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STATE OF MICHIGAN

IN THE 22ND CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL et al,

Plaintiff,

V

Civil No. 88-34734-CE

GELMAN SCIENCES INC.

Defendant.

HEARING

BEFORE THE HONORABLE DONALD E. SHELTON, CIRCUIT COURT JUDGE

Ann Arbor, Michigan - Wednesday, September 8, 2004

APPEARANCES:

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None

EXHIBITS:

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None

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Ann Arbor, Michigan

Wednesday, September 8, 2004 - 3:58 p.m.

THE CLERK: Washtenaw County Trial Court is now in session, The Honorable Donald E. Shelton presiding.

THE COURT: Please be seated.

THE CLERK: Number eleven, Attorney General versus Gelman Sciences, case number 8834734CE.

MR. REICHEL: Good afternoon, Your Honor. For the record Ronald Reichel, Assistant Attorney General on behalf of the plaintiffs, with me here in Court today are Mitch Adelman, and Sybil Kolon from the DEQ.

MR. CALDWELL: Your Honor, Mike Caldwell on behalf of Paul Life Sciences. With me at counsel table is Alan Wasserman. Also with us is Farsad Fotouhi.

THE COURT: Okay. This matter is before the Court on a scheduled review, continuation of the Court's last review and order in February. I have as I requested received reports, from Mr. Reichel on behalf of the DEQ as well as, the report from Mr. Caldwell on behalf of Paul Life Sciences. And I have read and reviewed those reports. I also received a request from an attorney from the City of Ann Arbor, and as well as, attached comments and positions of the City of Ann

1 Arbor. I'm--I'll consider those. I have read and will
2 consider those comments, but I'm gonna limit the hearing today
3 to these two--to these two parties. Mr. Reichel?

4 MR. REICHEL: Thank you, Your Honor. Just to follow
5 up briefly on our discussion in chambers. What I'd like to
6 accomplish here today, in addition to responding to questions
7 the Court may have, by way of brief overview summarize the
8 following. As we've indicated in the papers submitted to the
9 Court, after Paul submitted their feasibility study, and
10 proposed remedial options for Unit E. The DEQ carefully
11 reviewed that. It solicited and its considered comments from
12 the public, and the local governments, and from Paul, and
13 reached a decision as to what it believes is the appropriate
14 remedy should be for the Unit E contamination, that's laid out
15 in those documents. I'm not going to repeat all that at
16 length, but I do want to emphasize a couple of points, very
17 briefly.

18 DEQ has determined and yet indeed determined even
19 before the September 1st document that there are certain things
20 that Paul can and should do under any scenario. To address
21 part of the Unit E plume beyond what it's all ready doing,
22 which as the Court knows includes some purging on its own
23
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1 property from Unit E. And that is to conduct an investigation
2 a focused investigation to identify where it would need to
3 place wells, in the vicinity of Wagner Road, which is a major
4 thoroughfare adjacent to its property. An area where it's
5 still fairly closed to its existing Infrastructure Treatment
6 Center at its plant site. With the object of rapidly
7 designing, constructing, and implementing a series of purged
8 wells to interdict and halt all of the contamination above the
9 clean up criteria in that Unit E aquifer that is continuing go
10 migrate from plant site. This is a partial step, but it is
11 one that is implement able. It is one that could be addressed
12 with the existing infrastructure, that is that treatment
13 system that Paul has at it's plant property, the existing
14 surface water discharge--.

17 So, I want to emphasize that while DEQ's decision
18 document laid out basically, a parallel path for Paul to
19 follow. Basically pursuant (sic) pursuing two things. Each
20 of those parallel paths has as its first step, taking
21 additional measures in the very near future, to capture that
22 part of the Unit E plume along Wagner Road. The parallel part
23 by way of overview, addresses two different scenarios for
24 dealing with the rest of the plant. One scenario was that
25

1 which Paul has laid out in its feasibility study and
2 submission. That entails the risk of over simplifying it,
3 doing some additional purging in the vicinity of Maple Road up
4 to 200 gallons per minute. Treating the water near that
5 location, and re-injecting it, with the object being to
6 reduce, but not eliminate the Dioxane contamination below a
7 level that Paul believes would not cause an adverse impact on
8 the Huron River, as the remaining plume expanded. And with
9 respect to the remainder of the plume under Paul scenario, it
10 would involve essentially allow--allowing the so-called
11 leading edge of the plume to continue to migrate, to dilute,
12 they hope. And they believe prevent unacceptable exposures to
13 it. Without going into a lot of detail, but again it's laid
14 out specifically in the DEQ's decision document. The DEQ's
15 identified six specific conditions that would have to be
16 satisfied before that kind of approach can be implemented.

