

SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD

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| In the matter of: |) | |
| |) | Order R2-2010-00XX (Proposed) |
| C&H SUGAR COMPANY, INC. |) | |
| |) | SETTLEMENT AGREEMENT AND |
| |) | STIPULATION FOR ENTRY OF |
| |) | ADMINISTRATIVE CIVIL LIABILITY ORDER; |
| |) | ORDER (PROPOSED) |

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Staff ("Prosecution Staff") and C&H Sugar Company, Inc. (Collectively "Parties") and is presented to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

1. RECITALS

WHEREAS, at all times relevant to this matter, C&H Sugar Company, Inc. ("C&H") was the owner and operator of the C&H Sugar Refinery ("Refinery"), located at 830 Loring Avenue, Crockett, CA 94525, and was responsible for the operation thereof in accordance with National Pollution Discharge Elimination System ("NPDES") Permit No. CA0005240, Waste Discharge Requirements Order No. R2-2007-0032 ("NPDES Permit" or "Permit");

WHEREAS, on October 16, 2009, there was a discharge from the Refinery of 5,093 gallons of soft sugar liquor (containing an estimated 35,000 pounds of sugar), mixed with approximately 243,000 gallons of cooling water, to the Carquinez Strait, a water of the United States, and on June 21, 2010, there was a discharge from the Refinery of 3,957 gallons of sucrose (containing an estimated 33,000 pounds of sugar), mixed with approximately 520,000 gallons of cooling water, to the Carquinez Strait, a water of the United States ("the Discharge Events");

WHEREAS, the Assistant Executive Officer of the Regional Water Board, by and through the Prosecution Staff, investigated the circumstances of the Discharge Events;

WHEREAS, the Prosecution Staff alleges that the Discharge Events resulted in the violation of the Permit's Biochemical Oxygen Demand (BOD) maximum daily effluent limit of 6,700 lbs/day and BOD monthly average effluent limit of 2,200 lbs/day, and that the Discharge Events were caused by operator error, in violation of the Proper Operation and Maintenance Federal Standard Provision of the NPDES Permit, which states, in part, that "The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of [the Permit]." The alleged violations are described in Exhibit A, attached hereto;

WHEREAS, the Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order is consistent with a reasonable liability determination using the penalty methodology in the Water Quality Enforcement Policy. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Exhibit A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

2. **JURISDICTION**

The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

3. **ADMINISTRATIVE CIVIL LIABILITY**

Within 30 days of adoption of this Stipulated Order, C&H shall remit, by check, TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) to the Regional Water Board, payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order.

C&H shall send the original signed check to the San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612, with copies sent to: David Boyers, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and Myriam Zech, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612.

4. **MATTERS COVERED BY THIS STIPULATED ORDER**

Upon adoption by the Regional Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in Exhibit A or this Stipulated Order against C&H as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on C&H's full payment of administrative civil liability by the deadline specified in Paragraph 3.

5. **DENIAL OF LIABILITY**

In settling this matter, C&H expressly denies the allegations described in Exhibit A and this Stipulated Order and makes no admission or representation as to the appropriateness of the liability determination under the Water Quality Enforcement Policy as set forth in Exhibit A. Neither this Stipulated Order nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulations. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance

with this Order. This Order may be used as evidence of a prior enforcement action in future actions by the State Water Resources Control Board or the Regional Water Board against C&H.

6. **COVENANT NOT TO SUE**

Upon the effective date of this Stipulated Order, C&H shall and does release, discharge and covenant not to sue or pursue any civil or administrative claims against the Regional Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

7. **PUBLIC NOTICE**

The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board for adoption. If the Regional Water Board Assistant Executive Officer receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Regional Water Board. C&H agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

8. **PROCEDURE**

The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

9. **WAIVERS**

In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that the Prosecution Staff may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or 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 conducting any contested evidentiary hearing in this matter; or

b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

10. **APPEALS**

C&H hereby waives its right to appeal this Stipulated Order to the State Water Resources Control Board or a California Superior Court and/or any California appellate level court.

