspan.” (TSO, App. F.)

One Kingspan employee who worked on the project explained that Kingspan employees fabricated the gutters (based upon drawings provided by an outside company) and also installed them. The Roofing Company was not involved except for providing the drawings. This

employee stated that he had never built a gutter system before. Another Kingspan employee not involved in the installation reported that it leaked the first time it rained after the installation. That employee's recollection of the timeline coincides with a recording of 0.19 inches of rain at the Irvine, California weather station on August 11, 2021, or 0.04 inches of rain on August 21, 2021. The State Board should determine whether the gutter system was adequately fabricated and installed, and if Kingspan has addressed any issues with its proper performance.

### **III. Kingspan's SWPPP omits potential sources of contamination.**

#### **A. Kingspan did not identify outdoor fiberboard cutting as a dust and particulate generating activity in its SWPPP.**

In its SWPPP, Kingspan identifies two dust and particulate generating activities: pallet construction and the sand berm. (SWPPP, p 4-3; *see also* TSO, p. 1-3.) However, Kingspan fails to identify another potentially significant dust and particulate-generating activity: the regular activity of cutting fiberboard panels outside the facility. Workers indicate that a worker cuts fiberboard outside using a table saw approximately two to three times per week. Included in the Appendix is a photograph of a worker cutting fiberboard outside the Facility. See photo 4 from on or around August 20, 2021. According to workers, this operation generates substantial amount of dust. The State Board should investigate as to whether this operation should be included as part of the SWPPP and whether appropriate BMPs should be implemented to address the dust that is produced.

#### **B. Kingspan does not identify all industrial materials handled by the Facility.**



In Appendix C to its SWPPP, Kingspan identifies industrial materials that are handled by the Facility. However, workers report that galvanizing spray paint is being used, as well as spray cans of One Choice wax and grease remover (see photo 5). Neither of these products are listed in Appendix C. One worker estimates that during a typical shift the employee responsible for spray painting uses eight cases of eight cans (64 cans) of galvanized paint. This painting does not go on in a spray booth, but on the shop floor in a curtained area with apparently no mechanical ventilation or air filtration system. While it has not been confirmed what brand of paint is utilized at Kingspan, galvanizing spray paint typically is made up of 40-70 percent zinc, owing to its rust proofing capacity. The State Board should investigate the type of spray paint utilized in order to ensure its proper inclusion of Appendix C.

### **IV. Conclusion and Request to Meet**


We request a meeting with leaders of the Water Quality Control Board to discuss this complaint. We also request that the Board obtain from Kingspan the logs for vacuuming that the company may have produced to Coastkeepers under the consent decree, as well as logs related to employee training in the BMPs that we understand may also have been produced. We look forward to further direct communications with you. Understanding the first-hand accounts of the

operation from the workers at the Facility, most of whom also live in Santa Ana and therefore are impacted by the contamination of its watershed, is valuable to the mission of the agency and the enforcement of the Clean Water Act.

Sincerely,

SIGNATURE/ Firma:	DATE/ Fecha	CITY/ Ciudad de residencia:	YEARS AT KINGSPAN/ Años trabajando en Kingspan:
	10-14-21	santa ANA	8
		SANTA ANACA	18
M.P.F	10-14-21	Santa	10
Bartolo Calderon	10-14-21	santa ANA	32
JORGE EDUARDO W.	10/14/21	SANTA ANA	6
JOSE MILLON	10/18/21	SANTANA	3 meses

On behalf of SMART:

	10/13/21	202-662-0883
Meredith Schafer	Date	Phone



## APPENDIX/ ANEXO

Photo 1: vacuum stored inside assembly department September 16, 2021:

Foto 1: Aspiradora guardada dentro del Departamento de Ensamblado, 16 de septiembre de 2021:



Photo 2: Dumpsters—NE corner outside 401 E. Goetz (viewed from north).

Foto 2: Contenedores de basura, esquina noreste afuera de 401 E. Goetz (vista desde el norte).



Photo 3: Dumpsters—NE corner outside 401 E. Goetz (viewed from south).

Foto 3: Contenedores de basura, esquina noreste afuera de 401 E. Goetz (vista desde el sur).



Photo 4: Cutting fiberglass outside on or around August 20, 2021.

Foto 4: Cortando fibra de vidrio en exteriores, el 20 de agosto de 2021 o aproximadamente ese día.

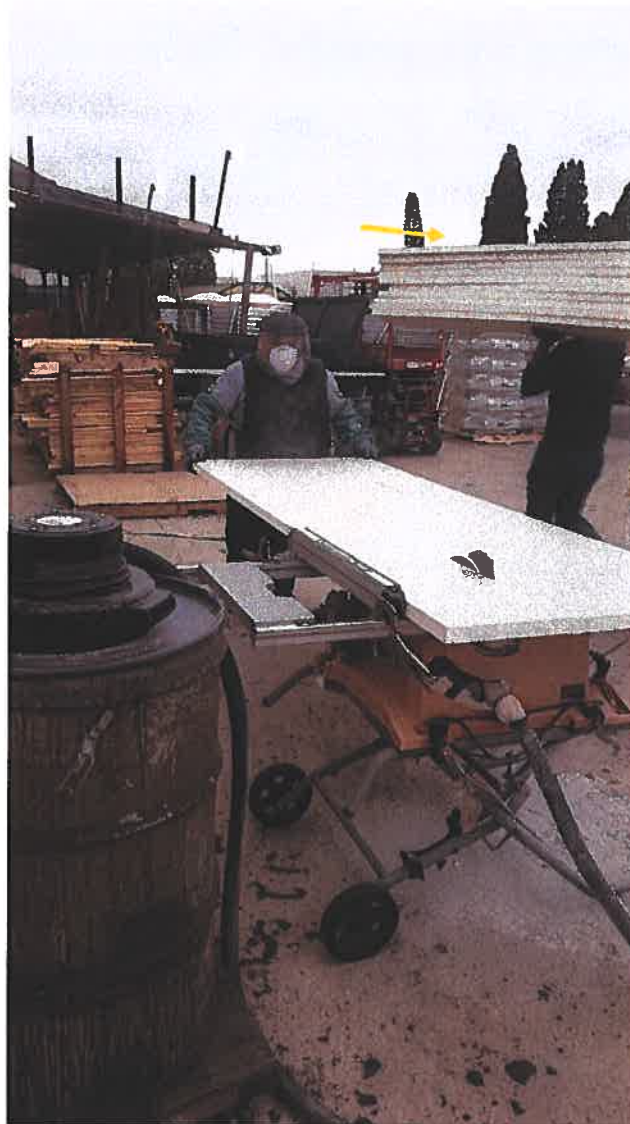


Photo 5: Wax and grease remover  
Foto 5: Removedor de cera y grasa.

