

**IN THE CIRCUIT COURT OF CRAWFORD COUNTY, ARKANSAS
CIVIL DIVISION**

**BRUCE SPINAS;
RCB MANAGEMENT, LLC d/b/a River
City Bistro, on behalf of itself
and all others similarly situated**

PLAINTIFFS

v.

CASE NO. 17CV-24-_____

DENALI WATER SOLUTIONS, LLC

DEFENDANT

COMPLAINT—CLASS ACTION

Comes now the Plaintiffs, for themselves and on behalf of all similarly situated persons, and for their cause of action against the Defendant, state as follows:

INTRODUCTION

1. This class action lawsuit is filed on behalf of the named Plaintiffs, and all those citizens and/or residents and/or property owners of the State of Arkansas who are affected by the noxious fumes emanating from a storage lagoon used to store organic residuals, hereinafter referred to as “Storage Lagoon,” being operated by Defendant Denali Water Solutions, LLC.

2. This action is being brought against the Defendant for the creation of a noxious and harmful nuisance; trespass; negligence; and economic losses that the noxious fumes have caused that have created a nuisance beginning in Crawford County, Arkansas and extending into Sebastian County, Arkansas and perhaps other areas.

3. This action seeks, among other forms of relief, injunctive relief requiring Denali Water Solutions LLC to cease all operations at the subject Storage Lagoon until it is properly closed and remediated to eliminate the noxious odors and harmful emissions affecting the Plaintiffs and other similarly situated persons.

JURISDICTION AND VENUE

4. Plaintiff Bruce Spinus is an adult resident citizen of Fort Smith, Sebastian County, Arkansas.

5. Plaintiff RCB Management, LLC, d/b/a River City Bistro (hereinafter “River City Bistro”), is a limited liability company that operates a restaurant located at 3106 South 74th St, Fort Smith, AR 72903.

6. Defendant Denali Water Solutions LLC (hereinafter “Denali Water Solutions”) is a foreign limited liability company with its principal place of business in Bentonville, Benton County, Arkansas. Defendant Denali Water Solutions was and continues to be engaged in the operation of Storage Lagoons and other waste management in the State of Arkansas which contaminate land and the environment in the State of Arkansas.

7. The Plaintiff’s causes of action arise in Crawford County, where the Defendant operates the subject Storage Lagoon or Lagoons and where the Defendant's tortious conduct arises. The Defendant’s harmful actions have persisted for several years in Crawford County and Sebastian County, and the harmful effects of the Defendant's actions continue unabated. As such, this Court has jurisdiction over the parties and subject matter hereto, and venue is proper herein.

FACTS

8. Defendant operates a storage lagoon or lagoons for organic residuals in Crawford County, which has been a source of noxious odors affecting residents and property owners in the

River Valley. (hereinafter referred to as the “subject Storage Lagoon”) This Storage Lagoon, intended for the temporary storage of byproducts from food processing and other industries, has been a significant source of noxious odors that have adversely affected residents and property owners throughout the River Valley. Since approximately August 2024, these persistent and overwhelming fumes have permeated Fort Smith and the surrounding areas, creating an intolerable environment for the community.

9. On information and belief, this Storage Lagoon is a man-made basin used for the temporary storage of organic residuals—byproducts from food processing and other industries that are unsuitable for disposal in traditional wastewater systems. The Storage Lagoon creates a manure like smell that impacts both Sebastian County, Arkansas and Crawford County, Arkansas and makes living outdoors or being outdoors very uncomfortable with poor air quality. The odor created from the Storage Lagoon is pungent and has proximately caused harm to Plaintiffs’ business and the business and life of other residents of Crawford and Sebastian County, Arkansas. On information and belief the waste and byproducts in the Storage Lagoon includes grease, blood, offal and other such biosolids.