17
18
19 The DEQ's view as the facts exist today, that is not
20 consistent with the law and it wouldn't adequately protect the
21 environment. The possibility exists of satisfying those
22 conditions, and Paul has stated his intentions to try to do
23 that. DEQ is willing in effect to say to Paul or is saying to
24 Paul you can, if you chose, try to pursue those conditions
25

1 within the next few months, within the next year, which is the
2 time frame Paul positively would need to do that. But because
3 the possibility exists that that approach would not ultimately
4 be successful or would not be acceptable, Paul should in
5 addition to doing this work, along Wagner Road, that I started
6 out talking about, which we believe, the DEQ has to believe,
7 has to be done no matter what. That Paul should begin
8 planning for a different remedial approach, which would entail
9 two additional areas of purging, capturing all the
10 contamination in two locations, one near Maple Road. The
11 other at the leading edge of the plume, wherever it happens to
12 be located by the time the necessary infrastructure is built,
13 the idea being to completely remediate the plume.

14
15
16 Again I'm not going to repeat all the reasoning, but
17 that in a nut shell is the path that DEQ has laid out. DEQ
18 and Paul have continued to discuss as we have throughout this
19 process where we stand. DEQ announced this decision that I
20 just described to you, and the Court has seen just last week.
21 We based upon preliminary discussions with Paul, and I'll let
22 them speak for themselves. There's certain portions of what
23 the DEQ has identified as the appropriate remedial decision,
24 that they agree with others, that they apparently disagree
25

1 with some others that they're still looking at. We contend in
2 the immediate future to continue to engage in discussions with
3 Paul to crystallize which areas there is a disagreement with,
4 but at the end of the day, and not very distance day, the
5 DEQ's approach to this would be to the extent that Paul--let
6 me back up.
7

8 As a legal matter, under both a consent judgment,
9 and Part 201 on the State cleanup law, we believe very
10 strongly that DEQ has both a responsibility, and the duty to
11 make decisions about what the appropriate clean up option is.
12 The DEQ has done that. It's laid out a two fold path that
13 I've just described in its detail. The object of which is to
14 do immediately that which can be done, and then to move
15 forward to address the remainder of the plume in a legal way.
16

17 Under both part 201 in the consent judgment, DEQ is
18 charged with making those decisions. If as I anticipate there
19 continues to be some dispute about that as between Paul and
20 DEQ. It is as a matter of law, and the consent judgment, and
21 part 201 DEQ's call to make. Subject to obviously the
22 resolution of any dispute, and the enforcement of the consent
23 judgment, and the law by this Court, but based upon a record
24 that DEQ has compiled of everything that its considered that
25

1 bears on this issue, and the test being whether DEQ's decision
2 was legal, and whether it was rational. That is how we from
3 our standpoint or DEQ standpoint see this moving forward.

4 Let me briefly address, I don't to take a great deal
5 of time. The Court has received a letter from Mr. Caldwell it
6 made certain points. Just for the record I just want to note
7 that there's certain items in Mr. Caldwell's letter with which
8 we do not find ourselves in agreement. And I just want to
9 clarify that for the Court, so the record's clear. Some of
10 these things are really sort of a factual background nature.
11 I'm not sure they really warrant an extensive discussion. Let
12 me focus in on what I think are the most significant.

13
14 Paul has--in Mr. Caldwell's letter he talks about
15 the plan for Unit E. And this proposal that they've
16 identified for purging up to 200 gallons per minute in the
17 vicinity of Maple Village, and re-injecting the treated--
18 treating it with a system to be installed there, and then re-
19 injecting it back into the aquifer. As DEQ indicated in its
20 decision document, in conditions two, and six of that list of
21 six conditions, the DEQ has substantial concerns about whether
22 it is prudent and acceptable, based on what we know today to
23 re-inject at that location. Those concerns relate to the
24
25

1 following. One, by re-injecting water in that area, there's a
2 potential for widening the existing plume. Secondly, making
3 it harder to effect or to assess the effect of the migration
4 of contamination from that area. And third, the possibility
5 that if Paul as planned is not implemented, if at the end of
6 the day, Paul has to go out and do the work necessary to
7 capture the entire plume, the leading edge, re-injecting into
8 the vicinity of Maple Village may complicate (sic) complicate
9 (sic) compromise those efforts. For these reasons as stated
10 in DEQ decision's document, DEQ believes that Paul can and
11 should, number one, look at any available other options in the
12 near term for disposing of some of this purged water, that
13 they proposed to purge near Maple Village. Even on a
14 temporary basis, using if available, we don't know that it is,
15 but using if available sewer capacity on an intermittent
16 basis. And then secondly, if they propose to go ahead and re-
17 inject that they collect enough additional information about
18 the geology in that area to satisfy DEQ that it is indeed
19 prudent to do that.
20
21

22 With regard to again in Mr. Caldwell's letter he
23 suggests that Paul can just go out and do this. And that no
24 approval--well, I don't wanna mis-state this--that they
25

