



C&H SUGAR COMPANY, INC.

C&H Sugar, Inc.
830 Loring Ave.
Crockett, CA 94525

Tanya Akkerman
Environmental Manager

August 29, 2012

VIA PDF submittal to: dwhitworth@waterboards.ca.gov

Mr. Derek Whitworth
California Regional Water Quality Control Board -
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

**Re: Comments to the Tentative Order No. R2-2012-00XX, NPDES Permit No. CA0005240,
C&H Sugar Company Inc. and Crockett Community Services District,
Crockett, California**

Dear Mr. Whitworth:

C&H Sugar Company, Inc. is providing our comments on the Tentative Order No. R2-2012-00XX (TO) for the C&H Sugar Company, Inc. and the Crockett Community Services District (CSD); collectively "the Discharger," located in Crockett, California. Specific narrative comments are presented below. In addition, we have included a red-lined/strike-out version of the TO highlighting additional suggested changes.

Specific Comments

P.1, Table 2. Discharge Locations

Discharge point 007 should be removed, as it was not required in the previous NPDES Permit. The sampling location is essentially Edwards Creek which collects storm water runoff from the Community and surrounding hills.

P. 2, II. Findings, B. Facility Description and Discharge Location.

The Refinery's sanitary wastewater is approximately 0.032 MGD, instead of the 0.01 MGD indicated.

P.4, H. Water Quality Control Plans - Requirements of this Order implement the Thermal Plan.

As stated in the Discharger's 2007 permit, "Based on State Board Resolution No. 75-72, issued on July 17, 1975 and approved by USEPA on September 2, 1975, discharges from Discharge Points 001 and 002 are exempt from Section Nos. 5.A.(1). a. and 5.(A).(2)...," which were the thermal plan requirements as presented in Table F-10.

P.10, E.3, Whole Effluent Acute Toxicity – Discharge Point 002: Bioassays shall be performed using the most up-to-date USEPA protocol and the requirements described in MRP section V.A. Bioassays shall be conducted in compliance with Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms, currently 5th Edition (EPA-821-R-02-012).

Discharger is requesting that there be exceptions granted by the Executive Officer or the Environmental Laboratory Accreditation Program (ELAP) upon the Discharger's request with justification.

P.14,(2) Reporting Requirements (a) Routine Reporting - The Discharger shall, within 30 days of receipt of analytical results, report in the transmittal letter for the appropriate monthly self-monitoring report...

C&H understands that the Discharger will submit a letter to the Regional Board within 30-days calendar days of the end of the prior month identifying the samples collected and priority pollutants detected.

p.20, 6. Other Special Provisions, a. Copper Action Plan for Discharge Point 001 and Discharge Point 002

The copper action plan is only applicable to Discharge Point 002 in accordance with Board Order R2-2007-0042.

p.21, 6. Other Special Provisions, b. Cyanide Action Plan for Discharge Point 001 and Discharge Point 002

The cyanide action plan is only applicable to Discharge Point 002 in accordance with Board Order R2-2006-0086.

Attachment A - Definitions, p.3 - Not detected (ND), Sample results less than the laboratory's MDL.

Laboratories are required to report data at the laboratory reporting-limit (RL) for the method employed, which is based on method specific calibrations, reference materials and the method detection limit (MDL). If data is reported by a laboratory as "ND," this often refers to a concentration that is below the laboratory-reporting limit and not the MDL, so the definitions are potentially confusing and we suggest removing the definition of "ND."

Attachment E, Monitoring and Reporting Program (MRP), p.2, Table E-1 Monitoring Station Locations.

It is our understanding that the receiving water locations identified will be monitored through participation in the Regional Monitoring Program (RMP).

Attachment E, III. Influent Monitoring Requirements, p.3, Table E-2. Intake and Influent Monitoring – INF-001, INF-002 and INF-003.

The Discharger is requesting that the sampling method for: arsenic, copper, cyanide, lead, nickel, selenium and zinc be changed from grab to a 24-hour composite; and that COD be removed, as there are no effluent limits. Discharger is also requesting that the sampling frequency be: 2/year for INF-001 Intake rather than 1/month; and that there be no sampling requirements for INF-002 Influent and INF-003 Influent (influent to JTP).

