

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

**ORDER R3-2024-0025
ASSESSING ADMINISTRATIVE CIVIL LIABILITY**

**JSM ORGANICS, INC.
EL RANCHO TRIPLE M RANCH**

**AGRICULTURAL IRRIGATED LANDS
MONTEREY COUNTY**

(GEOTRACKER GLOBAL ID# AGL020037144, OPERATION ID# AW3774)

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), having held public hearings on October 19, 2023, and February 15, 2024, to hear evidence and comments on the allegations contained in the Administrative Civil Liability Complaint R3-2023-0050, and having considered and deliberated on the evidence received in the public hearing and in the record, and having evaluated such evidence using the Central Coast Water Board's experience, technical competence, and specialized knowledge, and having considered all comments received, orders JSM Organics, Inc. (also "JSM Organics" or "Discharger") to pay civil liability in the amount of \$56,840 and finds as follows:

Background

1. Irrigated agricultural discharges have been regulated by the Central Coast Water Board for 20 years, since the adoption of the first agricultural order in 2004.¹ On April 15, 2021, the Central Coast Water Board adopted the fourth agricultural order, Order R3-2021-0040, *General Waste Discharge Requirements for Discharges from Irrigated Lands (Agricultural Order)*.² The [Agricultural Order](#) requires that landowners and operators of irrigated lands on or from which there are discharges of waste that could affect the quality of any surface water or groundwater in the Central Coast region comply with the Agricultural Order. (Agricultural Order, Part 1, Section A, ¶ 34.) Under the Agricultural Order, the Central Coast Water Board holds both the landowner and the operator liable for noncompliance with the Order, regardless of whether the landowner or the operator is the party to enroll under the Order. (*Id.*)

¹ The first agricultural order, Order R3-2004-0117, was adopted on July 9, 2004. Order R3-2004-0117 expired on July 9, 2009, and the Central Coast Water Board renewed it several times (Order R3-2009-0050 on July 9, 2009, Order R3-2010-0040 on July 8, 2010, Order R3-2011-0208 on March 29, 2011, Order R3-2011-0017 on September 30, 2011). The second agricultural order, Order R3-2012-0011, was adopted on March 15, 2012. The third agricultural order, Order R3-2017-0002, was adopted on March 8, 2017. All public records of the State Water Resources Control Board and the Central Coast Water Board that are subject of this hearing are admitted into the record pursuant to sections 648.3 and/or 648.2 of title 23, California Code of Regulations.

² A copy of the Agricultural Order (including the Monitoring and Reporting Program) is available at: https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/regulatory_information.html

2. On February 14, 2020, JSM Organics submitted an electronic Notice of Intent (eNOI) and enrolled El Rancho Triple M ranch (Ranch ID AGL020037144) under Agricultural Order R3-2017-0002. (Prosecution Team (PT)³ Ex. 23; 28.) The Prosecution Team presented evidence that JSM Organics is in fact JSM Organics, Inc., the entity named in Administrative Civil Liability Complaint R3-2023-0050. (PT Exs. 23, 28.) The Prosecution Team also presented evidence that El Rancho Triple M is listed as the name of the ranch in the electronic notice of intent (eNOI) submitted by JSM Organics, Inc. (PT Ex. 23; Ex. PT-Supp. 29.) Accordingly, the Central Coast Water Board hereby finds that JSM Organics, Inc. is the Discharger subject to civil liability here.
3. Pursuant to California Water Code (Water Code) section 13267, the Agricultural Order requires operators and landowners of irrigated land used for commercial crop production to submit total nitrogen applied reports (TNA Reports) annually by March 1. (See Agricultural Order Monitoring and Reporting Program Section B.1.) The Discharger was therefore required to report total nitrogen applied for the 2021 reporting period (January 1, 2021, to December 31, 2021) for the El Rancho Triple M ranch by March 1, 2022. The ranch eNOI stated El Rancho Triple M was composed of 65 acres of commercial irrigated land on Monterey County Assessor's Parcel Number 181-251-001-000.⁴ (PT Ex. 23; Testimony, J. Zamora, February 15, 2024 hearing.)
4. The Discharger's ranch is within a Disadvantaged Community Block, as determined by the State Water Resources Control Board's (State Water Board) online [Disadvantaged Communities Mapping Tool](#).⁵ 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 as impaired for ammonia, chlorophyll-a, chlorpyrifos, copper, DDE (dichlorodiphenyldichloroethylene), *E. coli*, nitrate, organophosphate pesticides, dissolved oxygen, pH, and turbidity. (PT Ex. 25; [2020-2022 California Integrated Report | California State Water Resources Control Board](#).)
5. On July 27, 2022, the Central Coast Water Board issued a notice of violation to the Discharger via first class mail for failure to submit the 2021 TNA Report required by the Agricultural Order. (See PT Ex. 5) On December 13, 2022, Central Coast Water Board staff sent the notice of violation via certified mail to both the operators JSM

