



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

SEP 28 2011

*Via Overnight Mail*

Elton W. DeLong, Jr., Operations Manager  
Pennsylvania Brine Treatment, Inc.  
931 Bells Mill Rd  
Josephine, Pennsylvania 15750

Re: Administrative Order for Compliance and Request for Information  
EPA Docket No. CWA-03-2011-0274DN

Dear Mr. DeLong:

Enclosed is an Administrative Order ("Order") and Request for Information ("Request") issued this date by the U.S. Environmental Protection Agency ("EPA") Region III, pursuant to Section 308 and Section 309(a) of the Clean Water Act (the "Act"), as amended, 33 U.S.C. § 1318 and 1319(a). Please provide a signed written confirmation of your intention to comply with this Request to Ms. Rebecca K. Crane, EPA Region III, at the address provided in Section VI, within five (5) days of receipt of this Information Request.

Your responses to this Request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the Request within fifteen (15) days unless otherwise stated. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the Request. Section IV, Paragraph 41 provides a Statement of Certification for this purpose.

You should carefully read the contents of the enclosed Order and Request, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.



If you require any information or assistance regarding this matter, please contact Ms. Rebecca Crane, NPDES Enforcement Branch, at 215-814-2389.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", with a long horizontal flourish extending to the right.

Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III

Enclosures (2)

cc: Jeff Means, Executive Assistant  
Office of Field Operations, PADEP

Sam Harper, Environmental Program Manager  
Water Management Southwest Regional Office, PADEP



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REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK  
EPA REGION III PHILADELPHIA, PA

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RECEIVED

IN THE MATTER OF:

Pennsylvania Brine Treatment, Inc.  
931 Bells Mill Rd  
Josephine, PA 15750

Pennsylvania Brine Treatment-  
Josephine Facility  
Josephine, PA

Respondent

Docket No. CWA-03-2011-027  
FINDINGS OF VIOLATION  
ORDER FOR COMPLIANCE  
AND REQUEST FOR INFORMATION

**I. STATUTORY AUTHORITY**

1. This Order for Compliance and Request for Information (“Order and Request”) are issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter “EPA”) under Sections 308 and 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318 and 1319(a). The Administrator has delegated these authorities to the Regional Administrator of Region III, who in turn has delegated them to the Director of the Water Protection Division of Region III.

**II. STATUTORY AND REGULATORY BACKGROUND**

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.
3. EPA is authorized under Section 308 of the CWA, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:
  - (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the CWA;

- (b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
  - (c) Any requirement under Section 308 of the CWA, 33 U.S.C. §1318; or
  - (d) Carrying out Sections 305, 311, 402, 404, and 504 of the CWA, 33 U.S.C. §§ 1315, 1321, 1342, 1344, and 1364.
4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the NPDES permit.
  5. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
  6. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, sludge, biological material and industrial, municipal and agricultural waste.
  7. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines "point source" as "...any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure..."
  8. A centralized waste treatment ("CWT") facility is defined as "any facility that treats (for disposal, recycling or recovery of material) any hazardous or non-hazardous industrial wastes, hazardous or non-hazardous industrial wastewater, and/or used material received from off site." 40 C.F.R. § 437.2(c).
  9. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Pennsylvania Department of Environmental Protection ("PADEP") to issue NPDES permits within the Commonwealth of Pennsylvania ("PA").

### **III. EPA FINDINGS AND ALLEGATIONS**

10. Pennsylvania Brine Treatment, Inc. ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
11. Respondent, at all times relevant to this Order, has owned and/or operated the Pennsylvania Brine Treatment – Josephine Facility, in Burrell, Indiana County, PA ("Josephine Facility").
12. Respondent operated the Josephine Facility pursuant to NPDES Permit No. NPDES Permit No. PA0095273 ("Permit") which was reissued June 23, 2008, effective July 1, 2008 through June 30, 2013.
13. The Permit authorizes discharges from the Josephine Facility through one outfall to Blacklick Creek.

14. Upon information and belief, the Josephine Facility had been accepting oil and gas exploration and/or production wastewaters for treatment.
15. Respondent received a letter from PADEP dated March 18, 2011 requesting that Respondent sample its effluent for total dissolved solids ("TDS"), pH, alkalinity, chloride, sulfate, bromide, Gross Alpha, Radium 226 and 228 and Uranium.
16. EPA conducted an NPDES file review in the Northwest and Southwest Regional Offices of PADEP April 3-8, 2011.
17. EPA conducted a site visit at the Josephine Facility on April 20, 2011. A walking tour of the plant was lead by plant representatives. During the tour it was observed that a connection, not displayed on the wastewater treatment system schematic, existed from the brine sales tanks to the discharge effluent line.

#### **IV. VIOLATIONS**

18. The allegations in Paragraphs 1 through 17 are realleged and incorporated herein by reference.
19. Respondent is the owner and operator of, and NPDES permittee for, the Josephine Facility and is legally responsible for all discharges from the Josephine Facility.
20. Part A, Section 1 of the Permit prescribes effluent limitations for the Respondent's discharge.
21. A summary table of effluent limit exceedences, as reported on discharge monitoring reports ("DMRs") by Respondent, is attached as Attachment A.
22. The effluent exceedences identified in Attachment A constitute violations of the Permit and Section 301(a) of the Act.

#### **V. CONCLUSION OF LAW**

23. Respondent's failures to comply with Permit effluent limitations constitute a violation of Section 301 of the CWA, 33 U.S.C § 1311.

#### **VI. ORDER AND REQUEST**

AND NOW, this 25<sup>th</sup> day of September, 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), to undertake the following activities and pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to provide the following information within fifteen (15) calendar days upon receipt of this Order and Request, unless otherwise specified.

24. Respondent shall immediately take whatever action necessary to correct the deficiencies

and eliminate and prevent recurrence of the violations cited above, and come into compliance with all of the applicable requirements of the Permit and the Act and its implementing regulations.

25. Within fifteen (15) calendar days upon receipt of this Order and Request, Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explain why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations. Respondent shall submit copies of all investigations conducted as a result of the effluent limit exceedences listed in Attachment A and copies of documents related to such investigations or provide explanation why such investigations were not conducted.
26. The report referenced in Paragraph 25 shall specify whether the acceptance of oil and gas exploration and/or production wastewater caused or contributed to the effluent limit exceedences listed in Attachment A.
27. Respondent shall provide EPA with an electronic spreadsheet that summarizes the information recorded in the Josephine Facility monthly DMRs for the years 2006-2011.
28. Respondent shall begin composite sampling, of a minimum of 8-hour duration, of its effluent for the analysis for TDS, chloride, bromide, sulfate, Gross Alpha, Radium 226 and 228 and Uranium upon receipt of this Order and Request and biweekly thereafter. Samples should be analyzed by an accredited laboratory using EPA-approved methods. Respondent shall submit to EPA and PADEP the additional monitoring data of their effluent with its monthly DMRs to characterize its water quality.
29. Respondent will not be required to perform the sampling and analysis prescribed in Paragraph 28 above, if within five (5) days of receipt of this Order and Request, Respondent certifies that it will not accept any oil and gas exploration and/or production wastewater. To meet the requirements of this paragraph, Respondent must sign and return to EPA the attached certification (Attachment B).
30. Respondent shall provide to EPA the day, month, and year when oil and gas exploration and/or production wastewater was first accepted at the Josephine Facility.
31. Respondent shall provide to EPA the notification given to PADEP regarding the acceptance of oil and gas exploration and/or production wastewater referenced in Paragraph 30.
32. Respondent shall provide to EPA documentation of PADEP's authorization for the acceptance of oil and gas exploration and/or production wastewater referenced in Paragraph 30.
33. Respondent shall provide to EPA all characterization evaluations of incoming wastes with source identification since the date referenced in Paragraph 30.
34. Respondent shall provide to EPA copies of all permit amendment applications including,

but not limited to, applications submitted to notify the permitting authority of a proposed change in the type of wastes received at the Josephine Facility since the date referenced in Paragraph 30.

