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ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IND/MUN BRANCH WATER DIVISION

IN THE MATTER OF:
Bunge North America
1400 Market Street Northeast
Decatur Alabama 35601
Permit No. IU085200103

Consent Order No.

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("the Department") and Bunge North America ("the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act ("AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. The Permittee operates a soybean processing, soybean oil refining, and vegetable oil blending facility ("the Facility"), located at 1400 Market Street Northeast, in the city of Decatur, Morgan County, Alabama.
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 § 22-22A-4(n), Ala. Code, as amended, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. The Department issued State Indirect Discharge ("SID") Permit No. IU085200103 ("the Permit"), in accordance with ADEM Admin. Code chap. 335-6-5 and the AWPCA, to the

Permittee on March 26, 2020, effective April 1, 2020, establishing limitations on the discharges of pollutants from a point source, designated therein as outfall number DSNS01, into the Decatur Utilities Wastewater Treatment Plant ("WWTP"). The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports ("DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants in violation of the limits imposed by Part I.A of the Permit. The effluent violations noted are listed in Attachment # 1.

6. On April 23, 2021, the Department issued a Warning Letter ("WL") to the Permittee for discharging pollutants in exceedance of the limits imposed in Part I.A of the Permit and for failure to submit DMRs by the 28<sup>th</sup> day of the month following the monitoring period as required by Part I.E.1.b of the Permit. The WL required the Permittee to submit to the Department a written report describing the corrective actions that would be or had been taken.

7. On May 19, 2021, the Department received the Permittee's response to the WL. The Permittee's response identified the corrective actions taken, including specific changes to operational, maintenance, and treatment procedures.

8. On November 3, 2022, the Department issued a Notice of Violation ("NOV") to the Permittee for discharging pollutants in exceedance of the limits imposed in Part I.A of the Permit and for failure to submit a Noncompliance Notification Form 421 ("Form 421") for exceedances in the reporting periods of August 2022, September 2021, August 2021, and January 2021. The NOV required the Permittee to submit to the Department the missing Form 421s and a written report prepared by an engineer registered and authorized to practice in Alabama describing the corrective actions that would be or had been taken.

9. On December 2, 2022, the Department received the Permittee's response to the NOV. The Permittee's response indicated an evaluation of the wastewater treatment system was

performed by the third-party contractor that installed the system. The contractor identified issues within the treatment system that would lead to decreased system performance. Additionally, the NOV response identified high turnover in personnel trained in wastewater treatment operations at the Facility as a cause of elevated discharge levels. The NOV response indicated the Permittee implemented a procedure to ensure Form 421 submittal as applicable and submitted the missing forms noted in the NOV.

10. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

11. The Department has agreed to the terms of the Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in the Consent Order are in the best interests of the citizens of Alabama.

#### **DEPARTMENT'S CONTENTIONS**

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 such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person 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 that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment #2), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-5, and the AWPCA were noted. The Department considered the general nature of each violation, the

magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: In consideration of the standard of care manifested by the Permittee, the Department determined the civil penalty is appropriate and has not enhanced the penalty based on this factor.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee and has determined that enhancement of the penalty is appropriate.

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

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has considered the Permittee's history of previous violations and has determined that enhancement of the penalty is appropriate.

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

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment #2.

#### **PERMITTEE'S CONTENTIONS**

The Permittee is committed to operating the Facility in full compliance with its Permit and applicable law and regulations. The Permittee believes that the violations alleged by the

Department resulted from a combination of equipment malfunctions with the wastewater treatment system, turnover of personnel, and supply chain issues regarding repairs to the wastewater treatment system. The Permittee has committed substantial resources to eliminate the sources of the alleged non-compliance and will continue to invest the resources necessary to ensure the Facility maintains compliance with permit and applicable law. Respondent strives to maintain good relationships with all of its various stakeholders and to conduct its operations in compliance with applicable requirements. The Permittee has been responsive to ADEM regarding the operational issues associated with the wastewater treatment system. The Permittee is not aware of any by-pass or interference experienced by Decatur Utilities POTW as a result of these alleged violations and the Permittee understands that Decatur Utilities POTW did not experience any violation of its NPDES permit.

