

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

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

LIS No. ~~23-~~ 24-007
Permit Number: 5268-WR-1(Expired)
AFIN 04-02382

CONSENT ADMINISTRATIVE ORDER

This Consent Administrative Order (“Order”) is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1311 *et seq.*, and the rules issued thereunder by Arkansas Pollution Control and Ecology Commission (APC&EC).

The issues herein having been settled by the agreement of Denali Water Solutions, LLC (Respondent) and the Division of Environmental Quality (DEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

FINDINGS OF FACT

1. Respondent operates industrial land application sites (“Sites”) located in Benton County, Arkansas.
2. Respondent is regulated pursuant to the Arkansas Water and Air Pollution Control Act (“Act”), Ark. Code Ann. § 8-4-101 *et seq.*
3. DEQ is authorized under the Act to issue permits in the state of Arkansas for the operation of disposal systems or any part of them and to initiate an enforcement action for any violation of a permit issued pursuant to the Act.
4. Ark. Code Ann. § 8-4-217(a)(3) provides:
 - (a) It shall be unlawful for any person to:

...

(3) Violate any provisions of this chapter or of any rule or order adopted by the [APC&EC] under this chapter or of a permit issued under this chapter by the [DEQ].

5. Ark. Code Ann. § 8-4-103(c)(1)(A) authorizes DEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any rule or permit issued pursuant to the Act.

6. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B), “[e]ach day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

7. DEQ issued No-Discharge Permit Number 5268-WR-1 (“Permit”) to Respondent on October 19, 2016 with an effective date of November 1, 2016. DEQ issued a modification to the Permit on October 25, 2017, with a modification effective date of October 26, 2017. The Permit expired on October 31, 2021.

8. Part III, Condition 23 of the Permit requires Respondent to submit a complete permit renewal application at least 180 days prior to the expiration date of the Permit if the activity regulated by the Permit is to continue after the expiration date.

9. Respondent intends to operate this facility beyond the expiration date of the current permit, October 31, 2021.

10. On November 4, 2020, and February 2, 2021, Respondent was notified that the Permit would expire on October 31, 2021, and that in order to continue the regulated activity, a complete renewal application must be submitted no later than May 4, 2021.

11. On May 27, 2021, DEQ received a Permit renewal application from Respondent.

12. On August 12, 2021, DEQ notified Respondent that the permit renewal application was determined to be administratively complete.

13. The complete Permit renewal application was not received by May 4, 2021. Failure to submit the complete Permit renewal application by May 4, 2021, is a violation of Part III, Condition 23 of the Permit and therefore is a violation of Ark. Code Ann. § 8-4-217(a)(3).

14. On November 4, 2021, DEQ notified Respondent by letter that the permit application received on May 27, 2021, was determined to be technically incomplete and requested that the information to satisfy the deficiencies be received by DEQ on or before November 18, 2021.

15. On November 15, 2021, DEQ received additional information from Respondent to address the permit application deficiencies.

16. On April 29, 2022, DEQ received the 2021 Annual Report for the Permit.

17. Part III, Condition 24, Section A states that all reports submitted pursuant to this permit shall be signed and certified. Part III, Condition 24, Section A states:

Any person signing a document under this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

18. Respondent reported the following land application events in the 2021 Annual Report that occurred between November 1, 2021, and December 31, 2021, after the Permit expired on October 31, 2021.

