

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California 94105



IN THE MATTER OF:	)	DOCKET NO. CWA-09-2026-0002
	)	
C&H Sugar Company, Inc.,	)	
830 Loring Avenue, Crockett, California	)	CONSENT AGREEMENT AND FINAL ORDER
	)	
Crockett, California	)	<i>Class II Administrative Penalty Proceeding under</i>
	)	<i>Section 309(g) of the Clean Water Act, 33 U.S.C. §</i>
Respondent.	)	<i>1319(g), and 40 C.F.R. §§ 22.13(b) and 22.18.</i>

I. INTRODUCTION AND JURISDICTION

1. This is a Class II civil administrative penalty proceeding under Sections 309(g)(1)(A) and (2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator of the United States Environmental Protection Agency (EPA) to assess administrative penalties against persons who, *inter alia*, violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter "Complainant."
3. Respondent is C&H Sugar Company, Inc.
4. This Consent Agreement and Final Order (CA/FO) contains the elements of a complaint as required by 40 C.F.R. § 22.14(a), and serves to simultaneously commence and conclude this penalty proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.
6. EPA and Respondent also entered into an administrative order on consent on January 16, 2025, EPA Docket No. 309(a)-25-005, wherein the Respondent has taken action to correct the alleged violations by, in part, making substantial equipment changes that should prevent the violations from recurring. Complainant and Respondent agree that settling this action without the filing of a complaint or the adjudication or admission of any issue of fact or law is in their respective interest and in the public interest.

II. STATUTORY AND REGULATORY FRAMEWORK

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
8. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant(s)” to mean any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.
9. CWA Section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as waters of the United States, including the territorial seas. Under CWA Section 502(8), 33 U.S.C. § 1362(8), the term “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles.
10. CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, “industrial waste.”
11. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include “any discernable, confined and discrete conveyance ... from which pollutants are or may be discharged.”
12. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States.
13. The State of California has an EPA-approved NPDES program and issues permits through its State Water Resources Control Board and nine Regional Water Quality Control Boards, including the San Francisco Bay Regional Water Quality Control Board (RWQCB).
14. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and 40 C.F.R. Part 19.4, EPA may assess a Class II civil administrative penalty of up to \$27,378 per day of violation, not to exceed \$342,218 in total, against a person for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or for violations of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, that occurred after November 2, 2015 where penalties are assessed on or after January 8, 2025.

III. GENERAL ALLEGATIONS

15. C&H Sugar Company, Inc. (Respondent or “C&H Sugar”) is incorporated in the State of Delaware and is a “person” within the meaning of CWA Section 502(5), 33 U.S.C. § 1362(5).

16. At all times relevant to this action, Respondent owned and/or operated the C&H Sugar Company Refinery located at 830 Loring Avenue, Crockett, California 94525, hereinafter the "Facility," which receives raw cane sugar for refining from ocean-faring ships that dock at the Facility.
17. At all times relevant to this action, the Facility utilized a mobile gantry leg crane with bucket elevator systems that extend into a ship's hull and transport the raw cane sugar onto a conveyor system which transfers the raw cane sugar over open water between the vessel and dock to the Facility's storage silo.¹ A basket filter overflow structure located at the northeast corner of the Facility's dock treats wastewater generated at the dock during washdowns of equipment and the conveyor segment that is located over the dock. In addition, the entire dock is connected to a drain system that goes to a "sweetwater" (a mixture of sucrose and water) holding tank and recovery system for reprocessing in the Facility's refinery. The sweetwater holding tank is located on the dock and has an overflow outlet.
18. Respondent's discharges to the Carquinez Strait of pollutants from the Facility are regulated under NPDES Permit No. CA0005240 (the "Permit") issued on April 13, 2018 by the RWQCB to both C&H Sugar Company, Inc. and Crockett Community Services Districts.
19. The Permit identifies both C&H Sugar Company, Inc. and Crockett Community Services Districts as dischargers under the Permit.
20. The Permit includes the following terms, in relevant part:
 - a. Section III.A prohibits the discharge of treated wastewater at a location or in a manner different than described in the Permit.
 - b. Section VI.A.1 of the Permit requires Respondent to comply with all standard provisions in Attachment D, including those in Attachment D, Section I.D, which require Respondent at all times to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by Respondent to achieve compliance with the conditions of the Permit.
 - c. Section VI.A.3 of the Permit requires Respondent to comply with all applicable provision of the "Stormwater Provisions, Monitoring, and Reporting Requirements" of the Permit in Attachment S, including:
 - i. Preparing a Stormwater Pollution Prevention Plan (SWPPP) that includes measures C&H Sugar has implemented or will implement to prevent fugitive sugar emissions from reaching the neighboring Crockett Cogeneration Plant and discharging to the Carquinez Strait. See Attachment S, section I.A; and
 - ii. Implementing Best Management Practices (BMPs) to contain all stored non-solid industrial materials or wastes (e.g., particulates, powders, shredded paper) that

¹ The Facility no longer uses a gantry leg crane system at the Facility.

can be transported or dispersed by the wind or contact with stormwater. See Permit, Attachment S, section I.F.1.f.

