

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL for the
STATE OF MICHIGAN, et al,
MICHIGAN NATURAL RESOURCES
COMMISSION, MICHIGAN WATER
RESOURCES COMMISSION, and
MICHIGAN DEPARTMENT OF
NATURAL RESOURCES,

Plaintiffs,

vs

GELMAN SCIENCES INC. a Michigan
Corporation,

Defendant.

Case No. 88-34734 CE

Honorable Donald E. Shelton

ORDER REGARDING POTENTIAL REMEDIAL MODIFICATIONS

At a Session of the Court held in the
Washtenaw County Courthouse in
the City of Ann Arbor, on April 6, 2009

PRESENT: HONORABLE DONALD E. SHELTON, Circuit Judge

The parties have been involved with remediating the groundwater contamination associated with past operations at Defendant Gelman Sciences, Inc.'s Wagner Road, Ann Arbor, Michigan facility since the late 1980's. Gelman, which was purchased by Pall Corporation in 1997 and now does business as Pall Life Sciences ("PLS"), is responsible for implementing the requirements of the October 26, 1992 Consent Judgment, as amended, (the "Consent Judgment") and this Court's subsequent remediation orders, including the July 17, 2000 Remediation Enforcement Opinion and Order (the "REO") and the December 14,

2004 Order and Opinion Regarding Remediation Of The Contamination Of The "Unit E" Aquifer (the "Unit E Order").

The Consent Judgment, REO, and Unit E Order each reflected the parties' and the Court's understanding of the hydrogeology and extent of contamination at the time they were entered by the Court. The parties now recognize that the different remedial approaches embodied in those documents have resulted in inconsistent remedial objectives and approaches. These inconsistencies along with divergent interpretations of the legal requirements imposed on PLS have contributed to disagreements between the parties as to extent of PLS' obligations, resulting in some cases to a diverting of resources (technical and legal) away from the cleanup.

The parties have decided to explore possible modification of the cleanup program that incorporates a coherent remedial approach to the groundwater contamination and reflects changes in state environmental law over time, the parties' current knowledge of site conditions, and the previous rulings of the Court. Over the last number of months, the parties have been discussing potential modifications to the cleanup program. The goal of any modifications will be to continue to protect the public while increasing the effectiveness and efficiency of the cleanup. While the discussions have progressed, the parties are still working through various issues and no final decisions have been made regarding any modifications.

Briefly stated, the modifications under consideration are as follows:

1. Overall Structure. The parties have discussed modifications that should

simplify the legal structure of the cleanup program by reducing the number of remedial systems and cleanup objectives and eliminating the largely outdated aquifer designations (e.g., "Unit E" v. D2 or C3 aquifers). Under PLS' proposal, there will be only two remedial systems, which will be defined geographically by their location east or west of Wagner Road and by the presence/absence of an institutional control.

- a. West of Wagner Road, the cleanup program would focus on removing the most highly contaminated groundwater contamination through groundwater extraction and treatment. Although extraction at Wagner Road would continue, it is expected that some groundwater contamination above the drinking water cleanup criterion would migrate into the Prohibition Zone established by the Court.
- b. East of Wagner Road, the cleanup program focuses on the possible consolidation of the Evergreen Subdivision and Maple Road systems and their conflicting cleanup objectives (Evergreen – capture 85 ppb; Maple Road – capture 2,800 ppb) into one coordinated response action system.

2. Cleanup Objectives. The Cleanup Objectives for the modifications under consideration include the following:

- a. Prevent Expansion. PLS would be responsible for taking the response actions needed to prevent the groundwater contamination above the drinking water criterion from expanding beyond its current boundaries in areas outside the Prohibition Zone previously established by the

Court.

- b. Maintain Integrity of Prohibition Zone Boundaries. PLS would continue to monitor the migration of the groundwater contamination as it migrates through the Prohibition Zone to ensure that it does not expand beyond the Prohibition Zone boundaries (including the proposed expanded area) or underflow the Huron River.
- c. Mass Removal. PLS would continue operate a number of existing purge wells and install at least one more extraction well to reduce the higher concentrations west of Wagner Road before the groundwater enters the Prohibition Zone and in the Evergreen Subdivision area. PLS would continue to operate each of these wells until concentrations in the groundwater extracted by the wells are reduced to agreed upon levels and all other relevant objectives continue to be met.
- d. Maple Road Capture. PLS would continue to prevent groundwater with concentrations exceeding 2,800 ppb (the groundwater/surface water interface criterion) from migrating east of Maple Road in order to insure that levels above the GSI criterion do not reach the Huron River.

The Court has not ruled upon any of these proposed modifications and is not amending its previous orders. However, the Court will allow for parties to pursue potential modifications if done in a timely manner. The schedule for considering and proposing such modifications will be as follows:

TASK

Begin Implementing Evergreen System-
Reduced Extraction Rate Study Work
Plan

Week of 1/19/09
(Weather
Permitting)

PLS Submit of the findings of
Evergreen System Reduced Extraction
Rate Study Work Plan (Evergreen
Report)

3/13/2009 (or
within 30 days
of completion of
work)

Parties to Meet to Discuss Impact, if
any, of Evergreen Data on Proposed
Modifications

Week of 3/23/09
(or within 10
days of DEQ's
receipt of report)

PLS Submit Revised Remediation Plan

04/24/2009

DEQ File Motion Re: Well ID Disputes
(if necessary)

04/30/2009

DEQ Response to PLS Remediation
Proposal/

05/22/2009

Parties to File Motions RE: Disputes (if
needed)

06/12/2009

Parties File Motion Seeking Court
Approval of Remediation
Plan/Resolution of Disputes (including
necessary Consent Judgment
amendments)

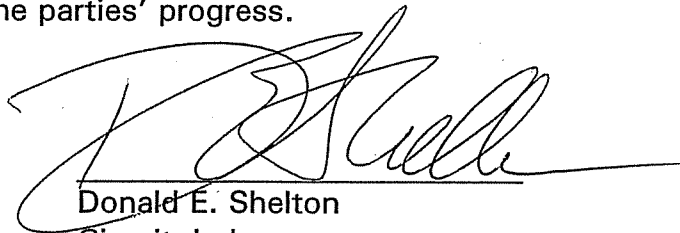
06/12/2009

PLS to Seek Court Order regarding access
(if necessary)

90 days after
Plan Approval

The parties may seek to modify this schedule as necessary, with approval of the Court. This Court may schedule additional status conferences or hearings as needed to keep the Court fully advised of the parties' progress.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Shelton', written over a horizontal line.

Donald E. Shelton
Circuit Judge