1 would've had to have a permit. It's true that they wouldn't
2 necessarily have a permit--have a permit, but again DEQ would
3 need to approve this under the law before they could do it.
4 And as I said DEQ has some concerns. They may be resolvable,
5 but there's not enough information today to just say go ahead
6 start re-injecting in that location. With regard to
7 statements in Mr. Caldwell's letter about the fate of the Unit
8 E plume that it's suggested, and again I'm simplifying, but
9 it's suggested, that it is all ready known actually where the
10 Unit E plume is going to and where it's going to end up, where
11 it's going to vent into the Huron River. For as explained in
12 detail in the DEQ documents we don't believe that has been
13 established yet. It is quite possible indeed inevitable at
14 least some portion of the plume that is--if it isn't halted
15 will end up in the Huron River, but exactly where, and at what
16 concentrations, and whether it will go anywhere else remains
17 to be determined. The point of this, Your Honor, that under
18 any scenario, even under the scenario that Paul has advocated
19 which DEQ has said it might approve, it will still need to be
20 monitoring in the areas down gradient that is in the direction
21 of flow to ensure that there were no unacceptable exposures to
22 people, in water supply wells, or to the Huron River. And
23
24
25

1 those--some of those conditions are addressed in the DEQ
2 decision documents. But the point of this comment is just to
3 make it clear that the suggestions in Mr. Caldwell's letter
4 that it is all ready clear as to where the plume is going.
5 That is not--isn't--we don't view it that way.
6

7 With regard to this first point that I mentioned,
8 Your Honor, the additional work at Wagner Road as I said DEQ
9 is all ready engaged with Paul on that. And Paul is--has
10 submitted a plan to collect some additional information along
11 this Wagner Road corridor. There is a dispute between the
12 parties on that issue. Apparently the only immediately
13 outstanding issue or an outstanding issue is DEQ's statement
14 to Paul that is a part of this additional investigation along
15 Wagner Road. That a certain kind of drilling technique be
16 used for some of the borings. Or at least one of the borings,
17 it's called Roto Sonic Drilling. I can get into it in detail,
18 but DEQ believes that there--it would yield useful information
19 at that part of the site, and the rest of the site. Paul and
20 DEQ are still debating that point. But we believe there isn't
21 any serious reason why Paul can't go ahead and do the
22 necessary work along Wagner Road, necessary to design, and
23 then install purge wells near Wagner Road.
24
25

1 And again I want to emphasize this to be absolutely
2 clear, Your Honor, when DEQ is talking about Wagner Road is a
3 base thing. It can be done, it should be done, and it can be
4 done soon. It does not vary with the strategy for the
5 remainder of the plume. That is it can be done whether or not
6 the leading edge is ultimately captured. And it can be done
7 whether or not Paul proceeds to--with partial purging at
8 Wagner--at Maple Road and re-injection or as DEQ has said as a
9 fall back, whether they have to more aggressively purge, and
10 get that whole segment of--.

12 Finally, at the risk of stating the obvious, you
13 know, Paul's made clear it's view which obviously it's
14 entitled to, but which we vehemently disagree that the DEQ's
15 fall back plan is unnecessary and feasible, etcetera. The DEQ
16 has explained where it ends up on this. It is ident (sic)
17 again identified two possible paths forward with regard to the
18 Unit E plume beyond Wagner Road. But I want to make it clear
19 that for the reasons articulated in the DEQ's decision
20 document and in the administrative record that we can, and if
21 necessary will submit to the Court in a dispute resolution
22 process, we believe the DEQ's decision is a rational one.
23 Again there's some other points raised in Mr. Caldwell's
24
25

1 letter that--with which we disagree, but frankly are of the
2 secondary nature, and I don't think merit extended discussion
3 at this time.

4 With that Your Honor, again I understand that the
5 Court has taken a great deal of time to look at the written
6 submissions of the parties, and I don't want to repeat them at
7 length. Having said what I just said, I'd be happy to respond
8 to any immediate questions the Court may have about the
9 position I've articulated or the position that DEQ has
10 described to you.
11

12 THE COURT: I do have a couple of questions about
13 the conditions that you have--that the DEQ--if I say you--I'm
14 referring--
15

16 MR. REICHEL: I understand.

17 THE COURT: --that the DEQ has most recently
18 attached to the proposal of Paul.

19 MR. REICHEL: Mh'hm.

20 THE COURT: Particularly concerned about the
21 ambiguity of condition six.
22

23 MR. REICHEL: And this is at page 16 and 17 of the
24 decision document?

25 THE COURT: Yes, it is. And frankly, not having

1 enough information to understand what--what the concerns about
2 re-injection are. And whether those are reasonable concerns
3 or not? So, if you--I don't need you to do anything here on
4 the record, but if you would like to I would be happy to
5 receive some more information about that.
6

7 MR. REICHEL: Well, I'll be provide the Court with
8 whatever time frame you specify, with some additional written
9 material on that subject from DEQ, but I've tried all be it in
10 my own lay fashion--

11 THE COURT: Mh'hm.

12 MR. REICHEL: --to articulate what I understand of
13 it.
14

15 THE COURT: I--I know. And I--I guess I need a
16 little more than that.

17 MR. REICHEL: Understood, so.

18 THE COURT: Finally, and my other question was on
19 number four. And again it's asking you to be a little more
20 specific, in terms of a plan for monitoring any water supply
21 wells that are outside the area covered by institutional
22 control, and later found to be threatened. I need a little
23 more description of what area we're talking about here, and
24 exactly what it is that you're suggesting happened in those.
25

