



cc: ☐ Enl. Database Coord.  
☒ Rav/Rec - Cost Recovery  
☒ Kevin Fitzpatrick  
orig: ☐ File - Fax to ATG  
☒ ATG Docket Clerk  
☒ Lori LeVander  
Initial: AD 3/25/15

RECEIVED

MAR 25 2015

DEPARTMENT OF ECOLOGY  
OFFICE OF DIRECTOR

To whom it may concern,

Hello! First off; thank you for taking the time to read this and also for your consideration. My name is Jed Schimke and I was hired on in November of 2014, as part of a team of new managers, here at Blau Oyster Co. When we received our letter of warning in the mail from your department, it came as a complete shock to me that we have not been in compliance for such a long time.

After some conversations in our office with the previous management, I then discovered that the employee who had been doing our monthly sampling and submission had been involved in a near-fatal car accident and ever since then, has not been performing this task correctly due to his recovery, scheduling, physical limitations, etc. It sounded like there were many factors contributing to our lapse in compliance even though our employee was trying his best.

For this I apologize, sincerely, and have taken some steps to correct this. I have reassigned this task to myself so that I will be in charge of sampling and getting these submissions to your department on time. I have already been in contact with your office and they helped me get the online portion setup so we can submit our monthly reports even quicker now. Just to give you an idea of my level of interest in this; I'm an active team member in The Clean Samish Initiative (an effort between several farmers and several government agencies where we are cleaning up the Samish River Watershed so that future generations may enjoy our natural resources). Water quality is especially important to me, on a personal level. Please take this into consideration.

If I could appeal this penalty and possibly defer it in some way, I would prefer that. Maybe we could strike a deal where you defer the penalty in exchange for compliance? Whatever those details look like would be fine with me. Just let me know what your ideas are!

Thank you, once more, for your time and consideration.

Regards,

**Jediah Schimke**

*Head Administrative Coordinator*

**Blau Oyster Co.**

**11321 Blue Heron Road**

**Bow, WA 98232**

**Office: 360.766.6171**

**Fax: 360.766.6115**

**blau@wavecable.com**



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

March 12, 2015

Mr. Paul Blau  
Blau Oyster Company, Inc.  
11321 Blue Heron Road  
Bow, WA 98232

Notice of Penalty Docket No.	11264
Site Location	11321 Blue Heron Road
Penalty Amount	\$1500
Due Date	Within 30 days after receiving this Notice of Penalty

Re: Notice of Penalty

Dear Mr. Blau:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to Blau Oyster Company, Inc. (Blau Oyster Co.) for violating provisions of:

- National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit No. WA0029262.

Please read the enclosed Notice of Penalty describing the violation(s) and options for responding to the penalty.

If you have questions, please contact Lori LeVander at 425-649-7039 or [llev461@ecy.wa.gov](mailto:llev461@ecy.wa.gov).

Sincerely,

Kevin C. Fitzpatrick  
Water Quality Section Manager

Enclosures: Notice of Penalty Docket No. 11264

By Registered Mail No.: RR 360 297 981 US

cc: Lori LeVander, Permit Manager, Ecology  
Biniam Zelelow, Enforcement Coordinator, Ecology  
Jerry Shervey, Industrial Unit Supervisor, Ecology  
Fiscal-Penalty Desk, Ecology  
Central Files, Blau Oyster Company, Inc., NPDES Permit No WA-002926-2, WQ 6.4



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

IN THE MATTER OF PENALTY  
ASSESSMENT AGAINST  
BLAU OYSTER COMPANY

)  
)  
)

NOTICE OF PENALTY  
INCURRED AND DUE  
PENALTY DOCKET NO. 11264

To: Mr. Paul Blau  
Blau Oyster Company, Inc.  
11321 Blue Heron Road  
Bow, WA 98232

Notice of Penalty Docket No.	11264
Site Location	11321 Blue Heron Road
Penalty Amount	\$1500
Due Date	Within 30 days after receiving this Notice of Penalty

The Department of Ecology (Ecology) has assessed a penalty against Blau Oyster Company, Inc. (Blau Oyster Co.) in the amount of \$1500 for violating provisions of:

- National Pollutant Discharge Elimination System (NPDES) Waste Discharge Permit No. WA0029262.