³ Exhibit numbers are consistent with the evidentiary submissions directed and submitted in compliance with the hearing procedures (initial and revised) for Administrative Civil Liability Complaint R3-2023-0050. The Prosecution Team's exhibits were submitted on September 5, 2023, and January 5, 2024. See Procedural and Evidentiary Issues, *infra*.

⁴ The Prosecution Team presented evidence that on January 23, 2024, the Discharger updated the ranch eNOI to reflect that an additional parcel (APN 181-251-003-000) is associated with the El Rancho Triple M ranch. (PT-Supp. Ex. 29.)

⁵ The State Water Board's Disadvantaged Communities Mapping Tool is available at: <https://gis.water.ca.gov/app/dacs/>

Organics and Javier Zamora and to El Rancho Triple M, LLC, because the Discharger did not respond to the July 27, 2022 notice of violation. (PT Ex. 6.) The Central Coast Water Board received certified mail receipts signed by Javier Zamora on December 22, 2022. (PT Ex. 7) In addition to issuance of the notice of violation, Central Coast Water Board staff conducted the following outreach with growers, including the Discharger, regarding the requirement to submit TNA Reports:

- a. E-mails on December 15, 2021, January 12, 2022, and February 16, 2022, reminding growers to submit the 2021 TNA Report, due on March 1, 2022.
 - b. E-mail on March 29, 2022, notifying growers of their failure to submit 2021 TNA Report. For all emails, see PT Ex. 4.
6. On February 6, 2023, the Central Coast Water Board Prosecution Team issued a letter notifying the Discharger of the forthcoming assessment of administrative civil liability.⁶ (See PT Ex. 8) The letter provided the Discharger with the opportunity to contact the Prosecution Team and discuss the matter. The Prosecution Team did not receive a response from the Discharger. Certified mail receipts signed by Javier Zamora were received on March 2, 2023. (See PT Exs. 9 and 10 accepting the February 6, 2023 letter)
7. On July 21, 2023, the Prosecution Team issued ACL Complaint R3-2023-0050 to JSM Organics, Inc.'s agent, Javier Zamora. The evidence shows that the Discharger received the ACL Complaint in July 2023, and no later than August 2, 2023. (Testimony, J. Zamora, 10/19/23; PT Ex. 13.) The ACL Complaint proposed that the Central Coast Water Board impose administrative civil liability in the amount of \$49,415 on the Discharger for failure to submit the required 2021 TNA report for El Rancho Triple M ranch.

Procedural and Evidentiary Issues

8. On August 4, 2023, the Advisory Team issued draft hearing procedures for this matter. Pursuant to the deadlines therein, the Prosecution Team submitted proposed revisions to the draft hearing procedures on August 21, 2023. JSM Organics did not submit any proposed revisions. The hearing procedures in this matter, which incorporated many of the Prosecution Team's proposed revisions and which were included in the Central Coast Water Board's materials for its October 19, 2023 meeting, were issued on August 29, 2023. (Available at [October 2023 Agenda \(ca.gov\)](#), Item 7, Attachment 1.)
9. On September 5, 2023, the Prosecution Team submitted evidence in accordance with the hearing procedures. JSM Organics did not submit any written evidence or arguments by the date due in the hearing procedures. Thereafter, on September 21, 2023, the Advisory Team sent an email to all parties in which it asked JSM Organics

⁶ The letter was sent to Javier Zamora, who is listed as the "Operator/Responsible Party" in the eNOI submitted by JSM Organics, Inc. and is therefore the Discharger under the Agricultural Order.

whether it intended to submit any evidence or other documents to the Central Coast Water Board. In that same email, the Advisory Team requested that Ms. Macedo, the Prosecution Team's attorney, let the Advisory Team know if she had heard anything from JSM Organics on this issue. (PT-Supp. Ex. 30.) On September 29, 2023, the date on which the parties' deadline to submit prehearing rebuttal evidence was due, the Advisory Team received an email from the Prosecution Team in which it stated (among other things) that:

- a. After receiving the Advisory Team's September 21, 2023 email, a member of the Prosecution Team reached out to Javier Zamora of JSM Organics. Mr. Zamora confirmed that he would attend the October 19, 2023 hearing.
 - b. Mr. Zamora also told the Prosecution Team that he would bring financial information to the hearing.
 - c. Mr. Zamora also indicated that there may be tenant leases that could be relevant to the case against him.
 - d. The Prosecution Team noted that while it was unclear whether Mr. Zamora would have any additional evidence to present to the Central Coast Water Board at the hearing, it would object to that evidence if it were introduced. (Agenda, October 19, 2023 meeting of the Central Coast Water Board, Staff Report, Item 7, Attachment 4.)
10. The Central Coast Water Board held a hearing on October 19, 2023. At that time, the Discharger provided additional materials in support of the Discharger's inability-to-pay claim and its case generally. Over the Prosecution Team's objection, the Central Coast Water Board admitted the evidence. However, upon the Prosecution Team's request, and in order to ensure that there was no prejudice to the Prosecution Team from the late-submitted evidence, the Central Coast Water Board continued the hearing until February 15, 2024, to allow the Prosecution Team sufficient time to review the documents. The Prosecution Team copied, scanned, and distributed those materials to the Discharger and the Advisory Team. The Advisory Team provided a copy to the Central Coast Water Board, redacting any private or otherwise sensitive financial information.
11. Immediately after the October 19, 2023 hearing, the Chair of the Central Coast Water Board requested that the Parties submit any proposed revisions to the hearing procedures no later than 5:00 p.m. on October 30, 2023. (Email 10/30/23 from S. Froelich to Prosecution Team, JSM Organics, and others.) The Prosecution Team submitted revisions, but JSM Organics did not. Revised hearing procedures were issued on November 20, 2023, which set forth additional briefing deadlines for the Prosecution Team to respond to the Discharger's financial materials. (Nov. 20, 2023 hearing procedures, available at [February 2024 Agenda \(ca.gov\)](#), Attachment 1, Item 7.)

12. Consistent with the revised hearing procedures, the Prosecution Team submitted a brief on January 5, 2024, which included a report from a financial expert concluding that no reduction in the penalty was necessary for JSM Organics. This report is the only financial expert analysis in the record before the Central Coast Water Board. The Prosecution Team's financial expert was available for questioning at the February 15, 2024 hearing, and confirmed the truth of the statements in her report at the hearing.
13. On April 4, 2017, the State Water Board adopted Resolution 2017-0020 amending the Water Quality Enforcement Policy. The 2017 [Enforcement Policy](#) was approved by the Office of Administrative Law and became effective on October 5, 2017.⁷ In its January 5, 2024 briefing, the Prosecution Team argued for the modification of certain 2017 Enforcement Policy factors: the cleanup and cooperation factor (from 1.3 to 1.5), the days of violation (from 508 to 692), and staff costs (from \$2,940 to \$8,085)⁸ considered under "other factors as justice may require." (See, PT Jan. 5, 2024 brief.)
14. On January 22, 2024, the Discharger contacted the Prosecution Team and requested a phone call with Central Coast Water Board staff to make updates in GeoTracker. During a phone call on January 23, 2024, the Discharger gave permission to Central Coast Water Board staff to unlock the GeoTracker TNA reporting form, and the Discharger orally provided information to Central Coast Water Board staff to input into the 2021 TNA reporting form. The Discharger provided partial 2021 TNA data for 12 acres out of 65 acres reported farmed in the eNOI and submitted an incomplete 2021 TNA report. (January 25, 2024 email from J. Macedo to Advisory Team and Javier Zamora titled, "New information regarding ACLC R3-2023-0050," available at [February 2024 Agenda \(ca.gov\)](#), Item 7, Attachment 5.)
15. On January 25, 2024, counsel for the Prosecution Team informed the Central Coast Water Board Advisory Team of the partial completion of the 2021 TNA report, since that represented a changed circumstance from the January 5, 2024 briefing. (See email 1/25/2024 from Prosecution Team to the Advisory Team and Mr. Zamora titled, "New Information Regarding ACLC R3-2023-0050," available at [February 2024 Agenda \(ca.gov\)](#), Item 7, Attachment 5.) It specifically affected how the Prosecution Team calculated economic damages, step 7 of the penalty calculation methodology. In the ACL Complaint, the economic benefit was calculated as \$98, which represented the cost the discharger saved by not submitting the 2021 TNA Report. The economic benefit was reduced to \$6.00, which represented the benefit