11. **EFFECT OF STIPULATED ORDER**

Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

12. **WATER BOARDS NOT LIABLE**

Neither the Regional Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by C&H, its employees, representative agents, attorneys, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board members, staff, attorneys or representatives be held as parties to or guarantor of any contract entered into by C&H, its employees, representative agents, attorneys, or contractors in carrying out activities required pursuant to this Stipulated Order.

13. **NO WAIVER OF RIGHT TO ENFORCE**

The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order.

14. **REGULATORY CHANGES**

Nothing in this Stipulated Order shall excuse C&H from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

15. **AUTHORITY TO ENTER STIPULATED ORDER**

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C&H Sugar Company, Inc.

Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

16. **INTEGRATION**

This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

17. **MODIFICATION OF STIPULATED ORDER**

This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Water Board or its Executive Officer.

18. **INTERPRETATION**

This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

19. **COUNTERPART SIGNATURES**

This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

20. **INCORPORATION OF EXHIBITS**

Exhibit "A" is incorporated by reference.

IT IS SO STIPULATED:

Regional Water Board Prosecution Staff

By: _____
Thomas E. Mumley, Assistant Executive Officer

Date

C&H

By: Michael Seither
Michael Seither, Senior Vice President

12/2/10
Date

**HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS,
THE REGIONAL WATER BOARD, OR ITS DELEGEE, FINDS THAT:**

21. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

22. In adopting this Stipulated Order, the Regional Water Board, or its delegee, has considered all the factors prescribed in Water Code section 13385(e), in accordance with the State Water Resources Control Board's Water Quality Enforcement Policy. The consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

23. The liability imposed by this Order is at a level that recovers the economic benefits derived from the acts that constitute the violation, in accordance with Water Code section 13385, subdivision (e) and is greater than the mandatory minimum liability required to be imposed pursuant to Water Code section 13385, subdivision (h). In addition, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

PURSUANT TO WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60, **IT IS HEREBY ORDERED** ON BEHALF OF THE REGIONAL WATER BOARD.

Bruce H. Wolfe
Executive Officer

Date

**EXHIBIT A – REGIONAL WATER BOARD PROSECUTION STAFF’S ALLEGATIONS AND
WATER QUALITY ENFORCEMENT POLICY METHODOLOGY**

1. C&H Sugar Company, Inc. (“C&H” or “Discharger”) is the owner and operator of the C&H Sugar Refinery (“Refinery”) located at 830 Loring Avenue, Crockett, CA 94525, and is responsible for the operation thereof in accordance with National Pollution Discharge Elimination System (“NPDES”) Permit No. CA0005240, Waste Discharge Requirements Order No. R2-2007-0032 (“NPDES Permit”);
2. The Proper Operation and Maintenance Federal Standard Provision of the NPDES Permit, states, in part, that “The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of [the Permit].”
3. The NPDES Permit contains mass loading effluent limitations for Biochemical Oxygen Demand (BOD) at Discharge Point 001 as follows:

Biochemical Oxygen Demand (BOD). The BOD₅ of the discharge shall not exceed the following limits:

| Constituent | Units | Maximum Daily | Monthly Average |
|------------------|---------|---------------|-----------------|
| BOD ₅ | lbs/day | 6,700 | 2,200 |

[1] This effluent limitation is based on a sugar melt rate of 3,300 tons/day and the effluent limits as defined at 40 CFR 409 Subpart B. The resulting mass loading limits are rounded to two significant figures.