Attachment E, IV. Effluent Monitoring Requirements, p.3, Table E-3. Effluent Monitoring – EFF-001

Discharger is requesting that temperature be monitored as grab, rather than continuous. Discharger is also requesting the parameter, BOD (increase over intake), be removed.

Attachment E, IV. Effluent Monitoring Requirements, p.4, Table E-4, Effluent Monitoring – EFF-002.

Discharger is requesting that the minimum sampling frequency for BOD, TSS and settleable matter be 2/month instead of 1/week. Discharger is also requesting that: temperature and ammonia be monitored as a grab sample; and that acute toxicity be measured using flow through or static renewal.

Attachment E, V. Whole Effluent Toxicity Testing Requirements, p.6. A. Whole Effluent Toxicity - Compliance with the acute toxicity effluent limitations of this Order shall be evaluated by measuring survival of test organisms exposed to 96-hour continuous flow-through bioassays.

Discharger is requesting that static renewal bioassay testing also be acceptable.

Attachment E- VIII. Reporting Requirements, p.11, Table E-6. SMR Reporting for CIWQS.

Discharger is requesting that EDF/CDF data be uploaded for instantaneous dissolved oxygen measurements, rather than monthly maximum and minimum.

Attachment E- VIII. Reporting Requirements, p.14, D. Modification to Attachment G

This section may require updating as the Discharger is an eSMR participant.

Attachment F, 2., p.18, IV. Rationale for Effluent limitations and Discharge Specifications, C. Water Quality-Based Effluent Limitations (WQBELs). 2. Applicable Beneficial Uses and Water Quality Objectives. F. Receiving Water Hardness - A hardness of 48 mg/L as CaCO₃ was used to determine the water quality objectives for this Order.

The receiving water hardness concentration of 48 mg/l CaCO₃ is based on the lowest of 26 measurements collected at the Napa River and Davis Point Stations between April 1995 and August 2001. The Discharger notes that the hardness concentration of 48 mg/l is unrealistically low for the receiving water body, with the average hardness as CaCO₃ at 1,484 mg/l and the maximum being 4,210 mg/l.

The Discharger therefore suggests that WQBELs be recalculated using a more realistic hardness concentration of the receiving water, e.g., the average hardness as CaCO₃ at 1, 484 mg/L.

Attachment G, D. Proper Operation & Maintenance – This Supplements I.D. of Standard Provisions (Attachment D), 3. Proper Supervision and Operation of Publicly Owner Treatment Works (POTWs) p.3.

The JTP (owned by C&H Sugar Company, Inc.) is a privately owned treatment works, not a publicly owned treatment works.

Mr. Derek Whitworth
RWQCB
August 30, 2012
Page 4

Comments on TO No. R2-2012-XXXX

We appreciate the opportunity to provide these important comments on and corrections to the TO. We would like to schedule a meeting to discuss our comments further. Please contact me to arrange a mutually convenient time.

Sincerely,

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

Tanya Akkerman
Environmental Manager
(Tanya.akkerman@chsugar.com)

Attachment: redlined version of TO No. R2-2012-XXXX

cc: Dale McDonald, CSD (via e-mail)



C&H SUGAR COMPANY, INC.

C&H Sugar, Inc.
830 Loring Ave.
Crockett, CA 94525

Tanya Akkerman
Environmental Manager

September 18, 2012

Mr. Derek Whitworth
California Regional Water Quality control Board
- San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612
(via PDF submittal to: dwithworth@waterboards.ca.gov)

Re: Addendum to Previously Provided Comments on Tentative Order No. R2-2012-00XX, NPDES Permit No. CA0005240, C&H Sugar Company Inc. and Crockett Community Services District, Crockett, California

Dear Mr. Whitworth:

C&H Sugar Company, Inc. is providing an addendum to our previously provided comments on the Tentative Order No. R2-2012-00XX which were submitted on August 30, 2012.