	Date of Land Application	Sludge Source	Number of Truckloads	Volume (gallons)	Field ID
1	11/30/2021	Blue Bell Creameries LP Blue Bell Broken Arrow	1	6000	BG5
2	12/01/2021	Simmons Prepared Decatur Processing	2	9200	BG5
3	12/03/2021	Simmons Prepared Decatur Processing	1	4600	BG5
4	12/08/2021	Simmons Prepared Decatur Processing	1	4600	BG5
5	12/10/2021	Simmons Prepared Decatur Processing	1	4600	BG5
6	12/15/2021	Simmons Prepared Decatur Processing	1	4600	BG5
7	11/30/2021	Simmons Foods Feedmill Decatur	1	4600	BG5
8	11/22/2021	Simmons Pet Food Pet Food Decatur	3	13,800	BG5
9	11/30/2021	Simmons Pet Food Pet Food Decatur	1	4600	BG5
10	12/07/2021	Simmons Pet Food Pet Food Decatur	1	4600	BG5
11	12/08/2021	Simmons Pet Food Pet Food Decatur	1	4600	BG5
12	12/09/2021	Simmons Pet Food Pet Food Decatur	2	9200	BG5
13	12/13/2021	Simmons Pet Food Pet Food Decatur	2	9200	BG5
14	12/15/2021	Simmons Pet Food Pet Food Decatur	2	9200	BG5
15	11/22/2021	Simmons Pet Food Siloam Treats	1	4600	BG5
16	11/23/2021	Simmons Pet Food Siloam Treats	2	9200	BG5
17	11/24/2021	Simmons Pet Food Siloam Treats	4	18,400	BG5
18	11/26/2021	Simmons Pet Food Siloam Treats	2	9200	BG5
19	11/29/2021	Simmons Pet Food Siloam Treats	2	9200	BG5
20	11/30/2021	Simmons Pet Food Siloam Treats	2	9200	BG5
21	12/01/2021	Simmons Pet Food Siloam Treats	3	13,800	BG5
22	12/02/2021	Simmons Pet Food Siloam Treats	6	33,200	BG5
23	12/03/2021	Simmons Pet Food Siloam Treats	3	18,000	BG5
24	12/06/2021	Simmons Pet Food Siloam Treats	3	16,600	BG5
25	12/07/2021	Simmons Pet Food Siloam Treats	3	13,800	BG5
26	12/08/2021	Simmons Pet Food Siloam Treats	3	13,800	BG5
27	12/09/2021	Simmons Pet Food Siloam Treats	4	18,400	BG5
28	12/10/2021	Simmons Pet Food Siloam Treats	5	23,000	BG5
29	12/11/2021	Simmons Pet Food Siloam Treats	1	4600	BG5
30	12/13/2021	Simmons Pet Food Siloam Treats	2	10,600	BG5
31	12/14/2021	Simmons Pet Food Siloam Treats	4	18,400	BG5
32	12/15/2021	Simmons Pet Food Siloam Treats	4	18,400	BG5
33	12/16/2021	Simmons Pet Food Siloam Treats	6	27,600	BG5
34	12/07/2021	Simmons Southwest City Wastewater	1	4600	BG5
35	11/23/2021	Simmons Feed Ingredients Wet Pet	2	9200	BG5
36	11/25/2021	Simmons Feed Ingredients Wet Pet	1	4600	BG5
37	11/29/2021	Simmons Feed Ingredients Wet Pet	1	4600	BG5
38	12/06/2021	Simmons Feed Ingredients Wet Pet	3	13,800	BG5
39	12/07/2021	Simmons Feed Ingredients Wet Pet	1	4600	BG5
40	12/08/2021	Simmons Feed Ingredients Wet Pet	1	4600	BG5

41	12/09/2021	Simmons Feed Ingredients Wet Pet	1	4600	BG5
42	12/10/2021	Simmons Feed Ingredients Wet Pet	1	4600	BG5
43	12/18/2021	Simmons Feed Ingredients Wet Pet	1	4600	BG5

19. Land application of industrial waste is authorized by DEQ through a State No-Discharge Permit. Respondent's Permit, which authorized the land application of industrial waste on specific land application sites during the term of the Permit including, but not limited to, the land application site listed in Paragraph 18 above, expired on October 31, 2021. Respondent's 2021 Annual Report identified forty-three (43) line-item events when Respondent land applied industrial waste on land application fields covered under the expired Permit after the Permit expired. Respondent's 2021 Annual Report indicates that those forty-three (43) land application events occurred on twenty-one (21) separate days and that a total of ninety-three (93) separate truckloads of industrial waste were land applied between November 1, 2021, and December 31, 2021.

20. Respondent stated in its 2021 Annual Report for the Permit that Respondent land applied ninety-three (93) truckloads of industrial waste on twenty-one (21) separate days without a valid permit authorizing such activity. Each of the ninety-three (93) truckloads constitutes separate violations of the Permit and therefore constitutes ninety-three (93) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

21. Part I, Table I of the Permit requires Respondent to monitor each waste stream annually, prior to the first land application of the calendar year. Pursuant to the information Respondent provided in the 2021 Annual Report, Respondent failed to monitor five (5) waste streams prior to the first land application of the calendar year.

Waste Source	First Date Waste Land Applied	Earliest Date of Analysis Prep	Analytical Report Date
Cobb Vantress Siloam Springs	01/19/2021	03/08/2021	03/15/2021
Simmons Prepared Foods Decatur Processing	02/03/2021	03/08/2022	03/17/2022
Simmons Foods Feedmill Decatur	01/04/2021	01/21/2021	01/28/2021
Simmons Prepared Foods SSFP #2 Siloam Springs	01/29/2021	03/08/2021	03/16/2021
Tyson Foods Inc., Tyson Foods Westville	01/15/2021	01/22/2021	02/01/2021

Failure to monitor five (5) waste streams before the first application of waste for the calendar year constitutes five (5) separate violations of Part I, Table I of the Permit and therefore constitutes five (5) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

22. Part I, Table II of the Permit requires Respondent to monitor each land application site annually, prior to the first land application of the calendar year. Pursuant to the information Respondent provided in the 2021 Annual Report, Respondent failed to monitor five (5) land application sites prior to the first land application of the calendar year for each site.

Land Application ID	Date of First Land Application to Site	Date Samples Received by Lab
Barbara Grisham 1 (BG-1)	01/02/2021	03/08/2022
Barbara Grisham 2 (BG-2)	03/08/2021	03/08/2022
Barbara Grisham 3 (BG-3)	01/12/2021	03/08/2022
Barbara Grisham 5 (BG-5)	08/02/2021	03/08/2022
Ronald Ownbey (JO-1)	01/15/2021	04/12/2021

Failure to monitor five (5) land application sites prior to the first land application of the calendar year constitutes five (5) separate violations of Part I, Table II of the Permit and therefore constitutes five (5) separate violations of Ark. Code Ann. § 8-4-217(a)(3).

23. Part I, Table II, Footnote 1 of the Permit requires Respondent to apply lime in accordance with recommendations from the University of Arkansas Cooperative Extension Service if the soil pH is 5.7 or lower. The soil analyses provided in the 2021 Annual report indicate that two (2) soil samples (BG-2 and BG-5-1) had a pH of 5.7 and therefore require the application of lime. The

recommendation provided on the Soil Analysis Report states, "Limestone application is targeted to bring soil pH to 6.0." Respondent did not indicate in the 2021 Annual Report that lime application occurred as required by Part I, Table II, Footnote 1 of the Permit. Failure to adjust the soil pH is a violation of Part I, Table II of the Permit and therefore constitutes a violation of Ark. Code Ann. § 8-4-217(a)(3).

24. On November 20, 2022, Respondent submitted to DEQ a revised 2021 Annual Report for the Permit. Respondent's revised 2021 Annual Report provided the following corrections:

- a. Land application records for the field identified as Barbara Grisham-5 from 11-01-2021 to 12-31-2021 were not accurate. During this time all materials listed were land applied in Missouri.
- b. Waste Source sampling for one of the waste streams, Cobb Vantress, was conducted in December 2020, and prior to application to a field in 2021. However, Respondent resampled the waste stream and only included the second set of results in the 2021 Annual Report.

25. On January 24, 2023, Respondent provided Facility Land Application Reports to support the corrected land application records in the revised 2021 Annual Report for the Permit.

26. Respondent, without admitting or denying the truth or falsity of any of the above Findings of Fact, allegations, or issues currently in dispute, wishes to avoid the uncertainty of litigation. Respondent agrees to settle and resolve these allegations or issues by entering into this Order.

ORDER AND AGREEMENT

WHEREFORE, the parties stipulate and agree as follows:

1. Upon the date of execution of this Order, Respondent shall comply with the existing Permit until the effective date of the final decision on Respondent's permit renewal application, unless Respondent provides written notice to DEQ that Respondent does not seek to renew the Permit. If

Respondent provides written notice to DEQ that Respondent does not seek to renew the Permit, Respondent shall cease all activities authorized by the expired Permit.