[2] Compliance with the maximum daily effluent limitation for BOD₅ shall be determined by evaluating the mass (lbs/day) of BOD₅ discharged at Discharge Point 001 during the calendar day that sampling occurs. The mass (lbs/day) of BOD₅ discharged shall be determined in accordance with the following equation:

$$\text{lbs/day BOD}_5 = [\text{BOD}_5 \text{ effluent concentration (mg/L) at Discharge Point 001}] \times \text{effluent flow (MGD) at Discharge Point 001} \times 8.34$$

where: Conversion factor (8.34) in $[(\text{L} \cdot \text{lb})/(\text{gallon} \cdot \text{kg})] = 3.7854 \text{ L/gallon} \times 2.2 \text{ lbs/kg}$

[3] Compliance with the monthly average effluent limitation for BOD₅ shall be determined by averaging all daily values (lbs/day) as determined above in each calendar month.

4. On October 16, 2009, there was a discharge from the Refinery at Discharge Point 001 of 5,093 gallons of soft sugar liquor (containing an estimated 35,000 pounds of sugar), mixed with approximately 243,000 gallons of cooling water, to the Carquinez Strait, a water of the United States, as defined under the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (“the October 2009 Event”);

5. On June 21, 2010, there was a discharge from the Refinery at Discharge Point 001 of 3,957 gallons of sucrose (containing an estimated 33,000 pounds of sugar), mixed with approximately 520,000 gallons of cooling water, to the Carquinez Strait, a water of the United States, ("the June 2010 Event");

6. The October 2009 Event resulted in a violation of the BOD maximum daily effluent limit and the BOD monthly average effluent limit. In addition, the October 2009 Event was caused as a result of operator error, in violation of the Proper Operation and Maintenance Federal Standard Provision.

7. The June 2010 Event also resulted in a violation of the BOD maximum daily effluent limit and the BOD monthly average effluent limit. In addition, the June 2010 Event was caused as a result of operator error, in violation of the Proper Operation and Maintenance Federal Standard Provision.

8. The Discharge Events described above in Paragraphs 4 and 5 were not susceptible to cleanup and not cleaned up as those terms are used under Water Code Section 13385(c).

POTENTIAL MAXIMUM CIVIL LIABILITY

9. Water Code section 13385, subdivision (a) provides that civil liability may be administratively imposed by the Regional Water Board against any person that violates any waste discharge requirements issued pursuant to Chapter 5.5 of Division 7 of the Water Code. NPDES Permit No. CA0005240, Waste Discharge Requirements Order No. R2-2007-0032 was issued to C&H pursuant to Chapter 5.5 of Division 7 of the Water Code.

10. Water Code section 13385, subdivision (c) provides that the civil liability may be imposed by the Regional Water Board in an amount not to exceed the sum of both the following:

- a. Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- b. Where there is a discharge, any portion of which is not susceptible to cleanup or is 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.

Potential Maximum Liability For October 2009 Event

11. C&H is exposed to liability pursuant to section 13385, subdivision (c) by failing to comply with its NPDES Permit on October 16, 2009, when there was a discharge from the Refinery of 5,093 gallons of soft sugar liquor (containing an estimated 35,000 pounds of sugar), mixed with approximately 243,000 gallons of cooling water, to the Carquinez Strait, a water of the United States.

12. The maximum liability for the violation described above, pursuant to section 13385, subdivision (c) of the Water Code is:

| PENALTY CATEGORY | CALCULATION | TOTAL |
|---|---|---------------------|
| Failure to comply with BOD maximum daily effluent limit | One day (October 16, 2009) x \$10,000 | \$10,000 |
| Failure to comply with BOD monthly average effluent limit | Thirty-one days (October 1, 2009 – October 31, 2009) x \$10,000 | \$310,000 |
| Failure to comply with Proper Operation and Maintenance Federal Standard Provision | One day (October 16, 2009) x \$10,000 | \$10,000 |
| Additional liability for volume of discharge over 1,000 gallons which is not susceptible to cleanup or which is not cleaned up. | 242,000 gallons x \$10/gallons. | \$2,400,000 |
| Potential Maximum Penalty | | \$ 2,730,000 |

Potential Maximum Liability For June 2010 Event

13. C&H is exposed to liability pursuant to section 13385, subdivision (c) by failing to comply with its NPDES Permit on June 21, 2010, when there was a discharge from the Refinery of 3,957 gallons of sucrose (containing an estimated 33,000 pounds of sugar), mixed with approximately 520,000 gallons of cooling water, to the Carquinez Strait, a water of the United States.

