STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER BUREAU

In the matter of administrative proceedings against:

FTO-DW08-002
Date Entered: 12/30/08

Muskegon Group LLC
23540 Reynolds Court
Clinton Township, Michigan 48036
_____/

ADMINISTRATIVE CONSENT ORDER

This Administrative Consent Order (ACO) results from allegations by the Department of Environmental Quality (DEQ), Water Bureau (WB), identified in the attached letters dated January 26, 2004, and December 17, 2007. The DEQ alleges that the Muskegon Group LLC (Muskegon Group), which owns and operates a community water system at Wayside Mobile Court in Whitehall Township, Muskegon County, Michigan, is in violation of Section 15(1) of the Michigan Safe Drinking Water Act, 1976 PA 399, as amended (SDWA), MCL 325.1001 et seq., and the Administrative Rules promulgated pursuant to the SDWA being 2005 ACS R 325.10101 et seq. The Muskegon Group and the DEQ agree to resolve the violations set forth in the attached letters by entry of this ACO.

I. STIPULATIONS

The Muskegon Group and the DEQ stipulate as follows:

1.1 The SDWA, and the rules promulgated under the SDWA, are pertinent to providing safe and reliable public drinking water.

1.2 The Muskegon Group stipulates to the issuance and entry of this ACO to comply by consent and stipulates that the termination of this matter by a final order to be entered as an ACO is proper and acceptable. The Muskegon Group further agrees not to contest

the issuance of this ACO. This ACO, thus, shall be considered a final order of the DEQ and shall become effective on the date it is signed by the chief of the WB, as delegate of the director.

1.3 The Muskegon Group and the DEQ agree that the signing of this ACO is for settlement purposes only and does not constitute an admission by the Muskegon Group that the law has been violated.

1.4 The Muskegon Group shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II, Compliance Program, of this ACO.

II. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the Muskegon Group shall take the following actions to prevent further violations of the SDWA:

2.1 **Not later than 60 days after the Effective Date of this ACO**, the Muskegon Group shall apply for an SDWA permit for the installation of necessary improvements to the community water supply at Wayside Mobile Court. At a minimum, the permit application shall encompass those improvements previously permitted by the DEQ within the SDWA permit issued on December 16, 2005, that has now expired.

2.2 The Muskegon Group shall notify the DEQ prior to commencing construction activities and shall complete the permitted activities in accordance with the SDWA permit issued under paragraph 2.1 of this ACO **not later than September 1, 2009**. In the event, the Muskegon Group fails to obtain a federally funded loan, all permitted activities in accordance with the SDWA permit issued under paragraph 2.1 of this ACO shall be completed not later than **November 1, 2009**.

2.3 Upon completion of the project, the Muskegon Group shall submit to the DEQ, a written affidavit from its engineer confirming that all improvements were constructed in accordance with permit requirements and are functioning as designed.

2.4 The Muskegon Group shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the district supervisor, WB, DEQ, 350 Ottawa Avenue NW, Grand Rapids, Michigan. The cover letter with each submittal shall identify the specific paragraph and requirement of this ACO that the submittal is intended to satisfy.

III. REPORTING

3.1 The Muskegon Group shall verbally report any violation(s) of the terms and conditions of this ACO to the Grand Rapids District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The Muskegon Group shall report any anticipated violation(s) of this ACO to the above-referenced individual in advance of the relevant deadlines whenever possible.

IV. EXTENSIONS

4.1 The Muskegon Group and the DEQ agree that the DEQ may grant the Muskegon Group a reasonable extension of the specified deadlines set forth in this ACO. Any extension shall be preceded by a written request in duplicate to the DEQ, WB, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the Grand Rapids District Supervisor at the address in paragraph 2.4, no later than ten business days prior to the pertinent deadline, and shall include:

a. Identification of the specific deadline(s) of this ACO that will not be met.

b. A detailed description of the circumstances that will prevent the Muskegon Group from meeting the deadline(s).

c. A description of the measures the Muskegon Group has taken and/or intends to take to meet the required deadline.

d. The length of the extension requested and the specific date on which the obligation will be met.

The district supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this ACO shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

V. RETENTION OF RECORDS

5.1 Upon request by an authorized representative of the DEQ, the Muskegon Group shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this ACO or pursuant to the SDWA or its rules. All such documents shall be retained by the Muskegon Group for at least a period of three (3) years from the date of generation of the record unless a longer period of record retention is required by the SDWA or its rules.

VI. RIGHT OF ENTRY

6.1 The Muskegon Group shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this ACO. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the SDWA and the rules promulgated thereunder, or any other applicable statutory provision.

VII. PENALTIES

7.1 The Muskegon Group agrees to pay to the State of Michigan **$2,806** as partial compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this ACO. Payment shall be made within 30 days of the effective date of this ACO in accordance with paragraph 7.6.

7.2 The Muskegon Group agrees to pay a civil fine of **$10,000** to the State of Michigan for the violations identified in the attached letters dated January 26, 2004 and December 7, 2007. Payment shall be made within thirty (30) days of the effective date of this ACO in accordance with paragraph 7.6.

7.3 For each failure to comply with the provisions of Section II of this ACO, the Muskegon Group shall pay stipulated penalties of **$1,000** per violation per day for each day of violation thereafter.

7.4 Stipulated penalties accruing under paragraph 7.3 shall be paid within 30 days after written demand by the DEQ in accordance with paragraph 7.6.

7.5 To ensure timely payment of the above civil fine, costs, and stipulated penalties, the Muskegon Group shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.

7.6 The Muskegon Group agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this ACO must include the **Payment Identification Number WTR-1083**.

7.7 The Muskegon Group agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 7.1, and 7.2, above. The Muskegon Group further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 7.3, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

VIII. GENERAL PROVISIONS

8.1 With respect to any violations not specifically addressed and resolved by this ACO, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Muskegon Group to comply with the requirements of the SDWA and its rules.

8.2 The DEQ and the Muskegon Group consent to enforcement of this ACO in the same manner and by the same procedures for all final orders entered pursuant to Section 4 of the SDWA.

8.3 This ACO in no way affects the Muskegon Group's responsibility to comply with any other applicable state, federal, or local laws or regulations.

8.4 Nothing in this ACO is or shall be considered to affect any liability the Muskegon Group may have for natural resource or public health damages caused by the Muskegon Group's water system construction activities. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources or public health.

8.5 The provisions of this ACO shall apply to and be binding upon the parties to this action, and their successors and assigns.

8.6 This ACO constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

IX. TERMINATION

9.1 This ACO shall remain in full force and effect until terminated by a written Termination Notice issued by the DEQ. Prior to issuance of a written Termination Notice, the Muskegon Group shall submit a request to the WB, Grand Rapids District Supervisor consisting of a written certification that the Muskegon Group has fully complied with the requirements of this ACO and has made payment of any fines required in this ACO. Specifically, this certification shall include:

a. The date of compliance with each provision of the compliance program in Section II, and the date any fines or penalties were paid.

b. A statement that all required information has been reported to the district supervisor.

c. Confirmation that all records required to be maintained pursuant to this ACO are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a Termination Notice.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this ACO to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

DEPARTMENT OF ENVIRONMENTAL QUALITY

William Creal, Chief
Water Bureau

12-30-08
Date

MUSKEGON GROUP LLC

By: D. Mark Krueger

Title: Managing Member

12/23/08
Date

APPROVED AS TO FORM:

By: Alan F. Hoffman, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

12/30/08
Date