SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA EX REL. CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION,

Plaintiff.

v.

PROLOGIS, INC; LIBERTY PROPERTY LIMITED PARTNERSHIP; DAY TO DAY IMPORTS, INC.; VIRGIN SCENT, INC.; AKIVA NOUROLLAH; YOSEF NOUROLLAH; YEHUDA NOUROLLAH; and YAAKOV NOUROLLAH,

Defendants.

Case No. 24STCV07273

[Assigned to the Hon. David S. Cunningham, Dept. 11]

(Related to Lead Case No. 21STCV38929 and all related cases)

~~[PROPOSED]~~ JUDGMENT AFTER COURT TRIAL

Complaint Filed: March 22, 2024
Trial Date: May 27, 2025

Plaintiff People of the State of California *ex rel.* California Regional Water Quality Control Board, Los Angeles Region (hereinafter referred to as Plaintiff) filed this action alleging violations of the California Water Code and federal Clean Water Act against Defendants Prologis, Inc. (Prologis), Liberty Property Limited Partnership (Liberty Property), Day to Day Imports, Inc. (Day to Day), Virgin Scent, Inc. (Virgin Scent), Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah. The action came on for trial in Department 11 of this Court, the Honorable David S. Cunningham III, presiding, the Court receiving evidence and hearing testimony from live witnesses on May 27-30, June 2-6, June 9-11, June 18, June 20, July 3, and July 9, 2025. The parties also filed various requests for judicial notice, declarations, deposition designations, and written discovery responses for the Court to consider. The parties filed closing briefs on August 1, August 4, and August 5, 2025, and counsel delivered closing arguments on August 11, 2025, with the Court taking the matter under submission thereafter.

Plaintiff was represented by Jennifer Kalnins Temple, John Sasaki, Kristin McCarthy and Dan Lucas of the Office of the Attorney General; Defendants Prologis and Liberty Property (Landlord Defendants) were represented by Navi Dhillon, Peter Meier, Dylan Crosby, Prashant Rai and Jessica Rose Carter of the law firm Paul Hastings LLP; and Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah (Tenant Defendants) were represented by Rudy Perrino, Vivian Pham and Saundra Wootton of the law firm Kutak Rock LLP.

On September 11, 2025, having fully considered the evidence and arguments of counsel, the Court issued its Tentative Statement of Decision finding liability against all Defendants. On October 6, 2025, the parties filed requests for additional findings and objections to the Tentative Statement of Decision, and on October 17, 2025, the Court heard argument regarding those requests and objections. On October 29, 2025, the Court issued a Final Statement of Decision, again finding liability against all Defendants.

In accordance with and for the reasons stated in the Court's Final Statement of Decision, which is incorporated into this Judgment as though fully set forth herein, the Court hereby enters judgment as follows:

With regard to the Landlord Defendants:

1. That Defendants Prologis and Liberty Property are liable for violating Water Code section 13350, subdivision (b) by permitting a discharge of hazardous substances to waters of the state;

2. That judgment is therefore entered in favor of Plaintiff and against Defendants Prologis and Liberty Property as to the First Cause of Action alleged in Plaintiff's Complaint for Civil Liabilities herein;

3. That the Court finds that Defendants Prologis and Liberty Property already have paid over $10 million for cleanup costs, and thus concludes that no additional civil penalties shall be imposed against said Defendants based on their having permitted a discharge of hazardous substances in violation of Water Code section 13350, subdivision (b); and

4. That in accordance with Code of Civil Procedure sections 1032 and 1033.5, ~~Plaintiff is entitled to recover costs against Defendants Prologis and Liberty Property in the amount of $ _____.~~ any issues concerning recoverable litigation costs shall be resolved in accordance with the procedures provided by law at post-judgment hearings, if any.

With regard to the Tenant Defendants:

1. That Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah are liable for violating Water Code section 13376 by causing an unpermitted discharge of pollutants to waters of the United States;

2. That judgment is therefore entered in favor of Plaintiff and against Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah as to the First Cause of Action alleged in Plaintiff's Complaint for Civil Liabilities herein;

3. That based on their unpermitted discharge of pollutants to waters of the United States in violation of Water Code section 13376, Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah are jointly and severally liable to Plaintiff for civil penalties in the amount of $575,000;

4. That Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah also are liable for violating Water Code section 13376 by failing to obtain the required permit for their industrial stormwater discharges;

5. That judgment is therefore entered in favor of Plaintiff and against Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah as to the Second Cause of Action alleged in Plaintiff's Complaint for Civil Liabilities herein;

6. That based on their failure to obtain the required permit for their industrial stormwater discharges in violation of Water Code section 13376, Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah are jointly and severally liable to Plaintiff for additional civil penalties in the amount of $10,000,000; and

7. That in accordance with Code of Civil Procedure sections 1032 and 1033.5, ~~Plaintiff is entitled to recover costs against Defendants Day to Day, Virgin Scent, Akiva Nourollah, Yosef Nourollah, Yehuda Nourollah and Yaakov Nourollah in the amount of $ _____~~ any issues concerning recoverable litigation costs shall be resolved in accordance with the procedures provided by law at post-judgment hearings, if any.

Dated: 12/16/2025

Hon. David S. Cunningham III
Judge of the Superior Court

Because the penalties were assessed under Water Code §13385 (Clean Water Act violations) rather than § 13350, the funds must go to the "State Water Pollution Cleanup and Abatement Account."

DECLARATION OF SERVICE

Case Name: **People of the State of California ex rel. California Regional Water Quality Control Board, Los Angeles Region v. Prologis, Inc., et.al**

No.: **24STCV07273**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. On November 12, 2025, I served the attached:

PROPOSED] JUDGMENT AFTER COURT TRIAL

by electronic transmission in accordance with the Court's Order Authorizing Electronic Service requiring all documents to be served upon the interested parties via the Case Anywhere system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 12, 2025, at Los Angeles, California.

Libby Tecson	*/s/ Libby Tecson*
Declarant	Signature

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA EX REL. CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION, Plaintiff, v. PROLOGIS, INC., et al., Defendants.	Case No. 24STCV07273 [Assigned to the Hon. David S. Cunningham, Dept. 11] (Related to Lead Case No. 21STCV38929 and all related cases) **FINAL STATEMENT OF DECISION (CCP §632; CRC 3.1590)** Complaint filed: March 22, 2024 Trial Date: May 27, 2025

This is the Court's Final Statement of Decision, which is based upon the Court's ruling after consideration of all objections, requests for additional controverted issues, and after the hearing set for October 17, 2025, at 1:45 pm.

Plaintiff in this action is the People of the State of California, Ex Rel. California Regional Water Quality Control Board, Los Angeles Region (the "Water Board"). The Water Board initiated this enforcement action to seek civil penalties related to discharges of pollutants into the Dominguez Channel Estuary (the "DCE" or "Dominguez Channel") following a major warehouse fire.[1]

Defendants include Prologis, Inc. and Liberty Property LP (collectively, the "Landlord Defendants"). Prologis, Inc. is the parent company of Liberty Property LP and manages the property as Liberty has no employees.[2] Other defendants are Day to Day Imports, Inc., Virgin Scent, Inc., and the Nourollah defendants (Akiva Nourollah, Yaakov Nourollah, Yehuda Nourollah, and Yosef Nourollah), who are collectively referred to as the "Tenant Defendants."

[1] Exhibit 835
[2] Exhibit 188

The Water Board asserts two causes of action. In the First Cause of Action, all defendants allegedly violated Water Code section 13376 and Clean Water Act (CWA) section 301 by causing an unpermitted discharge of pollutants to the DCE. Alternatively, the evidence shows defendants violated Water Code section 13350, subdivision (b), by causing an unpermitted discharge of hazardous substances to the DCE. As alleged in the Second Cause of Action, only Day to Day Imports, Inc., Virgin Scent, Inc., and the Nourollah defendants violated Water Code section 13376 by failing to obtain a permit for their industrial stormwater discharges when they stored products at 16325 South Avalon Boulevard in Gardena, California (referred to as the "Avalon Property or the "Subject Property").

The Court presided over a bench trial to address the two causes of action. The tentative decision follows 17 days of a bench trial held on May 27-30, June 3-6, June 9-11, June 18-20, July 3, July 9, and August 11, 2025.

I. SUMMARY OF LEGAL ARGUMENTS

A. Water Board's Arguments

The Water Board's primary legal arguments assert that all defendants violated the antipollution water laws by causing an unpermitted discharge of pollutants to the Dominguez Channel Estuary. The scientific basis for the subsequent odor event, according to the Water Board's experts, is that a massive discharge of alcohol (ethanol and isopropyl alcohol/IPA) from hand sanitizer products, originating from the Prologis property after a warehouse fire, created a low-oxygen environment in the DCE. The low oxygen condition enabled anaerobic bacteria to convert sulfate from seawater into hydrogen sulfide ("H2S") gas, which caused a foul odor. Pollutants, specifically sanitizer wipes with 75% ethanol content and hand sanitizer with 62.5% ethyl alcohol content, were discharged from ruptured containers and the property's drainage system into the Municipal Separate Stormwater Sewer System ("MS4"), which then carried them to the DCE.

The Water Board contends that both the damaged hand sanitizer containers and the property's on-site drains qualify as "point sources" for these discharges into the navigable waters

of the U.S. All defendants admitted to lacking permits for such discharges. The Water Board rejects the defense argument that the MS4 permit's exemption for "emergency firefighting activities" applies to non-permittees or covers their specific discharges. Plaintiff contends that such an interpretation would contradict CWA's purpose and statutory scheme. According to Plaintiff, the CWA and Water Code impose strict liability for these unpermitted discharges.

The Water Board contends that for the Landlord Defendants (Prologis and Liberty), liability is established through their knowledge and ability to control activities on the Subject Property. Plaintiff focuses on the Landlord Defendants' responsibility for storm drains, the collection of maintenance fees, and their awareness of the tenant's lease violations regarding outdoor storage and hazardous materials. The Water Board argues that the Nourollah defendants are also subject to personal liability under the responsible corporate officer doctrine, given their positions of authority and their documented failure to address known violations before the fire. Additionally, under Water Code section 13376, the Tenant Defendants face a separate cause of action for failing to obtain a permit for their industrial stormwater discharges throughout their operation period.

B. Prologis's Arguments

Prologis argues that it did not cause any "discharge" from a "point source" as defined by the CWA. Prologis asserts that any discharges associated with the emergency firefighting activities were expressly exempt from permit requirements under federal law. Prologis argues that federal regulations exempt discharges resulting from firefighting activities. As such, these water flows are not "illicit discharges" under the MS4 Permit. Prologis argues that the firefighting exemption is crucial, as society needs fires to be extinguished without fear of liability from firewater runoff. Prologis contends that once fire suppression water enters the MS4, the MS4 operators (municipalities) become the responsible dischargers, and the local ordinances enacted under the MS4 Permit universally confirm the exemption for emergency firefighting flows.

The Landlord Defendants also reject the Water Board's claim that damaged hand sanitizer containers or property drains constitute "point sources." Defendants assert that these

items are not "conveyances" that channel or control stormwater. Prologis further maintains that the Water Board's related state claim under Water Code section 13350, subdivision (b), also fails because the discharges were either permitted or the MS4 acts as a community sewer system under which no permit is required for such waste discharges.

At trial, Prologis presented expert testimony that existing sediments in the Dominguez Channel caused an odor event, not the alcohol discharge from the Avalon Property. The Landlord Defendants highlight that a September 17, 2021, Carson earthquake (4.3 magnitude) significantly disturbed these sediments, causing liquefaction and exposing deeper, anoxic layers where hydrogen sulfide (H2S) is generated. Prologis' experts calculated that any alcohol discharged would have been flushed out of the tidally influenced DCE within approximately two days, making it an unlikely cause for the multi-week odor event.

The Landlord Defendants also assert a lack of control and foreseeability, arguing that the lease granted the Master Tenant (Day-to-Day) exclusive control over the Subject Property. As a separate and independent ground, Defendants argue that they lacked the contractual or practical ability to move the tenant's products or prevent the discharge, especially while actively pursuing eviction. They contend it was not foreseeable that storing ordinary consumer products would lead to a significant discharge of pollutants into the Nation's waters. Prologis questions the reliability of the Water Board's evidence regarding the volume of discharge and notes the absence of ethanol detection in the DCE itself, suggesting analytical flaws in the Plaintiff's case.

C. The Tenant Defendants' Arguments

Like the Landlord Defendants, the Tenant Defendants contend that the Water Board's First Cause of Action for unpermitted discharges fails because any alleged discharges were associated with emergency fire suppression activities. The Tenant Defendants contend the exemption is broad, covering the resulting flow (water and entrained contaminants) regardless of the source, and is reinforced by local ordinances in Los Angeles County and the City of Carson. The U.S. EPA's policy further clarifies that MS4s, not Regional Boards, are to address such flows prospectively and categorically, not on an ad hoc basis. Moreover, the Industrial General

Permit (IGP), cited by the Water Board, specifically states it does not apply to firefighting-related discharges, suggesting no relevant permit was even available.

The Tenant Defendants also challenge the factual basis of the Water Board's claims and the applicability of the responsible corporate officer doctrine. They assert that there is no competent evidence that ethanol or isopropyl alcohol (IPA) actually reached the Dominguez Channel. Under the responsible corporate officer doctrine, the Nourollah Defendants argue they lacked control over the Fire Department's emergency fire suppression activities that caused the discharges and thus cannot be held personally liable. They stress that preventing the fire or managing stockpiles is not the relevant inquiry for responsible corporate officer liability related to discharges from firefighting. The Tenant Defendants contend that it was not foreseeable that a fire would cause discharges three miles away into the DCE. For the Second Cause of Action, Day to Day argues that SIC Code 4225 (General Warehousing and Storage) does not apply, negating the need for an IGP permit, because Day to Day owned its products rather than storing them for third parties.

D. The Legal Issues

The issues before the Court are the following:

A) Whether a discharge of a prohibited pollutant occurred under Water Code section 13376 and the Clean Water Act section 301 that reached the DCE?

B) Whether the alleged discharge originated from a point source as defined under the Clean Water Act section 301?

C) Whether any defendant caused or permitted a hazardous substance to be discharged in violation of the Water Code section 13350 (b)?

D) Whether the Landlord Defendants had sufficient knowledge and control over the tenants' activities at the Avalon Property, such that they are liable for allowing a discharge?

E) Whether Day-To-Day Inc., Virgin Scent Inc., and the individual defendants are liable for failure to file a report of waste discharge under Water Code section 13376?

F) Whether a permit existed and was available for the alleged discharges?

G) Whether the "discharges resulting from firefighting activities" exemption in the MS4 Permit applies to the defendants?

H) Whether the individual tenant defendants are liable under the responsible corporate officer doctrine for any of the violations under Water Code section 13376 and the Clean Water Act section 301?

I) If liability is proven, what are the appropriate civil penalties?

II. SUMMARY OF TRIAL EVIDENCE

A. The Property and Tenant Operations (Pre-Fire)

At trial, the evidence showed that Liberty Property LP owns the property at 16325 South Avalon Boulevard in Gardena, California. Prologis acquired Liberty in February 2020 and has since then managed the property. The Tenant Defendants occupied the property from October 2015 to May 2022. Initially, they operated under a pre-existing lease effective October 13, 2015,[3] and later under the Prologis Clear Lease starting October 5, 2020.[4] Day to Day sold pet products and automotive accessories, while Virgin Scent[5] sold beauty products and hand sanitizer products.[6] These products were stored at the property.[7] The Prologis Clear Lease included a Lease Guaranty signed by Akiva Nourollah for Virgin Scent, which Liberty stated was essential for entering the lease with Day to Day.[8]

Before the new lease, Day to Day and Virgin Scent had leased the entire Avalon Property and subleased portions of the warehouse and exterior areas to other entities, such as JIT.[9] Lisa Reddy, a vice president at Prologis, conducted environmental due diligence during the lease negotiations before the 2020 acquisition.[10] The prior master leases included a completed "environmental questionnaire" from Day to Day, which Ms. Reddy relied upon without requesting

[3] Exhibit 3005
[4] Exhibit 3011
[5] (Yaakov Nourollah Depo. At 64:1-23.)
[6] (RT 3776:11-377:24.)
[7](RT 4228:9-4231:3.)
[8] (Ex. 3011 at 19-20.)
[9] (Ex. 3004.)
[10] (RT 4225:21-26.)

the tenant or subtenants to complete any updated questionnaire.[11]

After acquiring the Avalon Property, Prologis's primary goals for the new lease were to simplify the subleasing arrangement and address outstanding payment issues resulting from the COVID-19 pandemic. Day to Day sought to maintain the "status quo" of its sublease arrangements, thus leading to a new lease in October 2020 that designated Day to Day as the sole tenant with exclusive use of the entire property.[12]

Prologis representatives visited the Avalon Property multiple times in 2020. Ms. Reddy visited in February and September 2020, gaining access to both outside areas and the warehouse interior.[13] She observed the property functioning as a "distribution center" with products like pet beds, pet accessories, and automobile accessories, but did not recall seeing hand sanitizers.[14] Ms. Reddy met with Yaakov and Akiva Nourollah during her visits in February and September 2021. [15] Mr. Raul Saldana, the Prologis Maintenance Technician, also visited the site twice in 2020 (March and October), and he testified that he did not observe anything unusual.[16]

B. Pre-Fire Conditions and Landlord/Tenant Actions

1. Tenant Defendants were stockpiling products outside the physical building on the Avalon Property.

Raul Saldana testified that on March 31, 2021, six months before the fire, he observed a "mountain of boxes stored outside with 'items falling out'" that blocked building exits and created a fire hazard.[17] He emailed photos, which showed OSHA's red flame symbol for flammability on products stored at the Subject Property.[18] Ms. Elizabeth Summerer, Saldana's supervisor, acknowledged receipt but overlooked the flammability symbol.[19] That same day, Ms. Summerer emailed defendants Yaakov Nourollah and Akiva Nourollah, instructing them to ensure exits had

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[11] (RT 4245:20-4248:26.)
[12] (RT 4235:26-4236-2)
[13] (RT 4231:23-25, 4233:13-4234:2, 4245:23-24.)
[14] (RT4232:21-4233:12, 4245:23-4247:15, 4247:13-18).
[15] (RT 4245:25 to 4246:4.)
[16] (RT 3488:25-3489:9, 3489:27-3490:16.)(RT3488:25-3489:26, 3489:27-21.)
[17] (RT 3529:3.)
[18] (Ex. 147)
[19] (RT 3396:22-3397:7.)

free access and fire lanes were not blocked.[20] However, Ms. Summerer never spoke directly to the Tenant Defendants about the photos, nor did she inquire about the contents of the boxes, or alert the Fire Department.[21] Lisa Reddy, also copied on the email, did not visit the site.[22]

No further emails from Prologis to the tenants regarding the issue were sent, despite evidence that the problem worsened over time, as shown by June 2021 drone photos and Google Earth images.[23] Prologis used site photos to assess the Avalon Property.[24] Mr. Saldana continued to drive by the property twice a month from March through September 2021.[25] In July 2021, Mr. Saldana reported the growing problem to his new supervising property manager, Michelle Bowles, and senior property manager Kelly Dergham, but his concerns were "shrugged off."[26] Ms. Summerer noted the property was problematic due to "overstacking product [and] blocking fire lanes" and described it as a "dangerous situation."[27]

2. Pre-Fire Inspections by Los Angeles County Fire Department (LACFD).

Michael Whitehead, LACFD Health Hazardous Materials Specialist, testified that on May 19, 2021, he inspected the property and confirmed large quantities of hand sanitizer and bulk isopropyl alcohol were on-site.[28] He issued a Notice of Violation (NOV) to Virgin Scent for failing to establish and implement a Hazardous Materials Business Plan (HMBP), which informs first responders about hazardous materials.[29] Yaakov Nourollah signed the NOV.[30] Inspector Whitehead testified he did not see products in the South access lane as depicted in Saldana's March 31 email.[31] Captain Joseph Williams' contemporaneous notes from May 2021 reported without explanation that a Lynwood Fire Department inspection on May 22, 2021, resulted in "no action" due to "no product

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[20] (Ex. 148.)
[21] (RT 3393:15-20) (3393:21-23.)
[22] (4271:23-26) (3400:2-20)
[23] (Ex 177.)
[24] (Ex. 177-Deposition of Kelly Dergham at 95:19-24.) Cabello Deposition at 61:13-18.)
[25] (RT 3497:4-9.)
[26] (Ex. 3022.)
[27] (RT 3385:1-3386:10.)
[28](RT 1409:5-22; 1410:13-1411:1; 1412:25-1413:7; 1414:11-9.)
[29] (Ex. 255; 1414:25-28.)
[30] (RT 1421:10-16.)
[31] (RT 1557:10-1558:8.)

on site."[32]

On July 27, 2021, Mr. Whitehead returned and observed more violations, specifically in the outdoor truck court, including failure to minimize fire, explosion, or hazardous waste release risks.[33] He noted "thousands" of hand sanitizer stacks, wipes, and bulk alcohol containers, with pallets leaning and bottles smashed open, spilling contents, which he testified posed a fire risk. [34] Exhibit 256 designated Virgin Scent as the responsible party and listed Yaakov Nourollah's email address for contact purposes. The NOV noted that the owner/operator had not complied with the violations issued on May 19, 2021. Yehuda Nourollah signed the NOV, which included a compliance deadline of September 23, 2021.[35] No NOVs were issued to the Landlord Defendants. Mr. Whitehead testified that he perceived the risk to be "very high."

On August 16, 2021, LACFD Inspector James Von Harz found eight Fire Code violations, including "excessive amounts of flammable liquids being stored on the interior and exterior of the property" and failure to post a DOT 704 placard.[36] Exhibit 684-002 notes that a permit is required "from the Bureau of Fire Prevention before engaging" in the storage of flammable liquids that exceed a designated quantity. When he testified at trial, Captain Joseph Williams, a 30-year LACFD employee, called these "major violations."[37]

On August 25, 2021, Captain Williams conducted a follow-up inspection with other agencies, including City of Carson Code Enforcement Officer Lise Enriquez, because the Tenant Defendants had previously denied access.[38] Captain Williams told Yaakov Nourollah that they had a "massive amount of flammable liquid" that needed to be "corrected immediately." Michael Whitehead's notes from this inspection documented boxes with 60-70% alcohol in a grassy area near a channel, marked with a flammability label. Yaakov, Akiva, and Yehuda Nourollah

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[32] (Ex 3017.) RT 1642:20-1643:9.)
[33] (Ex. 256; 1432:16-25; 1428:27-1429:10.)
[34] (RT 1430:1-26.) (1438:20-24.) Exhibit 6-071; 6-072; 6-073; 6-078; 6-079; Exhibit 264 [video]; Exhibit 810, 811, 821, 826.)
[35] (Ex 256.)((1522:11-1524:27.)
[36] (Ex. 684-03; Exhibit 279 [sample placard].)
[37] (RT 1627:24-1628:3; 1629:12-15 ["needed to be corrected immediately."].)
[38] (RT 1625:13-1627:17.)

acknowledged that corrective actions had not been started.[39] Lise Enriquez spoke to Yaakov Nourollah about the outdoor storage, which violated Carson's municipal code prohibiting outdoor storage in "Manufacturing Light" zones.[40] She issued a written warning on August 26, 2021, instructing Sean Saboo from Virgin Scent to notify the CEO and operations manager to remove the items in question.[41]

3. Prologis' Escalation Efforts.

Prologis claims that between April and September 2021, it did not control the Master Tenant. Ms. Reddy had "numerous" calls with the Master Tenant about product placement and rent nonpayment, with promises from the tenant to address both, which were not kept.[42] Prologis sent a default letter on June 8, 2021.[43] In June 2021, Ms. Reddy proposed a "surrender" where Day to Day would vacate for over one million dollars in rent forgiveness, but the Master Tenant did not accept the offer.[44] Ms. Reddy then instructed Mr. Saldana to contact LACFD for assistance.[45]

Captain Williams informed Prologis in August 2021 that the fire department was aware of the situation and was working to resolve it. In September 2021, Prologis initiated formal eviction proceedings, serving a three-day notice to pay rent or quit on September 9, which Day to Day ignored.[46] Prologis filed an unlawful detainer action on September 21. Prologis filed multiple lawsuits (September, October, November 2021, January 2022) to gain possession, finally succeeding in March 2022.[47]

D. The Fire and Immediate Aftermath (September 30 - October 2, 2021)

On September 30, 2021, a massive fire erupted at the Avalon Property. LACFD Chief Brian Bennett testified that it was the largest urban fire he had responded to in over 30 years, taking

[39] (RT 1525: 23-1528:21; Ex. 61-004 to 009) (RT 1533:7-8.)
[40] (1998:27-2000:21.)
[41] (Ex. 65-003; 1995:25-1997:9; 1998:1-6.)
[42] (RT 4250:27-4251:23; see also Ex. 182.)
[43] (RT 4251:25-4252:2, 4252:9-4253:2; Ex. 183.)
[44] (RT4253:3-5.)
[45] (RT 4253:12-24; 3500:9-17.)
[46] (RT 4254:21-5255:1; Ex. 3030.)
[47] (Exs. 3033, 3164, 3168, and 3110.)

three days to extinguish.[48] LACFD extinguished the fire using emergency fire suppression water and foam. Chief Bennett did not recall any concerns about water runoff, and the official LACFD National Fire Incident Reporting System report checked "None" for hazardous materials released.[49] LACFD witnesses testified they were unaware of any prior lawsuits based on emergency firefighting discharges or that such runoff would cause an odor event. Mr. Greg Sarpy of LA County understood emergency fire suppression water discharges were not "illicit."[50]

At trial, Carlos Van Rensburg of LACFD Health Hazardous Materials Division testified that he arrived on September 30, observing "significant pooling along the gutter" entering the storm drain, with about "4 feet of water pooling on the [] property" that had a "distinct" and "fragrant odor."[51] His Gemini instrument identified "ethanol with sweetener" in the runoff. He saw damaged sanitizer bottles and wipes releasing their contents into the water.[52]

Mr. Van Rensburg contacted the Los Angeles County Department of Public Works (DPW), reporting a "large commercial fire" with "significant amount of fire suppression waters were entering the storm drain and it was mixed with ethanol."[53] Van Rensburg expressed concerns that the effluent contained toxic and flammable materials that could combust on "top of flowing water."[54] On September 30, he issued a Notice of Violation and Order to Comply to Yaakov Nourollah and Virgin Scent, which Yaakov signed, regarding the management of hazardous materials.[55]

On October 1, 2021, Michael Whitehead observed water mixed with sanitizer flowing into the storm drain on Gardena Boulevard.[56] Van Rensburg measured a pH of 9 in the fire suppression water, indicating chemicals were raising the pH from the expected neutral 7.[57] On October 5, Van Rensburg spoke to Prologis's Kelly Dergham about securing the property to prevent further off-site

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[48] (160:10-161:17; Ex. 831, 832, 223 [news footage].) It took three days to extinguish. (Ex. 272.)

[49] (Ex. 3096; RT 365:16-24.) (See RT 494:7-495:3, 646:3-6; Exs. 3099, 3100, 3125, 3126.)

[50] (RT 646:3-6.)

[51] (RT434:28-435:1; 435:10-16; see Ex. 270-004.)

[52] (RT 491:6-13.)

[53] (RT 442:22-443:20; Ex . 270-002.)

[54] (rt 442:3-20.)

[55] (Ex. 273-003; 468:6-469:24.)

[56] (1541:11-13; 1542:14-23; Ex. 6-081.)

[57] (Ex. 272.) (488:23-28.) (Ex. 270-003; 466:28-467:14.)

flows. JoJo Comandante of LACFD issued a supplement to the September 30 NOV, requiring ArtNaturals to cover storm drains by October 22, 2021.[58] He informed Prologis on October 7 and followed up on October 18, but the tenant did not comply.[59]

Tenant Defendants argued that any discharge was associated with emergency fire suppression activities between September 30 and October 2, 2021, and that the Fire Department was responsible for creating these discharges. They argue that the Fire Department controlled the site during the fire. On October 6, 2021, City of Carson Officer Lise Enriquez inspected the property. She confirmed that "pollutant materials stored outdoors" needed containment and that the stored containers did not have closed lids. She did not observe any solids or liquids escaping from the property other than the water from the firefight going down the drainage.[60] However, Enriquez confirmed that there was evidence of an illicit discharge, noting "liquids entering the storm water system (gutters, drainage, inlets, etc.) previously or currently."[61]

E. Post-Fire Events and Investigations

1. Cleanup and Discharge Containment.

Prologis's restoration contractor, Karon Young, noted in an email dated October 3, 2021, that the water level in the truck yard was "several feet deep."[62] She reported to Prologis that the "sea of product all mixed and partially burnt" would likely be classified as a hazardous materials cleanup.[63] Prologis paid over $10 million for the cleanup of the Avalon Property, which was completed under LACFD's direction, and Prologis complied with all post-fire requests. [64]

The Master Tenant did not contribute to the cleanup or reimburse Prologis.[65] Daphne Smith, an employee of Day to Day's subtenant JIT, observed "a lot of burnt bottles" and pooled water "over ankle deep" on October 2-3, 2021.[66] The post-fire cleanup of alcohol-soaked debris

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[58] (Ex. 273 [last two pages]; 684:4-12; 688:18-689:16.)
[59] (Ex. 248; 694:21-695:28; (Ex. 248-004) (722:10-723:10.)
[60] (See Ex. 63, at 002; Ex. 64, at 002.)
[61] (Id.)
[62] 1979:8-12; see also Ex. 717 [video]; 1981:16-27].) (Ex. 715; 1975:8-13)
[63] (Ibid.)
[64] (RT 4257:8-17; see Ex. 3133 at 6.)
[65] Nor has it ever paid Prologis the more than $3.6 million in rent it owes. (RT 4257:20-22; Ex. 3133 at 6.)
[66] (RT 3435:11-16; 20-22.) (RT 3435:26-3436:5.)

took months. The Water Board issued a Cleanup and Abatement Order (CAO) to Day to Day and Liberty.[67] The Landlord Defendants' cleanup completion report (June/July 2022) detailed the removal of 778 tons of hazardous liquids and the detection of alcohol concentrations in the soil and concrete.[68]

By October 21, 2021, Tenant Defendants had plugged some storm drains, and by October 22, all storm drains on the property were plugged.[69] DPW ultimately plugged the system when the defendants failed to confirm they would take action.[70]

a. **Laboratory data confirmed the presence of pollutants in samples from the storm drains, BI 1206, and the DCE.**

Following the fire, water samples were tested from the property drains, the MS4 (specifically BI 1206), and the DCE. Pollutants were detected in all three locations.[71] DPW's report (December 23, 2021) indicated that **ethanol, isopropyl alcohol (IPA), acetaldehyde, benzoic acid, and benzyl alcohol** were found in property storm drain samples (October 21, 2021), in BI 1206 samples (October 14, 2021), and in DCE samples (October-December 2021), with acetone also detected in the DCE.[72] Exhibit 783 (DPW Notification of Emergency Situation) estimated that one million pounds of alcohol based hand sanitizer, antibacterial wipes, and other flammable products stored at the Avalon Property ignited the fire.[73]

On October 8, 2021, Public Works initiated a review of known non-stormwater discharges for potential sources of odor complaints. Further, Public Works reported contacting utility companies with facilities and infrastructure near the Channel. They found no confirmed incidents of leaks, spills, or overflows between September 1 and November 3, 2021, that impacted the DCE.[74]

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[67] (Ex. 781; RT 2923:25-28.)
[68] 790-023, Table 1B.I; 2926:21-28; 3133:3-3135:13 ["We determined that ethanol and acetone were found in soil and water and surfaces of the property."]; see also Ex. 790-063-64 [778 tons of hazardous liquids removed]; 3138:20-3139:24.) Liberty described the amount of waste as able to "cover a football field in multiple feet of refuse." (Plaintiff's RJN, Ex. 6 at 11:4-5.)
[69] (See Ex. 77.)
[70] (Ex. 75-008; Ex. 78.) (1240:19-1242:9.) (Ex. 82) (Ex. 77, 78; 1242:11-1245:16)(
[71] (Ex . 783-010 to 011), the MS4 (BI 1206) (Ex. 783-019), and the DCE (783-020).
[72] (Ex. 783-011.) (Ex. 783-19.) (Ex. 783-020.)
[73] (Ex. 783-005.)
[74] (Ex. 783-013-015.)

2. The odor event and multi-agency investigations.

In the days following the fire, thousands of odor complaints were received by Los Angeles County and the South Coast Air Quality Management District ("SCAQMD"). The County Board of Supervisors declared a local emergency on November 2, 2021.[75] The odor event lasted approximately 2-3 weeks, from around October 4-10 to late October.[76] Concentrations of the odor decreased with distance from the Channel.

a. **Los Angeles County Department of Public Works (DPW) Investigation.**

Mark Pestrella, DPW Director, reported approximately 10,000 odor complaints from October to December 2021, calling it a "full-scale emergency" for which the County used all its scientific resources.[77] Mark Lombos, DPW Assistant Deputy Director, reported that the source was an alcohol release from the property.[78]

Greg Sarpy, DPW, met with Jewel Carr, DPW Flood Control Construction Supervisor, at the BI 1206 outfall on or about October 11 or 12, 2021, where he discovered the "white milky substance" in the Dominguez Channel.[79] Sarpy saw the substance from the Victoria Street Bridge and observed water with foam coming out of BI 1206.[80] He smelled a "very strong" H2S odor, noting it was much more intense and longer-lasting than typical seasonal odors.[81]

Jewel Carr traced the "milky substance" upstream by opening manholes, eventually leading to the Prologis property as the source.[82] He stated that smelling H2S in storm drains was "not common" (98% of the time, there's no odor).[83]

Maria Baker, DPW, Environmental Programs Division, Field Operations Section,

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[75] (Ex. 783-02)
[76] (RT 4671:8-4672:2.) (RT 668:28-669:28; RT 1009:17-24; RT 3079:6-7; RT4324:19-4325:5, 4326:1-20; RT 4674:10-25, 4679:21-26.)
[77] (RT4324:19-4325:5, 4326:1-20; RT 4674:10-25, 4679:21-26.) (RT 4324:19-4325:5, 4326:1-20; RT 4674:10-25, 4679:21-26.) (1693:13-25)
[78] (1690:21-1691:15.)
[79] (RT 637:22-639:26)
[80] (RT 642:27-643:17.)
[81] (668:28-670:24; 676:4-678:3.)
[82] The H2S levels emanating from the manholes were too high for the crew to enter safely, and they had to continue travelling north, popping manholes until the levels were safe enough to allow entry, which led them to the Prologis property. (731:9-738:1; 753:12-755:3; 755:26-756:12.)
[83] (RT 793:25-794:21.)

Supervising Inspector, testified that she inspects industrial waste in stormwater and underground storage tank programs for illicit discharges. Ms. Baker found that a prior industrial waste permit for a treatment facility (clarifier/stormceptor) at the property was nontransferable, and the Landlord Defendants had not obtained a new license.[84] On October 20, 2021, she issued NOVs to the Landlord Defendants for failing to obtain a permit and pay fees, and to all defendants to cease the illicit discharge and plug on-site drains.[85] On October 21, she inspected the property, documenting sanitizer bottles in drains and the interceptor, where 7.1 ppm of H2S was detected.[86]

Mark Lombos, DPW, led a team of 20 to 30 scientists and engineers. He stated the odor was "unprecedented." [87] DPW formed a technical committee and conducted physical investigations of the channel and storm drains.[88] DPW notified the Water Board of a water quality emergency.[89] Lombos' "close out" report (December 23, 2021) summarized that H2S gas was generated in the DCE by an influx of organic material from a sizable illicit discharge identified as sanitizer from the Prologis property.[90] DPW employed odor neutralizers and nanobubbles (oxygen injection) as solutions.

Prologis pointed to polluted sediments already in the DCE as the cause of the odor, claiming that LA County improperly withheld expert reports from Geosyntec and Moleaer that corroborated the sediments theory.[91] Prologis theorizes that a September 2021 Carson earthquake liquefied the sediments, bringing the anoxic layers of the sediments where H2S is generated close to the surface. These sediments were subsequently disturbed by strong tidal flows and a first flush rain event in early October 2021. Moleaer's November 2021 report (Ex. 3090) found that Channel sediments released contaminants into the water column when disturbed. Prologis alleges that LA County was biased in its reporting, with Ms. Melissa Turcotte of LA County directing Moleaer to

[84] (RT 824:5-830-4; 825:16-20.) (849:13-16; 850:13-851:2.)
[85] (Ex. 71, 75, 89, 90; 1246:17-1247:1; 1248:1-23.)
[86] (Ex. 77-026; 1235:4-20.)
[87] (RT 1845:16-1846:10; 1847:2-16; 1888:10-20.) (1884:3-23.)
[88] (1884:24-1885:7; 1885:8-16; 1885:17-26.)
[89] (Ex. 3023 at p. 74, VIII.H.1.10; 1856:23-1857:20; 1858:24-1860:7)
[90] (RT1903:9-24; 1906:8-25; see 783-001.) (Ex. 783-005.)
[91] Although Dr. Jassby previously opined about the effects of the earthquake, he withdrew his opinions after reading Dr. Teague's report. (RT 2524:7-2525:17.) (RT-4061:20-23.) (RT 4106:3-20.)

delete references to sediments as the source of H2S and later directing the deletion of all draft reports.[92] Internal documents suggest LA County limited sediment sampling due to litigation risks.[93]

b. **South Coast Air Quality Management District (SCAQMD) Investigation.**

Terrance Mann, SCAQMD Deputy Executive Officer, testified that SCAQMD received 4,333 odor complaints from October 3 to November 19, 2021. [94]SCAQMD's investigation involved 35-40 staff and was a "massive agency response."[95] The investigation concluded in December 2021 with NOVs issued to Virgin Scent, Day to Day, the County of Los Angeles, Liberty, and Prologis.[96] SCAQMD determined that alcohol from the property, carried by fire suppression water, caused the odor when it reached the DCE.[97] SCAQMD specifically ruled out the Carson earthquake as a factor.[98] Mr. Mann testified that NOVs were "allegations," not "findings."[99]

c. **Water Board Investigation.**

Russ Colby, Water Board Environmental Program Manager, supervised the Water Board's investigation.[100] The Water Board searched its CIWQS database but found no relevant discharges from National Pollutant Discharge Elimination System ("NPDES") permitted facilities.[101] The Water Board issued investigative orders (Water Code § 13383) to MS4 permittees (LA County, LA County Flood Control District, City of Carson) to determine the cause and monitor the Channel.[102] DPW data collected in response found alcohols in the Channel.

The Water Board issued an investigative order (Water Code § 13267) to Day to Day and

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[92] (Dhillon Decl., Ex. A [Ex. 4164].) LA County pointed to the warehouse fire. (RT 1935:12-17.)
[93] (Exs 4154 & 3251.)
[94] (Ex. 104-004; 3043:14-3048:49; 3051:3-3053:3[first complaint October 3, 2021; see also Ex. 104-003 to -004 [Notice of Violation Report]
[95] (3026:20-3032:1; 3033:2-23; 3035:10-21 [Cal Compact landfill investigated with measuring equipment]; 3036:23-3038:1-3.)
[96] (Ex. 104-001), Day to Day (Ex. 104-682), the County of Los Angeles (Ex. 104-1363), Liberty (Ex. 104-2044), and Prologis (Ex. 104-2725).
[97] (RT 3103:11-16; 3106:19-3107:18) (3108:7-25; 3124:10-27.)
[98] (RT 3120:8-25.)
[99] He admitted the NOVs issued were not "findings" (RT 3087:2-7), but mere "allegations" as to "potential violations" (RT 3087:9-12).
[100] (RT 2890:11-18; 2903:25-2904:2; 2904:28-2905:2)
[101] (RT 2902:27-10; 2904:11-14; 2905:8-2906:8.)
[102] (Ex. 776:002-012; 2906:28-2907:12; 2908:19-24; 2911:15-24 [DPW collected data that found alcohols in the channel]; Ex. 779; 2913:23-28; see Addendum B.)

Liberty, requiring information on materials stored and discharges.[103] A Cleanup and Abatement Order (CAO) (Water Code § 13304) was issued to Day to Day and Liberty to clean up pollutants and prevent further site discharge. [104]The Landlord Defendants' completion report (Exhibit 790) showed the presence of ethanol and acetone in the on-site soil and water, which Mr. Colby testified bolstered the investigation's finding that the facility caused the DCE discharge and odor event.[105]

F. Causation of Odor Event

1. Water Board's View

Dr. Alex Spokoyny, Professor of Chemistry at UCLA and Chairperson of the Department of Chemistry/Biochemistry, testified that the odor event was caused by anaerobic bacteria in the Dominguez Channel converting sulfate from seawater into H2S when consuming abundant alcohol.[106] A low-oxygen environment was created as aerobic bacteria consumed oxygen while breaking down the alcohol.[107] Alcohol (ethanol, IPA) is "infinitely soluble" and readily consumed by bacteria.[108] Ethanol is converted to acetaldehyde (a potential human carcinogen), and IPA is converted to acetone.[109]

Dr. David Jassby, professor of Civil and Environmental Engineering at UCLA, concurred that alcohol discharged from the property caused the odor event.[110] Bacteria initially used oxygen to break down alcohol, depleting oxygen and allowing sulfate-reducing bacteria to produce H2S.[111] During the trial, Dr. Jassby relied upon two demonstrative exhibits to visually depict his testimony as outlined in Exhibits 864 and 883, respectively. His opinion is supported by sampling data showing IPA and acetone in the DCE, as well as IPA and ethanol in BI 1206.[112] He calculated that

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[103] (Ex. 780)(2921:18-22.)
[104] (Ex . 781.) Exhibit 790. (RT 2925:21-26; 2933:25-2934:6; 2937:17-2938: 12.)
[105] (RT 3138:16-19)(3139:24.)
[106] (RT 1047:20-1055:11.)
[107] (RT 1059:27-1060:26.)
[108] (RT 1059:27-1060:26.)
[109] (RT 1059:1-26) (1072:5.) (2452:1-2452:7; 2452:9-2453:25.)
[110](RT 2452:1-2452:7; 2452:9-2453:25.)
[111] (RT 2453:27-2454:23; 2482:6-21; see also Ex. 783-020.)
[112] (Add. B; Tables 3, 4, 7) Trial transcripts generally at 2458:11-2452:9-23; 2457:6-2467:20; 2476:23-2478:2-18.• Sampling data showing the presence of acetone in the DCE. (Add. B; Tables 15 to 21)
• Sampling data showing the presence of IPA in BI 1206. (Add. B, see Tables 3, 5)
• Sampling data showing the presence of ethanol in BI 1206.7 (Add. B, Table 1)

approximately 3,000 gallons of IPA and 50,000 gallons of ethanol were discharged into the DCE.[113] He acknowledged that ethanol was not detected in the DCE, but explained that it is more bioavailable and would have been consumed first.[114] Physical evidence ,i.e., sampling data, showed that alcohol and acetone were still present in the DCE as late as October 18, 2021

2. Prologis' and Tenant Defendants' View (Sediment as Primary Cause)

Prologis and the Tenant Defendants contend that the polluted sediments in the DCE caused the odor event and not any alleged pollutants from the Avalon Property. The Dominguez Channel contains polluted water and sediments from decades of industrial, municipal, and commercial sources, including oil refineries and landfills.[115] The Channel is listed as an "impaired water body." Its sediments have very high concentrations of organic matter and chemicals.[116]

The Torrance Lateral, a tributary to the DCE, contains contaminated sediments from former Superfund sites and landfills that generate hydrogen sulfide (H2S).[117] The earthen-lined portion of the Torrance Lateral was the "hot spot" [118]with the highest H2S concentrations during the odor event.[119] The Channel is a known source of H2S odors and has been responsible for past odor events.[120]

Prologis and the Tenant Defendants contend that the 2021 Carson Earthquake played a significant role in the event. On September 17, 2021, a 4.3 magnitude earthquake with an epicenter less than a kilometer from the DCE caused the "strongest ground shaking that the Dominguez Channel experienced [in] decades."[121] The ground shaking liquefied the sediments, exposing

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• Large volumes of alcohol waste onsite post-fire (Ex, 790-063 to 064), with ethanol and acetone detections in the soil and concrete. (Ex. 790-023 to 024.) Sanitizer bottles observed in BI 1206. (Ex. 883-001; Ex. 783-018.)

[113] (RT 2485:3-2487:23) (2485:3-2487:23)

[114] (RT 2464:15-18.) (2464:20-2465:4, 2538:20-2539:15.) . In other words, alcohol and acetone persisted in the channel for a significant amount of time, notwithstanding the possibility of tidal flushing. (2484:4-21.)

[115] (RT 3637:17-22.) (RT 3636:15-3637:10.)

[116] (RT 3646:7-3648:3.)

[117] (RT 4321:7-16, 4327:27-4329:23, 4330:22-4332:27.)

[118] (RT 4323:16-4324:7, 4335:1-15.)

[119] South Coast Air Quality Management District (AQMD) and LACFD demonstrated that the Torrance Lateral, near where it enters the Dominguez Channel, was a persistent H2S "hot spot" during the odor event. (RT 4323:16-4324:18, 4318:10-4321:27.)

[120] (RT 1000:7-15.) (RT 993:2-6; RT 3641:10-20, 3642:26-3643:2, 3646:15-28; RT 4067:16-26; 4069:1-4070:1; Exs. 283, 3187-1, 3187-2.) (RT3719:1-11; Ex. 3046) (Ex. 3000 at 13.)A serious odor event was reported in the 1965 Dominguez Channel Study prepared by LA County.)

[121] (RT 3180:14-24.) (RT 3183:28-3184:7.)

deeper, anoxic layers where H2S is produced and stored.[122]

Dr. Andrew Nicholson, a Geochemist, testified as an expert in environmental fate and transport of contaminants in water. He offered two opinions. First, Dr. Nicholson concluded that H2S released during the odor event originated from sediments, where it forms from organic matter and sulfates.[123] He evaluated the results of sediment sampling on October 15, 2021, and concluded they showed "abundant hydrogen sulfide" in the Channel that "was generated relatively recently."[124] Dr. Nicholson testified that this data showed "high levels of acid volatile sulfide measured in sediment" and "very high organic carbon in the sediment," from which he concluded that the sediments in the Dominguez Channel were generating hydrogen sulfide during the odor event.[125] Secondly, Dr. Nicholson opined that any alcohol or other miscible compounds discharged into the channel would have moved out of the channel in about two days. [126]

Dr. Nicholson explained that liquefaction, strong tidal flows, and increased rainfall flow combined to bring deeper sediment layers with higher concentrations of H2S to the surface, releasing H2S gases.[127] Dr. Nicholson also testified that his opinions on the source of the H2S generated during the odor event were confirmed by a study of Channel sediment conducted for LA County shortly after the odor event by Geosyntec, which found that a sample of sediment and water generated 7.5 times more H2S than Channel water that was "spiked" with ethanol and ammonium sulfate. (RT 4075:5-10, 4076:1-23, 4145:25-4146:22, 4147:17-4149:5; Ex. 744.) The lowest oxygen levels were observed at the sediment-water interface, indicating that sediments were the primary source of H2S.[128]

Dr. Melinda Hahn, an environmental engineer specializing in environmental forensic analysis, testified that contaminated sediments in the Channel and nearby landfills contributed to

[122] (RT 996:2-10;1005:3-14.) This testimony is undisputed.
[123] (RT 4061:9-23.)
[124] (RT 4067:21-26, 4068:4-7; Ex. 283.)
[125] (RT 4069:2-4070:7.)
[126] (RT 4061:16-27.)
[127] (RT 4075:5-10, 4076:1-23, 4145:25-4146:22, 4147:17-4149:5; Ex. 744.) (RT 4077:8-4081:9.)
[128] (RT 4083:27-4084:28.)

the odor.[129] She stated that the warehouse fire did not cause the odor event. [130]There is no scientific explanation for how alcohol can travel miles down the channel and then flow up the Torrance Lateral at high concentrations, remaining there and generating odors; alcohols would dilute, disperse, and degrade over time.[131] A review of prior large alcohol spills into water bodies found no previous reports of associated H2S odors.[132]

G. Disputed Evidence on Odor Causation

Dr. Spokoyny admitted he is not an expert in environmental fate and transport or forensics, and could not find evidence of ethanol spills causing H2S release.[133] He did not evaluate how long organic materials would remain in the DCE and was unaware of whether the Channel was tidally influenced or what an estuary is.[134] He opined that DCE sediments were "unlikely to create hydrogen sulfide" without reviewing data and admitted this opinion was "conjecture."[135] He stated ethanol and acetaldehyde were never detected in the Channel despite repeated sampling.

Dr. Jassby admitted he did not consider H2S concentrations when forming his causation opinion.[136] He was criticized for speculating that the warehouse was the source of the IPA detected weeks after the fire.[137] Prologis argues that he did not explain how alcohol would concentrate for weeks rather than flushing out. Dr. Hahn criticized Dr. Jassby's analysis for failing to consider other sources of IPA or acetone in proximity to the Avalon Property.[138] She cited the Gardena Dump site, located upgradient of the Subject Property, as an example of a potential site discovered through a simple database search of remediation sites in the area.

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[129] (RT 4538:27-4541:4.)
[130] (RT 4541:9-4542:26, 4562:7-22.)
[131] (RT 4553:5-4555:26.) (RT 4545:1-4546:2, 4558:28-4561:13.)
[132] (RT 4546:3-4547.)
[133] (RT 1054:24-1055:2, 1080:6-8, 1080:22-24.) (RT 1113:2-19.)
[134] (RT 1078:1-8.) (RT 1119:13-15.)
[135] (RT 1086:15-1088:28.) (RT 1077:9-18.)
(RT 1106-1107:9.)
[136] Dr. Jassby testified that he developed an opinion on the causation of the odor event, but admitted that he did not consider H2S concentrations. (RT 2548:18-21.)
[137] Dr. Jassby also pointed to isopropyl alcohol detected in the Channel weeks after the warehouse fire as somehow supporting his opinion, but was impeached for speculating that the warehouse was the source of this isopropyl alcohol. (RT 2497:12-2502:27, 2502:18-27.) The Channel sediments tested positive for acetone during the odor event, which Prologis theorizes was generated in the sediment. (RT 4107:9-4109:2.)
[138] (RT 4548:15-4550:20.)

Defendants called Craig Jones, Ph.D., a trained environmental and mechanical engineer in fluid dynamics with more than 20 years of experience, to confirm Dr. Nicholson's opinion regarding the residence time for water in the DCE.[139] Using salinity data from October 2021, marine estuary behavior, and the design of the Channel[140], Dr. Jones calculated the "residence time" of discharges that enter the Channel at Avalon Boulevard to be approximately "two days."[141] Dr. Jones explained the system, a tidally influenced marine estuary, "flushes" itself out over the course of a few "tidal cycles"–water flows into the Channel from the ocean during high tide, leaves the Channel during low tide, and is replenished with new ocean water during the next high tide.[142]

Dr. Nicholson also evaluated the salinity data for the Dominguez Channel. He concluded that any alcohol released would mix with water and exit the Channel within approximately two days. Therefore, alcohol would not have stayed in the Channel long enough to generate the H2S detected during the weeks-long odor event.[143] Dr. Nicholson concluded that alcohol released into the Channel with fire suppression water did not cause the generation of H2S detected in the odor event.[144] Likewise, Dr. Hahn testified that, applying accepted methodologies in environmental forensics analysis, the warehouse fire did not cause the odor event. [145]

Tenant Defendants assert that no acetaldehyde or ethanol was found in the Dominguez Channel.[146] They contend that Dr. Spokoyny assumed ethanol entered the Dominguez Channel solely based on its presence in the drains. They further argue that no witness provided a credible explanation for the presence of IPA in DCE but not ethanol, despite ethanol being predominant on site. Defendants contend that Dr. Jassby's retention time opinion (7-8 days) still indicates that the chemicals would have been out of the DCE before they were detected on October 18, 2025.

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[139] (RT 968:27-969:1).
[140] (RT 979:1-982:4, 1036:13-19),
[141] (RT 985:13-986:14; see also RT 984:2-985:3.)
[142] (RT 983:8-12.)
[143] .(RT 4111:28-4113:12, 4150:22-24.) (RT 4113:16-4114:3.)
[144] (RT 4061:24-27.)
[145] (RT 4541:9-4542:26, 4562:7-22.)
[146] Tenant Defendants argue there is no evidence that acetaldehyde or ethanol reached the Dominguez Channel. (June 2, 2025, Trial Tr.,p. 1281:7-21.) In sum, any "discharge" that may have left the site *was associated with emergency fire suppression activities and there is no competent evidence* any of it reached the Dominguez Channel.

III. ANALYSIS

A. Discharge of Prohibited Pollutants Reached the Channel

The Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (the "CWA") is the statutory centerpiece of Congress's intent "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (*County of Maui, Hawaii v. Hawaii Wildlife Fund,* 590 U.S. 165, 169 (2020).) The CWA prohibits the discharge of any pollutant from a point source into navigable waters, unless the discharger possesses a valid permit authorizing the release of the particular pollutant discharged in the specific amount, or concentration, contained in the discharge. (33 USCA §§ 1311(a), 1342.) It is a strict liability statute, meaning intent or negligence is not required for a violation to occur. (*City of Brentwood v. Central Valley Reg. Wat. Quality Control Bd*. (2004) 123 Cal.App.4th 714, 723, citing *U.S. v. Allegheny Ludlum Cor*p. (3rd Cir . 2004) 366 F.3d 164, 168.)

Water Code Section 13376 mirrors the CWA, prohibiting the discharge of pollutants to navigable waters of the U.S. within state jurisdiction unless authorized by a permit or waste discharge requirements. (*People v. Ramsey (*2000) 79 Cal. App.4th 621, 629.) The Act strikes a balance between federal oversight and state authority. While the federal government regulates pollution from point sources, the states retain their longstanding regulatory authority over land use and groundwater. (*County of Maui, Hawaii, supra,* 590 U.S. 174-178.) Congress also emphasized the importance of collaboration between federal and state agencies to prevent, reduce, and eliminate pollution. (*Id.)*

To establish a violation of CWA section 301, the Water Board must prove, by a preponderance of the evidence, that a person: (1) discharged; (2) a pollutant; (3) to navigable waters; (4) from a point source; (5) without a discharge permit. (*Comm. To Save Mokelumne River v. E. Bay Mun. Util. Dist.* (9th Cir. 1993) 13 F.3d 305, 309.)

Under the CWA, a "pollutant" is defined by Section 502(6). (See 33 U.S.C. § 1362(6).) The terms "pollutant," "discharge," "point source," and "navigable waters" have all been broadly defined under the CWA and interpretive case law. (*NRDC v. County of Los Angeles* 725 F.3d

1194, 1208-1210 (9th Cir. 2011).) The term "pollutant" encompasses virtually any substance or material which is not naturally found in the body of water where the discharge took place subject to minimal exceptions for discharges of sewage from vessels (floating craft) and materials related to oil and gas production facilities. (33 U.S.C. § 1362(6)). A "discharge" constitutes any "addition" of a pollutant to a waterway, 33 U.S.C.A. § 1362 (12), and therefore encompasses accidental leaching of pollutants as well as intentional releases. It is undisputed that "navigable waters" are understood to include the Dominguez Channel Estuary, which is subject to tidal ebbs and flows.

Specifically, a "pollutant" includes "chemical waste." In the context of the current case, a "pollutant" includes "chemical waste" such as ethanol, isopropyl alcohol (IPA), acetaldehyde, acetone, benzene, benzoic acid, naphthalene, and methanol. Plaintiff notes that it only needs to prove that one of these pollutants was discharged into a U.S. water body. Furthermore, Water Code section 13373 specifies that "pollutant," as used in Water Code section 13376, carry the same meaning as "pollutant" under the CWA.

At trial, substantial evidence proved the discharge of pollutants under the CWA and the Water Code from September 30 to October 2. Plaintiff contends that observations at the Avalon Property and the drainage systems corroborate that a discharge of contaminants reached the DCE. Witness testimony traced the discharge pathway to the DCE. Finally, laboratory data pinpointed the nature and location of the pollutants.

During the fire on September 30, 2021, significant pooling of water with a distinct, fragrant odor was observed on the property. Carlos Van Rensburg of LACFD identified "ethanol with sweetener" in the runoff using infrared technology, noting "sanitizers being released" and "fruit-like odors." Mr. Van Rensburg used a Gemini instrument, which detects unknown substances, and it identified "ethanol with sweetener" as being present in the runoff. He also reviewed product labels, identifying ethyl alcohol and fruit extracts. (See Exhibit 270-002-004.) Van Rensburg also saw damaged sanitizer bottles and wipes releasing their contents into the water. LACFD's Michael Whitehead later observed water mixed with sanitizer flowing into the

storm drain on Gardena Boulevard on October 1, 2021. Exhibit 6 is a collective reference to photographs and video footage Michael Whitehead took of the property. These exhibits document the conditions at the Avalon Property before and after the fire, depicting damaged sanitizer bottles, leaning pallets with smashed bottles spilling contents, and "liquid waste" entering storm drains.

Greg Sarpy provided testimony tracing the pathway of the alleged discharge. He observed a white, frothy, heavy flow in a manhole near the property and traced the same flow exiting BI 1206 into the DCE at 190th Street in Carson. Jewel Carr and his crew traced the milky substance, which smelled strongly of H2S, from the 190th Street outfall back to the Prologis property, confirming that all on-site drains gather at a clarifier (interceptor) that connects to BI 1206. Prologis's contractor also reported a sea of product, all mixed and partially burnt, and hazardous materials clean-up and disposal being needed.

Post-fire water samples from property drains, BI 1206 (MS4), and the DCE detected pollutants. The parties stipulated to the admission of such water samples, and Plaintiff attached a summary of the results as Addenda B and C to its brief. (Plaintiff's Closing Brief p. 15:6-11.) In Exhibit 783, the Inspector's Report from the LADPW to the Water Board, dated December 23, 2021, LADPW summarizes the water quality emergency and its findings.

Exhibit 783 identifies sanitizer from the Prologis property as the illicit discharge that caused the generation of hydrogen sulfide gas in the Dominguez Channel Estuary. Exhibit 783 details the location of ethanol, isopropyl alcohol (IPA), acetaldehyde, benzoic acid, and benzyl alcohol found in samples collected from the property's storm drains on October 21, 2021. (Ex. 783-010 to 011.) The same pollutants were detected in samples collected from BI 1206 (part of the MS4) at multiple locations along Avalon Boulevard and at the outfall of BI 1206 at the Dominguez Channel on October 14, 2021. (Ex. 783-019 to 020.) However, the relevant table shows that neither ethanol nor acetaldehyde was detected at the outlet of BI 1206, where it connects to the DCE. The exhibit detected IPA, methanol, total organic carbon, sulfide, benzoic acid, and benzyl alcohol at the connection. Notably, while ethanol was found in BI 1206, it was not detected in the DCE itself, which Dr. Jassby attributed to ethanol being more bioavailable and

consumed first.

Plaintiff referenced the H2S odor as evidence of the scale of the event. The thousands of complaints and the declared local emergency, according to the Water Board, are directly linked to the large volume of alcohol discharged, which caused chemical and biological reactions in the DCE, leading to the release of H2S gas. Dr. Jassby estimated approximately 3,000 gallons of IPA and 50,000 gallons of ethanol were discharged into the DCE. Bryan Elder estimated 5,307,040 gallons of firefighting water reached the DCE.

However, Defendants jointly contend that the Water Board failed to prove a discharge of pollutants from the Avalon property reached the DCE. Prologis questions the objectivity and completeness of Exhibit 783 because it omitted the details about sediment contamination. Defendants offered Dr. Andrew Nicholson and Craig Jones to prove that the H2S generated in the DCE during the October 2021 odor event originated from the sediments in the channel, not the Avalon Property. Additionally, Carig Jones challenges the calculations regarding water flow during the fire and offers his own opinion on the cause of the odor event.

1. Testimony of Dr. Nicholson

Dr. Nicholson testified that the sediments in the channel were generating H2S. He relied on laboratory results from sediment samples collected in the channel on October 15, 2021 (Exhibit 283). The report reveals high levels of organic carbon and acid-volatile sulfides. After forming his initial opinions, Dr. Nicholson reviewed reports from an LA County commissioned study conducted by AECOM and Geosyntec shortly after the odor event. He noted that the study confirmed the presence of sediment and water is required for H2S generation in the Channel. AECOM, a prominent environmental engineering consulting firm, identified that bottom channel sediments were responsible for generating H2S. Geosyntec's work plan aimed to assess methods for mitigating H2S generation from these sediments.

Exhibit 744 consists of two studies collectively (001-028) (the Geosyntec study) and (029-063) (the SiREM study). The primary purpose of the study prepared by Geosyntec Consultants (in conjunction with SiREM Laboratory) was to outline an Implementation Plan for

the Dominguez Channel Estuary Hydrogen Sulfide H2S Mitigation Action in Los Angeles, California. The work had the following key objectives such as evaluating mitigation efficacy, addressing the H2S origin, using sediment cores collected from the impacted area to assess solutions for the odor problem in the DCE. The Geosyntec/SiREM study reported on several bench-scale microcosms to test H2S production. This report was produced shortly after the October 2021 odor event.

The Geosyntec study concluded that the sediment and overlying water in the DCE **do not** produce sufficient H2S to cause an odor nuisance condition, even under strongly anaerobic conditions. (Ex. 744-009,) The study also found that the presence of stimulating food, such as ethanol, generated strong H2S in both the water column and the surface sediment. (*Id*.) Finally, the study found that the H2S production resulting from the input of ethanol can release enough H2S into the air to produce an odor nuisance. (Ex. 744-010.)

On cross-examination, Dr. Nicholson deemed Exhibit 744, specifically the SiREM study, sufficiently reliable as to the underlying laboratory data that he relied upon it for his opinion in the case. (June 20, 2025, RT 4129:112-15.) However, Dr. Nicholson disagreed with the Geosyntec study extrapolation opinion regarding the input of ethanol releasing enough H2S into the air to produce an odor nuisance based on the addition of ammonium sulfate in the laboratory tests, which Nicolson opined failed to represent the natural condition of the Channel. (June 20, 2025, RT 4144:16 to 4150:12.) But the SiREM study specifically concluded that "[a] key component for atypically high H2S production is a readily available source of organic carbon," that "[a] release of ethanol resulting from a fire upstream of the Dominguez Channel is thought to have provided the necessary organic carbon to stimulate excessive H2S production," and that "[w]ithout the input of additional organic carbon, a low level of H2S production may occur as is typical of wetlands and estuaries but was not shown to produce nuisance level odors." (Trial Ex. 744-037.) Neither Dr. Nicholson nor his counsel addressed this portion of the SiREM study, yet he relied upon the study.

Dr. Nicholson opined that the September 17 Carson Earthquake and the first flush of rain

on October 4 disturbed the sediments. High tidal ranges, both very high and very low, would expose deeper layers of the sediments. He referenced an Anchor QEA report (Exhibit 354) that showed changes in channel bathymetry and noted that sediments are abundant on the channel banks, particularly near the Torrance Lateral.

2. Testimony of Craig Jones

Craig Jones's testimony primarily focused on his critique of Brian Bennett's calculations regarding water flow rates during a fire event and his own expert opinions on the causes of the October 2021 odor event on the Dominguez Channel. Jones was asked to provide an expert opinion on Brian Bennett's declaration and concluded that Bennett's calculations of total water flow were unreliable.

Jones explained the concept of flow rate from an engineering perspective. He described flow rate as a measurement of the amount of water passing through a specific area over a designated time frame, commonly expressed in gallons per minute. (RT 940:9-24.) He outlined the variables involved in the engineering formula, which includes the volume of fluid moving to a specific area at a particular velocity. (RT 940.) Additionally, he noted that various coefficients are used in engineering to account for different processes in operation. Jones also acknowledged that calculating the adjustment factor requires "knowledge of the type of equipment that is being used." (RT 944:2-7.)

Jones stated that assuming an infinite water supply created Bennett's fundamental error, which renders the calculations flawed. (RT 947-948.) He criticized Bennett's methodology of using a single adjustment factor for all coefficients to determine the effective flow rate, arguing that it is an error from an engineering perspective, as each coefficient has specific variations and requires specialized knowledge for evaluation. He specifically mentioned that Bennett's declaration included adjustment factors of 33-37% for operational circumstances and 25-50% for pumping inefficiencies and questioned if both were applied in the ultimate calculation. During cross-examination, Jones clarified that he had reviewed Bennett's work but did not find sufficient specific information to establish a basis for Bennett's quantitative values. (RT 956-958.) He

attributed this lack of specific information to his own lack of firefighting experience. (*Id*.)

Regarding the first flush rainfall on October 4, Jones opined that it had an amplified effect, rapidly increasing pollutants in the water column by flushing everything that had accumulated. He noted a strong correlation between the earthquake's epicenter, strong shaking, and the number of odor complaints. (RT 1004-1017.) He understood that the highest H2S concentrations were detected at the Torrance Lateral near Avalon. Jones explained that the high tide following a first flush event, combined with strong winds, helped to clear out the system by washing out the remaining sediment containing H2S. (*Id*.) Jones reviewed a Moleaer memorandum (Exhibit 3090), which concluded that most of the contamination (H2S) resides in the historical sediment deposits in the Channel. Jones testified that the Moleaer finding was consistent with his opinions. (RT 1018:21-1020:2.)

3. Testimony of Dr. Jassby

Dr. David Jassby's testimony focused on his expertise in environmental engineering and the fate and transport of pollutants, specifically in relation to the fire and odor event that occurred. (RT 333-363.) He uses statistical regression analysis to model concentrations and predict initial volumes (RT 333:23-26, 345:22-28.) Dr. Jassby is not a geotechnical engineer and therefore has no opinions on the earthquake effects on the Dominguez Channel (RT 427:16-21). He opined on the cause of the odor event, based on the physical evidence showing IPA and acetone, the absence of ethanol in the DCE, the volume of alcohol released, and the environmental factors that supported his estimate of water residence time on the Channel.

Dr. Jassby's primary opinion is that alcohol (ethanol and isopropyl alcohol) released from the Avalon Property led to the hydrogen sulfide (H2S) odor event in the Dominguez Channel. (RT 364:28-366:20, 394:1-2.) Once alcohol reached the Channel, it elicited bacterial growth that consumed oxygen, and after oxygen depletion, H2S production began. (RT 366:26-367:1, 395:20-23.) He relied on lab results showing the presence of isopropyl alcohol (IPA) and acetone in the Dominguez Channel and the storm drain (BI system) leading from the Avalon property. (RT 367:7-14, 368:23-370:16, 394:4-6; Ex. 864.) Dr. Jassby stated that the presence of acetone is

significant because it is a breakdown product of IPA, confirming that IPA entered the channel. (RT 381:24-381:23.) He notes that IPA and acetone concentrations in the channel showed a correlation with declining odor complaints. (RT 406:26-407:2.)

Even though ethanol was not detected in the DCE itself, Dr. Jassby did not find the absence of ethanol surprising. He explained that ethanol degrades quickly in the presence of oxygen during a fire and would have been "long gone." (RT 383:4-5.) He nonetheless back-calculated ethanol based on IPA volumetric calculations using a linear regression model, applying a factor based on estimated presence at the site. (RT 475:11-20.)

Dr. Jassby also addressed the environmental factors in his testimony. He stated that dissolved oxygen levels were low in the Dominguez Channel during the odor event [469:20-23]. He is aware of "tidal flushing" but did not model or include it in his calculations, only concluding that alcohol reached and persisted in the Channel. (RT 416:6-21, 419:19-21.) He estimated the average retention time to be 7-8 days, based on calculations from other experts. (RT 472:27-473:5.)

On cross-examination, Defendants questioned Dr. Jassby 's methodology as novel and noted that he overlooked other sources of contamination. Defense counsel argued that Dr. Jassby's methods for calculating the volume of contaminant released were novel, and he had never performed such a calculation in a real-world scientific context before. Defendants emphasized that applying a linear equation to a dynamic, tidally influenced water body (which is nonlinear) was an inappropriate and unsupported technique. (RT 351:3-7, 352:13-16, 357:6-10, 471:27-472:22.) He also failed to evaluate other potential sources of IPA or acetone in the watershed.

4. The Court's Findings

The Court finds, by a preponderance of the evidence, that pollutants were discharged into the Dominguez Channel Estuary (DCE) from the Avalon Property in 2021. Testimony confirmed that during the fire, which occurred from September 30 to October 2, 2021, there was significant pooling of water with a distinct, sweet odor on the Avalon property. Multiple witnesses from the Los Angeles County Fire Department (LACFD) identified the substance in the runoff as "ethanol

with sweetener," and this information was further validated using infrared technology.

Witnesses Sarpy and Carr confirmed the pathway of pollutants leading to the DCE. Additionally, Prologis's contractor reported a significant amount of product that was mixed and partially burned, which required cleanup. Post-fire water samples collected from property drains and from a part of the MS4 system leading to the DCE revealed the presence of pollutants. Furthermore, the inspector's report from LA DPW (Exhibit 783) identified sanitizer from the Prologis property as the "illicit discharge" responsible for generating hydrogen sulfide gas in the DCE.

Exhibit 783 detailed the presence of multiple pollutants found in samples collected from the property's storm drains on October 21, 2021. The same pollutants were also detected in samples from BI 1206, which were collected from various locations along Avalon Boulevard and at the outfall of BI 1206 connected to the DCE on October 14, 2021.

Dr. David Jassby's testimony emphasized the importance of finding isopropyl alcohol (IPA) and acetone in the Dominguez Channel and the storm drain system. Acetone is a breakdown product of IPA, which confirms that IPA has entered the channel. Although ethanol was detected in BI 1206, it was not found directly in the Dominguez Channel Estuary (DCE). Dr. Jassby reasonably explained that this absence is due to ethanol being more bioavailable and consumed first, as it degrades rapidly in the presence of oxygen.

The Geosyntec/SiREM study (Exhibit 744), which Dr. Nicholson found to be sufficiently reliable and based his opinion on, concluded that while sediment and overlying water in the DCE alone do not produce enough hydrogen sulfide (H2S) to create an odor nuisance, the presence of ethanol as a nutrient would lead to the production of significant levels of H2S that could cause nuisance odors. Exhibit 744 effectively counters the argument that sediments alone were responsible for the odor event.

While Craig Jones questioned the calculations related to water flow during the fire and expressed his views on the impact of the September 17 Carson Earthquake, his arguments do not undermine the substantial evidence showing the direct discharge of pollutants from the Avalon

property. Additionally, these arguments do not dismiss the subsequent role in triggering the H2S order event, as established by eyewitness accounts, trace studies, laboratory data, and Dr. Jassby's expert testimony. The Geosyntec/SiREM study further supports each piece of evidence.

Based on the comprehensive evidence presented, including observations of contaminants at the Avalon Property, identified pathways leading to the Dominguez Channel Estuary (DCE), laboratory analyses confirming the presence of pollutants, and expert testimony establishing a causal link between the discharge of alcohol and the H2S odor event, the Court finds that pollutants discharged from the Avalon Property reached the Dominguez Channel Estuary in 2021. The evidence overwhelmingly supports the conclusion that the discharge contained chemical wastes, such as ethanol and isopropyl alcohol (IPA), which acted as "stimulating food" that contributed to the H2S odor nuisance.

B. The Discharge Originated from a Point Source

Under the CWA, a "point source" is defined in Section 502(14). (See 33 U.S.C. § 1362(14).) A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." Plaintiff contends courts typically interpret the term "point source" broadly to achieve the CWA's goal of restoring and maintaining the integrity of the Nation's waters. (*S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians* (2004) 541 U.S. 95; *Greater Yellowstone Coal. v. Lewis* (9th Cir. 2010) 628 F.3d 1143; *U.S. v. Earth Sciences, Inc*. (10th Cir. 1979) 599 F.2d 368 and *U.S. v. West Indies Transp., Inc.* (3d Cir. 1997) 127 F.3d 299.)

In discussing the interpretation of the term "point source," the U.S. Supreme Court noted that a point source does not necessarily need to be the original source of a pollutant; it merely needs to convey the pollutant to navigable waters. The concept was designed to embrace the "broadest possible definition of any identifiable conveyance from which pollutants might enter the waters of the United States." (*S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians* (2004) 541 U.S. 95.) The Court rejected the defendant's argument that an NPDES permit is only required

when pollutants originate from the point source. (*Ibid*. at 96.) The Court offered pipes, ditches, tunnels, and conduits as examples of objects that transport, but do not generate, pollutants and serve as point sources under the Act. (*Id*.) Plaintiff identifies the containers of hand sanitizer and alcohol, as well as the on-site drainage system, as point sources from which pollutants were discharged that triggered liability under the Act.

1. The On-site Drainage System

The trial evidence confirmed that the Avalon Property's on-site drains discharge to the municipal separate storm sewer system through a lateral connection at BI 1206. The MS4 collects water from the site and feeds it into the Dominguez Channel Estuary. The supporting documentary evidence included an Inspector's Report detailing observations of on-site drains and a hydrodynamic separator (Ex. 77), the Storm Drain Plan for the property (Ex. 797), and the "As Built" Drawing of County Project No. BI 1206 (Ex. 798). Testimonial evidence from Christine Quirk, DPW's Principal Engineer for its Stormwater Maintenance Division, confirmed she personally entered the lateral and observed the connection from the property to the MS4 at BI 1206, which feeds water to the DCE by gravity. (RT 1285:12-1286:6; 1288:19-1301:28.)

While Plaintiff argues that a stormwater system like the MS4 is considered "exactly the type of collection or channeling contemplated by the CWA" citing *Greater Yellowstone Coal. v. Lewis* (9th Cir. 2010) 628 F.3d 1143, the Court notes that the ruling is more nuanced than quoted. The *Greater Yellowstone Coal* decision addressed the stormwater point source issue by distinguishing between two types of potential discharges: (1) rainfall runoff seeping through covers over the rocks at the mining operation, creating pollution; and (2) from water that is collected or channeled to navigable waters. In *Greater Yellowstone Coal*, the court addressed whether a mining expansion project required a CWA certification for these different types of discharges.

The *Greater Yellowstone Coal* court found that the CWA requires any applicant for a federal permit for an activity that may result in a "discharge into the navigable waters" to obtain a certification from the state where the discharge originates. (*Supra*, 628 F.3d at 1152-1153.) The

court noted that point and nonpoint sources are differentiated by whether pollution reaches water through a confined, discrete conveyance, and that runoff primarily caused by rainfall around activities creating pollutants is typically a nonpoint source. (*Id*.)

Relying on the facts in *Greater Yellowstone Coal*, the court explained that there was no confinement or containment of the rainfall runoff; the cover is designed to divert water away from the pits. The small amount of precipitation that penetrated the cover (approximately 0.7 inches annually) was not collected or channeled; instead, it filtered through significant layers of overburden and undisturbed material before reaching surface water. (*Supra*, 628 F.3d at 1152-1153.) The *Greater Yellowstone Coal* court emphasized that stormwater that is not collected or channeled, but instead runs off and dissipates naturally, is not considered a discharge from a point source. Consequently, the waste rock pits themselves were not deemed point sources, and the operator was not required to obtain a certification for rainfall seepage.

In the instant case, Plaintiff presented the testimony of Jewel Carr regarding the sediment tank and the collection of loose debris at the drains on the Avalon Property to confirm a point source under the Act. Mr. Carr explained that all the drains on the Avalon facility converge and gather at one clarifier, which ultimately discharges. He defined a clarifier as a sediment tank located on the property, designed to collect loose debris and other materials. The primary function of this clarifier/sediment tank is to prevent various types of material or large objects from entering the County's storm drain system, thereby allowing only water to drain through. He stated that an interceptor serves the same purpose, acting as a collection point for sediment. Mr. Carr identified the location of the interceptor on the south side of the property along Gardena Boulevard, specifically just before the sidewalk. (RT 781-784.)

Maria Baker, another witness, corroborated that there is a pretreatment facility on-site at the Avalon Property, identified as a SUSMP (Standard Urban Stormwater Mitigation Plan) permit. This facility serves as a stormceptor, acting as a filter that collects rainwater, allowing floatables and solids to settle out before the cleaned water is discharged into the storm drain system. She confirmed that this pretreatment facility is a piece of equipment located on the Avalon Property

and that a lateral connects it to the storm drain system. (RT 781-782; 827-829; 845:14-23; 849:11-850:6.).)

2. The Containers of Hand Sanitizer and Alcohol

As an alternative to the on-site drainage systems, which constitute a point source, Plaintiff contends that the hand sanitizers themselves constitute a point source under the CWA. The text of 33 U.S.C. section 1362(14) explicitly includes the word "container" to define a point source. Plaintiff contends the containers of hand sanitizer and alcohol are point sources from which pollutants were discharged.

At trial, Plaintiff presented observations and testimony from and after the fire, describing damaged and leaking containers of hand sanitizer. Carlos Van Rensburg observed "damaged sanitizer bottles releasing their contents as well as damaged sanitizer wipes that [were] torn open in contact with the water." (RT 491:6-13.) Michael Whitehead reported finding "broken consumer packages that released the ethanol onto the ground" and noted that "Many pallets were crushed, causing the stack to lean. Several cartons had fallen to the ground and caused rupture to the 16 oz bottles." (RT 1429:26 to 1431:5.)

Documentary evidence corroborated the condition of the containers. Photos taken by Michael Whitehead on July 27, 2021, show leaning pallets containing hand sanitizer with damaged packaging and smashed bottles spilling their contents. Exhibit 77, the LADPW Inspector's Report, includes numerous photos showing sanitizer bottles in the on-site drains and interceptor. Bottles of hand sanitizer and isopropyl alcohol collected from BI 1206 were taken into custody.

Prologis calls Plaintiff's container argument "nonsense." They contend that the theory flies in the face of established law. Pointing to the ruling in *Ecological Rights Foundation v. Pacific Gas and Electric Co.*, where plaintiffs tried to convince the Ninth Circuit that a pile of utility poles treated with specific chemicals became a point source when ecologists could trace the contaminants in stormwater back to the pile. (*Ecological Rights Foundation v. Pacific Gas and Electric Co.*, (9th.Cir. 2013) 713 F.3d 502, 509-10.) Prologis asserts that the Ninth Circuit rejected

this argument, pointing out, among other things, that the "solid wood utility poles . . . simply are not 'discernable, confined and discrete conveyance[s]' that 'channel[] and control[]' stormwater." (*Id*. at 510.) Prologis argues that the boxes full of containers of sanitizer are not a point source because they are not "conveyances" and they neither "channel" nor "control" stormwater.

The issue in the *Ecological Rights Foundation* decision was whether PG&E's discharge of toxic wood treatment chemicals into stormwater, arising from rainfall and spread by truck tire pathways, constituted a point source under the CWA, such that a proper permit was needed. (*Supra*, 713 F.3d 502.) In that case, as the Landlord Defendants note, the alleged discharge consisted of wood treatment chemicals released from utility poles based on past wear and tear. The Ninth Circuit ruled that the utility poles were not associated with industrial activity, that the release of wood treatment chemicals arose from natural circumstances and did not involve the collection or conveyance of any alleged "waste product." (*Id*.)

The Ninth Circuit affirmed that allegations of "generalized stormwater runoff" do not establish a point source discharge absent an allegation that the stormwater is discretely collected and conveyed to waters of the United States. (*Ecological Rights Foundation*, *supra*, 713 F.3d at 509-511.) Citing the *Greater Yellowstone Coal* decision, the appellate court reaffirmed that stormwater that seeps through an item is a nonpoint source pollution because there is no confinement or containment of the water. (*Ibid*. at 509.) *Ecological Rights Foundation* is distinguishable from the instant facts on these grounds.

3. The Court's Findings

The Court finds that both the Avalon Property's on-site drainage system and the containers of hand sanitizer and alcohol constitute "point sources" under the CWA and the relevant provisions of the Water Code. This determination is based on the statutory definition of a point source, judicial interpretations, and the evidence presented at trial. A key distinction between point and nonpoint sources is whether pollution reaches water through a confined, discrete conveyance. Runoff primarily caused by rainfall around activities creating pollutants is typically considered a nonpoint source if it is not collected or channeled.

Unlike the rainfall runoff in *Greater Yellowstone Coal* that seeped through covers and filtered through material without confinement or channeling, the Avalon Property's system actively collects, channels, and treats stormwater before discharge. The *Ecological Rights Foundation* decision also emphasized that "generalized stormwater runoff" does not establish a point source discharge unless the stormwater is discretely collected and conveyed. Here, the evidence clearly shows such discrete collection and conveyance through the drains, clarifiers, interceptors, and stormceptor. Therefore, the on-site drainage system, including its drains, clarifier, interceptor, and stormceptor, constitutes a point source under the CWA.

The Court also finds that the containers of hand sanitizer and alcohol from which pollutants were discharged are point sources of pollution. The damaged hand sanitizer and alcohol containers were not merely passive objects from which chemicals leached due to "natural circumstances" or "generalized stormwater runoff." Instead, they were physically compromised, actively releasing their contents as observed and documented. While Prologis argues the boxes of containers do not "channel" or "control" stormwater, the statutory definition of a point source is broader than just channeling stormwater; it encompasses "any discernible, confined and discrete conveyance... including... container... from which pollutants are or may be discharged." The containers themselves, when damaged and leaking, served as the discernible and discrete conveyances from which the pollutants (hand sanitizer and alcohol) were discharged.

C. Caused or Permitted under Water Code Section 13350(b) and Liability Standard

1. Statutory Ambiguity and the Legislative History

The Water Board asserts that all defendants violated Water Code section 13350, subdivision (b), by causing an unpermitted discharge of hazardous substances to the DCE. The claim is presented as an alternative to Cause of Action No. 1, which alleges violations of Water Code Section 13376 and the Clean Water Act (CWA) Section 301.

The term "permitted," particularly within the context of a landlord's liability in environmental waste discharge cases, has been subject to various interpretations, especially in Water Code section 13304, subdivision (a). This section allows a prior owner of property to be

required to participate in waste cleanup if they "caused or permitted" the discharge. (*United Artists Theatre Circuit, Inc. v. Cal. Reg. Wat. Quality Control Bd*. (2019) 42 Cal.App. 5th 851, 858-860.)

Similarly, Water Code section 13350, subdivision (b)(1), imposes strict civil liability on any person who, "without regard to intent or negligence, causes or permits a hazardous substance to be discharged in or on any waters of the state" without a permit. The Water Board only needs to prove that a defendant "caused" or "permitted" such a discharge. The Water Board asserts that a landowner can be held strictly liable for causing or permitting a discharge even if they did not actively participate in the liability-causing event, citing *TWC Storage, LLC v. State Wat. Resources Control Bd.* (2010) 185 Cal.App. 4th 291, 293.

However, in *TWC Storage,* the landlord purchased a "Superfund" site with VOCs in the soil and groundwater. The landlord hired a contractor for demolition, informing them that known hazardous materials had been removed. A subcontractor's equipment operator damaged a transformer attached to the building, causing a highly toxic contaminant to spill that spiked the PCE levels in the groundwater. (*TWC Storage, LLC, supra,* 185 Cal.App. 4th at 293-295.)

The *TWC Storage* court held that the landlord did "cause or permit" the discharge and could be held strictly liable under Water Code section 13350, subdivision (b). The court found substantial evidence that TWC "cause[d] or permit[ted]" the discharge by engaging contractors to perform the demolition activity that resulted in the spill. (S*upra,* 185 Cal.App. 4th at 298.) The court rejected TWC's argument that Water Code section 13350 is inapplicable to a party who takes no physically active role leading up to the discharge. (*Ibid* at 297-298.) The appellate court explained that liability under the statute arose solely from the landowner's ownership, possession and control of the land, citing *Leslie Salt Co. v. San Francisco Bay Conservation Com*. (1984) 153 Cal.App.3d 605. The *TWC Storage* court clarified that the question pertained to statutory liability, rather than tort liability, particularly for the actions of an independent contractor. (S*upra,* 185 Cal.App. 4th at 298-299.)

The Water Board also relies on *United Artists Theatre Circuit, Inc., supra,* 42 Cal.App. 5th at 877-880, a case decided 9 years after *TWC Storage* to establish the meaning of "cause or

permitted" in section 13350. The *UATC* case interpreted "permitted" to hold former landlords liable if they knew or should have known that a tenant's business "creates a reasonable possibility of discharge" under section 13304 (the cleanup and abatement provision), which tracks the same relevant words as section 13350. The "reasonable possibility of discharge" standard aims to encourage owners to mitigate risk and prevent discharges, rather than remain ignorant of tenant activities. (*Id*.) The Water Board contends that the defendants knew flammable products were stockpiled on outdoor storm drains, creating a "reasonable possibility of discharge" if a fire occurred and water was applied. Evidence presented at trial indicated the discharge of hazardous substances, including acetaldehyde and benzene, reached the DCE.

In *United Artists Theaters Circuit, Inc.,* the Regional Board issued a tentative cleanup and abatement order naming the landlord ("UATC") as a discharger because it owned the site during the time of some PCE discharges, had knowledge of its tenant's dry-cleaning activities that caused the discharges, and had the legal ability to prevent them. (*United Artists Theaters Circuit, supra,* 42 Cal. App.5th at 862-863.) The Regional Board applied a legal standard that found an owner only needed knowledge of the general activity of the tenant that led to the discharge to establish a violation. (S*upra,* 42 Cal. App.5th at 884-887.) In granting mandamus writ relief, the trial court required "actual or constructive knowledge of either a specific discharge or of a dangerous condition that poses a reasonable suggestion of a discharge at the site." (*Ibid*. at 864-868.)

The appellate court in *UTAC* observed that the Water Code does not explicitly define "cause" or "permit." (*United Artists Theaters Circuit, supra,* 42 Cal. App.5th at 867-868.) The trial court noted that while "cause" implies direct responsibility, "permit" encompasses a range of actions, from formally authorizing a discharge to simply allowing an activity that results in one. The court explored the dictionary definitions of "permit," noting it includes "to allow the occurrence of," "to allow (something) be carried out or to take place," "to give permission or opportunity for," and "to afford opportunity or possibility for." Given these multiple meanings, the term "permitted" in section 13304 was considered ambiguous. (*Id*.)

The mandamus judge had identified at least five possible interpretations of "permitted"

concerning the knowledge requirement. These degrees of knowledge were (1) impose strict liability with no knowledge requirement, (2) require a landowner to know or should have known of the activities that caused the discharge, ***even without knowledge of the discharge itself or heightened risk***, (3) require a landowner to know or should have known that the activities are ***generally known to pose a reasonable suggestion*** of a discharge but still allowed them, (4) require a landowner to know or should have known that the ***activities specifically pose a reasonable suggestion*** of a discharge but still allowed them; or, (5) require a landowner to know or should have known that a ***specific activity caused a discharge*** at that specific location, failed to take corrective action, and still allowed the activities. (*United Artists Theaters Circuit, supra,* 42 Cal. App.5th at 867-870.)

On appeal, the Court addressed the degree of knowledge required for the prior owner to be held liable under Water Code section 13304 for "permitting" the discharge of waste resulting from the tenants' activities. (*United Artists Theaters Circuit, supra,* 42 Cal. App.5th at 858.) The Court of Appeal held that a prior owner may be named in a section 13304 cleanup order upon a showing that the owner knew or should have known that a lessee's activity created a reasonable possibility of a discharge into waters of the state of wastes that could create or threaten to create a condition of pollution or nuisance. (*Id*.)

The trial court's standard, requiring knowledge of a "specific discharge or specific dangerous condition," was deemed too restrictive. (*United Artists Theaters Circuit, supra,* 42 Cal. App.5th at 878-881.) It drew inappropriately from *Laube v. Stroh*, a case concerning liquor license revocation that involved distinct constitutional and policy considerations (e.g., constitutional good cause standard, avoiding "Orwellian" surveillance regimes) not present in the environmental cleanup context. In requiring a strenuous showing of knowledge to support a finding that an owner permitted illegal activity, *Laube* relied upon the fact that "liquor licensees ... enjoy a constitutional standard of good cause before their license—and quite likely their livelihood—may be infringed by the state." (*Laube*, *supra*, 2 Cal.App.4th at 377.) That is, the court in *Laube* was determining what circumstances constitute good cause for action against a licensee and therefore adopted a definition of "permitted" that held licensees responsible only for criminality in their establishments where they

acted in a blameworthy manner. In contrast, the *United Artists Theaters Circuit* court explained that public interest strongly favors preventing waste discharge and encourages greater vigilance from property owners. (S*upra,* 42 Cal. App.5th at 878-881.)

The appellate court explained that the term "permitted" in Water Code section 13304, subdivision (a), is ambiguous. It reasoned that the Legislature's express intent to "exercise its full power and jurisdiction to protect the quality of waters in the state" mandates a liberal construction of the statute to achieve this objective. (§ 13000) The court stated that the 1980 amendment to section 13304, which removed the phrase "intentionally or negligently," suggests a legislative intent to expand the Regional Boards' ability to name responsible persons and supports a broader interpretation of "permitted" that does not require proof of intentional or negligent conduct. (*United Artists Theaters Circuit, supra,* 42 Cal. App.5th at 878-881.)

In conclusion, the Court is adopting the *United Artists Theaters Circuit* standard in assessing whether the Landlord Defendants knew flammable products were stockpiled on outdoor storm drains, creating a "reasonable possibility of discharge" if a fire occurred and water was applied.

2. Landlord Control and Foreseeability in Practice

Prologis maintains that it lacked control over the Master Tenant (Day-to-Day) and the property, arguing that its only mechanism to regain possession was through summary dispossession proceedings. Prologis contends it lacked authority to move the tenant's private property but acted expeditiously in its removal efforts. It is true that the Landlord Defendants faced challenges, including denied access by the tenant, unpaid rent, and the tenant's non-compliance with Notices of Violation (NOVs) issued by the Los Angeles County Fire Department (LACFD). Although Prologis initiated eviction proceedings before the fire and continued to pursue them afterward, it did not gain possession of the Avlon Property until May 2022.

However, the lease provisions show a more nuanced leasing history. Exhibit 3011, the operative lease, designated Day to Day as the sole tenant with exclusive use of the entire property. Prologis drafted the lease, and a Prologis witness, Robert Antrobius, testified that Prologis

considers its terms to be clear. (Antrobius Depo.at 30:24-32:7.) Exhibit 3011 includes a Lease Guaranty that defendant Akiva Nourollah signed for Virgin Scent, which guaranteed the rent and performance of all lease terms.

According to Paragraph 1f of Exhibit 3011, the "Premises" are defined as "That portion of the Building containing approximately 210,710 rentable square feet as shown on Exhibit A. The definition implies that the tenant's exclusive control was limited to the warehouse, not the truck yard. Paragraph 4 of the lease, titled "Use," explicitly states that the "Tenant shall not permit any outside storage." Paragraph 20 grants the "Landlord and its agents, representatives, and contractors" the right to "enter the Premises at reasonable times to inspect the Premises, for any business purpose." Paragraph 30 prohibits the tenant from "bringing, permitting, or causing any party to bring any hazardous material on to the property." Paragraph 30 has a clause stating that "No cure or grace period provided in this Lease shall apply to Tenant's obligations" under it. Further, the Landlord Defendants argued in a Motion for Summary Judgment that the tenant violated this clause by bringing large amounts of hazardous material product to the premises. (Plaintiff's RJN Ex. 3 at 6254.)

Significantly, Liberty, Prologis's subsidiary, eventually sued the Tenant Defendants for unlawful detainer, and the pleadings it filed contain relevant admissions about how it interprets the lease. Days before the fire, on September 21, 2021, Liberty sued the Tenant Defendants for unlawful detainer due to nonpayment of rent. (Plaintiff's RJN, Ex. 1.) The pleading makes no mention of the stockpiled sanitizer. After the fire, on November 18, 2021, Liberty sued the Tenant Defendants again for unlawful detainer, but this time for breach of lease in connection with the failure to clean up hazardous waste. (Plaintiff's RJN, Ex. 2.) In the November 2021 complaint, Liberty sought to evict the tenant for violating Paragraph 30 of the lease which prohibited hazardous materials onsite. (*Id*. at ¶ 11A.)

In the motion for summary judgment Liberty filed, it stated that Virgin Scent distributed hand sanitizer, which contains large amounts of alcohol which is a hazardous material due to its flammability. (Plaintiff's RJN Ex. 3 at 6254.) Liberty asserted that the tenant violated Paragraph

30 regarding hazardous materials and that "no cure or grace period" applied to such violations. This prior position by Prologis serves as a relevant admission that undercuts its current arguments regarding the lack of control over hazardous materials.

Prologis also had responsibility for stormwater infrastructure. Prologis was directly responsible for the on-site storm drains, which were identified as a point source of discharge. Lisa Reddy testified that Prologis collected a fee from the tenants for maintenance of storm drains. (RT 4292:28-4293:20.) Prologis engaged a contractor, Revel Environmental (REM), for stormwater maintenance. (RT 3412:1-3420: 23.) REM repeatedly reported to Prologis that pallets of product obstructed the drains in May and September 2021. (RT 3396:22-3397:7.)

Prologis knew that these on-site drains connected directly to MS4 through an interceptor. (See Ex. 150 and 151.) The County of Los Angeles Department of Public Works (DPW) issued Notices of Violation (NOVs) to the Landlord Defendants for failing to obtain a permit for the interceptor and for the illicit discharge itself.

On October 20, 2021, Ms. Baker, Field Operations Section, Supervising Inspector, issued to the Landlord Defendants an NOV for failure to obtain a permit for the treatment facility and a separate NOV for the failure to pay annual inspection fees. (Ex. 71, 75, 89, 90; 1246:17-1247:1; 1248:1-23.) Exhibit 89 is an email dated October 22, 2021, from Kelly Dergham of Prologis, applying for a Change of Ownership for an Industrial Waste Disposal Permit. The email was a direct response to Notices of Violation (NOVs) LADPW issued on October 20, 2021. These NOVs included Exhibit 75 that cited Prologis for failing to obtain an industrial waste permit for the onsite stormwater drainage system (Violation 996972).

An Industrial Waste Disposal Permit was necessary because when Prologis/Liberty acquired the property in February 2020, the previous owner's permit became nontransferable, requiring a new application that Prologis had not submitted. Following the submission of the application documented in Exhibit 89, Liberty's Industrial Waste Disposal Permit for the onsite stormwater drainage system was subsequently issued by LADPW on December 23, 2021. Finally, Ms. Baker issued a NOV to all defendants to cease the illicit discharge and plug the onsite drains

so there would be no further discharge to the MS4. (Ex. 71; 826:13-827:3; 828:9-829:24.) Ultimately, DPW was compelled to plug the system when Prologis and the Tenant Defendants failed to take corrective action.

As early as March 31, 2021, Prologis's Maintenance Technician, Raul Saldana, emailed photos to Elizabeth Summerer depicting boxes that blocked exits and created a fire hazard. These photos clearly showed boxes marked with OSHA's red flame symbol for flammability. Ms. Summerer admitted she could have observed this symbol had she looked closer and known it signified flammability.

Lise Enriquez testified that she was able to identify hand sanitizer from the labels visible on the boxes stored on the property. This direct observation by a municipal inspector demonstrates that the contents were readily identifiable, despite Prologis's claims of ignorance. The Tenant Defendants' own representative, Akiva Nourollah, stated that before the lease, Prologis "knew exactly what we were storing in the space" and had been "given samples of the products." (Plaintiff's RJN Ex. 4 at 6307-6308.)

Prologis possessed the capability to monitor the property, including through the use of drone footage. Despite Ms. Summerer's testimony of being denied access on some occasions, she admitted that, even after witnessing conditions she recognized as a "fire hazard," she did not notify the fire department at that time. (RT 3393:15-23.) Her explanation of first contacting the tenant is insufficient, given the gravity of the hazard and the tenant's repeated non-compliance with lease terms.

Following the fire, the Los Angeles County Fire Department (LACFD) contacted Prologis on multiple occasions (October 5, 7, and 18, 2021) to address securing the property and covering storm drains to prevent further off-site flows. Prologis's failure to ensure timely compliance led to DPW taking direct action to plug the system. Prologis's argument that it lacked the factual ability to control the tenant is unpersuasive. Its repeated "escalation efforts" – including emails, notices of default, a "surrender" proposal, and initiation of eviction proceedings – demonstrate awareness of the tenant's non-compliance and an attempt to exercise control, which,

though contested by the tenant, does not negate the underlying contractual and factual ability to take stronger, more timely action as an owner and manager of the property.

3. The Court's Findings

Prologis contends that at the time of leasing, it could not have foreseen a discharge of hazardous materials. Prologis knew of boxes blocking fire lanes but did not anticipate a significant discharge of pollutants into the Nation's waters. Ms. Reddy, a Prologis leasing officer, testified that the fire was the first "involving tenant products" in her portfolio of over 400 properties in 17 years, and LACFD Chief Florez had not previously experienced an odor event following a hand sanitizer fire.

However, the tenant's continuous stockpiling of large quantities of hazardous, flammable hand sanitizer directly on or near the storm drains created a "reasonable possibility of discharge." As demonstrated by common sense and expert testimony, the ignition of such materials would foreseeably necessitate fire suppression efforts, which would then carry pollutants into the drainage system. The precedent set in *United Artists Theatre Circuit, Inc. v. Cal. Reg. Wat. Quality Control Bd*. supports holding landlords liable when they knew or should have known that a tenant's business activities created a "reasonable possibility of discharge" into state waters. This standard applies here, as Prologis had ample knowledge of the fire hazard and the location of the materials relative to the storm drains.

The Landlord Defendants are liable under CWA section 301 and similarly under Water Code section 13350 (b). (See *Calif. Sportfishing Protection Alliance v. Shiloh Group, LLC* (N.D. Cal. 2017) 268 F.Supp.3d 1029, 1043-1044) [landlord maintained the stormwater infrastructure thereby controlling discharges associated with tenants' industrial activities that landlord knowingly chose to allow to operate in outdoor areas]; see also *Puget Soundkeeper Alliance v. Total Terminals International, LLC, et al*. 216 F.Supp.3d 857 (W.D. Wash. 2019) [defendants' knowledge of and ability to control activities at the terminal determines liability; defendant had control where it was responsible for admitting vendors and able to monitor terminal via surveillance cameras].)

In conclusion, the Court finds that the Water Board has presented overwhelming evidence establishing Prologis's knowledge, ability to control, and responsibility for the conditions that led to the unpermitted discharges. Prologis's arguments of lacking control and unforeseeability are inconsistent with the lease terms, landlord's maintenance obligations of the storm drains, and the observable facts on the ground from available surveillance of the truck yard at the property.

D. Failure to File a report on Waste Discharge Under Water Code section 13376

1. Legal Framework for Industrial Stormwater Discharges

Plaintiff's Second Cause of Action specifically addresses Day to Day's violation of section 13376 for failing to obtain a permit for its industrial stormwater discharges. The cause of action is distinct from the allegations related to the unpermitted discharges linked to the fire suppression activities. The Water Board seeks penalties for the Tenant Defendants' alleged failure to obtain a permit for the entire period of their operation at the property, from October 13, 2015, to May 17, 2022.

The Regional Water Board employs a multifaceted approach to protecting water quality. The comprehensive strategy involves controlling pollutant discharges, requiring remediation of pollution, and coordinating with other agencies, all through a variety of mechanisms and programs as defined in section 13050(j)(3).

The Board's approach is structured around several key programs and considerations as outlined in CA Los Angeles Region 4 CH 4-*Strategic Planning and Programs of Implementation*. The approach to water quality protection also includes stormwater permitting. NPDES permits regulate stormwater and urban runoff, which are identified by the program as significant sources of pollution. The program works in tandem with the CWA.

There are three types of stormwater permits: municipal separate storm sewer system (MS4), industrial, and construction. The MS4 permits are further categorized as Phase I or Phase II, depending on the size of the system. The Industrial Storm Water General Permit regulates discharges associated with the industrial classifications described in federal stormwater regulations

(40 CFR §122.26(b)(14)(i)-(xi)).

Water Code section 13376 prohibits the unpermitted discharge of certain categories of stormwater, specifically those associated with "industrial activity." (Compare 33 U.S.C. § 1342(p)(2)(B).) (*Shiloh, supra,* 268 F.Supp.3d at 1043-1044.) The U.S. Environmental Protection Agency (EPA) regulations define "storm water" as "storm water runoff, snow melt runoff, and surface runoff and drainage." (40 C.F.R. § 122.25(b)(13).) "Industrial activity" is defined to include "establishments primarily engaged in the warehousing and storage of a general line of goods," referencing facilities categorized under Standard Industrial Classification (SIC) code 4225. (40 C.F.R. § 122.26(b)(14)(xi) [referring to facilities under Standard Industrial Classification code 4225].) SIC code 4225 covers "establishments primarily engaged in the warehousing and storage of a general line of goods." (Ex. 803 [SIC Code Manual] at 803-019 [Public warehousing and storage] and 803-020 [general warehousing and storage].)

Under California Water Code section 13260, any person discharging or proposing to discharge waste that could affect the quality of state waters must file a Report of Waste Discharge (ROWD) with the appropriate Regional Water Quality Control Board. (Water Code § 13260 et seq.) The filing requirement includes discharges into surface waters regulated under the federal NPDES program, as well as other discharges that could impact state water quality (CA Los Angeles Region 4 CH. 4.) The ROWD must describe the quantity and nature of the discharge and include any additional information required by the Regional Board.

In California, the process of obtaining an individual NPDES permit typically commences with the filing of a Report of Waste Discharge (ROWD) or by applying for coverage under the State Board's Industrial General Permit (IGP) through a Notice of Intent coverage under the State Board's Industrial General Permit. (*Shiloh, supra,* 268 F.Supp.3d at 1040-1041.) The IGP mandates pollution prevention and monitoring requirements.

Plaintiff argues that interpreting the MS4 Permit to allow unnamed parties to discharge pollutants is contrary to the purpose of the CWA. Second, Plaintiff contends that the property at issue is an industrial property subject to separate CWA permitting requirements distinct from the

MS4 permits issued to municipalities. MS4 permits are issued to municipalities under Section 402(p)(3)(B) of the CWA. (33 U.S.C. § 1342(p)(3)(B).) Industrial stormwater permits are issued to industrial dischargers under Section 402(p)(3)(A). (Id. at § 1342(p)(3)(A).) Plaintiff contends that this separate permitting scheme belies Defendants' assertions that the MS4 Permit covers them.

2. Day to Day's Engagement in Regulated Industrial Activity

The evidence presented at trial established that Day to Day engaged in industrial activity requiring NPDES permit coverage for its stormwater discharges. Lydia Kim, an environmental scientist with the Water Board, inspected the Subject Property on December 14, 2021, to determine whether a permit was necessary under the Industrial Stormwater General Permit. During this inspection, Hayden Epstein, Day to Day's President of Operations, informed Ms. Kim that Day to Day received products from overseas, stored them at the warehouse, and subsequently supplied these goods to various companies, including Virgin Scent's hand sanitizer and "Oxgord wheel covers." (RT 3221:19-3226:20; 3227:8-3228:1; 3228:2-12; 3337-3338:6; 3353:5-26; and Ex. 644.) There was no evidence presented of retail or other types of business activities by the Tenants Defendants. Based on these operational activities, Ms. Kim correctly determined that the facility was engaged in industrial activity classified as "general warehousing and storage" under SIC code 4225.

Lise Enriquez, City of Carson inspector, corroborated the general warehousing and storage classification as she also identified SIC code 4225 for the property. Although Day to Day, in response to a Water Code section 13267 investigative order, asserted that SIC code 5190 best described its activities, Ms. Kim testified that SIC code 5190 does not exist. Therefore, her inspection findings were controlling. Defendants failed to rebut the testimony.

Day to Day, despite its engagement in industrial activity as defined by applicable regulations, failed to obtain the requisite NPDES permit coverage for its stormwater discharges. In discovery, Day to Day expressly admitted that it never applied for an NPDES permit with either the Regional Water Quality Control Board, Los Angeles Region, or the State Water Resources

Control Board. Counsel for Virgin Scent also stipulated to this fact. Day to Day did not pursue coverage under either the ROWD process for an individual permit or by filing a Notice of Intent for coverage under the IGP.

3. The Landlord Defendants Claim No Need for an Individual MS4 Permit

The Defendants, primarily Prologis, raise several arguments concerning the MS4 permit to contest liability for the failure to secure an NPDES permit, particularly for discharges related to the fire and general industrial stormwater. Prologis dismisses the Water Board's reliance on *Environmental World Watch v. Walt Disney Co*. (C.D. Cal. Sept. 23, 2013) 2013 WL 12114822, because it was vacated and *San Francisco Baykeeper v. West Bay Sanitary District* (N.D. Cal. 2011) 791 F.Supp.2d 719, 770-771 because the case dealt with sewage, not firefighting, and allegedly confirmed third-party beneficiaries. Prologis asserts that the *Baykeeper* decision fails to negate the firefighting exemption but supports a third-party beneficiary theory.

However, Judge Chen in *San Francisco Baykeeper* ultimately rejected the Defendant's argument, holding that its discharges were not exempt from the CWA permitting scheme and that the MS4 permit issued to other municipalities did not apply to the Defendant's discharges. (S*upra,* 791 F.Supp.2d at 771-772.***)*** The Court reasoned that the permit was a contract, and that Defendant was not a party to the MS4 permit, nor was there any indication that it was an intended third-party beneficiary of the permit.

Judge Chen observed that Supreme Court precedent, such as *Milwaukee v. Illinois*, 451 U.S. 304, 318 (1981), indicates that "Every point source discharge is prohibited unless covered by a permit, which directly subjects the discharger to the administrative apparatus established by Congress to achieve its goals." (*San Francisco Baykeeper, supra*, 791 F.Supp.2d 7at 772.) The court's reasoning suggests that the discharger must hold the permit. He confirmed that the CWA's permitting system operates on a "quid pro quo" basis. Permit holders receive the benefit of being allowed to discharge some pollutants, but, in return, must assume corresponding burdens and responsibilities, including monitoring and reporting obligations. It would be incompatible with the statutory scheme to allow a non-permittee, such as the Defendants, to claim the benefits and

protections of a permit without undertaking its obligations. (*Ibid*. at 770-773.)

Finally, Judge Chen clarified that while the CWA is "indifferent to the originator of water pollution" and a discharger can be held liable for polluting through an MS4 owned by others, this does not mean that such a discharger is automatically covered by the MS4 permit itself. (*San Francisco Baykeeper, supra*, 791 F.Supp.2d at 771.) Liability for a discharge through an MS4 is separate from being entitled to the benefit of the MS4 permit.

Prologis argues that once water enters the MS4, the operators of the MS4 are the dischargers responsible for what comes out of the MS4 from the point source (the outfall), not individual entities like Prologis. They differentiate between a discharge into the MS4 and a discharge from the MS4 outfall to the Nation's waters, stating that only the latter is a discharge under the statutory definition. Prologis asserts that it is not the "operator" of the business conducted by the Day to Day and, therefore, is not required to obtain coverage under the IGP for stormwater discharges. Prologis argues that Water Code section 13260, which requires a report of waste discharge for "waste" that could affect water quality, exempts discharges that go "into a community sewer system." They classify the MS4 as a quintessential "community" sewer system, implying that discharges into it do not necessitate a report under section 13376.

4. The Tenant Defendants Claim No Need for an Individual MS4 Permit

The Tenant Defendants presented evidence that Day to Day and Virgin Scent owned the products they warehoused, distributed, and sold, rather than storing goods for third parties. Ms. Kim, the Water Board's own witness, conceded on cross-examination that if Day to Day was not storing goods for third parties, then SIC Code 4225 would not apply.

The Tenant Defendants challenged the Water Board's reliance on Hayden Epstein's statements regarding Day to Day's operations. They presented evidence from multiple witnesses, including Yosef Nourollah, Osher Netkin, Yehuda Nourollah, and even the Water Board's witness Michael Quan, indicating that Hayden Epstein did not work for Day to Day but rather for Virgin Scent (dba Art Naturals), a legally separate company. Yehuda Nourollah, a board member for Day to Day, testified that Hayden Epstein was not authorized to represent Day to Day. Therefore, any

statements Mr. Epstein made regarding Day to Day's operations cannot be attributed to Day to Day or form a reliable basis for determining its SIC code. The Tenant Defendants rely on Ms. Kim's own trial testimony and declaration, which were ambiguous as to whether she specifically asked Epstein if Day to Day stored products for third parties.

5. The Court's Findings

The Court finds that the Tenant Defendants engaged in industrial activity that requires NPDES permit coverage for their stormwater discharges. While Tenant Defendants challenged the classification under SIC code 4225, particularly by questioning Hayden Epstein's authority and the nature of their storage activities, the initial determination by Ms. Kim, supported by the operational activities described, is found to be a correct classification. The general evidence presented at trial established that the activities were primarily for storage, rather than for retail or other commercial purposes. The Tenant Defendants' alternative SIC code 5190 was deemed nonexistent. Despite Ms. Kim's concession regarding third-party storage, the overall evidence supported the Water Board's classification of the facility under SIC code 4225 for "general warehousing and storage." The Court further finds unpersuasive Day to Day's argument that IGP coverage was unnecessary because it stored its own goods, given that it did not own Virgin Scent's products and was demonstrably engaged in public warehousing under SIC code 4225.

Based on the foregoing findings and conclusions, the Court determines that Tenant Defendants Day to Day and Virgin Scent violated Water Code section 13376 for failing to obtain the required permit for their industrial stormwater discharges. The evidence presented at trial established their engagement in industrial activity under SIC code 4225, and they unequivocally failed to secure any form of NPDES permit coverage for the entire period of their operation at the property from October 13, 2015, to May 17, 2022. Their arguments regarding MS4 permit coverage are legally unavailing given the statutory scheme.

Therefore, the Water Board's Second Cause of Action against Tenant Defendants for violating Water Code section 13376 is proven. The Court will proceed to consider the appropriate penalties for this violation.

E. The Firefighting Exemption[147]

The firefighting exemption refers to provisions in federal regulations, the Municipal Separate Stormwater Sewer System (MS4) Permit, and local ordinances that generally exempt discharges resulting from emergency firefighting activities from being classified as "illicit discharges" or requiring a separate permit. Federal law broadly defines "illicit discharge" to include any discharge into an MS4 that is not entirely stormwater, except for discharges resulting from firefighting activities. (40 C.F.R. § 122.26(b)(2).) The EPA explained that these MS4 discharges are excluded from the definition of illicit discharge. (64 Fed. Reg. 68722, 68756.) The phrase "resulting from" recognizes that water applied to a fire naturally commingles with contaminants from the fire or other site conditions. (See RT 499:17-500:3, 1645:2-5.) The Defendants contend such discharges are excluded from the definition of illicit discharge with or without an individual permit.

LACFD Chief Brian Bennett estimated that approximately 12 million gallons of firefighting water were applied to the fire over 42 hours. Bryan Elder, a Supervising Water Resource Control Engineer, estimated that 5,307,040 gallons of this polluted firefighting water reached the DCE after accounting for evaporation and infiltration. He confirmed that the MS4 design would direct all water entering it to the DCE.[148]

Prologis argues that discharges associated with emergency firefighting activities are expressly exempted from the CWA discharge prohibition under federal law. They state that such discharges are excluded from the definition of "illicit discharge" and are "unconditionally exempt" in the relevant MS4 Permit. Prologis argues that federal law allows for regulation of such

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[147] The Court incorporates Analysis section III, D.3 into this section, especially the discussion of the *San Francisco Baykeeper* case.

[148] He testified that the average flow rates applied by engines and trucks during a fire response are in the range of 25-50% of maximum capacity. (RT 339:23-340:20.) He estimated that the flow rates applied here were 33-37% of maximum capacity based on his knowledge of the factors specific to this case including the switching of hoses, fluctuating water flow, fire apparatus repositioning and re-fueling, and equipment and personnel changes. (RT 334:8-21, 336:11-337:1.) Bennett calculated that the total estimated volume of water used to extinguish the fire was approximately 12,000,000 gallons. (RT 319:12-320:12.) Bryan Elder testified as to the volume of the discharge that entered the MS4 due to the fire by subtracting the volume of the discharge that either evaporated or infiltrated into the soil from the volume of water applied to the fire. (RT 2266:26-2270:3.) Elder determined the volume of water that evaporated based on a scientifically accepted formula that considers the fire temperature. (*Ibid*.)

discharges only when they "are identified as significant sources of pollutants." (40 C.F.R. § 122.26(d)(2)(iv)(B)(1).)

Prologis contends that it is the resulting flow that is exempt, including the water or foam itself, as well as anything else that might be entrained and flow along with those liquids into the MS4. Eric Strecker's expert testimony confirmed that "when there's a fire, things are burning and there's lots of pollutants released," yet though all those pollutants are in the fire wash water and runoff, the flow remains exempt. (RT 3682:17-28.)

Pointing to the San Francisco Regional Board, which ***conditionally exempted*** emergency discharges of firefighting water and foam after identifying procedures to ensure minimal impact, Prologis contends that federal law allows for the regulation of firefighting flows only if they are through a public rulemaking process that includes required notice and opportunity for comment. Without identifying the details of the permit at issue or reference to the rule-making process, Prologis argues that the firefighting exemption is the default binding result. Prologis states that the Water Board presented no evidence of having made these prerequisite regulatory findings, unlike the San Francisco (SF) Regional Board, which conditionally exempted emergency discharges of firefighting water and foam after identifying procedures to ensure minimal impact. The argument omits the type of permit being sought; however, the Court assumes that the San Francisco Regional Board was addressing an MS4 permit, not an IGP.

Prologis highlights that decades of administrative practice and local ordinances consistently interpret the MS4 Permit to exempt discharges from emergency firefighting activities. [149] Fortifying the conclusion that the firefighting exemption extends to an entire community are local ordinances adopted in accordance with the MS4 Permit itself. They point out that various municipalities, including Torrance, Lawndale, Rancho Palos Verdes, Compton, and Gardena,

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[149] For example, Torrance and Lawndale list "flows from emergency firefighting activity" within the definition of "permitted discharge." (Exs. 4158 [Lawndale Code of Ords. § 13.12.010], 4162 [Torrance Mun. Code § 410.1.010].) Rancho Palos Verdes specifies that flows "associated with emergency firefighting activities" are an exception from the prohibition on non-stormwater discharges. (Ex. 4160 [Code of Ords. § 13.10.040(E)].) Compton notes that the exempt discharges "specified in the municipal NPDES permit" include "discharges or flows from emergency firefighting activities." (Ex. 4156 [Mun. Code § 31-1.2].) And Gardena specifies that "discharges or flows from emergency fire fighting activities" "are not considered illicit discharges" and that they "are not prohibited." (Ex. 4157 [Mun. Code § 8.70.060(D)].)

explicitly state that emergency firefighting flows are not considered "illicit discharges" and are not prohibited. LA County itself, through its manual and employee testimonies, has historically not treated firefighting discharges as illicit.

Prologis also challenged the applicability of the IGP. They argue that firefighting-related discharges are not subject to the state's Industrial General Permit. (See Ex. 743 at 23 [IGP].) But Exhibit 743-023 -Bates Stamped LACOUNTY 0335842-does not reference the IGP. Therefore, the Court is uncertain about the accuracy of this claim. Prologis further argues that it is not required to obtain coverage under the IGP because it is not the "operator" of the business conducted by the Master Tenant (see 40 C.F.R. § 122.21(b)), a point previously conceded by the Water Board. (Pl. Reply ISO MSJ at 10-11, filed March 14, 2025.).

Relying on a policy argument, Prologis contends that holding property owners liable for firefighting discharges would lead to "massive liability" for homeowners and small businesses, which would be contrary to public policy that encourages prompt fire extinguishment without fear of legal repercussions. The Landlord Defendants' argument that the MS4 permit's exemption for emergency firefighting applies was countered by the Plaintiff, who argued that NPDES permits are read like contracts, and the defendants are not parties to the MS4 permit.

The Tenant Defendants argue that the Water Board has the burden of proving not only that a discharge was unpermitted but also that a permit existed and was available for the alleged discharges. They contend the Water Board failed to meet this burden. The Tenant Defendants highlight that the Water Board was unable to provide any evidence of a specific permit that would cover the discharges of emergency fire suppression waters mixed with hazardous substances. They argue that the Industrial General Permit (IGP), the only other permit brought into evidence, explicitly states that "Firefighting related discharges are not subject to this General Permit" and are not subject to its prohibition of non-stormwater discharges. (Ex. 3023 at F-134.) The Tenant Defendants contend the language means the IGP is not an available permit for these specific discharges.

The MS4 Permit itself, issued by the Water Board, lists "discharges from emergency

firefighting activities" as "unconditionally exempt" from any discharge prohibition. The "Fact Sheet" accompanying the MS4 Permit, which is provided to the public, confirms this interpretation, stating that these discharges are "unconditionally exempt" from regulation and are considered permitted. Local ordinances adopted by Los Angeles County and the City of Carson (where the fire occurred), enacted pursuant to MS4 Permit requirements, explicitly state that flows from emergency firefighting activities are "permitted discharges" or exceptions to prohibited non-stormwater discharges. These ordinances use broad language (e.g., "no person shall cause any discharge... unless such discharge... is associated with emergency firefighting activities"), indicating that the exemption applies to the public, not just the named MS4 permittees. Witnesses, including Mr. Sarpy of LA County, testified that discharges of emergency fire suppression water were understood not to be "illicit discharges/" LA County's formal manual regarding illicit discharges also does not mention reporting discharges from firefighting activities.

The Tenant Defendants argue that the U.S. EPA policy dictates that firefighting flows can only be regulated prospectively and categorically by MS4 operators, not retroactively or on an ad hoc basis by the Water Board. The EPA guidance suggests that if an MS4 is concerned about firefighting flows (as a category) contributing substantial pollutants, it should develop a program to address them proactively, working with fire departments and hazardous materials teams. They assert that the Water Board failed to introduce any evidence that such a categorical determination or prospective regulation process was undertaken by the relevant MS4s or the Water Board itself. Water Board witnesses even admitted the Board had never made such a finding.

Referring to Exhibit 3009 at page 26, the Tenant Defendants argue that the IGP on its face does not apply to firefighting discharges. The Court reviewed Exhibit 3009 at the cited page and found no such language. Moreover, the Tenant Defendants, as well as the Landlord Defendants, contend that the defendants never sought such a permit. Therefore, even if the statement is on a different page in the IGP, it doesn't change the result.

The Court finds that the firefighting exemption is inapplicable in this case due to the Defendants' lack of status as parties to, or applicants for, the relevant permit. Indeed, the same

contractual rationale with mutual obligations expressed in *San Francisco Baykeeper, supra*, 791 F.Supp.2d at 771-772, justifies the need for issuance of such a permit. Specifically, the Court notes that the Landlord and Tenant Defendants never sought coverage under an Industrial General Permit (IGP). Prologis, a Landlord Defendant, specifically argued that it was not required to obtain coverage under the IGP because they were not operating at the site. The Tenant Defendants, as well as the Landlord Defendants, explicitly contended that they never sought "such a permit" as the IGP.

Furthermore, the Water Board countered the Landlord Defendants' argument regarding the applicability of the MS4 permit's firefighting exemption by asserting that NPDES permits are read like contracts, and the Defendants are not parties to the MS4 permit. While the MS4 Permit and local ordinances generally exempt discharges resulting from emergency firefighting activities and refer to them as "unconditionally exempt" or "permitted discharges," the Plaintiff's argument hinges on the contractual nature of these permits, suggesting their provisions do not extend to non-parties. Therefore, based on the record indicating that the Defendants are not parties to the MS4 permit and never sought an IGP, the Court concludes that the specific firefighting exemption provisions found within or tied to these permits do not apply to the Defendants.

F. Liability Under the Responsible Corporate Officer Doctrine

1. The Legal and Factual Framework

The responsible corporate officer doctrine is a legal principle that holds corporate officers in responsible positions of authority personally liable for violations of strict liability statutes designed to protect public welfare. The doctrine has been applied in cases involving the CWA to establish the liability of corporate officers. (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 832, 836, citing *U.S. v. Iverson* (9th Cir. 1998) 162 F.3d 1015, 1024.) To establish liability, three elements must be satisfied: (1) the individual must be in a position of responsibility that allows them to influence corporate activities; (2) there must be a nexus between the individual's position and the violation in question, such that the individual could have influenced the corporate actions constituting the violations; and, (3) the individual's actions or inactions facilitated the violations.

(*Roscoe, supra*, 169 Cal. App.4th at p. 839.)

The *Roscoe* decision involved violations of the underground storage tank laws due to a leaking gas line tank. (*Supra*, 169 Cal. App.4th 829.) The individual corporate officers of the family-owned company received notices about alleged violations. Still, they considered them "form letters" and passed them on to an employee, who then referred them to a consultant. However, ultimately, no one ensured that the problems were addressed. (*Ibid*. at 833-831.) Similar to the instant action, the County brought an enforcement lawsuit against the operating entity and the individual owners, alleging failures to submit mandatory work plans, take interim remedial actions, and submit required reports. (*Ibid*. at 829-831.) The trial court held the individual corporate officers personally liable under the responsible corporate officer doctrine, finding that they had "overall authority for company affairs" and could have prevented or remedied the violations but failed to "exercise the responsible power and to use all objectively possible means to discover, prevent, and remedy any and all violations."(*Ibid*. at 833.)

In applying the responsible corporate officer doctrine, the *Roscoe* Court noted that the US Supreme Court developed the doctrine in *United States v. Dotterweich* (1943) 320 U.S. 277 and *United States v. Park* (1975) 421 U.S. 658, to hold corporate officers personally liable for violating strict liability statutes protecting public welfare. It is a common law theory distinct from piercing the corporate veil. The court concluded that the doctrine applied and subjects a corporate officer to liability as an "operator" if they have a "a responsible share in the furtherance of the transaction which the statute outlaws." (*Roscoe, supra*, 169 Cal. App.4th at p. 835.) The Plaintiff contends that the Nourollah defendants (Akiva, Yaakov, Yehuda, and Yosef Nourollah) are personally liable under this doctrine.

Secretary of State filings show that all Nourollah defendants held corporate officer positions. (Exs. 665, 666, 667, 668.) Michael Quan, a former Chief Financial Officer for Virgin Scent, from June 2020 to June 2022 testified that Yosef Nourollah and Akiva Nourollah were the ultimate decision-makers. (RT 2193:4; 2196:13-20.) He also testified that all four Nourollah defendants regularly attended weekly management meetings and were regularly present at the

warehouse. (RT 2193:22-23; 2194:18-26; 2196:24-2197:5.)

James Zellerbach, a former Chief Operating Officer from October 2000 to early July 2021 (RT 2027:15-21), testified that during his employment, he worked at the site most weekdays, and he would see the Nourollah defendants there one or two days a week. (RT 2029:14-2030:1; 2159:17-19; 2030:2-4; 2030:5-8.) He testified that he reported to Akiva and Yaakov Nourollah. (RT 2033:13-26; 2037:21-2038:4.) Zellerbach also reported to Akiva and Yaakov Nourollah, stating that Yosef served as Chief Executive Officer, Akiva was the Chief Financial Officer or Chief Operating Officer, Yehuda oversaw the website and Amazon presence, and Yaakov handled human resources and legal issues. (RT 2031:12-2032:7.) Ultimately, Zellerbach left the company for various reasons but noted that he did not "necessarily have all the autonomy to make decisions." (RT 2040:9-13; 2121:2-8; 2121:17-1.)

The Nourollah defendants were aware of the Notices of Violation (NOVs)issued by the Los Angeles County Fire Department (LACFD) prior to the fire, as testified by Michael Whitehead, Captain Williams, and Carlos Van Rensburg. (RT 4012:7-4013:13.) Yaakov Nourollah, for instance, signed an NOV in May 2021, and Yehuda Nourollah signed another in July 2021. Yaakov Nourollah handled "all the regulatory issues." (See Addendum A at pp. 8-9 (Responsible Corporate Officer Doctrine/Credibility). In particular, the exhibits related to the FDA recall of Virgin Scent hand sanitizer indicated that all four Nourollah defendants were involved with government agencies and regulatory issues related to the stockpiling of products at the Avalon Property. Plaintiff argues that the Nourollah defendants could have corrected these violations (e.g., by finding a different warehouse or prioritizing product movement) but failed to do so. They allegedly prioritized other functions, such as marketing on Amazon, over regulatory compliance.

The Tenant Defendants argue that the Nourollahs did not have control over the firefighting activities that allegedly caused the discharges. The Fire Department controlled access to the warehouse during the fire, and the Nourollahs were not in a position to influence the Fire Department's actions. (See Ex. 270, at 002.) Therefore, the causal link cannot be established.

While the Nourollahs' pre-fire activities involved storing flammable materials, they argue that no evidence suggests that removing products from the yard would have prevented the fire itself, as "fires happen." (RT 1586:12-13.) They argue that notices of violation issued before the fire did not warn that hand sanitizer could discharge into storm drains, which led to the Dominguez Channel, nearly three miles away from the facility. (RT 1573:3-14; 1569:25-1570:6; see Ex. 255.) The Tenant Defendants contend that compliance with LACFD's NOVs was not designed to eliminate the risk of fire or spill, but rather to manage hazardous materials. They argue that it was not foreseeable that a fire would result in the discharge of hand sanitizer over such a distance.

Yosef Nourollah testified that Virgin Scent's leadership team's motto was to "elevate and delegate" and that he relied heavily on the leadership team. He stated that James Zellerbach, as COO, was responsible for handling NOVs prior to August 2021, and after Zellerbach's departure, Hayden Epstein assumed this responsibility. (RT 3784:22-28, 3816:15-22.)

The Tenant Defendants also state that any direct involvement, approval, or control by Yaakov, Akiva, or Yehuda Nourollah regarding Virgin Scent or Day to Day's acts related to the fire is protected by their Fifth Amendment rights against self-incrimination and adverse inferences should not be drawn from this invocation.

The Plaintiff highlights that the court will need to contrast Yosef Nourollah's testimony (that his brothers were not on Virgin Scent's leadership team) with the testimony of Mr. Quan and Mr. Zellerbach, and even with Yosef Nourollah's own deposition testimony, when assessing witness credibility. The court may consider a witness's interest in the case, their manner of testifying, the character of their testimony, motives, and any contradictory evidence. (*Ortzman v. Van Der Waal* (1952) 114 Cal.App.2d 167, 171; Evid. Code § 780; CACI No. 107 [trier of fact may choose not to believe anything witness said or accept part and ignore rest].)

2. The Court's Findings

The *Roscoe* decision provides a compelling parallel, in which individual corporate officers of a family-owned company were held personally liable for violations involving

underground storage tanks. These officers had "overall authority for company affairs" and, despite receiving notices of violations, failed to exercise the responsible power and to use all objectively possible means to discover, prevent, and remedy any and all violations.

Based on the evidence presented, this Court finds that all three elements of the responsible corporate officer doctrine are met for the Nourollah defendants. The evidence overwhelmingly demonstrates that the Nourollah defendants were in positions of significant responsibility and authority within the corporate structure as corporate officers, ultimate decision makers, actively involved with management, and supervisory roles. The Court reached this conclusion without reference to any of the individual defendants asserting their Fifth Amendment right against self-incrimination.

While Yosef Nourollah testified that he relied heavily on the leadership team and that his brothers were not on it, this testimony contrasts sharply with that of Mr. Quan and Mr. Zellerbach, as well as with Yosef Nourollah's own deposition testimony. This Court, in assessing witness credibility, may consider a witness's interest in the case, their manner of testifying, the character of their testimony, motives, and any contradictory evidence. The weight of the evidence supports that all four Nourollah defendants held positions of substantial responsibility and influence within the company.

There is a clear nexus between the Nourollah defendants' positions and the discharge violations. The Nourollah defendants were aware of Notices of Violation (NOVs) issued by the Los Angeles County Fire Department (LACFD) prior to the fire, as testified by Michael Whitehead, Captain Williams, and Carlos Van Rensburg. Yaakov Nourollah signed an NOV in May 2021, and Yehuda Nourollah signed another in July 2021. Notably, Yaakov Nourollah was responsible for handling "all the regulatory issues."

The Nourollah’s were involved with working with government agencies. Exhibits related to an FDA recall of Virgin Scent hand sanitizer further indicate that all four Nourollah defendants were involved with government agencies and regulatory issues pertaining to the stockpiling of products at the Avalon Property. The Nourollah defendants, given their ultimate decision-making

authority, oversight of various company functions, and direct engagement with regulatory issues, were in a position to influence corporate actions related to hazardous material storage and compliance.

The evidence demonstrates that the Nourollah defendants' inactions facilitated the discharge violations. Despite receiving NOVs and being aware of the regulatory issues, the Nourollah defendants failed to take corrective actions. The Plaintiff argues explicitly that they could have rectified these violations by, for example, finding an alternative warehouse or prioritizing product movement; however, they allegedly prioritized other functions, such as marketing on Amazon, over regulatory compliance. This mirrors the *Roscoe* case, in which officers failed to address problems after receiving notices.

While the Tenant Defendants argue that the Nourollahs did not control the firefighting activities that caused the discharges, this argument misunderstands the scope of the doctrine. The responsible corporate officer doctrine focuses on the officers' "responsible share in the furtherance of the transaction which the statute outlaws." (*Roscoe*, *supra*, 169 Cal. App.4th at p. 835.) Their failure to address the hazardous material storage violations and comply with regulatory requirements created the conditions that ultimately led to the discharge during the fire.

The argument that NOVs did not warn of storm drain discharge or that fire-related discharge over a significant distance was unforeseeable is unavailing in the context of a strict liability statute. The doctrine imposes liability for failing to exercise responsible power to prevent violations, not merely for direct involvement in the immediate cause of the discharge. The Nourollah defendants' responsibility stemmed from their failure to manage hazardous materials in compliance with regulations, which then set the stage for the fire and subsequent discharge, regardless of the specific details of the fire suppression or the discharge's path.

The Nourollah defendants, by virtue of their positions of authority, their direct involvement in corporate decision-making and regulatory issues, their awareness of persistent violations, and their failure to take corrective actions despite having the power to do so, each had a "responsible share in the furtherance of the transaction which the statute outlaws." Their collective

and individual inactions facilitated the discharge violations of the Clean Water Act and Water Code.

Therefore, this Court declares that the individual Nourollah defendants (Akiva, Yaakov, Yehuda, and Yosef Nourollah) are personally liable for the discharge violations of the Clean Water Act (CWA) and the Water Code under the responsible corporate officer doctrine.

G. Penalties

1. Penalty Calculation for Cause of Action No. 1: Violations of Water Code § 13376 and CWA § 301 (or alternatively, Water Code § 13350(b))

Plaintiff seeks civil penalties for discharges of pollutants in the First Cause of Action. Water Code section 13385 provides for civil liability for violations of section 13376 or CWA section 301. Under the section 13385 penalty provision, a superior court may properly impose such liability in an amount limited to the sum of both a ***daily penalty*** up to $25,000 for each day of the violation **and** on a ***per-gallon penalty*** not to exceed $25 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeding 1,000 gallons. (Water Code § 13385 at subd. (b)(1), emphasis added.)

The Water Board calculated the penalties as follows. Plaintiff contends that the discharge occurred over at least three separate days, potentially up to 23 days until October 22, 2021, when the onsite interceptor was plugged. This suggests a base daily penalty of at least $75,000 (3 days x $25,000) or up to $575,000 (23 days x $25,000). The evidence established that allegedly 5,307,040 gallons of polluted water were discharged to DCE. This would result in a significant additional per-gallon penalty exceeding $132 million ($25 multiplied by 5,307,040—i.e., the number of gallons by which the discharge exceeded 1,000 gallons). Thus, the Court must resolve the actual number of days the discharge occurred and the estimated volume of pollutants that constituted the discharge before assessing any penalties.

If the court does not impose liability under Water Code section 13385, penalties may be assessed under section 13350 for causing or permitting the discharge of hazardous substances as an alternative theory of liability. A court may impose such civil liability ***either daily*** up to $15,000

or on a ***per-gallon*** basis up to $20 for each gallon of water discharged. (Wat. Code, § 13350, subd. (d).) Using the same data as the Water Board for the estimated timeframe of the event, the Court estimates that a base daily penalty of at least $45,000 (3 days x $15,000) or $345,000 (23 days x $15,000) is applicable. If the Court used a per-gallon analysis, the maximum amount could alternatively reach $106 million.

Plaintiff cited case law regarding who must prove entitlement to less than the maximum statutory penalty. Defendants bear the burden to present evidence that an amount less than the statutory maximum should be imposed. (*State of California v. City and County of San Francisco* (1979) 94 Cal.App.3d 522, 530-531.) In *State v. San Francisco*, after a six-day spill that discharged over 426 million gallons of untreated sewage into the San Francisco Bay from various outfalls, the State sought penalties under Water Code section 13385. The *State v. San Francisco* case reasoned that the penalties were compensatory in nature and not punitive.

In placing the burden on the City to show an amount less than the maximum is warranted, the appellate court cited the deterrent intent of the statute. (*State v. San Francisco*, *supra*, 94 Cal.App.3d at 531-532.) The Court noted that if the plaintiff had to prove quantifiable damage, the deterrent effect of the statute would be significantly diminished. (*Ibid*.) Finally, the appellate court reasoned that apportionment among joint tortfeasors on a comparative fault basis is appropriate, regardless of whether the defendants are strictly liable or negligent. (*Ibid*. at 533.) The case was remanded back to the trial court for a proportionate award of damages based on a comparative fault analysis. This Court believes that a comparative analysis for contributory fault is warranted in the DCE case.

The Water Board also relies on the Deepwater Horizon case to support this Court's discretion in determining the number of gallons discharged, where competing experts have presented wildly varying estimates. (See *In re Oil Spill* (E.D. La. 2015) 77 F.Supp.3d 500, 522.) In the Deepwater Horizon case, the district court addressed fault determinations related to the loss of well-control, the explosion, fire, and the sinking of the platform as well as an initial oil release. (*Ibid*.) The Court allocated penalties based on comparative fault under the general maritime law

and other theories.

In *In re Oil Spill*, the experts presented widely varying estimates for the cumulative discharge, ranging from 2.4 to 6 million barrels of oil. Ultimately, after weighing all the evidence, the court found that 4 million barrels of oil were released from the reservoir, and then the court deducted certain amounts derived from the parties' evidentiary stipulation. (See *In re Oil Spill*, *supra*, 77 F.Supp.3d at 521-525.) The Court determined that 3.19 million barrels of oil were discharged into the Gulf of Mexico for the purpose of calculating the maximum possible civil penalty under the CWA. (*Id*.) Thus, the Water Board argues that the Court has substantial discretion in assessing the number of gallons constituting the basis for the discharge and related penalties.

Moreover, the Court is required to consider certain mitigating factors when determining penalties under Water Code section 13385 (e). These factors include considering the nature, circumstances, extent and gravity of the violation. The statute expressly requires determination of whether the discharge is susceptible to clean up or abatement, the degree of toxicity of the discharge, the ability to pay, the effect on the defendant's ability to continue its business, any voluntary cleanup efforts undertaken, and any prior history of violations. Ultimately, the court must determine the degree of culpability. The court may also look to economic benefits or savings, if any, resulting from the violation. Otherwise, the court may simply analyze what justice requires. (Ibid.) Like Water Code section 13385, the same factors are identified in section 13351. (Compare Wat. Code, § 13351 with Wat. Code, § 13385, subd. (e).)

Plaintiff contends that substantial penalties are justified. The plaintiff argues that the nature, circumstances, extent, and gravity of the discharge—which caused a foul, pervasive rotten egg odor disrupting thousands of lives for weeks—warrant a substantial penalty. The presence of benzene (a known human carcinogen) and acetaldehyde (a probable human carcinogen) among the discharged pollutants also weighs in favor of a significant penalty. Plaintiff argues that the defendants presented no evidence limiting their ability to pay, and their failure to act despite notice of fire risk indicates a significant degree of culpability.

Prologis argues that the Water Board failed to establish the nature, quantity, and extent of any unpermitted discharge. They contend that the water estimates provided by the plaintiff were speculative and unreliable, citing issues with Captain Bennett's lack of prior experience, assumptions of infinite water supply, and Mr. Elder's flawed methodology for calculating flame temperatures and evaporation volume, including a misreading of a scientific formula. In essence, Prologis contests the very foundation for imposing penalties by arguing that no illicit discharge occurred, it lacked the necessary control and foreseeability, and the Water Board's calculations regarding the alleged discharge are scientifically unsound and speculative.

Tenants assert there is no competent evidence of ethanol or isopropyl alcohol (IPA) reaching the Dominguez Channel. They highlight that Dr. Spokoyny's opinion on ethanol reaching the DCE is based on its presence in drains, rather than direct detection in the channel. They also challenge Dr. Jassby's retention time opinion, noting that both ethanol and IPA should have been flushed out of the DCE by the time measurements were taken, given the channel's tidal influence.

2. Penalty Calculation for Cause of Action No. 2: Day to Day Violated Water Code § 13376

The Second Cause of Action targets Day to Day, Virgin Scent, and the Nourollah defendants for failing to obtain a permit for industrial stormwater discharges during their operation at the Avalon Property from October 13, 2015, to May 17, 2022. Section 13385 also governs the imposition of civil liability on Day to Day and Virgin Scent for failing to obtain a permit for their discharges of industrial stormwater, as required by Water Code Section 13376. (Wat. Code, § 13385, subd. (a) and (b)(1).) For this violation, Day to Day and Virgin Scent are civilly liable in the amount of $25,000 for each day the violation occurs.

The Water Board calculated the penalties for the Second Cause of Action as follows. Plaintiff contends that the discharge occurred from October 13, 2015, until May 17, 2022, totaling 2,407 days. Under section 13385 penalty provisions, a superior court may properly impose such liability in an amount limited to the sum of both a daily penalty up to $25,000 for each day of the violation and a per-gallon penalty not to exceed $25 multiplied by the number of

gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. (Water Code § 13385 at subd. (b)(1), emphasis added.) This suggests a base daily penalty of at least $60 million (2407 days x $25,000). The evidence established that approximately 5,307,040 gallons of polluted water were discharged to DCE. This would result in a significant additional per-gallon penalty exceeding $132 million ($25 multiplied by 5,307,040—i.e., the number of gallons by which the discharge exceeded 1,000 gallons).

Plaintiff argues that a significant penalty is warranted due to the extended period (over six years) the facility operated without a permit. Compliance with industrial stormwater permit requirements could have mandated safe storage and handling of materials, potentially preventing the fire and subsequent pollutant discharge.

The same mitigating factors listed above for Cause of Action No. 1 (nature, circumstances, extent, gravity, etc.) apply to this cause of action as well.

The Tenant Defendants argue that the Industrial General Permit (IGP), the only permit mentioned besides the MS4 permit, explicitly states that "Firefighting related discharges are not subject to this General Permit." They contend that if the IGP does not cover these discharges, the plaintiff has failed to prove that a permit was available.

Liability for this cause of action depends on whether SIC Code 4225 ("general warehousing and storage") applies to Day to Day's operations. The plaintiff's witness, Ms. Kim, conceded that SIC Code 4225 would not apply if Day to Day was not storing goods for third parties. Tenants assert that Day to Day owned the products it stored and sold, rather than warehousing for third parties, thus making SIC Code 4225 inapplicable. They also dispute that Hayden Epstein, on whom Ms. Kim relied, worked for Day to Day or was authorized to make statements on its behalf regarding third-party storage.

In both causes of action, the defendants bear the burden of presenting evidence to show that a penalty amount less than the statutory maximum should be imposed. The Court also has the discretion to determine the number of gallons discharged if competing expert estimates vary widely. (See *United States v. Gila Valley Irr. Dist*., 961 F.2d 1432 (9th Cir. 1992).) The *Gila*

Valley Irr. Dist. decision was cited to support the idea that extensive experience and training can provide a sufficient basis for an expert to offer an opinion, even if they had not previously performed a specific calculation for litigation.

Brian Bennett's testimony and calculations were an effort to estimate the actual amount of firefighting water flow based on his work experience and training, like the Water Commissioner's efforts in *Gila*. The *Gila* decision underscores that the method used, if logical and practical, can be permissible, even if it involves some uncertainty or the expert hasn't performed the exact calculation in a prior litigation context.

H. Penalty Findings

1. Findings regarding the Landlord Defendants and Related Penalties

a.) Violation of Water Code section 13350, subdivision (b)

The Court finds that the Landlord Defendants, Prologis, Inc., and Liberty Property LP, violated Water Code section 13350, subdivision (b), by permitting the Tenant Defendants to stockpile product outside until the date of the fire. Water Code section 13350, subdivision (b)(1), imposes strict civil liability on any person who "without regard to intent or negligence, causes or permits a hazardous substance to be discharged in or on any waters of the state" without a permit. A landowner is strictly liable for causing or permitting a discharge even without an active role. The Dominguez Channel Estuary (DCE) is a "water of the state." Hazardous substances, such as acetaldehyde and benzene, were detected in the DCE following the fire.

The evidence demonstrates that the Landlord Defendants permitted this condition. Prologis's maintenance technician observed a "mountain of boxes stored outside with 'items falling out'" as early as March 31, 2021, and noted the presence of OSHA's red flame symbol for flammability in photos. Despite this, and an email to the Tenant Defendants regarding blocked exits and fire lanes, Prologis's property manager neither spoke to the tenants about the photos nor notified the Fire Department.

The problem of outdoor stockpiling "grew only worse over time" and was both known and knowable to the Landlord Defendants through continued site visits and drone photos.

Prologis's property manager herself described the situation as "dangerous." Multiple inspections by the Los Angeles County Fire Department (LACFD) in May, July, and August 2021 documented "large quantities of hand sanitizer and bulk containers of isopropyl alcohol" stored outdoors, with "thousands" of stacks, leaning pallets, and bottles spilling contents, creating a fire risk. The City of Carson also cited the Tenant Defendants for prohibited outdoor storage.

The Landlord Defendants were responsible for the on-site storm drains, a point source of discharge, and collected fees for drain maintenance, with their contractor reporting obstructions by pallets. The standard for "permitted" in Water Code section 13304, which is informative here, applies when landowners "knew or should have known that a tenant's business creates a reasonable possibility of discharge." This Court finds it was foreseeable that if large quantities of flammable liquids stockpiled outdoors were to catch fire, fire suppression water would inevitably carry these liquids into the drains, creating a "reasonable possibility of discharge." The Landlord Defendants' own unlawful detainer complaints acknowledged the lease prohibited hazardous materials and outdoor storage, further supporting their knowledge of the risk.

b.) Factors Supporting Mitigation of Penalties Against the Landlord Defendants

The Court addresses each factor prescribed by Water Code section 13351 with respect to the violation committed by the Landlord Defendants:

1. *Nature, Circumstance, Extent, and Gravity of the Violation or Violations*:

The violation involved the discharge of pollutants, including chemical wastes such as ethanol and isopropyl alcohol (IPA), from the Avalon Property into the DCE,. This discharge resulted from a major warehouse fire that necessitated extensive fire suppression efforts. The gravity of the violation is significant, as the resulting chemical and biological reactions led to the release of hydrogen sulfide (H2S) gas, creating an odor nuisance that was pervasive, lingered for several weeks, and disrupted the lives of thousands of people. The discharge contained hazardous substances, including benzene (a known human carcinogen) and acetaldehyde (a probable human

carcinogen).

2. Whether the Discharge is Susceptible to Cleanup or Abatement:

The discharge was susceptible to cleanup and abatement. Abatement required immediate action, leading to the issuance of a Cleanup and Abatement Order (CAO) by the Water Board and coordination with the Los Angeles County Fire Department (LACFD). The Landlord Defendants undertook the cleanup of debris and contamination found on their property. Abatement efforts within the DCE itself, particularly H2S mitigation, required additional measures implemented by the County of Los Angeles, which has brought a separate action to recover its cleanup and removal costs.

3. Degree of Toxicity of the Discharge:

The degree of toxicity was high. Laboratory data confirmed the presence of hazardous substances in the discharges, including benzene, a known human carcinogen, and acetaldehyde, a probable human carcinogen. Ethanol and IPA acted as "stimulating food" to bacteria, contributing to the severe H2S odor nuisance.

4. Ability to Pay:

The Landlord Defendants presented no evidence that they could not pay a civil penalty. Prologis, Inc. is the parent company of Liberty Property LP and is characterized as the world's largest Real Estate Investment Trust (REIT), managing hundreds of commercial properties in Southern California.

5. Effect on Ability to Continue in Business:

There is no evidence in the record indicating that imposing penalties would negatively affect the Landlord Defendants' ability to continue their business operations.

6. Any Voluntary Cleanup Efforts Undertaken:

The Landlord Defendants paid over $10 million in cleanup costs following the fire. This effort, while significant, was directed by the LACFD and the Water Board (through a CAO) and focused on cleanup at the Avalon Property itself. Furthermore, the Landlord Defendants secured a judgment against the Tenant Defendants to recover these costs.

7. Prior History of Violations:

The record does not detail any specific prior history of violations for the Landlord Defendants that directly impacted this ruling.

8. Degree of Culpability:

The degree of culpability of the Landlord Defendants is deemed significant. Liability was found because the Landlord Defendants permitted the discharge, meeting the standard that they knew or should have known that a lessee's activity created a reasonable possibility of discharge. Evidence showed that the Landlord Defendants managed the property and maintained responsibility for the on-site storm drains. They disregarded reports from their maintenance contractor (REM) indicating that pallets of product were obstructing the drains. The continual stockpiling of large quantities of flammable hand sanitizer directly on or near the storm drains created a readily apparent fire hazard and a reasonable possibility of discharge.

9. Economic Benefit or Savings, if any, Resulting from the Violation:

No explicit economic benefit resulting from the failure to prevent the discharge was quantified or claimed by the Water Board,

10. Other Matters that Justice may Require.

Justice requires that penalties serve a deterrent function, particularly in pollution cases where damage is often unquantifiable. The purpose of such penalty statutes is to deter harmful conduct and ensure polluters bear the costs of contamination, thereby encouraging owners to manage their properties carefully. The Court acknowledges that Landlord Defendants mitigated the impact of the spill by paying over $10 million in cleanup costs following the fire. This significant cleanup effort, conducted at the direction of LACFD, is a factor considered in determining penalties under Water Code sections 13385, subdivision (e), and 13351. Based on the payment of over $10 million in clean-up costs, the Court concludes that imposing any additional penalties on the Landlord Defendants would be punitive and serve no deterrent effect.

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2. Findings regarding the Tenant Defendants and Related Penalties

a.) Violation of Water Code section 13376 (Unpermitted Discharge)

The Court finds that the Tenant Defendants violated Water Code section 13376 by causing an unpermitted discharge of pollutants to a U.S. Water. All Tenant Defendants admitted they did not have a permit for any discharges. Water Code section 13376 prohibits the discharge of pollutants to navigable waters of the U.S. without a permit. The DCE is a navigable water of the U.S.. Pollutants, including chemical wastes such as ethanol, isopropyl alcohol (IPA), acetaldehyde, acetone, benzene, benzoic acid, naphthalene, and methanol, were detected in the property drains, the municipal separate storm sewer system (MS4) (BI 1206), and the DCE following the fire. The containers of hand sanitizer and the property's onsite drains are considered "point sources" under the Clean Water Act.

Pollutant discharge occurred over the course of the fire, from September 30, 2021, to at least October 2, 2021, and continued until October 22, 2021, when the onsite interceptor was plugged. Therefore, the violation occurred over 23 days.

Under Water Code section 13385, subdivision (b)(1)(A), a daily penalty of up to $25,000 for each day of violation may be imposed. Accordingly, the Court imposes a penalty of $25,000 per day for 23 days, totaling $575,000 for this violation.

While Water Code section 13385, subdivision (b)(1)(B), allows for an additional per-gallon penalty for discharges exceeding 1,000 gallons, the Court declines to impose this amount due to significant doubts regarding the reliability and scientific basis of the plaintiff's volume estimates. Plaintiff's experts estimated 5,307,040 gallons of polluted water were discharged. However, this estimate was challenged as "speculative and unreliable" due to its "flawed methodology." Specifically, Dr. Marais identified a "fundamental misreading" of a scientific formula, rendering the volume estimate "completely unreliable and without meaning." Dr. Klassen further testified that the methods used for calculating evaporation and flame temperature were not accepted in his field. Tenant Defendants also argued that, given the tidally influenced nature of the DCE, ethanol and IPA should have flushed out before detection, casting further doubt on the

extent of the discharge as measured. Given these substantial concerns regarding the evidentiary foundation for the volume calculation, the Court cannot confidently determine a per-gallon amount and exercises its discretion to forgo this component of the penalty.

b.) Violation of Water Code section 13376 (Failure to Obtain a Permit)

The Court finds that Tenant Defendants, specifically Day to Day, are liable for failing to obtain a permit under Water Code section 13376 for industrial stormwater discharges. The Second Cause of Action is distinct from the fire-related discharges and seeks penalties for Day to Day's failure to obtain a permit for its industrial stormwater discharges for the entire period of its operation at the property, from October 13, 2015, to May 17, 2022.

Water Code section 13376 prohibits the unpermitted discharge of stormwater associated with "industrial activity." EPA regulations define "industrial activity" to include "establishments primarily engaged in the warehousing and storage of a general line of goods" (SIC code 4225). Day to Day operated as a warehouse, storing and supplying goods like pet products, automotive accessories, beauty products, and hand sanitizer. While Day to Day claimed a non-existent SIC code (5190), a Water Board environmental scientist determined the applicable SIC code for its operations was 4225 ("general warehousing and storage"), a finding also supported by a City of Carson inspection. Day to Day admitted that Virgin Scent and JIT paid it to store products, confirming its engagement in warehousing for third parties, which subjects it to SIC Code 4225. Day to Day admitted it never obtained an NPDES permit or coverage under the Industrial General Permit (IGP) for its stormwater discharges.

Day to Day operated at the property from October 13, 2015, until it was locked out on May 17, 2022, totaling 2,407 days without the required permit. Had Day to Day obtained this permit, it would have been subject to requirements for safe storage and handling of industrial materials, which could have potentially prevented the fire and subsequent pollutant discharge.

Water Code section 13385, subdivision (b)(1), authorizes a civil liability of up to $25,000 for each day the violation occurs. While the statutory maximum for 2,407 days would exceed $60

million, the Court imposes a $10 million fine for failing to obtain an industrial stormwater discharge permit and for the resulting discharge. This amount is calculated based on the number of days the parties operated without a permit and considering the nature, circumstances, extent, and gravity of the violation, as well as what justice requires. The $10 million civil penalty reflects the costs incurred to clean up the site post-fire and represents a just application of the mitigating factors to obtain an adequate deterrent effect.

c.) Joint and Several Liability

The Court finds the Tenant Defendants (Day to Day Imports, Inc., Virgin Scent, Inc., Akiva Nourollah, Yaakov Nourollah, Yehuda Nourollah, and Yosef Nourollah) jointly and severally liable for the violations found herein. The Nourollah defendants were in positions of responsibility within their corporations (CEO, CFO, COO, directors) and were aware of the notices of violation prior to the fire but failed to take corrective actions. Their actions or inactions facilitated the violations.

d.) Factors Supporting Penalties Against the Tenant Defendants

Pursuant to Water Code section 13351, which mandates consideration of factors generally paralleling those outlined in Water Code section 13385, subdivision (e), the Court assesses the appropriate civil liability against the Tenant Defendants (Day to Day Imports, Inc., Virgin Scent, Inc., Akiva Nourollah, Yaakov Nourollah, Yehuda Nourollah, and Yosef Nourollah). The factors considered include the nature, circumstances, extent, and gravity of the violations, the degree of toxicity of the discharge, the degree of culpability of the violators, economic benefit or savings, prior history of violations, and ability to pay.

1. Nature, Circumstances, Extent, and Gravity of the Violation or Violations

The violations committed by the Tenant Defendants were substantial in scope and consequence, involving both unauthorized discharges of pollutants and failures to maintain regulatory compliance for industrial activities. Unauthorized Discharge of Pollutants/Hazardous Substances (Cause 1): The discharge resulted from a massive warehouse fire on September 30,

2021, involving hand sanitizer products containing high concentrations of alcohol (e.g., 62.5% ethyl alcohol or 75% ethanol). The discharge was extensive, with an estimated 5,307,040 gallons of polluted firefighting water reaching the Dominguez Channel Estuary (DCE).

Toxicity of Discharge: The discharge introduced multiple pollutants and hazardous substances into the DCE, including ethanol, isopropyl alcohol (IPA), acetaldehyde, benzene, benzoic acid, and benzyl alcohol. Benzene is classified as a known human carcinogen, and acetaldehyde is a probable human carcinogen.

Community Impact: The discharge caused an unprecedented odor event, resulting from chemical and biological reactions of alcohol-related pollutants in the DCE, which released large amounts of hydrogen sulfide (H2S) gas. The resulting foul, pervasive rotten-egg odor lasted several weeks and severely disrupted the lives of thousands of community members.

Failure to Obtain Industrial Permit (Cause 2): Defendant Day to Day Imports, Inc. failed to obtain the required permit for its industrial stormwater discharges, a violation that persisted for 2,402 days, running from October 13, 2015, until May 17, 2022. Had Day to Day obtained permit coverage for its industrial stormwater, the facility would have been subjected to requirements governing the safe storage and handling of industrial materials, which the Plaintiff argues could have prevented the fire and subsequent discharge of pollutants and hazardous substances to the DCE.

2. Whether the Discharge is Susceptible to Cleanup or Abatement

The enormous volume of polluted water estimated to have reached the DCE (5,307,040 gallons) was not susceptible to cleanup once discharged. Abatement of the resulting widespread hydrogen sulfide odor required significant public resources and remedial actions, including the application of odor neutralizers and nanobubbles to inject oxygen back into the water.

3. Degree of Culpability

The Tenant Defendants demonstrated a significant degree of culpability through their pre-fire actions and inactions despite repeated warnings regarding the extreme fire hazard they created. Multiple inspections conducted by the Los Angeles County Fire Department (LACFD) in

May, July, and August 2021 confirmed the storage of large quantities of hand sanitizer and bulk containers of isopropyl alcohol. LACFD issued Notices of Violation (NOVs) to Virgin Scent, and the Nourollah defendants (Yaakov, Akiva, and Yehuda) were present and signed these NOVs. In August 2021, Captain Williams explained to Yaakov Nourollah that they needed to remove the excessive flammable liquid off the property as soon as possible to mitigate the hazard.

The Tenant Defendants acknowledged that the required corrective actions had not been started prior to the fire. Evidence suggests the Nourollah defendants, who were in positions of corporate authority, had the ability to rectify these violations but allegedly prioritized other functions, such as marketing on Amazon, over regulatory compliance.

Following the fire, the Tenant Defendants, including Virgin Scent, failed to timely comply with the September 30, 2021, Notice of Violation and Order to Comply requiring the proper management of hazardous materials and waste, and to cover storm drains to contain runoff. The County of Los Angeles Department of Public Works (DPW) ultimately had to plug the onsite system because the parties failed to confirm they would take any action to stop the discharge.

4. Economic Benefit or Savings

The continuous operation of Day to Day Imports, Inc. for over six years without applying for Industrial General Permit (IGP) coverage constitutes an economic benefit or savings derived from non-compliance. Compliance would have imposed costs associated with filing fees, developing pollution prevention plans, conducting monitoring, and ensuring safe storage practices as required by permit conditions.

5. Voluntary Cleanup Efforts Undertaken

The Tenant Defendants did not undertake significant voluntary cleanup efforts related to the fire discharge. The Water Board issued a Cleanup and Abatement Order (CAO) to Day to Day and Liberty. The subsequent massive cleanup of alcohol-soaked debris and hazardous materials was primarily executed and paid for by the Landlord Defendants, who incurred over $10 million in costs.

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6. Prior History of Violations

The Tenant Defendants demonstrated a history of environmental, health, and safety non-compliance before the fire:

LACFD NOVs: Virgin Scent received multiple NOVs from LACFD in May, July, and August 2021 related to failure to maintain a Hazardous Materials Business Plan, improper storage of hazardous waste, and fire risk associated with storage practices.

Carson Municipal Violations: The Tenant Defendants were also advised in August 2021 of violations of the City of Carson municipal code prohibiting outdoor storage in a Manufacturing Light zone.

FDA Recall: Virgin Scent was involved in an FDA recall of its hand sanitizer products due to the detection of unacceptable levels of contaminants, including benzene and acetaldehyde.

7. Ability to Pay and Effect on Ability to Continue Business

The Tenant Defendants failed to present evidence demonstrating that the imposition of a civil penalty would limit their ability to pay or negatively affect their capacity to continue operating their businesses.

THEREFORE, THE COURT RULES AS FOLLOWS:

A. Liability Determination

1. Landlord Defendants (Prologis, Inc. and Liberty Property LP)

The Landlord Defendants are hereby found liable for violating Water Code section 13350, subdivision (b), by permitting the discharge of hazardous substances into waters of the state.

2. Tenant Defendants (Day to Day Imports, Inc. and Virgin Scent, Inc.):

The Tenant Defendants are hereby found liable for violating Water Code section 13376 for causing an unpermitted discharge of pollutants to a U.S. Water.

The Tenant Defendants are further found liable for violating Water Code section 13376 for failing to obtain the required permit for their industrial stormwater discharges.

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3. Individual Nourollah Defendants (Akiva Nourollah, Yaakov Nourollah, Yehuda Nourollah, and Yosef Nourollah):

The individual Nourollah defendants are hereby found personally liable under the Responsible Corporate Officer Doctrine for all violations as specified in Sections III F.1 and III F.2 above.

The individual Nourollah defendants are found to be jointly and severally liable with Day to Day Imports, Inc. and Virgin Scent, Inc. for these violations.

B. Penalties

1. Penalties Against Landlord Defendants (Prologis, Inc. and Liberty Property LP):

The Court acknowledges that the Landlord Defendants paid over $10 million for voluntary cleanup costs following the fire, undertaken at the direction of LACFD. This significant voluntary effort is a mitigating factor under Water Code sections 13385, subdivision (e), and 13351.

Therefore, the Court concludes that no additional civil penalties shall be imposed against the Landlord Defendants, as such would be punitive and serve no further deterrent effect.

2. Penalties Against Tenant Defendants (Day to Day Imports, Inc., Virgin Scent, Inc., Akiva Nourollah, Yaakov Nourollah, Yehuda Nourollah, and Yosef Nourollah), jointly and severally:

For Violation of Water Code section 13376 (Unpermitted Discharge of Pollutants related to the fire):

A civil penalty of $25,000 per day is imposed for each day of violation, as authorized by Water Code section 13385, subdivision (b)(1)(A).

The discharge occurred for 23 days, from September 30, 2021, to October 22, 2021, when the on-site interceptor was plugged.

Total Penalty for Unpermitted Discharge: $575,000 (23 days x $25,000/day).

The Court declines to impose an additional per-gallon penalty under Water Code section 13385, subdivision (b)(1)(B), due to significant doubts regarding the reliability and scientific basis

of the plaintiff's volume estimates, including flawed methodology and misreading of scientific formulas.

For Violation of Water Code section 13376 (Failure to Obtain Industrial Stormwater Permit):

A civil penalty is imposed for operating without the required permit from October 13, 2015, to May 17, 2022, totaling 2,407 days.

Considering the nature, circumstances, extent, and gravity of the violation, and reflecting the costs incurred to clean up the site post-fire and to achieve an adequate deterrent effect, as justice requires.

Total Penalty for Failure to Obtain Permit: $10,000,000.

C. Joint and Several Liability

The Tenant Defendants (Day to Day Imports, Inc., Virgin Scent, Inc., Akiva Nourollah, Yaakov Nourollah, Yehuda Nourollah, and Yosef Nourollah) are hereby held jointly and severally liable for the total civil penalties of $10,575,000 ($575,000 + $10,000,000).

The Water Board is ordered to prepare a Final Judgment consistent with the Final Statement of Decision and file the same within thirty days of the entry of this order.

IT IS SO ORDERED:

DATED: 10/29/2025

David S. Cunningham III / Judge

THE HONORABLE DAVID S. CUNNINGHAM III