

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2022-0218-A1
IN THE MATTER OF**

**DAY TO DAY IMPORTS INC.
VIRGIN SCENT INC. DBA ARTNATURALS
LIBERTY PROPERTY LIMITED PARTNERSHIP
PROLOGIS, INC.**

This Administrative Civil Liability Complaint (Complaint) is issued by the Assistant Executive Officer of the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) to Day to Day Imports Inc., Virgin Scent Inc. dba ArtNaturals, Liberty Property Limited Partnership, and Prologis, Inc. (collectively, Dischargers) pursuant to California Water Code (Water Code) section 13385 or, in the alternative, section 13350, which authorize the imposition of administrative civil liability, Water Code section 13323, which authorizes the Executive Officer to issue this Complaint, and Water Code Division 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 evidence that the Dischargers discharged at least 5,079,770 gallons of water containing pollutants to the Dominguez Channel Estuary, a water of the United States, without a permit, on September 30 – October 2, 2021; or in the alternative, caused or permitted at least 5,079,770 gallons of water containing hazardous substances to be discharged to the Dominguez Channel Estuary, a water of the state and United States, without a permit, from September 30 – October 2, 2021.

The Assistant Executive Officer of the Los Angeles Water Board alleges the following:

BACKGROUND

1. Day to Day Imports Inc. and Virgin Scent Inc. dba ArtNaturals (collectively tenants) were the tenants and operators of a warehouse facility located at 16325 South Avalon Boulevard in Carson, California (Site) involved in the general warehousing of health and beauty supplies.
2. Liberty Property Limited Partnership is the owner of the Site.
3. Prologis, Inc. acquired Liberty Property Limited Partnership on February 4, 2020. Liberty Property Limited Partnership and Prologis, Inc. are collectively referred to as "owners."
4. Discharges from the Site enter storm drains connected to the municipal separate storm sewer system that discharges into the Dominguez Channel Estuary, a water of the state and United States.

5. The Dominguez Channel Estuary is a Clean Water Act section 303(d) listed impaired waterbody.
6. The Water Quality Control Plan for the Los Angeles Basin (Basin Plan) designates the following beneficial uses for the Dominguez Channel Estuary:¹
 - a. Water Contact Recreation (REC-1)
 - b. Non-Contact Water Recreation (REC-2)
 - c. Commercial and Sport Fishing (COMM)
 - d. Estuarine Habitat (EST)
 - e. Marine Habitat (MAR)
 - f. Wildlife Habitat (WILD)
 - g. Rare, Threatened or Endangered Species (RARE)
 - h. Migration of Aquatic Organisms (MIGR)
 - i. Spawning, Reproduction, and/or Early Development of Fish (SPWN)
7. The Dischargers were aware of unsafe conditions on the Site that created an undue risk of fire, which ultimately led to the discharge of pollutants to the Dominguez Channel Estuary.
8. On March 31, 2021, Raul Saldana, an employee of Prologis, Inc., observed pallets of tenants' products stacked high, falling over, and blocking exits at the Site. Mr. Saldana noted that these conditions created a fire hazard and notified other Prologis, Inc. employees who contacted the tenants regarding the Site conditions.
9. On May 19, 2021, the Los Angeles County Fire Department – Health Hazardous Materials Division (HHMD) inspected the Site and noted violations of the Health and Safety Code related to business plans for storing hazardous materials.²
10. During a July 27, 2021 follow-up inspection of the Site, the HHMD noted continuing violations related to the unsafe conditions, including inadequate storage of hazardous materials, at the Site.

¹ The Dominguez Channel Estuary also lists Navigation as a potential beneficial use.

² Note, the definition of “hazardous materials” under the Health and Safety Code is not the same as the definition of “hazardous substance” under Water Code section 13050, subdivision (p).

11. On August 16, 2021, the County of Los Angeles Fire Department, Fire Prevention Division inspected the Site and noted violations related to storage of materials, including hazardous materials, which created a significant risk of fire.
12. On September 30, 2021, a warehouse fire at the Site burned improperly stored bottles of hand sanitizer, sanitizing wipes, and beauty and wellness products. As a result of fire suppression activities, polluted water was discharged from the Site to the Dominguez Channel Estuary.
13. Fire suppression activities took place between September 30, 2021 and October 2, 2021. Over the course of these dates, water utilized in fire suppression combined with on-site pollutants and was discharged to the Dominguez Channel Estuary. The discharged pollutants included acetaldehyde, benzene, benzoic acid, naphthalene, acetal contaminants, acetone, ethanol, isopropyl alcohol, methanol, and sulfates.
14. Following the fire, the HHMD issued Notices of Violation/Orders to Comply on September 30, October 19, October 24, October 25, and December 27, 2021, requiring cleanup of all areas affected or impacted by the release of hazardous materials or waste,³ containment and prevention of stormwater runoff, immediate cleanup of all affected areas, appropriate testing and disposal of accumulated stormwater, submittal of a comprehensive cleanup and mitigation plan, and/or immediate coverage of all storm drains and containment of all stormwater runoff from the Site.
15. The discharge of pollutants from the Site caused anoxic conditions which contributed to the depression of dissolved oxygen in the Dominguez Channel Estuary. Once oxygen was depleted, the breakdown of these pollutants continued through an anaerobic process that produced hydrogen sulfide, a gas with a rotten egg odor.
16. On October 4, 2021, the U.S. Food and Drug Administration (FDA) advised consumers not to use certain ArtNaturals hand sanitizers due to unacceptable levels of acetaldehyde, benzene, and acetal contaminants. This announcement allegedly came after Virgin Scent Inc. dba ArtNaturals failed to respond to the FDA's multiple attempts to discuss contamination issues. The FDA noted that benzene may cause certain types of cancers in humans, and animal studies show acetaldehyde may cause cancers in humans and may cause serious illness or death.
17. On October 6, 2021, in response to odor complaints, the South Coast Air Quality Control District (SCAQMD) began monitoring hydrogen sulfide levels along the

³ Note, the definition of "hazardous waste" under the relevant sections of the California Code of Regulations is not the same as the definition of "hazardous substance" under Water Code section 13050, subdivision (p).

Dominguez Channel Estuary using a portable hand-held air quality monitor. Hydrogen sulfide monitoring in the Dominguez Channel Estuary and areas around the channel showed fluctuating results due to weather patterns, time of day, and wind conditions.

18. Beginning on October 10, 2021, the SCAQMD conducted community mobile monitoring near the Dominguez Channel Estuary and in and around the surrounding cities. Monitoring data showed elevated levels of hydrogen sulfide, with the highest concentrations along the Dominguez Channel Estuary. Results also showed some elevated levels in Carson communities adjacent to the Dominguez Channel Estuary.
19. On October 11, 2021, Los Angeles County Health Officer Muntu Davis issued a Public Health Directive to mitigate public nuisance due to odors from the Dominguez Channel.
20. In October and November 2021, the County of Los Angeles Department of Public Works (LACDPW) conducted sampling which demonstrated that pollutants from the Site had been discharged to the Dominguez Channel Estuary. Sampling also indicated that the total dissolved oxygen in the Dominguez Channel Estuary was extremely low. The LACDPW measured dissolved oxygen at three stations in the Dominguez Channel Estuary: (1) The Figueroa Street station is located in the Estuary approximately 0.25 miles downstream from Victoria Street and is the most representative location for impacts to the dissolved oxygen from the Site; (2) the Avalon Boulevard, station is approximately 1.7 miles downstream of the Figueroa Street station; and (3) the Alameda Street station is located approximately 2.6 miles downstream of Avalon Boulevard. The daily dissolved oxygen in the Dominguez Channel Estuary at the Figueroa Street station ranged from 0.096 mg/L to 1.098 mg/L from October 15 – 26, 2021. The daily dissolved oxygen in the Dominguez Channel Estuary at the Avalon Boulevard station was consistently 0 mg/L on October 23 – November 1, 2021. The daily dissolved oxygen in the Dominguez Channel Estuary at the Alameda Street station ranged from 0 to 1.025 mg/L from October 15 – 27, 2021. From February 13 through February 22, 2022, the daily dissolved oxygen at the Alameda Street location and at the Avalon Boulevard, station continued to exhibit depressed oxygen levels below 5 mg/L. These extremely low dissolved oxygen concentrations indicate the persistence of the impacts from the discharge to the Dominguez Channel Estuary.
21. On October 15, 2021, the LACDPW began spraying Epoleon, a biodegradable odor-neutralizing substance, over the surface of the Dominguez Channel Estuary.
22. On October 19, 2021, LACDPW initiated aeration of the Dominguez Channel Estuary using nano-bubblers to increase the dissolved oxygen levels, stop the production of

hydrogen sulfide, and aerobically digest accumulated organic materials, thereby reducing biological oxygen demand (BOD) and chemical oxygen demand (COD) levels, and reducing the odor without disturbing the sediment at the bottom of the channel. Nano-bubblers supplemented with oxygen were used to accelerate the oxygenation process and to increase the dissolved oxygen levels in the Dominguez Channel Estuary, thereby preventing the further release of hydrogen sulfide.

23. On October 20, 2021, the LACDPW issued a Notice of Violation Order to Comply, requiring, among other items, prevention of off-site discharges and cleanup.
24. On October 25, 2021, the City of Carson proclaimed a local emergency related to the Dominguez Channel odor incident.
25. On October 26, 2021, Virgin Scent Inc. dba ArtNaturals issued a voluntary recall of some hand sanitizer products following the FDA's October 4, 2021, advisory for consumers to not use certain ArtNaturals hand sanitizers.
26. On November 2, 2021, the Board of Supervisors of the County of Los Angeles proclaimed a local emergency related to the Dominguez Channel Estuary odor incident.
27. On November 3, 2021, the Los Angeles Water Board issued Investigative Order No. R4-2021-0132 to the Los Angeles County Flood Control District, the County of Los Angeles, and the City of Carson (MS4 Permittees). Among other items, Investigative Order No. R4-2021-0132 required the MS4 Permittees to sample several constituents in the Dominguez Channel Estuary and report on actions taken to ameliorate the hydrogen sulfide odors emanating from the Dominguez Channel Estuary.
28. On November 3, 2021, the LACDPW, in a continuing effort to mitigate the odors, began using drone sprayers to apply Epoleon to the entire width of the Dominguez Channel Estuary from 223rd Street to Figueroa Avenue.
29. On November 19, 2021, the Los Angeles County Department of Public Health issued a status update on the hydrogen sulfide odors to inform the public that the hydrogen sulfide levels had been declining and to begin taking steps to return home.
30. On November 24, 2021, the Los Angeles Water Board amended Investigative Order No. R4-2021-0132 issued to the MS4 Permittees based on their November 9, 2021 submittal and new information regarding the potential source of the odor in the Dominguez Channel Estuary. Among other items, the amended order required two new sampling locations upstream and downstream of 190th Street.

31. On December 9, 2021, the Los Angeles Water Board issued Investigative Order No. R4-2021-0140 and Cleanup and Abatement Order No. R4-2021-0141 to Day to Day Imports Inc. and Liberty Property Limited Partnership.
32. On February 7, 2022, the Los Angeles Water Board issued a Notice of Violation (NOV) notifying the Dischargers of the unauthorized discharge to waters of the state and United States in violation of Water Code sections 13376 and 13350, subdivision (b) and Clean Water Act section 301. The tenants did not respond to the Notice of Violation. The owners responded to the Notice of Violation on March 7, 2022 but did not specifically address the alleged discharge violation.

LEGAL AND REGULATORY CONSIDERATIONS

33. Water Code section 13385, subdivision (a) states in relevant part: A person who violates any of the following shall be liable civilly in accordance with this section:
 - (1) [Water Code] Section 13375 or 13376.
 - (5) A requirement of Section 301 ... of the federal Clean Water Act (33 U.S.C. Sec. 1311 ...), as amended.
34. Water Code section 13385, subdivision (c) states in relevant part:

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

 - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
35. Water Code section 13385, subdivision (e) states in relevant part:

At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
36. Per Water Code section 13373, the term “pollutant,” as utilized in Water Code section 13376, has the same meaning as in the Clean Water Act.

37. Clean Water Act section 502(6) (33 U.S.C. § 1362(6)) defines “pollutant” as:

Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

38. Water Code section 13350, subdivision (b)(1) states in relevant part:

A person who, without regard to intent or negligence, causes or permits a hazardous substance to be discharged in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

39. Water Code section 13050, subdivision (p)(1)(A) defines “hazardous substance” for discharges to surface waters as:

Any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act [aka Clean Water Act] (33 U.S.C. Sec. 1251 et seq.).

40. Pursuant to Clean Water Act section 311(b)(2)(A), the U.S. EPA has designated a list of hazardous substances in 40 Code of Federal Regulations section 116.4, Tables 116.4A and 116.4B. Acetaldehyde, benzene, benzoic acid, and naphthalene are listed as hazardous substances in Tables 116.4A and 116.4B.

41. Water Code section 13350, subdivision (e) states in relevant part:

The state board or a regional board may administratively impose civil liability pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both.

(1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

42. Pursuant to Water Code section 13385, subdivision (g) and 13350, subdivision (j), liability shall not be recoverable under both Water Code sections 13385 and 13350 for the same underlying violation.

43. Pursuant to Water Code sections 13327 and 13385, subdivision (e), in determining the amount of administrative civil liability, the Los Angeles Water Board shall take into consideration the nature, circumstances, extent, and gravity of the violation, 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 the ability to continue in 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 as justice may require.
44. On April 4, 2017, the State Water Resources Control Board adopted Resolution No. 2017-0020, which adopted the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017. The 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 an administrative civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e).
45. Issuance of this Complaint to enforce Water Code Division 7, Chapters 5 and 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §21000 et seq), in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).

ALLEGED VIOLATIONS

46. The Los Angeles Water Board Prosecution Team alleges that the Dischargers violated Water Code section 13376 and/or Clean Water Act section 301 by discharging at least 5,079,770 gallons of water containing pollutants to the Dominguez Channel Estuary, a water of the United States, without a permit from September 30 – October 2, 2021. The pollutants consisted of acetaldehyde, benzene, benzoic acid, naphthalene, acetal contaminants, acetone, ethanol, isopropyl alcohol, methanol, and sulfates. The Dischargers are subject to administrative civil liability under Water Code section 13385, subdivisions (a)(1) and (a)(5).
47. In the alternative, the Los Angeles Water Board Prosecution Team alleges that the Dischargers are subject to administrative civil liability under Water Code section 13350, subdivision (b)(1) for causing or permitting at least 5,079,770 gallons of water containing hazardous substances to be discharged to the Dominguez Channel Estuary, a water of the state and United States from September 30 – October 2, 2021. The discharged hazardous substances include acetaldehyde, benzene, benzoic acid,

and naphthalene. This violation is subject to administrative civil liability under Water Code section 13350, subdivision (e).

48. As stated above, pursuant to Water Code section 13385, subdivision (g) and Water Code section 13350, subdivision (j), liability is not recoverable under both Water Code sections 13385 and 13350 for the same underlying violation. The primary violation alleged by the Los Angeles Water Board Prosecution Team is the Water Code section 13376 and/or Clean Water Act section 301 violation identified in paragraph 46, with the Water Code section 13350, subdivision (b)(1) violation identified in paragraph 47, plead in the alternative.

BASIS FOR NAMING PROLOGIS, INC.

49. Prologis, Inc. is named as a discharger in this Complaint under the agency theory of liability.
50. “An agent is one who represents another called the principal, in dealings with third persons.” (Civ. Code, § 2295.) An agent represents its principal for all purposes within the scope of its actual or ostensible authority. (Civ. Code, § 2330.)
51. Prologis, Inc. was the agent of Liberty Property Limited Partnership and was operating and acting within the purpose and scope of the agency relationship at all relevant times.
52. Additional theories of liability for naming Prologis, Inc. as a discharger include but are not limited to piercing the corporate veil due to the joint venture between Prologis, Inc. and Liberty Property Limited Partnership, the single business enterprise theory, and the alter ego doctrine.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

53. The Prosecution Team proposes an administrative civil liability of \$11,517,529 for the alleged Water Code section 13376 and/or Clean Water Act section 301 violation, as detailed in Attachment A to this Complaint, herein incorporated by reference.
54. In the alternative, the Prosecution Team proposes an administrative civil liability of \$11,452,279 for the alleged Water Code section 13350, subdivision (b)(1) violation, as detailed in Attachment A to this Complaint.
55. The proposed administrative civil liabilities were derived using the penalty calculation methodology in the Enforcement Policy. The proposed administrative civil liabilities take into account the factors described in Water Code sections 13327 and 13385, subdivision (e), such as the Dischargers’ culpability, history of violations, ability to

pay, and other factors as justice may require. The proposed liability is joint and several amongst the named Dischargers.

56. Notwithstanding the issuance of this Complaint, the Los Angeles Water Board retains the authority to assess additional administrative civil liability for violations which have not yet been assessed or for violations that may subsequently occur.

MAXIMUM LIABILITY

57. Pursuant to Water Code section 13385, subdivision (c), the statutory maximum administrative civil liability for the alleged Water Code section 13376 and/or Clean Water Act section 301 violation is \$10,000 per day of violation, plus \$10 for each gallon discharged and not cleaned up in excess of 1,000 gallons. The discharge is alleged to have consisted of at least 5,079,770 gallons over 3 days (September 30 – October 2, 2021). Therefore, the statutory maximum liability under Water Code section 13385, subdivision (c) is \$50,817,700.
58. Pursuant to Water Code section 13350, subdivision (e)(2), the statutory maximum administrative civil liability for the alleged Water Code section 13350, subdivision (b)(1) violation is ten dollars (\$10) for each gallon of waste discharged. The discharge is alleged to have consisted of at least 5,079,770 gallons. Therefore, the statutory maximum liability under Water Code section 13350, subdivision (e)(2) is \$50,797,700.
59. The proposed administrative civil liability is below the statutory maximum liabilities under Water Code sections 13385 and 13350.

MINIMUM LIABILITY

60. For the Water Code section 13376 and/or Clean Water Act section 301 violation, Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, “[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.” The statutory minimum associated with the economic benefit for the alleged violation is \$747,370.
61. No statutory minimum liability applies to the Water Code section 13350, subdivision (b)(1) violation.
62. However, the Enforcement Policy requires the Los Angeles Water Board to recover, at a minimum, the economic benefit plus 10%. The minimum liability under the Enforcement Policy is the economic benefit plus 10%, which is equal to \$822,107.

63. The proposed administrative civil liability is above the minimum liability amounts.

THE DISCHARGERS ARE HEREBY GIVEN NOTICE THAT:

64. The Assistant Executive Officer of the Los Angeles Water Board proposes an administrative civil liability in the amount of \$11,517,529 pursuant to Water Code section 13385, or in the alternative \$11,452,279 pursuant to Water Code section 13350. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code sections 13327 and 13385, subdivision (e), as well as the Enforcement Policy.
65. A hearing on this matter will be conducted by the Los Angeles Water Board on a date to be determined. On July 22, 2022, Liberty Property Limited Partnership and Prologis, Inc. submitted a Waiver Form which waived their right to a hearing within 90 days of the issuance of this Complaint as articulated in Water Code section 13323. On July 29, 2022, Day to Day Imports Inc. and Virgin Scent Inc. dba ArtNaturals submitted a Waiver Form waiving their right to a hearing within 90 days.
66. If a hearing is held, it will be governed by Hearing Procedures which will be issued by the Advisory Team. During the hearing, the Los Angeles Water Board will hear testimony and arguments and affirm, reject, or modify the proposed administrative civil liability, or determine whether to refer the matter to the Attorney General for recovery of judicial civil liability.
67. The Assistant Executive Officer reserves the right to amend the proposed amount of administrative civil liability to conform to the evidence presented.

Hugh Marley
Assistant Executive Officer

Attachment A: Penalty Calculation Methodology