

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0511

MANDATORY PENALTY
IN THE MATTER OF

CALAVERAS TROUT FARM, INC.
TROUT REARING FACILITY
MERCED COUNTY

This administrative civil liability (ACL) Order is issued to Calaveras Trout Farm, Inc. (hereafter Discharger) pursuant to California Water Code (CWC) section 13385 based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Orders 96-107 and R5-2004-0119 (NPDES No. CA0081752).

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 the Trout Rearing Facility (Facility) that discharges flow-through wastewater from trout hatchery and rearing operations in various ponds. The Facility is on the south bank of the Merced River, four miles east of Snelling, and encompasses approximately 50 acres.
2. On 3 May 1996, the Central Valley Water Board issued WDRs Order 96-107 to regulate the Facility's discharge of hatchery wastewater to Merced River, a water of the United States.
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the Central Valley Water Board issued WDRs Order R5-2004-0119, which prescribed new requirements for the discharge and rescinded WDRs Order 96-107.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 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.

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(a) states, in part, that:

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. CWC section 13323(b) states that the regional board shall conduct a hearing within 90 days after service of an ACL Complaint, and that the party served with the complaint may waive this right.

8. 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>
Total Suspended Solids	mg/L	5	15	5	15

9. 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.

10. According to the Discharger’s self-monitoring reports covering the period from 1 January 2000 through 31 May 2008, the Discharger committed 1 violation of effluent limitations for total suspended solids under WDRs Order 96-107 and 17 serious late reporting violations under WDRs Order R5-2004-0119. Attachment A to this Order summarizes these violations, which occurred from 30 November 2003 to 2 May 2008 and comprise a total of 797 days that the Discharger was in violation of its NPDES permit.

11. In accordance with CWC sections 13385(h)(1) and 13385.1(a)(1), the total amount of the mandatory minimum penalty for the 18 violations cited in Attachment A is fifty-four thousand dollars (\$54,000).

12. On 20 November 2008, the Central Valley Water Board’s Assistant Executive Officer issued the Discharger ACL Complaint R5-2008-0584 (Complaint) proposing that the Discharger pay fifty-four thousand dollars (\$54,000) in civil liability pursuant to CWC sections 13385(h)(1) and 13385.1(a)(1) for the violations identified in Attachment A.

13. The Discharger did not pay the penalty assessed in the Complaint and on 16 December 2008, submitted a signed waiver to waive its right to a hearing within 90 days of service of the Complaint. By 22 December 2008 letter, the Discharger requested the liability be settled according to a proposed payment schedule detailed in the letter and incorporated in this Order.
14. This Order does not propose to assess a discretionary penalty above the minimum required by CWC sections 13385(h)(1) and 13385.1(a)(1).
15. On 15 March 2007, the Central Valley Water Board explicitly delegated to the Executive Officer the authority to issue orders to assess administrative civil liability where the matter is not contested by the discharger. (Resolution R5-2007-0009).
16. Issuance of this Administrative Civil Liability Order is an enforcement action by a regulatory agency and 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.

IT IS HEREBY ORDERED, pursuant to California Water Code sections 13385(a) and (h), that:

1. Calaveras Trout Farm, Inc. shall be assessed Administrative Civil Liability in the amount of **fifty-four thousand dollars (\$54,000)**.
2. Calaveras Trout Farm, Inc. shall remit payment according to the following payment schedule:

<u>Payment</u>	<u>Due Date</u>
\$3,000	27 Mar 2009
\$8,500	25 Aug 2009
\$8,500	19 Feb 2010
\$8,500	20 Aug 2010
\$8,500	16 Feb 2011
\$8,500	15 Aug 2011
\$8,500	11 Feb 2012

3. All checks shall contain a reference to Order R5-2009-0511, and shall be made to the "State Water Pollution Cleanup and Abatement Account."

4. Calaveras Trout Farm, Inc. shall remit payments to the following address:

California Regional Water Quality Control Board, Central Valley Region
1685 E Street, Fresno, CA 93706

5. Should Calaveras Trout Farm, Inc. fail to make any payment according to the schedule set forth in Order 2 above, then the Executive Officer may send a letter to the Calaveras Trout Farm, Inc. stating that the remaining balance shall be due within 30 days of receipt of the letter.
6. Failure of Calaveras Trout Farm, Inc. to make payments according to the schedule set forth in Order 2, or upon demand of the Executive Officer after Calaveras Trout Farm, Inc. has been informed that it has failed to make a scheduled payment, may result in the matter being referred to the Attorney General for collection and/or additional penalties.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order is signed, except that if the 30th day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), then the petition must be received by the State Water Board by 5:00 p.m. on the next business day. This Order is effective upon issuance. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

PAMELA C. CREEDON, Executive Officer

26 February 2009

Attachment A: Record of Violations

HA/JLK: 2/25/09

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0511

Calaveras Trout Farm, Inc.
Trout Rearing Facility

RECORD OF VIOLATIONS (1 January 2000 – 31 May 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 96-107 and R5-2004-0119)

<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

**ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0511**

**Calaveras Trout Farm, Inc.
Trout Rearing Facility**

RECORD OF VIOLATIONS (1 January 2000 – 31 May 2008) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs 96-107 and R5-2004-0119)

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