STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL for the
STATE OF MICHIGAN, et al,
MICHIGAN NATURE RESOURCES
COMMISSION, MICHIGAN WATER
RESOURCES COMMISSION, and
MICHIGAN DEPARTMENT OF NATURAL
RESOURCES,

Plaintiffs,

Case No. 88-34734 CE

vs

Hon. Donald E. Shelton

GELMAN SCIENCES INC.,
a Michigan corporation,

Defendant.
_____/

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PETITION FOR DISPUTE RESOLUTION

Defendant Gelman Sciences, d/b/a/ Pall Life Sciences Inc. ("PLS"), by and through its attorneys, Zausmer, Kaufman, August, Caldwell and Tayler, P.C. and Williams Acosta, PLLC, states as follows for its Petition for Dispute Resolution:

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INTRODUCTION

1. PLS submits this Petition and requests that this Court resolve a dispute that has arisen between Pall and the Michigan Department of Environmental Quality ("MDEQ") regarding the need to install a monitoring well cluster in the vicinity of Nancy Drive, near the location of existing boring PLS-08-07.

2. The MDEQ demanded that PLS install the monitoring well cluster, among other things, in its response to PLS' Wagner Road Interim Response Report, in which PLS provided evidence that it was capturing the Unit E plume at Wagner Road as ordered by this Court in its December 14, 2004 Order and Opinion Regarding Remediation Of The Contamination Of The "Unit E" Aquifer (the "Unit E Order").

3. PLS agreed to install boring PLS-08-07 so that the parties could investigate whether installation of the monitoring wells was necessary or appropriate. The boring demonstrated that 1,4-dioxane was not present at significant concentrations anywhere throughout the thickness of the aquifer, rendering the installation, construction (and subsequent monitoring) at Nancy Drive essentially meaningless for the stated purpose.

4. Despite these findings, the MDEQ has maintained throughout that the Proposed Monitoring Wells are still necessary, and the parties have not been able to resolve this disagreement through meetings and phone conversations, necessitating the need for using the dispute resolution procedures in the Consent Judgment.

FACTUAL BACKGROUND

5. In March 2007, PLS submitted to MDEQ its Wagner Road Interim Response Report ("WRIR"). In the WRIR, PLS documented that it had complied with the requirement in this Court's Unit E Order that PLS capture the Unit E plume at Wagner Road.

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6. In correspondence dated September 10, 2007, the MDEQ agreed that the data PLS submitted with the report had helped to increase the parties' understanding of the contamination and hydrogeology of the Wagner Road area. (Appendix 3). Nonetheless, the MDEQ argued that not enough data had been developed on several points. Specifically, the MDEQ claimed that the extent of the Unit E plume had not been adequately defined west of Wagner Road (and north of the known plume boundaries) between MW-100 and Aprill Drive. (Appendix 3, p. 2).

7. In its response, dated September 20, 2007, PLS argued that further delineation of the plume between MW-100 and Aprill Drive was not necessary in order to meet the requirements of the WRIR and the Unit E Order. PLS explained that the presence of contamination in that location would only be relevant if the contamination was both (a) north of the Prohibition Zone boundary and (b) not being captured by the Evergreen System extraction wells and that no data suggested that those circumstances existed. (Appendix 4). PLS also noted that the potential for a hypothetical plume to migrate from the area of Nancy Drive north to Dupont Circle was not only unsupported by the area's geology, but also contradicted by previous reports PLS had submitted for that area.

8. By correspondence dated October 31, 2007, the MDEQ justified its request for information in the disputed area as follows:

> It is more appropriate to consider water quality data from the TW-11 boring (about 375 feet southwest of GSI-98-01) to evaluate the possibility that a plume could be migrating from the area near the south end of Nancy Drive toward the Dupont area. First, high concentrations of 1,4-dioxane (3,100 ppb) were found during the boring of TW-11 in December 2001, at a depth similar to the well at 465 Dupont Circle. As noted by Mr. Coger, Figure 8 of the Dupont Report indicates groundwater flow in the TW-11 area is from the southwest to the northeast, in the direction of the Dupont area. The only boring between TW-11 and MW-118, a distance of 1,800 feet, is GSI-98-01, where PLS has indicated that attempts to collect water quality data were unsuccessful. There is no basis for PLS to assert that the information gathered during the drilling of MW-118 demonstrates that there is no groundwater contamination migrating from the area

around Nancy Drive toward the Dupont area. Inadequate data have been presented to conclude that contamination in the Nancy Drive area is not the source of contamination in the Dupont area.

