

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2022-0219-A1
IN THE MATTER OF**

**DAY TO DAY IMPORTS INC.
LIBERTY PROPERTY LIMITED PARTNERSHIP**

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 Liberty Property Limited Partnership (collectively, Dischargers) pursuant to California Water Code (Water Code) section 13350, 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 comply with Cleanup and Abatement Order No. R4-2021-0141 (CAO).

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

BACKGROUND

1. Day to Day Imports Inc. was the tenant and operator of a warehouse facility located at 16325 South Avalon Boulevard in Carson, California (Site). Liberty Property Limited Partnership is the owner of the Site.
2. The Site discharges into 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.
3. The Dominguez Channel Estuary is a Clean Water Act section 303(d) listed impaired waterbody.
4. 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)

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

- 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)
5. On December 9, 2021, the Los Angeles Water Board issued the CAO to the Dischargers.
 6. 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 had 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.
 7. CAO Attachment B establishes a time schedule for the Dischargers to complete the actions required in the CAO. The time schedule is incorporated into the CAO in Required Action No. 7. Attachment B requires completion of cleanup and abatement of all wastes by December 31, 2021.
 8. On December 16, 2021, a multi-agency meeting was conducted at Liberty Property Limited Partnership and Prologis, Inc.'s request. Representatives from the Los Angeles Water Board, the County of Los Angeles, the City of Carson, Liberty Property Limited Partnership, and Prologis, Inc. were present. Day to Day Imports Inc. 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 Day to Day Imports Inc. and its sublessee, Virgin Scent Inc. dba ArtNaturals, impeding cleanup efforts, and a request to extend the December 31, 2021 cleanup deadline in the CAO. Liberty Property Limited Partnership was told that extension requests for CAO deadlines must be submitted in writing.
 9. On December 23, 2021, Liberty Property Limited Partnership submitted a written request to extend the deadline to complete the cleanup and abatement of all wastes at the Site to June 1, 2022. The Los Angeles Water Board denied this request on December 24, 2021.

10. On January 10, 2022, Liberty Property Limited Partnership filed a Petition for Review of the CAO (Petition) with the State Water Resources Control Board (State Water Board) and requested the Petition be held in abeyance pursuant to California Code of Regulations, title 23, section 2050.5(d).
11. On February 7, 2022, the Los Angeles Water Board issued a Notice of Violation (NOV) to the Dischargers for, among other items, failing to cleanup and abate all wastes by December 31, 2021.
12. In its NOV response on March 7, 2022, Liberty Property Limited Partnership stated that it completed a substantial portion of the waste debris cleanup.
13. Day to Day Imports Inc. did not respond to the NOV.
14. 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.
15. On April 19, 2022, the State Water Board acknowledged receipt of Liberty Property Limited Partnership's Petition and approved its request for the Petition to be held in abeyance. The Petition is held in abeyance until January 10, 2024. As of the date of issuance of this Complaint, Liberty Property Limited Partnership has not requested the Petition be removed from abeyance and activated, nor have the Dischargers obtained a stay of any portion of the CAO.
16. Day to Day Imports Inc. vacated the Site on May 12, 2022. Vacating the Site does not relieve Day to Day Imports Inc. of its legal obligations to comply with the CAO.
17. 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 the 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 out of compliance with the CAO because cleanup was not complete.
18. On June 15, 2022, the Dischargers were notified via email that additional cleanup was needed.
19. 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.
20. As of the date of issuance of this Complaint, the Dischargers have yet to complete all required cleanup and abatement activities at the Site.

LEGAL AND REGULATORY CONSIDERATIONS

21. Water Code section 13350, subdivision (a) states in relevant part:

A person who (1) violates a cease and desist order or a cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

22. 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.

(1)(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

23. Water code section 13350, subdivision (f) states:

A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

24. Pursuant to Water Code section 13327, 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.

25. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 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 penalty calculation 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 13327.

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

27. The Los Angeles Water Board Prosecution Team alleges that the Dischargers violated the CAO by failing to cleanup and abate all wastes by December 31, 2021. The start date of the violation is January 1, 2022, and the end date of the violation is the date of issuance of this Complaint, July 14, 2022. There are a total of 195 days of violation. The violation is subject to administrative civil liability under Water Code section 13350, subdivision (e)(1).

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

28. The Los Angeles Water Board Prosecution Team proposes an administrative civil liability of ~~\$636,155,640,714~~ for the alleged violation, 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 considers the factors described in Water Code section 13327, 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.
29. 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

30. Pursuant to Water Code section 13350, subdivision (e)(1) the statutory maximum administrative civil liability is \$5,000 per day of violation.
31. The violation is alleged to have occurred for 195 days. Therefore, the statutory maximum liability is \$975,000.
32. The proposed administrative civil liability is below the statutory maximum liability.

MINIMUM LIABILITY

33. 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.
34. The violation is alleged to have occurred for 195 days. Therefore, the statutory minimum under Water Code section 13350, subdivision (e)(1)(B) is \$19,500.
35. The Enforcement Policy further requires the Los Angeles Water Board to recover, at a minimum, the economic benefit plus 10%. The minimum liability that may be imposed is the economic benefit plus 10%, which is equal to \$71,733.
36. The proposed administrative civil liability is above the minimum liability amount.

THE DISCHARGERS ARE HEREBY GIVEN NOTICE THAT:

37. The Assistant Executive Officer of the Los Angeles Water Board proposes an administrative civil liability in the amount of ~~\$636,155~~\$640,714. The amount of the proposed administrative civil liability is based upon a review of the factors cited in Water Code section 13327 and the Enforcement Policy.
38. 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 submitted a Waiver Form which waived its 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. submitted a Waiver Form waiving its right to a hearing within 90 days. 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 \$640,714; 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.~~

39. 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.
40. 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