

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SETTLEMENT AGREEMENT
AND MUTUAL RELEASE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2008-0100
IN THE MATTER OF C&H SUGAR COMPANY, INC
CROCKETT
CONTRA COSTA COUNTY

This Settlement Agreement for Administrative Civil Liability Complaint No. R2-2008-0100 (this "Agreement") is made and entered into by the California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Water Board") and C&H Sugar Company, Inc. ("C&H Sugar") (collectively referred to below as the "Parties") with reference to the following facts:

RECITALS:

- A. On or about December 12, 2008, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2008-0100 (Attachment A). The Complaint alleged that C&H Sugar's discharge of treated wastewater, cooling water and stormwater did not meet effluent limits established in NPDES Permit No. CA 0037541 (which was incorrectly cited and the operative Permit No. is CA0005240) for the reporting period of July 1, 2005, through October 31, 2008. The Complaint proposed that C&H Sugar pay a penalty in the amount of \$490,000.
- B. C&H Sugar subsequently provided the Assistant Executive Officer with evidence including that the sugar refinery and Joint Treatment Plant do not share a common deepwater outfall, that a number of the alleged violations were not separate and independent discharges, that these discharges were from a complex system that made it difficult to pinpoint causes of excess BOD.
- C. The Regional Water Board reviewed the evidence submitted by C&H Sugar and met with representatives of C&H Sugar to discuss the Complaint, and concluded that it was appropriate to pursue penalties pursuant to the Complaint under Water Code Section 13385.
- D. Since the time the Complaint was issued, C&H Sugar has had eight additional discharges that based on monitoring and reporting are alleged to have exceeded the same permit limits. A list of these additional discharges is provided at Attachment B. The penalty action has been adjusted to include these eight additional discharges.
- E. The Parties have reached this settlement for the violations alleged in the Complaint. This settlement is subject to public comment as provided below.

- F. The Parties agree that full compliance with this Agreement constitutes settlement of all claims arising out of the alleged violations specified in Complaint No. R2 2008-0100 and the additional discharges identified in Attachment B.
- G. The general terms of the settlement are that C&H Sugar will pay a total penalty of \$490,000 as follows:
 - a. C&H Sugar will pay administrative civil liability of \$258,500 to the State Water Resources Control Board's Cleanup and Abatement Account, which includes \$27,000 for Regional Water Board staff costs.
 - b. In lieu of the remaining \$231,500 penalty, C&H Sugar agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than \$231,500 towards acquisition and restoration projects proposed by the Muir Heritage Land Trust as described in Attachment C, which includes a schedule for implementation. C&H Sugar will comply with the specific terms and conditions detailed in Attachment C, which is incorporated into this Agreement.
- H. As a material condition of this Agreement, C&H Sugar represents and warrants that the SEP is not and was not previously contemplated, in whole or in part by C&H Sugar for any other purpose except to partially satisfy C&H Sugar's obligations in settling the violations alleged in Complaint No. R2-2008-0100. C&H Sugar further warrants that its contributions to the project that serves as the SEP would not be made in the absence of this enforcement action.
- I. Subject to the qualifications set forth in paragraph 6 below, the Assistant Executive Officer has the authority to settle this matter in accordance with Water Code Section 13323 and Government Code Section 11415.60. C&H Sugar's representative signing this Agreement confirms that he has the authority to bind C&H Sugar to the terms of this Agreement.

NOW THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Both Parties agree to comply with the terms and conditions of this agreement.
2. The Parties agree that they will support, advocate for, and promote the proposed Administrative Civil Liability Order attached as Attachment D. The Parties further agree that they will not contest the proposed Administrative Civil Liability Order attached as Attachment D before the Regional Water Board, the State Water Resources Control Board, or any court.