(Appendix 5). For ease of reference, the areas referenced by the MDEQ are depicted on Appendix 19.

9. Although PLS initially refused to install more monitoring wells in the demanded locations, it ultimately agreed to investigate the identified area in October 2008in connection with its request that the MDEQ consider its proposal for modifying the Evergreen Subdivision remedial system. The parties agreed on a location for the proposed cluster of wells by email dated October 23, 2008.

10. In December 2008, PLS installed boring PLS-08-07 on the south end of Nancy Drive. The boring was drilled to the bedrock surface, 230 feet below ground, and thirteen water samples were collected and analyzed for 1,4-dioxane. The highest 1,4-dioxane concentration detected was 14 parts per billion (ppb), only 40 feet below ground. The concentrations decreased at lower depths. The highest concentration detected in the Unit E was 4 ppb. Supporting data from the boring are provided as Appendix 20.

11. After reviewing the water quality data collected from PLS-08-07 during the boring, which showed 1,4-dioxane concentrations in the area to be well below 85 ppb, PLS concluded that the findings, along with other data, proved that the Nancy Drive area was not the source of 1,4-dioxane in the Dupont area, as hypothesized by the MDEQ in its October 11, 2007, letter. PLS also concluded that the boring served to adequately define the extent of 1,4-dioxane north of TW-11 and that a monitoring well in this area would provide little or no benefit. Accordingly, PLS informed the MDEQ of its decision not to install a well at this location.

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12. In an exchange of emails on January 5, January 6, and January 20, 2009, the parties outlined their dispute and agreed to discuss their differences. (Appendix 9). In its January 6, 2009 email, the MDEQ reiterated its position that the Nancy Drive area well was needed to define the western extent of the Unit E plume, but appeared to concede that PLS' installation of MW-118 on Ferry Street near Wagner Road negated its concern that the Nancy Drive area was a source of contamination for Dupont Circle.

13. By email dated January 20, 2009, PLS invoked the Consent Judgment's dispute resolution procedure regarding the necessity of installing the proposed monitoring well cluster in the area of Nancy Drive. (Appendix 10). The parties agreed to a number of extensions and conferred several times, to no avail, in an attempt to resolve the dispute. On June 23, 2009, the MDEQ wrote PLS with its proposed resolution of the dispute (Appendix 16). The parties have agreed that this petition may be filed with the other pleadings regarding PLS' proposed remedial modifications.

MATTERS IN DISPUTE

1. Data from Boring PLS-08-07 Adequately Address the MDEQs Expressed Reasons for Investigating the Nancy Drive Area.

14. The primary reason the MDEQ identified in its June 23, 2009 letter for investigating the Nancy Drive area is that the MDEQ has inadequate data to conclude that contamination in the Nancy Drive area is not the source of contamination in the Dupont area. (Appendix 16, p. 2).

15. 1,4-Dioxane concentrations in the Dupont area are currently over 1,000 ppb. The highest 1,4-dioxane concentration detected in the Unit E in the Nancy Drive area was 4 ppb. PLS believes that it is apparent from these data that the low levels of 1,4-dioxane in the Nancy Drive area are not "feeding" the Dupont area contamination. Furthermore, the low levels of

1,4-dioxane in the Nancy Drive area are consistent with other available water quality data and water level data. For example, water quality data collected from MW-118 (another well PLS installed to address the same MDEQ concerns about the northern extent of contamination) support the conclusion that there is no migration of 1,4-dioxane from the Nancy Drive area toward Dupont. Likewise, water level data have clearly shown that the groundwater flow from the TW-11 area is to the east, toward the area of TW-18, not to the northeast toward Dupont. A map showing the groundwater flow, along with the extent of the Unit E plume, is provided as Appendix 21. The shape of the plume is consistent with the groundwater flow directions. There is no indication of a northeast pathway between the Nancy Drive area and Dupont as hypothesized by MDEQ.

16. The MDEQ's assertion in its June 23, 2009 letter that vertical profiling results from a boring "cannot be relied upon to determine the extent of contamination" is not credible, given that the MDEQ has historically allowed PLS to use test boring data to help define the nature and extent of contamination. (Appendix 16, p. 2). For example, the MDEQ has accepted test boring data from Location D, PLS-04-01, and MW-80, PLS-07-06. While a boring may not provide any future "snapshot" information about contamination at the Nancy Drive location, such information is unnecessary because the low 1,4-dioxane concentrations and the direction of the groundwater flow in the Nancy Drive area sufficiently disprove the MDEQ's unsubstantiated hypothesis that some undiscovered, large and unknown mass of 1,4-dioxane in this vicinity is the source of the contamination at Dupont Circle.