Ecology has authority to issue this penalty under RCW 90.48.144 and is basing the penalties on the violations listed in this notice.

**DETERMINATION OF VIOLATION(S)**

**Ecology's determination that a violation/violations has/have occurred is based on the violations listed below.**

**Violation(s):**

**Violation description:**

Special condition S3.A of Blau Oyster Co.'s permit states that discharge monitoring reports (DMRs) "must be postmarked no later than the 15th day of the month following the completed monitoring period, unless otherwise specified in this permit."

Blau Oyster Co. has a history of non-compliance dating back to 1997 as shown in the table below and the phone records listed below the table.

Monitoring Period		Due Date	Received	Later or No	No of days late
Begin Date	End Date				
12/1/2014	12/31/2014	1/15/2015	2/10/2015	DMR was received late	26
11/1/2014	11/30/2014	12/15/2014	2/10/2015	DMR was received late	57
10/1/2014	10/31/2014	11/15/2014	2/10/2015	DMR was received late	87
9/1/2014	9/30/2014	10/15/2014	2/10/2015	DMR was received late	118
8/1/2014	8/31/2014	9/15/2014	11/3/2014	DMR was received late	49
7/1/2014	7/31/2014	8/15/2014	11/3/2014	DMR was received late	80
6/1/2014	6/30/2014	7/15/2014	11/3/2014	DMR was received late	111
5/1/2014	5/31/2014	6/15/2014	6/4/2014	Not late	0
4/1/2014	4/30/2014	5/15/2014	6/3/2014	DMR was received late	19
2/1/2014	2/28/2014	3/15/2014	6/3/2014	DMR was received late	80
1/1/2014	1/31/2014	2/15/2014	6/3/2014	DMR was received late	108
12/1/2013	12/31/2013	1/15/2014	1/7/2014	Not late	0
11/1/2013	11/30/2013	12/15/2013	12/11/2013	Not late	0
10/1/2013	10/31/2013	11/15/2013	11/13/2013	Not late	0
9/1/2013	9/30/2013	10/15/2013	10/10/2013	Not late	0
8/1/2013	8/31/2013	9/15/2013	1/7/2014	DMR was received late	114
7/1/2013	7/31/2013	8/15/2013	8/14/2013	Not late	0
6/1/2013	6/30/2013	7/15/2013	7/20/2013	DMR was received late	5
5/1/2013	5/31/2013	6/15/2013	7/20/2013	DMR was received late	35
4/1/2013	4/30/2013	5/15/2013	6/28/2013	DMR was received late	44
Statute of limitations has expired for violations below this line.					
3/1/2013	3/31/2013	4/15/2013	5/31/2013	DMR was received late	46
2/1/2013	2/28/2013	3/15/2013	5/31/2013	DMR was received late	77
1/1/2013	1/31/2013	2/15/2013	5/31/2013	DMR was received late	105
9/1/2012	9/30/2012	10/15/2012	12/5/2012	DMR was received late	51
8/1/2012	8/31/2012	9/15/2012	12/5/2012	DMR was received late	81
7/1/2012	7/31/2012	8/15/2012	9/28/2012	DMR was received late	44
6/1/2012	6/30/2012	7/15/2012	9/28/2012	DMR was received late	75
5/1/2012	5/31/2012	6/15/2012	6/14/2012	Not late	0
4/1/2012	4/30/2012	5/15/2012	5/7/2012	Not late	0
3/1/2012	3/31/2012	4/15/2012	5/7/2012	DMR was received late	22
2/1/2012	2/29/2012	3/15/2012	5/7/2012	DMR was received late	53
1/1/2012	1/31/2012	2/15/2012	5/7/2012	DMR was received late	82
12/1/2011	12/31/2011	1/15/2012	2/27/2012	DMR was received late	43
11/1/2011	11/30/2011	12/15/2011	2/27/2012	DMR was received late	74
10/1/2011	10/31/2011	11/15/2011	2/27/2012	DMR was received late	104
9/1/2011	9/30/2011	10/15/2011	2/27/2012	DMR was received late	135
8/1/2011	8/31/2011	9/15/2011	9/30/2011	DMR was received late	15
7/1/2011	7/31/2011	8/15/2011	9/30/2011	DMR was received late	46
6/1/2011	6/30/2011	7/15/2011	7/21/2011	DMR was received late	6
5/1/2011	5/31/2011	6/15/2011	6/22/2011	DMR was received late	7
4/1/2011	4/30/2011	5/15/2011	6/2/2011	DMR was received late	18
3/1/2011	3/31/2011	4/15/2011	6/2/2011	DMR was received late	48