For clarification purposes, the red-lined/strike-out version of the TO previously provided by C&H Sugar Company, highlighting additional editorial suggested changes, was provided for your informational use.

C&H is also providing an additional specific comment to the TO (as indicated in the red-lined/strike-out document) as presented below.

P.21, 6. Other Special Provisions, b., Table 11. Cyanide Action Plan, Task 2

C&H Sugar Company is requesting that the description of a "significant cyanide discharge" as it relates to the treatment plants influent cyanide concentration be changed to 190 micrograms per liter (i.e., 10 times the maximum allowed effluent concentration for cyanide, based on a minimum 90 percent reduction in the activated sludge process).

The costs of preparing and implementing an emergency monitoring and response plan if a significant cyanide discharge occurs (based on the RWQCB proposed influent concentration exceeding 11 µg/L) would not bear a reasonable relationship to the benefits of the program as the proposed influent concentration does not account for the cyanide reduction in the activated sludge process at the JTP.

Please call me at 510-787-4352 if you have any questions or wish to discuss this further.

Sincerely,

Tanya Akkerman
Environmental Manager
(Tanya.akkerman@chsugar.com)

cc: Dale McDonald, CSD (vial email)

CROCKETT SANITARY DEPARTMENT

of the Crockett Community Services District

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August 30, 2012

Derek Whitworth
NPDES Division
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Comments to the Tentative Order No. R2-2012-00XX,
NPDES Permit No. CA0005240 for C&H Sugar Company
and Crockett Community Services District

Dear Mr. Whitworth:

In my capacity as the General Manager for the Crockett Community Services District ("District"), I am providing comments with regard to San Francisco Regional Water Quality Control Board ("Regional Board") NPDES Tentative Order No. R2-2012-00XX ("Tentative Order"), Permit No. CA 0005240. The District appreciates the opportunity to comment on the Tentative Order. Please be advised that these comments supplement substantive comments being submitted on behalf of C&H Sugar Company ("C&H") and should be considered together and reconciled with C&H's comments.

It is important to note that the District was not listed on the Regional Board's distribution list during the application and review process, even though the District is listed as a discharger on the permit. Nor did the District receive information on the permit renewal process; C&H notified the District that a public hearing was announced and a Tentative Order was available for review. In addition, the District understands that an administrative draft was not completed, and thus the District did not have an adequate opportunity to review and comment on the administrative draft order. Because the Regional Board did not initially include the District in its public review process, and because the District never had an opportunity to provide comments on an administrative draft order, the District is understandably concerned about its due process rights during this quasi-adjudicative matter. As a result, the District asks that the Regional Board carefully review its comments and work with the District to resolve the issues raised before the forthcoming hearing. Even though the District does not operate the Joint Use Treatment Plant ("Plant"), the District still has a number of serious concerns regarding the Tentative Order, which are described below.

Specific Comments

Cover Page, Table 1, Discharger Information. Name of Facility and Facility Address

The Name of Facility is incorrect and unclear. As the Regional Board is aware, C&H owns and operates the Plant and the District, which owns and operates the collection system, subleases an interest in the Plant from C&H pursuant to a Joint Use Agreement

between C&H and the District. Because the Tentative Order applies to both C&H and the District as co-permittees, the Name of Facility should be revised to state as follows: "C&H Sugar Company refinery, Joint Use C&H Sugar Company-Crockett Community Services District Philip F. Meads Water Treatment Plant, and Crockett Community Services District collection system."

I. Facility Information. Table 4.

It is important that representatives from both C&H and the District are included in correspondence from the Regional Board relating to the NPDES permit and its reporting requirements. In addition to Tanya Akkerman, the Facility Contact, Title, and Phone number must also include the representative from the Crockett Community Services District: Dale McDonald, Crockett Community Services District General Manager, manager@town.crockett.ca.us, (510) 787-2992.

II.(A). Findings. Background. 1st paragraph.

