

IN THE COLE COUNTY CIRCUIT COURT  
STATE OF MISSOURI

CITIZENS OF RANDOLPH COUNTY	)	
AGAINST POLLUTION, LLC,	)	
	)	
RELATOR	)	
	)	
V.	)	Case No. _____
	)	
MISSOURI DEPARTMENT OF	)	Division _____
NATURAL RESOURCES,	)	
	)	
RESPONDENT	)	

PETITION FOR WRIT OF PROHIBITION

COMES NOW Relator, by and through the undersigned counsel, pursuant to § 530.010, RSMo *et seq.*, and Supreme Court Rule 97, and for its Petition states as follows:

Parties

1. Relator is a Missouri limited liability company in good standing. *See* Exhibit 1, attached hereto and incorporated herein. Relator’s members and supporters are Missouri residents and Missouri taxpayers whose taxes support Respondent’s implementation of the Missouri Solid Waste Management Law, §§ 260.200 - 260.345, RSMo. Relator’s members and supporters own real property and reside in Randolph County, Missouri. Most all of Relator’s members are engaged in agriculture for their livelihood. Relator’s members and supporters engage in recreational activities in and near Mud Creek and other water bodies located in Randolph County, Missouri. Relator, its members and supporters are adversely affected by the effects on their health, property values, loss of recreational

opportunities, and presence of offensive odors caused by the solid waste processing facility described herein, and by Respondent's actions in excess of its statutory authority by allowing the construction of the solid waste processing facility without the necessary permits specifically required by the Missouri Solid Waste Management Law, § 260.205.1, RSMo.

2. Respondent is a state agency created by Article IV, § 47(a) of the Missouri Constitution. Respondent has a legal duty to enforce the provisions of the Missouri Solid Waste Management Law, including § 260.205.1, RSMo.

#### Jurisdiction and Venue

3. This Court has jurisdiction pursuant to Article V, § 14 of the Missouri Constitution. Venue is appropriate in this Court because Respondent maintains its official place of business in Cole County, Missouri.

#### Statement of Facts

4. Denali Water Solutions, LLC ("Denali") is an Arkansas limited liability company. According to its corporate website, "DENALI IS A SPECIALTY WASTE AND ENVIRONMENTAL SERVICES COMPANY." (emphasis added). Further, Denali states on its corporate website, "Our team is on a mission to create a positive impact on how waste disposal is utilized, as there is limitless potential for what can be done with organic waste." (emphasis added). In addition, Denali states on its corporate website, "Denali is an innovative waste disposal and recycling company that is committed to repurposing waste to create value and make our economy more

circular.” (emphasis added). *See Exhibit 2, attached hereto and incorporated herein.*

5. The Arkansas Department of Environmental Quality has issued over 250 permits to Denali in connection with its operations in Arkansas. In these permits, Denali’s Primary Standard Industrial Classification Code (“SIC”) is listed as “4953 – Refuse Systems.” *See Exhibit 10, attached hereto and incorporated herein, pp. 1 - 28.*

6. According to the Occupational Safety & Health Administration (“OSHA”), SIC 4953 includes “Establishments primarily engaged in the collection and disposal of refuse by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials” (emphasis added). *See Exhibit 3, attached hereto and incorporated herein.*

7. In 2023, Denali constructed an earthen basin approximately 2.3 miles southwest of Jacksonville, Missouri in rural Randolph County. The earthen basin is approximately 600’ x 275’ by 20’ deep and is designed to hold 15 million gallons. The earthen basin is located in the Mud Creek watershed.

8. Prior to the construction of the earthen basin, Denali did not apply for and Respondent did not issue any permit of any kind relating to the earthen basin.