3. Paragraph 2 does not apply in the event that the Executive Officer or Regional Water Board considers adopting an order that differs in any substantive way from the proposed Administrative Civil Liability Order attached as Attachment D. In that event, the Parties will have full rights to a hearing and any applicable appeals process.
4. The Assistant Executive Officer agrees that this settlement fully resolves the allegations in the Complaint and assesses civil penalties for all violations for the discharges listed in Attachment B and D, and once the Administrative Civil Liability Order in Attachment D ("Order") is approved, will not pursue any further administrative or judicial action of any kind against C&H Sugar for those discharges. However, the Regional Water Board also maintains the ability to initiate other administrative or judicial enforcement actions against C&H Sugar for violations of the Order or for future violations.
5. C&H Sugar agrees to pay \$258,500 to the Cleanup and Abatement Account as an administrative civil liability payment not later than 30 days following approval by the Regional Water Board or its Executive Officer of the settlement described in this Agreement and the Order attached as Attachment D. That time period shall be extended during the time in which any review is sought by any third party under Water Code Sections 13320 or 13330. C&H Sugar agrees to undertake a SEP for not less than \$231,500 and will comply with the specific terms and conditions set forth in Attachment C. The Parties agree that the SEP set forth in Attachment C complies with the State Water Resources Control Board's SEP policy.
6. In the event that any of the following occur, C&H Sugar agrees to immediately pay an administrative civil liability amount of \$231,500 to the Waste Discharge Permit Fund:
 - a. C&H Sugar determines that it does not wish to perform the SEP,
 - b. The Executive Officer determines that the SEP is being not performed in accordance with the specified terms and conditions, including the time schedule detailed in Attachment C, or
 - c. The Executive Officer determines that the proposed SEP does not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy and another acceptable SEP proposal is not proposed to and approved by the Regional Water Board or the Executive Officer in a reasonable time frame.

Additionally, in the event that the SEP is completed, but expenditures were less than \$231,500, C&H Sugar shall immediately pay the remaining balance to the Cleanup and Abatement Account.

7. The Parties understand that this settlement and the proposed Administrative Civil Liability Order attached as Attachment D must be noticed for a 30-day public review period. In the event that objections are raised during the public comment

period for the proposed Administrative Civil Liability Order, the Regional Water Board or the Board's Executive Officer may, under certain circumstances, require a public hearing regarding the proposed Administrative Civil Liability Order. In that event, the Parties agree to meet and confer in advance of the public hearing concerning such objections, and may agree to revise or adjust the Agreement as necessary or advisable under the circumstances.

8. In the event that this Agreement does not take effect because the Executive Officer and/or the Regional Water Board does not approve the attached Administrative Civil Liabilities Order, or the Order is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, except this Agreement, will not be admissible as evidence in the hearing.
9. The Parties agree that in the event that the Regional Water Board does not approve a settlement of this matter, they waive any and all objections related to their attempt to settle this matter, including but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors. In that event they further agree to waive any objections that are premised in whole or in part on the fact that the Regional Water Board members and their advisors were exposed to some of the material facts and the Parties' settlement positions and, therefore, may have formed impressions or conclusions prior to scheduling an evidentiary hearing on the merits of the Administrative Civil Liability Complaint.
10. The Parties intend that this Agreement reflects adequate procedures to be used for the approval of the settlement by the Parties and review by the public. In the event that objections to the procedures are raised during the public comment period for the proposed Administrative Civil Liability Order, the Parties agree to meet and confer concerning any such objections and agree to revise or adjust the procedure as necessary or advisable under the circumstances.
11. Performance of paragraph 5 (and if applicable, paragraph 6) shall effect a mutual release and discharge of the Parties and their respective assigns, agents, attorneys, employees, officers and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses interests, costs, or expenses of whatever nature, character, or descriptions that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Administrative Civil Liability Order, the Complaint, or the discharges addressed in the Complaint and the list of additional discharges on Attachment B.

12. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
13. This Agreement shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be made in writing and signed by both Parties.
14. Each Party to this Agreement shall bear its own attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
15. If any part of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.
16. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.
17. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. Facsimile or electronic signatures are acceptable.
18. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers on the dates set forth, and this Agreement is effective as of the most recent date signed.

