

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF

Morton International, Inc.

Glendale, AZ

Proceedings under Section 1423(c)  
of the Safe Drinking Water Act,  
42 U.S.C. § 300h-2(c)

DOCKET NO. UIC-09-2010-0004

**CONSENT AGREEMENT  
AND  
[PROPOSED] FINAL ORDER**

**CONSENT AGREEMENT**

**I. STATUTORY AUTHORITY**

This Consent Agreement and Final Order (“CA/FO”) is issued under the authorities vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Sections 1423(c) and 1445(a) of the Safe Drinking Water Act (the “SDWA” or the “Act”), 42 U.S.C. §§ 300h-2(c), 300j-4(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX. The Regional Administrator in turn has delegated these authorities to the Director of the Water Division, EPA Region IX. In accordance with these authorities, and with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (hereinafter “Consolidated Rules of Practice”), the Director of the Water Division, EPA Region IX, hereby issues and Morton International, Inc. (“Respondent”) hereby agrees to the issuance of this CA/FO.

Respondent and Complainant (the “Parties”) agree that settlement of the matter at issue without litigation will save time and resources, is in the public interest, is consistent with the provisions and objectives of the Act and applicable regulations, and that entry of this CA/FO is the most appropriate means of resolving this matter.

**II. STIPULATIONS AND FINDINGS**

Respondent stipulates, and EPA finds as follows:

1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h to 300h-8, EPA has promulgated

regulations establishing minimum requirements for Underground Injection Control ("UIC") programs to prevent underground injection which endangers underground drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.

2. 40 C.F.R. Part 144 Subpart A, contains general provisions of the UIC program. 40 C.F.R. § 144.3 defines an "underground source of drinking water" ("USDW") as: "[A]n aquifer or its portion: (a)(1) Which supplies any public water system; or (2) Which contains a sufficient quantity of ground water to supply a public water system; and (i) Currently supplies drinking water for human consumption; or (ii) Contains fewer than 10,000 mg/l total dissolved solids ["TDS"]; and (b) Which is not an exempt aquifer."
3. "Underground injection" means the subsurface emplacement of fluids through a well. 42 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3.
4. Pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147 Subpart D, § 147.151, EPA administers the UIC program in the State of Arizona. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart D), and 148.
5. On September 17, 1987, EPA issued Respondent a Class III UIC permit, Permit No. AZS 000000005, for the operation of an injection well, Roach-Baker #4, at Morton's facility located at 13000 West Glendale Avenue, Glendale, Arizona. EPA modified the permit on August 8, 1996.
6. 40 C.F.R. § 144.3 defines a "facility or activity" to mean any UIC injection well that is subject to regulation under the UIC program, and further defines "owner or operator" to mean "the owner or operator of any 'facility or activity.'"
7. 40 C.F.R. § 144.6(c)(3) defines Class III wells to include "wells which inject for extraction of minerals including . . . solution mining of salts or potash."
8. 40 C.F.R. Part 144 Subpart E, includes conditions applicable to all UIC permits. 40 C.F.R. § 144.51(a) and Condition I.E.1 of Respondent's UIC permit provides that any permit or regulatory noncompliance constitutes a violation of the Act and is grounds for an enforcement action.
9. Pursuant to 40 C.F.R. § 144.51(q)(1), an owner or operator of a permitted Class III well shall maintain mechanical integrity. Condition I.H.5 of Respondent's UIC permit requires Respondent to halt operations immediately if the Respondent finds that the well fails to demonstrate mechanical integrity during a test, or loss of mechanical integrity becomes evident during operation. An injection well has

mechanical integrity if “there is no significant leak in the casing, tubing or packer; and there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.” 40 C.F.R. § 146.8.