9. On June 28, 2023, Respondent received a Form W permit application in which Denali requested a permit under the Missouri Clean Water Law, Chapter

644, RSMo, for the land application of certain wastes that would be stored in the earthen basin. *See Exhibit 4, attached hereto and incorporated herein.*

10. In § 8.2 of the permit application, Denali stated its Primary SIC Code is 0711, which is “Soil Preparation Services.” *See Exhibit 4, p. 2.*

11. According to OSHA, SIC 0711 includes “Establishments primarily engaged in land breaking, plowing, application of fertilizer, seed bed preparation, and other services for improving the soil for crop planting” (emphasis added). *See Exhibit 9, attached hereto and incorporated herein.*

12. According to Denali’s “Management Plan for the Land Application of Organic Residuals,” the types of wastes that Denali will place in the earthen basin “are primarily organic solids or semi-solid residues produced by wastewater treatment processes at food processing plants, animal processing plants, animal food processing plants, and other organic based residuals determined to be beneficial for land application.” *See Exhibit 5, attached hereto and incorporated herein, p. 005.*

13. Further, Denali states, that the wastes to be stored in the earthen basin can include “waste water residuals from various food and vegetable processing plants, animal processing plants, and animal food processing plants, processing wash-down rinse water, Dissolved Air Flotation (DAF) skimmings, waste activated sludge, wastewater lagoon sludge, and grease trap waste.” *Exhibit 5, p. 003.*

14. In describing DAF skimmings, Denali states, “DAF skimmings are a common product of wastewater pretreatment systems which employ flocculates and dissolved air to remove the solids from wastewater. Flocculated solids float to the surface where they are skimmed off and collected.” *Exhibit 5, p. 005.*

15. In describing grease trap water, Denali states, “Grease trap water is the mixture of vegetable oils, animal fats, water and semi-solid material that collects in the grease traps which are situated in the wastewater outflow lines. Its composition is typically about 90% water, 5% oil and grease, and 5% organic solids.” *Exhibit 5, p. 005.*

16. Also, Denali states, “The lagoon is for the storage of food processing and organic residuals and will not contain biosolids from municipal systems. Because of the material types, this lagoon will form a grease cap similar to anerobic lagoons at food processing facilities. The cap is formed when the lighter weight oils and greases float to the top and solidify together, forming an organic layer that minimizes the exchange of odorous gases and creates an anerobic environment below the cap.” *Exhibit 5, p. 004.*

17. Denali also states, “The lagoon will not have any aeration or engineered treatment.” *Exhibit 5, p. 003.*

18. On July 18, 2023, Respondent issued to Denali a draft Missouri State Operating Permit No. MO-0140236 under the Missouri Clean Water Law, Chapter 644, RSMo. *See Exhibit 6, attached hereto and incorporated herein.*

19. On August 21, 2023, at a public hearing held by Respondent in Macon, Missouri concerning the draft Missouri State Operating Permit, Respondent's representatives stated (i) the Denali earthen basin was constructed in compliance with Respondent's requirements, and (ii) the land application of "food waste residuals" was authorized in Missouri.

### COUNT I

20. Relator restates and realleges the allegations in paragraphs 1 to 19.

21. Section 260.200.1(56), RSMo defines "Solid Waste" as "garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials resulting from industrial, commercial, agricultural, governmental and domestic activities, but does not include hazardous waste as defined in sections 260.360 to 260.432, recovered materials, post-use polymers, recovered feedstocks, overburden, rock, tailings, matte, mill scale and slag or other waste material resulting from mining, milling or smelting." *See* Exhibit 7, attached hereto and incorporated herein.

22. Section 260.200.1(62) defines "Solid Waste Processing Facility" as "any facility where solid wastes are salvaged and processed." *Id.*

23. Section 260.205.1, RSMo states, "It shall be unlawful for any person to operate a solid waste processing facility or solid waste disposal area of a solid waste management system without first obtaining an operating permit from the department. It shall be unlawful for any person to construct a solid waste processing facility or solid waste disposal area without first obtaining a construction

permit from the department pursuant to this section. . . .” See Exhibit 8, attached hereto and incorporated herein.