The last sentence is incorrect because the District does not own the Plant. The District, a public entity, has a unique relationship with C&H, a private company, with respect to wastewater treatment at the Plant. C&H Sugar Company owns the Plant and the District subleases an interest in the Plant from C&H pursuant to a Joint Use Agreement. C&H is also responsible for Plant operations whereas the District manages its own collection system. The District's only contribution of wastewater exits at Discharge Point 002. Accordingly, the last sentence in Finding No. II(A) should be revised to state as follows: "*The Crockett Community Services District subleases an interest in the Joint Treatment Plant from C&H Sugar Company, pursuant to a Joint Use Agreement. Even though both C&H Sugar Company and Crockett Community Services District jointly use the Joint Treatment Plant, C&H Sugar Company is the sole operator of the Joint Treatment Plant.*" In addition, all references to joint ownership in the Tentative Order must be revised to state that the Plant is jointly used.

II.(B) Findings. Facility Description and Discharge Location. 4th paragraph.

The sentence that begins, "The Refinery's sanitary wastes and tank truck washings, which account for less than 0.01 MGD . . ." should be revised to read "less than 0.04 MGD" instead of 0.01 MGD.

III(D). Discharge Prohibitions.

The Regional Board should clarify who is responsible for sewer overflows that are upstream of the Plant. Add "*upstream of the Joint Treatment Plant*" to the sentence that should read "Sanitary sewer overflows upstream of the Joint Treatment Plant, if any, are the responsibility of Crockett Community Services District."

IV(B). Effluent Limitations and Discharge Specifications.

The Regional Board should clarify who is responsible for exceedances of effluent limitations at Discharge Point 001. Because the District only discharges through Discharge Point 002, the Tentative Order should include the following language with

respect to Discharge Point 001: "Exceedances of effluent limitations at Discharge Point 001, if any, are the responsibility of C&H Sugar Company, Inc."

IV(C)-(F). Effluent Limitations and Discharge Specifications.

The Regional Board should clarify who is responsible for exceedances of effluent limitations at Discharge Point 002. Both C&H and the District contribute to the effluent discharged through Discharge Point 002. Accordingly, the Tentative Order should include the following language with respect to Discharge Point 002: "Exceedances of effluent limitations at Discharge Point 002, if any, may be a shared responsibility between C&H Sugar Company, Inc. and Crockett Community Services District, depending on the circumstances and origination of the pollutant that is exceeded."

IV(D). Table 9. Effluent Limitations for Toxic Pollutants – Discharge Point 002.

The District is concerned with the stringent Average Monthly Effluent Limit (AMEL) and Maximum Daily Effluent Limit (MDEL) for lead. The lead AMEL limitation in the prior permit was 3.6 and it is now proposed to be lowered to 3.2. The lead MDEL limitation in the prior permit was 9.7 and it is now proposed to be lowered to 9.4.

The District serves an older small community and, absent a significant investment in technological upgrades at the Joint Treatment Plant and/or costly sewer collection system upgrades to limit infiltration and inflow, the risk of exceeding effluent limitations for lead will remain. It is not feasible for the small community to absorb the costs associated with the upgrades to meet the proposed lead effluent limits. The District is asking the Regional Board to consider increasing the AMEL and MDEL limitations to that of the highest recordings taken during wet weather events. C&H is expected to provide more substantive comments on the effluent lead limits.

The District is also concerned about the added parameters *Chlorodibromomethane*, *Dichlorobromomethane*, and *Ammonia as N*. These parameters were not in the prior NPDES permit. C&H, as operator of the Joint Treatment Plant, will be responsible for implementation and testing to comply with the proposed new effluent limits but there is an unknown cost associated with its implementation. Chlorodibromomethane is formed naturally by plants in the ocean, as a by-product of chlorinated drinking water, and as a by-product of chlorine added during the wastewater treatment process. There is concern that in implementing and adjusting the chemical balance to comply with chlorodibromomethane, dichlorobromomethane, and ammonia as N effluent limits, exceedances may occur on the parameters. The District is asking the Regional Board to consider allowing C&H additional time to implement procedures without final effluent limitations for these parameters. C&H is expected to provide more substantive comments on the effluent limits and testing requirements for Discharge Point 002.