⁷ The State Water Board's Water Quality Enforcement Policy, effective on October 5, 2017, is available at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf. (Hereafter, "2017 Enforcement Policy")

⁸ At the time of the hearing, the Prosecution Team reduced the \$8,085 to a total of \$5,877. (PT presentation, February 15, 2024 hearing, slide 18.) The Prosecution Team stated that the additional \$2,937 was for "copying, scanning, bates numbering, indexing, and generating FTP site for materials produced by" Mr. Zamora at the October 2023 hearing. (*Id.*)

for filing a late report. (See, Attachment B hereto; Prosecution Team testimony, February 15, 2024 hearing.)

16. On February 15, 2024, the Central Coast Water Board continued the ACL Complaint hearing that began on October 19, 2023. Considering the testimony and other evidence provided, the Central Coast Water Board finds:

- a. Adequate notice was not provided to the Discharger that the violation would continue for more than 508 days. This determination was made based on the pleadings and admissible evidence. The Central Coast Water Board finds that the settlement or mediation communications (PT Exs. 16, 17, 21) are inadmissible pursuant to Evidence Code section 1152, and that they are hearsay unsupported by additional admissible evidence. (See, Cal. Gov. Code, §11513 subd. (d).)
- b. Culpability: The Discharger failed to submit the 2021 TNA Report, as required by the Agricultural Order, despite the Central Coast Water Board's sending numerous reminders, a notice of violation, and a follow-up letter. The Discharger failed to submit this report on time, and, while the Board acknowledges partial compliance with the 2021 TNA Report requirement, the Discharger continues to fail to be in full compliance. (See email 1/25/2024 from Prosecution Team to the Advisory Team and Mr. Zamora titled, "New Information Regarding ACLC R3-2023-0050," available at [February 2024 Agenda \(ca.gov\)](#), Item 7, Attachment 5.) This demonstrates, at best, a negligent deviation from the standard of care, and, therefore, a factor of 1.4 is appropriate, based on testimony and exhibits provided at the hearing. (See PT Exhibits 4, 5, 6, and 8; 2017 Enforcement Policy at p. 17). Evidence of receipt of those communications is reflected in Prosecution Team Exhibits 7, 9, and 10.
- c. Cleanup and Cooperation: Despite numerous opportunities for the Discharger to receive assistance from Irrigated Lands Program staff to submit the TNA Report before and after issuance of the notice of violation and during settlement discussions and a reminder during the Central Coast Water Board hearing in October 2023, the Discharger only recently contacted Central Coast Water Board staff to seek assistance with unlocking the GeoTracker TNA reporting form, and the Discharger only submitted partial information, leaving the TNA Report still incomplete. The partial 2021 TNA Report information was input on January 23, 2024. (See email 1/25/2024 from Prosecution Team to the Advisory Team and Mr. Zamora titled, "New Information Regarding ACLC R3-2023-0050," available at [February 2024 Agenda \(ca.gov\)](#), Item 7, Attachment 5.) Since this violation does not involve a spill of waste that required cleanup, the Board determines that a factor of 1.5 is not appropriate, but that an increase from the original 1.3 to 1.4 is justified, based on the Discharger's failure to cooperate with regulatory authorities to return to compliance by submitting available TNA Report information for almost two years.