14. The maximum liability for the violation described above, pursuant to section 13385, subdivision (c) of the Water Code is:

| PENALTY CATEGORY | CALCULATION | TOTAL |
|---|---|-------------|
| Failure to comply with BOD maximum daily effluent limit | One day (June 21, 2010) x \$10,000 | \$10,000 |
| Failure to comply with BOD monthly average effluent limit | Thirty days (June 1, 2010 – June 30, 2010) x \$10,000 | \$300,000 |
| Failure to comply with Proper Operation and Maintenance Federal Standard Provision | One day (June 21, 2010) x \$10,000 | \$10,000 |
| Additional liability for volume of discharge over 1,000 gallons which is not susceptible to | 519,000 gallons x \$10/gallons. | \$5,190,000 |

| | | |
|-------------------------------------|--|--------------|
| cleanup or which is not cleaned up. | | |
| Potential Maximum Penalty | | \$ 5,510,000 |

Potential Maximum Liability For Both Discharge Events

15. The total maximum potential liability that may be imposed for the October 2009 Event and the June 2010 Event is \$8,240,000.

MANDATORY MINIMUM PENALTY

16. Water Code section 13385, subdivision (h) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to Water Code section 13385, subdivision (h)(2) "a serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants."

Mandatory Minimum Penalty For October 2009 Event

17. BOD is a Group I pollutant, and the October 2009 Event resulted in the discharge of BOD on October 16, 2009 in excess of the BOD maximum daily effluent limit by more than 40 percent. Therefore, the Regional Water Board must impose a mandatory minimum penalty of at least \$3,000 for this violation.

18. The October 2009 Event also resulted in the discharge of BOD in excess of the BOD maximum monthly effluent limit by more than 40 percent for the month of October, 2009. Therefore, the Regional Water Board must impose a mandatory minimum penalty of at least \$3,000 for this violation.

19. The total mandatory minimum penalty for the October 2009 Event that must be imposed, therefore, is \$6,000.

Mandatory Minimum Penalty For June 2010 Event

20. BOD is a Group I pollutant, and the June 2010 Event resulted in the discharge of BOD on June 21, 2010 in excess of the BOD maximum daily effluent limit by more than 40 percent. Therefore, the Regional Water Board must impose a mandatory minimum penalty of at least \$3,000 for this violation.

21. The June 2010 Event also resulted in the discharge of BOD in excess of the BOD maximum monthly effluent limit by more than 40 percent for the month of June 2010. Therefore, the Regional Water Board must impose a mandatory minimum penalty of at least \$3,000 for this violation.

22. The total mandatory minimum penalty for the June 2010 Event that must be imposed, therefore, is \$6,000.

Mandatory Minimum Liability For Both Discharge Events

23. The total mandatory minimum penalty that must be imposed for the October 2009 Event and the June 2010 Event is \$12,000.

CONSIDERATION OF FACTORS

24. Pursuant to Water Code section 13385, subdivision (e), the Regional Water Board is required to consider the following factors in determining the amount of civil liability, including 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; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require. Water Code section 13385, subdivision (e) requires that, at a minimum, the liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

25. On November 17, 2009, the State Water Resources Control Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code Section 13385 (e).

October 2009 Event

26. The proposed liability for violations associated with the failure to comply with the BOD maximum daily effluent and the BOD monthly average effluent limit are the mandatory liabilities of \$6,000, as described in Paragraphs 17 through 19, above. No discretionary liability is proposed and therefore, the methodology for assessing liability in the Enforcement Policy is not applicable.

