CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2008-0100

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
WASTE DISCHARGE VIOLATIONS
C&H SUGAR, CROCKETT
CONTRA COSTA COUNTY

This Complaint is issued to C&H Sugar, Inc. (hereinafter "Discharger") to assess administrative civil liability pursuant to California Water Code (CWC) § 13385. The Complaint addresses discharges of treated wastewater, including wastewater from the wastewater treatment plant, once-through cooling water from the sugar refinery, and stormwater from discharge points at the sugar refinery, that did not meet effluent limits established in NPDES Permit No. CA 0037541, Order Numbers 00-025 and R2-2007-0032. Violations cited herein occurred during the reporting period of July 1, 2005, through to October 31, 2008. Order No. 00-025 was adopted on April 19, 2000, and applied until June 30, 2007, when Order R2-2007-0038 became effective.

FINDINGS

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), hereby gives notice that:

1. The Discharger is alleged to have violated provisions of law for which the Regional Water Board may impose civil liability pursuant to CWC § 13385. This Complaint proposes to assess $490,000 in penalties for these violations based on the considerations described in this Complaint. The deadline for comments on this Complaint is January 12, 2009.

2. The Discharger owns and operates the C&H Sugar Company, Inc. sugar refinery in Crockett, which is located adjacent to the Carquinez Strait in Contra Costa County. Through a joint-use agreement, the Discharger also operates a wastewater treatment plant, known as the Joint Treatment Plant (JTP), which treats sanitary waste from the Crockett Community Services District as well as sanitary waste and process wastewater from the sugar refinery.

3. This Complaint addresses 54 effluent discharges that did not meet effluent limits and that occurred during the reporting period of July 1, 2005, through October 31, 2008.

4. Unless waived, the Regional Water Board will hold a hearing on this Complaint at its February 11, 2009, meeting at the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland. The Discharger or its representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of the civil liability. An agenda for the meeting will be mailed to the Discharger not less than 10 days

before the hearing date. The deadline to submit all written comments and evidence concerning this Complaint is specified in Finding 1. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability; to refer the matter to the Attorney General for recovery of judicial liability; or take other enforcement actions.

5. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by (a) paying the civil liability in full, or (b) undertaking an approved supplemental environmental project in an amount not to exceed $245,000 and paying the remainder of the civil liability, all in accordance with the procedures and limitations set forth in the attached waiver.

ALLEGATIONS

1. Under this permit, the two discharges, from the sugar refinery and the Joint Treatment Plant, share a common deep water outfall to Carquinez Strait, hence their combined discharge is regulated under one NPDES permit.

2. One discharge is from the sugar refinery's once through cooling system, which takes in water from the Carquinez Strait and uses it through heat exchangers and condensers to cool the process waters used in sugar refining. Prior to discharge through the common outfall, this effluent is monitored at discharge monitoring point 001. The discharge volume varies but typically averages around 15 million gallons per day (MGD), with daily maximums typically around 30 MGD.

3. The second discharge is from the joint Treatment Plant (JTP). The JTP treats sewage from the local community as well as from the sugar refinery. The sanitary sewer collection system serves 1,170 properties in Crockett and the unincorporated community of Valona. The JTP has an average dry weather design flow capacity of 1.8 MGD and a peak wet weather capacity of 3.3 MGD, and its effluent is monitored at discharge monitoring point 002. Under a 1976 Joint-Use Agreement with the Crockett Community Services District, the Discharger is responsible for operation and maintenance of the JTP.

4. In addition to the combined deep water discharge, stormwater drains collect stormwater from the refinery and discharge it through shoreline outfalls to Carquinez Strait. The discharges from these storm drains are monitored at discharge monitoring points 003 to 016.

5. The NPDES permit, issued through Order No. 00-025 and succeeded by Order No. R2-2007-0032, established effluent limits for all discharges from these discharge points. Reports submitted by the Discharger pursuant to the self monitoring program for discharge monitoring points 001 and 002, and stormwater discharge monitoring points 003, 012, and 013, indicate that from December 2, 2005, through March 6, 2008, the Discharger violated the effluent limits 54 times.

6. A violation occurs when the effluent has characteristics or contains contaminants at levels beyond the limits prescribed in the permit. Such a discharge may pollute surface waters, threaten public health, adversely affect aquatic life, or impair the recreational use or aesthetic enjoyment of surface waters.

REQUIREMENTS APPLICABLE TO THE DISCHARGE

1. The Regional Water Board adopted Order No. 00-025 on April 19, 2000, and Order No. R2-2007-0032 on April 11, 2007 (NPDES Permit No. CA 0005240). Both Orders prescribe waste discharge requirements for the Discharger's discharges. Thirty four (34) of the alleged violations occurred during the term of Order No. 00-025, and 20 occurred during the term of Order No. R2-2007-0032.

