

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0584

MANDATORY PENALTY
IN THE MATTER OF

CALAVERAS TROUT FARM, INC.
TROUT REARING FACILITY, MERCED COUNTY

This Complaint is issued to Calaveras Trout Farm, Inc. (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders 96-107 and R5-2004-0119 (NPDES No. CA0081752) at its Trout Rearing Facility.

The Assistant 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 Trout Rearing Facility (Facility) that discharges treated flow-through wastewater from trout hatchery and rearing operations. The treated wastewater is discharged to the Merced River, a water of the United States.
2. On 3 May 1996, the Central Valley Water Board issued WDRs Order 96-107 to regulate, in part, the daily discharge of up to 32 million gallons per day (mgd) of treated wastewater from the Facility to the Merced River.
3. On 10 September 2004, the Central Valley Water Board issued WDRs Order R5-2004-0119, which prescribed new requirements for the discharge and rescinded WDRs Order 96-107.
4. CWC section 13385(h) requires assessment of mandatory penalties and states, 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 II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

5. CWC section 13385.1(a)(1) states:

For purposes of subdivision (h) of Section 13385, a “serious violation” also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

6. CWC section 13323 states, in relevant 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.

7. WDRs Orders 96-107 and R5-2004-0119 prescribe, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	WDRs Order 96-107 (5/3/96-9/9/04)		R5-2004-0119 (9/10/04-Current)	
		<u>30-Day Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Settleable Solids	ml/L	0.1	0.2	0.1	0.2
Total Suspended Solids	mg/L	5	15	5	15

8. Monitoring and Reporting Program R5-2004-0119 requires the Discharger to submit monthly self-monitoring reports to the Central Valley Water Board by the 1st day of the second month following sample collection.

9. On 23 July 2008, Central Valley Water Board staff (staff) issued the Discharger a Notice of Violation and draft Record of Violations identifying violations of WDRs Orders 96-107 and R5-2004-0119 that are subject to mandatory minimum penalties (MMPs). The draft Record of Violations covers the period from 1 January 2000 to 31 May 2008.

10. On 18 August 2008, the Discharger’s attorney, Michael Dini, responded to the 23 July Notice of Violation on the Discharger’s behalf and stated several effluent limitations and serious late reporting violations should either be dismissed or were not subject to MMPs. Staff reviewed the Discharger’s response and, where appropriate, revised the draft Record of Violations. Attachment A to this Complaint is the final Record of Violations, which covers the period of 1 January 2000 through 31 May 2008 and identifies one (1) serious effluent limitation violation subject to MMPs pursuant to CWC section 13385(h) and seventeen (17) serious late reporting violations subject to MMPs pursuant to CWC section 13385.1. Attachment B to this Complaint is a technical staff memorandum dated

12 November 2008 that details staff's analysis of the Discharger's response and explains changes made to the draft Record of Violations based on the Discharger's comments.

11. 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 (Public Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

CALAVERAS TROUT FARM, INC. IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **fifty-four thousand dollars (\$54,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled in **5/6 February 2009**, unless the Discharger does either of the following by **30 December 2008**:
 - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **fifty-four thousand dollars (\$54,000)**; or
 - b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, 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.

LOREN J. HARLOW, Assistant Executive Officer

Attachment A: Final Record of Violations

Attachment B: Technical Staff Memorandum dated 12 November 2008

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

1. I am duly authorized to represent Calaveras Trout Farm Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0584 (hereinafter the "Complaint");
2. 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" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **fifty-four thousand dollars (\$54,000)** by **two** checks that both contain a reference to "ACL Complaint R5-2008-0584." One check is to be in the amount of **three thousand dollars (\$3,000)** made payable to the "State Water Pollution Cleanup and Abatement Account," and one check is to be in the amount of **fifty-one thousand dollars (\$51,000)** and made payable to the "Waste Discharge Permit Fund." Payment must be received by the Regional Water Board by **30 December 2008** or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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.

-or-

5. **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

(Print Name and Title)

(Signature)

(Date)