1 Presumably these would be wells outside the City, but where?
2 How far?

3 MR. REICHEL: Right.

4 THE COURT: What's encompassed by this condition?

5 MR. REICHEL: Okay. Well, we can certainly provide
6 something additional in writing on that, but for a brief
7 response, Your Honor, again the--one of the other immediately
8 proceeding conditions, as the Court sees, is this item three,
9 immediately and before, this institutional control. That
10 means in plain English, having in place an adequate, and
11 reliable mechanism of assuring, a legal mechanism, whether it
12 be an ordinance or combination of ordinances.
13

14 THE COURT: I understand your position on that.

15 MR. REICHEL: Right. Okay. And so the--presumably
16 whatever--assuming that such a control was adopted or modified
17 to be sufficient, it would have some limitations on its
18 geographic scope--
19

20 THE COURT: Mh'hm. What? Mh'hm.

21 MR. REICHEL: --and the point of number four is that
22 any areas beyond that--there would need--again we'll address
23 this in writing for clarification, but there would need to be
24 a monitoring scheme in place. Just as in the following item
25

1 number five.

2 THE COURT: Mh'hm.

3 MR. REICHEL: To make sure that if the plume is not
4 all that's not gonna be captured, that it doesn't go some
5 place where it exceeds the level that protects the surface
6 water or protects human health, people who might have wells.

7 THE COURT: On that issue I'd be happy to get your
8 materials, on that issue the defense I take it says that those
9 required regulatory controls or those controls required by
10 regulation--
11

12 MR. REICHEL: Mh'hm.

13 THE COURT: --can be, could be even in the form of a
14 Court order. You have a response to that?
15

16 MR. REICHEL: That is their--I would note first
17 that's their position. And the statute itself contemplates and
18 talks about--I'm paraphrasing here--a reliable and enforceable
19 legal mechanism. Normally, that has been--or at other sites
20 like this where the issue comes up it has taken a form of some
21 kind of ordinance, or regulation adopted by a local
22 legislative body, which restricts or limits the use of ground
23 water. Frankly I don't know precisely what it is their
24 suggesting, in terms of some judicially imposed restriction.
25

1 From a statutory standpoint, and a legal standpoint, I think
2 what's required is something--is clear. That is legally
3 enforceable, and that assures that there is not any
4 unacceptable exposure. Those would be the basic criteria.

5 THE COURT: Well, the obvious concern that I have
6 about the interpretation of this is that if it's a condition,
7 and if were--having been in local government a long time
8 myself, if we're waiting for the County, or a City, or a
9 Township, or heaven forbid, the State Legislature to adopt a
10 regulatory scheme as a statute, or ordinance we'll be here
11 another 16 years.

12 MR. REICHEL: Well, I understand what the Court is
13 saying. I--I hope and I don't believe that's inevitable. I
14 don't--maybe I'm being naïve, but I think the possibility
15 exists.

16 THE COURT: I'm being pessimistic, but I--I just--to
17 say that we're not going to move this process forward until
18 some legislative body decides on the details of an enforceable
19 mechanism in this particular area--seems to me to be not--I
20 mean frankly, if they meant to say ordinance, or statute they
21 could've said it, rather than legally enforceable mechanism.

22 MR. REICHEL: Well, I can--let me--refer the Court.
23
24
25

1 I will be happy to submit something in writing. Before I get
2 to that I just want to re-emphasize one point, Your Honor. To
3 be absolutely clear, the DEQ is not advocating that nothing
4 happen--that we wait for--

5 THE COURT: I--I understand your position on that--

6 MR. REICHEL: --some legislative action.

7 THE COURT: --Mr. Reichel. I'm not--

8 MR. REICHEL: Okay. Okay. I just want to be
9 abundantly clear.
10

11 THE COURT: But you are saying this ought to be a
12 condition that has to be satisfied, before this other plan can
13 go in place--

14 MR. REICHEL: Precisely.

15 THE COURT: Right. And--

16 MR. REICHEL: Exactly.

17 THE COURT: --so I'm--?

18 MR. REICHEL: Understood. But if--we're not saying
19 wait indefinitely for that--
20

21 THE COURT: I know.

22 MR. REICHEL: --if it isn't accomplished, then we
23 have to go to the other plan, but in terms of the legal
24 requirement, Your Honor, and the statute, and this is also in
25

1 our administrative rules, it's in again the clean up statute
2 MCL 324.20120B. And there's various subsections. We can give
3 you something further in writing, and that's if you like--

4 THE COURT: Mh'hm.

5 MR. REICHEL: --but the statute contemplates a
6 restrictive covenants, or under sub five it says, if the
7 department determines that exposure to hazardous substances
8 may be quote, reliably restricted by an institutional control,
9 and--restrict able--restricted covenant. And that the
10 restricted covenants are impractical, the department may
11 approve a plan that relies on such controls. Mechanisms that
12 may be considered under this section include, but are not
13 limited to an ordinance that prohibits the use of ground water
14 or an aquifer. Then goes on and does--so--it talks about, but
15 does not limit it to an ordinance, to answer your question.
16
17

18 THE COURT: All right. Thank you. That's fine.

19 MR. REICHEL: Are there other specific questions I
20 can try to address--

21 THE COURT: No.

22 MR. REICHEL: --at this point?

23 THE COURT: Not yet.

24 MR. REICHEL: May I have just a moment, Your Honor.
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THE COURT: Yes.

