CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2004-0067
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
C&H SUGAR COMPANY
CROCKETT, CONTRA COSTA COUNTY

Pursuant to California Water Code Section 13385, this Complaint is issued to the C&H Sugar Company (hereinafter called the Discharger) to assess mandatory minimum penalties (MMP), based on a finding of the Discharger's violations of Waste Discharge Requirements contained in Order No. 00-025 for the period between February 1, 2002, and May 31, 2004.

The Executive Officer finds the following:

1. On April 19, 2000, the Regional Water Quality Control Board, San Francisco Bay Region, (the Water Board) adopted Order No. 00-025 for the Discharger, to regulate discharges of waste from the C&H's sugar refinery and the biological wastewater treatment plant (the treatment plant).

2. In 1976 the Discharger entered into a Joint-Use Agreement with the Crockett-Valona Sanitary District (CVSD) for the joint use of the treatment plant. According to the agreement provisions, C&H assumed, and continues to assume, full responsibility for the operation and maintenance of the treatment plant to produce an effluent in compliance with the applicable NPDES permit, and CVSD shares the equipment cost and reimburses the Discharger a portion of the operational and maintenance cost.

3. C&H is named as the Discharger in this Complaint because it is the sole operator of the treatment plant and its own refinery. According to the Joint-Use Agreement, CVSD has no responsibility for the operation and maintenance of the treatment plant. In assuming its operator responsibility, the Discharger chose to hire a contractor to operate the treatment plant. Despite this, it is still the Discharger's responsibility to ensure that any waste discharged from the treatment plant, as well as the refinery, complies with the waste discharge requirements contained in Order No. 00-025.

4. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP of three thousand dollars ($3,000) for each serious violation.

5. Water Code Section 13385(h)(2) defines "serious violation" as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent of more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent of more.

6. Water Code Section 13385(i)(1) requires the Water Board to assess an MMP of three thousand dollars ($3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six consecutive months:

a. Violates a waste discharge requirement effluent limitation.
b. Fails to file a report pursuant to Section 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.

5. Water Code Section 13385(l) allows the Regional Board, with the concurrence of the discharger, to direct a portion of the MMP amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. The discharger may undertake an SEP for up to the full amount of the MMP for liabilities less than or equal to $15,000. If the MMP amount exceeds $15,000, the maximum MMP amount that may be expended on an SEP may not exceed $15,000 plus 50 percent of the MMP amount that exceeds $15,000.

6. Effluent Limitations
Order No. 00-025 includes the following applicable effluent limitations:

Total coliform 5-sample median	*240 MPN/100 mL*
BOD daily maximum	*6688 lb/day + an allowance for CVSD*
BOD monthly average	*2417 lb/day + an allowance for CVSD*
Residual Chlorine	*0.0 mg/L*
Nickel monthly mass loading	*1.5 lb/month*

7. Summary of Effluent Limit Violations
During the period between February 1, 2002, and May 31, 2004, the Discharger had twenty-four violations of its effluent limits. These violations are: five total coliform 5-sample median limit violations, three nickel monthly mass loading limit violations, three chlorine residual limit violations, ten BOD daily maximum limit violations and three BOD monthly average limit violations. The details of these limit violations are summarized in the attached Table 1, which is incorporated herein by reference, and described in the following findings. The first three violations listed in Table 1 (items 1-3) have already been assessed an MMP in Complaint No. R2-2002-0005.

8. Total coliform 5-sample median
The first four coliform violations (items 4-7 in Table 1) are chronic violations and subject to an MMP since there have been four or more violations in a six-month period. The fifth coliform violation (item 10 in Table 1) is a non-serious violation and counts as the third chronic violation in the 180-day period counting back from October 22, 2002, and is not subject to an MMP. Therefore, these violations are subject to a $12,000 MMP.

9. Nickel monthly mass loading
Nickel is a Group II pollutant, but each violation does not exceed the effluent limitation by 20 percent. The first nickel violation (item 8 in Table 1) is a non-serious violation and counts as the second chronic violation in the 180-day period counting back from August 31, 2002, and is not subject to an MMP. The second nickel violation is a non-serious violation and counts as the second chronic violation in the 180-day period counting back from September 30, 2003, and is not subject to an MMP. The third nickel violation is a chronic violation and subject to an MMP since there have been four or more violations in a six-month period. Therefore, these violations are subject to a $3,000 MMP.

10. Residual Chlorine
Residual Chlorine is a Group II pollutant. The three violations (items 9, 15, and 16 in Table 1) are serious violations. Therefore, these violations are subject to a $9,000 MMP.

11. BOD daily maximum
BOD is a Group I pollutant. The ten violations (items 11-14, 17-18, 22 and 24-26 in Table 1) are serious violations. Therefore, these violations are subject to a $30,000 MMP.