2. Within thirty (30) calendar days of the effective date of this Order, Respondent shall submit to DEQ a sampling and analysis plan that describes the process that Respondent will use to ensure that all waste sources and land application sites are monitored annually in accordance with the terms of the Permit.

3. Within sixty (60) calendar days of the effective date of this Order, Respondent shall submit to DEQ a plan that describes the process that Respondent will use to ensure that Respondent submits to DEQ documentation demonstrating that fields with pH results of 5.7 or less have lime applied and the pH of the soil has been raised to 6.0 or higher before land application occurs.

4. Respondent shall submit an Annual Report for 2023 in compliance with the conditions in the expired Permit.

5. Respondent shall submit a separate Annual Report for 2024 in compliance with the conditions in the expired Permit for the period beginning January 1, 2024, until the effective date of the final decision on Respondent's permit renewal application, unless Respondent provides written notice to DEQ that Respondent does not seek to renew the Permit. The separate Annual Report for 2024 shall be submitted to DEQ within thirty (30) calendar days of the effective date of the final decision on Respondent's permit renewal application. If Respondent provides written notice to DEQ that Respondent does not seek to renew the Permit, Respondent shall submit an Annual Report for 2024 in compliance with the conditions in the existing Permit for the period beginning January 1, 2024, and ending on the date permit activities ceased.

6. In compromise and full settlement of the violations specified in the Findings of Fact, Respondent agrees to pay a civil penalty of Twelve Thousand Dollars (\$12,000.00). Payment is

due within thirty (30) calendar days of the effective date of this Order. Payment of the penalty shall be made payable to the Division of Environmental Quality, and mailed to the attention of:

Division of Environmental Quality
Fiscal Division
5301 Northshore Drive
North Little Rock, AR 72118

In the event that Respondent fails to pay the civil penalty within the prescribed time, DEQ shall be entitled to attorneys' fees and costs of collection.

7. Failure to meet any requirement or deadline of this Order constitutes a violation of this Order. If Respondent should fail to meet any such requirements or deadlines, Respondent consents and agrees to pay on demand to DEQ stipulated penalties according to the following schedule:

- a. First day through fourteenth day: \$100.00 per day
- b. Fifteenth day through the thirtieth day: \$500.00 per day
- c. Each day beyond the thirtieth day: \$1000.00 per day

These stipulated penalties for delay in performance shall be in addition to any other remedies or sanctions that may be available to DEQ by reason of failure by Respondent to comply with the requirements of this Order.

8. If any event, including but not limited to an act of nature, occurs that causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this Order, Respondent shall so notify DEQ, in writing, as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates specified in this Order. The notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

9. DEQ may grant an extension of any provision of this Order, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify the DEQ promptly, as provided in the preceding paragraph of this Section, shall be grounds for a denial of an extension.

10. All requirements by the Order and Agreement are subject to approval by DEQ. Unless otherwise specified herein, in the event of any deficiencies, Respondent shall, within the timeframe specified by DEQ, submit any additional information or changes requested, or take additional actions specified by DEQ to correct any such deficiencies. Failure to respond adequately to such Notice of Deficiency within the timeframe specified in writing by DEQ constitutes a failure to meet the requirements established by this Order.

11. This Order is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d) and APC&EC Rule 8 and shall not be effective until thirty (30) calendar days after public notice is given. DEQ retains the right to rescind this Order based upon the comments received within the thirty (30) day public comment period. Notwithstanding the public notice requirements, the corrective actions necessary to achieve compliance shall be taken immediately. The publication of this Order shall occur on or about the 10th or 25th day of the month following the date this Order is executed. As provided by APC&EC Rule 8, this matter is subject to being

reopened upon Commission initiative or in the event a petition to set aside this Order is granted by the Commission.

12. Nothing in this Order shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. Also, this Order does not exonerate Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of its responsibilities for obtaining any necessary permits.

13. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this Order by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 29 DAY OF JANUARY, ⁴³⁰~~2021~~₂₀₂₃


CALEB J. OSBORNE, CHIEF ADMINISTRATOR, ENVIRONMENT
DIRECTOR, DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

Denali Water Solutions, LLC

BY: 
(Signature)

Donald Gambelin
(Typed or printed name)

TITLE: EVP Strategic Initiatives

DATE: 12/29/23