



# 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 10, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3111

Purina Animal Nutrition LLC  
c/o CT Corporation System, Registered Agent  
780 Commercial Street, SE, Suite 100  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-WR-2018-140

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Purina Animal Nutrition LLC, also known as Land O'Lakes Purina Feed LLC, a civil penalty of \$9,290 for failing to perform monitoring of benchmark and impairment pollutants during the 2017-2018 monitoring year as required under the NPDES 1200-Z General Permit for the facility located at 102 SE Booth Bend Road, in McMinnville, Oregon.

DEQ issued this penalty because monitoring is an important condition of the Permit and this is the second year that Purina Animal Nutrition has failed to comply with the Permit's requirements for impairment pollutant monitoring. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to waters of the state. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges.

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](mailto: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>

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

If you have any questions, please contact Courtney Brown at 503-229-6839 or toll free in Oregon at  
800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mark Diehm, Land O'Lakes Purine Feed LLC, 1200 County Road F W, Arden Hills, MN 55112  
Jill Seale, DEQ, Eugene Office  
John Koestler, WQ, DEQ  
Julie Cheney, Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	
4	PURINA ANIMAL NUTRITION LLC,	)	NOTICE OF CIVIL PENALTY
5	a foreign limited liability corporation,	)	ASSESSMENT AND ORDER
6	Respondent.	)	CASE NO. WQ/SW-WR-2018-140

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
9 ORS Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. Respondent is registered under the National Pollutant Discharge Elimination System  
13 1200-Z Permit (the "Permit") for the facility located at 102 SE Booth Bend Road, in McMinnville,  
14 Oregon (the Facility).

15 2. Schedule B, condition 1.a of the Permit requires permittees to monitor for the  
16 benchmark pollutants identified in Schedule A.9 of the Permit: total copper, total lead, total zinc, pH,  
17 total suspended solids (TSS), total oil & grease, and E.coli.

18 3. Schedule B, condition 1.b of the Permit requires permittees that discharge to an impaired  
19 water without a total maximum daily load calculation (TMDL) to monitor for impairment pollutants  
20 identified by DEQ in the permit assignment letter.

21 4. Schedule B, condition 2.f of the Permit requires permittees to monitor for benchmark  
22 pollutants four times per monitoring year (July 1 through June 30) and to monitor for impairment  
23 pollutants two times per monitoring year

24 5. Respondent discharges to the South Yamhill River which is an impaired water without a  
25 TMDL.

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

14 Active duty service-members have a right to stay proceedings under the federal Service  
15 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
16 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
17 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
18 <http://legalassistance.law.af.mil/content/locator.php>.

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

25  
26  
27  
Date

10/10/18

  
Kieran O'Donnell, Manager

Office of Compliance and Enforcement

## EXHIBIT

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

VIOLATION: Violating ORS 468B.025(2) by violating Schedule B, conditions 1 and 2 of the Permit by failing to monitor benchmark and impairment pollutants in the 2017-2018 monitoring year.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(o).

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(iii) because Respondent has coverage under an NPDES General 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 2 according to OAR 340-012-0145(2)(a)(C) because Respondent has one prior significant action (EEO #2016-EEO-1940) which included 1 class I violation.

"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. Specifically, Respondent failed to complete four instances of grab sample monitoring and two instances of impairment pollutant monitoring for a total of six occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to perform monitoring for impairment pollutants twice per monitoring year. Additionally, Respondent was cited for violating this monitoring requirement in the Permit in EEO

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#2016-EEO-1940 during the 2015-2016 monitoring year. By failing to adhere to the Permit's monitoring requirements Respondent consciously disregarded a substantial and unjustifiable risk that it would fail to perform required monitoring during the 2017-2018 monitoring year and violate Oregon law.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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 \$490. This is the amount Respondent gained by avoiding spending \$316 on five analyses of impairment pollutants and \$438 on twelve analyses of benchmark pollutants during the 2017-2018 monitoring year by June 30, 2018. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (2 + 0 + 2 + 8 + 0)] + \$490  
= \$4,000 + (\$400 x 12) + \$490  
= \$4,000 + \$4,800 + \$490  
= \$9,290