12. BOD monthly average
The three violations (items 20, 23, and 27 in Table 1) are serious violations. Therefore, these violations are subject to a $9,000 MMP.

13. Water Code Exception
Water Code Section 13385(j) provides some exceptions related to the assessment of an MMP for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.

14. MMP Assessment
Twenty-one of the twenty-seven items listed in Table 1 are subject to an MMP. The total MMP amount is $63,000.

15. Partial Suspended MMP Amounts
Instead of paying the full penalty amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may spend an amount up to $39,000 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

16. SEP Categories
If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:

    a. Pollution prevention;
    b. Pollution reduction;
    c. Environmental clean-up or restoration; and
    d. Environmental education.

THE C&H COMPANY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the total amount of $63,000.

2. The Water Board will hold a hearing on this Complaint on October 20, 2004, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checks the appropriate box. By doing so, the Discharger agrees to:

    a. Pay the full MMP of $63,000 within 30 days after the signed waiver becomes effective, or
    b. Propose an SEP in an amount up to $39,000. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of $63,000.

3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by September 24, 2004, to the Executive Officer for conceptual approval. Any SEP proposal shall also 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 the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Projects. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty of $39,000. All payments, including money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.

4. The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.

5. If a hearing is held, the Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of penalty.

Bruce H. Wolfe
Executive Officer

8/13/04
Date

Table 1 – Violations Summary
Attachment A- Standard Criteria and Reporting Requirement for Supplemental Environmental Projects

WAIVER

(The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

☐ Waiver of the right to a hearing and agree to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Board with regard to the violations alleged in Complaint No. R2-2004-0067 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 signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.

☒ Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Board with regard to the violations alleged in Complaint No. R2-2004-0067, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to $39,000. I also agree to remit payment of the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the signed waiver becomes effective. 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 Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of the date of the letter from the Executive Officer denying the approval of the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

J. A. Warfield
Name (print)

Signature

8/27/04
Date

V.P. Operations
Title/Organization

Table 1: Violations (February 2002 – May 2004)

Item No.	DATE	POLLUTANT	EFFLUENT LIMIT	DAILY VALUE	Chronic	Serious	start of 180 days
1	9/30/2001	BOD monthly average, lb/day	2476	5889	C1		
2	11/13/2001	BOD daily maximum, lb/day	7026	15720	C2		
3	11/30/2001	BOD monthly average, lb/day	2501	3209	C3		
4	2/27/2002	Total coliform 5-sample median, MPN/100 mL	240	540	$3,000		8/27/01
5	2/28/2002	Total coliform 5-sample median, MPN/100 mL	240	1600	$3,000		
6	3/1/2002	Total coliform 5-sample median, MPN/100 mL	240	1600	$3,000		
7	3/4/2002	Total coliform 5-sample median, MPN/100 mL	240	540	$3,000		
8	8/31/2002	Nickel monthly mass loading, lb/month	1.5	1.56	C2		3/4/2002
9	9/16/2002	Chlorine residual, mg/l	0	4.1		$3,000	3/16/2002
10	10/28/2002	Total coliform 5-sample median, MPN/100 mL	240	350	C3		4/22/2002
11	10/28/2002	BOD daily maximum, lb/day	7080	10005		$3,000	
12	11/7/2002	BOD daily maximum, lb/day	6913	18926		$3,000	
13	11/21/2002	BOD daily maximum, lb/day	6818	28043		$3,000	
14	11/30/2002	BOD daily maximum, lb/day	2487	11781		$3,000	
15	12/20/2002	Chlorine residual, mg/l	0	0.12		$3,000	
16	2/21/2003	Chlorine residual, mg/l	0	10		$3,000	
17	5/8/2003	BOD daily maximum, lb/day	6954	10169		$3,000	11/8/2002
18	9/11/2003	BOD daily maximum, lb/day	6860	17480		$3,000	3/11/2003
19	9/30/2003	Nickel monthly mass loading, lb/month	1.5	1.71	C3		3/30/03
20	9/30/2003	BOD monthly average, lb/day	2481	4426		$3,000	
21	12/31/2003	Nickel monthly mass loading, lb/month	1.5	1.67	$3,000		
22	2/3/2004	BOD daily maximum, lb/day	7337	37851		$3,000	
23	2/29/2004	BOD monthly average, lb/day	2527	12674		$3,000	
24	3/25/2004	BOD daily maximum, lb/day	6886	15041		$3,000	
25	5/11/2004	BOD daily maximum, lb/day	6844	19912		$3,000	
26	5/27/2004	BOD daily maximum, lb/day	6844	16476		$3,000	
27	5/31/2004	BOD monthly average, lb/day	2483	7319		$3,000	
Number of Fineable Chronic Violations			5		$15,000		
Number of Serious Violations			16			$48,000	
				Total Penalty		**$63,000**	

Notes

C(x) - Running chronic violation. First three are not penalized, fourth and subsequent violations are penalized at $3,000 per violation.