2. **Order No. 00-025** imposed the following requirements:

A. Prohibitions

5. The handling, storage, treatment or discharge of wastewater or biosolids by the Discharger shall not cause a condition of pollution, contamination, or nuisance as defined in Section 13050 of the California Water Code.

B. Effluent Limitations

1. The discharge of effluent shall not exceed the following total mass emission rates for the biological oxygen demand, or BOD_5, and TSS.

a. Total mass emission rate of BOD_5 contributed by Waste 001 and treated Waste 002 shall be determined by summing the calculated industrial effluent guideline limits for C&H with the calculated municipal limits for the District as follows:

BOD_5 Limit	= C&H	+	District
Monthly Average Limit (lb/day)	= 2,417	+	(30 mg/l) x (District Flow in MGD) x (8.34)
Daily Maximum Limit (lb/day)	= 6,688	+	(60 mg/l) x (District Flow in MGD) x (8.34)

3. The median of 5 consecutive samples collected from the discharge of treated Waste 002 shall not have a total coliform bacteria exceeding 240 MPN/100ml. Any single sample shall not exceed 10,000 MPN/100 ml.

4. The discharge of treated Waste 002 shall not have residual chlorine concentration greater than 0.0 mg/L.

8. The discharge of Waste 002 containing constituents in excess of the following interim limitations is prohibited:

Mercury	Monthly average of 0.21 µg/L; Daily maximum of 1.0 µg/L; Running annual average of 0.04 lb/month
Nickel	Daily maximum of 53 µg/L; Monthly average mass load 1.5 lb

C. Storm Water Limitations

1. Discharge of storm water runoff Wastes 003 through and including 016 outside the pH range or containing constituents in excess of the following limits is prohibited:

pH – 6.5 to 8.5
Visible oil – none observed
Visible color – none observed

3. **Order No. R2-2007-0032** imposes the following requirements:

A. Effluent Limitation for Discharge Point 001

1. Biochemical Oxygen Demand (BOD). The BOD_5 of the discharge shall not exceed the following limits:

Maximum daily of 6,700 lbs/day; Monthly average of 2,200 lbs/day.

3. Final Effluent Limitation for Toxic Substances (Discharge Point 001). The discharge of effluent at Discharge Point 001 shall not exceed the following limitations.

Bis(2-ethylhexyl)phthalate:
Maximum daily of 110 µg/L; Monthly average of 54 µg/l.

B. Effluent Limitations for Discharge Point 002

1. Effluent Limits for Conventional and Non-Conventional Pollutants. Discharge of conventional and non-conventional pollutants at Discharge Point 002 shall be limited as follows:

BOD_5:
Maximum daily of 2,000 lbs/day; Monthly average of 730 lbs/day.

2. Total Coliform Bacteria. The median concentration of total coliform bacteria in 5 consecutive effluent samples of the discharge at Discharge Point 002 shall not exceed 240 MPN/100 mL. No single sample shall exceed 10,000 MPN/100 mL.

3. Water Quality Based Effluent Limits for Toxic Pollutants. The discharge of effluent at Discharge Point 002, as monitored at M-002, shall not exceed the following limitations.

   Cyanide (alternate effluent limits):
   Maximum daily of 44 µg/L, Monthly average of 20 µg/L.

F. Storm Water Limitations

   Discharge of storm water runoff Wastes 003 through and including 016 outside the pH range or containing constituents in excess of the following limits is prohibited:

   pH – 6.5 to 8.5
   Visible oil – none observed
   Visible color – none observed

WATER CODE PROVISIONS RELEVANT TO THESE DISCHARGES

Pursuant to CWC Chapter 5.5 § 13385(a), a discharger is subject to civil liability for violating any waste discharge requirement. Pursuant to § 13385(c), a regional board may impose civil liability administratively pursuant to Chapter 5, Article 2.5 (commencing at § 13323) in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which not susceptible to cleanup or not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Pursuant to § 13385(h)(1), a mandatory minimum penalty of three thousand dollars ($3,000) must be assessed for each serious violation.

Pursuant to § 13385(i)(1), a mandatory minimum penalty of three thousand dollars ($3,000) must be assessed for each violation whenever the Discharger does any of the following in four or more

times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to § 13260.

(C) Files an incomplete report pursuant to § 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

If the matter is referred to the Attorney General for judicial enforcement, then under § 13385(b) a higher liability of $25,000 per day of violation and $25 per gallon of discharge may be imposed.

VIOLATIONS

As shown in Tables 1 and 2, there were 34 effluent limit violations of Order No. 00-025, and 20 effluent limit violations of Order No. R2-2007-0032.

