

EXHIBIT

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

CITY OF ANN ARBOR, a Michigan
municipal corporation,

Case Number: 04-513 CF
Hon. Honorable Donald E. Shelton

Plaintiff,

v.

GELMAN SCIENCES, INC. (d/b/a PALL
LIFE SCIENCES), a Michigan corporation,

Defendant.

BODMAN LLP
By: FREDRICK J. DINDOFFER (P31398)
KURT M. BRAUER (P54061)
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(313) 393-7595
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Co-Counsel for Defendant

**RESPONSE BY THE CITY OF ANN ARBOR IN OPPOSITION TO DEFENDANT'S
MOTION FOR PARTIAL SUMMARY DISPOSITION AND BRIEF IN SUPPORT**

Arbor must be sure that the wells are properly secured and that no one can inadvertently pump water from them, creating a potential health risk. *See* Exhibit 5 at ¶ 11.

Third, the future use and enjoyment possibilities of the park land were greatly diminished when this highly contaminated water was found. This park overlies a potentially productive aquifer that the City could otherwise have used to provide an additional source of groundwater to ensure the proper operation of its water plant and for distribution to its citizens. However, after these high 1,4 dioxane concentrations were discovered, Ann Arbor could not install a groundwater well in the park to supplement its municipal water system, until the groundwater is cleaned up to concentrations considered fit for human consumption. *See* Exhibit 5 at ¶ 13.

Fourth, because the City discovered that the Park was a “facility” [i.e., hazardous substances concentrations exceed those allowable for unrestricted residential use], certain statutory “Due Care” obligations suddenly applied, one of which is the mandate that Ann Arbor not exacerbate the existing groundwater contamination. MCL 324.20107a. Under the applicable statute and regulations, “exacerbation” means undertaking an activity that will cause a change in facility conditions that increases response activity costs. MCL 324.20101(1)(n)(iii). A principal concern, therefore, of the City of Ann Arbor was complying with its legal obligation to avoid any activities that would worsen or expand the plume of contamination that had been identified within the boundaries of Veterans Memorial Park, making cleanup more expensive. *See* Exhibit 5 at ¶ 11. Consequently, for the first time, in August, 2002, the City of Ann Arbor knew that it had been injured with respect to its property located at Veterans Memorial Park.

(3) Injury to the Northwest Supply Well first discovered.

Ann Arbor completed a Well Head Protection Study relating to the Northwest Supply Well on September 30, 2002, which concluded that the contamination found under Veterans

Memorial Park was in the same aquifer (Unit E) from which the Northwest Supply Well draws its water. At that point, for the first time, Ann Arbor discovered that if it resumed use of the Northwest Supply Well the movement of and spread of the Unit E Plume of contamination would accelerate. In other words, contaminated groundwater (exceeding applicable cleanup criteria and health-based standards) would be drawn into as yet uncontaminated areas, thereby exacerbating that existing contamination because: (i) it would be drawn farther into, and possibly beyond, the boundaries of Veterans Memorial Park; (ii) more highly contaminated portions of the Plume would be drawn into the park and spread through the aquifer; (iii) highly contaminated water exceeding applicable cleanup criteria and health-based standards eventually would be drawn into the Northwest Supply Well, itself, thereafter making it unusable as a continued source of drinking water for Ann Arbor (until the contamination was cleansed from the aquifer); and (iv) the costs of response to cleanse the aquifer would be increased. In addition to complying with its clear statutory duty not to exacerbate the contamination caused by PLS, Ann Arbor's action in not restarting the Northwest Supply Well after September 30, 2002 is consistent with its duty to mitigate its damages. Finally, at that point, there was sufficient data available to make clear that this contamination had spread to the City from the contaminants PLS had disposed at its Wagner Road property. Accordingly, the City then also knew that there was a causal connection of these injuries to PLS's negligence, nuisance and public nuisance

Accordingly, it was only on or after September 30, 2002 that Ann Arbor first knew of the injury to the Northwest Supply Well because resumed use of the well would cause an illegal exacerbation of the contamination in Veterans Memorial Park. As noted in *Adkins v. Thomas Solvent*, 184 Mich App 693 (1990), a cause of action is available to Ann Arbor arising from the Due Care obligations placed on its ability to use the Northwest Supply Well, even if an actionable concentration of 1,4-dioxane has not yet reached that well.

