

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

**COMPLAINT NO. R2-2002-0005**

**MANDATORY MINIMUM PENALTIES  
IN THE MATTER OF  
C&H SUGAR COMPANY  
CROCKETT, CONTRA COSTA COUNTY**

This Complaint to assess mandatory minimum penalties pursuant to California Water Code Section 13385 is issued to C&H Sugar Company (hereinafter the Discharger) based on a finding of violations of Waste Discharge Requirements Order Nos. 95-078 and 00-025 (NPDES No. CA0005240).

The Executive Officer finds the following:

1. On April 19, 1995, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Waste Discharge Requirements Order No. 95-078 to regulate discharges of wastes from the C&H's sugar refinery and the biological wastewater treatment plant (hereinafter the treatment plant). On April 19, 2000, the Regional Board adopted Waste Discharge Requirements Order No. 00-025, which superseded Order No. 95-078 in regulating the discharges from the refinery and the treatment plant.
2. In 1976 C&H entered into a Joint-Use Agreement with Crockett-Valona Sanitary District (CVSD) for the joint use of the treatment plant. According to 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 C&H 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 the abovementioned Orders.
4. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for the first serious violation and each additional serious violation in any six-month period. If no serious violation has occurred in the prior six months, the Board may, in lieu of assessing the first penalty, require the discharger to spend an equal amount for a supplemental environmental project or to develop a pollution prevention plan.
5. Water Code Section 13385(h)(2) defines a 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 or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.

6. Water Code Section 13385(i) requires the Regional Board to assess a mandatory penalty 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-month period:
  - (a) Exceeds a waste discharge requirement effluent limitation.
  - (b) Fails to file a report pursuant to section 13260.
  - (c) Files an incomplete report pursuant to section 13260.
  - (d) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
  
7. Order No. 95-078 includes, in part, the following effluent limitations for wastes discharged to the receiving water:

Chlorine residual: 0.0 mg/L  
Daily maximum pH range of stormwater runoff: 6.5 to 8.5
  
8. Order No. 00-025 includes, in part, the following effluent limitations for wastes discharged to the receiving water:

Daily maximum biochemical oxygen demand (BOD) loading: 6,688 pounds/day (lb/d)  
Monthly average BOD loading: 2,417 lb/d  
Chlorine residual: 0.0 mg/L  
5-sample median total coliform: 240 MPN/100 mL  
Single sample maximum total coliform: 10,000 MPN/100 mL
  
9. The Complaint alleges there were fourteen violations of effluent limitations of the Discharger's NPDES permit during the period between January 1, 2000 and December 31, 2001. Violations described in (a) through (c) below are based on Board Order No. 95-078, and violations (d) through (n) are based on Board Order No. 00-025.
  - (a) A violation occurred on January 11, 2000: the stormwater pH value of 8.88 exceeded the maximum effluent limit of 8.5.
  - (b) A violation occurred on April 17, 2000: the stormwater pH value of 6.33 was below the minimum effluent limit of 6.5.
  - (c) A violation occurred on April 28, 2000: the effluent chlorine residual value of 16.7 mg/L exceeded the maximum limit of 0.0 mg/L.
  - (d) A violation occurred on May 17, 2000: the effluent chlorine residual value of 1.55 mg/L exceeded the maximum limit of 0.0 mg/L.
  - (e) A violation occurred on June 6, 2000: the effluent daily maximum total coliform value of 16,000 MPN/100 mL exceeded the limit of 10,000 MPN/100 mL.
  - (f) A violation occurred on October 9, 2000: the effluent chlorine residual value of 9.84 mg/L exceeded the maximum limit of 0.0 mg/L.
  - (g) A violation occurred on April 12, 2001: the 5-sample median total coliform value of 350 MPN/100 mL exceeded the limit of 240 MPN/100mL.
  - (h) A violation occurred on April 13, 2001: the 5-sample median total coliform value of 950 MPN/100 mL exceeded the limit of 240 MPN/100mL.
  - (i) A violation occurred on April 16, 2001: the 5-sample median total coliform value of 950 MPN/100 mL exceeded the limit of 240 MPN/100mL.