24. Section 260.205.1 does contain an exemption from the foregoing permit requirements: “A permit shall not be required to operate a waste stabilization lagoon, settling pond or other water treatment facility which has a valid permit from the Missouri clean water commission even though the facility may receive solid or semisolid waste materials.” *Id.*

25. All the different types of wastes collected by Denali, as described in its Management Plan, are “solid waste” as defined by § 260.200.1(56).

26. The earthen basin constructed by Denali is a “solid waste processing facility” as defined by § 260.200.1(62).

27. Under § 260.205.1, Respondent has a legal duty to require Denali to obtain a construction permit before Denali constructed the earthen basin.

28. Under § 260.205.1, Respondent has a legal duty to require Denali to obtain an operating permit before Denali begins any operations at the solid waste processing facility/earthen basin.

29. Because Denali constructed the solid waste processing facility/earthen basin without first obtaining a construction permit from Respondent under § 260.205.1, the construction of the lagoon is not in conformance with all applicable legal requirements and the statements made by Respondent’s representatives on August 21, 2023 were incorrect.

30. By allowing Denali to construct an earthen basin without requiring Denali to obtain a construction permit under § 260.205.1, Respondent exceeded its authority under § 260.205.1.

### COUNT II

31. Relator restates and realleges the allegations in paragraphs 1 to 30.

32. Any earthen basin constructed by Denali to store waste water residuals from various food and vegetable processing plants, animal processing plants, and animal food processing plants, processing wash-down rinse water, Dissolved Air Flotation skimmings, waste activated sludge, wastewater lagoon sludge, grease trap waste, and other similar wastes is a “solid waste processing facility” as defined by § 260.200.1(62).

33. Because, as Denali admits in its Management Plan, “The lagoon will not have any aeration or engineered treatment,” any earthen basin constructed by Denali is not a “waste stabilization lagoon,” “settling pond,” or “treatment facility.”

34. A “waste stabilization lagoon” and “settling pond” are components of a wastewater treatment system generally used to treat municipal and industrial wastewater.

35. Because any earthen basin constructed by Denali is not a “waste stabilization lagoon,” “settling pond,” or “treatment facility,” the permit exemption in § 260.205.1 is not applicable.

36. Because Denali constructed the solid waste processing facility/earthen basin without first obtaining a construction permit under § 260.205.1, and because



the permit exemption is not applicable, Respondent is allowing Denali to violate the permit requirements in § 260.205.1 by constructing a solid waste processing facility without a construction permit.

37. By unlawfully applying the permit exemption in § 260.205.1 to the earthen basin, in issuing draft Missouri State Operating Permit No. MO-0140236, and in not requiring Denali to obtain a construction permit, Respondent exceeded its authority under § 260.205.1.

### RELIEF REQUESTED

Because Respondent has clearly exceeded its authority and failed to properly enforce the Missouri Solid Waste Management Law, specifically § 260.205.1, this Court should issue a Preliminary and Permanent Writ in Prohibition commanding Respondent to require Denali to cease any and all operations and to obtain a construction permit and operating permit under § 260.205,1, RSMo in connection with any solid waste processing facility/earthen basin operated by Denali in Missouri.

### SUGGESTIONS IN SUPPORT OF WRIT OF PROHIBITION

A. Regulatory Background. The Missouri Supreme Court has succinctly stated the purpose for the Missouri Solid Waste Management Law, §§ 260.200 - 260.345, RSMo.

The legislature enacted §§ 260.200--245 to prevent public nuisances, public health hazards, and the despoliation of the environment that necessarily accompany the accumulation and unmanaged disposal of garbage, refuse, and filth. Throughout human history this menace has led to and intensified disease and plague. The legislature, in its wisdom, has forbidden the dumping of solid waste on the ground, in

streams, springs, and other bodies of water except through licensed solid waste processing facilities, solid waste disposal areas, and other means that do not create public nuisances or adversely affect the public health.