- d. Costs: The costs of investigation and enforcement are “other factors as justice may require” and can be added to the liability amount. The Central Coast Water Board has incurred over \$2,940 in staff costs associated with the investigation and enforcement of the alleged violation. No attorney or management staff costs were included in this calculation. (See PT Exhibit 24.) The Prosecution Team proposed additional costs of \$2,937 at the hearing on February 15, 2024.⁹ The Board finds that these costs are not allowed by the 2017 Enforcement Policy because it states: “staff costs should not be allowed for any investigation or enforcement work undertaken by staff regarding the specific allegations set forth in the ACL complaint after it is issued...and any staff costs associated with preparing for or attending a hearing should never be included in a civil liability.” (2017 Enforcement Policy, p. 22.)
- e. Ability to pay: The Central Coast Water Board finds that the evidence presented demonstrates that the Discharger has ability to pay the proposed penalty. (K. Smirnova, Attachment B to January 5, 2024 PT supplemental brief, *Ability to Pay Analysis for JSM Organics, Inc., El Rancho Triple M, LLC, and Javier Zamora*.) Although Mr. Zamora testified that JSM Organics made 60% less in 2023 than it did in 2022, he did not provide any documentary evidence to support that claim in accordance with the hearing procedures or in the documents he presented to the Board on October 19, 2023. Furthermore, the Central Coast Water Board did not find Mr. Zamora’s testimony to be credible.
17. On February 15, 2024, the Central Coast Water Board considered evidence and testimony from parties and deliberated in open session and in closed session pursuant to Government Code section 11126, subd. (c)(3) to reach the conclusions reflected in this order.
18. At the hearing held on February 15, 2024, the Central Coast Regional Water Quality Control Board also delegated authority to the Executive Officer to issue Administrative Civil Liability Order R3-2024-0025 consistent with the civil liability amount and findings presented by the Advisory Team and the Board at the hearing, with certain revisions to add citations and make other editorial corrections. The issuance by the Executive Officer of Administrative Civil Liability Order R3-2024-0025 will constitute the final action of the Board pursuant to Water Code section 13320.

⁹ See paragraph 14 and footnote 7, *supra*.

Violation and Regulatory Considerations

19. California Water Code section 13267 confers to a regional water quality control board the authority to investigate state water quality and the authority to require a discharger or suspected discharger to submit technical or monitoring reports. The Central Coast Water Board alleges that the Discharger failed to submit the 2021 TNA Report by the March 1, 2022 due date set forth in the Agricultural Order. The Discharger's failure to submit the 2021 TNA Report subjects it to administrative civil liability under Water Code section 13268. (Agricultural Order, Attachment B – Monitoring and Reporting Program, Section A, ¶ 3.)
20. Water Code section 13268 states, in relevant part:
 - (a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of section 13267...is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).
 - (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
21. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the Central Coast Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
22. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing civil liability as outlined in Water Code section 13327. These factors were applied in accordance with the 2017 Enforcement Policy, as set forth above and in Attachment A hereto, which is specifically incorporated herein.
23. The violation herein is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program, and therefore the daily assessment can be less than the calculated daily assessment, but greater than the per day economic benefit resulting from the violation (see, Enforcement Policy, p. 18).
24. As documented in the ACL Complaint, the TNA Report was 508 days late as of July 21, 2023, as documented in Attachment A, and, thus, the maximum penalty for the violation is \$508,000. The 2017 Enforcement Policy requires that the minimum

liability imposed be at least 10% higher than the estimated economic benefit of \$6.00 so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$6.60. The economic benefit analysis is provided in Attachment B.

25. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The method of compliance with this enforcement action consists entirely of payment of administrative civil liability. Issuance of this order is not subject to the provisions of the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it is not considered a “project” (Pub. Resources Code, §§ 21065, 21080(a); Cal. Code Regs., tit. 14, §§ 15060(c)(2), (3); 15378(a))
26. Any person aggrieved by this action 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 the [State Water Board Water Quality Petitions website](#),¹⁰ or will be provided upon request.
27. Fulfillment of Discharger’s obligations under this order constitutes full and final satisfaction of Administrative Civil Liability Complaint R3-2023-0050.
28. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if the Discharger fails to comply with payment of the administrative civil liability.

IT IS HEREBY ORDERED, pursuant to Water Code section 13268, that civil liability be imposed upon the Discharger in the amount of \$56,840 for the violation described in Administrative Civil Liability Complaint R3-2023-0050. The Central Coast Regional Water Quality Control Board hereby orders the Discharger to pay the total administrative civil liability amount within thirty (30) days of execution of this order by the Executive Officer. Payment shall be made by check to the “State Water Board Cleanup and Abatement Account” and a copy e-mailed to Prosecution Team contact Tamara Anderson at tamara.anderson@waterboards.ca.gov. The Discharger shall include the number of this order (R3-2024-0025) on the check and send it to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment

¹⁰ The State Water Board Water Quality Petitions website can be found at: https://www.waterboards.ca.gov/public_notices/petitions/water_quality/

ACL Order R3-2024-0025
JSM Organics, Inc.

February 23, 2024

P.O. Box 1888
Sacramento, California 95812-1888

I, Ryan E. Lodge, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order imposing civil liability issued by the California Regional Water Quality Control Board, Central Coast Region on February 23, 2024.