27. The Prosecution Staff is proposing discretionary liability for violations associated with the failure to comply with the Proper Operation and Maintenance Federal Standard Provision and the discharge of 243,000 gallons of cooling water and has conducted an analysis of the methodology for assessing liability in the Enforcement Policy, as shown below:

a. **Step 1. Potential for Harm for Discharge Violations**

The potential for harm to the environment associated with the October 2009 Event is 3. This is determined by the sum of the factors for:

(a) The potential for harm to beneficial uses is 1 (minor) because although the soft liquor raised the effluent BOD to an extremely high level, the discharge was geographically and temporally limited. The spatial extent of the discharge was limited to the site of the release and dissipated into the Carquinez Strait within the hour. Because of the modest volume of the discharge compared to the large amount of water that moves through the Carquinez Strait every day, dilution offset or

minimized the depletion of dissolved oxygen caused by the high levels of BOD and created only minor impacts to beneficial uses.

(b) The physical, chemical, biological or thermal characteristics of the discharge is 1 (minor risk) because the soft liquor was mixed with 243,000 gallons of cooling water before it was discharged.

(c) The susceptibility to cleanup or abatement is 1 (less than 50% susceptible to cleanup) because the discharge was directly to the Carquinez Strait and could not be recovered.

b. **Step 2. Assessment for Discharge Violations**

Because the October 2009 Event resulted in a large scale discharge of soft sugar liquor mixed with cooling water, liability is proposed both on a per gallon and a per day basis, as shown below.

Per Gallon Assessment

The deviation from requirements is major. The Proper Operation and Maintenance Federal Standard Provision of the NPDES Permit, states, in part, that "The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of (the Permit)." The October 2009 Event was caused by operator negligence, rendering the requirement to operate properly completely ineffective.

Therefore, in accordance with Table 1-Per Gallon Factor for Discharges on Page 14 of the Enforcement Policy, a multiplier of 0.020 is appropriate.

Per Day Assessment

The deviation from requirements is major, for the same reason as stated above.

Therefore, in accordance with Table 2-Per Day Factor For Discharges on Page 15 of the Enforcement Policy, a multiplier of 0.020 is appropriate.

High Volume Discharge

Because the October 2009 Event resulted in a high volume discharge of 243,000 gallons of soft liquor mixed with cooling water (soft sugar liquor was diluted 48:1 by cooling water), consistent with the direction in the Enforcement Policy, a maximum per gallon liability of less than \$10 is appropriate. In this case, a maximum liability of \$6 per gallon was selected because any further reduction would have resulted in a liability that was insufficient to serve as an appropriate deterrent to future violations.

INITIAL LIABILITY AMOUNT

The Initial Liability Amounts for the violation calculated on a per gallon and a per day basis, is as follows:

Per Gallon Liability
 $(242,000 [243,000 - 1,000]) \times (.02) \times (\$6) = \$29,040$

Per Day Liability
 $(10,000) \times (.02) = \200

Total Initial Liability = **\$29,240**

c. **Step 3. Per Day Assessments For Non-Discharge Violations**

This step is not applicable because the violation is a discharge violation.

d. **Step 4. Adjustment Factors**

(a) Culpability: The degree of culpability is high because the October 2009 Event was the result of operator negligence (operator turned a control dial in the incorrect direction), resulting in a multiplier of 1.4.

(b) Cleanup and Cooperation: The October 2009 Event was not susceptible to cleanup, however, C&H did timely report the event and returned to compliance. This type of response is expected and required by the Permit and therefore no adjustment is warranted. A multiplier of 1 is appropriate.

