

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ORDER R5-2012-0007  
AMENDING CEASE AND DESIST ORDER R5-2007-0013

STERLING CAVIAR LLC.  
ELVERTA FACILITY  
SACRAMENTO COUNTY

1. On 15 March 2007 the Central Valley Water Board adopted Waste Discharge Requirements (WDR) Order R5-2007-0012 (NPDES No. CA0085197), prescribing waste discharge requirements for Sterling Caviar LLC (hereafter Discharger) at the Sterling Caviar LLC, Elverta (hereafter Facility), a sturgeon fish farm in Sacramento County. The Discharger was unable to comply with new final effluent limitations for arsenic, nitrate, and manganese. Therefore, on 15 March 2007 the Central Valley Water Board also adopted Cease and Desist Order (CDO) R5-2007-0013 that provides time schedules for compliance with the final effluent limitations.
2. The Discharger owns and operates a fish farm that produces white sturgeon and caviar. Wastewater is discharged to wetlands within the Betts-Kismat-Silva (BKS) preserve. The BKS preserve was developed by the Natomas Basin Conservancy to provide habitat for the giant garter snake and the Swainson's hawk. The BKS preserve is located within Reclamation District No. 1000 (RD1000). The RD1000 operates and maintains a drainage system that collects storm water and agricultural drainage within the RD1000 boundaries and disposes of the water via various pumping plants to the Sacramento River, a water of the United States.
3. On 20 July 2011, the Discharger submitted a letter requesting an extension of the compliance schedule of the CDO from 1 March 2012 until 1 March 2015 for the final effluent limitations for arsenic, manganese and nitrate. The Discharger states that treatment to remove arsenic and manganese at or below discharge requirements is not economically feasible. The Discharger is pursuing outside parties for development of an agricultural operation to be located near the Facility that would use treated effluent from the Facility as its irrigation water supply. The Discharger needs additional time to establish contracts with an outside party, secure necessary permits, and develop the agricultural operation.
4. The Central Valley Water Board finds that the Discharger has demonstrated due diligence to identify feasible compliance alternatives and is making diligent progress to comply with final effluent limitations. The Discharger has provided a plan to cease the discharge to surface waters. The Discharger plans to reuse the treated wastewater to irrigate an agricultural crop. This project will allow the discharge to be used as an irrigation water supply, augmenting the area water supply. The NPDES permit and CDO for this Facility may be potentially rescinded.

5. Issuance of this Order 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(a)(2).
6. The Central Valley Water Board has notified the Discharger and interested agencies and persons of its intent to amend the Cease and Desist Order for this discharge and has provided them with an opportunity to submit their written views and recommendations.

**IT IS HEREBY ORDERED THAT:**

Cease and Desist Order No. R5-2007-0013 is amended as shown in underline/strikeout format in Attachment 1 to this Order.

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 Water Code 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 of this Order, except that if the thirtieth day following the date of this Order 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](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 2 February 2012.

Original Signed by Kenneth D. Landau for  
PAMELA C. CREEDON, Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CEASE AND DESIST ORDER NO. R5-2007-0013-01  
(as amended by Order R5-2012-0007)

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 Central Valley Water Board) finds that:

1. On 15 March 2007 the ~~Regional Central Valley Water Board~~ adopted Waste Discharge Requirements (WDR) Order No. R5-2007-0012 (NPDES Permit No. CA0085197), 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~~ Central Valley 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.

### **Need for Time Schedule Extension and Legal Basis**

11. The Discharger has provided a preliminary plan to reuse the treated wastewater as irrigation supply for an agricultural crop and may cease the point source discharge to surface waters. Therefore, the NPDES Permit and CDO could potentially be rescinded.
12. On 20 July 2011, the Discharger submitted a letter requesting an extension of the compliance schedule from 1 March 2012 until 1 March 2015 for the final effluent limitations for arsenic, manganese and nitrate. The Discharger evaluated project alternatives to either change its ground water supply source for the Facility, which is the

source of the arsenic and manganese, or construct facilities to remove the constituents. The Discharger conducted water quality monitoring and evaluated project alternatives and concluded that treatment for removal of arsenic and manganese at or below effluent limitations is not economically feasible. The Discharger also evaluated the option of reusing the treated wastewater for reuse on an agricultural crop. This was determined to be the cost effective project. Additional time is needed to pursue outside parties for development of an agricultural operation to be located near the Facility that would use treated effluent from the Facility as its irrigation source. Additional time is also necessary to establish contracts with an outside party, secure necessary permits, and develop the agricultural operation.

