



Oregon

Tina Kotek, 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

May 23, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6532 12

Da Yang Seafood, Inc.
c/o Chang Lee, Registered Agent
45 Pier 2, Bldg. A
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-2023-156

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Da Yang Seafood, Inc. a civil penalty of \$150,000 for discharging wastewater from your seafood processing facility located on Pier 2 at the Port of Astoria, Oregon (the Facility) to waters of the state without a permit on 33 occasions between July 2021 and September 2023.

In May 2015, DEQ learned that Da Yang Seafood, Inc. had been discharging wastewater to the Columbia River without a permit for a period of seven years. DEQ advised Da Yang Seafood, Inc. in a July 15, 2015, letter that the agency would not take enforcement action for future unpermitted discharges from the Facility if Da Yang immediately applied for permit coverage and complied with the terms of the 2006 900J General Permit until permit coverage was issued to the Facility.

During the period July 2021 through September 2023, Da Yang Seafood, Inc. has failed on multiple occasions to comply with the effluent limitations set forth in the 2006 900J Permit for total suspended solids, biochemical oxygen demand, and oil and grease. Additionally, in July 2023, a DEQ inspector observed untreated wastewater flowing from one of the Facility's processing areas and discharging through cracks in the pier deck to the Columbia River below. Compliance with effluent limitations is essential to protect water quality; the discharge of untreated wastewater poses a risk to aquatic life.

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

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

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 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 instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Aaron Courtney, Stoel Rives (via email to aaron.courtney@stoel.com)
Randall Bailey, DEQ NWR
Accounting, DEQ

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)	CASE NO. WQ/NP-NWR-2023-156
7	Respondent.)	

7 I. AUTHORITY

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

15 2. Respondent discharged seafood processing wastewater from the Facility to the Columbia
16 River on July 6, 2021; August 3–4, 2021; August 10, 2021; August 17, 2021; September 7–8, 2021;
17 September 14, 2021; October 5–6, 2021; November 9, 2021; May 18, 2022; May 23, 2022; June 8,
18 2022, July 6, 2022; August 3–4, 2022; September 7–8, 2022; October 5–6, 2022; November 3, 2022;
19 December 14, 2022; May 9, 2023; May 23, 2023; June 6, 2023; July 20, 2023; July 27, 2023; August 8,
20 2023; August 22, 2023; September 13, 2023; September 26, 2023.

21 3. On July 18, 2023, DEQ conducted an inspection of the Port of Astoria to assess the
22 Port’s compliance with the 1200-Z NPDES General Permit for Industrial Stormwater. At the time of
23 the inspection, wastewater from one of Respondent’s processing areas was flowing from the processing
24 area and discharging through cracks in the pier deck to the Columbia River.

25 4. The Columbia River is a water of the state pursuant to ORS 468B.005(10).

26 5. Pursuant to ORS 468B.050(1)(a), “without holding a permit from the Director of the
27 Department of Environmental Quality . . . , which permit shall specify applicable effluent limitations, a

1 person may not: (a) Discharge any wastes into the waters of the state from any industrial or commercial
2 establishment or activity or any disposal system.”

3 6. Respondent does not hold a wastewater permit from DEQ for discharges from the
4 Facility.

5 III. CONCLUSIONS

6 1. Respondent violated ORS 468B.050(1)(a) by discharging wastewater to the Columbia
7 River without first obtaining permit coverage, as described in Section II above. These are Class I
8 violations pursuant to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$150,000 civil penalty for these
9 violations.

10 IV. ORDER TO PAY CIVIL PENALTY

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

13 1. Pay a total civil penalty of \$150,000. The determination of the civil penalty is attached as
14 Exhibit 1 and is incorporated as part of this Notice.

15 If you do not file a request for hearing as set forth in Section V below, your check or money
16 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**
17 **Business Office, 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232.**

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

19 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
20 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
21 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
22 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
23 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
24 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
25 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax
26 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
27 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

1 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
2 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
3 you may represent yourself. If you are a corporation, partnership, limited liability company,
4 unincorporated association, trust or government body, you must be represented by an attorney or a duly
5 authorized representative, as set forth in OAR 137-003-0555.

6 Active duty Service members have a right to stay proceedings under the federal Service
7 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
8 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
9 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
10 Department does not have a toll free telephone number.

11 If you fail to file a timely request for hearing, the Notice will become a final order by default
12 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
13 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
14 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
15 the relevant portions of its files, including information submitted by you, as the record for purposes of
16 proving a prima facie case.

17
18
19
20 5/23/2024
Date

Rebecca J Puskas
Becka Puskas, Interim Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATIONS: Respondent violated ORS 468B.050(1)(a) by discharging wastewater to waters of the state without a waste discharge permit.

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 (PSAs), 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)(b), because Respondent has prior significant actions consisting of more than 9 Class I violations stemming from Case Nos: WQ/I-NWR-2015-096; WQ/I-NWR-2016-238; and WQ/NP-NWR-2021-133.

"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 was more than one but less than seven occurrences of the violation. Respondent discharged wastewater from the Facility on 33 days, as set forth in Section II, Paragraphs 2–3 of the Notice. Each day of violation is a separate occurrence. DEQ is assessing a separate penalty for ten 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 3.3 occurrences for an "O" factor 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

the state without a permit for a period of at least seven years. At that time, DEQ advised Respondent that it could, without being subject to enforcement action, discharge wastewater to waters of the state while DEQ processed Respondent's permit application provided Respondent complied with the terms of the 2006 900J General Permit. In failing to take the actions necessary to consistently comply with the effluent limitations in the 2006 900J Permit, Respondent failed to take reasonable care to avoid the foreseeable risk that a violation would occur.

"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 the Respondent made reasonable efforts to ensure the violation would not be repeated by applying for permit coverage, berming the gap between the wastewater screen and the wall to prevent discharges to the pier deck, and purchasing a larger and improved screen.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (10 + 0 + 2 + 4 + -1)] + \$0
= \$6,000 + [\$600 x 15] + \$0
= \$6,000 + \$9,000 + \$0
= \$15,000

DEQ is using its enforcement discretion to assess separate penalties for ten of the 33 occurrences of the violation.

TOTAL PENALTY CALCULATION

$$\text{\$15,000} \times 10 = \text{\$150,000}$$