10. In a February 1, 2019, letter, Defendant explained that it had "purchased a company" in October 2017, which included the purchase of the subject Storage Lagoon located “between Highway 59 and Hollis Lake.” (See Exhibit A, Letter from Jason Golden, General Manager, Denali Water Solutions, to Mayor George McGill (Feb. 1, 2019))

11. Denali Water Solutions admitted in the letter that noxious odors were “coming from the work we are performing” at the subject Storage Lagoon and explained that the stored organic residuals “can get odorous” depending on factors such as temperature and the residuals' makeup. *Id.* Denali also acknowledged that it “knew we were going to have to clean [the storage lagoon]

out,” stated that they “intended to” do so, and confirmed their intent to “close [the Storage Lagoon] permanently” after the clean-up. *Id.* Denali further admitted that it had anticipated the noxious odor would waft into the River Valley, stating that “we knew it would stink” during the clean-up process. *Id.*

12. In a press release from the City of Fort Smith titled “Pungent Odors,” published on February 1, 2019, it was reported that a strong and unpleasant odor was emanating from a storage lagoon, prompting hundreds of phone calls, emails, and other messages from concerned residents to the City. (See Exhibit B, *News Release, City of Fort Smith, “Pungent Odors” (Feb. 1, 2019)*). The release emphasized that the odor had been “unusually intense” during this period, primarily due to the ongoing clean-up efforts of the organic residuals lagoons located in the Crawford County river bottoms. *Id.*

13. Fort Smith Mayor George McGill personally assured residents that “the issue is being resolved” and that the clean-up would culminate in the lagoons being closed permanently, ensuring that the noxious odors would no longer “plague residents” at various times of the year. *Id.* This commitment came in response to the community's mounting frustration regarding the noxious odors affecting their quality of life. Mayor McGill had good intentions but his assurances were incorrect and the problem continues at the present time.

14. Despite acknowledging the widespread nuisance created by the Storage Lagoon and prior assurances from Denali Water Solutions and the City of Fort Smith that the lagoon would be permanently closed, the subject Storage Lagoon was never closed, on information and belief. The failure to close the Storage Lagoon has led to the intense odors that Plaintiffs and other residents in the River Valley have experienced since approximately August 2024 and continue to endure.

15. In a press release dated October 14, 2024, the City of Fort Smith addressed ongoing concerns from residents regarding the persistent noxious odors affecting Fort Smith and the surrounding area. (See Exhibit E, Press Release, City of Fort Smith (Oct. 14, 2024)). The City again confirmed that these odors were linked to a lagoon cleanup project occurring in the Arkansas River bottoms in Crawford County. *Id.*

16. As confirmed through the reporting of Tina Alvey Dale, Denali Water Solutions appear to have continued to operate out of the subject Storage Lagoon, resulting in persistent noxious odor throughout Fort Smith and the surrounding area. (See Exhibit D, *Tina Alvey Dale, DEQ Commits to Monitoring Denali Use of Crawford County Lagoon* (Oct. 14, 2024)). The article noted that “Denali began cleaning out a storage lagoon in Crawford County on Sept. 24,” indicating that the company is still managing the residuals stored there rather than completing the promised closure. On information and belief, the ongoing operation at the subject Storage Lagoon is the source of the noxious odors affecting the quality of life for Plaintiffs and other residents in the River Valley. *Id.*

17. The activities of the Defendants were performed knowingly, wantonly and with reckless disregard for the rights of the Plaintiffs and other residents in the River Valley.

18. As a direct result of the noxious odors emanating from the subject Storage Lagoon, Plaintiff and others similarly situated have suffered a significant loss of enjoyment of his property and other damages set forth below.

19. Plaintiff RCB Management, LLC, d/b/a River City Bistro, heavily relies on outdoor dining as a vital aspect of its business model. However, the persistent odors from the Storage Lagoon have deterred patrons from utilizing the outdoor patio, leading to a noticeable decline in

customer traffic. Numerous customers have lodged complaints about the unpleasant smell, further impacting the Bistro's ability to attract and retain business.

CAUSES OF ACTION

NUISANCE

20. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

21. The ongoing operation of the Storage Lagoon by Denali Water Solutions has created a noxious and harmful nuisance that has substantially interfered with the use and enjoyment of the properties of the named Plaintiffs and those similarly situated.

22. Denali Water Solutions has acted negligently and with a disregard for the rights of the surrounding community by failing to adequately mitigate the noxious odors and by continuing to operate the Storage Lagoon despite knowing the significant impact it has on Plaintiff and those similarly situated.