*Craig v. City of Macon*, 543 S.W.2d 772, 773 (Mo. banc 1976).

In this context, § 260.205.1 establishes a process by which a solid waste processing facility or disposal area can obtain permits. Initially, an applicant is required to conduct a preliminary site investigation (“PSI”), which involves a technical investigation into environmental and geologic conditions at a proposed site. Then, once Respondent approves the PSI, the applicant is required to conduct a detailed site investigation (“DSI”), which involves a more rigorous investigation, including subsurface borings, groundwater sampling, and the installation of groundwater monitoring wells. Once the Respondent approves the DSI, the applicant is required to obtain a construction permit prior to the start of any construction of the solid waste facility. Once the facility is constructed and the construction is approved by the Respondent, the applicant is required to obtain an operating permit prior to the acceptance of any solid wastes.

B. Denali is primarily engaged in the waste disposal industry.

It cannot be reasonably disputed that Denali is in the waste disposal industry. Denali admits this fact on its own website when it states, “Denali is an innovative waste disposal and recycling company.” In addition, if Denali was not primarily engaged in waste disposal, then the Arkansas Department of Environmental Quality would not have issued and Denali would not have accepted over 250 permits with the SIC Code “4953 - Refuse Systems.”

As part of its proposed activities, Denali admits in its Management Plan that it collects refuse, garbage, dissolved floatation skimmings, grease trap waste, and other discarded waste materials from its customers. Significantly, it is highly unlikely businesses with SIC Code 0711 which are primarily engaged in “land breaking, plowing, application of fertilizer, seed bed preparation, and other services for improving the soil for crop planting” do not collect garbage, refuse, dissolved floatation skimmings, grease trap wastes, and other noxious wastes for disposal. Rather, SIC 0711 clearly applies to agricultural business and not waste disposal companies.

Also, it cannot be reasonably disputed that the refuse, garbage, dissolved floatation skimmings, grease, and other waste materials collected by Denali are “solid wastes” as defined by § 260.200.1(56). Moreover, because Denali’s earthen basin used to store these noxious wastes, the earthen basin is a “solid waste processing facility” as defined by § 260.200.1(62).

Further, it cannot be reasonably disputed that the earthen basin is not a “waste stabilization lagoon,” “settling pond” or “water treatment facility.” In this regard, the earthen basin does not receive any “aeration or engineered treatment” of any kind. More importantly a “waste stabilization lagoon” and “settling pond” are typical components of the type of multi-pond wastewater treatment systems found in rural areas that are used to provide treatment for domestic, commercial, and industrial wastewater generated in rural communities. *See Missouri Department of*

Natural Resources, WASTEWATER GUIDELINES AND STANDARDS DOCUMENT - PUB2754 (February 2019). Clearly, Denali's earthen basis is not that.

In Publication 2754, Respondent states that a person proposing to dispose of biosolids on land must,

Evaluate the program of land spreading of biosolids as an integral system, which includes stabilization, storage, transportation, application, soil, crop, and groundwater. Wastewater biosolids are useful to crops and soils by providing nutrients and organic matter.

WASTEWATER GUIDELINES AND STANDARDS DOCUMENT - PUB2754, p. 129.

Based on Publication 2754, Respondent allows for land disposal of biosolids from wastewater plants. But, Publication 2754 makes no mention of the land disposal of "food processing residuals" and the other types of noxious wastes mentioned in Denali's Management Plan. Furthermore, in its Management Plan, Denali states, "The lagoon is for the storage of food processing and organic residuals and will not contain biosolids from municipal systems." *Exhibit 5, p. 004.*

Thus, a conflict exists because Respondent's Publication 2754 generally addresses municipal wastewater systems and the land disposal of biosolids from such wastewater systems. However, Denali admits that it will not accept biosolids from municipal wastewater systems. Further, Publication 2754 does not even mention the land disposal of "food waste residuals," which is exactly what Denali proposes to land apply. As a result, Denali's proposed waste disposal activities cannot be permitted as part of a "waste stabilization lagoon," "settling pond" or "water treatment facility," and the permit exemption in § 260.205.1 does not apply.