35. Respondent shall inform EPA within five (5) business days if they are planning to accept oil and gas exploration and/or production wastewater and/or change current process operations.
36. Respondent shall provide to EPA the Josephine Facility's standard operating procedures for sampling the hauled wastewater at the truck unloading zone.
37. Respondent shall provide to EPA the Josephine Facility's method for determining the acceptance and denial of hauled wastewater at the truck unloading zone based on the sampling procedure referenced in Paragraph 36.
38. Respondent shall provide to EPA with the following information regarding the connection from the brine sales tanks to the effluent discharge line including, but not limited to:
  - a. All wastewater treatment system schematics submitted to Pennsylvania Department of Environmental Protection since the date referenced in Paragraph 30;
  - b. When was the connection from the brine sales tank to the effluent discharge line installed;
  - c. Why was the connection from the brine sales tank to the effluent discharge line installed;
  - d. Record of all occasions the connection from the brine sales tanks was opened to the effluent discharge line;
  - e. Record of all bypasses and types of wastes from brine sales tanks to effluent discharge line;
  - f. A plan to eliminate the potential bypass identified in the April 20, 2011 site visit from the brine sales tanks to the discharge effluent line.
39. Within five (5) calendar days of the effective date of this Order and Request, Respondent shall submit to EPA a certification, signed by a responsible official, of Respondent's intent to comply with this Order and Request.
40. Unless otherwise stated, Respondent shall provide EPA all submissions pursuant to this Order and Request within fifteen (15) calendar days of receipt of this Order and Request.
41. All submissions pursuant to this Order and Request shall be signed, and dated by a responsible official of the Respondent, and include the following certification:

*"I certify that the information contained in or accompanying this submission is true, accurate, and complete.*

*As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.*

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

The certification shall be submitted to:

Rebecca K. Crane  
Environmental Engineer  
NPDES Enforcement Branch  
Mail Code 3WP42  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

## **VII. GENERAL PROVISIONS**

42. Issuance of this Order and Request shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, 18 U.S.C. § 1001, and/or a civil judicial action initiated by the EPA and the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.
43. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
44. Respondent shall permit EPA or its authorized representative to inspect any site under its control or authority at reasonable times to confirm that Respondent is in compliance with

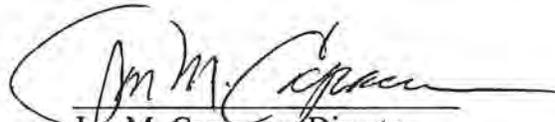
this Order and Request and with any applicable permit. EPA reserves all existing inspection authority.

45. This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or ordinance.
46. Violation of the terms and conditions of this Order and Request constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

#### **VIII. EFFECTIVE DATE**

This ORDER AND REQUEST is effective upon receipt.

Date: 9/28/11

  
Jon M. Capacasa, Director  
Water Protection Division  
EPA, Region III

Attachment A. Monthly Discharge Monitoring Report Effluent Violations

<b>Month, Year</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Effluent Limit</b>	<b>Effluent Measurement</b>
February 2009	001	Flow	.155	No Recording
June 2009	001	Average Barium	114 mg/L	121.05 mg/L
October 2009	001	Average Barium	114 mg/L	264.74 mg/L
October 2009	001	Maximum Barium	228 mg/L	440.79 mg/L
September 2010	001	Average Barium	114 mg/L	172.19 mg/L
September 2010	001	Maximum Barium	228 mg/L	256.52 mg/L

I certify that **Pennsylvania Brine Treatment, Inc. – Josephine Facility**, which operates under NPDES Permit No. PA0095273, will not accept any oil and gas exploration and/or production wastewaters at this facility. For the purpose of this certification, oil and gas exploration and/or production wastewaters includes, but is not limited to: ground water produced from coal seams, shale formation ground water, well drilling fluids, fracturing fluids, shale gas produced water, water produced from conventional and unconventional wells, pit water, containment pond water, and storage pond water.

If **Pennsylvania Brine Treatment, Inc. – Josephine Facility** desires to accept oil and gas exploration and/or production wastewater after signing this certification, **Pennsylvania Brine Treatment, Inc. – Josephine Facility** will, prior to acceptance: notify EPA Region III and PADEP of its intent, take all actions necessary to comply with the Clean Water Act (CWA) and receive all necessary approvals from EPA and PADEP.

As a company official, I certify that this statement is true and correct. I am aware that violations of CWA are punishable under the civil and criminal provisions of Section 309 of the CWA, which provide for the assessment of penalties, injunctive relief and imprisonment.

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)