July 12, 2004

Ms. Sybil Kolon
Environmental Quality Analyst
Gelman Sciences Project Coordinator
Remediation and Redevelopment Division
Jackson District Office
301 E. Louis Glick Hwy.
Jackson, MI 49201-1556

RE: Unit E Aquifer Interim Response

Dear Ms. Kolon:

We are in receipt of MDEQ's June 29, 2004 letter directing PLS to: (1) implement the necessary work to make TW-17 operational; (2) submit a work plan by July 23, 2004 to install extraction wells near Wagner Road in order to intercept the entire width of the Unit E plume at that location, and; (3) to include a sufficient number of borings using rotosonic drilling to characterize the stratigraphy in the Wagner Road area. This letter will briefly summarize PLS's response to your letter and will formally initiate the dispute resolution process under Section XVI of the Consent Judgment.

As an initial matter, the MDEQ's "requirement" that PLS make TW-17 operational is unnecessary. It appears to PLS to be another and another example of the Department's practice of ordering PLS to do something that it has already offered to do. PLS installed the pipelines necessary to connect TW-17 to the existing treatment infrastructure the week before your letter and is in the process of connecting the well. Pall also takes issue with the statement in your letter that MDEQ was the party that first "suggested" undertaking interim response measures near the PLS facility in the first place. That is simply not true. Soon after PLS discovered the presence of 1,4-dioxane in the Unit E aquifer on its property, PLS installed two extraction wells (TW-11 and 12) and immediately began purging highly contaminated groundwater from those wells. This was done on PLS's own initiative, although MDEQ concurred that it was a sound approach. More recently, it was PLS, not the MDEQ, that suggested to the Court during the August 2003 status hearing that we install additional purge wells in the Unit E in order to take advantage of the small volume of excess discharge capacity available under the NPDES permit. In sum, unless directed otherwise, PLS will continue to implement the interim response actions on its property that it proposed and that the MDEQ acknowledges it approved.

PLS is, however, initiating the dispute resolution procedures with regard to the MDEQ's

attempt to unilaterally change the performance objective of the work plan it previously approved and to require the use of technically unsound and unnecessary drilling techniques. Your June 29, 2004 correspondence, acknowledges that the MDEQ approved PLS' interim response work plan that called for mass reduction rather than capture of the entire width of the plume. The State cannot approve an interim response plan that calls for mass reduction and then turn around and require PLS to undertake a completely different approach, particularly where the new approach achieves no measurable environmental or public health benefit. As discussed briefly below, your June 29th correspondence reflects decisions that are inconsistent with the Consent Judgment, not supported by any material or substantial technical evidence, are arbitrary and capricious, and materially deviate from the law. The MDEQ's proposed interim response is also in direct conflict with the Court's July 2005 Remediation and Enforcement Order (REO).

PLS has already initiated and begun to implement the approved February 24, 2004 work plan. PLS, therefore, disputes MDEQ's contention that it has not "diligently pursued" response activities and further disputes the applicability of Section 20114(g) to the ordered interim response. Section 20114(1)(h), even if applicable, does not give the MDEQ the authority to require yet another layer of interim response at essentially the same location. We also dispute that the additional work would accomplish many of the criteria of the rules you cite in your letter. Specifically, and without limitation, there is no technical basis offered for the proposition that capturing the plume (as opposed to mass reduction) in the Wagner Road area will materially speed up the remediation of the aquifer or provide any added protection to the public health, safety, welfare or the environment. Since there is no pump test data available for the Unit E in the Wagner Road area, there is actually no basis to make the judgments required for evaluating the interim response ordered by MDEQ.

The MDEQ's proposed performance objective would also conflict with the goal of achieving significant mass reduction in a timely manner. PLS proposed its mass reduction interim response because it could be conducted on PLS property without the delays attendant with obtaining access needed to place wells near Wagner Road. It is quite clear that the MDEQ has not given any thought to the delays that will result from changing the performance objective to complete capture of the plume. An aquifer test would have to be conducted, since currently nobody has any idea how many gallons per minute will need to be purged in order to capture the plume at this location. Additional investigation would be required in order to determine where to place the extraction wells and how many would be needed. All of that work would have to be completed before PLS could even begin negotiations with the relevant property owners to obtain access.

Perhaps most importantly, the unilateral change in the performance objective is in direct conflict with PLS' obligations under the REO. Although the exact capture volume is unknown, it will undoubtedly exceed the available capacity under the NPDES permit unless more capacity

is diverted from the D2/C3 cleanup effort. As you know, PLS sought and obtained a permit amendment to increase the allowable discharge volume from 800 gpm to 1300 gpm in order to accommodate the additional water from Unit E wells, TW-11 and 12, as well as to provide enough capacity to meet the Court's five-year time frame with regard to the C-3 and D-2 aquifer cleanup. PLS has already allocated approximately 180 gpm of the 1300 gpm capacity allowed under the permit to TW-11 and 12. Because of decreasing water levels in the C-3 and D-2 aquifers (and resulting decrease in purge rates), there is still approximately 200 to 250 gpm of capacity which can be allocated to additional Unit E interim response measures. What the MDEQ has proposed, however, will greatly exceed the available capacity and would require PLS to choose between attempting to comply with the Court's REO or the MDEQ's proposed interim response.

Finally, PLS has informed the MDEQ on a number of occasions why rotosonic drilling is neither practical nor necessary in the context of the Unit E investigation. Rotosonic technology is not the standard for investigations nor appropriate for this one. PLS disputes that there is any authority under the Consent Judgment, Part 201 or the rules for MDEQ to direct PLS to use such a drilling technique. It is unfortunate that the MDEQ continues to be influenced by third parties who continue to champion this technology, even though the MDEQ has not required it to be used at other sites in the State.

Please have Mr. Reichel contact me to discuss the informal negotiating under the dispute resolution procedures.

Very truly yours,

ZAUSMER, KAUFMAN, AUGUST & CALDWELL, P.C.

Michael L. Caldwell

MLC/gt

cc Robert P. Reichel, Esq.
Andrew W. Hogarth
Mitchell Adelman
Leonard Lipinski
Alan D. Wasserman, Esq.