CONCLUSION

For the above stated reasons, the Court should find and conclude:

1. That arsenic in the Northwest Supply Well is not an intervening, superceding cause that bars Ann Arbor's claims against PLS; and
2. Ann Arbor's negligence, nuisance and public nuisance are not barred by the applicable statutes of limitations.

Based on those findings, the Court should enter its order denying PLS's motion.

Respectfully submitted,

BODMAN LLP

BY: Kurt M. Brauer
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(313) 393-7595

DATED: November 3, 2004.

EXHIBIT

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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.

ORDER PROHIBITING GROUNDWATER USE

At a session of said Court held in the City of Ann Arbor, County of Washtenaw, Michigan, on the _____ day of _____, 2005.

PRESENT: HONORABLE DONALD E. SHELTON
Circuit Court Judge

On December 17, 2004, this 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 Michigan Department of Environmental Quality (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.

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.

ACCORDINGLY, pursuant to the December 17, 2004 Opinion and Order, based upon further information provided by the Parties, and in the exercise of this Court's statutory and inherent authority to enforce its orders and judgments,

IT IS HERE BY ORDERED:

1. The prohibitions imposed by this Order apply to the zone identified in the map attached hereto as Figure 1 (Prohibition Zone).
2. The installation by any person of a new water supply well in the Prohibition Zone for drinking, irrigation, commercial, or industrial use is prohibited.
3. The Washtenaw County Health Officer shall not issue a well construction permit for any well in the Prohibition Zone.
4. The consumption or use by any person of groundwater from the Prohibition Zone is prohibited.
5. The prohibitions listed in paragraphs 2, 3, and 4 do not apply to the installation and use of :
 - a. groundwater extraction and monitoring wells as part of response activities approved by MDEQ or otherwise authorized under Parts 201 or 213 of NREPA, or other legal authority;

b. dewatering wells for lawful construction or maintenance activities, provided that appropriate measures are taken to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a;

c. emergency measures necessary to protect public health, safety, welfare or the environment.

6. PLS shall provide, at its expense, connection to the City of Ann Arbor municipal water supply for any existing private drinking water wells within the Prohibition Zone. Within thirty (30) days after entry of this Order, PLS shall submit to MDEQ for review and approval a work plan for identifying, or verifying the absence of, any private drinking water wells within the Prohibition Zone and for the abandonment and replacement of such wells. PLS shall implement the work plan and schedule approved by MDEQ.

7. This Order shall be published and maintained in the same manner as a zoning ordinance.

8. This Order shall remain in effect in this form until such time as it is amended or rescinded by further order of this Court, with a minimum of thirty (30) days prior notice to all Parties.

9. Either Party may move to amend the boundaries of the Prohibition Zone to reflect material changes in the boundaries or fate of the groundwater contamination plume as described by future hydrogeological investigation or monitoring.

HONORABLE DONALD E. SHELTON
Circuit Court Judge

Order Prepared By:

Robert P. Reichel (P31878)
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Gelman/1989001467/Order1

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.

ORDER PROHIBITING GROUNDWATER USE

At a session of said Court held in the City of Ann Arbor, County of
Washtenaw, Michigan, on the _____ day of _____,
2005.

PRESENT: HONORABLE DONALD E. SHELTON
Circuit Court Judge

On December 17, 2004, this 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 Michigan Department of Environmental Quality (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.

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 certain groundwater uses in specifically defined areas and addressing the relevant conditions identified in the MDEQ's September 1, 2004 Decision Document.

