STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
JACKSON DISTRICT OFFICE

JENNIFER M. GRANHOLM
GOVERNOR

STEVEN E. CHESTER
DIRECTOR

June 15, 2007

VIA ELECTRONIC AND US MAIL

Mr. Farsad Fotouhi
Corporate Vice President
Environmental Engineering
Pall Life Sciences, Inc.
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Ann Arbor, MI 48103-9019

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Mr. Michael L. Caldwell
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Dear Sirs:

SUBJECT: Gelman Sciences, Inc. Remedial Action
Evergreen System, Operation of AE-3
DEQ Proposed Resolution of Dispute Pursuant to
Section XVI of Consent Judgment in Response to
Letter from Michael L. Caldwell, Dated June 1, 2007

By a letter dated June 1, 2007, Mr. Michael L. Caldwell, on behalf of Pall Life Sciences (PLS), invoked the dispute resolution process found in Section XVI of the Consent Judgment, regarding the Department of Environmental Quality's (DEQ) May 29, 2007 letter denying PLS's claim of "Force Majeure" for not operating the Allison extraction well, AE-3, at the approved minimum extraction rate.

The parties discussed the subject of this dispute in a telephone conference on June 11, 2007. The DEQ also reviewed Mr. Farsad Fotouhi's letter on this subject, dated May 17, 2007. In his letter, Mr. Fotouhi referenced PLS's Evergreen System Review (ESR), dated May 10, 2007, which he indicates contains an option for management of the leading edge of the Evergreen plume. That is a separate issue from whether PLS's failure to continuously operate AE-3 constitutes a "Force Majeure" under the Consent Judgment. The DEQ's review of the ESR is underway and for this reason, we decline to address all of the issues it raises at this time. Further, we do not believe the ESR impacts our analysis of the events leading up to PLS's claim of a "Force Majeure". This letter serves as the DEQ's response and resolution of the dispute with regard to PLS's "Force Majeure" claim.

BACKGROUND

PLS invoked dispute resolution in response to the DEQ's May 29, 2007 letter, in which PLS was notified that the DEQ considered it to be in violation of the Consent Judgment and the Five Year Plan by operating AE-3 at less than the approved minimum extraction rate. The Five Year Plan specifies that the minimum extraction rates will not be lowered without the approval of the DEQ or the Court. Before the present dispute arose, PLS did not request, nor did the DEQ approve, a lower extraction rate at AE-3. There was certainly no request by PLS nor approval by the DEQ of a prolonged shutdown of AE-3. The current minimum extraction rate of 25 gallons per minute (gpm), was approved in a letter from the DEQ, dated May 19, 2004, based on a Capture Zone Analysis (CZA) submitted by PLS, dated August 21, 2002. This approval was for AE-1, in combination with extraction from LB-1 and LB-2. Extraction well AE-1 has been replaced by AE-3 and LB-2 has been replaced by LB-3. Therefore, the minimum

extraction rates approved on May 19, 2004 apply to the current Evergreen System extraction wells, LB-1, LB-3, and AE-3.

As stated above, we reviewed Mr. Fotouhi's May 17, 2007 letter, which PLS asserts provide written documentation to support its claim of "Force Majeure". We have also reviewed the operation and maintenance history of AE-3, which we believe is important in determining whether its recent operation should be considered a "Force Majeure". AE-3 operated at or above the minimum extraction rate from June 8, 2004, until January 1, 2006 (except for shutdowns for circumstances not attributed to the ability of AE-3 to extract at the approved minimum rate).

On January 2, 2006, we were notified by PLS that AE-3 had been shut down due to non-steady flow rates and that rehabilitation had been scheduled. After rehabilitation, AE-3 operated at the minimum extraction rate from January 4, 2006 until April 6, 2006, at which time the flow had decreased, but remained above 25 gpm. PLS then rehabilitated AE-3 for a second time. AE-3 continued to be operated above the minimum extraction rate from April 11, 2006 until January 17, 2007. As before, the rehabilitation was initiated prior to the extraction rate falling below the minimum. Extraction was resumed on January 22, 2007 and continued above the minimum rate until March 3, 2007. Pump maintenance was performed and extraction resumed on March 6, 2007, above the minimum extraction rate, until March 14, 2007, when the extraction rate for AE-3 decreased to below the minimum rate and the well was eventually shut down. During a telephone call on April 3, 2007, Mr. Fotouhi informed me that on March 19, 2007, when AE-3 was turned back on as planned, it was pulling in air and could not maintain flow. Mr. Fotouhi also indicated that AE-3 remained turned off and that PLS was considering other options.

Mr. Fotouhi's May 17, 2007 letter indicates that rehabilitation was delayed from March 15 to April 23 to allow the water levels to recover. What PLS does not explain is how these circumstances differed from the previous shut downs, in which rehabilitation was begun within a few days of shutting the well down. Mr. Fotouhi also states in his letter that the rehabilitation "was unable to restore adequate well capacity." However, according to information provided by PLS, including May 2007 operational data for AE-3, after rehabilitation was completed on April 26, 2007, extraction resumed at 14 to 23 gpm until May 3, 2007, after which the minimum extraction rate of 25 gpm was achieved until May 29. On May 30 and 31 the extraction rate was 17 and 15 gpm, respectively. We do not have any information about operations in June.

