



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

WU-16J

MAR 06 2007

CERTIFIED MAIL NO. 7001 0320 0005 8933 2829
RETURN RECEIPT REQUESTED

Scott S. Brinkmeyer, Esq.
Mika Meyers Beckett & Jones
900 Monroe Avenue NW
Grand Rapids, Michigan 49503

**Re: Issuance of Consent Agreement and Final Order
Muskegon Development Company
Docket No. SDWA-05-2007-0002**

Dear Mr. Brinkmeyer:

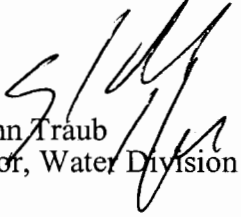
Enclosed, please find a fully executed Consent Agreement and Final Order (Consent Order) issued to Muskegon Development Company for violations of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f et seq., and the Underground Injection Control (UIC) regulations promulgated under Section 1421 and 1422 of the SDWA, 42 U.S.C. § 300h and 300h-1.

Pursuant to Paragraph 24 of the Consent Order, the Order becomes effective 30 days after the date it is signed by the Director of the Water Division (or any person acting in her place). Payment of \$30,910 penalty is due within 30 days after the effective date of the Consent Order. Please place the following billing document reference number on the penalty check:
2750748W004. Please mail the penalty check to the address set forth at Paragraph 24 of the Consent Order. Please send a copy of the check and its accompanying transmittal letter to Susan Perdomo, Assistant Regional Counsel, USEPA, 77 W. Jackson Blvd., (C-14J) Chicago, Illinois 60604-3590.

Failure to comply with the Consent Order can result in additional enforcement actions against Muskegon Development Company to achieve compliance. Moreover, compliance with the Consent Order does not relieve the well owner or operator from further enforcement actions pursuant to Section 1423(c) of the SDWA, 42 U.S. C. § 300h-2(c).

If you have any questions regarding the Consent Order, please do not hesitate to contact Eva-Marie Rowe of my staff at (312) 353-0829, or Susan Perdomo, Assistant Regional Counsel at (312) 886-0557.

Sincerely yours,



Jo-Lynn Traub
Director, Water Division

Enclosures

cc: Peg McComb-Elowski
Michigan Department of Environmental Quality

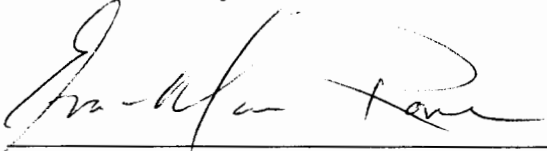
Regional Hearing Clerk (w/original CAFO)
U.S. EPA, Region 5 (E-13J)

CERTIFICATE OF SERVICE

I, Eva-Marie Rowe, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number SDWA-05-2007-0002, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed an original by first-class, postage prepaid, certified mail, return receipt requested, to Muskegon Development Company by placing it in the custody of the United States Postal Service addressed as follows:

Scott S. Brinkmeyer, Esq.
Mika Meyers Beckett & Jones
900 Monroe Avenue NW
Grand Rapids, MI 49503

on the March day of 6, 2007.



U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard (WU-16J)
Chicago, Illinois 60604

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8933 2829

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
MUSKEGON DEVELOPMENT COMPANY)
1425 SOUTH MISSION ROAD)
MT. PLEASANT, MICHIGAN 48858)
)
Respondent.)

Docket No. SDWA-05 - 2007-0002
[Handwritten signature]

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EPA REGION 5

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative action for the assessment of a civil penalty commenced and concluded under Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) 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 (2004). In particular, this proceeding was conducted in accordance with the procedures set forth in the Consolidated Rules at 40 C.F.R. Part 22, Subpart I, which apply to actions, such as this one, that are not governed by Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554.
2. The Director, Water Division, Region 5, United States Environmental Protection Agency ("U.S. EPA"), is, by lawful delegation, the Complainant.
3. The Respondent is Muskegon Development Company (hereinafter "Respondent" or "Muskegon" which is, and has been continuously since at least 2001, a corporation organized under the laws of the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).
40 C.F.R. § 22.13(b) (2004).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

I. JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

II. STATUTORY AND REGULATORY BACKGROUND

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

10. Section 1422(b) of SDWA, 42 U.S.C. § 300h-1(b), provides that States, upon receipt of U.S. EPA's approval of a proposed UIC program, may implement a Federally-enforceable UIC program in that State and obtain primary enforcement responsibility of that program (a concept called "primacy").