MINIMUM LIABILITY

According to CWC § 13385(h), the mandatory minimum penalties for these violations would be $156,000, as shown in Tables 1 and 2.

MAXIMUM LIABILITY

According to CWC § 13385(c), the maximum administrative civil liability the Regional Water Board may impose for the violations, as shown in Tables 1 and 2, is approximately $114 billion. This is based on a liability of $10,000 per day of violation and $10 per gallon of waste discharged above 1,000 gallons.

CONSIDERATION OF FACTORS UNDER § 13385

In determining the amount of civil liability to assess against the Discharger, the Regional Water Board has taken into consideration the factors described in CWC § 13327:

- The nature, circumstances, extent, and gravity of the violations;
- Whether the discharge is susceptible to cleanup or abatement;
- The degree of toxicity of the discharge;
- With respect to the discharger, the ability to pay and the effect on ability to continue in business;
- Any voluntary cleanup efforts undertaken;
- Any prior history of violations;

- The degree of culpability;
- The economic benefit or savings, if any, resulting from the violations; and
- Other such matters as justice may require.

1. The nature, circumstances, extent, and gravity of the violations

For the period from July 1, 2005, though October 31, 2008, the Discharger reported 54 violations, the nature of which is described below. There were 32 violations of the BOD_5 limits and 22 less egregious violations of various other effluent limits during this period of more than three years. Tables 1 and 2 show the dates and extent of these incidences.

a. **Biochemical Oxygen Demand (BOD_5)**

Over a period of 13 months, from January 2006 until November 2007, the refinery's once-through-cooling water discharge exceeded the maximum daily effluent limit for BOD_5 20 times and the average monthly effluent limit for BOD_5 12 times, as monitored at discharge monitoring point 001. These were not random unpredictable or unexplained events, but routine occurrences resulting from leaking equipment, poor operating decisions, and ineffective equipment monitoring and repair. The Discharger repeatedly released sugar into the cooling water discharged to the Carquinez Strait. As shown in Tables 1 and 2, which show the dates and extent of these violations, the discharges often significantly exceeded the effluent limits. The Discharger's explanations of these incidences are summarized below.

January 2006. There were two violations, and the Discharger offered three possible explanations. The first possible explanation was that debris (e.g., garbage, wood chips, or seaweed) may have accumulated on the filter screens, which upset the vacuum pressure control and resulted in the release of sugar vapors not captured in the entrainment separators. The Discharger committed to increasing inspections of the saltwater intake screens. The second possible explanation was that the entrainment separators may have been plugged and sugar could not drain back to the sugar recovery system. The Discharger committed to improving its cleaning practices. The third possible explanation was operator error. The Discharger committed to updating its operator training program.

These violations occurred less than four months after the Regional Water Board issued Complaint R2-2005-2005 on September 16, 2005, for six BOD_5 violations between September 2004 and May 2005.

February 2006. When three more violations occurred, the Discharger provided the same explanations as it did for the January 2006 violations.

October 2006. There were five more violations. The average monthly effluent concentration was 6.2 times the limit. The Discharger attributed these events to an equipment failure that resulted from unplanned power interruptions that occurred in August, September, and October 2006. These interruptions caused a loss of steam, and the Discharger claimed these events resulted in shocks to the operating system. In addition, the Discharger noted an

emergency shutdown on October 14, when the city water line failed. The Discharger found leaks in its pans and committed to routine inspections.

November 2006. When two more violations occurred, the Discharger provided the same explanation as it did for the October 2006 violations.

January 2007. There were four more violations. The average monthly effluent concentration was 2.5 times the limit. The Discharger provided the same explanation as it did for the October 2006 violations.

February 2007. When two more violations occurred, the Discharger provided the same explanation as it did for the October 2006 violations.

April 2007. When two more violations occurred, the Discharger provided the same explanation as it did for the October 2006 violations.

July 2007. Three more violations took place. The Discharger's explanation was equipment failure, namely leaks in equipment that separated the sugar from the cooling water. The Discharger claimed it repaired the equipment and would increase its monitoring frequency of the total organic carbon analyzers.

August 2007. Two more violations occurred. The Discharger blamed leakages in the process equipment and evaporators. The Discharger stated that it started an enhanced inspection and testing program and would further train its operators regarding proper operating procedures.

September 2007. When another violation occurred, the Discharger again pointed to leaking process equipment. The Discharger said it would enhance its inspection and leakage testing procedures and repair or replace parts as appropriate.

October 2007. When three more violations occurred, the Discharger again pointed to leaking process equipment that had been under repair since September 2007. It noted that continued problems were likely until the repairs were complete.

November 2007. When two more violations occurred, the Discharger provided the same explanation as it did for the September 2007 and October 2007 violations.

January 2008. When another violation occurred, the Discharger blamed a faulty valve, which it then replaced.