- C. Respondent exceeded its authority in applying the permit exemption and not requiring Denali to obtain permits under § 260.205.1, RSMo.

Instead of requiring Denali to comply with the construction permit requirements under the Missouri Solid Waste Management Law that apply to waste disposal businesses, Respondent unlawfully applied the permit exemption for “waste stabilization lagoon,” “settling pond,” and “treatment facility” and issued Denali a draft Missouri State Operating Permit under Chapter 644, the Missouri Clean Water Law. In this regard, it is possible that Respondent was confused by Denali using an apparently erroneous SIC Code (0711 - Soil Preparation Services) in its Form W application which made it appear that Denali was an agricultural business instead of a waste disposal business. Nonetheless, in applying the permit exemption, Respondent clearly exceeded its statutory authority because Denali’s earthen basin does not meet the criteria in the permit exemption.

In this context, the exemption from the permit requirements in § 260.205.1 only applies to a “waste stabilization lagoon,” “settling pond” or “water treatment facility” that has received a water permit under Chapter 644. But, because Denali’s earthen basin is not a component of a wastewater treatment system generally used to treat domestic, commercial, and industrial water and does not provide any aeration or engineered treatment of any kind, it is evident that Denali’s earthen basin is not a “waste stabilization lagoon,” “settling pond” or “treatment facility.” Moreover, a cursory review of Respondent’s own Publication 2753 shows that Denali’s earthen basin is not a “waste stabilization lagoon,” “settling pond” or “treatment facility” that would qualify for the permit exemption. Consequently, the

permit exemption in § 260.205.1 just does not apply to Denali's solid waste processing facility/earthen basin.

- D. The Court should enter a Writ of Prohibition to refrain Respondent from acting in excess of its authority under § 260.205.1, RSMo.

The essential function of prohibition is to correct or prevent inferior courts and agencies from acting without or in excess of their jurisdiction. *State ex rel. State ex rel. Douglas Toyota v. Keeter*, 804 S.W. 2d 750, 752 (Mo banc 1991); *McDonnell Douglas Corp. v. Gaertner*, 601 S.W.2d 295, 296 (Mo.App.1980).

Based on the foregoing, it is evident that Respondent unlawfully applied the permit exemption to Denali. Consequently, the Court should exercise its authority and issue a Writ of Prohibition to refrain Respondent from continuing to act in excess of its statutory authority and instead command Respondent to require Denali to cease any and all activities and operations at any solid waste processing facility/earthen basin in Missouri used to store food waste residuals and related wastes until such time Respondent has issued Denali a construction permit and an operating permit under § 260.205.1 for any such facility. *State ex rel. State ex rel. Douglas Toyota v. Keeter, supra; McDonnell Douglas Corp. v. Gaertner, supra.*

#### PRAYER

Relator prays the Court sustain its Petition and issue a Preliminary and Permanent Writ of Prohibition against Respondent, find that Respondent's actions are not substantially justified, command Respondent to require Denali to cease any and all activities and operations at any solid waste processing facility/earthen basin in Missouri storing food waste residuals until such time Respondent has issued

Denali a construction permit and an operating permit under § 260.205.1, award Relator its reasonable attorneys' fees and costs, and award such further relief the Court deems appropriate.

Respectfully submitted,

**JEFFERY LAW GROUP, LLC**

/s/ Stephen G. Jeffery

Stephen G. Jeffery, MBE 29949  
400 Chesterfield Center, Suite 400  
Chesterfield, Missouri 63017-4800  
(855) 915-9500 - Toll free Phone/Fax  
*E-mail: [sjeffery@jefferylawgroup.com](mailto:sjeffery@jefferylawgroup.com)*

ATTORNEY FOR RELATOR