11. Section 1422(c) of SDWA, 42 U.S.C. § 300h-1(c), further provides that, in states that have not obtained primacy, U.S. EPA is to promulgate, implement and enforce an applicable UIC program in that State.

12. Pursuant to Sections 1421 and 1422 of SDWA, 42 U.S.C. §§ 300h and 300h-1, respectively, U.S. EPA has promulgated UIC regulations at 40 C.F.R. Parts 144 through 147.

13. The UIC program for the State of Michigan is set forth at 40 C.F.R. Part 147, Subpart X.

14. Pursuant to 40 C.F.R. § 147.1151, the UIC program for the State of Michigan for Class II wells, as defined by 40 C.F.R. §§ 144.6, 146.5, consists of the UIC program

requirements set forth at, *inter alia*, 40 C.F.R. Parts 124, 144, 146, 147 (Subpart X) and 148, and was effective on June 25, 1984.

15. Pursuant to 40 C.F.R. § 147.1151, at all times relevant to this Complaint, U.S. EPA had primacy over Class II wells, as defined by 40 C.F.R. §§ 144.6, 146.5, in the State of Michigan.

16. The UIC program set forth at 40 C.F.R. § 147.1151, constitutes the "applicable underground injection control program" as defined by Section 1422(d) of SDWA, 42 U.S.C. § 300h-1(d), for the State of Michigan.

III. FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

Failure to Demonstrate Mechanical Integrity for G. Perkins #V-12

17. On April 11, 2003, the Respondent sent the U.S. EPA a letter indicating that the G. Perkins #V-12 rule-authorized well failed mechanical integrity, injection had ceased and the well was shut in. On April 17, 2003, the U.S. EPA sent the Respondent a cease injection letter pursuant to 40 C.F.R. § 144.28(f)(3) informing the Respondent that the within 30 days of the cease injection letter the Respondent must demonstrate mechanical integrity or plug and abandon the well.

18. Respondent's failure to maintain mechanical integrity or plug and abandon the G. Perkins #V-12 well constitutes a violation of 40 C.F.R. §§ 144.22(d) and 144.28(f)(2).

Failure to Demonstrate Mechanical Integrity for L. Doran #N09

19. On November 12, 2004, the Respondent sent the U.S. EPA a letter indicating that the L. Doran #N09 rule-authorized well failed mechanical integrity, injection had ceased and the well was shut in. On November 18, 2004, the U.S. EPA sent the Respondent a cease injection letter pursuant to 40 C.F.R. § 144.28(f)(3) informing the Respondent that within 30 days of the cease injection letter the Respondent must demonstrate mechanical integrity or plug and abandon the well.

20. Respondent's failure to maintain mechanical integrity or plug and abandon the L. Doran #N09 well constitutes a violation of 40 C.F.R. §§ 144.22(d) and 144.28(f)(2).

IV. CONSENT AGREEMENT

Based upon the foregoing allegations and stipulations, and having taken into account the requirements of Section 1423(c)(4) of SDWA, 42 U.S.C. § 300h-2(c)(4), Complainant and Respondent agree as follows:

21. Respondent waives any and all rights under any provision of law to a hearing on the allegations in the Complaint or to appeal or otherwise challenge the terms and conditions of this CAFO.

22. Respondent certifies that the G. Perkins #V-12 well has been permanently plugged and abandoned and further certifies that it is in compliance with Michigan State Permit No. 30923 for the Doron # N09 well and the other UIC requirements applicable to these wells.

23. In settlement of the violations alleged in the Complaint, Respondent shall pay a civil penalty in the amount of \$30,910, such civil penalty to be considered assessed upon the effective date of this CAFO.

24. Respondent shall pay the \$30,910 civil penalty for the violations alleged in the Complaint by mailing a certified or cashiers' check, made payable to "Treasurer, United States of America," to the following address:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

Payment of the civil penalty is due within 30 days after the effective date of this CAFO (see Section V below).

25. Simultaneous with Respondent's payment of the civil penalty in accordance with Paragraph 24 above, Respondent shall separately send notice of each such payment, including a copy of the checks, to the following parties:

Regional Hearing Clerk
U.S. EPA, Region 5 (E-19J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Eva-Marie Rowe
Underground Injection Control Branch
Water Division
U.S. EPA, Region 5 (WU-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Susan Perdomo
Associate Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

26. A failure to pay any civil penalty assessed herein after the effective date of this order may result in a civil action brought pursuant to Section 1423(c)(7) of SDWA, 42 U.S.C. § 300h-2(c)(7), for the recovery of such overdue amounts, costs, late payment penalties, interest and attorneys' fees as are authorized therein. In such an action, the validity, amount and appropriateness of such penalty shall not be subject to review.