10. Pursuant to 40 C.F.R. § 144.51(l)(6) and Condition I.E.12(d)(1) of Respondent’s UIC permit, within 24 hours a permittee must orally report “any noncompliance which may endanger health or the environment, including any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.”
11. Pursuant to 40 C.F.R. 144.51(l)(6) and Condition I.E.12(d)(2) of Respondent’s UIC permit, a permittee must submit a written report within 5 days of any noncompliance which may endanger health or the environment.
12. Pursuant to Section 1423(c)(1) of the Act, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. § 19.4, EPA may issue an order either assessing an administrative civil penalty of not more than \$11,000 for each day of each violation occurring before January 12, 2009 and not more than \$16,000 for each day of each violation occurring after January 12, 2009, up to a maximum penalty of \$177,500, against any person who violates the Act or any requirement of an applicable UIC program. In assessing a penalty for such violations, EPA must take into account: (1) the seriousness of the violations; (2) the economic benefit resulting from the violations; (3) the history of such violations; (4) any good faith efforts to comply with the applicable requirements; (5) the economic impact of the penalty on the violator; and (6) such other matters as justice may require. 42 U.S.C. § 300h-2(c)(4)(B).
13. Pursuant to Section 1445(a)(1)(A) of the Act, 42 U.S.C. § 300j-4(a). EPA may require any person who is subject to the requirements of the Act to submit information relating to such person’s compliance with the requirements of the Act. 42 U.S.C. § 300j-4(a)(1)(A).
14. Morton International, Inc. is a corporation. Thus, Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.
15. Respondent owns and operates well Roach-Baker #4 at 13000 West Glendale Avenue, Glendale, Arizona.
16. During November 2008, the ratio of injected water to produced brine exceeded levels that indicate a well is maintaining mechanical integrity.

17. No later than December 1, 2008, a loss of mechanical integrity in Roach-Baker #4 should have become evident, and Respondent was required to halt operations immediately. Respondent did not halt operations until January 30, 2009.
18. Respondent was required to orally report the loss of mechanical integrity in Roach Baker #4 within 24-hours of December 1, 2008, when Respondent should have recognized the loss of mechanical integrity, which could have endangered health or the environment, had occurred. Respondent orally reported the loss of mechanical integrity on January 30, 2009.
19. Morton was required to submit a written report on the loss of mechanical integrity in Roach-Baker #4 within five days of December 1, 2008, when Respondent should have recognized the loss of mechanical integrity, which could have endangered health or the environment, had occurred. Respondent submitted a written report on February 3, 2009.
20. Based on the foregoing, EPA finds that Respondent violated three requirements of its UIC permit.

### III. PROPOSED ORDER

Respondent and EPA agree to issuance of the following, which shall become effective upon issuance of the Final Order:

#### A. Penalty

21. To settle this matter, Respondent agrees to pay to the United States an administrative civil penalty of **thirty-four thousand, one hundred dollars (\$34,100)** no later than thirty (30) days following the effective date of the Final Order (hereafter referred to as the "due date").
22. The administrative civil penalty referred to in paragraph 21 shall be made payable to the Treasurer, United States of America, in accordance with any acceptable method of payment listed in Attachment A "EPA Region IX Collection Information," which is incorporated by reference as part of this CA/FO.
23. Concurrent with the payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case, via certified mail, to each of the following:

Steven Armsey  
Regional Hearing Clerk (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Erica Maharg  
Office of Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

24. Payment must be received on or before the due date specified in paragraph 21.
25. If the full payment is not received on or before the due date, interest shall accrue on any overdue amount from the due date through the date of payment, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date. Respondent shall tender any interest, handling charges, or late penalty payments in the same manner as described above.
26. Pursuant to Section 1423(c)(7) of the Act, 42 U.S.C. § 300h-2(c)(7), if Respondent fails to pay by the due date the administrative civil penalty assessed in paragraph 21 of this CA/FO, EPA may bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. 42 U.S.C. § 300h-2(c)(7).

B. General Provisions

27. Respondent waives any right to a hearing under Section 1423(c)(3) of the Act, 42 U.S.C. § 300h-2(c)(3). Respondent waives any right to contest the allegations contained in the Consent Agreement or to appeal the CA/FO.
28. For the purpose of this proceeding, Respondent admits the jurisdictional allegations, as stated in Section I, of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.
29. Respondent neither admits nor denies the allegations set forth in the Stipulations

and Findings of the Consent Agreement.

