

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

In the Matter Of:)	Docket No.: UIC-09-2020-0051
)	
SMS Briners, Inc.)	Proceeding under Section 1423(c) of the
Stockton, California,)	Safe Drinking Water Act,
)	42 U.S.C. § 300h-2(c)
Respondent.)	
_____)	

Consent Agreement and [Proposed] Final Order

Statutory Authority and Parties

1. The United States Environmental Protection Agency (EPA), Region 9 and SMS Briners, Inc. (Respondent) (collectively the Parties) agree to settle this matter and consent to the filing of this Consent Agreement and Final Order (CA/FO). This CA/FO is an administrative action commenced and concluded under Section 1423(c) of the Safe Drinking Water Act (SDWA), 42 U.S.C. §300h-2(c)(1), and Sections 22.13(b), 22.18(b)(2) and (3), and 22.45 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division of EPA, Region 9. The Administrator of EPA delegated to the Regional Administrator of EPA Region 9 the authority to bring and settle this action under the SDWA. In turn, the Regional Administrator further delegated the authority to bring this action and sign a consent agreement settling this action under the SDWA to the Director of the Enforcement and Compliance Assurance Division.

3. Respondent is SMS Briners, Inc., a corporation doing business in California.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order. *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CA/FO, including the assessment of the civil penalty of \$6,205 and the compliance requirements specified below.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CA/FO and neither admits nor denies the factual allegations in this CA/FO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 1423(c)(3) of SDWA, 42 U.S.C. § 300h-2(c)(3); its right to seek federal judicial review of the CA/FO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CA/FO; and its right to appeal this CA/FO under Section 1423(c)(6) of SDWA, 42 U.S.C. § 300h-2(c)(6).

Respondent also consents to the issuance of this CA/FO without further adjudication.

Statutory and Regulatory Background

9. Section 1421 of SDWA, 42 U.S.C. § 300h, requires that the Administrator of EPA promulgate regulations, which shall include permitting requirements as well as inspection, monitoring, recordkeeping and reporting requirements, for state underground injection control (UIC) programs to prevent underground injection which endangers drinking water sources.

10. Section 1421(d)(1) of SDWA, 42 U.S.C. § 300h(d)(1), defines “underground injection” as the subsurface emplacement of fluids by well injection and excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

11. Section 1421(d)(2) of SDWA, 42 U.S.C. § 300h(d)(2), provides that underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

12. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, EPA has promulgated UIC regulations at 40 C.F.R. Parts 124 and 144 through 148.

13. 40 C.F.R. § 144.1(g) provides that the UIC programs regulate underground injection by six classes of wells and all owners or operators of these injection wells must obtain authorization for injection activity associated with these wells either by permit or rule. Class I wells include (1) wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water, (2) other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water, and (3) radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one quarter mile of

the well bore. 40 C.F.R. § 144.6(a)(1)-(3).

14. EPA administers and has primary enforcement responsibility for the UIC program in the State of California for Class I wells.

15. 40 C.F.R. § 144.11 further prohibits any underground injection, except into a well authorized by rule or by permit issued under the UIC program.

16. 40 C.F.R. § 144.51(a) provides that any UIC permittee must comply with all conditions of its permit. Any permit noncompliance constitutes a violation of SDWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 C.F.R. § 144.34.

17. Section 1401(6) of SDWA, 42 U.S.C. § 300f(6), and 40 C.F.R. § 144.3 define “contaminant” as any physical, chemical, biological, or radiological substance or matter in water.

18. 40 C.F.R. § 144.3 defines “fluid” as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

19. 40 C.F.R. § 144.3 defines “injection well” as a “well” into which “fluids” are being injected.

20. 40 C.F.R. § 144.3 defines “permit” as an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of 40 C.F.R. Parts 144, 145, 146 and 124.

21. Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), defines “person” as an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State,

municipality, or Federal agency). *See also* 40 C.F.R. § 144.3.

22. 40 C.F.R. § 144.3 defines “underground injection” as a “well injection.”