MR. CALDWELL: Thank you, Your Honor.

THE COURT: Caldwell?

MR. CALDWELL: Your Honor--

THE COURT: Before you begin, do you agree with Mr. Reichel that both sides agree on the immediate Wagner Road measures to be taken?

MR. CALDWELL: No, Your Honor. I think that's correct when you indicated that--that request has been put into dispute resolution, for two reasons. One, we don't see that cutting off the entire--we're--to back up. We're all ready operating three--at least three wells on the Gel (sic)--on the Gelman--for the Gelman property, and have been operating at least two of those wells since this contamination was originally discovered. So, we've been doing source control.

Plus, as we found out our D2C3 Clean up Purge program has been so aggressive that we've been pulling up contamination from the Unit E, we believe for at least the last four years. So, I don't want the Court to think that we haven't been doing any source control. We do a lot of source control, even if some of it has been by accident. We've done

1 intentionally, and we've proposed in our feasibility study to
2 do an investigation which the department now agrees that we
3 should do. To see what the concentrations are along Wagner
4 Road. To see whether an additional purge well would be
5 justified. Now, they want us to go beyond that and capture
6 the entire width of the plume, down to 85 parts per billion.
7 We're not sure that that has any real benefit. But more
8 importantly, we believe it would place us in a situation were
9 we would have to be pumping so much water from there, and
10 disposing of it pursuant to our NPDES Permit. That we would
11 be in conflict with our obligations under the Court's previous
12 remediation enforcement order.
13

14
15 So, to find out whether that's an issue we've agreed
16 to go ahead, and do a pump test to find out how much--'cause
17 right now we're really talking hypothetically, both of us. We
18 don't know how much water it would take to capture the entire
19 width of that plume. But we're gonna do a pump test, and we
20 submitted that work plan to the state all ready. And with
21 exception of this one issue regarding Roto Sonic Drilling that
22 plan hasn't been approved, and we're in the process for
23 obtaining access for that. So, we will know if in a fairly
24 short--I'm not exactly sure how long.
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THE COURT: Mh'hm.

MR. CALDWELL: How much it would take to purge from that location. And whether we could do that within the limitations we have under our NPDES Permit. And this Court's five year remediation enforcement order. So, we're not in-- we're--I think we're in agreement that we should be doing--we should at least decide whether we should do it--an additional well in the Wagner Road area. We're in agreement that we should do an investigation. And Mr. Fotouhi indicates that subject to the access, we could probably have that pump test done within 40 days.

Your Honor, I'm gonna--I'm gonna be brief.

Although, there are a number of people here today that I think have not formally been interested in this issue. People that have become concerned about the impact the State's Proposal might have on them. And I just wanted to provide a little bit of background to them. In 1997 Paul Corporation purchased Gelman's Sciences, and formed Paul Life Sciences. We make filters for medical purposes, like filtering blood, the bacteria out of blood. Our filters are used in hospitals all over the world. We even make the air filters on--Gelman's just learned recently we can make the air filters that our

1 Astronaut's use in their space suits. We employ over 400
2 people at the Wagner Road facility, many in high tech, high
3 paying positions. I think that Paul Life Sciences is
4 precisely the type of high tech life sciences type employer
5 that this community is trying to attract.
6

7 Gelman the predecessor company stopped using 1,4
8 Dioxane in 1986 after the contamination was discovered, eleven
9 years before we bought the company. We have never used that
10 solvent here in Ann Arbor, Your Honor. It's the--the Court
11 concluded in 1991 after a lengthy trial, the ground water
12 contamination affecting the community result--not from the
13 illegal dumping that sometimes been implied in media reports,
14 but rather from waste disposal practices, that were
15 specifically authorized by permits issued by the State.
16

17 Simply put the State of the Art back in the 60's and
18 early 70's was not what we would want it to be today. That
19 doesn't mean the ground water contamination doesn't have to be
20 addressed. Gelman before we ever bought the company entered
21 into a consent judgment with the State that required it to
22 take certain remedial actions. And we assumed those
23 obligations when we purchased the company. Since 1997 when we
24 purchased Paul or purchased Gelman, particularly since 2000
25

