

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

SMS Briners, Inc.

Stockton, CA

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

DOCKET NO. UIC-09-2006-0001

CONSENT AGREEMENT
AND [PROPOSED] FINAL ORDER

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order 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 “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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” 64 Fed. Reg. 40,176, Subpart I (July 23, 1999) (hereinafter “Consolidated Rules of Practice”), the Director of the Water Division, EPA Region IX, hereby issues, and SMS Briners, Inc. (“Respondent”) hereby agrees to the issuance of, this Consent Agreement and Final Order (“CA/FO”).

II. STIPULATIONS AND FINDINGS

Respondent stipulates, and EPA finds as follows:

1. Pursuant to Part C of the Act, 42 U.S.C. §§ 300h-300h-8, EPA has promulgated regulations establishing minimum requirements for UIC programs, to prevent underground injection which endangers drinking water sources. These regulations are set forth at 40 C.F.R. Part 144.
2. “Underground injection” means the subsurface emplacement of fluids by well injection. 42 U.S.C. § 300h(d)(1), 40 C.F.R. § 144.3.

3. Pursuant to 40 C.F.R. § 144.6, Class I underground injection wells include industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter miles of the well bore, an underground source of drinking water.
4. Pursuant to Section 1422(c) of the Act, 42 U.S.C. § 300h-1(c), and 40 C.F.R. Part 147 Subpart F, § 147.251, EPA administers the Underground Injection Control program in the State of California for Class I, III, IV, and V wells. This UIC program consists of the program requirements of 40 C.F.R. Parts 124, 144, 146, 147 (Subpart F), and 148.
5. Pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. § 19.4, EPA may issue an order assessing an administrative civil penalty of not more than \$11,000 for each day of each violation, up to a maximum penalty of \$157,500, or requiring compliance, against any person who violates the Act or any requirement of an applicable Underground Injection Control (“UIC”) program. The total administrative penalty for violations which occurred between January 30, 1997 and March 15, 2004, may not exceed \$137,500, 42 U.S.C. § 300h-2(c)(1), adjusted for inflation at 40 C.F.R. § 19.4 (69 Fed.Reg. 7121, February 13, 2004). 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).
6. 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).
7. SMS Briners 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.
8. Respondent owns and operates a vegetable brining facility in Stockton, California (the “facility”). The facility generates a waste stream consisting of a concentrated brine solution with a sodium chloride base combined with potable water. In March 1992, Respondent constructed and obtained a permit to operate a Class I injection well, as defined under 40 C.F.R. § 144.6(a), for disposal of non-recyclable brine materials (the “1992 Permit”).
9. EPA performed an announced inspection of the facility on May 22, 2001. EPA staff conducted an interview, records inspection and facility walk through. The

1992 Permit required that records, including injected fluid analysis and mechanical integrity testing data, be provided to EPA during the inspection. Respondent failed to produce these records.

10. On July 5, 2001, EPA issued a Notice of Violation to Respondent for failure to retain injected fluid analysis records and submit quarterly monitoring reports. Respondent replied to the 2001 NOV on August 7, 2001. After receiving the 2001 NOV, Respondent continued to violate the reporting and monitoring conditions of the 1992 Permit.
11. On June 13, 2005, EPA issued a second NOV for monitoring and reporting violations, and included a request for information to assist EPA in determining compliance with other conditions of the permit. Respondent's response to the 2005 NOV revealed that it violated the permit requirements for injection fluid analysis, monthly annular pressure recording, and quarterly report submittals.
12. Pursuant to the 1992 Permit, Part II, Condition D.1.(a)(ii), Respondent was required to analyze the injection fluids annually for total dissolved solids (TDS), major ions, pH, volatile organic compounds, semi-volatile organic compounds and metals.
13. Respondent did not conduct an analysis for the injection fluids from December 2000 through March 17, 2002.
14. Pursuant to the 1992 Permit, Part II, Condition D.1.(b), Respondent was required to record monthly injection pressure, annulus pressure, flow rate and cumulative volume.
15. Respondent did not record annulus pressure from December 2000 through March 17, 2002 .
16. Pursuant to the 1992 Permit, Part II, Condition D.4., Respondent was required to submit Quarterly Reports to the Director summarizing the results of the monitoring required by Part II, Sections D.1-2. of the Permit.
17. Respondent did not submit quarterly reports for two quarters extending from July 2001 to January 31, 2002.
18. Based on all the foregoing, Respondent has violated the conditions of its Class I UIC Permit No. CA 192000001.

III. PROPOSED ORDER

Respondent and EPA agree to issuance of the following order:

A. Compliance Requirements

19. Respondent shall continue to comply with the terms and conditions of operation set forth in the March 1992 Permit until a new permit is issued by EPA.

B. Penalty

20. To account for the violations set forth in the Stipulations and Findings, Respondent agrees to pay to the United States an administrative civil penalty of Sixty Two Thousand Seven Hundred and Fifty Eight dollars (\$62,758), no later than thirty days following the effective date of the Final Order (hereafter referred to as the “due date”).

21. The administrative civil penalty referred to in paragraph **20** shall be made payable via money order or certified check made payable to the Treasurer, United States of America. Respondent shall tender the payment via certified mail to:

U.S. Environmental Protection Agency, Region IX
Regional Hearing Clerk
P.O. Box 371099M
Pittsburgh, PA 15251

22. Respondent shall note on the money order or certified check the title and docket number of this case and mail photocopies of the money order or certified check via certified mail to:

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

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

23. Payment must be *received* at the address referred to in paragraph **21** on or before the due date specified in paragraph **20**

24. If payment is not received on or before the due date, interest will be assessed, at

the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. 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.

25. 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 **20** of this CA/FO, EPA shall 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).

C. General Provisions

26. 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.
27. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Consent Agreement and agrees not to contest, in any administrative or judicial forum, EPA's jurisdiction to enter into this CA/FO.
28. Respondent neither admits nor denies the allegations set forth in the Stipulations and Findings set forth in the Consent Agreement.
29. 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.
30. 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.
31. The provisions of this CA/FO shall 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.
32. Respondent shall not deduct the administrative civil penalty, nor any interest, handling fees, or late penalty payments provided for in this CA/FO from its

federal, state, or local income taxes.

33. 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.
34. Issuance of this CA/FO does not in any case affect the right of EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of 40 CFR § 22.18, or settlement pursuant to paragraph (b) of § 22.18 shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.
35. 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 Act, regulations promulgated thereunder, and any order or permit issued thereunder.
36. 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.
37. Each party hereto shall bear its own costs and attorneys fees incurred in this proceeding.

D. Effective Date

41. The effective date of the Consent Agreement and Final Order shall be the date that the Final Order is filed.

FOR THE CONSENTING PARTIES:

For SMS Briners, Inc.

Robert W. Chelli
General Manager
S.M.S. Briners Inc.
17750 East Highway 4
Stockton, CA 95205

Date: _____

For the United States Environmental Protection Agency:

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: _____

FINAL ORDER

The United States Environmental Protection Agency Region IX (“EPA”), and SMS Briners, Inc., having entered into the foregoing Consent Agreement, and EPA having duly publicly noticed the Findings and Proposed Administrative Order regarding the matters alleged therein,

IT IS HEREBY ORDERED THAT:

1. The foregoing Consent Agreement and this Final Order (Docket No. UIC-AO-2006-0001) be entered; and
2. Respondent, SMS Briners, Inc., shall pay an administrative civil penalty of Sixty Two Thousand Seven Hundred and Fifty Eight dollars (\$62,758), plus interest, 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 Order issued by EPA in this proceeding.

Joanna DeLucia
Presiding Officer
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: _____