21. On September 13, 2022, representatives of EPA and the RWQCB inspected the Facility. EPA provided its inspection report to Respondent on February 9, 2023. The inspection report documented several Areas of Concern, including:
 - a. Inadequate BMPs, such as incomplete berming and insufficient protection of the conveyor belt from the elements, resulting in fine particulate fugitive sugar falling into the Carquinez Strait from the conveyor system and also drifting to and reaching the neighboring Crockett Cogeneration Plant where it could potentially discharge to the Carquinez Strait;
 - b. Leaking hydraulic oil from one of the gantry crane bucket elevator systems to the Carquinez Strait located directly below; and
 - c. A basket filter system with an open top indicating an overflow and discharge of wastewater to the Carquinez Strait located directly below.
22. Information obtained by EPA subsequent to the September 13, 2022 inspection, but included in the inspection report provided to Respondent on February 9, 2023, showed Respondent partially submerging the Facility's gantry crane and one of the gantry crane bucket elevator systems, both of which had visible fugitive sugar on their surfaces, in the Carquinez Strait on October 7 and 31, 2022.
23. Information obtained by EPA subsequent to the September 13, 2022 inspection, but included in the inspection report provided to Respondent on February 9, 2023, showed the basket filter system overflowing and discharging wastewater to the Carquinez Strait on October 31, 2022.
24. On June 27, 2023, Respondent provided the RWQCB with a written report of an unauthorized discharge of 250 gallons of sweetwater containing 662 pounds of sucrose to the Carquinez Strait that resulted from an overflow of the Facility's sweet water collection tank.
25. On August 8, 2023, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, EPA requested that Respondent provide information regarding BMPs at the Facility to prevent fugitive sugar emissions and standard operating procedures related to normal operation and maintenance of the Facility. On August 18, 2023, Respondent provided the requested information to EPA.
26. The pollutants discharged from the Facility's gantry cranes, conveyor system, bucket elevator system, and the sweetwater holding tank, which include fugitive sugar, hydraulic fluids, and sucrose, are "pollutants" as defined by CWA § 502(6), 33 U.S.C. § 1362(6).
27. The Facility's gantry cranes, conveyor system, bucket elevator system, and the sweetwater holding tank's overflow outlet, are each a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), because each is a confined and discrete conveyance from which pollutants are or may be discharged.

28. Respondent's discharge of pollutants from the Facility's gantry cranes, conveyor system, bucket elevator system, and the sweetwater holding tank into navigable waters constitutes a "discharge of pollutants" within the meaning of CWA Section 502(12), 33 U.S.C. § 1362(12).
29. Based on the foregoing and EPA's review of available information, EPA has found Respondent violated the CWA as follows:
- a. Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants directly to the Carquinez Strait, a water of the United States, in violation of Section 301(a), 33 U.S.C. § 1311(a), from the Facility's conveyor system on at least September 13, 2022; the gantry crane and gantry crane bucket elevator system on at least October 7 and 31, 2022; and from the sweet water collection tank on June 27, 2023.
 - b. Respondent failed to comply with the Permit issued to C&H Sugar and Crockett Community Services District by:
 - i. Failing to properly operate and maintain the basket filter system in accordance with Section VI.A.1 of the Permit and the Permit's standard operation and maintenance provisions included in Attachment D, Section 1.D, and discharging treated wastewater from the basket filter system on at least September 13, 2022 in violation of Section III of the Permit; and
 - ii. Failing to implement proper measures in a SWPPP in accordance with Attachment S, Sections I.A and I.F.1.f of the Permit to prevent fugitive sugar emissions from reaching the neighboring Crockett Cogeneration Plant, and subsequently discharging to the Carquinez Strait.

IV. ALLEGED VIOLATIONS

30. Between September 13, 2022 and June 27, 2023, Respondent violated sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, on at least five days by discharging pollutants from point sources into waters of the United States without NPDES permit authorization and in violation of the conditions of the Permit.