California Regional Water Quality Control Board
San Francisco Bay Region

By: 

Thomas E. Mumley
Assistant Executive Officer

C&H Sugar

By:  - Refinery Manager

Date: 7/1/09

APPROVED AS TO FORM:

By: _____

Yuri Won

Counsel for Regional Water Board Prosecution Team

By: _____

List of Attachments:

- A. Complaint No. R2-2008-0100
- B. Additional Discharges November 2008 to March 2009
- C. Supplemental Environmental Project
- D. Proposed Administrative Civil Liability Order

Attachment A

Complaint R2-2008-0100

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 BOD₅, and TSS.
 - a. Total mass emission rate of BOD₅ 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:

$$\begin{aligned} \text{BOD}_5 \text{ Limit} &= \text{C\&H} + \text{District} \\ \text{Monthly Average Limit (lb/day)} &= 2,417 + (30 \text{ mg/l}) \times (\text{District Flow in MGD}) \times (8.34) \\ \text{Daily Maximum Limit (lb/day)} &= 6,688 + (60 \text{ mg/l}) \times (\text{District Flow in MGD}) \times (8.34) \end{aligned}$$
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 BOD₅ 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:

BOD₅:
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, through October 31, 2008, the Discharger reported 54 violations, the nature of which is described below. There were 32 violations of the BOD₅ 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 (BOD₅)

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 BOD₅ 20 times and the average monthly effluent limit for BOD₅ 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 BOD₅ 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 BOD₅ violations.

In an August 16, 2008, letter, the Discharger stated it was only able to reliably comply with the BOD₅ 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 BOD₅ monitoring data for samples collected at the discharge point. Since there was a lag time of a week before the Discharger received the BOD₅ 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. BOD₅, 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 BOD₅ limits in the refinery discharge and for high coliform counts in discharge from the Joint Treatment Plant. The BOD₅ 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 BOD₅ 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 BOD₅ 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 BOD₅ 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 BOD₅ 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 BOD₅ violations. Aside from the BOD₅ violations, the violations were generally isolated, non-recurring events. As shown in Tables 1 and 2, the minimum penalties for all non-BOD₅ violations is \$60,000.

A greater penalty for the BOD₅ 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

Item	Date	Description	Dis-charge Point	Limit	Report	x	Violation	Min. penalty		Calculation of maximum penalty.			
								Sub-ject to MMP	MMP	Max Daily Penalty	Discharge 10*6 gal	Applicable Days	Max fine \$10/gal (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

Attachment B
C&H Sugar Company
Reports of Discharge
October 31, 2008 to March 2009

Date	Reported Discharge	Duration	Identified Root Cause	Permit Limit
11/03/08	Stormwater pH at E003 (5.41<6.5)	1 Day	Unknown	Effl. Limit IV.F.
11/05/08	Max Daily BOD Limit M-001 (9,761>6,700)	1 Day	Equipment Failure	Effl. Limit IV.A.1
12/02/08	Max Daily Coliform Limit M-002 (16,000>10,000)	1 Day	Disruption Of Nitrification	Eff. Limit IV.B.2
01/05/09	Max Daily BOD Limit M-001 (9,434>6,700)	1 Day	Faulty Vacuum Pump	Effl. Limit IV.A.1
01/13/09	Max Daily BOD Limit M-001 (11,008 >6,700)	1 Day	Faulty Vacuum Pump	Effl. Limit IV.A.1
01/31/09	30 Day BOD Limit M-001 (3,545>2,200)	1 Month	Equipment Failure	Effl. Limit IV.A.1
01/31/09	12-Month Running Average Mercury Mass Limit M-001 (0.102>0.08 kg/m)	1 Month	Unknown	Effl. Limit IV.C.1
02/28/09	30 Day BOD Limit M-001 (2,349>2,200)	1 Month	Equipment Failure	Effl. Limit IV.A.1
02/28/09	12 month Running Average Mercury Mass Limit M-001 (0.09>0.08 kg/m)	1 Month	Unknown	Effl. Limit IV.C.1

Attachment C

C&H Sugar Company, Inc.

Supplemental Environmental Project



C&H SUGAR COMPANY, INC.

Tanya Akkerman
Environmental Compliance Manager

June 3, 2009

VIA PDF submittal to RWQCB FTP site

Executive Officer
Attn: Derek Whitworth
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

**Re: Revision #2: Proposed Supplemental Environmental Project
ACL R2-2008-0100**

**Attention: Surveillance Division
File #2119.1006 – C&H Sugar Company, Inc.**

Dear Mr. Whitworth:

Attached is the revised Proposed Supplemental Environmental Project (SEP) developed as part of the resolution of ACL R2-2008-0100. These additional revisions were requested by your office in an e-mail dated May 27, 2009.