February – October 2008. The Discharger reported no additional BOD_5 violations.

In an August 16, 2008, letter, the Discharger stated it was only able to reliably comply with the BOD_5 effluent limits after it installed an in-line sugar analyzer in conjunction with better equipment maintenance and personnel training. At first, the Discharger had relied on BOD_5 monitoring data for samples collected at the discharge point. Since there was a lag time of a week before the Discharger received the BOD_5 results, this did not allow for timely feedback

to prevent releases. To shorten the lag time, the Discharger installed an in-line total organic carbon analyzer. However, this monitoring equipment proved to be unreliable; it gave false readings. It did not provide feedback to the operators if sugar was getting into the cooling water. The Discharger purchased and installed an in-line sugar analyzer in July 2007 to monitor for sugar in the once-through cooling water discharge. This gave an instant warning if sugar got into the cooling water so the Discharger could take immediate corrective action.

b. Total Coliform

The Joint Treatment Plant discharge exceeded effluent limits for total coliform eight times during three reporting periods, December 2005, January 2007, and March 2008, as monitored at discharge monitoring point 002. These violations followed two total coliform violations reported in June 2005, for which the Regional Water Board issued mandatory minimum penalties through Order R2-2005-0037.

In December 2005, four violations occurred over a 5-day period. The Discharger could not explain them but suggested six possible explanations: (1) sample bottle contamination, (2) contamination when transferring chain of custody, (3) high chlorine demand, (4) nitrification process upset, (5) effluent suspended solids interference with disinfection, and (6) plant metabolic rate change.

In January 2007, three violations occurred over a 6-day period. Similarly, the Discharger could not explain them but suggested five possible explanations (essentially the same as in December 2005 but the Discharger did not suspect plant metabolic rate change).

In March 2008, one violation occurred. Again, the Dischargers could not explain it but suggested three possible explanations from the list submitted for the December 2005 violations: (1) high chlorine demand, (2) nitrification process upset, and (3) effluent suspended solids interference with disinfection.

Although a total of eight total coliform violations took place, they did not occur regularly and were limited to specific months. Only one violation has occurred since January 2007.

c. Bis(2-ethylhexyl)phthalate

The refinery's once-through-cooling water discharge exceeded effluent limits for bis(2-ethylhexyl)phthalate three times during two reporting periods, July 2007 and September 2007, as monitored at discharge monitoring point 001. In July, the Discharger was unable to explain the presence of bis(2-ethylhexyl)phthalate in the cooling water except to acknowledge that bis(2-ethylhexyl)phthalate is commonly associated with PVC piping. In September, the Discharger indicated the cause to be repair work on the discharge pipeline involving PVC piping and glues. These violations appear to be isolated, non-recurring incidents.

d. pH

The refinery's stormwater exceeded the pH limits six times during three monthly reporting periods, December 2006, February 2007, and January 2008, as monitored at discharge monitoring points 003, 012, and 013. The Discharger could not offer any explanation for these violations other than possible runoff of water pooled upstream from earlier storms. These violations do not appear to have resulted from Discharger negligence.

e. Oil

The Discharger reported one instance of oil in the receiving water, the Carquinez Strait. In January 2008, the oil-water separator overflowed onto the Discharger's dock. For approximately 20 minutes, the Discharger released oily water to the Carquinez Strait. The Discharger spilled about two gallons before stopping the flow and containing the release. This violation appears to be an isolated event with minimal and temporary water quality impact.

f. Chlorine

The Joint Treatment Plant discharge exceeded the effluent limit for total residual chlorine in January 2006, as monitored at discharge monitoring point 002. During a period of heavy inflow, a five-second power outage caused some equipment to turn off and then back on again. Procedures that the plant operators followed immediately after this outage resulted in the discharge of approximately 1,000 gallons of effluent with a chlorine residual level of 0.1 mg/L. The limit was 0.0 mg/L. The Discharger indicated that, subsequent to this event it changed its operating procedures to prevent such a reoccurrence. This violation was, to some extent, unpredictable, and the Discharger took steps to prevent reoccurrences. There have been no similar violations since January 2006.

g. Mercury

The Joint Treatment Plant discharge exceeded an effluent limit for mercury once in June 2006, as monitored at discharge monitoring point 002. The average monthly effluent concentration was 0.23 µg/L, compared to the limit, 0.21 µg/L. The Discharger provided no certain explanation for this violation, but suggested that the elevated mercury could have come from the sanitary sewer collection system. No mercury violation has occurred since.

h. Nickel

The Joint Treatment Plant discharge exceeded an effluent limit for nickel once in July 2006, as monitored at discharge monitoring point 002. The average monthly nickel mass discharged was 2.1 pounds, compared to the limit of 1.5 pounds. The Discharger provided no clear explanation for this violation, but suggested that the elevated nickel could have come from the sanitary sewer collection system. Fertilizers and fireworks contain nickel, which could have entered the sanitary sewer collection system through inflow. No nickel violation has occurred since.