1 this Court removed a number of bureaucratic obstacles that had
2 slowed--the clean up progress. Paul Life Sciences has met and
3 surpassed their remedial goal set forth in the consent
4 judgment, and this Court's REO. We've removed over 60,000
5 pounds of 1,4 Dioxane from the aquifer since 1997. And since
6 2000 we've removed over 37,000 pounds of 1,4 Dioxane from the
7 aquifer covered by this Court's five year order. And that's
8 11,000 more than the State and the Paul Life Science's
9 estimated would be--would take to finish the job. Paul has
10 been in--hopes to continue to be a valuable and cooperative
11 member of this community.
12

13 Now, the problem that we're here today about
14 primarily is the--that is of course the Unit E contamination.
15 I'm not sure if everyone knows this, but this contamination
16 was not known when Paul bought the company in 1997. But we
17 haven't tried to avoid addressing this contamination in a
18 protective and responsible way. And we've proposed a plan
19 that we believe satisfies both of those requirements. Our
20 remedial plan is essentially as Mr. Reichel has--has
21 described, is essentially to gut the plume at two locations.
22 We're gonna--we're gonna take out the highest concentrations
23 at Maple Road. And we're gonna by purging 200 gallons a
24
25

1 minute, which will capture the most highly contaminated ground
2 water. And we've all ready designed, and tested a treatment
3 unit that has a fairly small footprint. It could be--we think
4 placed safely in that area that can cleanup the ground the
5 Dioxane contamination that we expect to find.
6

7 Now, as Mr. Reichel's discussed we're proposed to
8 place the treated ground water to re-inject that back into the
9 aquifer. We don't think there's any question that they--that
10 the aquifer in this area can handle the ground water--the
11 volume of ground water that we're proposing to re-inject. I
12 mean very simply, we're taking out 200 gallons a minute, we're
13 treating it, and we're gonna re-inject the same volume of
14 water. So, we believe that we've submitted some materials,
15 and are willing to work with the DEQ to satisfy their
16 concerns. But we don't think there's any question that we can
17 re-inject the treated ground water in that area without
18 causing any of the negative ramifications that Mr. Reichel has
19 identified.
20

21 In general, because we're taking out what we're or
22 we're putting back in--what we're taking out, so this should
23 be very little effect on the destruction of the plume.
24

25 Now, the DEQ has asked us to determine whether the

1 City's sanitary sewer has available capacity that could be
2 used to dispose of the treated ground water. We actually
3 don't have a problem with that, but we're looking into that.
4 We've made those inquiries before in particularly when we
5 installed a test wall in the Warden area--Warden Street area.
6 At that time, we were given a letter from the City's attorney
7 that stated at most, there might be 600 excuse me 60--six,
8 zero, gallons a minute of capacity during the dry weather
9 time. And that would not be available during storm events.
10 This poses two problems, one and it's also conditions tied to
11 that. The 60 gallons a minute is obviously not 200, so we
12 don't think it's sufficient capacity even during the dry
13 weather. But during the variability, the weather dependant
14 variability is also a problem because, for lack of a more
15 technical term, screws up the treatment system, which has very
16 precisely calibrated injection sequences, and a whole lot of
17 things that only Mr. Fotouhi understands.

20 And when you increase the--and decrease the volume
21 back and forth, you really run the risk that your treatment is
22 not gonna be as sufficient. And so we're doubtful that the
23 sanitary sewer will provide a reliable option, but we'll
24 certainly talk to the City about that. We don't want to
25

1 foreclose that without further discussions.

2 But most importantly, the point I want to make, Your
3 Honor, with regard to our plan is that with necessary
4 approvals, and if something I said in my letter gave the wrong
5 impression--I don't want to give the impression that the DEQ
6 does not have to approve our plan. But we do need DEQ
7 approval. But under the exemptions to the ground water
8 discharge permit requirement that I point out in my papers, we
9 do not need a formal permit that would be subject to public
10 comment, and inevitable administrative challenge, unlike a
11 NPDES permit or a ground water discharge permit.
12

13 So, I think our option would be much more
14 streamlined, and because it involves limited infrastructure,
15 can be installed--to subject to getting access, and the things
16 that we always have to do deal with. Can be installed in you
17 know, I think we can have everything up and running in six
18 months.
19

20 Now, as Mr. Reichel's noted he's asked us to capture
21 the width of the plume at Wagner Road, and we've had some
22 issues. We're going to be doing an investigation. We're
23 gonna resolve that I think in the near term. Now, as the
24 Court's aware our plan does not include capturing the entire
25

1 width of the plume. And--there--or the low levels of
2 contamination that are east of Wagner Road--excuse me, east of
3 Maple Road, a 150 feet or so below the ground.