ACCORDINGLY, pursuant to the December 17, 2004 Opinion and Order, based upon further information provided by the Parties, and in the exercise of this Court's statutory and inherent authority to enforce its orders and judgments,

IT IS HEREBY ORDERED:

1. The prohibitions imposed by this Order apply to the zone identified in the map attached hereto as Figure 1 (Prohibition Zone).
2. The installation by any person of a new water supply well in the Prohibition Zone for drinking, irrigation, commercial, or industrial use is prohibited.
3. The Washtenaw County Health Officer shall not issue a well construction permit for any well in the Prohibition Zone.
4. The consumption or use by any person of groundwater from the Prohibition Zone is prohibited.
5. The prohibitions listed in paragraphs 2, 3, and 4 do not apply to the installation and use of:
 - a. groundwater extraction and monitoring wells as part of response activities approved by MDEQ or otherwise authorized under Parts 201 or 213 of NREPA, or other legal authority;

b. dewatering wells for lawful construction or maintenance activities, provided that appropriate measures are taken to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a;

c. emergency measures necessary to protect public health, safety, welfare or the environment;

d. wells supplying heat pump systems that either operate in a closed loop system, or if not, are demonstrated to operate in a manner sufficient to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a.

6. PLS shall provide, at its expense, connection to the City of Ann Arbor municipal water supply for any existing private drinking water wells within the Prohibition Zone. Within thirty (30) days after entry of this Order, PLS shall submit to MDEQ for review and approval a work plan for identifying, or verifying the absence of, any private ~~drinking water~~ wells within the Prohibition Zone and for the abandonment and replacement of any such private ~~drinking water~~ wells. PLS shall implement the work plan and schedule approved by MDEQ.

7. This Order shall be published and maintained in the same manner as a zoning ordinance.

8. This Order shall remain in effect in this form until such time as it is amended or rescinded by further order of this Court, with a minimum of thirty (30) days prior notice to all Parties.

9. Either Party may move to amend the boundaries of the Prohibition Zone to reflect material changes in the boundaries or fate of the groundwater contamination plume as described

by future hydrogeological investigation or M DEQ approved monitoring of the fate of the groundwater contamination

10. Either Party or a local unit of government having jurisdiction within the Prohibition Zone may seek enforcement of this Order by the Court..

HONORABLE DONALD E. SHELTON
Circuit Court Judge

Order Prepared By:

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Gelman/1989001467/Order1

EXHIBIT

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Mike Caldwell

From: Robert Reichel [reichelb@michigan.gov]
Sent: Monday, February 28, 2005 4:01 PM
To: FDindoffer@BODMANLONGLEY.COM
Cc: Mitchell Adelman; Sybil Kolon; alanw@williamsacosta.com; Mike Caldwell
Subject: Draft Institutional Control- AGv Gelman Sciences



AGRevised2 Gelman Boundary
OrderProhibitingGW.. Map.JPG (1 MB)...

Fred,

In response to your recent inquiries on behalf of the City of Ann Arbor, I am enclosing for your information a copy of a draft proposed Order Prohibiting Groundwater Use that DEQ staff and I have prepared. It is intended to respond to the provisions of the December 17, 2004 Opinion and Order issued by Judge Shelton in our case regarding remediation of the "Unit E" groundwater contamination. A copy of a proposed map depicting the area to be covered by the draft order prepared by DEQ staff is also attached.

Please note that neither the Order nor map has yet been submitted to the Court for approval in this or any other form. It is also important to note that these documents reflect DEQ's proposals; they have not been agreed to by Pall Life Sciences.

We are providing this to you informally for your information and in response to your request. As I mentioned before, we will notify you in advance both when, and in what form, a proposed DEQ Order on this subject will be submitted to the Court for approval.

Robert P. Reichel
Assistant Attorney General
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517-373-7540 (Phone)
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EXHIBIT

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FREDRICK J. DINDOFFER
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March 4, 2005

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Robert P. Reichel Esq.
Assistant Attorney General
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Lansing, Michigan 48933

Re: *Granholm v. Gelman*
Washtenaw County Circuit Court
File Number 88-34734-CE
Draft Order Prohibiting Groundwater Use

Dear Mr. Reichel:

Thank you for providing a copy of the above-referenced draft order for review and comment by the City of Ann Arbor prior to its submission to the court. As outlined below, Ann Arbor suggests that portions of this order be modified. I have enclosed a set of suggested revisions for your consideration. The basic rationale for these revisions is a desire to protect Ann Arbor's water supply, and if that cannot be accomplished, to require Pall to pay the Response Activity Costs associated with providing alternative water supplies.