27. This CAFO constitutes full settlement of all allegations asserted in this CAFO against Respondent.

28. Respondent consents to the terms of this CAFO, including, but not limited to, the assessment of the \$30,910 civil penalty.

29. This CAFO shall be binding upon Respondent, its successors and assigns.

30. Nothing in this CAFO relieves Respondent of its duty to comply with all Federal, State and local laws, regulations and permits. This paragraph includes, but is not limited to, the laws, regulations and/or permits that are the subject of this proceeding.

31. Complainant and Respondent each agree to bear all of their own costs and attorneys fees incurred with respect to this adjudication.

32. The undersigned representative of Respondent certifies that he is duly authorized to bind Respondent to the terms of this CAFO.

33. After executing this CAFO, Respondent consents to the filing of this fully executed CAFO with the Regional Hearing Clerk without further notice to Respondent. Complainant agrees to deliver to Respondent expeditiously a copy of the fully executed and file-stamped CAFO after filing it with the Regional Hearing Clerk.

34. Issuance of this CAFO does not constitute a waiver by U.S. EPA of its remedies, either judicial or administrative, under any law, except that U.S. EPA waives any right to seek additional civil penalties (*i.e.*, civil penalties other than those assessed herein) for the violations alleged in the Complaint.

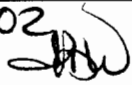
35. This CAFO constitutes the entire settlement agreement between Complainant and Respondent.

V. EFFECTIVE DATE

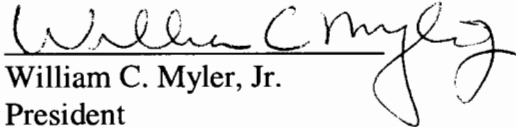
36. For purposes of Section 1423(c)(3)(D), 42 U.S.C. § 300h-2(c)(3)(D), this CAFO shall be considered issued upon filing with the Regional Hearing Clerk.

37. Pursuant to Section 1423(c)(3)(D), 42 U.S.C. § 300h-2(c)(3)(D), this CAFO will become effective 30 days after issuance, which is 30 days after the filing of this CAFO with the Regional Hearing Clerk.

**Consent Agreement and Final Order
In the Matter of Muskegon Development Company
Docket No. SDWA-05-2007-0002**

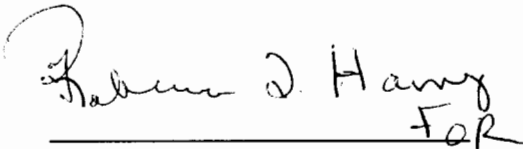


Muskegon Development Company
RESPONDENT


William C. Myler, Jr.
President

Dated: DECEMBER 15, 2006

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
COMPLAINANT



FOR

Jo Lynn Traub, Director
Water Division
U.S. EPA, Region 5 (W-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dated: January 9, 2007

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The settling Respondent, Muskegon Development Company, is hereby **ORDERED** to comply with all terms of the Consent Agreement, which shall be effective 30 days after the filing of the Consent Agreement and Final Order with the Regional Hearing Clerk.


Jo Lynn Traub, Director
Water Division
U.S. EPA, Region 5 (W-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dated: March 1, 2007

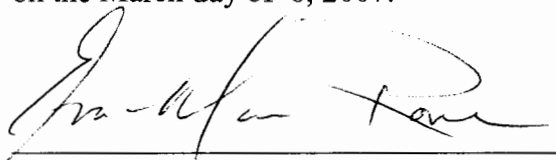
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CERTIFICATE OF SERVICE

I, Eva-Marie Rowe, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number SDWA-05-2007-0002, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed an original by first-class, postage prepaid, certified mail, return receipt requested, to Muskegon Development Company by placing it in the custody of the United States Postal Service addressed as follows:

Scott S. Brinkmeyer, Esq.
Mika Meyers Beckett & Jones
900 Monroe Avenue NW
Grand Rapids, MI 49503

on the March day of 6, 2007.



U.S. Environmental Protection Agency
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Chicago, Illinois 60604

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8933 2829

REGIONAL HEARING CLERK
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