30. Respondent consents to the issuance of this CA/FO and the conditions specified herein, including payment of the administrative civil penalty in accordance with the terms of this CA/FO. Full payment of the penalty set forth in this CA/FO shall resolve Respondent's liability for federal civil penalties for the SDWA violations specifically alleged in the Consent Agreement.
31. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement.
32. The provisions of this CA/FO shall apply to and be binding upon Respondent, its officers, directors, agents, servants, authorized representatives, employees, and successors or assigns. Action or inaction of any persons, firms, contractors, employees, agents, or corporations acting under, through, or for Respondent shall not excuse any failure of Respondent to fully perform its obligations under this CA/FO.
33. Respondent shall give notice and provide a copy of this CA/FO to any successor-in-interest prior to transfer of ownership or operation of the well referred to in paragraphs 5 and 15. Such transfer, however, shall have no effect on Respondent's obligation to comply with Section III.A of this CA/FO. Respondent shall notify EPA in writing at least thirty (30) days prior to any such transfer of ownership or operation of the well referred to in paragraphs 5 and 15. Respondent's obligations expressed in this paragraph shall terminate upon EPA's receipt of Respondent's payment of the administrative civil penalty according to the terms expressed in Section III.A of this CA/FO.
34. Respondent shall not deduct the administrative civil penalty, nor any interest, late penalty payments, or administrative handling fees provided for in this CA/FO from its federal, state, or local income taxes.
35. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local statute, regulation, or condition of any permit issued thereunder, including the requirements of the Act and accompanying regulations.
36. This CA/FO is not a permit or modification of a permit. It shall not affect Respondent's obligation to comply with all federal, state, local laws, ordinances, regulations, permits, and orders. Issuance of, or compliance with, this CA/FO does not waive, extinguish, satisfy, or otherwise affect Respondent's obligation to comply with all applicable requirements of the SDWA, regulations promulgated thereunder, and any order or permit issued thereunder.

37. EPA reserves any and all legal and equitable remedies available to enforce this CA/FO, as well as the right to seek recovery of any costs and attorneys' fees incurred by EPA in any actions against Respondent for noncompliance with this CA/FO. Violation of this CA/FO shall be deemed a violation of the Act.
38. Except as stated in paragraph 26, each party hereto shall bear its own costs and attorneys' fees incurred in this proceeding.

IV. EFFECTIVE DATE

39. The effective date of the CA/FO shall be the date that the Final Order is filed.

FOR THE CONSENTING PARTIES:

For Morton International, Inc.

*Margaret Lattin Bagamy*  
*Authorized Representative*

Date: June 24, 2010

For the United States Environmental Protection Agency:

*Alexis Strauss*  
Alexis Strauss, Director  
Water Division

Date: 29 June 2010

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DOCKET NO. UIC-09-2010-0004

[PROPOSED]  
**FINAL ORDER**

The United States Environmental Protection Agency Region IX ("EPA"), and Morton International, Inc. ("Respondent"), having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Stipulations and Findings and proposed Final Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-09-2010-0004) be entered; and
2. Respondent shall pay an administrative civil penalty of thirty-four thousand, one hundred dollars (\$34,100) to the Treasurer of the United States of America in accordance with the terms set forth in the Consent Agreement.

This Final Order shall become effective on the date that it is filed. This Final Order constitutes full adjudication of the Complaint issued by EPA in this proceeding.

\_\_\_\_\_  
Steven Jawgiel  
Presiding Officer  
U.S. Environmental Protection Agency  
Region IX

Date: \_\_\_\_\_



ATTACHMENT A

In the Matter of Morton International, Inc.

DOCKET NO. UIC-09-2010-0004

**EPA REGION 9 COLLECTION INFORMATION:**

**ELECTRONIC FUNDS TRANSFERS**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

**CHECK PAYMENTS**

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**OVERNIGHT MAIL**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087