17. Thirteen water samples were collected from PLS-08-07, with the highest concentration being 14 ppb (at a shallower depth than the Unit E aquifer). The highest concentration detected in the Unit E aquifer was 4 ppb, approximately 20 times lower than 85

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ppb, the MDEQ's drinking water criterion for 1,4-dioxane, and 500 times lower than the 1000 pbb currently found in Dupont Circle. Because all data collected from PLS-08-07 are well below the drinking water criterion, PLS considers these data adequate to demonstrate that concentrations greater than 85 ppb are not present in that area and that there is no large mass of 1,4-dioxane in that vicinity.

2. The MDEQ's Position That SimulProbe™ Vertical Aquifer Samples Are Not Representative of Aquifer Conditions Is Not Supported by Site Data.

18. The MDEQ has asserted that the SimulProbe™ vertical aquifer samples ("VAS") PLS has collected, in some selected cases, are not representative of aquifer conditions. (Appendix 16, p. 3). However, this assertion is unsupported by data. PLS has installed wells at 66 locations based on the results of VAS. In order to show this Court that VAS is an appropriate and acceptable screening tool, PLS has compared initial well samples ("IWS") with the corresponding VAS. Appendix 22 contains a correlation plot comparing the VAS and IWS at 66 locations. PLS' analysis indicates that IWS collected from monitoring wells correlate very well with VAS collected during test boring installations. Overall, VAS collected using the SimulProbe™ appeared to be an excellent indicator of actual chemical concentrations in an aquifer (R^2 = 0.8354 and Pearsons Correlation Coefficient of 0.912, see Appendix 22). Minor variations between the two data sets are accounted for by: the variation in screen length during sampling, differences in well development prior to sampling, the different sample collection methods, the time of sample collection, and analytical method variations. (*See also* Affidavit of James Brode, ¶¶ 31-37)

19. In very limited situations, where a test boring penetrates high concentrations of 1,4-dioxane, there appears to be a potential for the deeper VAS results to be influenced by the overlying contaminated zones. This would not be the case for PLS-08-07, because high

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concentrations of 1,4-dioxane in shallow zones were not penetrated and potentially carried downward.

3. Ongoing Monitoring at the PLS-08-07 Location Is Not Necessary at This Time.

20. The last rationale the MDEQ cited for demanding a monitoring well cluster at Nancy Drive is to "collect static water level data to provide valuable groundwater elevation data to assess the current groundwater flow direction, and to monitor changes to the groundwater flow direction as the extraction rates at various extraction wells are changed over time." (Appendix 16, p. 3).

21. It has been approximately 40 years since 1,4-dioxane was released into the groundwater at the PLS site. The boring data demonstrate that 1,4-dioxane has likely never reached the Nancy Drive boring location at concentrations above a drinking water standard. Even if it had, it has either migrated past this location or has been remediated by the operation of extraction wells such as TW-5, TW-11, and TW-17 and is no longer present in high concentration.

22. PLS already has numerous wells that can and will be used to assess groundwater flow in all aquifers west of Wagner Road and does not believe a well at this location would provide additional understanding of groundwater flow in this area. PLS anticipates operating TW-5, the South Horizontal well, and a proposed extraction well in the area of MW-94 for at least the next several years. During this time, water level data will be collected from wells in the area of TW-11. For this period, there is no reason to anticipate that groundwater will begin to flow to the north, escaping the capture of these three extraction wells. If, after reducing extraction rates in the future, there is a noticeable change in groundwater flow that could result in

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1,4-dioxane migrating toward the Nancy Drive area, PLS will reevaluate the need for a well in this area.

23. Finally, the MDEQ is asking for wells to be installed in shallower zones unrelated to the Unit E. No rationale is offered for this demand.

RELIEF REQUESTED

24. PLS requests that this Court resolve the pending dispute between the parties pursuant to Section XVI of the Consent Judgment, as amended, and find that PLS is not required to install a monitoring well cluster in the vicinity of Nancy Drive, near the location of existing boring PLS-08-07.

Respectfully submitted,

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