RESOLUTION

"Force Majeure" is defined in Section XIV of the Consent Judgment as "an occurrence or nonoccurrence arising from causes beyond the control of Defendant or any entity controlled by the Defendant..." We believe the above information demonstrates that meeting the minimum extraction rate for AE-3 is not beyond the control of PLS and PLS's failure to do so does not qualify as a "Force Majeure" event. PLS is well aware of the lower water levels that persist in this aquifer. And, as demonstrated by the operation and maintenance history of AE-3, PLS could have avoided this failure with the use of reasonable diligence.

We acknowledge that the frequency of rehabilitation has increased; however, we believe rehabilitation can and should be continued, as needed, until alternate measures can be

implemented. The DEQ has already suggested one alternative in its May 29, 2007 letter: that PLS install multiple extraction wells that can operate at lower extraction rates. The DEQ believes this should help to reduce the need to shut down wells for rehabilitation as the amount of air being pulled in would be minimized, thus avoiding the fouling that results in the need to do frequent maintenance and rehabilitation. At the same time, it would assist PLS in meeting its remedial obligations under the Consent Judgment and the Five Year Plan. According to PLS, it has considered this alternative, but has not performed any detailed analysis. Further, PLS has not submitted any additional information regarding its apparent contention that it is not feasible to capture the portion of the Evergreen plume that has migrated beyond LB-1 and LB-3. However, as noted above, this last point is a separate issue from whether PLS operated AE-3 as required by the Consent Judgment and the Five Year Plan, which is the subject of the "Force Majeure" claim and this dispute resolution.

In addition, as indicated in our May 29, 2007 response to the claim of "Force Majeure", we believe PLS waived its right to claim a "Force Majeure" event. AE-3 had either been turned off or operated at an extraction rate of less than 25 gpm from March 15, 2007 to May 3, 2007. PLS did not notify the DEQ of a "Force Majeure" event until April 30, 2007, thirty (30) working days after PLS had knowledge that the minimum extraction rate was not being met. Section XIV of the Consent Judgment specifies that PLS notify the DEQ of circumstances it believes constitute "Force Majeure" within 48 hours after it first believes those circumstances to apply and provide a written explanation of the cause of any delay, expected duration of the delay, and measures to be taken to overcome the delay within 14 working days of when it first believes the circumstances to apply.

We acknowledge that PLS is apparently not asserting a "Force Majeure" claim with regard to the operation and shutdown of AE-3 from the period covering March 14 to April 26, 2007. PLS has periodically shut down AE-3 for a few days for maintenance without asserting a "Force Majeure" event and without the DEQ asserting that a violation of the Consent Judgment had occurred. We have, and still do, recognize that routine maintenance is required and does not qualify as a "Force Majeure" event, nor do we believe it would be appropriate to assert a violation of the Consent Judgment for such maintenance. To the extent that PLS asserts that the same analysis should apply to the shut down of AE-3 in March and April 2007, because PLS was evaluating the appropriate response, we disagree. This recent shut down was prolonged, lasting much longer than is necessary for routine well maintenance or rehabilitation, and had it qualified for a "Force Majeure" event, such a claim should have been made within a few days of the March shut down. Also given the recent history of AE-3, we believe that PLS's attempt to assert a "Force Majeure" based on the low extraction rate it experienced upon restarting the well on April 26, 2007, is arbitrary and unsupportable for the reasons stated above.

The DEQ's resolution of the dispute is that PLS pay stipulated penalties that accrued during the period when AE-3 was not operating or was operating below the minimum approved extraction rate, from March 15, 2007 to May 3, 2007 and on May 31, 2007, a period of 37 working days. Pursuant to Section XVII.A of the Consent Judgment, the first 15 working days of violation are assessed at $1,000 per day; the subsequent 15 working days are assessed at $1,500 per day; six working days are assessed at $2,000 per day, and one working day, on May 31, 2007, is assessed at $1,000 per day, for a total of $50,500 in stipulated penalties. Penalties will

continue to accrue pursuant to Section XVII of the Consent Judgment for all working days that AE-3 is not meeting the minimum extraction rate of 25 gpm.

Pursuant to Section XVII.E of the Consent Judgment, P/GSI shall remit a check in the amount of $50,500, made payable to the "State of Michigan", within 14 working days of receipt of this notice, and addressed to the Assistant Attorney General in Charge, Environment, Natural Resources and Agriculture Division, G. Mennen Williams Building, 6th Floor, 525 W. Ottawa Street, Lansing, Michigan 48933 (P.O. Box 30755, Lansing, Michigan 48909).

Sincerely,

Sybil Kolon
Environmental Quality Analyst
Gelman Sciences Project Coordinator
Remediation and Redevelopment Division
517-780-7937

SK/KJ

cc: Ms. Celeste Gill, Department of Attorney General
Mr. Mitchell Adelman, DEQ/Gelman File
Mr. James Coger, DEQ