V. ADMINISTRATIVE PENALTY

31. In consideration of the penalty factors of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent agrees to pay a civil administrative penalty in the amount of One Hundred Twenty-Eight Thousand and Five Hundred Dollars (**\$128,500.00**) ("Assessed Penalty") within thirty (30) calendar days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").
32. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

33. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, Docket No. CWA-09-2026-0002.
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve via electronic mail proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 9
r9HearingClerk@epa.gov

Michael Weiss
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
weiss.michael@epa.gov

and
U.S. Environmental Protection Agency
Cincinnati Finance Division
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

34. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts:

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS large corporate underpayment rate applicable to penalties over \$100,000.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

35. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.
36. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
37. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

VI. APPLICABILITY

38. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors, and assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VII. RESPONDENT'S ADMISSIONS AND WAIVERS

39. In accordance with 40 C.F.R. § 22.18(b), solely for the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations of this CA/FO;

- b. neither admits nor denies the specific factual and non-factual allegations set forth in Section III of this CA/FO;
 - c. consents to the assessment of the administrative penalty set forth in Section V above and to all conditions specified in the CA/FO; and
 - d. waives any right to contest the allegations and its right to appeal this CA/FO.
40. Respondent waives the right to a hearing under Section 309(g)(2)(B) of the CWA and to any appeal of the Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1319(g)(8)(B).
41. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waive any right to challenge the lawfulness of the final order accompanying the consent agreement.
42. Nothing in this CA/FO waives, limits, or otherwise affects Respondent's defenses to or arguments against any future enforcement actions brought by any entity for any claimed violations not specifically alleged herein.

VIII. RESERVATION OF RIGHTS/EFFECT OF CONSENT AGREEMENT

43. In accordance with 40 C.F.R. § 22.18(c), compliance with this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue injunctive or other equitable relief or criminal sanctions for any violations of law or in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. EPA is presently unaware of any additional violations of the CWA at Respondent's Facility.
44. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ADDITIONAL TERMS

45. Each party shall bear its own attorney's fees and costs.
46. This CA/FO can be signed in counterparts.
47. The undersigned representative of Respondent certifies it has authority to bind Respondent to this Agreement.
48. By signing this CA/FO, Respondent acknowledges that this CA/FO does not contain any confidential business information (CBI) or waives any claim of CBI.
49. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service ("IRS") a completed IRS Form 1098-F ("Fines, Penalties, and Other

Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Respondent’s failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at sherrer.dana@epa.gov on or before the date that Respondent’s initial penalty payment is due pursuant to this CA/FO, or within 7 days should he order become effective between December 15 and December 31 of the calendar year. EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Division with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

X. EFFECTIVE DATE

50. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall take effect on the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the “Effective Date”), and shall terminate when Respondent has complied with this CA/FO in full.

XI. PUBLIC NOTICE

51. As required by Section 309(g)(4), 33 U.S.C. §§ 1319(g)(4), and 40 C.F.R. § 22.45, prior to submitting this Agreement to the Regional Judicial Officer or Regional Administrator for approval, the EPA will provide public notice of this Agreement and a reasonable opportunity to comment on the matter. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating this Agreement is inappropriate, improper, or inadequate, or if a hearing is requested under Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C).

For Complainant the U.S. Environmental Protection Agency, Region 9

AMY MILLER-
BOWEN

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Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

Of counsel:

Richard Campbell
Attorney-Advisor
Office of Regional Counsel

For Respondent C&H Sugar Company Inc.:



Armando A. Tabernilla, Vice President

August 28, 2025

Date

FINAL ORDER

It is hereby ordered that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2026-0002) be entered and that Respondent shall pay a civil penalty in the amount of One Hundred Twenty-Eight Thousand and Five Hundred Dollars (**\$128,500.00**) in accordance with the terms of this Consent Agreement and Final Order.

Beatrice
Wong

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Beatrice Wong
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Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order in the matter of *C&H Sugar Company, Inc.* (Docket No. CWA-09-2026-0002) has been filed with the Regional Hearing Clerk, and a copy was served on Counsel for Respondent by email as indicated below:

COMPLAINANT:

Rich Campbell
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105
Campbell.Rich@epa.gov

RESPONDENT:

Rick Rothman
Morgan, Lewis & Brockius LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
Rick.Rothman@morganlewis.com

Tu, Ponly

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Date: 2025.10.27
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Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX