

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2022-0217-A1
IN THE MATTER OF**

**DAY TO DAY IMPORTS INC.
VIRGIN SCENT INC. DBA ARTNATURALS**

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. and Virgin Scent Inc. dba ArtNaturals (collectively, Dischargers) pursuant to California Water Code (Water Code) section 13385, which authorizes 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 failed to file a Report of Waste Discharge (ROWD) prior to commencement of discharges associated with industrial activities at the facility located at 16325 South Avalon Boulevard in Carson, California (Facility).

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

BACKGROUND

1. The Dischargers operated at the Facility, which is involved in the general warehousing of health and beauty supplies.
2. This type of industrial operation is classified under Standard Industrial Classification (SIC) code 4225 – general warehousing and storage. The Facility discharges stormwater associated with industrial activities.
3. Facilities with SIC code 4225 are required to obtain coverage under the State Water Resources Control Board's (State Water Board) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities, Order No. 2014-0057-DWQ as amended in 2015 and 2018, NPDES Permit No. CAS000001 (General Permit) in accordance with General Permit, Attachment A, Section 2 or to file a ROWD and obtain individual waste discharge requirements.
4. The Facility discharges into storm drains connected to the municipal separate storm sewer system that discharges into the Dominguez Channel Estuary, a water of the 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 Facility has been discharging stormwater to storm drains connected to the municipal separate storm sewer system that discharges into the Dominguez Channel Estuary since at least October 8, 2015, when Day to Day Imports Inc. acquired a business license and started operations at the Facility. This is consistent with Day to Day Import Inc.'s December 23, 2021 Water Code section 13267 Order response in which it indicated it had been operating at the Facility since October 2015.
8. Virgin Scent Inc. dba ArtNaturals subleased the Facility from Day to Day Imports Inc. since at least November 1, 2016.
9. On February 7, 2022, the Los Angeles Water Board issued a Notice of Violation notifying the Dischargers to immediately obtain coverage under the General Permit or file a ROWD to obtain individual waste discharge requirements.
10. The Dischargers vacated the Facility on May 12, 2022.
11. At no point did the Dischargers file a Notice of Intent to comply with the requirements of the General Permit or file a ROWD to obtain individual waste discharge requirements before they vacated the Facility.

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

LEGAL AND REGULATORY CONSIDERATIONS

12. 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.

13. 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.

14. 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.

15. Pursuant to Water Code section 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.

16. 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 section 13385, subdivision (e).

17. Issuance of this Complaint to enforce Water Code Division 7, Chapter 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

18. The Los Angeles Water Board Prosecution Team alleges that the Dischargers failed to file a ROWD prior to discharging to waters of the United States in violation of Water Code section 13376. The Dischargers could have satisfied the requirement to file a ROWD by filing a Notice of Intent to comply with the requirements of the General Permit or filing a ROWD to obtain individual waste discharge requirements.
19. Day to Day Imports Inc. was required to file a ROWD by at least October 8, 2015, the start date of Day to Day Imports Inc.'s business license and operations at the Facility. Virgin Scent Inc. dba ArtNaturals was required to file a ROWD by at least November 1, 2016, the date it subleased the Facility from Day to Day Imports Inc.
20. Violation 1: The Los Angeles Water Board Prosecution Team is using its prosecutorial discretion to start the days of violation on October 5, 2017, the effective date of the Enforcement Policy. The end date of the violation is February 7, 2022, the date the Los Angeles Water Board issued a Notice of Violation to the Dischargers. The total from October 5, 2017 to February 7, 2022 is 1,587 days of violation.
21. Violation 2: The start date of the violation is February 8, 2022, the day after the Los Angeles Water Board issued a Notice of Violation to the Dischargers. The end date of the violation is May 12, 2022, when the Dischargers vacated the Facility. The total from February 8, 2022 to May 12, 2022 is 94 days of violation.
22. The total days of violation for Violations 1-2 is 1,681 days.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

23. The Los Angeles Water Board Prosecution Team proposes an administrative civil liability of \$~~971,297,973.050~~ for the alleged violations, as detailed in Attachment A to this Complaint, herein incorporated by reference. This proposed administrative civil liability was derived using the penalty calculation methodology in the Enforcement Policy. The proposed administrative civil liability takes into account the factors described in Water Code section 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.

24. 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

25. Pursuant to Water Code section 13385, subdivision (c) the statutory maximum administrative civil liability is \$10,000 per day of violation.
26. For Violation 1, the total days of violation is 1,587. Therefore, the statutory maximum for Violation 1 is \$15,870,000.
27. For Violation 2, the total days of violation is 94. Therefore, the statutory maximum for Violation 2 is \$940,000.
28. The combined statutory maximum for Violations 1-2 is \$16,810,000.
29. The proposed administrative civil liability is below the statutory maximum liabilities.

MINIMUM LIABILITY

30. Water Code section 13385, subdivision (e) requires that when pursuing civil liability under Water Code 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 economic benefit for the alleged violations is \$10,531. Therefore, the statutory minimum is \$10,531 for Violations 1-2, collectively.
31. The Enforcement Policy further requires the Los Angeles Water Board to recover, at a minimum, the economic benefit plus 10%. The minimum liability under the Enforcement Policy for Violations 1-2, collectively, is the economic benefit plus 10%, which is equal to \$11,584.
32. The proposed administrative civil liability is above the minimum liability amount.

THE DISCHARGERS ARE HEREBY GIVEN NOTICE THAT:

33. The Assistant Executive Officer of the Los Angeles Water Board proposes an administrative civil liability in the amount of \$971,297~~\$973,050~~. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code section 13385, subdivision (e) and the Enforcement Policy.
34. A hearing on this matter will be conducted by the Los Angeles Water Board on a date to be determined. On July 29, 2022, the Dischargers submitted a Waiver Form waiving their right to a hearing within 90 days of the issuance of this Complaint as articulated in Water Code section 13323.~~October 12, 2022, unless the Dischargers~~

~~do any of the following by the deadline to submit the Waiver Form that will be identified in the forthcoming Hearing Procedures:~~

- ~~a. The Dischargers waive the right to a hearing by completing the enclosed Waiver Form (checking the box next to Option 1) and returning it to the Los Angeles Water Board, along with payment for the proposed administrative civil liability of \$973,050; or,~~
 - ~~b. The Los Angeles Water Board agrees to postpone any necessary hearing after the Dischargers request to engage in settlement discussions by checking the box next to Option 2 on the enclosed Waiver Form and returning it to the Los Angeles Water Board; or,~~
 - ~~c. The Los Angeles Water Board agrees to postpone any necessary hearing after the Dischargers request a delay by checking the box next to Option 3 on the enclosed Waiver Form and returning it to the Los Angeles Water Board along with a letter describing the items to be discussed.~~
35. 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.
36. 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