4 In our judgment, this portion of the plume--in this
5 portion of the plume, nor the low levels of contamination that
6 would not be stopped by our Maple Road purging, pose any risk
7 to the public health or to the environment. We are prepared
8 to back that up, Your Honor, by doing the investigation that
9 we've all ready discussed with the DEQ to address the
10 outstanding uncertainties, regarding the plume path as it goes
11 towards the river. And I don't--I'm not gonna stand here and
12 say that has--that that plume path has been identified with
13 certainty. I do think there does need to be some additional
14 investigation. We've proposed--we've always proposed to do
15 that investigation. That has never been an issue. What I've
16 said is that all the available data, and primarily that's from
17 City Generated Well Head Protection, that the data was
18 reviewed, and approved by the State, indicates that the plume
19 will migrate in an area that will not affect down grading it
20 to drinking water wells or other receptors. We've--like I
21 said we've done that. We've prepared that plan. We're gonna
22 submit it to the State shortly to do the investigation.
23
24
25

1 As to any uncertainties regarding the plume pathway,
2 and the State's condition that we put monitoring wells over in
3 the area's of potentially receptors, those aren't issues.
4 We're gonna--we're gonna do an appropriate investigation, and
5 we're not going to let this plume migrate in an area that's
6 going to effect the safety of anybody's water supply. That's-
7 -it's not in our interest to that--if nothing else, and so no
8 one's drinking the water from the portions that aquifer that--
9 where the plume remnant will migrate.

11 And it's all ready illegal under existing ordinances
12 for anybody to install a new well in this area. And we're
13 gonna do the investigation we need to prove that. And I'm not
14 gonna say a lot about the DEQ's plan--sounds like we'll have
15 an option--opportunity to address that later--I've all ready
16 addressed that to some degree in our papers. But I mean
17 basically, we think that the few legal issues that stand
18 between us and approval of our plan, as a final remedy--I
19 don't think anybody disagrees with this--with the exception of
20 this re-injection issue, that needs to be--that concerns need
21 to be resolved. I don't think anybody disagrees that our plan
22 is a good thing to do. And we think that we can--they just
23 don't agree it's a final remedy. And we think it can be made
24
25

1 a final remedy with very few--with a limited amount of effort,
2 and with the cooperation from the community, or perhaps as we
3 discussed, pursuant to some type of Court order that will
4 provide the institutional control that is required. And the--
5 we will provide this in our papers to you, Your Honor, but the
6 rules flush out the definition of institutional control. And
7 it basically says that it's a measure that will ensure that
8 unacceptable exposures to contamination do not occur. So,
9 certainly neither the statute nor the rules preclude that
10 measure from being a Court order. It gets that simple, and
11 we'll be glad to you know, to meet that issue as well.

12
13 The last--I just wanna stress, that Paul will
14 continue to work towards implementing our remedy in a timely
15 fashion. We will continue to do that, because we believe it's
16 the best thing for the community. We think that the DEQ
17 remedy which will be incredibly disruptive of--a fall back
18 remedy would be incredibly disruptive to the community. And
19 it has all ready drawn a great deal of opposition. And the
20 truth is only a small number of the people potentially
21 effected by their plan have--are even aware of this issue at
22 this point. All ready 700--370 home owners have signed
23 petitions in opposition to that. And I think this goes beyond
24
25

1 the expected, not in my backyard, type of opposition. I think
2 they're very legitimate issues about the necessity for this
3 plan. And we're going to do all we can do to get our plan
4 approved, so that those disruptions can be avoided. And
5 obviously if you have any other questions.
6

7 THE COURT: I have none. Did you have any final
8 comments, Mr. Reichel?

9 MR. REICHEL: A couple of things briefly, Your
10 Honor. I'm not going to re-cap the history of this litigation
11 or you know--

12 THE COURT: Thank you.

13 MR. REICHEL: --Paul apparently done--done certain
14 things that it's required to do. The business decisions of
15 Paul Life Sciences made to acquire Gelman's Sciences is a rich
16 business. The fact remains that it had the legal obligation,
17 and it still has the legal obligation to do whatever is
18 necessary to address this problem. They have done a lot of
19 work. Unfortunately there's still a lot to be done. The--as
20 far as, the bench mark goes again, that was brought up again,
21 it's interesting to note that, as Mr. Caldwell also noted in
22 his papers, under the five year plan that they have moved more
23 mass than they thought was there. And the obvious indication
24
25

1 from that is that the estimate of mass was wrong. And it is
2 by no means established that this additional 11,000 pounds
3 came out of the Unit E.

4 The fact remains that there's a massive problem that
5 they need to address. As far as, the issue of community
6 concern, or comments received by the DEQ about this, what Mr.
7 Caldwell referred to as a fall back option, that is capturing
8 the leading edge, I would just note, Your Honor, that it's
9 absolutely true, that a number of people in the area have
10 expressed their concerns about possible disruption in
11 residential neighborhoods.

12 Obviously it's not DEQ desire under any
13 circumstances to cause undo disruption. But I would be
14 remised if I didn't note that it appears that--again
15 undoubtedly, a variety of motivations for this, but it's my
16 understanding, that an employee of Paul distributed inaccurate
17 or unduly alarming descriptions about what the DEQ was
18 considering in the area, in part to orchestrate some
19 opposition to this alternative proposal.

