

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0541

MANDATORY PENALTY
IN THE MATTER OF

TSAR NICOULAI CAVIAR, LLC
TSAR NICOULAI STURGEON FARM, WILTON
SACRAMENTO COUNTY

This Complaint is issued to Tsar Nicoulai Caviar, LLC (hereafter referred to as “Discharger”) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2005-0080 (NPDES No. CA0085120).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates a fish farm with a wastewater treatment system. The treatment system consists of filtration, an aquatic vegetation pond for nutrient uptake, and a biofiltration system for ammonia and dissolved organics removal. Wastewater is discharged to the Sacramento County storm drain system which flows to an unnamed tributary of the Cosumnes River, then to the Cosumnes River, a water of the United States.
2. On 24 June 2005, the Central Valley Water Board issued WDRs Order R5-2005-0080 to regulate discharges of waste from the facility.
3. On 1 March 2010, the Executive Officer issued ACL Complaint R5-2010-0511 for MMPs for effluent limitation violations which occurred from 1 January 2009 through 31 December 2009. On 26 March 2010, the Discharger waived its right to a hearing within 90 days of issuance of the Complaint, and requested that it be allowed to pay its outstanding liability over the course of several months. On 23 April 2010, the Executive Officer agreed, but demanded that full payment of \$12,000 be received by the Board no later than 30 June 2010, or a subsequent ACL Complaint would be issued to collect the outstanding balance. The Discharger submitted a partial payment of \$4,000 by check dated 28 June 2010. However, despite repeated contacts by Board staff, the Discharger has not submitted the outstanding \$8,000. This Complaint rescinds ACLC R5-2010-0511, extends the period of record from 1 January 2009 through 30 June 2010, and accounts for the Discharger’s payment of \$4,000.
4. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- 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 Section 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. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

6. WDRs Order R5-2005-0080 Effluent Limitations A.1.a., include, in part, the following effluent limitations: “*The discharge of aquacultural wastewater shall maintain compliance with the following effluent limitations... : “*

Parameter	Units	Effluent Limitations			
		Average Monthly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Total Iron	µg/L	300	--	--	--
Total Manganese	µg/L	50	--	--	--
Total Ammonia as N	mg/L	0.59	--	--	--

7. According to the Discharger's self-monitoring reports, the Discharger committed four (4) serious Group I violations of the above effluent limitations contained in Order R5-2005-0080 during the period beginning 1 January 2009 and ending 30 June 2010. These violations are defined as serious because measured concentrations of Group I constituents exceeded maximum prescribed levels by more than 40 percent on these occasions. The mandatory minimum penalty for the four serious violations is **twelve thousand dollars (\$12,000)**
8. According to the Discharger's self-monitoring reports, the Discharger committed eight (8) non-serious violations of the above effluent limitations contained in Order R5-2005-0080 during the period beginning 1 January 2009 and ending 30 June 2010. Five (5) of these non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) because these violations were preceded by three or more similar violations within a six-month period. The mandatory minimum penalty for the five non-serious violations is **fifteen thousand dollars (\$15,000)**.
9. The total amount of the mandatory minimum penalties assessed for the cited effluent violations is \$27,000, of which the Discharger has paid \$4,000. Therefore, the remaining mandatory minimum penalties are **twenty three thousand dollars (\$23,000)**. A detailed list of the cited effluent violations is included in Attachment A, a part of this Order.
10. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

TSAR NICOULAI CAVIAR, LLC. IS HEREBY GIVEN NOTICE THAT:

1. Administrative Civil Liability Complaint R5-2010-0510 is hereby rescinded.
2. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **twenty three thousand dollars (\$23,000)**.
3. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **8/9/10 December 2010**, unless one of the following occurs by **15 October 2010**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **twenty three thousand dollars (\$23,000)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or

- c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
4. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

--original signed by --

PAMELA C. CREEDON, Executive Officer

16 September 2010

Attachment A: Record of Violations
BLH/WSW: 16 Sept10

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Tsar Nicoulai Caviar, LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2010-0541 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **twenty three thousand dollars (\$23,000)** by check that references "ACL Complaint R5-2010-0541" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **15 October 2010**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2010-0541**

Tsar Nicoulai Caviar, LLC

Tsar Nicoulai Sturgeon Farm, Wilton

Draft RECORD OF VIOLATIONS (1 January 2009 – 30 June 2010) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2005-0080)

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	30-Apr-09	Iron	µg/L	300	330	Monthly	3	822566
2	30-Apr-09	Ammonia as N	mg/L	0.59	0.68	Monthly	3	822572
3	31-May-09	Manganese	µg/L	50	60	Monthly	3	829408
4	30-Jun-09	Manganese	µg/L	50	53	Monthly	4	845371
5	31-Jul-09	Iron	µg/L	300	370	Monthly	4	845372
6	30-Nov-09	Iron	µg/L	300	570	Monthly	1	859939
7	30-Dec-09	Iron	µg/L	300	620	Monthly	1	859941
8	31-Jan-10	Iron	µg/L	300	750	Monthly	1	879799
9	31-Mar-10	Iron	µg/L	300	550	Monthly	1	879800
10	30-Apr-10	Iron	µg/L	300	390	Monthly	4	879801
11	31-May-10	Iron	µg/L	300	400	Monthly	4	879802
12	31-May-10	Manganese	µg/L	50	57	Monthly	4	879803

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is exempt.
4. Non-serious violation subject to mandatory penalties.

<u>VIOLATIONS AS OF:</u>	<u>06/30/2010</u>
Group I Serious Violations:	4
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	3
Non-serious Violations Subject to MPs:	5
<u>Total Violations Subject to MPs:</u>	<u>9</u>

Mandatory Minimum Penalty = (4 Serious Violation + 5 Non-Serious Violations) x \$3,000 = \$27,000

Note: \$4,000 of this penalty was paid on 28 June 2010