i. Cyanide

The Joint Treatment Plant discharge exceeded an effluent limit for cyanide once in September 2008, as monitored at discharge monitoring point 002. The average monthly effluent concentration was 23 µg/L, compared to the limit of 20 µg/L. The Discharger measured cyanide in the two inflows to the JTP, influent from the refinery and the sanitary sewer collection system, and those concentrations were only 11 µg/L and 4.5 µg/L. The Discharger could not determine the origin of the cyanide in the combined effluent, but committed to further investigating potential sources within the refinery.

2. Whether the discharge is susceptible to cleanup or abatement

The discharges were directly to the Carquinez Strait, and thus, after discharge the pollutants could not be removed from the receiving water.

3. The degree of toxicity of the discharge

The degree of toxicity for all the discharges was relatively low. BOD_5, total coliform, and pH would have been quickly attenuated after discharge to Carquinez Strait. The only persistent pollutants released, bis(2-ethylhexyl)phthalate and the metals, mercury and nickel, were at concentrations only slightly above the limits and were non-recurring. Discharges through the deep water outfall to the Carquinez Strait are substantially diluted, and thus after dilution in the deep water outfall, the impacts of these discharges were likely minimal.

Most of the violations were for exceedances of BOD_5 limits in the refinery discharge and for high coliform counts in discharge from the Joint Treatment Plant. The BOD_5 discharges could have caused anoxic (low oxygen) conditions in Carquinez Strait waters that would have threatened the health of aquatic life. However, based on limited measurements of dissolved oxygen in the receiving water, there were no observable impacts. In October 2006 and January 2007, when there were several exceedances of BOD_5 in the effluent, dissolve oxygen levels were greater than 7.6 mg/L (the receiving water limit was 5.0 mg/L) with saturation in the range 85 to 94%.

The exceedances of coliform limits could threaten recreational users of the Carquinez Strait. However, as stated above, these discharges were substantially diluted.

There were two exceedances of the chlorine residual limit in the discharge from the Joint Treatment Plant. The quantity released in each case was less than 1000 gallons (possibly as little as 12 gallons in the case of the second violation), and the amount by which the violation was exceeded was relatively small; therefore, adverse impacts were likely minimal.

The stormwater discharges with pH values exceeding the limits would not likely have had a measurable effect in the receiving water. According to the Discharger, this slightly acidic rainwater could have come from natural sources but it did not identify such sources.

4. The ability to pay and the effect on ability to continue in business

The Discharger is part of American Sugar Refining, Inc., a company that supplies approximately three million tons of refined sugar per year according to prnewswire.com, one third of the sugar used in the U.S. market. The Discharger itself produces about 700,000 tons of sugar. The market value of refined sugar varies, but according to surgartech.co.za, in November 2008, a ton of sugar was valued at $360. C&H Sugar has sufficient market power to adjust its prices to provide for financial needs, including this proposed administrative civil liability.

5. Any voluntary cleanup efforts undertaken

Cleanup or remediation of the discharges was impossible following the releases.

6. Any prior history of violations

The Regional Water Board issued mandatory minimum penalty Complaint Order R2-2005-0037 for violations between September 2004 and June 2005. There were ten violations, six for BOD_5 exceedances, two for total coliform exceedances, and two for mercury exceedances. The Regional Water Board imposed mandatory minimum penalties of $30,000.

7. The degree of culpability

The Discharger's degree of culpability is high for the BOD violations because it failed to promptly and adequately address process control and preventative maintenance and inspection causes of those violations for over three years.

The Discharger's degree of culpability for the coliform violations is medium. Though the coliform violations did not stem from a clear cause, the Discharger is responsible for the proper operation and maintenance of the Joint Treatment Plant.

The Discharger's degree of culpability for the other violations is low. These other violations were isolated and not foreseeable incidents,

8. The economic benefit of savings

For operation of the Joint Treatment Plant, no information suggests that the violations resulted from the Discharger trying to save costs related to plant operation. The metals violations were unusual occurrences and not repeated. The chlorine residual violation resulted from a power outage and subsequent operator errors that were not repeated. The Discharger could not explain the coliform violations, but they were infrequent. In the past three years, they occurred only in December 2005, January 2007, and once in March 2008.

In contrast, the high BOD_5 discharges from the refinery continued for several months and were, as the Discharger reports, due to leakages that allowed water or vapors containing sugar to mix with the cooling water. After the Discharger installed an improved sensor

system in July 2007 and implemented an effective inspection and repair program starting in September 2007, no more violations from these causes took place. These improvements could have been implemented earlier, at least after the Regional Water Board fined the Discharger in September 2005 for earlier BOD_5 violations, if not sooner.

The Discharger indicated in its August 16, 2008 Response to Notice of Violation that it spent $545,600 on equipment repairs over the period of December 2005 to July 2008 and $58,500 on the sugar analyzer in July 2007. The Discharger completed these repairs and improvements between September and November 2007, two years after the Regional Water Board issued Complaint No. R2-2005-0037 for similar violations. By delaying these expenditures, the Discharger postponed spending $604,100 for two years. At a prime interest rate of 8%, the economic benefit over two years would have been $100,500.

9. Other such matters as justice may require

Regional Water Board Staff time to prepare the Complaint and supporting evidence is estimated to be about 200 hours. Based on an average cost to the State of $135 per hour, the total staff cost is $27,000.

PROPOSED CIVIL LIABILITY

The Assistant Executive Officer therefore proposes a civil liability in the amount described in Finding 1, above, which includes the required mandatory minimum penalty and staff costs. The minimum fine for these violations is the sum of the mandatory minimum penalties, $156,000. Based on the factors described above, mandatory minimum penalties are adequate for all these violations, except the BOD_5 violations. Aside from the BOD_5 violations, the violations were generally isolated, non-recurring events. As shown in Tables 1 and 2, the minimum penalties for all non-BOD_5 violations is $60,000.

A greater penalty for the BOD_5 violations is appropriate because they persisted over a long period and the Discharger could have prevented them by implementing a more pro-active inspection, maintenance, and operational control program. The proposed penalty for these violations is $430,000, which is sufficient to cover Regional Water Board staff costs to prepare the complaint ($27,000) and the economic benefit that the Discharger gained by delaying needed repairs and maintenance ($100,500). Considering all the factors above, the total proposed civil liability for all the violations cited in Tables 1 and 2 is $490,000 (= $430,000 + $60,000).

CEQA EXEMPTION

The issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, § 15321.

December 12, 2008
Date

Thomas E. Mumley
Assistant Executive Officer

Attachments: Waiver of Hearing
Tables

WAIVER FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

If you waive your right to a hearing, the matter will be included on the agenda of a Water Board meeting but there will be no hearing on the matter, unless a) the Water Board staff receives significant public comment during the comment period, or b) the Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your **waiver is due no later than January 12, 2009.**

❑ Waiver of the right to a hearing and agreement to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No.**R2-2008-0010** and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the scheduled Hearing date. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability.

❑ Waiver of right to a hearing and agreement to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Water Board with regard to the violations alleged in Complaint No. **R2-2008-0010**, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to $**245,000** and paying the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled Hearing date. **The SEP proposal shall be submitted no later than January 26, 2009.** I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Water Board holds a hearing under either of the circumstances described above. If the Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

❑ Waiver of right to a hearing within the 90-day hearing requirement in order to extend the hearing date.

By checking this box, I hereby waive my right to have a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the prosecution team can discuss settlements. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

_____	_____
Name (print)	Signature
_____	_____
Date	Title/Organization

Table 1 **C& H violations** **Order 00-025**

								Min. penalty		Calculation of maximum penalty.			
Item	Date	Description	Dis-charge Point	Limit	Report	x Limit	Violation	Sub-ject to MMP	MMP	Max Daily Penalty	Discharge 10^6 gall	Applicable Days	Max fine $10/gall (over 1,000 gal) +$10,000/day
1	12/2/2005	Total Colif 5 day med MPN/100 mL	002	240	310	1.3	Provision B.3	Yes	**$3,000**	$10,000	1.5	1	$14,509,000
2	12/3/2005	Total Colif 5 day med MPN/100 mL	002	240	350	1.5	Provision B.3	Yes	**$3,000**	$10,000	1.2	1	$11,909,000
3	12/5/2005	Total Colif 5 day med MPN/100 mL	002	240	310	1.3	Provision B.3	Yes	**$3,000**	$10,000	1.1	1	$11,209,000
4	12/6/2005	Total Colif 5 day med MPN/100 mL	002	240	310	1.3	Provision B.3	Yes	**$3,000**	$10,000	1.1	1	$11,009,000
5	1/23/2006	Chlorine Residual	002	0	0.1	1.0	Provision B.4	Yes	**$3,000**	$10,000	1.1	1	$11,009,000
6	1/31/2006	Total BOD Daily Max lbs/day	001	7358	57329	7.8	Provision B.1.a.	Yes	$3,000	$10,000	35.2	1	$352,009,000
7	1/31/2006	Total BOD Monthly Av Max lbs/day	001	2543	8576	3.4	Provision B.1.a.	Yes	$3,000	$10,000	14.4	31	$4,464,279,000
8	2/9/2006	Total BOD Daily Max lbs/day	001	7240	10760	1.5	Provision B.1.a.	Yes	$3,000	$10,000	29.1	1	$291,009,000
9	2/23/2006	Total BOD Daily Max lbs/day	001	7240	17575	2.4	Provision B.1.a.	Yes	$3,000	$10,000	27.3	1	$273,009,000
10	2/28/2006	Total BOD Monthly Av Max lbs/day	001	2511	7537	3.0	Provision B.1.a.	Yes	$3,000	$10,000	19.7	28	$5,516,252,000
11	6/2/2006	Mercury JTP, monthly av, ug/L	002	0.21	0.23	1.1	Provision B.8.	Yes	**$3,000**	$10,000	0.8	30	$237,270,000
12	7/31/2006	Nickel, JTP month av mass load lbs	002	1.5	2.1	1.4	Provision B.8.	Yes	**$3,000**	$10,000	0.8	31	$260,679,000
13	10/5/2006	Total BOD Daily Max lbs/day	001	6830	7520	1.1	Provision B.1.a.	Yes	$3,000	$10,000	14.2	1	$142,009,000
14	10/10/2006	Total BOD Daily Max lbs/day	001	6830	38024	5.6	Provision B.1.a.	Yes	$3,000	$10,000	18.6	1	$186,009,000
15	10/19/2006	Total BOD Daily Max lbs/day	001	6830	7329	1.1	Provision B.1.a.	Yes	$3,000	$10,000	33.4	1	$334,009,000
16	10/24/2006	Total BOD Daily Max lbs/day	001	6830	8603	1.3	Provision B.1.a.	Yes	$3,000	$10,000	14.0	1	$140,009,000
17	10/31/2006	Total BOD Monthly Av Max lbs/day	001	2481	15369	6.2	Provision B.1.a.	Yes	$3,000	$10,000	14.8	31	$4,588,279,000
18	11/16/2006	Total BOD Daily Max lbs/day	001	6851	7012	1.0	Provision B.1.a.	Yes	$3,000	$10,000	23.1	1	$231,009,000
19	11/30/2006	Total BOD Monthly Av Max lbs/day	001	2484	4097	1.6	Provision B.1.a.	Yes	$3,000	$10,000	18.5	30	$5,550,270,000
20	12/21/2006	pH stormwater	E-003	6.5	6.1	0.9	Provision C.1.	Yes	**$3,000**	$10,000	0.0	1	$10,000
21	1/5/2007	Total Colif 5 day med MPN/100 mL	002	240	950	4.0	Provision B.3	Yes	**$3,000**	$10,000	0.4	1	$4,209,000
22	1/8/2007	Total Colif 5 day med MPN/100 mL	002	240	390	1.6	Provision B.3	Yes	**$3,000**	$10,000	0.6	1	$6,309,000
23	1/9/2007	Total BOD Daily Max lbs/day	001	6837	7919	1.2	Provision B.1.a.	Yes	$3,000	$10,000	52.5	1	$525,009,000
24	1/10/2007	Total Colif 5 day med MPN/100 mL	002	240	1600	6.7	Provision B.3	Yes	**$3,000**	$10,000	1.0	1	$9,809,000
25	1/10/2007	Total BOD Daily Max lbs/day	001	6837	11635	1.7	Provision B.1.a.	Yes	$3,000	$10,000	55.3	1	$553,009,000
26	1/30/2007	Total BOD Daily Max lbs/day	001	6837	21339	3.1	Provision B.1.a.	Yes	$3,000	$10,000	36.4	1	$364,009,000
27	1/31/2007	Total BOD Monthly Av Max lbs/day	001	2483	6181	2.5	Provision B.1.a.	Yes	$3,000	$10,000	25.4	31	$7,874,279,000
28	2/8/2007	Total BOD Daily Max lbs/day	001	6952	61418	8.8	Provision B.1.a.	Yes	$3,000	$10,000	34.2	1	$342,009,000
29	2/12/2007	pH stormwater	E-003	6.5	6.4	1.0	Provision C.1.	Yes	**$3,000**	$10,000	0.0	1	$10,000
30	2/12/2007	pH stormwater	E-012	6.5	6.4	1.0	Provision C.1.	Yes	**$3,000**	$10,000	0.0	1	$10,000
31	2/12/2007	pH stormwater	E-013	6.5	6.4	1.0	Provision C.1.	Yes	**$3,000**	$10,000	0.0	1	$10,000
32	2/28/2007	Total BOD Monthly Av Max lbs/day	001	2496	16242	6.5	Provision B.1.a.	Yes	$3,000	$10,000	25.9	28	$7,252,252,000
33	4/24/2007	Total BOD Daily Max lbs/day	001	6848	9445	1.4	Provision B.1.a.	Yes	$3,000	$10,000	40.0	1	$400,009,000
34	4/30/2007	Total BOD Monthly Av Max lbs/day	001	2484	4168	1.7	Provision B.1.a.	Yes	$3,000	$10,000	24.5	30	$7,350,270,000

Table 2	C& H violations						Order R2-2007-	032					
								Min. penalty		Calculation of maximum penalty.			
#	Date	Limit(s)	Dis-charge Point	Limit	Reported	x Limit	Violation	Sub-ject to MMP	MMP	Max Daily Penalty	Discharge 10^6 gall	# of days	Max fine $10/gall (over 1,000 gal) +$10,000/day
1	7/11/2007	Total BOD Daily Max lbs/day	M-001	6700	43751	6.5	IV Effluent Limit A.1.	Yes	$3,000	$10,000	34.2	1	$342,009,000
2	7/18/2007	Total BOD Daily Max lbs/day	M-001	6700	10722	1.6	IV Effluent Limit A.1.	Yes	$3,000	$10,000	38.4	1	$384,009,000
3	7/31/2007	Total BOD Monthly Av Max lbs/day	M-001	2200	14506	6.6	IV Effluent Limit A.1.	Yes	$3,000	$10,000	32.0	31	$9,920,279,000
4	7/31/2007	Bis phthalate monthly average	M-001	54	63	1.2	IV Effluent Limit B.3.	Yes	**$3,000**	$10,000	32.0	31	$9,920,279,000
5	8/22/2007	Total BOD Daily Max lbs/day	M-001	6700	42461	6.3	IV Effluent Limit A.1.	Yes	$3,000	$10,000	35.6	1	$356,009,000
6	8/31/2007	Total BOD Monthly Av Max lbs/day	M-001	2200	8416	3.8	IV Effluent Limit A.1.	Yes	$3,000	$10,000	31.7	31	$9,827,279,000
7	9/5/2007	Total BOD Daily Max lbs/day	M-001	6700	9184	1.4	IV Effluent Limit A.1.	Yes	$3,000	$10,000	28.2	1	$282,009,000
8	9/5/2007	Bis phthalate daily max	M-001	110	113	1.0	IV Effluent Limit B.3.	Yes	**$3,000**	$10,000	28.2	1	$282,009,000
9	9/30/2007	Bis phthalate monthly average	M-001	54	59	1.1	IV Effluent Limit B.3.	Yes	**$3,000**	$10,000	27.4	30	$8,220,270,000
10	10/17/2007	Total BOD Daily Max lbs/day	M-001	6700	13401	2.0	IV Effluent Limit A.1.	Yes	$3,000	$10,000	35.0	1	$350,009,000
11	10/24/2007	Total BOD Daily Max lbs/day	M-001	6700	7366	1.1	IV Effluent Limit A.1.	Yes	$3,000	$10,000	43.4	1	$434,009,000
12	10/31/2007	Total BOD Monthly Av Max lbs/day	M-001	2200	4970	2.3	IV Effluent Limit A.1.	Yes	$3,000	$10,000	29.4	31	$9,114,279,000
13	11/28/2007	Total BOD Daily Max lbs/day	M-001	6700	17645	2.6	IV Effluent Limit A.1.	Yes	$3,000	$10,000	47.3	1	$473,009,000
14	11/30/2007	Total BOD Monthly Av Max lbs/day	M-001	2200	6916	3.1	IV Effluent Limit A.1.	Yes	$3,000	$10,000	25.9	30	$7,770,270,000
15	1/3/2008	Oily water from oil-water separator		none	present		IV Effluent Limit F.	Yes		$10,000	0.0	1	$10,000
16	1/3/2008	Stormwater pH	E-003	6.5	6	0.9	IV Effluent Limit F.	Yes	**$3,000**	$10,000	0.0	1	$10,000
17	1/4/2008	Stormwater pH	E-013	6.5	6	0.9	IV Effluent Limit F.	Yes	**$3,000**	$10,000	0.0	1	$10,000
18	1/31/2008	Total BOD Monthly Av Max lbs/day	M-001	2200	2626	1.2	IV Effluent Limit A.1.	Yes	$3,000	$10,000	28.2	31	$8,739,179,000
19	3/6/2008	Total Colif 5 day med MPN/100 mL	M-002	240	1100	4.6	IV Effluent Limit B.2	Yes	**$3,000**	$10,000	1.1	1	$10,709,000
20	9/4/2008	Cyanide, average monlthly	M-002	20	23	1.2	IV Effluent Limit B.3	No		$10,000	1.1	30	$321,270,000
	10/31/2008	**Totals from Tables 1 and 2**							**$156,000**				**$114,053,875,000**
	10/31/2008	**Recommended MMP violations**							**$60,000**				