<u>Violation ID¹</u>	<u>Violation Date</u>	<u>Violation Type²</u>	<u>Violation Description³</u>	<u>MMP Type⁴</u>
241266	11/30/03	CAT1	11M; TSS; 5; mg/L; M; 9	SERIOUS
199788	3/2/05	LREP	January 2005 SMR, due 3/1/05, received 4/29/05 (58 days late)	SERIOUS
250649	12/2/05	LREP	October 2005 SMR, due 12/1/05, received 1/06/06 (35 days late)	SERIOUS
250653	1/2/06	LREP	November 2005 SMR, due 1/1/06, received 2/27/06 (56 days late)	SERIOUS
250652	1/2/07	LREP	November 2006 SMR, due 1/1/07, received 2/14/07 (43 days late)	SERIOUS
199789	3/2/07	LREP	January 2007 SMRs, due 3/1/07, received 4/27/07 (56 days late)	SERIOUS
250648	4/2/07	LREP	February 2007 SMR, due 4/1/07, received 5/21/07 (49 days late)	SERIOUS
769198	6/2/07	LREP	April 2007 SMR, due 6/1/07, received 7/30/07 (58 days late)	SERIOUS
769208	9/2/07	LREP	July 2007 SMR, due 9/1/07, received 11/27/07 (87 days late) (1st 30-day period)	SERIOUS
769212	9/2/07	LREP	July 2007 SMR, due 9/1/07, received 11/27/07 (87 days late) (2nd 30-day period)	SERIOUS
769216	10/2/07	LREP	August 2007 SMR, due 10/1/07, received 11/27/07 (56 days late)	SERIOUS
769203	1/2/08	LREP	November 2007 SMR, due 1/1/08, received 2/13/08 (42 days late)	SERIOUS
769220	2/2/08	LREP	December 2007 SMR, due 2/1/08, received 4/10/08 (69 days late) (1st 30-day period)	SERIOUS
769224	2/2/08	LREP	December 2007 SMR, due 2/1/08, received 4/10/08 (69 days late) (2nd 30-day period)	SERIOUS
769229	3/2/08	LREP	January 2008 SMR, due 3/1/08, received 4/10/08 (39 days late)	SERIOUS
774459	4/2/08	LREP	February 2008 SMR, due 4/1/08, received 6/30/08 (89 days late) (1st 30-day period)	SERIOUS
774460	4/2/08	LREP	February 2008 SMR, due 4/1/08, received 6/30/08 (89 days late) (2nd 30-day period)	SERIOUS
774461	5/2/08	LREP	March 2008 SMR, due 5/1/08, received 6/30/08 (59 days late)	SERIOUS

¹ Violation ID in CIWQS

² Table of Abbreviations below defines abbreviations used in this table.

³ Violation Descriptions for effluent limitation violations are coded as follows: Reporting period (e.g., 5M = May); constituent or parameter (e.g., TSS); effluent limitation; units; limitation period; and reported result.

⁴ Serious violations are subject to MMP

<u>Abbreviation</u>	<u>Definition</u>
SMR	Self-monitoring report
CAT1	Violation of Group I pollutant effluent limitation as defined in Enforcement Policy

ATTACHMENT A
 ACL COMPLAINT R5-2008-0584
 CALAVERAS TROUT FARM, INC.
 TROUT REARING FACILITY
 MERCED COUNTY

<u>Abbreviation</u>	<u>Definition</u>
CIWQS	California Integrated Water Quality System database
D	Daily
LREP	Late Report
M	Monthly
MMP	Mandatory Minimum Penalty
OEV	Other Effluent Violation
TSS	Total Suspended Solids

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>1/1/2000 TO 5/31/2008</u>
Serious Violation of Group I Pollutant Effluent Limitation Subject to MMP:	1
Serious Late Reporting Violations Subject to MMP:	17
Total Violations Subject to MMP:	18
Mandatory Minimum Penalty = (18 Serious Violations) x \$3,000 = \$54,000	



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

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**Arnold
Schwarzenegger**
Governor

Linda S. Adams
Secretary for
Environmental Protection

TO: Lonnie M. Wass
Supervising Engineer

FROM: Jo Anne Kipps
Senior Engineer
Compliance and Enforcement Unit

DATE: 12 November 2008

SIGNATURE: _____

SUBJECT: CALAVERAS TROUT FARM, INC. RESPONSE TO NOV AND DRAFT RECORD OF VIOLATIONS

Calaveras Trout Farm, Inc. (Discharger) owns and operates a trout rearing facility (Facility) on land owned by Merced Irrigation District. Flow entering the Facility is diverted into two streams, concrete rearing ponds, and raceways for the hatchery. All flow is treated in settling ponds and discharged to the Merced River, a water of the United States.

WDRs Orders 96-107 and R5-2004-0119 prescribe, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	WDRs Order 96-107 WDRs Order Effective Dates (5/3/96-9/9/04)		R5-2004-0119 (9/10/04-Current)	
		<u>30-Day Average</u>	<u>Daily Maximum</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>
Settleable Solids	ml/L	0.1	0.2	0.1	0.2
Total Suspended Solids	mg/L	5	15	5	15

On 23 July 2008, Central Valley Water Board staff (staff) issued the Discharger a Notice of Violation (NOV) and Draft Record of Violations (ROV) for violations of WDRs Orders 96-107 and R5-2004-0119 that occurred at the Facility from 1 January 2000 to 31 May 2008. The Discharger's attorney, Mr. Michael Dini, responded on the Discharger's behalf by letter dated 18 August 2008. The following discusses the Discharger's comments and any changes made to the draft Record of Violations based on these comments. The following follows the format of the Discharger's response. The final Record of Violations is included as Attachment A to Administrative Civil Liability Complaint R5-2008-0584.

