

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CEASE AND DESIST ORDER NO. R5-2007-0013

REQUIRING STERLING CAVIAR LLC.
ELVERTA FACILITY
SACRAMENTO COUNTY
TO CEASE AND DESIST
FROM DISCHARGING CONTRARY TO REQUIREMENTS

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Regional Water Board) finds that:

1. On March 15, 2007 the Regional Water Board adopted Waste Discharge Requirements (WDR) Order No. R5-2007-0012, prescribing waste discharge requirements for the Sterling Caviar LLC (hereafter Discharger) at Sterling Caviar LLC, Elverta (hereafter Facility), Sacramento County.
2. WDR Order No. R5-2007-0012 contains Final Effluent Limitations IV.A.1.a. which reads, in part, as follows:

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Arsenic	µg/L	10	--	--	--	--
Nitrate	mg/L	10	--	--	--	--
Manganese	µg/L	50	--	--	--	--

3. Arsenic was detected in the effluent at a concentration of 12 µg/L, based on a sample collected on 16 March 2006. The effluent limitations specified in Order No. R5-2007-0012 for arsenic are based on implementation of the Basin Plan narrative chemical constituents objective. Therefore, the discharge has a reasonable potential to cause or contribute to an in-stream excursion above the USEPA Primary Maximum Contaminant Level (MCL).
4. Nitrate was detected in the effluent at a concentration of 15.1 mg/L, based on a sample collected on 16 March 2006. The effluent limitations specified in Order No. R5-2007-0012 for nitrate are based on implementation of the Basin Plan narrative chemical constituents objective. Therefore, the discharge has a reasonable potential to cause or contribute to an in-stream excursion above the California Primary MCL.
5. Manganese was detected in the effluent at a concentration of 55.3 µg/L, based on a sample collected on 20 November 2006. The effluent limitations specified in Order No. R5-2007-0012 for manganese are based on implementation of the Basin Plan narrative chemical constituents objective. Therefore, the discharge has a reasonable potential to cause or contribute to an in-stream excursion above the California Secondary MCL.
6. Federal regulations, 40 CFR §122.44 (d)(1)(i), require that NPDES permit effluent limitations must control all pollutants which are or may be discharged at a level which will

cause or have the reasonable potential to cause or contribute to an in-stream excursion above any State water quality standard, including any narrative criteria for water quality. Beneficial uses, together with their corresponding water quality objectives or promulgated water quality criteria, can be defined per federal regulations as water quality standards.

7. Section 13301 of the California Water Code (CWC) states in part, *“When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventative action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing, or in accordance with the procedure set forth in Section 13302.”*
8. In accordance with CWC section 13385(j)(3), the Regional Water Board finds that, based upon results of effluent monitoring and statistically projected effluent concentrations, the Discharger is not able to consistently comply with the new effluent limitations for arsenic, manganese, and nitrate. These limitations are new requirements that became applicable to the Order after the effective date of adoption of the waste discharge requirements, and after July 1, 2000, for which new or modified control measures are necessary in order to comply with the limitations, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.
9. Immediate compliance with the new effluent limitations for arsenic, manganese, and nitrate is not possible or practicable. The Clean Water Act and the California Water Code authorize time schedules for achieving compliance.
10. This Order provides time schedules for the Discharger to develop, submit, and implement methods of compliance, including utilizing pollution prevention activities or constructing necessary treatment facilities to meet these new effluent limitations.
11. CWC section 13385(h) and (i) require the Regional Water Board to impose mandatory minimum penalties upon dischargers that violate certain effluent limitations. CWC section 13385(j) exempts certain violations from the mandatory minimum penalties. CWC section 13385(j)(3) exempts the discharge from mandatory minimum penalties *“where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all the [specified] requirements are met.”*
12. Compliance with this Order exempts the Discharger from mandatory penalties for violations of effluent limitations for arsenic, manganese, and nitrate only, in accordance with CWC section 13385(j)(3). CWC section 13385(j)(3) requires the Discharger to

prepare and implement a pollution prevention plan pursuant to section 13263.3 of the California Water Code. Therefore, a pollution prevention plan will be necessary for arsenic, manganese, and nitrate in order to effectively reduce the effluent concentrations by source control measures.

