

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0517

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, Tsar Nicoulai Sturgeon Farm, Wilton (hereafter 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) 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 17 December 2008, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2008-0575 for mandatory minimum penalties for effluent violations from 24 June 2005 through 31 December 2007. The Discharger paid the Complaint and the Central Valley Water Board considers the matter resolved.
4. On 11 February 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period of 1 January 2008 through 31 December 2008. On 19 February 2009, the Discharger responded. As discussed in Finding 8 and Attachment B to this Order, staff reviewed the additional data and deleted two violations.
5. 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.

6. 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.

7. WDRs Order R5-2005-0080 Effluent Limitations No. 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	--	--	--

8. As described in the technical memorandum mentioned in Finding No. 6, Central Valley Water Board staff made the following adjustments to the draft Record of Violations (all violation numbers reference those contained in the draft Record of Violations).
  - Ammonia, Violations 4 and 5. The Discharger certified that the ammonia concentration was incorrectly reported and should have been 0.53 mg/L, not 5.3 mg/L.
9. According to the Discharger's self-monitoring reports, the Discharger committed one (1) serious Group I violation of the above effluent limitations contained in Order R5-2005-0080 during the period beginning 1 January 2008 and ending 31 December 2008. This violation is defined as serious because the measured concentrations of a Group I constituent exceeded maximum prescribed levels by more than 40 percent on this occasion. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
10. According to the Discharger's self-monitoring reports, the Discharger committed two (2) non-serious violations of the above effluent limitations contained in Order R5-2005-0080 during the period beginning 1 January 2008 and ending 31 December 2008. These non-serious violations are not subject to mandatory penalties under CWC section 13385(i)(1) because these violations were not preceded by three or more similar violations within a six-month period.
11. The total amount of the mandatory penalties assessed for the cited effluent violation is **three thousand dollars (\$3,000)**. The cited effluent violation is included in Attachment A, a part of this Complaint.
12. 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 section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**TSAR NICOULAI CAVIAR, LLC., TSAR NICOULAI STURGEON FARM, WILTON, IS  
HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **three thousand dollars (\$3,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **11/12 June 2009**, unless the Discharger does either of the following by **15 April 2009**:
  - 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 **three thousand dollars (\$3,000)**; 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.

---

PAMELA C. CREEDON, Executive Officer

16 March 2009

---

Attachment A: Record of Violations  
Attachment B: 11 Mar 2009 memorandum  
BLH: 16-Mar-09

**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 the Tsar Nicoulai Caviar, LLC (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2009-0517 (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 Central Valley Regional Water Quality Control Board (Central Valley 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 proposed civil liability in the amount of **three thousand dollars (\$3,000)** by check, which will contain a reference to "ACL Complaint R5 2009-0517" and will be made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **15 April 2009** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **11/12 June 2009** Central Valley Water Board meeting.
  - 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 Central Valley Water Board receive 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. New information or comments include those submitted by personnel of the Central Valley 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)

---

**ATTACHMENT A**  
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0517**

(Date)

**ATTACHMENT A**  
**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2009-0517**

**Tsar Nicoulai Caviar, LLC**

RECORD OF VIOLATIONS (1 January 2008 – 31 December 2008) 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>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	30-Jan-08	Iron	µg/L	300	345	Monthly	3	788937
2	31-Mar-08	Iron	µg/L	300	410	Monthly	3	788938
3	30-Apr-08	Iron	µg/L	300	520	Monthly	1	788940

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 violations 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>12/31/2008</u>
Group I Serious Violations:	1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	2
Non-serious Violations Subject to MPs:	0
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>1</u></b>

**Mandatory Minimum Penalty = (1 Serious Violation + 0 Non-Serious Violations) x \$3,000 = \$3,000**



Linda S. Adams  
Secretary for  
Environmental Protection

**ATTACHMENT B**

**California Regional Water Quality Control Board  
Central Valley Region**

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

11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114  
Phone (916) 464-3291 • FAX (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>



**Arnold  
Schwarzenegger**  
Governor

**TO:** Wendy Wyels, Supervisor  
Compliance and Enforcement Section

**FROM:** Barry Hilton, WRCE  
Compliance and Enforcement

**DATE:** 11 Mar 2009

**SIGNATURE:** \_\_\_\_\_

**SUBJECT:** TSAR NICOULAI CAVIAR STURGEON FARM RESPONSE TO NOV AND ASSESSMENT OF MMPS

On 11 February 2009, Central Valley Water Board staff sent the Discharger a draft Record of Violations (ROV) for the period of 1 January 2008 through 31 December 2008. On 19 February 2009, the Discharger responded that the 30 December 2008 reported ammonia concentration was 0.53 mg/L, not 5.3 mg/L.

I deleted the ammonia violations.

**Tsar Nicoulai Caviar, LLC**

RECORD OF VIOLATIONS (1 January 2008 – 31 December 2008) 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>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Remarks</u>	<u>CIWQS</u>
1	30-Jan-08	Iron	µg/L	300	345	Monthly	3	788937
2	31-Mar-08	Iron	µg/L	300	410	Monthly	3	788938
3	30-Apr-08	Iron	µg/L	300	520	Monthly	1	788940
4	<del>30-Dec-08</del>	<del>Ammonia</del>	<del>mg/L</del>	<del>2.4</del>	<del>5.3</del>	<del>1-hour</del>	<del>4</del>	<del>805918</del>
5	<del>30-Dec-08</del>	<del>Ammonia</del>	<del>mg/L</del>	<del>0.59</del>	<del>5.3</del>	<del>Monthly</del>	<del>4</del>	<del>805919</del>

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 violations 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>12/31/2008</u>
Group I Serious Violations:	<del>3</del> 1
Group II Serious Violations:	0
Non-Serious Exempt from MPs:	2
Non-serious Violations Subject to MPs:	0
<b><u>Total Violations Subject to MPs:</u></b>	<b><u>3</u></b> 1

**Mandatory Minimum Penalty = (0 Serious Violations + 1 Non-Serious Violation) x \$3,000 = \$3,000**