MDEQ has a statutory duty to protect the groundwater resources involved in this matter. As drafted, however, the order would allow an aquifer that supplies water to Ann Arbor to become unusable. That will have set an unacceptable precedent for issues that may arise in other areas of the State. This is particularly discouraging because on numerous occasions the City and others have requested that MDEQ order Pall to undertake appropriate actions to define the nature and extent of the contamination and to take actions to properly remediate the problem. MDEQ has not issued such orders. However, MDEQ repeatedly assured Ann Arbor that Pall would be required to take appropriate actions to protect our groundwater aquifer that is used for drinking water.

In fact, no better example exists of a situation where full and complete remediation is appropriate. The Unit E Aquifer is a productive groundwater source that is used by the City of Ann Arbor for municipal water. As well, that aquifer is used for private wells by numerous private citizens and businesses. Unfortunately, unless Pall is compelled to arrest its plume and cleanup the 1,4-dioxane, Ann Arbor's northwest supply well soon will have concentrations of 1,4-dioxane that exceed applicable drinking water criteria. Accordingly, either that water will have to be

treated to remove the 1,4-dioxane or alternative water supplies must be sought to satisfy the City's needs. In addition, absent 1,4-dioxane, Ann Arbor's future water needs could be satisfied through more wells placed in the Unit E Aquifer. Unfortunately, again, if Pall is not required to cleanup the contamination from that aquifer, Ann Arbor must search for alternative water sources, at greater distance from the City's treatment system, and therefore at greater expense.

Unfortunately, the current draft of the order does not protect the legitimate interests of Ann Arbor and its citizens to protect their drinking water supply. Steps can be taken to improve the order as outlined below:

1. The Court's Opinion, which was issued without taking any evidence, contains numerous factual errors that MDEQ should seek to have corrected. For example, the direction of plume travel should be recognized to be unknown, especially as it nears the river. The opinion should recognize that other wells are in the Unit E Aquifer. The order should recognize that the City's northwest supply well has not been abandoned (in fact it remains an important part of the City's municipal water system, requiring only cleanup of the upgradient groundwater so that it may be brought back to full productive use).
2. The Court's opinion does not limit the types of requirements or provisions that can be placed in this proposed order. In fact, the Court's opinion specifically states that "[t]he parties are directed to submit a proposed order to this Court which will include **at least** the following controls: . . ." In other words, the items listed below that sentence in the Court's opinion were not contemplated by the Court to be the maximum to be required of Pall. In fact, the Court specifically stated that those were the **minimum** requirements. As a consequence, the order should incorporate the following additional concepts, which are incorporated in the enclosed draft:
 - a. To the extent the City wishes to utilize groundwater from its northwest supply well, Pall must pay for any treatment of the water taken from that well, which may be necessary to reduce 1,4-dioxane to acceptable concentrations.
 - b. Pall should be required to pay for alternative water supplies to replace the City's northwest supply well (providing alternative water supplies is a response activity cost within the definition provided in Part 201 of NREPA). Moreover, to the extent future groundwater wells must be placed farther away from the city and at greater cost, Pall should be required to bear the costs of those alternative water supplies. For example, Pall should be required to pay for costs to locate new groundwater sources, to acquire water rights, to study and assure wellhead protection, to install new wells, to acquire and

Robert P. Reichel Esq.
March 4, 2005
Page 3

install infrastructure to transport water to the treatment plant (e.g., pipelines, pumps, etc.), to acquire and operate and maintain new treatment equipment that may be needed at the water treatment plant.

- c. As to non-City owned wells, Pall should be required to pay for more than simply the costs of "connection" to the Ann Arbor water system. Pall should pay for all related costs, which would include: identification of all wells located within the prohibition zone; actual, proper closure and abandonment of current wells; costs to extend water pipelines to new locations; costs of hook-ups and pipes from water mains to homes and other buildings; costs incurred by such well owners or users for future water purchases from the city municipal system; costs of additional taxes required because the property must be annexed to the City in order to provide new water services; and to pay the taxes lost to the Township when property within the Township is annexed to the City as a consequence of this extension of new municipal water services.
- d. Pall should undertake and pay for monitoring wells to define the leading edge of the plume and further monitoring wells to track the movement of the plume in the future, to assure that other areas within the City may be appropriately protected.
- e. The "prohibition zone" should be broadened and defined by objective criteria. Until the true extent of and movement of the plume is known, a broader area should be protected, which might be reduced in scope as areas are determined to safe in the future.

The City would appreciate the opportunity to discuss these and other comments and concerns it has with the current draft order before it is submitted to the court. Thank you very much for your consideration.

Sincerely,

Fredrick J. Dindoffer

FJD/ttv

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,

File No. 88-34734-CE
Honorable Donald E. Shelton

Plaintiffs,

GELMAN SCIENCES, INC., a Michigan
corporation,

Defendant.

ORDER ~~[PROHIBITING]~~RESTRICTING GROUNDWATER USE

At a session of said Court held in the
City of Ann Arbor, County of Washtenaw,
State of Michigan
on the ____ day of _____, 2005.

PRESENT: HONORABLE DONALD E. SHELTON, Circuit Court Judge

On December 17, 2004, this 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 Michigan Department of Environmental Quality ("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.

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 certain groundwater uses in specifically defined areas and addressing the relevant conditions identified in the MDEQ's September 1, 2004 Decision Document.

ACCORDINGLY, pursuant to the December 17, 2004 Opinion and Order, based upon further information provided by the Parties, which information is attached as Exhibit 1 hereto and made part of the record, and in the exercise of this Court's statutory~~[-and inherent]~~ authority to enforce its orders and judgments;

IT IS HEREBY ORDERED:

1. The ~~[prohibitions imposed by this Order apply to the zone identified in the map attached hereto as Figure 1 (Prohibition Zone).]~~ restrictions imposed by this Order apply to the zone identified in the map attached hereto as Figure 1 ("Prohibition Zone").

2. No later than thirty (30) days after the entry of this order, PLS shall commence a comprehensive investigation to delineate the full nature and extent of 1,4 dioxane contamination within the Unit E Aquifer, as well as any other hazardous substances that have been released from its Wagner Road facility that have not been fully characterized. "Full nature and extent" includes the determination of the boundaries of any plume of 1,4 dioxane (or any other hazardous substance) in the Unit E Aquifer that has been released from PLS's Wagner Road facility, without regard to minimum concentrations, and it also includes studying the geology and hydrogeology more completely to gain an understanding of the pathways the plume follows from the time it leaves Pall's Wager Road facility.

3. In order to ensure that the boundaries of the Unit E contamination have been identified, and to ensure that the migration of hazardous substances within the Unit E Aquifer is properly monitored, PLS shall undertake each of the following no later than sixty (60) days after the entry of this Order:

- a. Install and collect monthly samples from monitoring wells at such locations as are necessary to determine the boundary between water that contains 1,4 dioxane (and any other hazardous substances that have been released from PLS's Wagner Road facility) and water that does not contain 1,4 dioxane;
- b. For any monitoring well required under section 3.a. of this Order where in the future 1,4 dioxane is detected in any concentration, install a supplemental monitoring well in an adjacent area where 1,4 dioxane is not likely to be detected in the Unit E Aquifer;
- c. Install and collect samples no less than monthly from monitoring wells located no less than every 1,000 feet along the perimeter of the Prohibition Zone. With the exception of the boundary adjacent to the Huron River, where the monitoring wells may be placed landward of the Huron River, each such monitoring well shall be located no more than five hundred (500) feet outside the boundary of the Prohibition Zone, unless a waiver for a greater distance is granted by both the MDEQ and the local unit of government having jurisdiction over the area of Prohibition Zone where the monitoring well is to be installed; and
- d. In the event the Prohibition Zone is enlarged, install and collect samples no less than monthly from monitoring wells located no more than five hundred

(500) feet outside the new boundary of the Prohibition Zone, unless a waiver for a greater distance is granted by both the MDEQ and the local unit of government having jurisdiction over the area of the Prohibition Zone where the monitoring well is to be installed.

4. The Prohibition Zone attached as Figure 1 has been drawn to include all potential areas to which the Unit E contamination is likely to migrate based upon currently available data, and includes all properties potentially affected by the plume. Any changes to the boundaries of the Prohibition Zone shall be drawn to include: 1) all areas where the Unit E contamination has migrated, or is likely to migrate, in any detectable concentrations; and 2) all properties potentially affected by the plume. The lack of data shall not be a sufficient reason to draw the boundaries of the Prohibition Zone narrower than is scientifically supportable. The Prohibition Zone shall be enlarged to include any additional areas that, based upon further investigation by the parties or by any other person, may also be affected by the plume. The Prohibition Zone shall be redrawn to exclude properties only in the event that the parties or any other person proves by clear and convincing evidence on the record that the properties to be excluded are not within the area that may be affected by hazardous substances released at PLS' Wagner Road facility.

5. [2.] The installation by any person of a new water supply well in the Prohibition Zone for drinking, irrigation, commercial, or industrial use is prohibited.

6. [3.] The Washtenaw County Health Officer shall not issue a well construction permit for any well in the Prohibition Zone.

7. [4. The~~Except as provided elsewhere in this Order, the~~ consumption or use by any person of groundwater from the Prohibition Zone is prohibited.

8. No later than ninety (90) days after the entry of this Order, PLS shall identify all private, municipal, commercial, cooling, irrigation or other well within the Prohibition Zone, and provide the resulting inventory to the Court, the MDEQ, Washtenaw County, the City of Ann Arbor and any other affected political jurisdiction or constitutional entity.

9. Except as otherwise provided in paragraph 12 below, PLS shall pay for the proper abandonment of each well identified within the Prohibition Zone within one year of identifying such well. Not later than thirty (30) days after proper abandonment of each well under this section, PLS shall certify to the Court, MDEQ, Washtenaw County and the local unit of government with jurisdiction over the property where the abandoned well is located that the well has been properly abandoned.

10. As to any well in the Prohibition Zone whose water may no longer be consumed or used as a result of this Order:

- a. PLS shall pay to install or replace all necessary piping, including water mains and water lines to individual properties, to connect the property served to the Ann Arbor municipal water system ("System");
- b. PLS shall pay all costs incurred for obtaining and utilizing potable water at the property, including any hookup fees due to the City of Ann Arbor and all future water purchases made by the individual property owner;
- c. PLS shall pay all increased taxes or assessments incurred by the property owner as a result of annexation or other action required to permit the property to be connected to the System;

- d. PLS shall replace all taxes to any taxing jurisdiction that must forego collection of taxes with respect to the property due to annexation; and
- e. PLS shall pay all costs incurred by the City of Ann Arbor as a result of connecting such properties to the System.

11. Because the City of Ann Arbor's Northwest Supply Well is located within the Prohibition Zone, and because PLS will not clean up the 1,4 dioxane to levels that can safely be used to supply water to the System: (i) Ann Arbor may, for some unspecified period of time, be unable to use that well as a Type I municipal supply well; (ii) groundwater in other areas within the Zone may not be available, for some unspecified period of time, to be used for current or future municipal needs; and (iii) an alternative water supply must be provided to Ann Arbor under Part 201 of Michigan's Natural Resources and Environmental Protection Act at PLS's expense. Accordingly, PLS shall pay all costs incurred by Ann Arbor to secure, transport and treat a replacement water source, including but not limited to the following:

- a. To locate alternative new source areas from which the City of Ann Arbor may obtain potable water;
- b. To secure all necessary rights to utilize water from the selected new source area and all easements necessary to install water transmission pipelines and associated infrastructure;
- c. To install new production wells, structures, buildings and associated infrastructure as may be necessary or desirable to utilize the new source area;

- d. To install necessary transmission infrastructure, including but not limited to pipelines and pumps, to transport the water to the Ann Arbor Water Treatment Plant;
- e. To install all necessary infrastructure and systems to integrate the new raw water into the Ann Arbor Water Treatment Plant's treatment train and to treat the water to remove any contaminants it may contain; and
- f. To conduct wellhead protection studies, programs and delineations, and to protect the new source from contamination.

12. [5- The prohibitions listed in paragraphs [2, 3,] 5, 6 and [4] 7 do not apply to the installation [~~and~~] or use of:

- a. [~~groundwater~~] Groundwater extraction and monitoring wells as part of response activities approved by MDEQ or otherwise authorized under Parts 201 or 213 of NREPA, or other legal authority;
- b. [~~dewatering~~] Dewatering wells for lawful construction or maintenance activities, provided that appropriate measures are taken, at PLS's sole cost and expense, to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a;
- c. [~~emergency~~] Emergency measures necessary, as determined by the local unit of government having jurisdiction over the location where the well is installed, to protect public health, safety, welfare or the environment. The City of Ann Arbor's Northwest Supply Well (and any associated observation or monitoring wells) shall not be abandoned, but may be used in an emergency,

as such emergency shall be determined by the City of Ann Arbor or other appropriate unit of government;

- d. ~~[wells]~~Wells supplying heat pump systems that either operate in a closed loop system, or if not, are demonstrated, at PLS's sole cost and expense, to operate in a manner sufficient to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a.

13. PLS shall escrow \$10,000,000, or such greater amount as may be determined to be necessary by this Court, to pay, at such time as the 1,4 dioxane contamination is fully remediated and the use of water is safe for such appropriate uses, for the re-installation of each commercial, cooling, irrigation or other non-domestic well within the Zone that has been abandoned pursuant to this order. The escrowed funds shall be in addition to all other monies or damages paid to the City of Ann Arbor or any other person who has been injured by PLS's plume of 1,4 dioxane.

~~[6. — PLS shall provide, at its expense, connection to the City of Ann Arbor municipal water supply for any existing private drinking water wells within the Prohibition Zone. Within thirty (30) days after entry of this Order, PLS shall submit to MDEQ for review and approval a work plan for identifying, or verifying the absence of, any private wells within the Prohibition Zone and for the abandonment of any such private wells. PLS shall implement the work plan and schedule approved by MDEQ.]~~

14. ~~[7. This Order shall be published and maintained in the same manner as a zoning ordinance.~~

15. ~~[8-~~This Order shall remain in effect in this form until such time as it is amended or rescinded by further order of this Court, with a minimum of thirty (30) days prior notice to all Parties.

16. ~~[9-~~Either Party may move to amend the boundaries of the Prohibition Zone to reflect material changes in the boundaries or fate of the groundwater contamination plume as described by future hydrogeological investigation or MDEQ approved monitoring of the fate of the groundwater contamination.

17. ~~[10-~~Either Party or a local unit of government having jurisdiction within the Prohibition Zone may seek enforcement of this Order by the Court.~~[-]~~

HONORABLE DONALD E. SHELTON
Circuit Court Judge

EXHIBIT

11

Sybil Kolon - Meeting with Ann Arbor and Washtenaw County RE: Gelman Institutional Control Order

From: Mitchell Adelman
To: SenLBrater@senate.michigan.gov
Date: 3/7/2005 5:30 PM
Subject: Meeting with Ann Arbor and Washtenaw County RE: Gelman Institutional Control Order
CC: Carol Linteau; Hogarth, Andrew; Kolon, Sybil; Schrantz, Philip; Sygo, Jim

Hi Senator Brater.

Andy Hogarth asked that I update you about the status of meeting with the City of Ann Arbor, Washtenaw County, Ann Arbor Township, and the DEQ to discuss the State's draft Court Order for Institutional Controls, which the December 17, 2004 Washtenaw County Circuit Court ordered the parties to submit to the court.

Andy, Sybil Kolon and I met with Representatives of the City (Matt Naud, Sue McCormick, and Fred Dindoffer) and Washtenaw County (Dick Fleece and Mike Gebhard) this morning. Mike Moran from Ann Arbor Township did not attend.

We were better able to understand the concerns the City and County have with our draft order and will make some changes to address, primarily the county's, concerns.

If you wish to discuss further, please contact Andy, or you can always contact Sybil or me. Thanks.

Mitch Adelman
Jackson District Supervisor
Remediation and Redevelopment Division
Department of Environmental Quality
517-780-7852