Violations 767628, 767631, 767634 Related to Discharger's 4/26/00 Report

<u>Violation ID</u>	<u>Violation Date</u>	<u>Violation Type</u>	<u>Violation Description</u>	<u>MMP Type</u>
767628	4/26/00	CAT1	4M; Settable Solids; 0.2; ml/L; D; 0.5	SERIOUS
767634	4/30/00	CAT1	4M; Settable Solids; 0.1; ml/L; M; 0.5	SERIOUS
767631	4/26/00	CAT1	4M; TSS; 5; ml/L; D; >10	SERIOUS

The Discharger indicates that while the Discharger's April 2000 self-monitoring report (SMR) reports an effluent settleable solids (SS) result of 0.5 ml/L, the laboratory report for this sample reports a result of < 0.5 ml/L. Because the laboratory's detection limit for this sample is greater than the daily maximum effluent SS limitation of 0.2 ml/L, it is not possible to determine whether the effluent SS concentration exceeded the daily maximum limitation. The Discharger is required to monitor effluent SS only once per month. Therefore, the 26 April 2000 effluent SS result is used to evaluate compliance with the monthly average effluent SS limitation of 0.1 ml/L. The Discharger requests Violation IDs 767628 and 767634 be dismissed due to laboratory error.

Similarly, the Discharger indicates that while the Discharger's April 2000 SMR reports an effluent total suspended solids (TSS) result of 10 mg/L, the laboratory report for this sample reports a result of < 10 mg/L. The laboratory's detection limit for this sample (i.e., 10 mg/L) is less than the daily maximum effluent TSS limitation of 15 mg/L, therefore the result indicates the effluent is compliant with the daily maximum effluent TSS limitation. The Discharger is required to monitor effluent TSS only once per month. As such, the 26 April 2000 effluent TSS result of < 10 mg/L is used to evaluate compliance with the monthly average effluent TSS limitation of 5 mg/L. Because the laboratory's detection limit for this sample is greater than the monthly average effluent SS limitation of 5 mg/L, it is not possible to determine whether the effluent TSS concentration exceeded the monthly average limitation. The Discharger requests Violation ID 767631 be dismissed due to laboratory error.

Conclusion: Staff dismissed Violation IDs 767628, 767634, and 767631 with the reason of "laboratory error."

Violation 241266 Related to Discharger's 11/30/03 Report

<u>Violation ID</u>	<u>Violation Date</u>	<u>Violation Type</u>	<u>Violation Description</u>	<u>MMP Type</u>
241266	11/30/03	CAT1	11M; TSS; 5; mg/L; M; 9	SERIOUS

According to the Discharger's November 2003 SMR, effluent TSS was 9 mg/L on 17 November 2003. Because the Discharger monitors effluent TSS only once per month, the 17 November 2003 result of 9 mg/L constitutes an exceedance of the monthly average effluent TSS limitation of 5 mg/L. The Discharger indicates that the subject effluent sample was collected at the discharge point "where heavy river flow can be expected due to precipitation and water released from the McSwain Dam." The Discharger further indicates that on 17 November 2003 the turbidity of receiving water upstream and downstream of the discharge on (i.e., at points R-1 and R-2) was equivalent at 1.5 NTU, suggesting that the discharge did not contribute to an increase in receiving water turbidity on that day. The Discharger requests that Violation ID 241266 be dismissed.

Conclusion: The Discharger's response did not provide sufficient technical information to indicate that Violation ID 241266 was in error; therefore this violation remains enforceable.

Late Reporting Violations

The Discharger committed 17 serious late reporting violations from January 2005 through March 2008 (i.e., 13 monthly SMRs were delinquent by more than 30 days and four monthly SMRs were delinquent by more than 60 days). The SMRs contain information regarding effluent quality that is necessary to evaluate compliance with numerical effluent limitations. According to Central Valley Water Board records, staff telephoned the Discharger on 3 July and 6 November 2003 to discuss the Discharger's submittal of delinquent SMRs.

The Discharger indicates that none of the delinquent SMRs subject to MMPs contain information demonstrating that the effluent exceeded any numerical limitation. The Discharger further indicates staff did not notify the Discharger that submittal of SMRs by more than 30 days late would constitute a late reporting violation subject to MMP, and that the Discharger realized no economic benefit from any delinquent reporting.

Conclusion: All 17 serious late reporting violations remain subject to mandatory minimum penalties.

Summary

The final Record of Violations identifies one serious violation of the effluent TSS limitation and 17 serious late reporting violations.