Many of the late DMRs were in fact submitted only as a result of phone reminders on non-submittals in the first place.

Lori LeVander compiled written phone records of calling and reminding Blau Oyster Co. of the late or non-submitted DMRs as listed below:

June, July, August, and November 2012 and January 2011, Feb 2011 were all missing and Ecology had to call Blau Oyster Co. to receive the DMRs.

January, February, March, June, July, August and November of 2010 were missing and reminder calls were made.

### **ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT**

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations. We have made no determination as to whether you meet the definition of a "small business" under this section. However, we have determined that the requirements of RCW 34.05.110 do not apply to the violation(s) due to a conflict with federal law or program requirements, including federal requirements that are a prescribed condition to the allocation of federal funds to the state.

### **FAILURE TO COMPLY WITH THIS NOTICE OF PENALTY**

Continued failure to correct the violations listed in this Notice of Penalty may result in additional, escalated penalties.

### **OPTIONS FOR RESPONDING TO A NOTICE OF PENALTY**

#### **Option 1: Pay the penalty within 30 days after receiving the Notice of Penalty.**

Make your payment payable to the *Department of Ecology*. Please include the penalty docket number on your payment.

#### **Mail payment to:**

Department of Ecology  
Cashiering Unit  
PO Box 47611  
Olympia, WA 98504-7611

Note: Ecology may take legal action to collect the penalty if you have not paid 30 days after receiving the Notice of Penalty, and have not appealed.

#### **Option 2: Appeal to the PCHB and serve Ecology within 30 days after the date of receipt of the Notice of Penalty.**

The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days after the date of receipt of this Notice of Penalty:

- File your appeal and a copy of this Notice of Penalty with the Pollution Control Hearings Board (PCHB) during regular business hours.
- Serve a copy of your appeal and this Notice of Penalty on Ecology in paper form, by mail or in person. E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

#### ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

#### CONTACT INFORMATION

Please direct all questions about this Notice of Penalty to:

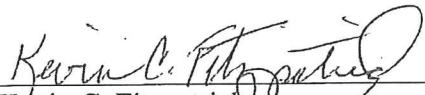
Lori LeVander  
Department of Ecology  
Northwest Regional Office  
3190 – 160<sup>th</sup> Ave SE  
Bellevue, WA 98008-5452

Phone: 425-649-7039  
Email: llev461@ecy.wa.gov

#### MORE INFORMATION

- **Pollution Control Hearings Board:** [www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board:** <http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice and Procedure:**  
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act:**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Laws:** [www.ecy.wa.gov/laws-rules/ecyrcw.html](http://www.ecy.wa.gov/laws-rules/ecyrcw.html)
- **Rules:** [www.ecy.wa.gov/laws-rules/ecywac.html](http://www.ecy.wa.gov/laws-rules/ecywac.html)

#### SIGNATURE

  
Kevin C. Fitzpatrick  
Water Quality Section Manager  
Northwest Regional Office

March 12, 2013  
Date