23. 40 C.F.R. § 144.3 defines “well” as a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

24. 40 C.F.R. § 144.3 defines “well injection” as the subsurface emplacement of fluids through a well.

25. 40 C.F.R. § 144.51(q) requires owners or operators of Class I wells to “maintain mechanical integrity as defined in 40 C.F.R. § 146.8.”

26. A Class I UIC well has mechanical integrity when “(1) There is no significant leak in the casing, tubing or packer; and (2) There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.” See 40 C.F.R. § 146.8 (emphasis added).

27. Section 1423(a)(2) of SDWA, 42 U.S.C. § 300h-2(a)(2), provides that any person found to be in violation of any requirement of an applicable UIC program in a state that does not have primacy may be assessed a civil penalty and be subject to an order requiring compliance pursuant to Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1).

28. Under Section 1423(c)(1) of SDWA, 42 U.S.C. § 300h-2(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$23,331 for each day of violation, up to a maximum administrative penalty of \$291,641 for violations occurring after November 2, 2015 and where penalties are assessed on or after January 13, 2020 and/or issue an order requiring compliance.

Factual Allegations and Alleged Violations

29. Respondent is a corporation, and as such, Respondent is a “person” as that term is defined at Section 1401(12) of SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 144.3.

30. Respondent owns and operates a Class I well facility located at 17750 East Highway 4, Stockton, California (the Facility).

31. At all times relevant to this CA/FO, Respondent owned and/or operated one (1) UIC Class I well located at the Facility, known as the Sousa #1 well, that is subject to the UIC program requirements set forth at 40 C.F.R. Parts 124, 144, 146, 147, and 148 and that Respondent has operated pursuant to EPA-issued UIC permit (CA10910002), effective April 12, 2010 (the Permit). The Permit expired on April 12, 2020 but has been administratively extended as the result of Respondent’s timely extension application until such time as the extension application is approved or denied.

32. The Permit authorizes the underground injection of nonhazardous waste, or brine, into the Sousa-1 well, subject to the terms and conditions set forth in the Permit.

33. Brine is a “fluid” and the subsurface emplacement of brine through Sousa-1 well is a “well injection.” 40 C.F.R. § 144.3.

34. On September 5, 2019, at approximately 7 a.m., the Sousa-1 well experienced a mechanical integrity failure at the Sousa-1 well that lasted approximately 28 hours until approximately 12 pm on September 6, 2019, during which time it continued injecting fluid. SMS Briners reported the failure to EPA on September 6, 2019. On September 11, 2019, EPA authorized Respondent’s recommencement of injection activities at the well after Respondent successfully repaired the well and passed a mechanical integrity test.

35. Under 40 C.F.R. § 144.51(a) and Section III, Part E of the Permit, Respondent is

required to comply with all conditions of the Permit and any noncompliance constitutes a violation of SDWA and is grounds for enforcement action, permit termination, revocation and reissuing or modification.

Count I - Unauthorized Injection

36. The statements in Paragraphs 1 through 35 of this CA/FO are hereby incorporated by reference as if set forth in full.

37. The Permit requires that Respondent demonstrate that Sousa-1 “has and maintains mechanical integrity consistent with CFR §146.8 and [Permit Condition II.D.2]” prior to injecting fluid into the well. See Permit Condition II.D.1(a).

38. According to the Permit Conditions II.D.2(c)(ii) and (iii), a loss of mechanical integrity occurs when: “(ii) [it] becomes evident during operation, or (iii) a significant change in the annulus or injection pressure occurs during normal operating conditions.”

39. Monitoring data shows that between 7 a.m. on September 5, 2019 and 12 p.m. on September 6, 2019, the well continued injecting fluid despite a significant change in the annular pressure during normal operating conditions. This significant, sustained increase in annular pressure was due to a loss in mechanical integrity of the well tubing, which allowed communication between the tubing and annulus.

40. Respondent violated Permit Condition II.D.2(c)(ii) and (iii) and the UIC regulations at 40 C.F.R. 144.51(q) on each day that it injected fluids into a well lacking mechanical integrity.