TRESPASS

23. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

24. The noxious odors and emanating from the Storage Lagoon operated by Denali Water Solutions have intruded upon the properties of the Plaintiff and all others similarly situated. This intrusion constitutes a trespass, interfering with the rights of the Plaintiffs and others in the class to enjoy their properties free from offensive and noxious odors.

NEGLIGENCE

25. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

26. Denali Water Solutions had a duty to operate the Storage Lagoon in a manner that did not cause harm to the Plaintiffs and those similarly situated. The Defendant had a duty to take all measures reasonably necessary to protect the Plaintiffs and those similarly situated from the noxious odors which accompanied their operation of the Storage Lagoon.

27. The Defendant, by its own admission, was aware that its operation of the Storage Lagoon was causing the migration of harmful and noxious fumes throughout the River Valley. Yet, despite this knowledge, the Defendant failed to take adequate measures to mitigate the impact of these emissions, resulting in ongoing harm to Plaintiffs and those similarly situated.

28. The actions of the Defendants were grossly, recklessly and wantonly negligent, and were done with utter disregard for the consequences to the Plaintiffs and those similarly situated. Therefore, the Plaintiff and those similarly situated, are entitled to an award of punitive damages.

CLASS ACTION

29. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

30. The Plaintiffs bring this action for themselves and on behalf of a class of similarly situated persons consisting of all citizens and/or residents and/or property owners of the State of Arkansas who live and/or own property or are affected and who have losses due to the actions or inactions of the Defendant. In this regard, Plaintiffs state pursuant to Ark. R. Civ. P. 23: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the

claims or defenses of the class, and (4) the representative parties and their counsel will fairly and adequately protect the interests of the class. All of these prerequisites are met for class certification.

31. Plaintiffs are members of the class that they seek to represent.

32. The members of the proposed class share common legal and factual questions, including but not limited to:

- a) Whether the operations of the Storage Lagoon create noxious odors and harmful substances that intrude upon the properties of the Plaintiffs and similarly situated individuals.
- b) Whether the Defendant's actions constitute a nuisance, trespass, or negligence.
- c) Whether the ongoing operation of the Storage Lagoon has caused economic and emotional harm to the Plaintiffs and those similarly situated.
- d) Whether the Plaintiffs and the class are entitled to compensatory and punitive damages as a result of the Defendant's conduct.
- e) The appropriate scope of injunctive relief necessary to mitigate or eliminate the harmful effects of the Storage Lagoon.

33. The claims of the named Plaintiffs are typical of the claims of the class, as all members of the class have been similarly affected by the noxious odors and harmful substances emanating from the Storage Lagoon.

34. The Defendant has acted on grounds generally applicable to the class making appropriate injunctive relief with respect to the class as a whole as well as damages suffered by each class member

35. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because class certification is a more efficient way to handle the case, the class is manageable and class certification will avoid a multiplicity of individual actions.

36. The Plaintiffs will fairly and adequately represent and protect the interests of the class.

DAMAGES

37. That as a direct and proximate consequence of the negligent acts of the Defendant, Denali Water Solutions, the Plaintiffs, and all others similarly situated, have suffered from loss of use and enjoyment of their property; endured mental anguish; have sustained economic losses; and other damages all to his harm and detriment in the sum and amount that the proof presented at the trial of this matter warrants, with such some being in excess of the minimum amount required for jurisdiction in the United States District Courts in diversity of citizenship cases.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant the following relief:

1. An order requiring Denali Water Solutions, LLC to immediately cease and desist all operations at the Storage Lagoon until it is properly closed and remediated to eliminate the noxious odors and harmful emissions affecting the Plaintiffs and those similarly situated.
2. An award of compensatory damages to Plaintiffs, and those similarly situated, for the loss of use and enjoyment of their property, emotional distress, economic losses, and other damages suffered as a result of the Defendant's actions.

3. An award of punitive damages against Denali Water Solutions for its willful and wanton disregard for the rights of the Plaintiffs, and those similarly situated, to deter similar future conduct.
4. All other relief to which the Plaintiffs and members of the class may be entitled.