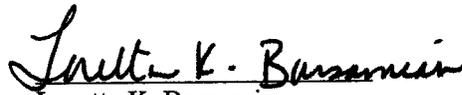
- (j) A violation occurred on April 17, 2001: the 5-sample median total coliform value of 350 MPN/100 mL exceeded the limit of 240 MPN/100mL.
  - (k) A violation occurred on September 13, 2001: the daily maximum BOD loading of 18,763 lb/d exceeded the limit of 6,688 lb/d.
  - (l) A violation occurred on September 30, 2001: the monthly average BOD loading of 5,889 lb/d exceeded the limit of 2,417 lb/d.
  - (m) A violation occurred on November 13, 2001: the daily maximum BOD loading of 15,720 lb/d exceeded the limit of 6,688 lb/d.
  - (n) A violation occurred on November 30, 2001: the monthly average BOD loading of 3,209 lb/d exceeded the limit of 2,417 lb/d.
10. Chlorine residual is a Group II pollutant. The exceedances of the effluent limit for chlorine residual, as cited in 7(c), (d), and (f) above, are serious violations, since each of the three violations is greater than the effluent limit by 20%.
11. BOD is a Group I pollutant. The exceedances of the effluent limits for BOD, as cited in 7(k), (l), (m), and (n) above, are serious violations, since each of the four violations is greater than the corresponding effluent limits by 40%.
12. The exceedances of the effluent limits for pH and total coliform, as cited in 7(a), (b), (e), (g), (h), (i), and (j) above, are non-serious violations because these are neither Group I nor Group II pollutants.
13. The first three non-serious violations in any six-month period, as referenced in finding 7(a), (b), (g), (h), and (i), are not subject to mandatory minimum penalties. The penalty assessment is based on seven serious violations and two non-serious violations; each is subject to \$3,000 fine. The total amount of the mandatory minimum penalties for the abovementioned effluent limit violations is \$27,000.
14. Water Code Section 13385(j) provides some exceptions related to the assessment of mandatory minimum penalties for effluent limit violations. Board Staff does not believe any of the exceptions applies to the violations cited in this Complaint.

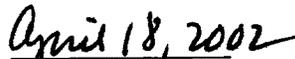
**C&H SUGAR COMPANY IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a mandatory minimum penalty in the amount of \$27,000.
2. The Regional Board shall hold a hearing on May 22, 2002, unless the Discharger agrees to waive the hearing and pay the mandatory minimum penalty of \$27,000 in full.
3. Since the Discharger has not committed a serious violation in the two six-month periods preceding the first serious violations on April 29, 2000 and September 13, 2001, respectively, the \$6,000 liability for these two serious violations is suspended if the Discharger spends \$6,000 on a supplemental environmental project (SEP) or pollution prevention plan (PPP) acceptable to the Executive Officer. If the Discharger wishes to propose a SEP or PPP, it must submit the proposal to the Regional Board no later than May 1, 2002. Any proposed SEP shall conform to the general criteria for SEP set forth in the State Water Resources Control Board's Guidance to implement the Water Quality Enforcement Policy, Resolution No. 96-030, as amended by Resolution No. 97-

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085. If the Discharger chooses not to or fails to spend \$6,000 on an adequate and approved SEP or PPP, the suspended liability of \$6,000 shall be immediately due and payable.
4. The Discharger may waive the right to a hearing. If the Discharger wishes to waive the hearing, please check and sign the attached waiver and return it with a check made payable to the State Water Resources Control Board for the full amount, or propose by May 1, 2002 a SEP or PPP as described above for the Executive Officer's approval.

  
Loretta K. Barsamian  
Executive Officer

  
Date

**WAIVER (check one box only)**

- By checking the box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No.R2-2002-0005 and to remit full payment for the civil liability imposed to State Water Resources Control Board at 1515 Clay Street, Oakland CA 94612. I understand that I am giving up my right 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. I further agree to remit payment for the civil liability imposed within 30 days after signing this waiver.
- By checking the box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0005, and to complete a pollution prevention plan (PPP) or conduct a supplemental environmental project (SEP) in lieu of the suspended civil liability of \$6,000 imposed for two serious violations, subject to approval by the Executive Officer. If the PPP or SEP is not acceptable to the Executive Officer, I agree to pay the suspended civil liability of \$6,000 within 30 days of a letter from the Executive Officer denying the approval of the proposed plan or project. I understand that I am giving up my right 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. I further agree to complete the PPP or SEP in accordance with a time schedule approved by the Executive Officer.

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title/Organization