IV(G). Effluent Limitations and Discharge Specifications. Stormwater Limitations.

The Regional Board should clarify who is responsible for exceedances of stormwater limitations at Discharge Points 003 through 016. Discharge Points 003 through 016 are the sole responsibility of C&H. Because the District only discharges through Discharge Point 002, the Tentative Order should include the following language with respect to

Discharge Points 003-016: "Exceedances of stormwater limitations at Discharge Points 003 through 016, if any, are the responsibility of C&H Sugar Company, Inc."

VI(C)(4). Special Provisions. Stormwater Pollution Prevention Plan.

The Regional Board should clarify who is responsible for preparing and submitting the Stormwater Pollution Prevention Plan and Best Management Practices Plan. Because Discharge Points 003 through 016 are the sole responsibility of C&H Sugar Company, the Tentative Order should include the following language: "C&H Sugar Company is solely responsible for submitting the updated Stormwater Pollution Prevention Plan (SWPPP) and Best Management Practices Plan (BMPP)."

Attachment C, Page C-2 – Process Flow Diagram.

The flow rate of sanitary wastes is incorrect. The correct flow rate value is <0.04 MGD. Accordingly, the Tentative Order needs to update the value of Sanitary Wastes from <0.01 MGD to <0.04 MGD.

Attachment C, Page C-3 – Process Flow Diagram.

The Tentative Order should include the following footnote: "C&H Refinery Sewage, CSD Domestic Sewage, and CSD Stormwater Inflow/Infiltration are conveyed for treatment through the same wastewater collection and force main system. Excess capacity of wastewater and storm water inflow/infiltration, primarily during storm events, can be temporarily diverted to CSD Wet Weather Storage."

Attachment D, Page D-8(VI). Standard Provisions – Enforcement.

The District is requesting the detailed enforcement provisions of the Water Code be added back into the enforcement section. The District doesn't understand why these were deleted, because it is preferable to have enforcement codes and provisions easily referenced within the NPDES order.

Attachment E, Page E-10(VIII)(B). Reporting Requirements. Self Monitoring Reports (SMRs).

The Tentative Order should clarify that C&H, as operator of the Joint Treatment Plant, is responsible for submitting the SMRs.

Attachment F, Table F-1 Facility Information.

The information in Table F-1 must be identical to the information in Tables 1 and 4 of the main Order. As explained above, the Name of Facility should be corrected to state the following: "C&H Sugar Company refinery, Joint Use C&H Sugar Company-Crockett Community Services District Philip F. Meads Water Treatment Plant, and Crockett Community Services District collection system."

In addition to Tanya Akkerman, the Facility Contact, Title, and Phone number must also include the representative from the Crockett Community Services District: Dale McDonald, Crockett CSD General Manager, manager@town.crockett.ca.us, (510) 787-

2992. It is important that all communications regarding the NPDES permit be provided to both contacts.

Attachment F, Page F-2(A) 1st paragraph.

The Tentative Order's description of the District's treatment of wastewater is not accurate and must be revised. The language in the First Paragraph that includes "...use the wastewater treatment facility located at the Refinery." should be replaced with "...discharge to and make use of the wastewater treatment facility located on the property leased by the Refinery."

Attachment F, Page F-2 Facility Description. 3rd paragraph.

Replace "...co-owned..." with "...jointly used..."

Attachment F, Page F-3(A) Facility Description. Description of Wastewater. 4th paragraph.

As mentioned above, the Refinery's sanitary wastes and tank truck washings account for less than 0.04 MGD. Accordingly, the fourth paragraph needs to replace "...less than 0.01 MGD" with "...less than 0.04 MGD ..."

Attachment G, Page G-3(I)(J)(1) Stormwater Pollution Prevention Plan (SWPPP)

As explained above, the Regional Board should clarify who is responsible for preparing and submitting the SWPPP. Because Discharge Points 003 through 016 are the sole responsibility of C&H Sugar Company, the Tentative Order should include the following language: "C&H Sugar Company is solely responsible for submitting the updated Stormwater Pollution Prevention Plan (SWPPP)."