S - serious violation, penalized at $3,000 per violation.

MMP assessed for items #1-3 in Complaint No. R2-2002-005

ORDER NO. 00-025
WDID 2 071006001
File No. 2119.1006
NPDES PERMIT NO. CA 0005240
Previous Enforcement:
Complaint No. R2-2002-0005;
and ACL R2-2002-0016

ATTACHMENT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION
JANUARY 2004

STANDARD CRITERIA AND REPORTING REQUIREMENT
FOR
SUPPLEMENTAL ENVIRONMENTAL PROJECT

A. BASIS AND PURPOSE

The San Francisco Bay Regional Water Quality Control Board (Water Board) accepts and encourages Supplemental Environmental Projects (SEP) in lieu of a portion of the ACL imposed on Dischargers in the Bay Area.

The Water Board does not select projects for SEP; rather, the Discharger identifies a project it would like to fund and then obtains approval from the Water Board's Executive Officer. The Water Board facilitates the process by maintaining a list of possible projects, which is made available to Dischargers interested in pursuing the SEP option. This list is available on the Water Board web site:

http://www.swrcb.ca.gov/rwqcb2/

Dischargers are not required to select a project from this list. Dischargers may contact local governments or public interest groups for potential projects in their area, or develop projects of their own.

B. GENERAL SEP QUALIFICATION CRITERIA

All SEPs approved by the Water Board must satisfy the following general criteria:

(a) An SEP shall only consist of measures that go above and beyond all legal obligations of the Discharger (including those from other agencies). For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.

(b) The SEP should benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. SEPs in the following categories have received approval from the Water Board's Executive Officer:

- Pollution prevention. These are projects designed to reduce the amount of pollutants being discharged to either sewer systems or to storm drains. Examples include improved industrial processes that reduce production of pollutants or improved spill prevention programs.
- Pollution reduction. These are projects that reduce the amounts of pollution being discharged to the environment from treatment facilities. An example is a program to recycle treated wastewaters.
- Environmental restoration. These projects either restore or create natural environments. Typical examples are wetland restoration or planting of stream bank vegetation.

- Environmental education. These projects involve funding environmental education programs in schools (or for teachers) or for the general public.

Further, an SEP should be located near the Discharger, in the same local watershed, unless the project is of region-wide importance.

C. APPROVAL PROCESS

The following information shall be submitted to the Executive Officer for approval of an SEP:

1. Name of the organization and contact person, with phone number.
2. Name and location of the project, including watershed (creek, river, bay) where it is located.
3. A detailed description of the proposed project, including proposed activities, time schedules, success criteria, other parties involved, monitoring program where applicable, and any other pertinent information.
4. General cost of the project.
5. Outline milestones and expected completion date.

Generally SEP proposals are submitted along with waivers of hearings. In such a case the approval of a proposal will not become effective until the waiver goes into effect, i.e. at the close of the public comment period. There will not be a public hearing on the SEP proposal unless new and significant information becomes available after the close of the public comment period that could not have been presented during the comment period.

If the Discharger needs additional time to prepare an SEP it may waive its right to a hearing within 30 days of the issuance of a Complaint (and retain its right to a hearing to contest the Complaint at a later date), and request additional time to prepare an SEP proposal. Any such time extension needs to be approved by Water Board staff.

D. REPORTING REQUIREMENT

On January 15 and July 15 of each year, progress reports shall be filed for the SEPs with expected completion date beyond 240 days after the issuance of the corresponding complaint.

E. FINAL NOTIFICATION

No later than 60 days after completion of the approved SEP, a final notification shall be filed. The final notification shall include the following information:

- Outline completed tasks and goals;
- Summary of all expenses with proof of payment; and
- Overall evaluation of the SEP.

F. THIRD PARTY PROJECT OVERSIGHT

For SEPs of more than $10,000 the Water Board requires there to be third party oversight of the project. The Water Board has made arrangements with the Association of Bay Area Governments (ABAG) to provide this oversight, or a Discharger may choose an alternative third party acceptable to the Executive Officer. If ABAG is chosen, six per cent of the SEP funds shall be directed to ABAG for oversight services (the remaining 94% of funds go directly to the SEP). If an alternative third party is chosen, the amount of funds directed to the SEP, as opposed to oversight, shall not be less than 94% of the total SEP funding. For projects greater than $10,000 the Discharger shall indicate when submitting the information required under C. above whether ABAG or an alternative third party oversight entity will be used.