(c) History of Violations: The Discharger has had a number of violations in recent years, and operator error appears to be a recurring cause of BOD violations. From July 1, 2005, to March 31, 2009, the Discharger reported 62 effluent limitation violations, including 36 BOD violations, a number of which cite operator error as the main cause of the violation. During this period, the Discharger exceeded the maximum daily effluent limit for BOD₅ 22 times and the average monthly effluent limit for BOD₅ 14 times. These BOD violations were routine occurrences resulting from leaky equipment, poor operating decisions, and improper equipment monitoring and repair. The Discharger repeatedly released sugar into the cooling water discharged to the Carquinez Strait, often significantly exceeding the BOD effluent limits. In reports relating to the incidents, the Discharger committed to improving its cleaning practices, making needed repairs and enhancing its operator training.

BOD violations that occurred between July 1, 2005 and March 1, 2009 were addressed in Orders No. R2-2008-0100 and R2-2009-0058.

Given the Discharger's history of violations, a multiplier of 1.4 is appropriate.

e. **Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

(Initial Liability) X (Culpability Multiplier) X (Cleanup and Cooperation Multiplier) X (History of Violations Multiplier) = Total Base Liability

$\$29,240 \times 1.4 = \$40,936 \times 1 = \$40,936 \times 1.4 = \mathbf{\$57,310.40}.$

- f. **Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amounts have been determined for the remaining violations.**

June 2010 Event

28. The proposed liability for violations associated with the failure to comply with the BOD maximum daily effluent and the BOD monthly average effluent limit are the mandatory liabilities of \$6,000, as described in Paragraphs 20 through 22, above. No discretionary liability is proposed and therefore, the methodology for assessing liability in the Enforcement Policy is not applicable.

29. The Prosecution Staff is proposing discretionary liability for violations associated with the failure to comply with the Proper Operation and Maintenance Federal Standard Provision and the discharge of 520,000 gallons of cooling water and has conducted an analysis of the methodology for assessing liability in the Enforcement Policy, as shown below:

a. **Step 1. Potential for Harm for Discharge Violations**

The potential for harm to the environment associated with the June 2010 Event is 3. This is determined by the sum of the factors for:

(a) The potential for harm to beneficial uses is 1 (minor) because although the sucrose raised the effluent BOD to an extremely high level, the discharge was geographically and temporally limited. The spatial extent of the discharge was limited to the site of the release and dissipated into the Carquinez Strait within the hour. Because of the modest volume of the discharge compared to the large amount of water that moves through the Carquinez Strait every day, dilution offset or minimized the depletion of dissolved oxygen caused by the high levels of BOD and created only minor impacts to beneficial uses.

(b) The physical, chemical, biological or thermal characteristics of the discharge is 1 (minor risk) because the sucrose was mixed with 520,000 gallons of cooling water before it was discharged.

(c) The susceptibility to cleanup or abatement is 1 (less than 50% susceptible to cleanup) because the discharge was directly to the Carquinez Strait and could not be recovered.

b. **Step 2. Assessment for Discharge Violations**

Because the June 2010 Event resulted in a large scale discharge of sucrose mixed with cooling water, liability is proposed both on a per gallon and a per day basis, as shown below.

Per Gallon Assessment

The deviation from requirements is major. The Proper Operation and Maintenance Federal Standard Provision of the NPDES Permit, states, in part, that "The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of (the Permit)." The June 2010 Event was caused by operator negligence, rendering the requirement to operate properly completely ineffective.

Therefore, in accordance with Table 1-Per Gallon Factor for Discharges on Page 14 of the Enforcement Policy, a multiplier of 0.020 is appropriate.

Per Day Assessment

The deviation from requirements is major, for the same reason as stated above.

Therefore, in accordance with Table 2-Per Day Factor For Discharges on Page 15 of the Enforcement Policy, a multiplier of 0.020 is appropriate.

High Volume Discharge

Because the June 2010 Event resulted in a high volume discharge of 520,000 gallons of sucrose mixed with cooling water (sucrose was diluted 13:1 by cooling water), consistent with the direction in the Enforcement Policy, a maximum per gallon liability of less than \$10 is appropriate. In this case, a maximum liability of \$6 per gallon was selected because any further reduction would have resulted in a liability that was insufficient to serve as an appropriate deterrent to future violations.

