



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

October 19, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8983

Da Yang Seafood, Inc.
c/o Chang Lee, Registered Agent
45 Pier 2, Building A
Astoria, OR 97193

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/NP-2021-133

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$105,000 for discharging wastewater from your facility located at Pier 2, Astoria, Oregon, to waters of the state without a permit on 32 occasions beginning in June 2018 through June 2021.

In May 2015, DEQ learned that Da Yang had been discharging wastewater to Youngs Bay without a permit for a period of seven years. DEQ advised Da Yang in a July 15, 2015 letter that it would not take enforcement action for future unpermitted discharges from the Astoria facility to Youngs Bay, if Da Yang immediately applied for a permit and complied with the terms of the expired NPDES 900-J general permit until a permit was issued.

During the period June 2018 through June 2021, Da Yang has failed on multiple occasions to comply with 900-J permit terms pollutant effluent limits for total suspended solids, biochemical oxygen demand and oil and grease. Pollutant effluent limits in the permit are set at levels necessary to protect human health and the environment. By exceeding these levels, Da Yang created a risk that its effluent would harm water quality and aquatic life.

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:

Da Yang Seafood, Inc.
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Via mail – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232
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.

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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Randy Bailey, DEQ
Tiffany Yelton-Bram, DEQ
Aaron Courtney, Stoel Rives LLP, 900 SW 5th Ave., Portland OR 97204

1 wastewater discharge permit, as described in Section II, above. These are Class I violations pursuant to
2 OAR 340-012-0055(1)(c). DEQ assesses a \$105,000 civil penalty for these violations.

3 IV. ORDER TO PAY CIVIL PENALTY

4 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
5 hereby ORDERED TO: Pay a total civil penalty of \$105,000. The determination of the civil penalty is
6 attached as Exhibit 1 and is incorporated as part of this Notice.

7 If you do not file a request for hearing as set forth in Section V below, your check or money
8 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
9 **Office, 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232**. Once you pay the penalty,
10 the Findings of Fact, Conclusions and Order become final.

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing.
13 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
14 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
15 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
16 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
17 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
18 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 700 NE Multnomah**
19 **Street, Suite #600, Portland, Oregon 97232**, or fax it to **503-229-5100**. An administrative law judge
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
22 represented by an attorney at the hearing, or you may represent yourself unless you are a corporation,
23 agency or association.

24 Active duty Service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

2 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
3 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
4 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
5 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
6 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
7 information submitted by you, as the record for purposes of proving a prima facie case.
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10

11 10/19/2021
12 Date


11 
12 Kieran O'Donnell, Manager
13 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 NO. 1 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)(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 10 according to OAR 340-012-0145(2)(a) because Respondent has prior significant actions consisting of more than 9 Class I equivalent violations stemming from Case Nos: WQ/I-NWR-2016-238 and WQ/I-NWR-2015-096.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than 2 but less than seven occurrences of the violation. Respondent discharged wastewater from its seafood processing facility to Young's Bay on June 26, 2018; July 18, 2018; August 1 and 21, 2018; September 4 and 12, 2018; October 2, 2018; April 24, 2019; May 21, 2019; June 11, 2019; July 16 and 17, 2019, August 6 and 7, 2019; September 10 and 11, 2019; October 8 and 15, 2019; July 7, 14, and 20, 2020; August 18 and 19, 2020; September 3 and 8, 2020, October 7, 28, and 29, 2020, November 3, 2020, May 11 and 12, 2021 and June 8, 2021. Therefore, Respondent committed 32 total violations. DEQ is assessing a separate penalty for seven of the violations. To arrive at "O" DEQ divides the total number of violations by the number of violations penalized. Therefore each assessed penalty represents 4.6 occurrences for an "O" factor value of 2.

"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. In May 2015, DEQ discovered that Respondent had been intermittently discharging wastewater from its facility to waters of state without a permit for a period of at least seven years. DEQ advised Respondent that it could, without being subjected to enforcement action, discharge wastewater to waters of the state during processing of its individual permit application, if Respondent complied with the terms of the expired general permit for seafood processors. In failing to take the actions necessary to consistently comply with the effluent limits, screening, and monitoring requirements of the general permit, Respondent failed to exercise reasonable care.

"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.

"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 \$0 as DEQ has insufficient information on which to base another finding.

PENALTY FORMULA:

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

GRAVITY BASED PENALTY CALCULATION

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 2 + 4 + (-)1)] \\ &= \$6,000 + [(\$600 \times 15)] \\ &= \$6,000 + \$9,000 + \$0 \\ &= \$15,000 \end{aligned}$$

Of the 32 occurrences of the violation, DEQ elects to assess separate penalties for seven occurrences.

TOTAL PENALTY CALCULATION

$$\$15,000 \times 7 = \$105,000$$