**ORDER**

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$24,600.00 in settlement of the violations alleged herein within forty-five days after issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified 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

C. The Permittee shall prepare and submit to the Department, not later than one hundred and twenty (120) days after the issuance of this Consent Order, an Engineering Report that identifies the potential causes of noncompliance and summarizes an investigation of the changes necessary for the Permittee to achieve and maintain compliance with the Permit. The Engineering Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known. At a minimum, the Permittee shall consider each of the following in making its investigation: the need for changes in maintenance and operating procedures; the need for modification of existing treatment and collection system works; and the need for new or additional treatment and collection system works. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the Report is not sufficient, then the Report shall be modified accordingly. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report not later than 360 days after the issuance of this Consent Order.

D. No later than 390 days after the issuance of this Consent Order, the Permittee shall comply with the Five Day Biochemical Oxygen Demand, Oil and Grease, and Total Suspended Solids numeric effluent limitations imposed by Part I.A of the Permit.

E. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon the issuance of this Consent Order.

F. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. The Permittee shall

submit such certification so that it is received by the Department no later than 420 days after issuance of this Consent Order.

G. After the issuance date of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or satisfy any of the requirement dates set forth in or established by Paragraphs C and F contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in Paragraphs C and F the Department reserves the right to file a new action against the Permittee.

H. Should violations of the Five Day Biochemical Oxygen Demand, pH, Oil and Grease, and Total Suspended Solids numeric effluent limitations imposed by Part I.A of the Permit continue to occur after 390 days after the issuance of this Consent Order or as stipulated in Paragraph G above, then the Department reserves the right to issue additional orders or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

I. Payment of stipulated penalties for violations of milestone dates under this Consent Order are due no later than the 28<sup>th</sup> day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

J. 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.

K. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

L. The Permittee it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

M. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

N. 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 concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

O. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

P. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

Q. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

R. 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.

S. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

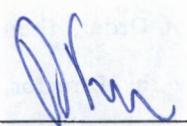
T. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligation to comply in the future with any permit.

Executed in duplicate, with each part being an original.

BUNGE NORTH AMERICA

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

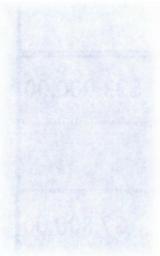
By:  \_\_\_\_\_ By: \_\_\_\_\_  
Its: Vice President - Industrial Operations Its: \_\_\_\_\_  
Date: November 2, 2023 Date: \_\_\_\_\_

Attachment 1: Effluent Violations

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Violation Type
August 2023	S011	Solids, Total Suspended	500.0	1170.00	mg/l	Daily Maximum
July 2023	S011	Oil & Grease	300.0	305	mg/l	Daily Maximum
July 2023	S011	Oil & Grease	100.0	103.73	mg/l	Monthly Average
June 2023	S011	BOD, 5-Day (20 Deg. C)	1500.0	1610.00	mg/l	Daily Maximum
April 2023	S011	BOD, 5-Day (20 Deg. C)	1500.0	1960.00	mg/l	Daily Maximum
April 2023	S011	BOD, 5-Day (20 Deg. C)	800.0	832.38	mg/l	Monthly Average
April 2023	S011	Oil & Grease	300.0	706	mg/l	Daily Maximum
April 2023	S011	Oil & Grease	100.0	139.59	mg/l	Monthly Average
April 2023	S011	Solids, Total Suspended	500.0	1970.0	mg/l	Daily Maximum
April 2023	S011	Solids, Total Suspended	250.0	297.75	mg/l	Monthly Average
March 2023	S011	Oil & Grease	300.0	551.00	mg/l	Daily Maximum
March 2023	S011	Solids, Total Suspended	500.0	685.00	mg/l	Daily Maximum
January 2023	S011	BOD, 5-Day (20 Deg. C)	1500.0	2210.00	mg/l	Daily Maximum
January 2023	S011	BOD, 5-Day (20 Deg. C)	800.0	994.13	mg/l	Monthly Average
January 2023	S011	Oil & Grease	300.0	1610.00	mg/l	Daily Maximum
January 2023	S011	Oil & Grease	100.0	336.65	mg/l	Monthly Average
January 2023	S011	pH	5.0	4.2	S.U.	Minimum Daily
January 2023	S011	Solids, Total Suspended	500.0	1050	mg/l	Daily Maximum
November 2022	S011	BOD, 5-Day (20 Deg. C)	1500.0	2270	mg/l	Daily Maximum
November 2022	S011	BOD, 5-Day (20 Deg. C)	800.0	828.22	mg/l	Monthly Average
November 2022	S011	Solids, Total Suspended	500.0	1860.00	mg/l	Daily Maximum
November 2022	S011	Solids, Total Suspended	250.0	282.64	mg/l	Monthly Average

