

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JENNIFER M. GRANHOLM, Attorney  
General for the State of Michigan, *ex rel*,  
MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiffs,

File No. 88-34734-CE

v

Honorable Donald E. Shelton

GELMAN SCIENCES, INC.,  
a Michigan corporation,

Defendant.

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**MOTION TO ENTER ORDER  
PROHIBITING GROUNDWATER USE**

Plaintiff, Michigan Department of Environmental Quality (MDEQ), by its undersigned counsel, hereby moves for entry of the proposed Order Prohibiting Groundwater Use attached hereto and states:

1. On December 17, 2004, the Court issued its Opinion and Order Regarding Remediation of the Contamination of the "Unit E" Aquifer. That Opinion and Order resolved a dispute between the parties regarding the September 1, 2004 Decision Document issued by the MDEQ regarding remediation of the "Unit E" groundwater contamination emanating from the Pall Life Sciences (PLS) (formerly known as Gelman Sciences, Inc.) facility in Scio Township, Washtenaw County.

2. Among other things, this Court determined that in order to satisfy the requirements of MCL 324.20118(6)(d) and MCL 324.20120b(5) for institutional controls preventing unacceptable exposure to 1,4-dioxane in the groundwater, it is necessary and appropriate to supplement the Washtenaw County Rules and Regulations for the Protection of Groundwater adopted February 4, 2004, with a legally enforceable order of this Court prohibiting groundwater use in specifically defined areas and addressing the relevant conditions identified in the MDEQ's September 1, 2004 Decision Document.

3. The December 17, 2004 Opinion and Order directed the parties to submit a proposed order to the Court which would include at least the following controls:

1. A map that identifies the area that would be covered by the judicial institutional control, including a buffer zone.
2. A prohibition against the installation of new water supply wells for drinking, irrigation, or commercial or industrial use, within the zones shown on the map.
3. A prohibition directed to the County Health Officer prohibiting permits for well construction in those zones.
4. A prohibition against consumption or use of groundwater from within the zones.
5. A requirement that PLS provide, at its expense, connection to the City of Ann Arbor municipal water supply for any existing private drinking water wells within the zones.

6. A requirement that the Order be published and maintained in the same manner as a zoning ordinance.

7. A provision that the Order shall remain in effect until such time as it is amended or rescinded by further Order of the Court, with a minimum 30 days for notice to all parties.

8. A provision to allow either party to move to amend the boundaries of the prohibition zone to reflect material changes in the boundaries or fate of the plume as determined by future hydrogeological investigations and/or monitoring.  
[Opinion and Order, p 12.]

4. Pursuant to that directive, the MDEQ and its counsel prepared and shared with PLS a proposed Order Prohibiting Groundwater Use, including an attached map identifying the area that would be covered by the Order, including a buffer zone.

5. The parties thereafter communicated over several weeks regarding both the terms of the proposed Order and the area to be covered in the map. Unfortunately, the parties have been unable to agree.

6. The principal areas of disagreement between MDEQ and PLS initially included:

(a) The scope of PLS's obligations under paragraph 6 of the proposed Order to identify any existing private wells in the prohibition zone, pay for the abandonment of all such wells, and to replace any private drinking water wells in that area through connection to the municipal water supply; and

(b) the boundaries of the map defining the prohibition zone, particularly whether it should encompass, as part of the buffer zone, the City of Ann Arbor's Northwest Water Supply (Montgomery) Well.

7. The MDEQ has concluded that both the disputed terms of the proposed Order and the map are necessary to satisfy the requirements of applicable law of reliably restricting unacceptable exposure to hazardous substances that were addressed by the September 1, 2004

Decision Document and this Court's December 17, 2004 Opinion and Order. Among other things:

(a) MDEQ does not agree with PLS's suggestions that the well abandonment and replacement requirements in paragraph 6 need only apply to wells completed in "Unit E." Given the uncertainties and complexity of the geology at this site, as well as the administrative and practical difficulty of objectively defining the vertical extent of "Unit E" across the wide area at issue, MDEQ has determined that, subject to certain limited exceptions, any wells in the prohibited zone need to be abandoned, and any drinking water wells in that area need to be replaced with a connection to municipal water supply.

(b) Unless and until Northwest Supply (Montgomery) Well is actually abandoned, use of that well remains possible. If the well is used, it will draw 1,4-dioxane contaminated groundwater toward and ultimately into it. Accordingly, to reliably restrict exposure, that well is appropriately included in the buffer zone.

8. Because of the impact of the Unit E contamination on groundwater within their jurisdictions, and of proposed use restrictions on their residents, the MDEQ has informally provided, for informational purposes, a draft of the proposed Order and map to representatives of Washtenaw County, the City of Ann Arbor, Ann Arbor Township, and Scio Township. Both the County and the City have provided comments on, and suggested changes to, the MDEQ's draft of the proposed Order and map.

9. The proposed Order attached hereto incorporates some relatively minor changes based upon comments received from the County and the City, as well as one major substantive change that PLS will undoubtedly oppose. (See paragraph 7 of the proposed Order.)

10. With one exception, MDEQ believes that the previous draft of the proposed Order shared by MDEQ with PLS and the local units of government, together with MDEQ-approved work plans that PLS is now or will in the future be required to implement under the proposed Order and this Court's December 17, 2004 Order, adequately address the substantive concerns and comments raised by the County and the City. That exception involves the abandonment and replacement of the Northwest Water Supply (Montgomery) Well.

11. For the reasons stated in the September 1, 2004 Decision Document and MDEQ's subsequent submittal to this Court, the MDEQ determined, and still believes, that in order to comply with the requirements of Part 201 and given the decision not to require active remediation of the entire Unit E groundwater contamination plume, the Northwest Water Supply Well needs to be formally and physically abandoned as part of the statutorily mandated "institutional control." Further, since PLS is the source of the contamination that necessitates that abandonment, and proposed the remedial approach that requires an institutional control, PLS should be required to provide, at its expense, replacement of the City of Ann Arbor's lost water supply capacity and infrastructure associated with that well, just as it is required to replace private drinking water wells.

12. The MDEQ's proposed Order attached hereto now includes a provision (paragraph 7) for abandonment and replacement of the Northwest Water Supply (Montgomery) Well. Such a requirement was omitted from previous drafts of the Order solely because of this Court's statements in its December 17, 2001 Opinion and Order that the well "has no bearing on the remediation plan for Unit E . . . [and that] there is no basis to include it as a condition to the cleanup plan." (Opinion and Order, pp 10-11.) The MDEQ respectfully submits that the conclusion by the Court was legally and factually erroneous and should be reconsidered in the

context of entering an Order Prohibiting Groundwater Use necessary to satisfy the requirements of Part 201, since, among other reasons:

(a) The Northwest Water Supply Well has not, in fact, been "closed." It is not currently being used, but absent further legal action, it could be. Indeed, until it is replaced, it may need to be operated on an emergency basis.

(b) The well, if operated, would likely draw 1,4-dioxane contaminated groundwater toward and ultimately into it.

(c) Abandonment of the well is necessary to assure that exposure to 1,4-dioxane is reliably restricted.

ACCORDINGLY, the MDEQ respectfully requests that this Court:

- A. Enter the proposed Order Prohibiting Groundwater Use attached hereto; and
- B. Grant Plaintiff such other relief as this Court find appropriate.

Respectfully submitted,

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Gelman/1989001467/Motion