The District urges the Regional Board to carefully consider the above comments and to address the noted deficiencies in the Draft Order, especially those provisions specifically related to Discharge Point 002. The District looks forward to your responses and to working with you on further revisions. If you have questions or concerns concerning the comments set forth herein, please feel free to contact me at (510) 787-2992.

Sincerely,



Dale McDonald
General Manager
Crockett Community Services District
1959276.2

August 30, 2012

Derek Whitworth
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612
Dwhitworth@waterboards.ca.gov
Submitted via electronic mail

Re: Comments on the Proposed NPDES Permit for the C&H Sugar Refinery and Water Treatment Plant

Dear Mr. Whitworth:

Thank you for the opportunity to comment on Tentative Order for the C&H Sugar Refinery (“Refinery”) and the Joint Crockett Community Services District-C&H Sugar Company Water Treatment Plant and associated sewage collection system (“Treatment Plant”), NPDES Permit No. CA0005240 (“Draft Permit” or “TO”). San Francisco Baykeeper (“Baykeeper”), a 501(c)(3) nonprofit organization with the mission of protecting and enhancing the San Francisco Bay for the health of its ecosystems and surrounding communities, respectfully submits these comments on behalf of our 2,300 members. Please address the following concerns to ensure that the Draft Permit adequately protects water quality and appropriately regulates a facility that has been a major source of pollution in the Bay Area for over a century.

1. The Relaxation of Effluent Limitations for Bis(2-Ethylhexyl)Phthalate and Cyanide Violate the Clean Water Act’s Prohibition on Backsliding.

The Draft Permit violates the Clean Water Act’s (“CWA”) anti-backsliding policy by including relaxed permit limitations for bis(2-Ethylhexyl)phthalate and cyanide. The CWA and accompanying regulations prohibit renewing or reissuing a permit with less stringent effluent limitations than those contained in the previous permit. 33 USC § 1342(o); 40 CFR § 122.4(l)(1). Despite this mandate, the Draft Permit includes effluent limits for bis(2-Ethylhexyl)phthalate that are less stringent than the former National Pollution Discharge Elimination System (“NPDES”) permit for the C&H Sugar Refinery. The former permit has an average monthly effluent limit (“AMEL”) of 54 micrograms per liter for Discharge Points 001 and 002, where the Draft Permit proposes an AMEL of 55 micrograms per liter. *Compare* Order No. R2-2007-0032, Tables 6 and 9,¹ *with* Draft Permit, Tables 7 and 9. The Fact Sheet claims that there is no backsliding for this parameter because the effluent limitations from the former

¹ California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Board”), Order No. R2-2007-0032 (“2007 Permit”), IV.A.3 and B.3, pgs. 12-16, *available at* http://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2007/R2-2007-0032.pdf.

permit are retained, but as explained above, this claim is not accurate. Draft Permit, F-42, F-45. The CWA requires the Regional Board to retain the more stringent AMEL of 54 micrograms per liter, especially since the Sugar Refinery has exceeded this limitation twice over the last permit cycle. Draft Permit, Table F-6.

In addition, the Draft Permit proposes effluent limitations for cyanide at Discharge Point 002 of 19 micrograms per liter (AMEL) and 46 micrograms per liter (MDEL) (Draft Permit, Table, 9), compared to limits of 20 micrograms per liter (AMEL) and 44 micrograms per liter (MDEL) in the Sugar Refinery's 2007 NPDES Permit. While the new permit would impose a more stringent AMEL (lowering it from 20 µg/L to 19 µg/L), the Draft Permit does not justify relaxing the MDEL from 44 micrograms per liter to 46 micrograms per liter. The Fact Sheet asserts that this revision does not trigger the CWA's anti-backsliding provision because "the lower AMEL would limit the discharge to a lower long term average concentration" (F-43), yet this is not the case for the daily limits, which are now more lax.

2. The Draft Permit Should Include Proactive Requirements to Help the Permittee Eliminate Violations of the Biochemical Oxygen Demand Effluent Limitations.