October 2022	S011	BOD, 5-Day (20 Deg. C)	1500.0	2160.00	mg/l	Daily Maximum
October 2022	S011	BOD, 5-Day (20 Deg. C)	800.0	1144.75	mg/l	Monthly Average
October 2022	S011	Oil & Grease	300.0	472.00	mg/l	Daily Maximum
October 2022	S011	Oil & Grease	100.0	151.16	mg/l	Monthly Average
October 2022	S011	Solids, Total Suspended	500.0	1320	mg/l	Daily Maximum
October 2022	S011	Solids, Total Suspended	250.0	364	mg/l	Monthly Average
September 2022	S011	Oil & Grease	300.0	302.00	mg/l	Daily Maximum
September 2022	S011	Oil & Grease	100.0	118.18	mg/l	Monthly Average
August 2022	S011	Oil & Grease	300.0	615	mg/l	Daily Maximum
August 2022	S011	Oil & Grease	100.0	132.61	mg/l	Monthly Average
July 2022	S011	Oil & Grease	300.0	1320	mg/l	Daily Maximum
July 2022	S011	Oil & Grease	100.0	239	mg/l	Monthly Average
July 2022	S011	Solids, Total Suspended	500.0	1240	mg/l	Daily Maximum
July 2022	S011	Solids, Total Suspended	250.0	253	mg/l	Monthly Average
June 2022	S011	Oil & Grease	100.0	104	mg/l	Monthly Average
April 2022	S011	Oil & Grease	300.0	1230.00	mg/l	Daily Maximum
April 2022	S011	Oil & Grease	100.0	218.98	mg/l	Monthly Average
September 2021	S011	Oil & Grease	100.0	119.03	mg/l	Monthly Average

Attachment 2: Penalty Synopsis



**Attachment 2**

**Bunge North America  
Decatur, Morgan County  
IU085200103**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Effluent Violations	40	\$ 19,400.00	\$ -	\$ 3,600.00
		\$19,400.00	\$0.00	\$3,600.00
		Total (A)	Total (B)	Total (C)
<b>Base Penalty Total</b> [Total (A) + Total (B) + Total (C)]				\$23,000.00
<b>Mitigating Factors (-)</b>				
<b>Economic Benefit (+)</b>				\$7,800.00
<b>Ability to Pay (-)</b>				
<b>Other Factors (+/-)</b>				-\$6,200.00
<b>INITIAL PENALTY</b>				\$24,600.00
<b>Total Adjustments (+/-)</b>				\$0.00
<b>FINAL PENALTY</b>				\$24,600.00

**Additional Adjustments due to negotiations, receipt of additional information, or public comment**

<b>Mitigating Factors (-)</b>	
<b>Economic Benefit (+)</b>	
<b>Ability to Pay (-)</b>	
<b>Other Factors (+/-)</b>	-\$6,200.00
<b>Total Adjustments (+/-)</b>	

Footnotes

\*See the "Stipulations" and "Contentions of the Department" portion of the Order for a detailed description of each violation and the penalty factors