INITIAL LIABILITY AMOUNT

The Initial Liability Amounts for the violation calculated on a per gallon and a per day basis, is as follows:

Per Gallon Liability
 $(519,000 [520,000 - 1,000]) \times (.02) \times (\$6) = \$62,280$

Per Day Liability
 $(10,000) \times (.02) = \200

Total Initial Liability = **\$62,480**

c. **Step 3. Per Day Assessments For Non-Discharge Violations**

This step is not applicable because the violation is a discharge violation.

d. **Step 4. Adjustment Factors**

- (d) Culpability: The degree of culpability is high because the June 2010 Event was the result of operator negligence (operator failed to shut off a pump), resulting in a multiplier of 1.4.
- (e) Cleanup and Cooperation: The June 2010 Event was not susceptible to cleanup, however, C&H did timely report the event and returned to compliance. This type of response is expected and required by the Permit therefore no adjustment is warranted. A multiplier of 1 is appropriate.
- (f) History of Violations: The Discharger has had a number of violations in recent years, and operator error appears to be a recurring cause of BOD violations. From July 1, 2005 to March 31, 2009, the Discharger reported 62 effluent limitation violations, including 36 BOD violations, a number of which cite operator error as the main cause of the violation. During this period, the Discharger exceeded the maximum daily effluent limit for BOD₅ 22 times and the average monthly effluent limit for BOD₅ 14 times. These BOD violations were routine occurrences resulting from leaky equipment, poor operating decisions, and improper equipment monitoring and repair. The Discharger repeatedly released sugar into the cooling water discharged to the Carquinez Strait, often significantly exceeding the BOD effluent limits. In reports relating to the incidents, the Discharger committed to improving its cleaning practices, making needed repairs and enhancing its operator training.

BOD violations that occurred between July 1, 2005 and March 1, 2009 were addressed in Orders No. R2-2008-0100 and R2-2009-0058.

Given the Discharger's history of violations, a multiplier of 1.4 is appropriate.

e. **Step 5. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

(Initial Liability) X (Culpability Multiplier) X (Cleanup and Cooperation Multiplier) X (History of Violations Multiplier) = Total Base Liability

$\$62,480 \times 1.4 = \$87,472 \times 1 = \$87,472 \times 1.4 = \mathbf{\$122,460.80}.$

The Combined Total Base Liability Amounts for the violations discussed above is:

(Total Base Liability for October 2009 Event) + (Total Base Liability for June 2010 Event) = Combined Total Base Liability

$\$57,310.40 + \$122,460.80 = \mathbf{\$179,771.20}$

f. **Step 6. Ability to Pay and Ability to Continue in Business**

C&H is a major corporation and its Refinery processes over 700,000 tons of cane sugar annually. C&H has the ability to pay the proposed liability and continue in business. Accordingly, the Combined Total Base Liability is not adjusted.

g. **Step 7. Other Factors as Justice May Require**

The Regional Water Board has incurred \$23,000 in staff costs associated with the investigation and enforcement of the violations alleged herein. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

$$\$179,771.20 + \$23,000 = \mathbf{\$202,771.20}$$

h. **Step 8. Economic Benefit**

The violations discussed above did not result in any economic benefit to the Discharger.

i. **Step 9. Maximum and Minimum Liability Amounts**

As discussed above, the maximum liability that may be imposed for the violations alleged herein, including the BOD effluent limitation violations is \$8,240,000.

In addition, as discussed above, the minimum liability that must be assessed for the violations alleged herein, including the BOD effluent limitation violations is \$12,000.

The proposed liability falls within these maximum and minimum liability amounts.

j. **Step 10. Final Liability Amount**

The final liability amount proposed is **\$202,771.20**. This amount is consistent with the amount stipulated by the Parties in settlement. Therefore, no further adjustments are made.