

William S. "Buddy" Cox

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bcoc@bradley.com
205.521.8461 direct

Bradley

July 13, 2021

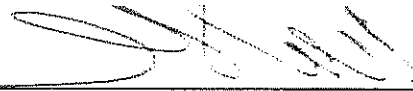
Mr. Todd Carter
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

Re: Denali Water Solutions LLC

Dear Todd:

Enclosed please find two original Consent Orders signed by Denali Water Solutions, LLC. Please feel free to contact me if you have any questions.

Very truly yours,



William S. "Buddy" Cox, III

WSC:III/jc

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

June 25, 2021

CERTIFIED MAIL

9489 0090 0027 6298 3034 54

Jeff Retzke
Denali Water Solutions, LLC
3308 Bernice Avenue
Russellville, AR 72802

**Subject: Consent Order
Denali Water Solutions, LLC
3308 Bernice Avenue
Russellville, AR 72802**

Dear Mr. Retzke:

Attached is the proposed Consent Order between Denali Water Solutions, LLC and the Alabama Department of Environmental Management. The Order requires you to take certain actions in response to alleged violations of applicable requirements of Division 13 of the ADEM Administrative Code.

The terms of this Order were agreed upon during a recent meeting between yourself and the Department. Upon receipt, please review the enclosed Order and sign both copies, and return both copies to the Department.

If you have questions regarding this matter, please contact Rick Kelsey of the Materials Management Section at (334) 271-7770 or by email at rkelsey@adem.alabama.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Cobb".

Stephen A. Cobb, Chief
Land Division

Enclosure: Consent Order (2)

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Denali Water Solutions, LLC.)	Consent Order No. 21- XXX-CSW
Russellville, Arkansas)	
Registration Number BUD0000-054574)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "ADEM" or the "Department" and Denali Water Solutions, LLC (hereinafter "Denali", "Registrant", or "Distributor" pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Solid Wastes and Recyclable Materials Management Act (hereinafter "SWRMMA"), Ala. Code §§ 22-27-1 to 22-27-18, as amended, and the ADEM Administrative Code promulgated hereunder:

STIPULATIONS

1. Denali is a foreign limited liability company registered in Alabama and the distributor of a by-product material beneficially used for the purpose of land application. The Distributor's principal place of business is located at 3308 Bernice Avenue in Russellville, Arkansas, and is currently operating in Alabama under Registration Number BUD0000-054574. According to the 2020 Annual Report and the 2021 Renewal Application, the Distributor has beneficially land applied by-product material at several locations in Alabama during the past year, including Lauderdale, Franklin, Morgan, Blount, Tuscaloosa, Sumter, Clay, Marengo, Colbert, Lawrence, Etowah, Marshall, and Mobile Counties.

2. The Department is a duly constituted Department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended and Ala. Code § 22-27-9(a), as amended, the Department is the State agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act, Ala. Code §§ 22-27-1 to 22-27-18, as amended.

4. On April 13, 2020, the Department's regulations governing the beneficial use of by-product material (ADEM Admin. Code c. 335-13-16) became effective and the Distributor became subject to these regulations.

5. On October 9, 2020, the Department received the Distributor's application for registration along with the Nutrient Management Plan (NMP) and Operations Plan (OP) for the sites that the Distributor operates and manages.

DEPARTMENT'S CONTENTIONS

6. On October 27, 2020, the Department issued a Notice of Violation (NOV) to the Distributor for violations of the 100 foot property boundary buffer and the 100 foot surface waters of the State buffer noted at the Vandiver Farm located in Colbert County, Alabama. On November 24, 2020, the Distributor provided a response to the Department regarding these violations.

7. On November 5, 2020, the Distributor was issued Registration Number BUD0000-054574 for beneficial use of by-product materials.

8. On January 7, 2021, the Department issued an NOV to the Distributor for violations of the 500 foot buffer from inhabited buildings and the 100 foot buffer from property boundaries noted at the Warren Farm in Marshall County, Alabama. On February 5, 2021, the Distributor provided a response to the Department regarding these violations. On February 13, 2021, the Department requested the Distributor to provide additional information. On February 22, 2021, the Distributor responded to the Department's request for more information.

9. As required by ADEM Admin Code c. 335-13-16, the Distributor is required to submit the annual report and registration renewal by February 28 of each year, or in the case of 2021 in which the 28th fell on a Sunday, the next business day after that date. On February 26, 2021, the Distributor submitted the Industrial Wastewater OP and NMP. On March 1, 2021, the Distributor submitted the Municipal Wastewater OP and NMP, the Application for Renewal with renewal fee payment, and Annual Report.

10. Beginning on February 17, 2021, and continuing into March 2021, the Department received complaints, relative to a land application site on 6683 Mt. Olive Road, Warrior, Alabama in Jefferson County (Tommy Self Farm), regarding odors resulting from the land application activities and concerns of pollution entering the nearby Locust Fork River.

11. The Department conducted inspections of the Tommy Self Farm on March 3, 2021, and March 5, 2021, to determine compliance with Division 13 of the ADEM Administrative Code. During the investigations/inspections, the following violations were noted:

A. The Distributor land applied by-product materials on the site without submitting an updated OP and NMP which included the subject property to the Department. After land application had begun and upon the Department's request, the Distributor provided the OP and NMP for the site on March 5, 2021, to ADEM. This violates ADEM Admin. Code r. 335-13-16-.03(2)(c), which states, "An Operations Plan and a Nutrient Management Plan are required for the site or sites where by-product materials will be applied. These plans are to be updated as application site locations or conditions change."

B. Based upon information provided to the Department in the OP and NMP for the site by the Distributor, the by-product material being land applied at the site is described as "Poultry DAF" from several sources. ADEM Admin. Code r. 335-13-16-.04(2)(b)2.(VII)

requires that the Distributor identify best management practices to protect human health and the environment in the NMP. ADEM Admin. Code r. 335-13-16-.04(3)(b)3.(ii) requires that the Distributor include best management practices for minimizing odors during handling and transportation in the OP. Based upon observation and information provided to the Department, the Distributor's method of land application of the "Poultry DAF" included surface application via spraying the by-product material onto the land surface, which allows the odors associated with this material to be dispersed into the surrounding atmosphere. This method of land application of this by-product material is in violation of ADEM Admin. Code r. 335-13-16-.04(2)(b)2.(VII) and ADEM Admin. Code r. 335-13-16-.04(3)(b)3.(ii). Also, this method of application is inconsistent with Section 1.0 Part III of the OP and NMP, submitted by the Distributor on March 5, 2021, which stated "the residuals will be spliced into the ground at a depth of 6-12 inches."

12. On March 5, 2021, the Department contacted the Distributor to inform them that an NMP had not been received for the Tommy Self Farm at the time land application was initiated and that any land application going forward at this site would be in violation of the Distributor's registration. At that time, the Department verbally directed the Distributor to cease application of by-product materials at Tommy Self Farm pending resolution of the observed compliance issues.

13. On March 9, 2021, the Department conducted an inspection of the Tommy Self Farm. No land application activity appeared to be continuing at the site, no tanker trucks or Terra Gators were observed, no odors were detected, and two gates to the site were closed and locked.

14. On March 10, 2021, the Department issued Cease and Desist Order No. 21-038-SW to the Distributor for the violations of Division 13 of the ADEM Admin. Code at the Tommy Self Farm, Jefferson County Alabama.

15. On March 12, 2021, the Department issued an NOV to the Distributor for Hidden Valley Farm, Morgan County Alabama for violating the 100 foot buffer from surface waters of the State and for violating the OP and NMP regarding Best Management Practices.

16. On March 15, 2021, the Department issued a NOV to the Distributor for Dunn Farm, Marshall County Alabama for violating the requirement that an approved OP and NMP be provided before land application activity at a site occurs.

17. On March 17, 2021, the Department issued an NOV to the Distributor for Walker Cattle Farm, Clay County Alabama for violating the requirement of at least a 100 foot buffer from surface waters of the State.

18. On April 19, 2021, the Department received a letter from Denali regarding concerns noted at the Vandiver Farm, King Farm, and Warren Farm.

19. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Distributor; the economic benefit which delayed compliance may confer upon the Distributor; the nature, extent and degree of success of the Distributor's efforts to minimize or mitigate the effects of such violation upon the environment; the Distributor's history of previous violations; and the ability of the Distributor to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the fact that the Distributor did not comply with provisions of ADEM Admin. Code div. 335-13 at several locations in Alabama to be serious. However, the Department has no evidence of any irreparable harm to human health or the environment.

B. **THE STANDARD OF CARE:** The Distributor failed to exhibit a sufficient standard of care by failing to operate in a manner commensurate with beneficial use regulatory requirements at the above sites.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Distributor has realized a significant economic benefit as a result of the violations noted.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is unaware of any efforts employed by the Distributor to mitigate any effects upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department has not identified a history of previous violations of these regulations, which became effective on April 13, 2020.

F. **THE ABILITY TO PAY:** The Distributor has not alleged an inability to pay the civil penalty.

G. **OTHER FACTORS:** The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty provided in Section A of the Order is appropriate given the actions of the violator, and in keeping with a penalty range imposed by the Department for similar violations at other facilities, as follows:

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Beneficial Use Distributor Operation Requirements	\$100 - \$25,000

21. The Department neither admits nor denies Registrant's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

DISTRIBUTOR'S CONTENTIONS

22. The Distributor neither admits nor denies the Department's contentions. The Distributor has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein.

23. The Distributor's response to the December 1, 2020, WL established that the tank was constructed less than 500 feet from an inhabited building prior to the effective date of the applicable regulations and that the location of such storage tank does not threaten the public health or unreasonably create environmental pollution. The Distributor's response to the December 1, 2020, WL also established that although there is a property line between the King Property and the adjacent property to the south, the same person farms both properties as a single unit and the landowners of both underlying properties provided consent to the beneficial use of by-product material. The 100 foot buffer requirement between properties is unnecessary in such circumstances and does not threaten the public health or unreasonably create environmental pollution.

24. As of the date of this order, the Distributor is in compliance with all aspects of the Beneficial Use Rules for all sites on which it is currently engaged in land application of by-products.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Distributor, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code 22-22A-5(18), as amended, as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Distributor agree to enter into this Consent Order with the following terms and conditions.

A. That, not later than **forty-five days** after issuance of this Order, the Distributor shall pay to the Department a civil penalty in the amount of \$34,500.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the Distributor's name and address and the ADEM Consent Order number of this action.

B. That immediately, upon the issuance date of this Order and continuing each and every day thereafter, the Distributor shall comply with all applicable provisions of ADEM Admin. Code div. 335-13.

C. That immediately, upon the issuance date of this Order, the Cease and Desist Order No. 21-038-SW will become closed and superseded by this order. The remaining items from that order are now included below and the Distributor shall implement and adhere to these items within thirty (30) days of issuance of this Order. These items include:

1. Provide an updated OP and NMP prior to commencing land application activities at a site that complies with ADEM Admin. Code r. 335-13-16-.03(2)(c), and 335-13-16-.04(2)(b)(2-3), and any of the items listed in paragraphs 2-4 below.

2. An updated consent form shall be obtained prior to the land application of DAF materials, which acknowledges the potential for, intensity, areal extent, and duration of odors resulting from the land application activities. These updated written consent forms must be signed by the land owner as per ADEM Admin. Code r. 335-13-16-.03(2)(d).

3. Demonstrate that the application site at the Tommy Self Farm and any future sites where DAF materials will be land applied at the surface without incorporation into the soil are suitable for land application and include the following:

a. Demonstration that the site is suitable for utilization of the specific by-product.

b. Demonstration that the site is suitable for the specific application method to be used.

4. Until such time as the Distributor demonstrates to the Department in writing and through appropriate testing and pilot demonstration that other land application methods are suitable, land application at the Tommy Self Farm and any future sites of by-product materials generated from food processing or manufacturing facilities with a strong odor potential (specifically including but not limited to "Poultry DAF") must be via subsurface

application methods and/or direct tillage and incorporation into the soil. Land application of these by-product materials via spraying or other application methods, which do not provide odor control at least as effective as subsurface application and/or direct tillage and incorporation, is prohibited.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

F. The Registrant agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Registrant agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

H. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; the Registrant shall not object to such future orders,

litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

I. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Registrant does hereby waive any hearing on the terms and conditions of this Consent Order.

J. The parties agree that this Consent Order shall not affect the Registrant's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

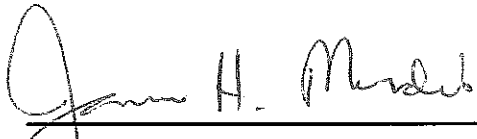
M. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Registrant of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

DENALI WATER SOLUTIONS, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Jimmy Merdick
(Printed Name)

July 8, 2021
(Date Signed)

(Date Signed)

Attachment A

Denali Water Solutions, LLC.

Russellville, Arkansas

Registration BUD0000-054574

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to abide the 100' property boundary.	2	\$1,000	\$500		
Failure to abide the 100' waters of the state boundary.	3	\$1,500	\$750		
Failure to abide the 500' inhabited building boundary.	1	\$500	\$250		
Failure to submit approved OP and NMP before land application activities.	2	\$10,000	\$5,000		
Failure to abide by practices in approved OP and NMP.	2	\$10,000	\$5,000		
					Total of Three Factors
TOTAL PER FACTOR		\$23,000	\$11,500	\$0	\$34,500

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$34,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$34,500