Respectfully submitted



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February 1, 2019

Honorable Mayor George McGill
623 Garrison Ave # 315
Fort Smith, AR 72901

Dear Mr. Mayor,

Speaking on Behalf of Denali Water Solutions, we are terribly sorry for the pungent odors that are being emitted as we complete our lagoon closure. To be perfectly clear, the odors that your constituents are smelling are coming from the work we are performing and not the neighboring sod farm.

Denali Water's business is recycling organic residuals. Our clients are food processors that produce nutrient-rich organic residuals that cannot enter the municipal wastewater system. These organics residuals are excellent all-natural fertilizers. We pick up the residuals from their plants and give them to farmers as eco-friendly fertilizers.

During times of inclement weather, when the farmers cannot get on their fields to spread the materials, these residuals will get stored until it becomes dry enough to spread. The storage options are either gigantic tanks or lagoons. Depending on certain factors (temperature, time, residual makeup), the material can get odorous.

In October 2017, Denali Water Solutions purchased a company that provides the same types of beneficial recycling that Denali performs. When we purchased this company, we also purchased a storage lagoon that is located between highway 59 and Hollis lake that is filled with these residuals. We knew we were going to have to clean it out and close it permanently and specifically chose the month of January because we knew it would stink and there would be less people outside. Further, the winds typically blow to the east at this time of year, away from Ft. Smith.

We began cleaning out the lagoon on January 9th and we have about 2 more days' worth of work to do before that lagoon is completely closed. We have no intentions of ever using this lagoon again for storage and are terribly sorry for the inconvenience that it has caused. We just need these last few days so we can finish and be done with it.

For the record, we have worked closely with the Arkansas Department of Environmental Quality with whom we have an outstanding record of compliance.

Again, we are terribly sorry and are almost finished.

Sincerely,

Jason Golden, General Manager of Denali Water Solutions





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FOR IMMEDIATE RELEASE

“PUNGENT ODORS”

“Organic Residuals” Lagoons Being Cleaned Out & Closed

(February 1, 2019, Fort Smith, AR) — A strong and unpleasant aroma has hung in the air over Fort Smith the last few weeks, leading to hundreds of phone calls, emails, and other messages to the City from residents demanding that something be done.

The smell emanates from Crawford County river bottoms, where food processing companies’ “organic residuals” long have been lagooned and, from time to time, emitted a bad smell that wafted across neighborhoods of Fort Smith. It’s been unusually intense the last several days as the new landowner removes the residuals and prepares them for removal. The clean-up will culminate in the lagoons being closed permanently, so intermittent faint odors will no longer plague residents at various times of year.

“The issue is being resolved,” said Mayor George B. McGill, “The lagoons are being drained and cleaned. Soon, it will be going away forever.”

McGill is quick to point out the work is lawful and permitted by state environmental authorities. It is being done now, during a colder month, because fewer people spend time outdoors where there’s no escape from the smell. During warmer or summer months, more residents spend longer periods of time outdoors, enjoying recreational activities, and the intense aroma would prove even more obtrusive and inconvenient.

McGill’s concern about community complaints led him to contact state authorities that put him in touch with the new landowner conducting the clean-up project. Working together, the company agreed to halt operations as of last night to allow the stench to die down.

Clean-up is to resume early next week when the winds shift so that they’re not blowing the odor toward Fort Smith. After a few more days work, the job is to be completed and Fort Smith residents should no longer have to contend with the “pungent odors.”

Attachment: Company letter to Mayor McGill

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Addressing Recent Odor Concerns in Fort Smith

Fort Smith, Arkansas sent this bulletin at 10/14/2024 02:18 PM CDT

[View as a webpage/Share](#)



October 14, 2024

Fort Smith residents, many of you have reported concerns of unpleasant odors in Fort Smith. After investigation, we learned that the smell is a result of a lagoon cleanup project in the Arkansas River bottoms in Crawford County. This process involves breaking down food residuals into agriculture inputs, providing local farmers with nutrient-rich fertilizer to stimulate plant growth. The anticipated completion of the lagoon cleanup is within the next 10 days.