13. The Central Valley Water Board finds that the Discharger is demonstrating continued due diligence to comply with the final effluent limits and develop a compliance alternative that maximizes the beneficial reuse of water and reduces/eliminates a surface water discharge.

### **Mandatory Minimum Penalties**

44-14. CWC section 13385(h) and (i) require the Regional Central Valley Water Board to impose mandatory minimum penalties (MMPs) upon dischargers that violate certain effluent limitations. CWC section 13385(j) exempts certain violations from the mandatory minimum penalties MMPs. CWC section 13385(j)(3) exempts the discharge from mandatory minimum penalties MMPs "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." ...for the purposes of this subdivision, the time schedule may not exceed five years in length..."

15. Per the requirements of 13385(j)(3) of the CWC, the Central Valley Water Board finds that:

- a. This Order specifies the actions that the Discharger is required to take in order to correct the violations that would otherwise be subject to CWC Section 13385(h) and (i).
- b. This Order establishes a time schedule to bring the waste discharge into compliance with the effluent limitations that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitations.

16. Per the requirements of CWC Section 13385(j)(3)(C)(i), an individual Cease and Desist Order or Time Schedule Order may provide protection from MMPs for no more than five years, except as provided in 13385(j)(3)(C)(ii). Per the requirements of CWC Section 13385(j)(3)(C)(ii)(II) following a public hearing, and upon a showing that the Discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the Central Valley Water Board may extend the time schedule for an

additional five years if the Discharger demonstrates that the additional time is necessary to comply with the effluent limitation. The Central Valley Water Board finds that the Discharger has demonstrated due diligence and is making diligent progress to bring the waste discharge into compliance with final effluent limitations.

17. 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.

This Order originally provided protection from MMPs from 15 March 2007 through 29 February 2012 for violations of effluent limitations for arsenic, manganese, and nitrate. On 2 February 2012 the Central Valley Water Board adopted Order R5-2012-0007 amending this Order to extend the MMP protection from 1 March 2012 through 28 February 2015. In accordance with CWC Section 13385(j)(3), the total length of protection from MMPs for these constituents is less than ten years.

- ~~42-18.~~ 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 an maximum daily average monthly 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 an maximum daily average monthly 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 average monthly interim limitation (TSD, Table 5-2).

- ~~43-19.~~ The Regional Central Valley 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.

- ~~14-20.~~ On 15 March 2007 and 2 February 2012, in ~~Sacramento~~ Rancho Cordova, California, after due notice to the Discharger and all other affected persons, the ~~Regional Central Valley~~ Water Board conducted a public hearings 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.
- ~~15-21.~~ Issuance of this Order 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(a)(2).
- ~~16-22.~~ 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	<b>1 September 2007</b>
Submit Pollution Prevention plan (PPP) pursuant to CWC section 13263.3	<b>1 March 2008</b>
<b><u>Submit Agricultural Operation Workplan/Schedule<sup>2</sup></u></b>	<b><u>1 September 2012</u></b>
Progress Reports <sup>1</sup>	<b>1 June, annually,</b> after approval of work plan until final compliance
Full compliance with arsenic, manganese, and nitrate effluent limitations	<b>1 March 201<u>5</u>2</b>

<sup>1</sup> 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.

<sup>2</sup> A detailed, specific workplan/schedule shall be submitted that includes detailed actions and time steps that will result in achieving compliance with the waste discharge requirements in accordance with this Order.

2. The following interim effluent limitations shall be effective immediately. The interim effluent limitations for arsenic, manganese, and nitrate shall be effective until **289 February 20152**, or when the Discharger is able to come into compliance, whichever is sooner.

<b>Parameter</b>	<b><u>Maximum Daily Average Monthly Effluent Limitation</u></b>
Arsenic ( $\mu\text{g/L}$ )	<b>37</b>
Nitrate ( $\text{mg/L}$ )	<b>47</b>
Manganese ( $\mu\text{g/L}$ )	<b>172</b>

3. For the compliance schedules required by this Order, the Discharger shall submit to the Regional Central Valley 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 Central Valley 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.

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 15 March 2007, and amended by Order R5-2012-0007 on 2 February 2012.

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PAMELA C CREEDON, Executive Officer