20 At the end of the day, Your Honor, DEQ has been
21 guided, and will continue to be guided, by what it takes very
22 seriously, not bureaucratic requirements, but its mission to
23
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1 protect health--human health and the environment. And to do
2 so in a way that's consistent with the statutory scheme
3 they're charged with enforcing. That's what we're about. We
4 welcome the opportunity to provide--answer any other questions
5 you may have to submit additional information.
6

7 But in closing, we're not saying wait for a year.
8 We are saying move forward in a multi front attack to deal
9 with the rest of this problem, and to do it responsibly.
10 Thank you, Your Honor.

11 MR. CALDWELL: Just one item, Your Honor. And I
12 know that's a dangerous thing for me to say, it's hardly ever
13 believed. The employee who passed out the notice that Mr.
14 Reichel referred to as misleading, was John Psychas an
15 employee who lives in the Evergreen subdivision, and has been
16 a great liaison for the people in that neighborhood, and the
17 company. All the notice said--and I--we will produce a copy
18 of this to the Court--
19

20 THE COURT: I'm not interested.

21 MR. CALDWELL: --okay.

22 THE COURT: You must admit you wouldn't have ended
23 up on that note, because it's sort of--sums up the--or
24 encapsulates the Court's frustration in trying to deal with
25

1 big issues that get side tracked on small irrelevant points.
2 This pollution began almost 20 years ago, and several
3 organizations and people, have been engaged in efforts to
4 control its--its spread, and ensure public safety. I have the
5 good fortune at this point I believe, to be dealing with
6 parties to this litigation who share the concern for
7 eliminating the public dangers from such pollution. And have
8 been working in good faith to do that. And I refer both to
9 the DEQ and to the successor of Galman, Paul. That doesn't
10 make it less frustrating that we have not been able to
11 adequately control the spread of this pollution. This case--
12 this law suit was filed in 1988. It has been pending for 16
13 years. When this Court was originally assigned in the matter,
14 because frankly the law suit out lasted the Judges, I reviewed
15 the law, and I believe that it is the role of this Court under
16 the law, and under the law of this case, to assure that the
17 parties, both of them, and the affected local units of
18 government act promptly to re--remediate this pollution. Only
19 in the law could we say promptly after 16 years. But that's
20 where we are. That's how I perceive the role of the Court.

21
22
23 Frankly if the Court of Appeals or the Supreme Court
24 wants to say that the Court should act--should solely rely on
25

1 the DEQ mechanism, and bureaucracy to protect the County from
2 this public health danger that's been present for almost two
3 decades, so be it. And I will someday await their response.
4 In the meantime I believe it is the role of this Court to move
5 the process along, and to force the parties, and if necessary
6 local units of government, to promptly remediate this public
7 danger.
8

9 My perception after my conclusion, after reading the
10 volumes of material that have been submitted this time around,
11 is that in some significant respects, the parties are at an
12 impasse, about what to do, if not next, right after next,
13 whether to proceed on the basis of re-injection mode. Whether
14 to proceed on the basis of piping, and clean up mode, what the
15 impacts of--and whether we ought to be discharging non-toxic
16 levels into the river or not. And as I read through all of
17 these submissions, I see no common ground, other than we ought
18 to study it some more.
19

20 And again Mr. Reichel is correct, not as to the
21 immediate step, but as to the next step thereafter. We have--
22 I have reviewed other input, and local governments have
23 injected themselves with legitimate concerns about their
24 residence, their sewers, their water wells, and other issues.
25

1 Frankly we don't have another year to wait to make a
2 decision about what the step after next will be. I have
3 concluded as I indicated that the parties are at an impasse as
4 to those issues. I do intend to modify the Court's July 17th,
5 2000 remediation enforcement order. And I intend to do that
6 within the next 60 days. I invite further submissions, and
7 proposals from the parties, as well as, as they wish from the
8 City for such an opinion, and order within the next--those
9 submissions I would like within the next 21 days. I will
10 conduct an informal status conference before opinion and order
11 modifying that REO issues, and will notify the parties of
12 that.
13

14 I would appreciate answers to the specific questions
15 I raised today, and those submissions, but I'm not limiting it
16 to that. I'd be happy to receive whatever suggestions, or
17 proposals you have. Ultimately given the status of this case--
18 -the Court's gonna have to make those decisions about to
19 resolve these impasses. The procedures that we're using to
20 resolve them at this point, in this Court's view are simply
21 not moving at a pace that's consistent with public safety. I
22 will look forward to receiving your submissions, and we will
23 have an informal status conference as I indicated. And at
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that point determine the next official review date. Thank you
very much. Adjourned.

THE CLERK: All rise.

(At 4:55 p.m., proceedings concluded)

1 STATE OF MICHIGAN)
2 COUNTY OF WASHTENAW)

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I certify that this transcript, consisting of 38 pages, is a complete, true, and correct transcript, to the best of my ability, of the proceedings and testimony taken in this case on September 8, 2004.

Tonjia Holmes (CER 7253)
Certified Electronic Reporter
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September 28, 2004