

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 15, 2024

Prepared on February 2, 2024

ITEM NUMBER: 7

SUBJECT: **Consideration of Adoption of an Administrative Civil Liability Order for JSM Organics, Inc., Monterey County, Administrative Civil Liability Complaint R3-2023-0050**

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KEY INFORMATION

Location: El Rancho Triple M Ranch, 420 Hall Road, Royal Oaks, Monterey County

Type of Discharge: Agricultural Irrigation

Existing Orders: Order R3-2021-0040, *General Waste Discharge Requirements for Discharges from Irrigated Lands* (Agricultural Order)

ACTION: **Consider Adopting Administrative Civil Liability (ACL) Order**

SUMMARY

The Central Coast Water Board's enforcement staff alleges that JSM Organics, Inc. has violated Board requirements that apply to commercial irrigated agricultural operations set forth in the Agricultural Order, including not submitting required reports. In the ACL complaint, the Prosecution Team¹ proposes that the Central Coast Water Board impose civil liability on JSM Organics, Inc. in the amount of \$49,415. In recent submissions to the Board, the Prosecution Team has proposed higher penalties based on the fact that JSM Organics, Inc. has not yet submitted the required reports.

On February 15, 2024, the Central Coast Water Board will hold a hearing to consider written evidence and arguments, hear oral evidence and arguments, and deliberate.

This hearing is continued from October 19, 2023.

¹ Members of the Prosecution Team are defined *infra* in the section of this report titled, "Separation of Functions," on page 2.

DISCUSSION

Background

JSM Organics, Inc. enrolled El Rancho Triple M ranch in the Central Coast Water Board's Order R3-2021-0400, *General Waste Discharge Requirements for Discharges from Irrigated Lands* (referred to herein as the Agricultural Order), in 2020. The ranch comprises 65 acres of commercial irrigated land at 420 Hall Road, Royal Oaks, Monterey County.

The Agricultural Order requires that owners and operators of commercial, irrigated lands submit information regarding fertilizers applied to land, known as total nitrogen applied (TNA) reports, annually by March 1.

Regulatory Framework

The regulatory framework for this proceeding is set out in detail in hearing procedures established by the Central Coast Water Board. See Attachment 1.

Separation of Functions

Central Coast Water Board staff and attorneys who have prepared the ACL complaint (Prosecution Team) have been separated from Central Coast Water Board staff and attorneys who will advise the Central Coast Water Board on the ACL complaint (Advisory Team). The Prosecution Team will present evidence for consideration by the Central Coast Water Board. The Advisory Team provides legal and technical advice to the Central Coast Water Board.

The Prosecution Team is led by Assistant Executive Officer Thea Tryon, and includes Julie Macedo (Office of Enforcement, Attorney V), Tamara Anderson, Mary Hamilton, Stephanie Young, Todd Stanley, Paula Richter, and Jesse Woodard. The Advisory Team includes Executive Officer Ryan Lodge, Harvey Packard, and Sophie Froelich (Office of Chief Counsel, Attorney IV).

Parties

Parties are the primary participants in the hearing. Parties may present written evidence, offer witness testimony, cross-examine witnesses, and provide closing statements. Parties may be asked to respond to questions from the Central Coast Water Board and Advisory Team.

The parties to this proceeding are the Prosecution Team and JSM Organics, Inc.

Alleged Violations

The Prosecution Team alleges that JSM Organics, Inc. violated the Agricultural Order by not submitting the required TNA report for El Rancho Triple M ranch for calendar year 2021.

The Prosecution Team's ACL complaint, Attachment 2 of this staff report, details the efforts made by Central Coast Water Board staff to inform JSM Organics, Inc. of Agricultural Order requirements (including TNA report requirements) and its failure to comply.

Administrative Civil liability Complaint

The complaint proposes administrative civil liability in the amount of \$49,415. The amount of the proposed civil liability is based on the Prosecution Team's analysis of the factors in Water Code section 13327 and of the 2017 [Enforcement Policy](#)² and includes consideration of the economic benefit or savings resulting from the violations. The complaint is included as Attachment 2.

Hearing Procedures

The Advisory Team issued written procedures for the October 19, 2023 hearing on this matter on August 29, 2023. After the October 19, 2023 hearing, and to prepare for the continued hearing in February 2024, the Advisory Team requested the parties submit any proposed revisions to the hearing procedures by October 30, 2023. The Prosecution Team submitted proposed revisions to the hearing procedures on October 30, 2023. JSM Organics, Inc. did not submit any proposed revisions. The revised hearing procedures in this matter were issued on November 20, 2023. See Attachment 1.

Evidence Submittals

The Prosecution Team timely submitted its evidence and arguments for the October 19, 2023 hearing in accordance with the August 29, 2023 hearing procedures. For this continued hearing, the Prosecution Team also submitted its evidence and arguments in accordance with the November 20, 2023 revised hearing proceedings to the Central Coast Water Board on January 5, 2024.

JSM Organics, Inc. did not submit any written evidence or arguments by the date due in either the August 29, 2023 or the November 20, 2023 hearing procedures. Rather, Javier Zamora submitted documents to the Central Coast Water Board at the October 19, 2023 hearing. The evidence was admitted over the Prosecution Team's objection, and the hearing was continued to February 15, 2024, to give the Prosecution Team time to review and prepare rebuttal to the late-submitted evidence.