The C&H Sugar Refinery has a long history of violating the effluent limitation for biochemical oxygen demand ("BOD") with its cooling water discharges. Over just the last 5-year past permit cycle, the Refinery exceeded its BOD limitations at Discharge Point 001 nineteen times, with the highest reported concentration at 33,300 pounds over its daily effluent limitation. Draft Permit, Table F-6. However, the Draft Permit claims that "the Refinery has improved performance" because there have been no exceedances during the past two years. Draft Permit, F-6. While this may be true, there is no discussion of how the Permittee is making improvements in the Draft Permit or its Fact Sheet. We request that the TO be revised to include a more thorough discussion in the Fact Sheet describing how the Sugar Refinery may have improved its cooling water operations to prevent further BOD violations.

3. The Draft Permit Should be Revised to Include Requirements for Chronic and Acute Toxicity that are Consistent with Other Water Quality Permits and Policies and Protective of Beneficial Uses in Carquinez Straight.

The Draft Permit's effluent limitations, monitoring requirements, and process for conducting a reasonable potential analysis ("RPA") for chronic and acute toxicity are not consistent with other water quality policies and permits in the state, and even contain some inconsistencies within the Permit itself. This confusing system for measuring toxicity makes it difficult to determine whether the Permittee's discharges are in compliance with water quality standards. To effectively protect beneficial uses of California waters, it is important that the process for measuring and limiting toxic discharges is clear and consistent in all permits and policies whenever possible.

First, the Draft Permit contains toxicity effluent limitations for Discharge Point 2, but does not include similar limits for Discharge Point 1. Cooling water discharges have caused several violations of effluent limitations in the past, including two mercury violations (see Table

F-6), showing that there is a potential for this discharge to cause toxicity. Since there have been toxic cooling water discharges, there should be toxicity limitations for Discharge Point 1.

Also, the Draft Permit does not contain a RPA for acute toxicity and the RPA for chronic toxicity is inadequate since it is based on outdated data from 2008. Draft Permit, F-50 to 51. According to the implementing regulations for the CWA and the State Policy for Implementation of Toxic Standards (“SIP”), NPDES permits “must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.” 40 CFR § 122.44(d)(1)(i); SIP § 1.3. Since the Basin Plan includes narrative water quality objectives for both chronic and acute toxicity,² and it would not be possible to determine whether these objectives are being met without conducting RPAs, both the CWA and the SIP mandate the Regional Board to conduct RPAs to ensure that the Permittee is meeting the Basin Plan’s standards. The Draft Statewide Policy for Toxicity and Control (“Toxicity Policy”) also mandates wastewater dischargers to conduct RPAs for chronic toxicity and suggests that RPAs should also be conducted for acute toxicity,³ indicating that the State Water Board is in favor of including RPAs in permits to determine whether wastewater discharges are causing chronic and acute toxicity in California waters.

Once the Regional Board conducts RPAs for chronic and acute toxicity using the most current data collected by the Permittee, the Draft Permit should include numeric effluent limitations if necessary. The proposed Toxicity Policy, which aims to establish a consistent statewide policy for achieving numeric objectives for chronic and acute toxicity, mandates the Regional Board to include numeric objectives for chronic toxicity – expressed as a maximum daily effluent limitation and a median monthly effluent limitation – if it determines that there is reasonable potential that a permittee’s wastewater dischargers will violate water quality standards, and suggests the same for acute toxicity. Toxicity Policy, 7. This approach is consistent with several NPDES permits recently adopted by the Regional Board, including the permit for the Shell Oil Refinery, which contains a numeric effluent limitation for both chronic and acute toxicity.⁴ All of these revisions are necessary to ensure that the C&H Sugar Refinery is in compliance with the CWA and the state objectives for chronic and acute toxicity.

² San Francisco Bay Basin (Region 2) Water Quality Control Plan (“Basin Plan”), 3.3.18, pg. 3-6, *available at* http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/BP_all_chapters.pdf.

³ Policy for Toxicity Assessment and Control: Public Review Draft (June 2012), Part III.A, pg. 6, *available at* http://www.waterboards.ca.gov/water_issues/programs/state_implementation_policy/docs/draft_tox_policy_0612.pdf.

