Attachment A
Penalty Calculation Methodology
Administrative Civil Liability Complaint No. R4-2022-0218-A1
Day to Day Imports Inc., Virgin Scent Inc. dba ArtNaturals, Liberty Property Limited Partnership, and Prologis, Inc.

Day to Day Imports Inc., Virgin Scent Inc. dba ArtNaturals, Liberty Property Limited Partnership, and Prologis, Inc. (collectively, Dischargers) are alleged to have discharged at least 5,079,770 gallons of water containing pollutants to the Dominguez Channel Estuary, a water of the United States, without a permit from September 30 – October 2, 2021; or in the alternative, to have caused or permitted at least 5,079,770 gallons of water containing hazardous substances to be discharged to the Dominguez Channel Estuary, a water of the state and United States, from September 30 – October 2, 2021.

The unauthorized discharge of pollutants to the Dominguez Channel Estuary, a water of the United States, without a permit is a violation of California Water Code (Water Code) section 13376 and Clean Water Act section 301. The pollutants consisted of acetaldehyde, benzene, benzoic acid, naphthalene, acetal contaminants, acetone, ethanol, isopropyl alcohol, methanol, and sulfates. The Dischargers are subject to administrative civil liabilities pursuant to Water Code section 13385, subdivisions (a)(1) and (a)(5). Pursuant to Water Code section 13385, subdivision (c), the Dischargers are subject to administrative civil liability of up to $10,000 per day of violation, plus $10 for each gallon discharged and not cleaned up in excess of 1,000 gallons.

In the alternative, causing or permitting water containing hazardous substances to be discharged to the Dominguez Channel Estuary, a water of the state and United States, without a permit is a violation of Water Code section 13350, subdivision (b)(1). The discharged hazardous substances include acetaldehyde, benzene, benzoic acid, and naphthalene. The Dischargers are subject to administrative civil liabilities pursuant to Water Code section 13350, subdivision (e) of up to $10 for each gallon of waste discharged or $5,000 per day of violation.

Factors required to be considered in determining the amount of administrative civil liability pursuant to Water Code sections 13327 and 13385, subdivision (e), as well as the State Water Resources Control Board's Water Quality Enforcement Policy effective October 5, 2017 (Enforcement Policy) are discussed below. The Enforcement Policy can be found at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

Violation: Unauthorized discharge of pollutants to the Dominguez Channel Estuary, a water of the United States, without a permit.

Step 1. Actual or Potential for Harm for Discharge Violations

a) Factor 1 The Degree of Toxicity of the Discharge: 4

A score between 0 and 4 is assigned based on a consideration of the characteristics of the discharged material and the risk of damage to potential receptors or beneficial uses caused by the discharged material. The Degree of Toxicity score for the alleged violation is 4. A score of 4 is defined as the "discharged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors and pose a significant threat to potential receptor uses)."

The following pollutants were discharged into the Dominguez Channel Estuary by the Dischargers:

Acetaldehyde

Acetaldehyde is a volatile organic compound that is flammable and miscible (mixes well) with water. It is a key generator of free radicals and a known carcinogen.[1] Acetaldehyde is toxic to fish.

Benzene

Benzene is an aromatic volatile organic compound that is flammable. It is insoluble in water. Benzene is a carcinogen and acutely toxic to fish.

Benzoic Acid

Benzoic acid is a white crystalline solid that is slightly soluble in water. Benzoic acid is toxic to humans and fish.

Naphthalene

Naphthalene is a highly flammable solid and insoluble in water. Naphthalene impacts both human health and causes chronic toxicity to fish. The vapor given off when naphthalene is heated is flammable and a fire hazard.

Acetal Contaminants

Acetal contaminants are volatile organic compounds that are highly flammable and slightly soluble in water. Acetal contaminants impact human health because they are irritants and a central nervous system depressant. Acetal contaminants also cause chronic toxicity to fish.

[1] Risks to human health are discussed generally in the Degree of Toxicity analysis to acknowledge that these pollutants have the ability to impact a potential receptor. More specific human health impacts are discussed in the Actual Harm or Potential for Harm to Beneficial Uses analysis in Factor 2 below.

Acetone

Acetone is a volatile organic compound that is flammable and miscible with water. Acetone is associated with human neurological effects and is acutely toxic to fish.

Ethanol

Ethanol is a volatile organic compound and an alcohol. Ethanol is flammable and miscible with water. Ethanol presents a human health risk because it is a neurotoxin, central nervous system depressant, and a carcinogen. Ethanol is toxic to fish.

Isopropyl Alcohol

Isopropyl alcohol, also known as isopropanol, is a volatile organic compound and an alcohol. Isopropyl alcohol is flammable and miscible with water. Isopropyl alcohol is known to be toxic to fish and invertebrates. It also presents a risk to human health.

Methanol

Methanol is a volatile organic compound and an alcohol. Methanol is flammable and miscible with water. Methanol exposure presents risks to human health and is toxic to fish and invertebrates.

Sulfates

Sulfates are soluble in water. Sulfates can be acutely toxic to water fleas and protozoans. Sulfates can cause skin irritation in humans.

All these pollutants (acetaldehyde, benzene, benzoic acid, naphthalene, acetal contaminants, acetone, ethanol, isopropyl alcohol, methanol, and sulfates), due to their chemical nature, are known to cause or contribute to depressions of dissolved oxygen in surface waters. In this case, these pollutants created a condition of low dissolved oxygen in the Dominguez Channel Estuary which caused a chemical reaction to take place resulting in the production of toxic hydrogen sulfide (H_2S) gas, a waste product of sulfate-reducing microorganisms.

In addition to the impacts from the odors, these pollutants cause and/or contribute to anoxic conditions in waterbodies which are harmful to aquatic life and its habitat.

The individual toxicity of each of these pollutants poses a significant risk to both human and aquatic life receptors; therefore, a Degree of Toxicity score of 4 is

assigned for this violation.

b) Factor 2 Actual Harm or Potential Harm to Beneficial Uses: Major (5)

An Actual Harm or Potential Harm to Beneficial Uses score of Major is assigned for this violation. The Enforcement Policy defines a score of Major as a violation having "high harm or threat of harm to beneficial uses." The Enforcement Policy further states: "A score of major is typified by observed or reasonably expected potential significant impacts, and involves potential for or actual acute, and/or chronic (e.g., more than five day) restrictions on, or impairment of, beneficial uses, aquatic life, and/or human health."

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

All Discharged Pollutants Significantly Impacted Dissolved Oxygen and Associated Beneficial Uses

The discharge of the above referenced pollutants (acetaldehyde, benzene, benzoic acid, naphthalene, acetal contaminants, acetone, ethanol, isopropyl alcohol, methanol, and sulfates) significantly harmed the beneficial uses in the Dominguez Channel Estuary by causing the dissolved oxygen levels to decline due to anoxic conditions. The discharge of these pollutants contributed to the depression of dissolved oxygen in the Dominguez Channel Estuary through aerobic and anaerobic processes carried out by microorganisms. Once oxygen was depleted, the breakdown of these pollutants continued through an anaerobic process that produced hydrogen sulfide gas (a rotten egg odor). Impacts to beneficial uses were prolonged as odors persisted in the Dominguez Channel Estuary and its vicinity from at least October 3, 2021 to November 19, 2021.

Odors That Resulted from the Discharge Adversely Affected Water Contact Recreation (REC-1) and Non-Contact Water Recreation (REC-2) Beneficial Uses

[2] The Dominguez Channel Estuary also lists Navigation as a potential beneficial use.

Water Contact Recreation (REC-1) and Non-Contact Water Recreation (REC-2) were impacted by the discharge of pollutants because the discharge resulted in the production of the hydrogen sulfide gas and the odor was pervasive in and around the Dominguez Channel Estuary. Water contact recreation (such as swimming) or non-water contact recreation (such as recreational walking) near the Dominguez Channel Estuary were not possible due to the foul, noxious odors created by the emitted hydrogen sulfide.

Depressed Dissolved Oxygen Adversely Impacted Commercial and Sport Fishing (COMM); Estuarine Habitat (EST); Marine Habitat (MAR); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); and Spawning, Reproduction, and/or Early Development of Fish (SPWN) Beneficial Uses

These beneficial uses require that the water is oxygenated enough to be suitable to support aquatic life. The Basin Plan states that the mean annual dissolved oxygen concentration of all waters shall be greater than 7 mg/L, and no single determination shall be less than 5.0 mg/L, except when natural conditions cause lesser concentrations. The Los Angeles County Department of Public Works (LACDPW) measured dissolved oxygen at 3 stations in the Dominguez Channel Estuary to assess impacts resulting from the discharge. The daily average dissolved oxygen level at the Figueroa Street station ranged from 0.096 mg/L to 1.098 mg/L over the span of 12 days (October 15 – 26, 2021). The daily dissolved oxygen level at the Avalon Boulevard station was consistently 0 mg/L from October 23 – November 1, 2021. The daily dissolved oxygen at the Alameda Street station ranged from 0 to 1.025 mg/L from October 15 – 27, 2021. Dissolved oxygen of at least 5 mg/L is needed for fish to survive. Chemical reactions in the Dominguez Channel Estuary caused by the discharge event led to the oxidation of pollutants, depressing the dissolved oxygen to 0 mg/L. On February 24, 2022, dissolved oxygen continued to be measured below 5 mg/L in the Dominguez Channel Estuary as a result of the discharge. This lack of dissolved oxygen created a prolonged condition in the Dominguez Channel Estuary ecosystem that could not support Commercial and Sport Fishing (COMM); Estuarine Habitat (EST); Marine Habitat (MAR); Wildlife Habitat (WILD); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); and Spawning, Reproduction, and/or Early Development of Fish (SPWN*)* beneficial uses.

Odorous Conditions Created by the Discharge Impacted Human Health

Residents living in nearby communities relocated due to the foul odors. Residents living in the watershed near the Dominguez Channel Estuary reported physiological symptoms because of the hydrogen sulfide odors

which resulted in residents leaving the area. Workers from the South Coast Air Quality Management District (SCAQMD) and the LACDPW who were working in the Dominguez Channel Estuary investigating the odors had to wear respirators to protect their health from the foul odors. On November 19, 2021, only after extensive remediation efforts to mitigate the odors by the LACDPW, the Public Health Officer issued an update for relocated residents to return home.

Individual Pollutants had the Potential to Adversely Impact Human Health

There was a potential for harm to human health from the discharge event associated with the pollutants that were discharged.

- Acetaldehyde damages DNA and prevents the body from repairing the damage. It also has the potential to cause cancer in humans and may cause serious illness or death.

- Benzene has the potential to cause cancer in humans.

- Benzoic acid is known to cause immediate eye damage, skin irritation, rash, redness, and/or a burning feeling. It can also cause irritation to the nose, throat, and lungs if inhaled, which may cause coughing, wheezing, and/or shortness of breath.

- Acute, short- term exposure to very large amounts of naphthalene can cause damage to blood cells, leading to a condition called hemolytic anemia. Naphthalene has the potential to cause cancer in humans.

- Ingestion of isopropyl alcohol can lead to renal failure. Severe isopropyl alcohol poisoning results in respiratory depression and circulatory collapse.

- Acetal contaminants irritate the upper respiratory tract and can act as a central nervous system depressant. Symptoms of exposure include headache, dizziness, drowsiness, abdominal pain, and nausea. Acetal contaminants have the potential to cause cancer in humans.

- Acetone can impact human health ranging from mild neurobehavioral effects to severe narcosis. These effects have been observed following inhalation and oral exposures to acetone. Acetone has the potential to cause cancer in humans.

- Ethanol can cause skin irritation.

- Sulfates can cause skin irritation.

Due to the prolonged, significant actual and potential impacts to human health, beneficial uses, and aquatic life, an Actual Harm or Potential Harm to Beneficial Uses score of Major (5) is assigned for this violation.

c) Factor 3 Susceptibility to Cleanup or Abatement: 1

A score of 1 is appropriate where 50% or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to clean up 50% or more of the discharge within a reasonable time. In this case, the Dischargers did not clean up or abate any of the discharge into the Dominguez Channel Estuary. The LACDPW abated the odors created by the discharge by applying aerators to oxygenate the Dominguez Channel Estuary water, and by applying an odor control neutralizer to the Dominguez Channel Estuary water. The Dischargers do not get credit for actions taken by others to cleanup and abate the discharge. Cleanup of the Site itself is also not considered under this factor as it is not related to cleanup and abatement of the alleged violation. Therefore, a Susceptibility to Cleanup or Abatement score of 1 is assigned for this violation.

d) Potential for Harm Score: 10

The Potential for Harm Score is the sum of the scores for Degree of Toxicity, Actual Harm or Potential Harm to Beneficial Uses, and Susceptibility to Cleanup or Abatement.

Potential for Harm Score = 4 (Degree of Toxicity) + 5 (Actual Harm or Potential Harm to Beneficial Uses) + 1 (Susceptibility to Cleanup or Abatement) = 10

Step 2. Assessment for Discharge Violations

a) Deviation from Requirement: Major

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. The Deviation from Requirement for the alleged violation is Major. The Enforcement Policy defines a Major Deviation from Requirement as "[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions)."

Water Code section 13376 and Clean Water Act section 301 prohibit the discharge of pollutants unless authorized by waste discharge requirements (i.e., a permit). Waste discharge requirements protect surface water by either prohibiting discharge of pollutants to surface waters or prescribing requirements for discharge to surface waters.

The Deviation from Requirement is Major because Water Code section 13376 and Clean Water Act section 301 were rendered ineffective in their essential function of protecting the Dominguez Channel Estuary from a discharge containing the pollutants alleged above which resulted in negative impacts to the Dominguez Channel Estuary and nearby residents. A discharge of the type alleged herein would never have been permitted by the Los Angeles Water Board.

b) High Volume Discharges: $1.00/gallon

Water Code section 13385, subdivision (c) provides that administrative civil liability may be imposed up to $10.00 for each gallon discharged and not cleaned up in excess of 1,000 gallons.

Generally, the Water Boards apply the per gallon factor to the maximum per gallon amount allowed under the Water Code for the violation alleged. However, recognizing that the volume of some discharges can be very high, the Enforcement Policy allows the Water Boards to use a value between $1.00 and $10.00 per gallon to determine the per gallon amount for discharges in excess of 2,000,000 gallons. The Los Angeles Water Board Prosecution Team alleges the discharge consisted of at least 5,079,770 gallons. The Los Angeles Water Board Prosecution Team is using the conservative volume calculation of 5,079,770 gallons for purposes of this penalty calculation methodology. The Los Angeles Water Board Prosecution Team has determined a per gallon amount of $1.00 per gallon is appropriate and would not result in an inappropriately small administrative civil liability.

c) Per Gallon Assessment for Discharge Violations: $1.00/gallon

When there is a discharge, the Los Angeles Water Board determines the initial liability on a per gallon basis using the Potential for Harm Score from Step 1 and the Deviation from Requirement.

Table 1 of the Enforcement Policy is used to determine the per gallon factor using the Potential for Harm Score and the Deviation from Requirement. Using a Potential for Harm Score of 10 and a Deviation from Requirement of Major, the per gallon factor is 1.0. This per gallon factor is then multiplied by the volume of the discharge and the maximum per gallon amount, as described below.

Per Gallon Assessment = 1.0 (per gallon factor) x (5,079,770 gallons – 1,000 gallons) x $1.00/gallon = $5,078,770

d) Per Day Assessment for Discharge Violations

Table 2 of the Enforcement Policy is used to determine a per day factor based on the Potential for Harm Score from Step 1 and the Deviation from Requirement.

Using a Potential for Harm Score of 10 and a Deviation from Requirement of Major, the per day factor is 1.0. The Per Day Assessment is calculated as the per day factor multiplied by the number of days of violation and the $10,000 per day statutory maximum under Water Code section 13385, subdivision (c). Here, the discharge occurred for 3 days from September 30 – October 2, 2021.

Per Day Assessment = 1.0 (per day factor) x 3 days x $10,000/day = $30,000

e) Initial Liability Amount

The Initial Liability Amount is the Per Gallon Assessment plus the Per Day Assessment = $5,078,770 Per Gallon Assessment + $30,000 Per Day Assessment = $5,108,770

Step 3. Per Day Assessments for Non-Discharge Violations

This factor does not apply to this violation.

Step 4. Adjustment Factors

a) Degree of Culpability: 1.5

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

A Culpability multiplier of 1.5 is assigned for this violation. A reasonable and prudent person who operates a business engaged in the storage of hazardous materials that are flammable, and pose additional risks to the environment, such as the ones stored by the Dischargers, would have taken the precautions necessary to store the materials appropriately to avoid the potential for a fire.

This is especially true given that prior to the fire, the Los Angeles County Fire Department (Fire Department) inspected the Site in May, July, and August 2021, and noted violations related to improper storage of hazardous materials at the Site and the associated fire hazard.

Moreover, since at least March 2021, the Dischargers were aware of the fire hazard posed by the Site. On March 31, 2021, Raul Saldana, an employee of Prologis, Inc., observed pallets of tenants' products stacked high, falling over, and blocking exits at the Site. Mr. Saldana was concerned about a fire hazard and notified other Prologis, Inc. employees who contacted the tenants regarding Site conditions.

Despite knowledge and multiple notifications of the problems at the Site, the

Dischargers failed to correct the improper storage violations and continued to improperly store the hazardous materials creating an unreasonable risk of a fire and associated discharge of pollutants.

A reasonable and prudent person would expect the Fire Department to respond to a fire event which would result in firefighting water combining with on-site pollutants being discharged to surface waters through multiple on-site storm drains.

No additional actions were taken by the Dischargers to reduce the fire risk, and associated risk of an unauthorized discharge of pollutants, despite actual knowledge that the conditions at the site were unsafe.

Therefore, a Culpability multiplier of 1.5 is assigned for this violation.

b) History of Violations: 1.0

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

c) Cleanup and Cooperation: 1.5

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

A Cleanup and Cooperation multiplier of 1.5 is assigned for this violation. The Dischargers failed to cleanup or abate any portion of the discharge. All cleanup and abatement activities in the Dominguez Channel Estuary and storm drains were undertaken by the County of Los Angeles. The Dischargers do not get credit for actions taken by others to cleanup and abate the discharge.

While the Dischargers implemented interim measures to prevent additional discharges from the Site, such measures merely prevented the Dischargers from incurring additional violations and did not involve cleanup or abatement of the violation alleged in this Complaint. Moreover, such interim measures were not voluntary; they were required by Orders to Comply issued by the Fire Department and Cleanup and Abatement Order No. R4-2021-0141.

Cleanup of the Site itself is also not considered under this factor as it is not related to cleanup and abatement of the alleged violation and is more appropriately addressed in Administrative Civil Liability Complaint No. R4-2022-0219-A1, which

is based on failure to comply with Cleanup and Abatement Order No. R4-2021-0141.

On February 7, 2022, the Los Angeles Water Board issued a Notice of Violation (NOV) to the Dischargers for, among other items, the alleged discharge violation. Liberty Property Limited Partnership and Prologis, Inc. submitted a written response to the NOV on March 7, 2022 but did not address the discharge violation. Day to Day Imports Inc. and Virgin Scent Inc. dba ArtNaturals did not respond to the NOV.

Therefore, a Cleanup and Cooperation multiplier of 1.5 is assigned because the Dischargers actions fell far below what is expected in a reasonable and prudent response to a discharge violation as they did not cleanup or abatement any portion of the discharge and did not communicate with the Los Angeles Water Board regarding the discharge.

Step 5. Total Base Liability Amount

Total Base Liability Amount = $5,108,770 (Initial Liability Amount) x 1.5 (Degree of Culpability) x 1.0 (History of Violations) x 1.5 (Cleanup and Cooperation) = $11,494,732

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

The Enforcement Policy requires the Los Angeles Water Board to analyze the Dischargers' ability to pay the Total Base Liability Amount and the effect paying the Total Base Liability Amount may have on the Dischargers' ability to continue in business. The Dischargers have the ability to pay the Total Base Liability Amount and continue in business. As of December 31, 2021, Prologis, Inc. had over $100 billion in owned or managed ventures, properties, and development projects worldwide, with another $65.3 billion in investments worldwide, $5 billion in total available liquidity, and $13.8 billion worth of consolidated operating properties in California alone. Liberty Property Limited Partnership had approximately $7 billion in assets in 2019, with the Site valued at approximately $47 million in 2019 based on Los Angeles County Tax Assessor Records. Virgin Scent Inc. dba ArtNaturals and Day to Day Imports Inc. earned approximately $20 million and $2.5 million, respectively, in revenue in 2020. Therefore, the Dischargers' assets are more than sufficient to pay the Total Base Liability Amount.

Step 7. Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (U.S. EPA) Economic Benefit Model (BEN) program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was

calculated using BEN Version 2021.0.0 (April 2021). For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes. In this case, the economic benefit was calculated as the avoided cost associated with additional space for excess stored material. Using BEN, the economic benefit of noncompliance is $747,370.

Step 8. Other Factors as Justice May Require

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

a) Environmental Justice Considerations

The Enforcement Policy provides that "a consideration of environmental justice issues," is appropriate in this factor. Consideration of environmental justice ensures that enforcement is conducted in a manner that advances the fair treatment of people of all races, cultures, and income levels. The location of the discharge and some of the areas impacted by the discharge are classified as Environmental Justice (EJ) and/or Disadvantaged Communities (DAC). The location of the discharge and areas impacted by the discharge are especially important because any conditions of noncompliance would affect already overburdened communities. CalEPA utilizes a screening tool, the California Communities Environmental Health Screening Tool (CalEnviroScreen), to identify communities in California that bear a disproportionate burden of environmental pollution and other hazards. For the area where the Site is located, CalEnviroScreen identifies the community as being within the 92nd percentile of communities. Such a high score indicates that the community is an EJ community and/or DAC. Similarly, CalEnviroScreen indicates communities impacted by the hydrogen sulfide odors in portions of Carson, Gardena, Wilmington, Torrance, and Long Beach are also EJ communities and/or DACs. The location of the violation and the areas impacted by the violation support the imposition of the proposed administrative civil liability in this case and no downward adjustment is warranted.

b) Costs of Investigation and Enforcement Adjustment: $22,797

The Enforcement Policy allows for the costs of investigation and enforcement to be considered under other factors as justice may require. To date, the Los Angeles Water Board has incurred $22,797 in staff costs associated with the investigation, preparation, and enforcement of the violation. This represents approximately 182.84 hours of staff time devoted to the investigation, preparation, and enforcement of the violation. No attorneys' fees are included in this calculation.

The Los Angeles Water Board Prosecution Team finds that it is appropriate to increase the Total Base Liability Amount by $22,797 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

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

a) Maximum Liability Amount

Water Code section 13385, subdivision (c) provides that liability of up to $10 per gallon shall apply to volumes of waste discharged but not cleaned up in excess of 1,000 gallons plus $10,000 per day for each violation. The gallons discharged minus 1,000 is 5,078,770 (5,079,770 gallons – 1,000 gallons). The total days of violation is 3. Therefore, the statutory maximum is $50,817,700.

b) Minimum Liability Amount

Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." Therefore, the statutory minimum is $747,370.

The Enforcement Policy requires the Los Angeles Water Board to recover, at a minimum, 10% more than the economic benefit. The economic benefit is $747,370. Therefore, the minimum under the Enforcement Policy is $822,107.

Step 10. Final Liability Amount: $11,517,529

The Final Liability Amount consists of the amount for the violation, provided the amount is within the minimum and maximum liability amounts. The Total Base Liability Amount was added to the investigation and enforcement costs accrued by the Los Angeles Water Board Prosecution Team. Therefore, the Final Liability Amount assessed pursuant to Water Code section 13385 is $11,517,529, which is within the minimum and maximum liability amounts.

Alternative Violation: Causing or permitting the discharge of hazardous substances to the Dominguez Channel Estuary, a water of the state and United States, without a permit.

The analysis below is specific to the Water Code section 13350, subdivision (b)(1) violation, plead in the alternative, for causing or permitting at least 5,079,770 gallons of

water containing hazardous substances (acetaldehyde, benzene, benzoic acid, and naphthalene) to be discharged to the Dominguez Channel Estuary, a water of the state and United States, without a permit from September 30 – October 2, 2021.

When only considering the hazardous substances, the analysis results in the same penalty calculation methodology scores and multipliers identified above except for the following:

Step 2. Assessment for Discharge Violations

Either per gallon or per day amounts may be assessed under Water Code section 13350, but not both. The Los Angeles Water Board Prosecution Team has elected to assess a per gallon assessment, as a per day assessment would result in an inappropriately low administrative civil liability.

a) Deviation from Requirement: Major

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. The Deviation from Requirement for the alleged violation is Major. The Enforcement Policy defines a Major Deviation from Requirement as "[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions)."

Water Code section 13350, subdivision (b)(1) prohibits the discharge of hazardous substances unless authorized by waste discharge requirements (i.e., a permit). Waste discharge requirements protect surface water by either prohibiting discharge of pollutants to surface waters or prescribing requirements for discharge to surface waters.

The Deviation from Requirement is Major because Water Code section 13350, subdivision (b)(1) was rendered ineffective in its essential function of protecting the Dominguez Channel Estuary from a discharge containing the hazardous substances alleged above which resulted in negative impacts to the Dominguez Channel Estuary and nearby residents. A discharge of the type alleged herein would never have been permitted by the Los Angeles Water Board.

b) Per Gallon Assessment for Discharge Violations: $5,079,770

When there is a discharge, the Los Angeles Water Board determines the initial liability on a per gallon basis using the Potential for Harm Score from Step 1 and the Deviation from Requirement.

Table 1 of the Enforcement Policy is used to determine the per gallon factor using the Potential for Harm Score and the Deviation from Requirement. Using a Potential for Harm Score of 10 and a Deviation from Requirement of Major, the per

gallon factor is 1.0. This per gallon factor is then multiplied by the volume of the discharge and the maximum per gallon amount, as described below.

Per Gallon Assessment = 1.0 (per gallon factor) x 5,079,770 gallons x $1.00 per gallon = $5,079,770

c) Initial Liability Amount: $5,079,770

The Initial Liability Amount is the Per Gallon Assessment plus the Per Day Assessment. Since the violation is assessed only on a per gallon basis, the Initial Liability Amount is equal to the Per Gallon Assessment of $5,079,770.

Step 6. Total Base Liability Amount

Total Base Liability Amount = $5,079,770 (Initial Liability Amount) x 1.5 (Degree of Culpability) x 1.0 (History of Violations) x 1.5 (Cleanup and Cooperation) = $11,429,482

Step 9. Maximum and Minimum Liability Amounts

a) Maximum Liability Amount

Pursuant to Water Code section 13350, subdivision (e)(2), the statutory maximum administrative civil liability is $10 for each gallon of waste discharged. The Dischargers are alleged to have caused and/or permitted at least 5,079,770 gallons of water containing hazardous substances to be discharged to the Dominguez Channel Estuary. Therefore, the statutory maximum liability under Water Code section 13350, subdivision (e)(2) is $50,797,000.

b) Minimum Liability Amount

The Enforcement Policy requires the Los Angeles Water Board to recover, at a minimum, 10% more than the economic benefit. The economic benefit is $747,370. Therefore, the minimum under the Enforcement Policy is $822,107.

Step 10. Final Liability Amount: $11,452,279

The Final Liability Amount consists of the amount for the violation, provided the amount is within the minimum and maximum liability amounts. The Total Base Liability Amount was added to the investigation and enforcement costs accrued by the Los Angeles Water Board Prosecution Team. Therefore, the Final Liability Amount that could be assessed pursuant to Water Code section 13350 is $11,452,279, which is within the minimum and maximum liability amounts.