The Prosecution team submitted a supplemental brief on January 5, 2024. Among other things, the supplemental brief describes the conclusions of a consultant hired by the Prosecution Team to evaluate JSM Organics, Inc.'s ability to pay the recommended penalty. The economic analysis also considered whether El Rancho Triple M, LLC,

² State Water Resources Control Board *Water Quality Enforcement Policy*:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

which owns the ranch land, and Javier Zamora personally, could pay the recommended penalty. However, the complaint only names JSM Organics, Inc. as a Discharger.

The supplemental brief also alleges additional days of violation since issuance of the ACL complaint. Considering these additional days of violation, a review of factors in the Enforcement Policy, and the ability-to-pay analysis, the Prosecution Team recommends that the Board assess liability to JSM Organics, Inc. in the amount of \$68,145. This is an increase over the amount the Prosecution Team recommended in the ACL complaint (\$49,415).

Human Right to Water

California Water Code section 106.3, subdivision (a) states that it is the policy of the State of California “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes.” On January 26, 2017, the Central Coast Water Board adopted Resolution No. R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as the Central Coast Water Board's top priorities.

Compliance with the Agricultural Order is critical to protect water quality for all residents, including underrepresented communities. Enforcement of Agricultural Order requirements is a necessary tool to ensure widespread compliance.

Environmental Justice

Environmental Justice principles call for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies that affect every community's natural resources and the places people live, work, play, and learn. The Central Coast Water Board implements regulatory activities and water quality projects in a manner that ensures the fair treatment of all people, including underrepresented communities. Underrepresented communities include but are not limited to disadvantaged communities (DACs), severely disadvantaged communities (SDACs), economically distressed areas (EDAs), tribes, environmentally disadvantaged communities (EnvDACs), and members of fringe communities.³

³ Disadvantaged community: a community with an annual median household income that is less than 80% of the statewide annual median household income (Public Resources Code section 80002(e)); severely disadvantaged community: a community with a median household income of less than 60% of the statewide average. (Public Resources Code section 80002(n)); economically distressed area: a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less with an annual median household income that is less than 85% of the statewide median household income and with one or more of the following conditions as determined by the department: (1) financial hardship, (2) unemployment rate at least 2% higher than the statewide average, or (3) low population density. (Water Code section 79702(k)); tribes: federally recognized Indian tribes and California state Indian tribes listed on the Native American Heritage Commission's California Tribal Consultation List; EnvDACs: CalEPA designates the top 25 percent scoring census tracts as DACs. Census tracts that score the highest 5% of pollution burden scores but do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data are also designated as DACs (refer to the

Furthermore, the Central Coast Water Board is committed to providing all stakeholders the opportunity to participate in the public process and provide meaningful input to decisions that affect their communities.

The Prosecution Team reports that El Rancho Triple M ranch is in a disadvantaged community block, as determined by the online census mapping tool provided by the State Water Resources Control Board at <https://gis.water.ca.gov/app/dacs/>. The ranch is in an area where domestic wells (serving fewer than five connections) and state small water systems (serving between 5 and 15 connections) may be at a relatively higher risk of accessing groundwater that does not meet primary drinking water standards. The ranch is located adjacent to Carneros Creek, which is on the 2020-2022 303(d) list with impairments for ammonia, chlorophyll-a, chlorpyrifos, copper, DDE, *E. coli*, nitrate, organophosphate pesticides, dissolved oxygen, pH, and turbidity.

Compliance with the Agricultural Order is essential to protect water quality for residents of the area.

Climate Change

The Central Coast faces the threat and the effects of climate change for the foreseeable and distant future. To proactively prepare and respond, the Central Coast Water Board has launched the Central Coast Water Board's Climate Action Initiative, which identifies how the Central Coast Water Board's work relates to climate change and prioritizes actions that improve water supply resiliency through water conservation and wastewater reuse and recycling; mitigate for and adapt to sea level rise and increased flooding; improve energy efficiency; and reduce greenhouse gas production. The Climate Action Initiative is consistent with the Governor's Executive Order B-30-15 and the State Water Board's Climate Change Resolution No. 2017-0012.

Compliance with the Agricultural Order is an important tool for climate change mitigation. A clean, adequate supply of groundwater into the future depends on proper management of all land uses, including commercial, irrigated agriculture. Climate change will continue to apply pressure to both water quality and quantity.

CONCLUSION

At the hearing, the Central Coast Water Board will hear testimony and consider evidence from both the Prosecution Team and JSM Organics, Inc. In addition, the Central Coast Water Board will hear oral arguments from the parties as it considers its options.

The Central Coast Water Board may choose to impose administrative civil liability in the amount proposed or in a different amount, decline to impose civil liability, or refer the

CalEnviroScreen 3.0 Mapping Tool or Results Excel Sheet); fringe community: communities that do not meet the established DAC, SDAC, and EDA definitions but can show that they score in the top 25% of either the Pollution Burden or Population Characteristics score using the CalEnviroScreen 3.0.

matter to the Attorney General to have a superior court consider enforcement. The Advisory Team will be available to assist the Board in its deliberations.

RECOMMENDATION

To be provided at the hearing.

ATTACHMENTS

1. Hearing Procedures for Administrative Civil Liability Complaint R3-2023-0050
2. Administrative Civil Liability Complaint R3-2023-0050 and Attachment A thereto, Factor Consideration and Penalty Calculation Methodology for [Proposed] Administrative Civil Liability Order R3-2023-0050
3. Prosecution Team's Briefs and Evidentiary Submittals
 - Brief and Exhibits Dated September 5, 2023
 - Supplemental Brief and Exhibits Dated January 5, 2024
4. JSM Organics, Inc.'s Evidentiary Submittals
5. 1/25/24 Email from Prosecution Team to Advisory Team and Mr. Zamora titled, "New information regarding ACLC R3-2023-0050."

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