

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0515

MANDATORY PENALTY
IN THE MATTER OF

STERLING CAVIAR, LLC
SACRAMENTO COUNTY

This Complaint is issued to the Sterling Caviar, LLC (hereafter Discharger) pursuant to California Water Code (Water Code) section 13385, which authorizes the imposition of Administrative Civil Liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint and Water Code 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 allegations that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2007-0012 (NPDES CA0085197).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

1. The Discharger is the owner and operator of Sterling Caviar LLC, Elverta (hereinafter Facility), a fish farm. The discharge of aquaculture wastewater to the Betts-Kismat-Silva (BKS) preserve wetlands is regulated by Waste Discharge Requirements (WDRs) Order R5-2007-0012, which was adopted by the Central Valley Water Board on 15 March 2007 and became effective on 4 May 2007.
2. The BKS preserve includes constructed wetlands that were developed by The Natomas Basin Conservancy, located within Reclamation District No. 1000 (District). The District operates and maintains a drainage system that collects stormwater and agricultural drainage that is delivered to pumping plants for disposal in the Sacramento River, a water of the United States.
3. On 15 March 2007, the Board adopted Cease and Desist Schedule Order (CDO) R5-2007-0013. On 2 February 2012, the Board adopted amended CDO R5-2007-0013-01. The CDOs include interim average monthly limitations for arsenic, nitrate, and manganese and provide a time schedule to comply with final effluent limitations for arsenic, nitrate, and manganese by 28 February 2015. This Complaint considers the exemption from mandatory minimum penalties provided by the Cease and Desist Orders.
4. This Complaint addresses administrative civil liability for effluent violations that occurred between 4 May 2007 and 31 December 2014. These violations are specifically identified in Attachment A to this Complaint as subject to mandatory minimum penalties. Attachment A to this Complaint is attached hereto and incorporated herein by this reference.
5. On 5 January 2015, Central Valley Water Board staff issued the Discharger a Notice of Violation and draft Record of Violations for effluent limitation violations from 4 May 2007

through 31 October 2014. The Discharger did not submit any comments regarding the alleged violations. This Complaint extends the dates through 31 December 2014.

6. Water Code section 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 subdivision (i)(1) states, in part:

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 13385.1(a)(1) states, in part:

For the 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 30 days following the deadline for submitted the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. This paragraph applies only to violations that occur on or after January 1, 2004.

8. 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.

9. WDRs Order R5-2007-0012 Effluent Limitations IV.A.1.a., Discharge Point No. 001 include, in part, the following effluent limitations:

Table 6. Final Effluent Limitations—Discharge Point No. 001

Parameter	Units	Effluent Limitations			
		Average Monthly	Average Weekly	Instantaneous Minimum	Instantaneous Maximum
pH	Standard units	--	--	6.5	8.0

10. WDRs Order R5-2007-0012 Self-Monitoring Reports, Attachment E, Section X.B.2 states, in part:

2. Monitoring results shall be submitted to the Regional Water Board by the **first day** of the second month following sample collection.

11. According to the Discharger's self-monitoring reports, the Discharger committed two (2) non-serious violation of the above effluent limitations contained in Order R5-2007-0012. The non-serious violations are not subject to mandatory penalties under Water Code section 13385 subdivision (i)(1) because the violations were not preceded by three or more similar violations within a six-month period.
12. The February 2014 self-monitoring report was required to be submitted by 1 April 2014. The monitoring report was submitted on 27 June 2014, which is 87 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with California Water Code section 13385.1(a), the failure to submit timely the February 2014 self-monitoring report is subject to a mandatory minimum penalty of \$3,000 for each 30-day period it is late. The Discharger committed two (2) serious violations for failure to submit timely the February 2014 self-monitoring report required by WDRs Order R5-2007-0012. The mandatory minimum penalty for these serious violations is **six thousand dollars (\$6,000)**.
13. The March 2014 self-monitoring report was required to be submitted by 1 May 2014. The monitoring report was submitted on 27 June 2014, which is 57 days after the required deadline in the Monitoring and Reporting Program. Because there was a discharge, in accordance with California Water Code section 13385.1(a), the failure to submit timely the March 2014 self-monitoring report is subject to a mandatory minimum penalty of \$3,000 for each 30-day period it is late. The Discharger committed one (1) serious violation for failure to submit timely the March 2014 self-monitoring report required by

WDRs Order R5-2007-0012. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.

14. The total amount of the mandatory penalties assessed for the alleged violations is **nine thousand dollars (\$9,000)**. As stated herein, a detailed list of the alleged violations is included in Attachment A. This Complaint addresses administrative civil liability for violations that are specifically identified in Attachment A as subject to mandatory minimum penalties.
15. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue Administrative Civil Liability Complaints.
16. Issuance of this Administrative Civil Liability Complaint to enforce Water Code 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).

STERLING CAVIAR LLC 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 **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **4/5 June 2015**, unless the Discharger does one of the following by **3 April 2015**:
 - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board. In addition, submits payment for the proposed civil liability of **nine thousand dollars (\$9,000)** to the State Water Board, with a copy of the check to the Central Valley Water Board; or
 - b) Requests to engage in settlement discussions by checking the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed. The Central Valley Water Board must agree to the postponement; or
 - c) Requests to delay the hearing by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the proposed length of delay and the issues to be discussed. The Central Valley Water Board must agree to the postponement.
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.

4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original signed by

ANDREW ALTEVOGT, Assistant Executive Officer

9 March 2015

DATE

Attachment A: Record of Violations

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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

I am duly authorized to represent the Sterling Caviar LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2015-0515 (hereafter Complaint). 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. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **nine thousand dollars (\$9,000)** by check that references "ACL Complaint R5-2015-0515" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment at PO Box 1888, Sacramento, California, 95812-1888 by **3 April 2015**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova California, 95670 by **3 April 2015**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A TO ACLC R5-2015-0515

**Sterling Caviar LLC
Elverta Facility**

**MANDATORY PENALTIES FOR FAILURE TO SUBMIT REPORTS
RECORD OF VIOLATIONS (4 May 2007 through 31 December 2014) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2007-0012)**

Effluent Limitation Violations

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measured</u>	<u>Period</u>	<u>Remarks</u>	<u>CIWQS</u>
1	9/7/2010	pH	Std. Units	6.5	6.32	Instant Min	3	888524
2	9/28/2010	pH	Std. Units	6.5	6.32	Instant Min	3	888525

Late Report Violations

	<u>SMR</u>	<u>Due Date</u>	<u>Received Date</u>	<u>No. of 30-day Periods Late</u>	<u>Discharge</u>	<u>No. of 30-day periods Subject to MMPs</u>	<u>Remarks</u>	<u>CIWQS</u>
3	February 2014	1 April 2014	27 June 2014	2	Yes	2	4	975670, 975672
4	March 2014	1 May 2014	27 June 2014	1	Yes	1	4	975676

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 180-day period, thus is not subject to mandatory minimum penalties. Penalties that may be assessed for this violation are discretionary. This violation is not addressed or resolved in this ROV.
4. Serious Violation: Failure to file a discharge monitoring report for each complete period of 30 days following the deadline for submitting the report when a discharge occurred.

VIOLATIONS AS OF: 12/31/2014

Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	2
<u>Serious Violations Subject to MMPs:</u>	<u>3</u>
Total Violations Subject to MMPs:	3

Mandatory Minimum Penalty = (3 Serious violations) x \$3,000 = \$9,000