Ryan E. Lodge, Executive Officer
Central Coast Regional Water Quality Control Board

Attachments:

Attachment A: ACL R3-2024-0025, Penalty Calculation Methodology
Attachment B: ACL R3-2024-0025, Economic Benefit Analysis

ATTACHMENT A

FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2024-0025

**JSM ORGANICS, INC.
EL RANCHO TRIPLE M RANCH**

**AGRICULTURAL IRRIGATED LANDS
MONTEREY COUNTY**

(GEOTRACKER GLOBAL ID# AGL020037144, OPERATION ID# AW3774)

This document provides details on the proposed administrative civil liability penalty methodology related to JSM Organics, Inc., referred to as “Discharger,” for failure to submit the 2021 total nitrogen applied report (TNA Report) for El Rancho Triple M ranch (GeoTracker Global Identifier #AGL020037144) by the annual March 1 deadline. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) derived the proposed administrative civil liability by following the State Water Resources Control Board’s (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy), which was adopted on April 4, 2017, and became effective on October 5, 2017. The proposed administrative civil liability takes into account such factors as the Discharger’s culpability, cooperation in returning to compliance, ability to pay the proposed liability, and other factors as justice may require. (See, 2017 Enforcement Policy).

Application of the State Water Board’s 2017 Enforcement Policy

The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in California Water Code (Water Code) section 13327, which requires the Central Coast Water Board to consider several factors when determining the amount of civil liability to impose, including “...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.”

The administrative civil liability is based on the procedures included in the 2017 Enforcement Policy methodology. The steps used to calculate the proposed liability are discussed and summarized in the table below.

Regulatory Basis of Alleged Violation and Proposed Liability

The Central Coast Water Board regulates discharges from irrigated agricultural lands to protect surface water and groundwater by requiring enrollment in Order R3-2021-0040,

Attachment A
ACL Order R3-2024-0025
JSM Organics, Inc.

General Waste Discharge Requirements for Discharges from Irrigated Lands (Agricultural Order). The Discharger is enrolled in the Agricultural Order. The Discharger failed to submit the 2021 TNA Report for El Rancho Triple M ranch by March 1, 2022, a violation of Agricultural Order Monitoring and Reporting Program section B.1.

Failure to submit the 2021 TNA Report is a violation of Water Code section 13267. Pursuant to Water Code section 13268, subdivision (b), a violation of a Water Code section 13267 requirement subjects the Discharger to administrative civil liability up to \$1,000 per day for each day in which the violation occurs.

In the table below, the Central Coast Water Board presents the procedural steps used to calculate the proposed liability for failure to submit the 2021 TNA Report for the El Rancho Triple M ranch.

PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 1 – Actual or Potential for Harm for Discharge Violations	Not applicable	This step is not applicable because this is not a discharge violation.
Step 2 – Assessments for Discharge Violations	Not applicable	This step is not applicable because this is not a discharge violation.
Step 3 – Per Day Assessments for Non-Discharge Violations	<p>Potential for Harm – Moderate</p> <p>Deviation from Requirement – Major</p> <p>Per Day Factor for Non-Discharge Violation – 0.55</p> <p>Initial Liability Amount – \$279,400</p>	<p>The per day assessment for non-discharge violations considers potential for harm and the extent of deviation from applicable requirements. Failing to submit a TNA report substantially impairs the Central Coast Water Board’s ability to perform its regulatory functions, because the Central Coast Water Board uses TNA reports to assess threats to water quality and compliance with Agricultural Order requirements. Therefore, a moderate potential for harm score is appropriate. Failing to submit the TNA Report also rendered the requirements ineffective in its essential function. Therefore, a major deviation from requirement is appropriate. Table 3 in the 2017 Enforcement Policy (page 16) is used to determine the initial penalty factor for a violation. Based on the potential for harm and the deviation from requirement determinations, a per day factor for a non-discharge violation of 0.55 is appropriate.</p> <p>The days of violation are alleged from March 1, 2022, to July 21, 2023 (508 days). The days of violation are calculated up to the date of issuance of the complaint on July 21, 2023.</p> <p>The initial liability amount is calculated by multiplying the days of violation by the per day factor for non-discharge violations (0.55) by the statutory</p>

PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
		<p>maximum liability pursuant to Water Code section 13268 (\$1,000 per day of violation). See PT Exhibit 25.</p> <p>Initial liability amount: 508 days x 0.55 x \$1,000 per day = \$279,400.</p>
<p>Step 4 – Adjustment Factors (Conduct Factors)</p>	<p>Degree of Culpability – 1.4</p>	<p>A discharger’s degree of culpability is determined by evaluating what a reasonable and prudent person would have done or not done under similar circumstances. This Adjustment Factor should result in a multiplier between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence and a lower multiplier for more simple negligence. The Discharger failed to submit the 2021 TNA Report, as required by the Agricultural Order, despite the Central Coast Water Board’s sending numerous reminders, a notice of violation, and a follow-up letter. The Discharger failed to submit this report on time, and, while the Board acknowledges partial compliance with the 2021 TNA Report requirement, the Discharger continues to fail to be in full compliance. This demonstrates, at best, a negligent deviation from the standard of care, and, therefore, a factor of 1.4 is appropriate, based on testimony and exhibits provided at the hearing. See PT Exhibits 4, 5, 6, and 8. Evidence of receipt of those communications is reflected in Prosecution Team Exhibits 7, 9, and 10. See also email 1/25/2024 from Prosecution Team to the Advisory Team and Mr. Zamora titled, “New Information Regarding ACLC R3-2023-0050.”</p>
<p>Step 4 – Adjustment Factors (Conduct Factors)</p>	<p>History of Violations – 1.0</p>	<p>Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. The Discharger has a history of not submitting reports. However, there has not been formal enforcement for those missing reports. Therefore, this factor remains neutral at 1.0.</p>

PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 4 – Adjustment Factors (Conduct Factors)	Cleanup and Cooperation – 1.4	The Cleanup and Cooperation Adjustment Factor is determined by evaluating a discharger’s voluntary efforts to clean up and/or cooperate with regulatory authorities in returning to compliance. This Adjustment Factor should result in a multiplier between 0.75 to 1.5 , using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected and the higher multiplier where there is not. Despite numerous opportunities for the Discharger to receive assistance from Irrigated Lands Program staff to submit the TNA Report before and after issuance of the notice of violation and during settlement discussions and a reminder during the Central Coast Water Board hearing in October 2023, the Discharger only recently contacted Central Coast Water Board staff to seek assistance with unlocking the GeoTracker TNA reporting form, and the Discharger only submitted partial information leaving the TNA Report still incomplete. The partial 2021 TNA Report information was input on January 23, 2024. Since this violation does not involve a spill of waste that required cleanup, the Board determines that a factor of 1.5 is not appropriate, but that an increase from the original 1.3 to 1.4 is justified. Based on the Discharger’s failure to cooperate with regulatory authorities to return to compliance by submitting available TNA Report information for almost two years, a Cleanup and Cooperation factor of 1.4 is appropriate.
Step 4 – Adjustment Factors (Multiple Day Violations)	Multiple Day Violations – 50 days	For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided it is no less than the per day economic benefit, if any, resulting from the violation. The violation is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program. Therefore, the Central Coast Water Board has collapsed the number of days of violation from 508 days to 50 days.

Attachment A
 ACL Order R3-2024-0025
 JSM Organics, Inc.

PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 5 – Determination of Total Base Liability Amount	Total Base Liability Amount – \$53,900	After each of the above factors is considered for the violation, the applicable factors are multiplied by the initial liability amount proposed for the violation considering the adjusted number of days of violation to determine the total base liability amount for the violation. $50 \text{ days} \times 0.55 \times \$1,000 \times 1.4 \times 1.0 \times 1.4 = \$53,900.$
Step 6 – Ability to Pay and Ability to Continue in Business	Ability to pay and continue in business – No adjustment	The ability to pay and to continue in business must be considered when assessing administrative civil liability. The Prosecution Team submitted financial information provided by the Discharger to its financial expert. The Central Coast Water Board concurs with the financial expert’s determination that the Discharger, JSM Organics Inc., has the ability to pay the proposed liability. This determination was made after a review of recent tax returns and available cash flow.
Step 7 – Economic Benefit	Economic Benefit Amount - \$6	The economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. Using the United States Environmental Protection Agency’s (USEPA) BEN Model Version 2022.0.0 revised June 2022, the economic benefit was calculated to be \$6.00. This represents the cost the discharger saved by submitting the 2021 TNA Report late. This represents a change from the initial economic benefit calculated in July 2023 when the failure to submit the 2021 TNA Report was considered an avoided cost. In this instance, the economic benefit does not capture any value to the regulatory system of information expected from this report.

PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 8 – Other Factors as Justice May Require	Other factors as justice may require – \$2,940	The costs of investigation and enforcement are “other factors as justice may require” and can be added to the liability amount. The Central Coast Water Board has incurred over \$2,940 in staff costs associated with the investigation and enforcement of the alleged violation. No attorney or management staff costs were included in this calculation. (See Prosecution Team Exhibit 24) The Prosecution Team proposed additional costs of \$2,937. The Board finds that these costs are not allowed by the 2017 Enforcement Policy because it states: “staff costs should not be allowed for any investigation or enforcement work undertaken by staff regarding the specific allegations set forth in the ACL complaint after it is issued...and any staff costs associated with preparing for or attending a hearing should never be included in a civil liability.” (p. 22)
Step 9 – Maximum and Minimum Liability Amounts	Minimum Liability – \$6.60 Maximum Liability – \$508,000	<u>Minimum Liability</u> : \$6.60 (economic benefit plus 10 percent) <u>Maximum Liability</u> : \$508,000 (\$1,000 per day per violation under Water Code section 13268)
Step 10 – Final Liability Amount	Final Liability Amount – \$56,840	Considering the foregoing analysis and the evidence admitted into the record at the October 19, 2023 and February 15, 2024 hearings and consistent with hearing procedures governing Administrative Civil Liability Complaint R3-2023-0050, including testimony from Central Coast Water Board staff and experts and Discharger, the final administrative civil liability is the sum of the Total Base Liability Amount (\$53,900) and other factors as justice may require (staff costs of \$2,940), totaling \$56,840 . The Final Liability Amount is between the Minimum and Maximum Liability Amounts.

ATTACHMENT B

**ECONOMIC BENEFIT ANALYSIS FOR
ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2024-0025**

**JSM ORGANICS, INC.
EL RANCHO TRIPLE M RANCH
AGRICULTURAL IRRIGATED LANDS
MONTEREY COUNTY**

(GEOTRACKER GLOBAL ID# AGL020037144, OPERATION ID# AW3774)

This document provides details on the proposed administrative civil liability economic benefit analysis related to JSM Organics, Inc. (Discharger) for failure to submit the 2021 total nitrogen applied report (TNA Report) for El Rancho Triple M ranch (GeoTracker Global Identifier AGL020037144) by the annual March 1 deadline. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) derived the economic benefit by following the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (2017 Enforcement Policy), which was adopted on April 4, 2017, and became effective on October 5, 2017. The economic benefit analysis considers actions required to comply with a permit or order, how often these actions are required, what actions should have been taken to avoid the violation, whether the actions are avoided or simply delayed, and an estimate of costs.

The benefit of non-compliance was calculated using United States Environmental Protection Agency's BEN Model Version 2022.0 revised June 2022. The inputs and assumptions for the violation are as follows:

1. Per information from the California Secretary of State, the Discharger is a "Corporation" under entity identification number C3728536, as such, the tax schedule for "C = Corporation" was used for this analysis. See Prosecution Team Exhibits 23, 27, 28.
2. According to Order R3-2021-0040, *General Waste Discharge Requirements for Discharges from Irrigated Lands* (Agricultural Order) Attachment A, Finding 82.c, TNA tracking and reporting is estimated to cost between approximately \$8.97 and \$23.22 per acre over the course of five years. Using the lower value and averaging it over a five-year period, the cost to prepare the TNA Report is assumed to be \$1.79 per acre per year. See Prosecution Team Exhibit 1.
3. El Rancho Triple M ranch comprises 65 acres per the electronic Notice of Intent submittal. As such, total costs to prepare the TNA report are \$116. (See Prosecution Team Exhibits 23, 27, 28)
4. The expenditure type is assumed to occur once and is non-depreciable.

5. The cost basis assumes labor costs only.
6. Date of non-compliance is March 1, 2022, the date which the TNA Report was due.
7. Date of compliance is January 23, 2024, the date when the report was turned in. Since the Discharger submitted the 2021 TNA Report, the costs are considered “delayed.” (See Prosecution Team Exhibit 12)
8. For computational purposes, the penalty payment date was established as March 25, 2024, representing thirty days after the date this order was executed, February 23, 2024.

Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be \$6. This represents the costs the Discharger saved by not submitting the TNA Report in the required time. The 2017 Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore, the minimum total liability associated with the economic benefit is \$6.60.