

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0097

MANDATORY PENALTY
IN THE MATTER OF

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

This Order is issued to Tsar Nicoulai Caviar, LLC (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2005-0080 (NPDES No. CA0085120).

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board or Board) finds the following:

1. During 1 January 2009 through 30 June 2010, the Discharger owned and operated a fish farm with a wastewater treatment system located at 10822 Gay Road, Wilton, California (Facility). The wastewater treatment system consisted of filtration, an aquatic vegetation pond for nutrient uptake, and a biofiltration system for ammonia and dissolved organics removal. Wastewater was 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 mandatory minimum penalties (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.
4. On 16 September 2010, the Executive Officer issued ACL Complaint R5-2010-0541 in the amount of \$23,000. This ACLC rescinded ACLC R5-2010-0511, extended the period of record from 1 January 2009 through 30 June 2010, and accounted for the Discharger's payment of \$4,000. The Discharger waived its right to a hearing within 90 days. In early 2011, a different entity, TNC Holding Company, LLC, took over operations at the sturgeon farm.

5. The \$23,000 in mandatory minimum penalties assessed in ACL Complaint R5-2010-0541 has not been paid. This Order is intended to compel payment.
6. Water Code sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

Water Code 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.

Water Code 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.

Water Code 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.

7. Water Code 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.

8. 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	--	--	--

9. 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)**.
10. 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 Water Code 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)**.
11. 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.
12. Issuance of this Administrative Civil Liability Order to enforce Water Code 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).

IT IS HEREBY ORDERED that the Discharger, Tsar Nicoulai Caviar, LLC, its agents, successors and/or assigns, is assessed an Administrative Civil Liability in the amount of twenty three thousand dollars (\$23,000) as follows:

1. **Within 30 days of adoption of this Order (i.e., by 26 August 2013)**, the Discharger shall pay twenty three thousand dollars (\$23,000) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. The check shall have the number of this ACL Order written on it and shall be mailed to the Central Valley Water Board.
2. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer or her delegate is authorized to refer this matter to the Office of the

Attorney General for enforcement and/or to pursue a judgment pursuant to Water Code section 13328.

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 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. 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.

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 25 July 2013.

Original signed by

PAMELA C. CREEDON, Executive Officer

1 August 2013

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2013-0097

Tsar Nicoulai Caviar, LLC

Tsar Nicoulai Sturgeon Farm, Wilton

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