

Attachment A
Penalty Calculation Methodology
Administrative Civil Liability Complaint No. R4-2022-0219-A1
Day to Day Imports Inc. and Liberty Property Limited Partnership

On December 9, 2021, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) issued Cleanup and Abatement Order No. R4-2021-0141 (CAO) to Day to Day Imports Inc. (Day to Day) and Liberty Property Limited Partnership (Liberty Property) (collectively, Dischargers). Day to Day operated a warehouse facility located at 16325 South Avalon Boulevard in Carson, California (Site). Liberty Property owns the Site.

The Dischargers are alleged to have failed to comply with the CAO and are subject to administrative civil liability under California Water Code (Water Code) section 13350.

Factors required to be considered in determining the amount of administrative civil liability pursuant to Water Code section 13327 and the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy effective October 5, 2017 (Enforcement Policy) are discussed for the violation below. The Enforcement Policy can be found at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

Violation: Failure to cleanup and abate all wastes by December 31, 2021

The Dischargers violated the CAO by failing to cleanup and abate all wastes by December 31, 2021.

CAO Required Action No. 1 states that the Dischargers shall implement a cleanup and abatement program for the cleanup of wastes and abatement of the effects of the discharges of wastes on beneficial uses of water. Specifically, the Dischargers were required to clean up and abate any and all discharges of wastes on Site, and any waste that has discharged to surrounding areas, in storm drains at or near the Site and any impacted receiving waters, including the Dominguez Channel Estuary. Discharges of waste included, but were not limited to alcohol-based products, trash, debris, and fire suppression wastes.

CAO Attachment B establishes a time schedule for the Dischargers to complete the actions required by the CAO. The time schedule is incorporated into the CAO in Required Action No. 7. Attachment B requires completion of clean up and abatement of all wastes by December 31, 2021.

As of the date of issuance of this Complaint, the Dischargers have yet to complete all required cleanup and abatement activities at the Site.

Step 1. Actual or Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

a) Potential for Harm: Minor

The Enforcement Policy defines Minor Potential for Harm as follows: “The characteristics of the violation have little or no potential to impair the Water Boards’ ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.”

The statutory and regulatory functions of the Los Angeles Water Board are to protect water quality and beneficial uses in the Dominguez Channel Estuary. The Site discharges into storm drains connected to the municipal separate storm water system that discharges into the Dominguez Channel Estuary. The Dominguez Channel Estuary is a Clean Water Act section 303(d) listed impaired waterbody. The Water Quality Control Plan for the Los Angeles Basin (Basin Plan) designates the following beneficial uses for the Dominguez Channel Estuary: Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Commercial and Sport Fishing (COMM); Estuarine Habitat (EST); Marine Habitat (MAR); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); and Spawning, Reproduction, and/or Early Development of Fish (SPWN).¹

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

In general, the continued presence of wastes poses an ongoing threat to water quality and beneficial uses since wastes could be transported via stormwater to surface waters.

However, in this case, the failure to complete the cleanup and abatement of wastes at the Site had a minor potential to impair the Los Angeles Water Board's ability to perform its statutory and regulatory functions of protecting water quality and the beneficial uses in the Dominguez Channel Estuary because Liberty Property implemented interim measures to prevent stormwater runoff from the Site thereby minimizing the threat of discharges to the Dominguez Channel Estuary. These interim measures included installing and maintaining sandbag berms around the perimeter of the debris pile and along the driveway to Gardena Boulevard; installing plastic sheeting along the fence line parallel to the driveway to Gardena Boulevard; plugging on-site storm drains with inflatable bladders and covering them with tarps and sandbags; plugging the on-site Stormceptor treatment system; having vacuum trucks on standby during rain events; and keeping stormwater storage tanks on-site in preparation of storm events. These interim measures are consistent with Orders to Comply issued by Los Angeles County Fire Department – Health Hazardous Materials Division (HHMD) and CAO Required Action Nos. 2 – 4, which required the Dischargers to contain all stormwater at the Site throughout the cleanup and abatement activities, implement and maintain adequate perimeter control best management practices (BMPs) to prevent stormwater discharge, and appropriately dispose of any captured stormwater. Consistent with CAO Required Action No. 5, Liberty Property also submitted weekly progress reports from which Los Angeles Water Board staff was able to determine the status of cleanup activities.

In summary, the Dischargers' partial compliance with the CAO, but not the final cleanup and abatement deadline, resulted in little impairment to the Los Angeles Water Board's ability to perform its statutory and/or regulatory functions and the threat to beneficial uses was minor. Therefore, the Potential for Harm for this violation is characterized as Minor.

b) Deviation from Requirement: Major

A Deviation from Requirement score of Major is assigned for this violation. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The CAO required the Dischargers to cleanup and abate all wastes by December 31, 2021. While the Dischargers took steps to minimize the ongoing threat to water quality posed at the Site during cleanup, as required by the CAO, they ultimately failed to clean up the Site in the urgent manner required by the CAO. On November 10, 2021, Liberty Property submitted a Fire Debris Cleanup and Restoration Work Plan to HHMD with a conditional completion date of December 31, 2021. Despite indicating that cleanup could be achieved by December 31, 2021, the deadline incorporated into the CAO, the Dischargers have yet to complete cleanup.

The requirement was rendered ineffective and therefore, the Deviation from Requirement is Major.

c) Per Day Factor: 0.35

In accordance with Table 3 of the Enforcement Policy, for a Minor Potential for Harm and Major Deviation from Requirement, the per day factor is 0.35.

d) Days of Violation: 195 days

The start date of the violation is January 1, 2022, the day after the deadline to cleanup and abate all wastes from the Site. The end date of the violation is July 14, 2022, the date of issuance of this Complaint. There are a total of 195 days of violation.

e) Initial Liability Amount: \$341,250

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

The per day factor is 0.35, days of the violation is 195, and the per day statutory maximum liability is \$5,000 under Water Code section 13350, subdivision (e)(1).

Initial Liability Amount = $0.35 \times 195 \text{ days} \times \$5,000/\text{day} = \$341,250$

Step 4. Adjustment Factors

a) Degree of Culpability: 1.4

The Culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence.

While the Dischargers implemented interim measures, as described under the Potential for Harm factor above, such measures were required by Orders to Comply issued by HHMD and CAO Required Action Nos. 2 – 4. Partial compliance with these Orders and the CAO did not relieve the Dischargers of their responsibility to meet the December 31, 2021 cleanup and abatement deadline in the CAO.

The Dischargers knew of the need to clean up and abate the wastes from the Site even prior to issuance of the CAO. The Dischargers and their affiliates and/or representatives from Virgin Scent Inc. dba ArtNaturals; Yaakov Nourollah; and Prologis, Inc. received orders and notices of violations from other government agencies requiring cleanup beginning on the date of the fire, September 30, 2021.

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, 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 rainwater runoff from the Site.

On October 20, 2021, the County of Los Angeles Department of Public Works issued a Notice of Violation Order to Comply requiring, among other items, prevention of offsite discharges and cleanup and proper disposal of all contents within the on-site drainage system.

On November 1, 2021, the City of Carson Department of Public Safety Code Enforcement Section issued a Notice of Code Violation requiring removal of trash and debris and cleanup and containment of spills and leaks.

From these numerous orders and notices of violations, the Dischargers knew or should have known of the importance of completing the cleanup and abatement activities in a timely manner.

On or about November 10, 2021, Liberty Property submitted a Fire Debris Cleanup and Restoration Work Plan (Work Plan) to HHMD. The Work Plan contained a conditional project schedule to complete all cleanup and abatement activities by December 31, 2021. Debris removal operations were expected to take 30-45 days with decontamination and final cleanup expected to take 3 days. The Work Plan was allegedly approved by HHMD on November 11, 2021 with Liberty Property starting cleanup activities on November 15, 2021.

The Los Angeles Water Board issued the CAO on December 9, 2021, with a cleanup and abatement deadline of December 31, 2021, consistent with the deadline in the Work Plan. The Dischargers knew or should have known of the importance of completing all cleanup and abatement activities by this deadline given the numerous notices and orders issued by other government agencies in addition to the Los Angeles Water Board's CAO.

On December 16, 2021, a multi-agency meeting was conducted at Liberty Property and Prologis, Inc.'s request. Representatives from the Los Angeles Water Board, the County of Los Angeles, the City of Carson, Liberty Property, and Prologis, Inc. were present. Day to Day did not attend the meeting. The meeting included but was not limited to a discussion of various orders issued by government agencies, alleged issues the owners were having with the tenants' impeding cleanup efforts, and a request to extend the December 31, 2021 cleanup deadline in the CAO. Liberty Property was told that extension requests for CAO deadlines must be submitted in writing.

On December 23, 2021, Liberty Property submitted a written request to extend the deadline to complete the cleanup and abatement of all waste at the Site to June 1, 2022. The Los Angeles Water Board denied this request on December 24, 2021, and the Dischargers were encouraged to promptly comply with the CAO. Thus, the Dischargers knew or should have known the importance of the December 31, 2021 cleanup and abatement deadline in the CAO.

Therefore, a Culpability multiplier of 1.4 is assigned for this violation.

b) History of Violations: 1.0

Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Because the Dischargers have no prior a history of violations, a multiplier of 1.0 is assigned for this violation.

c) Cleanup and Cooperation: 1.3

The Cleanup and Cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not.

While the Dischargers implemented interim measures, as described under the Potential for Harm factor above, such measures were required by Orders to Comply issued by HHMD and CAO Required Action Nos. 2 – 4. Partial compliance with these Orders and the CAO did not relieve the Dischargers of their responsibility to meet the December 31, 2021 cleanup and abatement deadline in the CAO. In other words, complying with one requirement of a CAO does not excuse noncompliance with another requirement of a CAO.

On February 7, 2022, the Los Angeles Water Board issued a Notice of Violation (NOV) to the Dischargers for, upon other items, failing to cleanup and abate all wastes by December 31, 2021. Day to Day did not respond to the NOV.

In its March 7, 2022 NOV response, Liberty Property stated that it completed a substantial portion of the waste debris cleanup, but progress was allegedly impeded by Day to Day interfering with cleanup crew access to the site; failing and refusing to make space on the Site for debris to be processed; blocking cleanup and remediation efforts by parking truck trailers and shipping containers in the cleanup area and around the warehouse; piling debris and waste in and around frac tanks stored on-site to contain captured stormwater; and disrupting BMP features by destroying and removing sandbag berms. Once these issues were resolved, Liberty Property was able to engage more actively in cleanup activities.

On February 8, 2022, and March 7, 2022, Los Angeles Water Board staff conducted consent-based inspections of the Site. Los Angeles Water Board staff observed progress in cleanup activities but noted additional cleanup work needed to be done to comply with the CAO.

On June 9, 2022, Los Angeles Water Board staff along with State Water Board staff conducted a consent-based inspection of the Site. Terence Wong, the Project Manager for cleanup, told Los Angeles Water Board staff that cleanup and decontamination of the outside portions of the Site was complete. Based on Los Angeles Water Board staff's observations during the inspection, the Dischargers remained in noncompliance with the CAO because cleanup was not complete.

On June 15, 2022, the Dischargers were notified via email that additional cleanup was needed.

On June 23, 2022, Los Angeles Water Board staff emailed the Dischargers a detailed list of additional cleanup activities to be undertaken before cleanup could be deemed complete under the CAO.

As of the date of issuance of this Complaint, the Dischargers have yet to complete all required cleanup and abatement activities at the Site.

The delayed progress towards compliance with the CAO despite knowledge of the importance of the cleanup and abatement deadline and lack of communication and cooperation between the Dischargers falls far below what is expected of reasonable and prudent dischargers that receive a CAO. Therefore, a Cleanup and Cooperation multiplier of 1.3 is assigned for this violation.

Step 5. Total Base Liability Amount

Total Base Liability Amount = \$341,250 (Initial Liability Amount) x 1.4 (Degree of Culpability) x 1.0 (History of Violations) x 1.3 (Cleanup and Cooperation) = \$621,075

Step 6. Ability to Pay and Ability to Continue in Business

The Enforcement Policy requires the Los Angeles Water Board to analyze the Dischargers' ability to pay the Total Base Liability Amount and the effect paying the Total Base Liability Amount may have on the Dischargers' ability to continue in business. The Dischargers have the ability to pay the Total Base Liability Amount and continue in business. According to public records, Liberty Property had approximately \$7 billion in assets in 2019, with the Site valued at approximately \$47 million in 2019 based on Los Angeles County Tax Assessor Records. Day to Day earned approximately \$2.5 million in revenue in 2020. Therefore, the Dischargers' assets are more than sufficient to pay the Total Base Liability Amount.

Step 7. Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (U.S. EPA) Economic Benefit Model (BEN) program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 2021.0.0 (April 2021). For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes. In this case, the economic benefit was calculated as the delayed costs associated with cleanup and abatement activities including the use of a Bobcat Loader, frac tanks, and vacuum trucks; transportation of stormwater, solid wastes, and flammable liquid; employment of

field crew; and soil and concrete sampling. Using BEN, the economic benefit of noncompliance is \$65,212.

Step 8. Other Factors as Justice May Require

If the Los Angeles Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this adjustment.

a) Environmental Justice Considerations

The Enforcement Policy provides that “a consideration of environmental justice issues,” is appropriate in this factor. Consideration of environmental justice ensures that enforcement is conducted in a manner that advances the fair treatment of people of all races, cultures, and income levels. The area where the Site is located is classified as an Environmental Justice (EJ) and/or Disadvantaged Community (DAC). Compliance with the CAO is especially important given this Site’s location because any conditions of noncompliance would impact an already overburdened community. CalEPA utilizes a screening tool, the California Communities Environmental Health Screening Tool (CalEnviroScreen), to identify communities in California that bear a disproportionate burden of environmental pollution and other hazards. For the area where the Site is located, CalEnviroScreen identifies the community as being within the 92nd percentile of communities. Such a high score indicates that the community is an EJ community and/or DAC. The location of the violations supports the imposition of the proposed administrative civil liability in this case and no downward adjustment is warranted.

b) Costs of Investigation and Enforcement Adjustment: \$15,080

The Enforcement Policy allows for the costs of investigation and enforcement to be considered under other factors as justice may require. To date, the Los Angeles Water Board has incurred \$15,080 in staff costs associated with the investigation, preparation, and enforcement of the violation. This represents approximately 136.84 hours of staff time devoted to inspecting the Site, meetings, communications, and drafting the enforcement documents. No attorneys’ fees are included in this calculation. The Los Angeles Water Board Prosecution Team finds that it is appropriate to increase the Total Base Liability Amount by \$15,080 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy requires the Los Angeles Water Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

a) Maximum Liability Amount

Water Code section 13350, subdivision (e)(1) provides that liability shall not exceed \$5,000 for each day the violation occurs. The total days of violation are 195. Therefore, the statutory maximum is \$975,000.

b) Minimum Liability Amount

Under Water Code section 13350, subdivision (e)(1)(B), where there is no discharge, but an order issued by the regional board is violated, excepted as provided in subdivision (f), the civil liability shall not be less than \$100 for each day in which the violation occurs. The violation occurred for 195 days. Therefore, the statutory minimum under Water Code section 13350, subdivision (e)(1)(B) is \$19,500.

The Enforcement Policy also requires the Los Angeles Water Board to recover, at a minimum, 10% more than the economic benefit. The economic benefit is \$65,212. Therefore, the minimum under the Enforcement Policy is \$71,733.

Step 10. Final Liability Amount: \$636,155

The Final Liability Amount consists of the amount for the violation, provided the amount is within the minimum and maximum liability amounts. The Total Base Liability Amount was added to the investigation and enforcement costs accrued by the Los Angeles Water Board Prosecution Team. Therefore, the Final Liability Amount is \$636,155, which is within the minimum and maximum liability amounts.