The revised document includes the following items:

- The SEP funding will be for \$231,500; and
- Third-party oversight of the SEP will be provided by the San Francisco Estuary Partnership. The oversight fee is \$2,520 which will be paid to the Association of Bay Area Governments (ABAG).

If you have questions regarding the attached proposal, please contact myself or Steve Ball at (510) 787-4343.

Sincerely,

A handwritten signature in cursive script that reads 'Tanya Akkerman'.

Tanya Akkerman
Environmental Compliance Manager

Attachment

830 Loring Ave
Crockett, CA 94525
Tel 510.787.4352
E-Fax 415.796.1061
Tanya.Akkerman@chsugar.com

**PROPOSED SUPPEMENTAL ENVIRONMENTAL PROJECT
LAND ACQUISITION THROUGH MUIR HERITAGE LAND TRUST**

June 1, 2009

C&H Sugar Company, Inc. proposes to undertake a Supplemental Environmental Project (SEP) in cooperation with the Muir Heritage Land Trust (MHLT) for participation in property acquisition in the Franklin Canyon area. The MHLT is seeking to acquire the property to preserve it as open space for habitat protection and for watershed environmental quality protection.

Various land acquisition and restoration projects proposed by the MHLT were listed on the Regional Water Quality Control Board's list of potential SEP's in June of 2003, and that entry remains on the Board's listing of projects at this time.

This proposal is submitted by C&H Sugar Company, Inc. (C&H) to the San Francisco Bay Regional Water Quality Control Board (RWQCB) for approval of their Executive Officer as part of the resolution of Complaint R2-2008-0100. The proposal reflects a project that has been developed in cooperation with the MHLT under the Policy on Supplemental Environmental Projects dated February 3, 2009. If approved, C&H will provide funding for MHLT for their land acquisition project. It is proposed that oversight of the project be provided by the San Francisco Estuary Partnership as described in the email from Derek Whitworth to Tanya Akkerman dated May 27, 2009.

Background

The Muir Heritage Land Trust has been acquiring and protecting important habitat and watershed lands since 1988 in the northern and central portions of Contra Costa County. The mission of the MHLT is:

"to ensure a lasting quality of life for future generations by preserving and stewarding open space and fostering environmental awareness."

One of the immediate objectives of the MHLT is to acquire a 423 acre parcel of property in the Franklin Canyon area east of Hercules. This area is adjacent to the Fernandez Ranch property that has already been purchased by MHLT. The area includes riparian habitat in both the Rodeo Creek and Refugio Creek watersheds. Important fauna species for which this property provides appropriate habitat include the California red legged frog, the Alameda whipsnake, the western pond turtle, and the Cooper's hawk. A wide variety of other species is found in the grasslands and riparian plant communities. A map of the proposed land acquisition is attached.

The MHLT has entered into a purchase agreement by which it can acquire the Franklin Canyon property for \$1,780,000. Additional costs associated with the acquisition and basic development will require \$620,100 in funding. The agreement requires the purchase to be completed by late June, 2010. Approval may be required from some of the other contributors to the proposed land purchase before the MHLT can accept funding from this proposed SEP. The MHLT is initiating the process for obtaining that approval as necessary.

The MHLT is known throughout the Bay Area as a responsible and effective non-profit organization. Its contribution to the community through acquisition of land, development of visitor access, and educational programs is well known. Its success is obvious from its history of land acquisition and from the high quality of its sponsors.

The project has an environmental justice component. The West Contra Costa County area served by the proposed acquisition is traditionally underserved with parks and open space, and is the portion of the county associated with the lowest per capita income.

Proposal

C&H Sugar Company, Inc. proposes to enter into an agreement to direct \$231,500 from the administrative civil liability payment associated with the resolution of Complaint No. R2-2008-0100 to the Muir Heritage Land Trust to cover a portion of the purchase and development cost for the Franklin Canyon property. The single payment to MHLT by C&H of \$231,500 and the application of those funds to the Franklin Canyon property purchase will comprise the entire SEP.