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DEQ commits to monitoring Denali use of Crawford County lagoon

The Division of Environmental Quality (DEQ) of the Arkansas Department of Energy and Environment is monitoring cleanout of a lagoon in Crawford County that has caused Fort Smith area residents to complain about a bad smell. But several questions remain.

The City of Fort Smith issued a statement Monday (Oct. 14) regarding multiple reports from city residents involving concerns of unpleasant odors in Fort Smith.

“After investigation, we learned that the smell is a result of a lagoon cleanup project in the Arkansas River bottoms in Crawford County. This process involves breaking down food residuals into agriculture inputs, providing local farmers with nutrient-rich fertilizer to stimulate plant growth. The anticipated completion of the lagoon cleanup is within the next 10 days,” the statement from the city said.

Russellville-based water treatment company **Denali Water Solutions** (<https://www.denalicorp.com/>) has stated they are in process of emptying a lagoon where they are repurposing food processing residuals into fertilizer for nearby farms, and this is likely the cause of the smell.

Carol Booth, chief of communications with Arkansas Department of Energy and Environment, said Tuesday (Oct. 15) that Denali began cleaning out a storage lagoon in Crawford County on Sept. 24. The cleanout is permitted through the DEQ. On Oct. 10, the company submitted a report stating what they have done thus far and is in compliance with state regulations.

“A total of 368,276 gallons were land applied on field SS-1 on 9/26/2024 and 9/27/2024. The clean out of the lagoon is still occurring. 3,151,735 gallons have been removed from the lagoon and the lagoon is below freeboard as of today,” the update report stated.

Paragraph 10 of Permit 5257-WR-2 states that residuals will be stored in the storage lagoon during periods of inclement weather or when [field]/crop conditions are not suitable for land application and the lagoon will be cleaned out “periodically,” Booth said. The contents in the lagoon will be land applied to the land applications sites via a dragline land application system and/or load on to and then spread with a tanker truck, terragator, or tractor and buggy.

Booth said an inspection will be conducted by the DEQ water division to make certain all protocol is followed.



“When inspecting a facility, the inspector will determine if the activities performed under the permit are in compliance with the terms of the permit,” she said.

([HTTPS://TALKBUSINESS.NET/](https://talkbusiness.net/))



The City of Fort Smith contacted the Department of Energy and Environment’s air division Monday, but was told all inquiries need to be routed through the water division. Josh Buchfink, public relations manager with the city, said Tuesday he had contacted the water division but had not heard back from them.

The city and Denali, which has faced regulatory and legal pushback in other states, had conversations regarding lagoon cleanup and the smells it created in the area in 2019.

“(Those organic residuals) from time to time, emitted a bad smell that wafted across neighborhoods of Fort Smith. It’s been unusually intense the last several days as the new landowner removes the residuals and prepares them for removal. The clean-up will culminate in the lagoons being closed permanently, so intermittent faint odors will no longer plague residents at various times of year,” Denali noted in January 2019.

“The issue is being resolved,” Fort Smith Mayor George McGill said at the time. “The lagoons are being drained and cleaned. Soon, it will be going away forever.”

Golden told McGill in a letter dated Feb. 1, 2019, the odors were from the work Denali Water Solutions was conducting, not from the neighboring sod farm in the river bottoms. Golden said in the letter. “These organic residuals are excellent all-natural fertilizers. We pick up the residuals from their plants and give them to farmers as eco-friendly fertilizers.”

Golden said during times when farmers cannot spread the materials on their fields, the residuals are stored in gigantic tanks or lagoons.

“Depending on certain factors (temperature, time, residual makeup), the material can get odorous,” he said.

Denali purchased a company that provides similar recycling in 2017. At that time, it also purchased a lagoon located between Highway 59 and Hollis Lake in Crawford County that is filled with the residuals.

“We knew we were going to have to clean it out and close it permanently and specifically chose the month of January because we knew it would stink and there would be less people outside. Further, the winds typically blow to the east at this time of year, away from Fort Smith,” Golden said in the 2019 letter.

Denali representatives did not respond Tuesday to questions regarding the lagoon, nor did they answer whether the lagoon being cleaned now is the same one from 2019 that was to be permanently closed.