

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

<u>IN THE MATTER OF:</u>)	
)	
Denali Water Solutions, LLC)	Consent Order No. 23-XXX-CSW
3308 Bernice Avenue)	
Russellville, Arkansas 72802)	
<u>Registration Number BUD0000-054574-21</u>)	

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 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 BUD0000-054574-21. According to the 2021 Annual Report and the 2022 Renewal Application, the Distributor has beneficially land applied by-product material at several locations in Alabama during the past year, including: Barbour, Blount, Calhoun, Chambers, Clay, Colbert, Cullman, Dallas, DeKalb, Etowah, Franklin, Jackson, Lauderdale, Lawrence, Lee, Marshall, Mobile, Morgan, Russell, Sumter, Talladega, and Tuscaloosa 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 SWRMMA, 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. These regulations were subsequently amended and became effective on August 15, 2022.

5. The Distributor has been registered in the ADEM Beneficial Use Program in 2020 (November 5, 2020), and 2021 (September 22, 2021), excluding the Hidden Valley Lagoons.

6. On March 25, 2022 the Department received the Distributor's application for 2022 registration along with the Nutrient Management Plan (NMP) and Operations Plan (OP) for the sites that the Distributor operates and manages.

DEPARTMENT'S CONTENTIONS - HIDDEN VALLEY FARM

1. In January 2021, Denali purchased Recyc Systems Southeast, LLC and assumed management operations of the three (3) former dairy waste lagoons, farm structures, and surrounding property of Hidden Valley Farm, at 107 Hidden Valley Road, Danville, AL 35622.

2. On March 17, 2021, Denali received authorization to utilize the lined storage Lagoon #3 as temporary storage. This authorization was contingent on the operation of this lagoon to be consistent with the submitted documentation, including liner integrity maintenance, to minimize odor issues, etc.

3. On September 23, 2021, the Department conducted an inspection of the Hidden Valley Farm to determine compliance with Division 13 of the ADEM Administrative Code. It was observed that the top of the solidified grease cap of Lagoon #3 had exceeded available liner freeboard. Two

(2) requests for information, dated September 23 and 27, 2021, were issued to Denali based on this observation.

4. On October 5, 2021, Denali responded to the September 23 information request that Lagoon #3 experienced an overflow event on September 23, 2021, due to recent heavy rainfall. To mitigate this event and prevent future events, Denali reported that it had transferred material from Lagoon #3 to unlined/unapproved Lagoon #1 and indicated that the unlined/unapproved Lagoons #1 and #2 would be used as additional emergency storage.

5. On October 15, 2021, Denali responded to the September 27 information request, again to address the actions to be taken to mitigate future overflow events. These actions included spray irrigation of the material from the lagoon, transporting the material from the lagoon to off-site locations, and emergency transfers of material from Lagoon #3 to unlined/unapproved Lagoon #1.

6. On March 16, 2022, the Department conducted an inspection of the Hidden Valley Farm, initiated by a complaint regarding odors, to determine compliance with Division 13 of the ADEM Administrative Code. During the inspection the following violations/observations were noted:

a. The liner of Lagoon #3 appeared to have been compromised and was observed to be floating on the surface of the stored by-product material in noncompliance with ADEM authorization issued March 17, 2021, referenced in 2. above.

b. The material stored in Lagoon #3 had increased beyond available freeboard and overflowed the embankment in noncompliance with ADEM authorization issued March 17, 2021, referenced in 2. above.

7. On April 15, 2022, Denali was issued ADEM Cease and Desist Order No. 22-070-SW for Hidden Valley Farms at 107 Hidden Valley Farm Road, Danville, AL 35622, for violations described in the Department's Contentions above.

DEPARTMENT'S CONTENTIONS – OTHER LAND APPLICATION SITES

1. On August 25, 2021, Denali was issued a Notice of Violation (NOV) for Patterson Farms at 1523 County Road 599, Hanceville, AL 35077, regarding the violation of land application of by-product material within the one hundred (100) foot property boundary buffer zone.

2. On November 29, 2021, Denali was issued a NOV at Neely Farms at 819 Rifle Range Road, Glencoe, AL 35905, regarding the violation of land application of by-product materials within the one hundred (100) foot surface waters of the State buffer zone, and operating beneficial use activities without a required approved NMP.

3. On November 30, 2021, Denali was issued a NOV for Linton Farms at 216 South Herring Road, Phenix City, AL 36804, regarding the violation of land application of by-product material within the one hundred (100) foot property boundary buffer zone.

4. On March 24, 2022, Denali was issued a NOV for Norton Farms at 59 Sid Bush Road, Clayton, AL 36016, regarding violations of land application of by-product materials within the five hundred (500) foot inhabited building buffer zone, the one hundred (100) foot property boundary buffer zone, activities observed to be inconsistent with the approved NMP, and activities observed to be inconsistent with ADEM Consent Order No. 21-094-CSW regarding subsurface land application requirements.

5. On April 21, 2022, Denali was issued a NOV for Murphree Farms at 2708 County Road 1718, Holly Pond, AL 35083, regarding violations of land application of by-product material

within the five hundred (500) foot inhabited building buffer zone, the one hundred (100) foot property boundary buffer zone, the one hundred (100) foot surface waters of the State buffer zone, activities observed to be inconsistent with the approved NMP, and activities observed to be inconsistent with ADEM Consent Order No. 21-094-CSW regarding subsurface land application requirements.

6. 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 land application sites aforementioned in this order.

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 identified a history of previous violations of these regulations at Hidden Valley Farm, including: one (1) NOV dated March 12, 2021 and one (1) Cease and Desist Order No. Order No. 22-070-SW dated April 15, 2022. The Department has identified a history of previous violations of these regulations at additional application site locations, including five (5) NOVs since March 17, 2021, described in the Department's Contentions above.

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

The Department neither admits nor denies the 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

1. 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.
2. HIDDEN VALLEY FARM
 - a. The damage to the liner in Lagoon #3 was not foreseeable and the activities observed during the March 16, 2022 inspection were consistent with Distributor's duty to implement BMP to minimize any potential odors or other impacts to the environment, including removal of material, temporary storage of material from Lagoon #3 to Lagoons #1 and #2 at Hidden Valley as communicated to the Department.
 - b. The alleged overflow/spill noted was de minimis in nature and was promptly remediated. There was no discharge or release of any material beyond the boundaries of Hidden Valley Farm and no adverse environmental impact.
 - c. Denali appealed the issuance of the cease and desist order to the Alabama Environmental Management Commission. Such appeal remains pending.
3. PATTERSON FARMS - Land application activities at this site were performed in full compliance with the approved OP and NMP for the Patterson Farms location, including compliance with all buffers and set back requirements.
4. LINTON FARMS – Prior to land application activities, Denali had obtained land owner consent from all land owners to waive the 100-foot property boundary buffer and allow the land

application activities to occur within the otherwise prescribed buffer. Copies of these consent forms were provided to the Department.

5. NORTON FARMS – The material being surface land applied at this location was a dewatered activated sludge material and was not pretreatment DAF. The Department provided Denali with authorization to land apply this material without subsurface injection so long as it was land applied within 48 hours. Denali complied with the Department’s requirements.

6. MURPHEE FARMS – A contractor retained to perform the activities at Murphee Farms was informed about the terms of Consent Order No. 21-094-CSW, applicable buffer zones, and the approved NMP. The contractor failed to abide by Denali’s instructions and was terminated immediately.

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 agrees to pay to the Department a civil penalty in the amount of \$76,800.00 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 Denali agrees to cease and desist all activities at Hidden Valley Farm until a plan associated with Paragraph D below is submitted and approved in writing by the Department.

C. That Denali agrees to comply with the restrictions on surface application contained in ADEM Consent Order No. 21-094-CSW for Food Process Residuals (FPR).

D. That, within thirty (30) calendar days of issuance of this Order, Denali agrees to submit to the Department a corrective action plan including a proposed timeline for the following activities for the Hidden Valley Farm, which address the violations noted above in accordance with ADEM Admin. Div. 13 regulations. Corrective actions associated with this plan shall not commence until the plan is approved in writing by the Department. Specifically, the corrective action plan shall at a minimum, include:

1. Updated OP and NMPs that comply with all of the requirements of ADEM Admin. Code rs. 335-13-16-.03(4)(c), 335-13-16-.04(2)(c-d), and 335-13-16-.08(8) including updated BMP to protect human health and the environment.

2. The cleanout and remediation procedures and schedule for Lagoons #1, #2, and #3 using appropriate BMP to protect human health and the environment. All by-product material contained in all three (3) lagoons, and all residual lagoon contents (e.g., manure, etc.) which were contained in each of the lagoons at the time by-product materials were initially introduced, shall be properly disposed via landfill/incinerator or land applied at approved off-site locations or on-site areas not prohibited by paragraph E of this order, in compliance with

all applicable regulatory requirements and in a manner consistent with updated and approved OPs and NMPs.

3. Design of lagoon(s) to indicate compliance with NRCS technical standards and guidelines including but not limited to embankment integrity, liner integrity, emergency overflow structure, maximum operating liquid level, safety storage volume and liquid level gauge.

4. A lagoon(s) closure plan if the lagoon(s) cannot be certified and are noncompliant with ADEM regulations.

5. Actions, as required, that will be taken to remediate all immediate and surrounding area(s) affected by the overflow of Lagoon #3 and/or liner breach. Documentation describing methods to be employed to verify remediation must be included in the corrective action plan.

E. That Denali agrees to refrain from spraying/irrigation activities at the Hidden Valley Farm unless and until the Department approves in writing an updated OP and NMP for Hidden Valley Farm which demonstrates that land affected by irrigation/spraying is suitable for land application and includes the following:

1. Demonstration that the site is suitable for utilization of by-product material.
2. Demonstration that the site is suitable for the specific application method to be used.
3. Demonstration that land application of these by-product materials via spraying and/or irrigation provides the same level of odor control as subsurface application and/or direct tillage and incorporation.

F. That Denali shall immediately implement the approved corrective action plan, upon Departmental approval, and shall submit documentation of initiating corrective action activities in accordance with the schedule set forth in the corrective action plan approved by the Department.

G. That Denali shall complete corrective action activities at Hidden Valley Farm in accordance with the schedule set forth in the corrective action plan approved by the Department.

H. That, except as otherwise set forth herein, this 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 Denali of Denali's obligations to comply in the future with any regulatory coverage.

I. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Denali for the violations cited herein.

J. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Denali for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

K. That immediately, upon the issuance date of this Order, the ADEM Cease and Desist Order No. 22-070-SW will become closed and superseded by this order. The remaining items from that order are now included above and the Distributor shall implement and adhere to these items within thirty (30) days of issuance of this Order.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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. Upon the effective date of this Consent Order, the parties will move the Alabama Environmental Management Commission to dismiss Denali's appeal of ADEM Cease and Desist Order No. 22-070-SW for Hidden Valley Farm.

Q. 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. The parties further agree that this Consent Order shall not affect any approved NMP or OP previously issued by the Department.

R. 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.

S. 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.

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

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

Jeff Retzke

(Printed Name)

Senior Director of Environmental Services

(Printed Title)

3-20-2023

(Date Signed)

(Date Signed)

Attachment A

Denali Water Solutions, LLC

Russellville, Arkansas

Registration BUD0000-054574-21

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to abide by the 100' surface waters of the State buffer: Insp. (Neely-10/28/22), (Murphree-04/08/22)	2	\$2,000	\$1,000	\$1,000	
Failure to abide by the 100' property buffer: Insp. (Patterson-08/04/21), (Linton-10/26/21), (Norton-03/09/22), (Murphree-04/08/22)	4	\$4,000	\$2,000	\$1,000	
Failure to abide by the 500' inhabited building buffer: Insp. (Norton-03/09/22), (Murphree-04/08/22)	2	\$2,000	\$1,000	\$1,000	
Failure to submit approved OP and NMP before land application activities: Insp. (Neely-10/28/21)	1	\$7,500	\$2,500	\$1,000	
Failure to abide by 03/17/21 Authorization issued For Hidden Valley Farm's Lagoons: Insp. (HVF-09/23/21)	2	\$10,000	\$4,000	\$1,000	
Failure to abide by 03/17/21 Authorization issued For Hidden Valley Farm's Lagoons: Insp. (HVF-03/16/22)	2	\$10,000	\$4,000	\$1,000	
Failure to abide by approved/updated OP and NMP as required: Insp. (Norton-03/09/22), (Murphree-04/08/22)	2	\$10,000	\$4,000	\$1,000	
Failure to abide by Order No. 21-094-SW as it relates to subsurface land application requirements: Insp. (Norton-03/09/22), (Murphree-04/08/22)	2	\$20,000	\$5,000		
					Total of Three Factors
TOTAL PER FACTOR		\$65,500	\$23,500	\$7,000	\$96,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-/+)	\$0
Ability to Pay (-/+)	\$0
Other Factors (-20%)	\$19,200
TOTAL ADJUSTMENTS (-20%)	\$19,200

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$96,000
Total Adjustments (-20%)	-\$19,200
FINAL PENALTY	\$76,800