It is proposed that the RWQCB suspend payment of \$231,500 from the penalty until the actual purchase of the property by MHLT. If the acquisition of the land should fail to occur as planned, or if the MHLT should be unable to agree with other contributors to receive funding from this SEP, the agreements will provide for C&H to withdraw from supporting the Franklin Canyon property acquisition. At that time, the penalty funds will be submitted to the State of California Water Pollution Cleanup and Abatement Account.

The success of the project will be measured by the actual payment of the funds associated with the acquisition of the Franklin Canyon property. No other criteria for success are proposed for the project.

It is proposed that C&H will submit a check for \$2520 to the Association of Bay Area Governments (ABAG) within 45 days following approval of this SEP. This funding will cover the required third-party oversight of the project. C&H has been advised that ABAG will establish an account for this funding and will make progressive payments to the San Francisco Estuary Partnership from the account according to a pre-determined schedule of payments.

The contact person for this project is:

Tanya Akkerman, Environmental Manager
C&H Sugar Company, Inc.
830 Loring Ave.
Crockett, CA, 94525
Phone 510-787-4352
tanya.akkerman@chsugar.com.

An alternative contact person is:
Steve Ball, Compliance Manager
Phone 510-787-4343
steve.ball@chsugar.com

Milestones

If the project is not withdrawn for reasons stated in this proposal, C&H will bear responsibility for the project meeting the following milestones:

- By March 5, 2010 C&H remits a check to the MHLT for deposit in a segregated account to be held until the property sale closes.
- By October 31, 2010 the MHLT has completed the close of the purchase of the Franklin Canyon property. The full \$231,500 suspended liability is to be waived with certification that this milestone has been fulfilled.

Reporting

It is proposed that the following reports be submitted to the (SFEP) as the full required documentation of the project under the Policy on Supplemental Environmental Projects:

- A progress report will be provided by C&H to the SFEP quarterly during the first 20 days of March, June, September, and December of each year beginning in September 2009 and continuing until the project is completed. It should be noted that the reports will be identical up to the first milestone, scheduled for March 2010. Copies of these reports will also be submitted to the Division of Financial Assistance of the California State Resource Control Board.
- A final report will be submitted to the SFEP within 60 days of the close of purchase of the property or within 60 days of withdrawal from the project and payment to the Cleanup and Abatement Account. If the project is completed as planned, this report will declare under penalty of perjury that the project has met the criteria for success described in the Proposal section above.
- A financial report and proof of payment will be appended to the final report and certified as required. It is proposed that the RWQCB determine that a final, certified, post-project accounting of expenditures (an independent third-party audit) is unduly onerous for a project such as this that requires just a single payment and that the audit is not required because the proof of payment provides the RWQCB with other means to verify the expenditures.

Supplemental Environmental Project Qualification Criteria

SEP's must "only consist of measures that go above and beyond the otherwise applicable obligations of the discharger" (section C.1.). C&H has no legal obligation to contribute to the purchase of property by the MHLT.

The SEP must "benefit or study ground water or surface water quality or quantity, and the beneficial uses of the waters of the State" (section C.2.). This project benefits water quality and beneficial uses of waters of the State, and is consistent with the examples provided in C.2.f, g, and l. The MHLT project will remove a large parcel of land from potential development, ensuring protection of the riparian environment in two watersheds. Protection of the existing riparian areas will provide pollution protection for

the streams in the purchased area. The project also has the potential to support environmental education by providing visitor access to the acquired property. The property has extensive flora and fauna that is appropriate subject matter for environmental education.

The nexus criteria (section E.) is met by the location of the project. The discharger's plant is located in the Edwards Creek watershed, approximately two miles north of the north boundary of the proposed purchase property. The Edwards Creek watershed is small and was not directly involved in exceedences associated with the administrative civil liability. The exceedences involved the Carquinez Strait, and less extensively the east end of San Pablo Bay. The watersheds involved in the acquisition area (Rodeo Creek and Refugio Creek) also drain into the west end of the Carquinez Strait and the east end of San Pablo Bay. The benefits of this project will be easily accessible by the residents of the local watershed where the discharger's plant is located.