⁴ California Regional Water Quality Control Board, San Francisco Bay Region, Order No. R2-2012-0052, IV.A.5-5, pgs. 12-13, *available at*

Finally, the Draft Permit's monitoring requirements for acute and chronic toxicity are inconsistent and confusing. Under the Monitoring and Reporting Program in the Draft Permit, the Permittee is required to monitor for acute toxicity once a month and chronic toxicity once a year. Draft Permit, Table E-4. However, the Fact Sheet states that "In accordance with the previous permit requirements, the Discharger is not required to perform routine [chronic toxicity] monitoring during the permit term." Draft Permit, F-51. This statement should be removed because it is inconsistent with the Monitoring Plan and contrary to the requirements of the Basin Plan and SIP.

4. The Draft Permit Should Retain the Discharge Prohibition for Algaecides and Anti-Fouling Additives from the Prior NPDES Permit or Justify its Removal with an Antidegradation Analysis.

The Draft Permit removes Discharge Prohibition III.C, which prohibits the use of algaecides and anti-fouling additives in the Refinery's barometric condenser cooling water system, without any justification. *Compare* Order No. R2-2007-0032, III.C, *with* Draft Permit, III.A-D. According to the federal and state antidegradation policy, before relaxing a permit's water quality standards, it must be demonstrated that the change will be consistent with the maximum benefit to Californians, will not unreasonably affect present and anticipated beneficial uses, and will not further degrade water quality. 40 CFR § 131.12; State Water Board Resolution No. 68-10. The Draft Permit claims that it is consistent with the antidegradation policy, but neglects to include any discussion of why the discharge prohibition for algaecides and anti-fouling additives was removed or analysis of how this change will impact the beneficial uses of Carquinez Strait. *See* Draft Permit, II.M and Fact Sheet. The Regional Board should revise the Draft Permit to either retain this discharge prohibition or justify the removal in the Fact Sheet pursuant to the antidegradation policy.

5. The Draft Permit Should Require the Permittee to Monitor its Stormwater Discharges for Additional Pollutants that are Likely to be Present at the Facility and Ensure that Stormwater Discharges Protect Beneficial Uses.

The Draft Permit has minimal monitoring requirements for the Sugar Refinery's stormwater discharges – it only requires the Refinery to monitor flow, pH, total suspended solids, total organic carbon, and conductivity twice a year, and to conduct standard observations once a month. Draft Permit, Table E-4, E-5. However, over the last permit cycle, the Refinery violated its pH stormwater limitation on five separate occasions, indicating that there may be additional pollutants contaminating the Permittee's stormwater discharges. Draft Permit, Table F-6. Even more, the C&H Sugar Refinery is a very old facility that has been operating since 1906, so some of the equipment may be outdated and laden with toxic pollutants. Therefore, the Permittee should be monitoring its stormwater discharges for the pollutants that are likely to be present on its property, such as total suspended solids, iron, aluminum, magnesium, and copper. This revision would be consistent with the General Industrial Stormwater Permit, which requires

permittees to take and analyze stormwater samples for all toxic chemicals and pollutants that are likely to be present in storm water discharges in significant quantities.⁵ C&H Sugar Refinery's individual NPDES Permit should not be less stringent than the General Industrial Permit under any circumstances.

Also, the Draft Permit does not require the Permittee to implement best available or control technologies to limit pollution in its stormwater discharges. We request that the Regional Board require the Permittee to use best management practices to control stormwater pollution. At the very least, the Draft Permit should contain a provision that states, "NPDES Permits for storm water discharges must meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require control of pollutant discharges using best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT)."

Thank you for your careful consideration of Baykeeper's comments. If you have any questions, please contact Abigail Blodgett at (415) 856-0444, extension 109.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Blodgett", with a long horizontal flourish extending to the right.

Abigail Blodgett
Associate Attorney, San Francisco Baykeeper

⁵ General Permit for Industrial Stormwater Discharges (1997), Fact Sheet X, *available at* http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf.