



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

November 30, 2015

CERTIFIED MAIL: 7011 2000 0000 5122 8605

Da Yang Seafood, Inc.
c/o Chih Yuan Wang, Registered Agent
45 Pier 2, Building A
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-15-096

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$85,319 for discharging wastewater from your facility located at Pier 2, Astoria, Oregon, to the Columbia River without a permit from June 2008 through May 2015.

Oregon law requires permits before allowing discharge of waste to waters of the state to ensure that such activity does not create a risk of harm to human health or the environment by limiting the amount of waste that can be discharged and by imposing monitoring and reporting requirements. Your failure to obtain and comply with the appropriate permit resulted in pollution of the Columbia River and at a minimum posed a risk of harm to humans and other environmental receptors.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.



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If you have any questions, please contact Jeff Bachman, at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mer Wiren, Northwest Region, DEQ
John Koestler, WQ, DEQ HQ
Aaron Courtney, Stoel Rives LLP, 900 SW 5th Ave., Portland OR 97204

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 DA YANG SEAFOOD, INC.,) ASSESSMENT AND ORDER
5 a Washington corporation,)
6 Respondent.) CASE NO. WQ/I-NWR-15-096

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) to Respondent, Da Yang, Seafood, Inc., a Washington corporation, pursuant to Oregon
10 Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon
11 Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 045.

12 II. FINDINGS OF FACT

13 1. Since at least June 2008, Respondent has operated a seafood processing facility at 45
14 Pier 2, Bldg. A, Astoria, Oregon.

15 2. Respondent discharged wastewater from its seafood processing facility to the Columbia
16 River in July and August 2008; May, June, July and September 2009; May, June, July, August,
17 September, October and November 2010; June, July, August and September 2011, January, March,
18 April, May, July, August, September, October and November, 2012; May, June, July, August,
19 September, October and November, 2013; June, July, August, September and October 2014; and
20 March, April and May 2015.

21 3. DEQ renewed National Pollutant Discharge Elimination System (NPDES) General
22 Permit 900-J on July 17, 2006. The 900-J general permit covered discharge of process water and
23 stormwater from seafood processing facilities. The NPDES General Permit 900-J expired on May 31,
24 2011.

25 4. During the period of June 2008 through May 2015, Respondent was not registered for
26 coverage under NPDES General Permit 900-J and did not possess an individual NPDES permit for its
27 facility at 45 Pier 2, Bldg. A, Astoria, Oregon.

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1 III. CONCLUSIONS

2 From or about June 2008 through May 2015, Respondent violated OAR 340-045-0033(6) and
3 ORS 468B.050(1)(a) by discharging waste to the Columbia River, waters of the state, without obtaining
4 coverage under a general permit or authorization under an individual wastewater discharge permit, as
5 described in Section 1, Paragraphs 1 through 4. These are Class I violations pursuant to OAR 340-012-
6 0055(1)(c). DEQ assesses an \$85,319 civil penalty for these violations.

7 IV. ORDER TO PAY CIVIL PENALTY

8 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
9 hereby ORDERED TO:

10 Pay a total civil penalty of \$85,319. The determination of the civil penalty is attached as Exhibit 1
11 and is incorporated as part of this Notice.

12 If you do not file a request for hearing as set forth in Section V below, your check or money
13 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
14 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of
15 Fact, Conclusions and Order become final.

16 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

17 You have a right to a contested case hearing on this Notice, if you request one in writing. You
18 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
19 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
20 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
21 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
22 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
23 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
24 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
25 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
26 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
27 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
association.

1 Active duty service-members have a right to stay proceedings under the federal Service
2 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

6 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
7 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
8 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
9 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
10 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
11 information submitted by you, as the record for purposes of proving a prima facie case.
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15 _____
16 Date

11/30/15

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16 Leah K. Feldon, Manager
17 Office of Compliance and Enforcement
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Discharging waste to waters of the state without a permit authorizing such discharge, in violation of ORS 468B.050(1)(a).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(e), because the Respondent is being assessed separate penalties for multiple occurrences of the violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has a duty to ascertain and comply with the regulations that apply to its business in Oregon. By not taking the action necessary to determine its need for, and obtain, a wastewater discharge permit, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e), because Respondent made reasonable efforts to ensure the violation would not be repeated by applying for a permit on May 28, 2015.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$30,719. This is the amount Respondent gained by avoiding the \$13,703 cost of monitoring required by the permit and permitting fees and by delaying the cost of installing two hydrosieves also required by the permit. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY FORMULA:

Gravity Based Penalty x Number of Violations Penalized + Economic Benefit = Total Penalty

GRAVITY BASED PENALTY CALCULATION

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 + (-1))] \\ &= \$6,000 + [(\$600 \times 3)] \\ &= \$6,000 + \$1,800 \\ &= \$7,800 \end{aligned}$$

Of the 42 occurrences of the violation, DEQ elects to assess separate penalties for 7 occurrences of the violation.

TOTAL PENALTY CALCULATION

$$\$7,800 \times 7 = \$54,600 + \$30,719 = \mathbf{\$85,319}$$