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

August 21, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 4630

Calbee North America, LLC
Russell Goldman, General Manager
P.O. Box 320
Boardman, OR 97818

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-ER-2020-116

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 $1,700 for failing to timely submit your 2019 annual report to DEQ as required by your Air Contaminant Discharge Permit.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether sources of air contaminants are operating within the conditions and limits of the permit, and to ensure emissions are within levels that do not pose harm to the public's health or the environment.

DEQ appreciates your effort to correct the violation by submitting your report on May 26, 2020. DEQ considered this effort when determining the amount of civil penalty.

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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Tom Hack, Eastern Region, Pendleton Office, DEQ
Mark Bailey, Eastern Region, Bend Office, DEQ
Donald Hendrix, AQ, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: CALBEE NORTH AMERICA, LLC, an Oregon corporation, Respondent.	)	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. AQ/ACDP-ER-2020-116

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, 214 and 216.

II. FINDINGS OF FACT

1. Respondent, Calbee North America, LLC, an Oregon corporation, owns and operates a potato frying and processing facility at 72600 Lewis and Clark Drive in Boardman, OR (the Facility).

2. On April 26, 2013, the Department of Environmental Quality (DEQ) issued Simple Air Contaminant Discharge Permit No. 25-0039-Si-01 (the Permit) to Respondent.

3. The Permit authorizes Respondent to discharge air contaminants from the Facility in conformance with the requirements, limitations and conditions set forth in the Permit.

4. Condition 6.2 of the Permit requires Respondent to submit an annual report to DEQ by February 15th of each year that includes specific production, maintenance and pollutant emission information for the previous calendar year of operation at the Facility.

5. Respondent's 2019 annual report was due by February 15, 2020.

6. Respondent submitted its 2019 annual report to DEQ on May 26, 2020.

III. CONCLUSIONS

Respondent violated Condition 6.2 of the Permit and OAR 340-214-0114(1) and (2), adopted pursuant to ORS 468A.050(1), by failing to submit its 2019 annual report to DEQ by February 15, 2020. This is a Class II violation, according to OAR 340-012-0054(2)(f). DEQ hereby assesses a $1,700 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of $1,700. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice.

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

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

Department does not have a toll free telephone number.

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

8/21/2020
Date

Kieran O'Donnell, 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

VIOLATION: Failing to timely submit the 2019 annual report in violation of Condition 6.2 of Respondent's Air Contaminant Discharge Permit and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ considered the following reasonably available information: once Respondent submitted the annual report, DEQ was able to determine Respondent had operated in compliance with its permit emission limits during the 2019 operating year.

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 $1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the Facility under a Simple Air Contaminant Discharge Permit.

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had four Class II violations (two Class I equivalents) in Notice of Civil Penalty Assessment and Order No. AQ/AC-ER-2018-131 issued December 7, 2018; and one Class II violation in Notice of Civil Penalty Assessment and Order No. AQ/AC-ER-2013-026 issued April 3, 2013.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"O" is whether the violation was repeated or ongoing and receives a value 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2019) annual report.

"M" is the mental state of the Respondent and receives a value of 8 pursuant to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent's Permit expressly requires Respondent to submit an annual report by February 15th of each year. On April 26, 2018, DEQ issued Respondent a warning letter with opportunity to correct for failing to submit its 2017 report by the February 15, 2017, due date. On December 7, 2018, DEQ issued Respondent a civil penalty for annual reporting violations (inaccurate reports) for the four previous reporting years. By failing to take adequate measures to ensure Respondent met its obligation to submit its 2019 annual report timely, Respondent consciously disregarded a substantial and unjustifiable risk that it would again violate the reporting requirements of the Permit and Oregon's air quality regulations. Given the prior enforcement history of late or inaccurate reporting, disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation by submitting the report on May 26, 2020.

"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 there is insufficient information on which to base a finding.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $1,000 + [(0.1 x $1,000) x (3 - 2 + 0 + 8 - 2)]+ $0
= $1,000 + ($100 x 7) + $0
= $1,000 + $700 + $0
= $1,700