



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

December 7, 2018

CERTIFIED MAIL No. 7016 0750 0000 3470 3739

Calbee North America, LLC
c/o Corporation Service Company, Registered Agent
1127 Broadway Street NE, Suite 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-ER-2018-131

This letter is to inform you that DEQ has issued you a \$1,800 civil penalty for submitting annual reports for operating years 2014 through 2017 that did not accurately reflect the air pollutant emission levels at your potato processing and frying plant at 72600 Lewis and Clark Drive, Boardman, Oregon, in violation of your Air Contaminant Discharge Permit. The air pollutant emission information in the reports appears to have been duplicated from the information in your 2013 annual report.

DEQ issued this penalty because accurate reporting is critical for DEQ to determine whether companies are operating within the operational and emission limits allowed by 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 efforts to eventually correct the violation by submitting revised reports. DEQ considered these efforts when determining the amount of civil penalty.

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 – 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 DEQ Environmental Law Specialist Jenny Root at (503) 229-5874.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

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
Julie Cheney, Accounting, DEQ
Donald Hendrix, AQ, DEQ

1 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
2 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to

3 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
4 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
5 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
6 attorney at the hearing, however you are not required to be. If you are an individual, you may
7 represent yourself. If you are a corporation, partnership, limited liability company,
8 unincorporated association, trust or government body, you must be represented by an attorney or
9 a duly authorized representative, as set forth in OAR 137-003-0555.

10 Active duty service-members have a right to stay proceedings under the federal Service
11 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
12 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
13 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
14 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

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22
23 12/7/18
24 Date

23 
24 Kieran O'Donnell, Manager
25 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

- VIOLATION: Submitting reports to DEQ that failed to include accurate air pollutant emission information, in violation of Condition 5.2.b of the Permit
- CLASSIFICATION: These are Class II violations 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 and the environment. In making this finding, DEQ considered the following reasonably available information: once Respondent submitted revised annual reports, DEQ was able to determine Respondent's air pollutant emissions were well below the Facility's Plant Site Emission Limits in the Permit.
- 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(2)(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 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 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent submitted four annual report (2014, 2015, 2016, 2017) that contained inaccurate air pollutant emission information.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent's permit expressly requires that Respondent submit an annual report that includes air pollutant emission calculations for the previous operating year. Respondent's 2014 through 2017 annual reports contained air pollutant emission information that appeared to have been copied directly from the 2013 annual report instead of submitting reports that contained accurate air pollutant emission information for operating years 2014 through 2017. Respondent later admitted to DEQ that the pollutant information in the reports was incorrect.

"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. Respondent submitted revised reports to DEQ on August 2, 2018.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,000 + [(0.1 x \$1,000) x (0 + 0 + 2 + 8 + -2)] + \$0
= \$1,000 + (100 x 8) + \$0
= \$1,000 + \$800 + \$0
= \$1,800