13. Since the time schedules for completion of action necessary to bring the waste discharge into compliance exceed 1 year, this Order includes interim requirements and dates for their achievement. The time schedules do not exceed 5 years.

The compliance time schedules in this Order include interim performance-based effluent limitations for arsenic, manganese, and nitrate. The interim effluent limitations consist of a maximum daily effluent concentration derived using sample data provided by the Discharger. In developing the interim limitations, when there are less than 10 sampling data points available, the *Technical Support Document for Water Quality- Based Toxics Control* ((EPA/505/2-90-001), TSD) recommends a coefficient of variation of 0.6 be utilized as representative of wastewater effluent sampling. The TSD recognizes that a minimum of 10 data points is necessary to conduct a valid statistical analysis. The multipliers contained in Table 5-2 of the TSD are used to determine a maximum daily limitation based on a long-term average objective. In this case, the long-term average objective is to maintain, at a minimum, the current plant performance level. Therefore, when there are less than ten sampling points for a constituent, interim limitations are based on 3.11 times the maximum observed effluent concentration to obtain the daily maximum interim limitation (TSD, Table 5 2).

14. The Regional Water Board finds that the Discharger can undertake source control measures to maintain compliance with the interim limitations included in this Order. Interim limitations are established when compliance with the final effluent limitations cannot be achieved by the existing discharge. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis. The interim limitations, however, establish an enforceable ceiling concentration until compliance with the effluent limitation can be achieved.
15. On March 15, 2007, in Sacramento, California, after due notice to the Discharger and all other affected persons, the Regional Water Board conducted a public hearing at which evidence was received to consider a Cease and Desist Order under CWC section 13301 to establish a time schedule to achieve compliance with waste discharge requirements.
16. Any person adversely affected by this action of the Board may petition the State Water Resources Control Board to review this action. The petition must be received by the State Water Resources Control Board, Office of the Chief Counsel, P.O. Box 100, Sacramento, CA 95812-0100, within 30 days of the date on which this action was taken. Copies of the law and regulations applicable to filing petitions will be provided on request.

IT IS HEREBY ORDERED THAT:

1. The Discharger shall comply with the following time schedule to ensure compliance with the arsenic, manganese, and nitrate effluent limitations contained in WDR Order No. R5-2007-0012 as described in the above Findings:

<u>Task</u>	<u>Date Due</u>
Submit Method of Compliance Workplan/Schedule	1 September 2007
Submit Pollution Prevention plan (PPP) pursuant to CWC section 13263.3	1 March 2008
Progress Reports ¹	1 June, annually, after approval of work plan until final compliance
Full compliance with arsenic, manganese, and nitrate effluent limitations	1 March 2012

¹ The progress reports shall detail what steps have been implemented towards achieving compliance with waste discharge requirements, including studies, construction progress, evaluation of measures implemented, and recommendations for additional measures as necessary to achieve full compliance by the final date.

2. The following interim effluent limitations shall be effective immediately. The interim effluent limitations for arsenic, manganese, and nitrate shall be effective until **29 February 2012**, or when the Discharger is able to come into compliance, whichever is sooner.

Parameter	Maximum Daily Effluent Limitation
Arsenic (µg/L)	37
Nitrate (mg/L)	47
Manganese (µg/L)	172

3. For the compliance schedules required by this Order, the Discharger shall submit to the Regional Water Board on or before each compliance report due date, the specified document or, if appropriate, a written report detailing compliance or noncompliance with the specific schedule date and task. If noncompliance is being reported, the reasons for such noncompliance shall be stated, and shall include an estimate of the date when the Discharger will be in compliance. The Discharger shall notify the Regional Water Board by letter when it returns to compliance with the time schedule.
4. If, in the opinion of the Executive Officer, Sterling Caviar, LLC fails to comply with the provisions of this Order, the Executive Officer may apply to the Attorney General for judicial enforcement. If compliance with these effluent limitations is not achieved by the Full Compliance date, the discharge would not be exempt from the mandatory minimum penalties for violation of certain effluent limitations.

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STERLING CAVIAR LLC ELVERTA FACILITY
SACRAMENTO COUNTY

5

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on March 15, 2007.

PAMELA C CREEDON, Executive Officer