Count II – Failure to Install Adequate Monitoring Equipment

41. The Permit requires Respondent to install “devices to continuously measure and record injection pressure, annulus pressure, flow rate, and injection volumes.” See Permit Condition II.B.9(b).

42. Inherent in the requirement, continuous measuring and recording devices should also include systems to alert the operator in situations of changes to monitoring levels or excursion from permitted levels.

43. The monitoring devices installed at the Facility failed to alert Respondent that a significant change in annular pressure occurred on September 5, 2019.

44. Each day that there was a significant change to the annular pressure with a system at the Facility’s injection well without the monitoring devices alerting the operator constituted a violation of Permit Condition II.B.9(b) and the UIC regulations at 40 C.F.R. 146.13(b).

Civil Penalty

45. Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), requires the Administrator to take into account the seriousness of the violation, the economic benefit (if any) resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require, when assessing a civil penalty for violations of SDWA.

46. Based upon the facts alleged in this CA/FO, the factors listed in Section 1423(c)(4)(B) of SDWA, 42 U.S.C. 300h-2(c)(4)(B), and Respondent’s good faith and cooperation in resolving this matter, EPA has determined that an appropriate civil penalty to settle this action is \$6,205.

47. Within thirty (30) days of the Effective Date of this CA/FO, Respondent must pay the \$6,205 civil penalty. Respondent may pay the penalty by check (mail or overnight delivery),

wire transfer, automated clearing house, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

48. Concurrent with making the payment pursuant to Paragraphs 46 through 47, Respondent must provide a letter with evidence of the payment and the title and docket number of this action, to the EPA Region 9 Regional Hearing Clerk, via email, at:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9 - Office of Regional Counsel
r9HearingClerk@epa.gov

Respondent shall also send copies of the letter via email to the EPA Region 9 Enforcement and Compliance Assurance Division's Enforcement Officer and the EPA Region 9 Office of Regional Counsel attorney in accordance with Paragraph 50.

49. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment made in accordance with Paragraph 47.

50. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested). Electronic submissions must be sent to the following addresses: scavello.grant@epa.gov, and pierce.jennifer@epa.gov. The subject line of all email correspondence must include the facility name, docket number, and subject of the deliverable.

All electronically-submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Mailed submissions must be sent to the following addresses:

Grant Scavello, Physical Scientist
U.S. Environmental Protection Agency
Region 9, Enforcement and Compliance Assurance Division
75 Hawthorne Street (ENF-3-1)
San Francisco, CA 94105

Jennifer A. Pierce, Attorney Advisor
U.S. Environmental Protection Agency
Region 9, Office of Regional Counsel
75 Hawthorne Street (ORC-2-3)
San Francisco, CA 94105

51. At the time of penalty payment, Respondent must also send copies of the notice of payment and transmittal letter to the email or mail addresses, as specified in Paragraph 50.

52. This civil penalty is not deductible for federal tax purposes.

53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, Respondent must pay the following on any amount overdue under this CA/FO: interest accrued on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings; a \$15 handling charge fee each month that any portion of the penalty is more than 30 days past due; and 6% per year penalty on any principal amount 90 days past due.

54. If Respondent does not pay timely the civil penalty due under Paragraph 46 and/or any stipulated penalties due under Paragraph 57, below, EPA may request the United States Department of Justice bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses

for the collection action under Section 1423(c)(7) of SDWA, 42 U.S.C. § 300h-2(c)(7). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

Compliance Requirements

55. As provided by Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(1), Respondent shall within sixty (60) days from the Effective Date of this CA/FO design, construct and implement an alert system that will automatically and immediately cease disposal at the Sousa 1 well and shut the well in. The system chosen for the Sousa-1 well should engage if a change in injection *or* annular pressure is significant enough to signal a “potential mechanical integrity failure.” For the purposes of this settlement, a “potential mechanical integrity failure” shall mean an increase in injection *or* annular pressure of more than five (5) percent above maximum injection pressure or annular pressure as defined in the Permit for a period of thirty (30) minutes (Part II.D.2 (a)(i)), or a decrease of injection *or* annular pressure below Permit conditions or those deemed “irregular” by the operator for a period of one hour during normal operation or twelve hours after the well has been shut-in or during a well stabilization period. “Irregular” conditions should be defined in the Standard Operating Procedure (SOP) to be submitted as a condition of this settlement in Paragraph 56(b), below.

56. As provided by Section 1423(c)(2) of SDWA, 42 U.S.C. § 300h-2(c)(1), Respondent shall:

- a. Within ninety (90) days from the Effective Date of this CA/FO, submit to EPA a report describing the design and nature of the alert system installed at the Facility, as required by Paragraph 55.

- b. Within ninety (90) days from the Effective Date of this CA/FO, draft, implement, and submit to EPA an SOP that all Facility operators will follow for responding to an alert event and subsequent well shut-in. The SOP should include a step-by-step procedure for the Facility operator to follow if the alert system indicates that a loss of mechanical integrity has occurred and shut-in of the Sousa-1 well automatically occurs. The SOP should also include procedures to: (1) help the Facility operator identify the cause of the alert, e.g. identify whether the reason for the alert is valid or false; (2) verify and document the data that triggered the alert; (3) inform EPA of a valid alert and well shut-in, and any efforts to restore mechanical integrity; (4) restart well operation if a false alert occurs, and (5) ensure adequate safety precautions and operational procedures for personnel to follow through the shut-in process.
- i. Opportunity to Disapprove SOP: EPA may provide written notice to Respondent within thirty (30) days of its receipt of the SOP that it is disapproving the SOP, in whole or in part, and identifying deficiencies to be corrected. Respondent shall have an additional thirty (30) calendar days from its receipt of any notice of disapproval from EPA to prepare and submit to EPA a revised SOP that addresses any deficiencies identified by EPA.
- c. Permit Modification Application: Within ninety (90) days of the Effective Date of this CA/FO, Respondent shall submit to EPA a written permit

application supplement (which may supplement the Respondent's pending permit renewal application) requesting EPA modify the Respondent's UIC Permit to include the requirement to maintain an operational alert system as required by Paragraph 55. The application supplement should also include a request to incorporate into the UIC Permit a requirement to comply with the final SOP required by Paragraph 56. The permit modification application shall be submitted to the following EPA contact via email:

David Basinger
U.S. Environmental Protection Agency
Region IX, Water Division
75 Hawthorne Street (WTR 4-2)
San Francisco, CA 94105
Basinger.david@epa.gov

Stipulated Penalties

57. If Respondent fails to pay the assessed civil administrative penalty specified in Paragraph 46 by the deadline specified in Paragraph 47, or fails to meet the compliance requirements by the deadline specified at Paragraph 55, Respondent agrees to pay in addition to the assessed penalty, a stipulated penalty of \$250 per day for each day Respondent is late in making the penalty payment or meeting the compliance deadline. If Respondent fails to timely submit any reports (including copies of SOPs) in accordance with the timelines set forth in this CA/FO, Respondent agrees to pay a stipulated penalty of \$75 for each day after the SOP was due until it submits the report in its entirety.

58. Respondent agrees to pay any stipulated penalties within thirty (30) days of receipt of EPA's written demand for such penalties. All penalties shall begin to accrue on the first date of noncompliance and shall continue to accrue through the date of completion of the delinquent CA/FO requirement. Respondent will use the method of payment specified in

Paragraph 47 of this CA/FO, and agrees to pay interest, handling charges and penalties that accrue for late payment of the stipulated penalty in the same manner set forth in Paragraph 47 of this CA/FO.

59. Neither the demand for, nor payment of, a stipulated penalty relieves Respondent of its obligation to comply with any requirement of this CA/FO or modifies or waives any deadlines set forth in this CA/FO.

60. EPA may, in the unreviewable exercise of its discretion, elect to pursue any other administrative or judicial remedies in addition to or in lieu of assessing stipulated penalties and/or reduce or waive stipulated penalties due under this CA/FO.