Conclusion

C&H Sugar Company appreciates the opportunity to submit this SEP proposal. Please feel free to contact either of the listed contacts with questions or suggestions.

Attachment D

C&H Sugar Company, Inc.

Proposed Administrative Civil Liability Order

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**TENTATIVE ORDER
ORDER NO. R2-2009-[insert number]**

ADMINISTRATIVE CIVIL LIABILITY FOR:

**C&H SUGAR COMPANY, INC.
CROCKETT
CONTRA COSTA COUNTY**

This Order is issued in reference to an adjudicative proceeding initiated by the California Regional Water Quality Control Board, San Francisco Bay Region's (Regional Water Board) issuance of Administrative Civil Liability Complaint No. R2-2008-0100, dated December 12, 2008 (Complaint), which proposed to assess a total of \$490,000 against the C&H Sugar Company, Inc. (Company) for certain alleged discharges that occurred from July 1, 2005, through to October 31, 2008, in violation of Order Nos. 00-025 and R2-2007-0032 (NPDES No. CA0005240). The parties to this proceeding are the Regional Water Board's Prosecution Team and the Company.

The Regional Water Board has been presented with a proposed settlement of the claims alleged in the Complaint, which was developed during negotiations between the parties. The proposed settlement ("Settlement") is provided as Attachment 1, and represents a mutually agreed-upon resolution of the Prosecution Team's claims alleged in the Complaint, and other alleged violations by the Company from November 1, 2008, to March 31, 2009, as shown in the attachments to the Settlement. The Settlement includes the Company's payment of a total administrative civil liability penalty in the amount of \$490,000. The Parties recommend that the Regional Water Board issue this Order to effectuate their proposed settlement.

Having provided public notice of the proposed settlement and not less than thirty (30) days for public comment, the Regional Water Board finds that:

1. The Company 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. The Company 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.
2. The Complaint asserts that during the reporting periods between July 1, 2005, and October 31, 2008, the Company reported 54 effluent discharges that did not meet permit limits.

3. The Executive Officer has considered the exhibits and information in the record and comments provided by the Parties and the public and finds that the Company is subject to civil penalties. In determining the amount of civil liability to be assessed against the Company, the Executive Officer has taken into consideration the factors described in California Water Code (CWC) Section 13385(e).
4. The Executive Officer finds that the penalty amount agreed to by the Parties in the Settlement is reasonable based on the factors in CWC Section 13385(e). In addition to these factors, the civil liability recovers the costs incurred by the staff of the Regional Water Board in evaluating the claims alleged in the Complaint, and preparing the Complaint and related documents.
5. A notice of this Order and assessment of civil liability was published on the Regional Water Board's website notifying the public of a 30-day review period and soliciting public comments. The Settlement supports the total assessment of administrative civil liability in the amount of \$490,000 for the claims alleged in the Complaint and the other alleged violations by the Company from November 1, 2008, to March 31, 2009. This Order provides for the full and final resolution of each of these claims.
6. The Settlement is in the public interest.
7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that:

1. The Settlement is approved.
2. The Company shall pay a total penalty of \$490,000 as follows:
 - A. The Company shall pay administrative civil liability of \$258,500 to the State Water Resources Control Board's Cleanup and Abatement Account.
 - B. In lieu of the remaining \$231,500 penalty, the Company shall complete a Supplemental Environmental Project (SEP) as described in Attachment C of the Settlement at a cost of no less than \$231,500 towards acquisition and restoration projects proposed by the Muir Heritage Land Trust.
3. In the event that the Company does not complete the SEP by [insert date for completion in SEP proposal], then the Company shall pay \$231,500 in accordance with the terms of the Settlement.

4. Fulfillment of the Company's obligations under this Order constitutes full and final satisfaction of any and all liability for each Claim in the Complaint and additional claims of discharges exceeding permit limits prior to March 31, 2009, in accordance with the terms of the Settlement.

Date: _____

Bruce H. Wolfe
Executive Officer

Attachment:
Supplemental Environmental Project