Submissions Requirements

61. All reports, notifications, documentation, and submissions required by this CA/FO shall be sent to EPA in the manner described in Paragraph 50. These reports, notifications, documentation, and submissions must be signed by a duly authorized representative of Respondent and shall include the following statement consistent with 40 C.F.R. § 144.32(d):

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

62. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify EPA immediately. Knowingly submitting false information to EPA in response to this CA/FO may subject Respondent to

criminal prosecution under Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b), as well as 18 U.S.C. §§ 1001 and 1341.

63. Submissions required by this CA/FO shall be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.

64. EPA may use any information submitted in accordance with this CA/FO in support of an administrative, civil, or criminal action against Respondent.

65. The information required to be submitted pursuant to this CA/FO is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

General Provisions

66. This CA/FO may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute an instrument. If any portion of this CA/FO is determined to be unenforceable by a competent court or tribunal, the Parties agree that the remaining portions shall remain in full force and effect.

67. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Paragraph 55 (Compliance Requirements) is restitution or required to come into compliance with law.

68. If Respondent fails to comply with the requirements set forth in Paragraph 55, above, EPA may request the United States Department of Justice bring an action to seek penalties for violating this CA/FO under Section 1423(b) of SDWA, 42 U.S.C. § 300h-2(b).

69. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. If any event occurs which causes or may cause delays meeting the deadlines set forth in this CA/FO, Respondent or its attorney shall, within forty-eight (48) hours of the

delay or within forty-eight (48) hours of Respondent's knowledge of the anticipated delay, whichever is earlier, notify EPA in writing, by email or overnight mail. Within fifteen (15) days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of *force majeure*.

70. If EPA agrees in writing that the delay or anticipated delay in compliance with this CA/FO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for the period of the delay resulting from the circumstances causing the delay. In such event, EPA will grant, in writing, an extension of time. An extension of the time for performing an obligation granted by EPA pursuant to this paragraph shall not, of itself, extend the time for performing a subsequent obligation.

71. The parties consent to service of this CA/FO by e-mail at the following valid e-mail addresses: pierce.jennifer@epa.gov (for Complainant) and chelli2247@aol.com (for Respondent).

72. Full compliance with this CA/FO shall not in any case affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

73. This CA/FO does not affect Respondent's responsibility to comply with SDWA and other applicable federal, state, or local laws and permits.

74. This CA/FO constitutes a "previous violation" as that term is used in EPA's UIC Penalty Policy and to determine Respondent's "history of such violations" under Section 1423(c)(4)(B) of SDWA, 42 U.S.C. § 300h-2(c)(4)(B).

75. The terms of this CA/FO bind Respondent and its successors and assigns.

76. Each person signing this CA/FO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CA/FO.

77. Each party agrees to bear its own costs and attorney fees in this action.

78. This CA/FO constitutes the entire agreement between the parties.

79. The parties acknowledge and agree that final approval by EPA of this CA/FO is subject to 40 C.F.R. § 22.45(c)(4) which sets forth requirements under which a person not a party to this proceeding may petition to set aside a consent agreement and final order on the basis that material evidence was not considered.

80. Pursuant to 40 C.F.R. § 22.45, this CA/FO will be subject to a thirty (30)-day public notice and comment at least forty (40) days prior to it becoming effective through the issuance of the final order by the Regional Judicial Officer.

81. In accordance with 1423(c)(3)(D) of SDWA, 42 U.S.C. § 300h-2(c)(3)(D), and 40 C.F.R. §§ 22.18(b)(3), 22.31(b), and 22.45, this CA/FO shall become effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the “Effective Date”).

82. This CA/FO will terminate after Respondent has complied with all terms of the CA/FO throughout its duration.

**Consent Agreement and Final Order
In the Matter of SMS Briners, Inc.
Docket Number.: UIC-09-2020-0051**

SMS Briners, Inc., Respondent

July 23, 2020 _____

Date

/s/ _____

Bob Chelli
President

United States Environmental Protection Agency, Region 9, Complainant

August 2, 2020 _____

Date

/s/ _____

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

