



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
JACKSON DISTRICT OFFICE



STEVEN E. CHESTER
DIRECTOR

November 18, 2005

Mr. Farsad Fotouhi
Environmental Manager
Pall Life Sciences, Inc.
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Ann Arbor, MI 48103-9019

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2430 First National Bank
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Mr. Michael L. Caldwell
Zausmer, Kaufman,
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31700 Middlebelt Road,
Suite 150
Farmington Hills, MI 48334

Dear Sirs:

SUBJECT: Gelman Sciences, Inc. Remedial Action
Response to Claim of "Force Majeure",
North Transmission Pipeline Leak/Evergreen System Shutdown

We are in receipt of Mr. Michael Caldwell's letter, dated October 21, 2005, in which Pall Life Sciences (PLS) asserts that "...circumstances exist that constitute a force majeure event under the Consent Judgment." We have also received correspondence from Mr. Farsad Fotouhi, dated October 26, 2005, that provides PLS's explanation of the North Transmission Pipeline (NTP) leak and the shutdown of extraction from the Evergreen System. We have also received additional information provided by Mr. Fotouhi in response to our requests. Under Section XIV.D of the Consent Judgment, the Department of Environmental Quality (DEQ) is required to respond to PLS's "Force Majeure" notice.

We have reviewed the information provided in detail and based upon the information currently available, the DEQ has determined that the "Force Majeure" provisions allowed for in Section XIV of the Consent Judgment do not apply for two separate reasons:

- The claim of "Force Majeure" was not made within 48 hours of the event believed to constitute "Force Majeure";
- Even if PLS had informed us within 48 hours of the event, the circumstances described were not beyond the control of PLS or otherwise subject to a claim of "Force Majeure".

Any equipment or infrastructure installed by PLS to perform its remedial obligations is known to require periodic maintenance and to have a finite lifespan. As Mr. Caldwell noted in his letter to Judge Donald E. Shelton, dated October 20, 2005, the pipeline has a finite life-expectancy, has been submerged in the aquifer for many years and routine maintenance has put stress on the pipeline. It is clear that the eventual failure of the pipeline was foreseeable. PLS could have, and should have, identified contractors who could have monitored the condition of the NTP (and other pipelines) before it failed, rather than waiting until after the leak became apparent. PLS apparently did not have a contingency plan in the event of the failure of any portion of the pipeline, which has increased the time to resolve this problem that PLS should have anticipated and prepared for.

PLS's representations that it adequately informed the DEQ about the shutdown of the Evergreen System extraction wells and the NTP leak are not supported by documents in our files, or my notes, or memory. As the DEQ's project coordinator for the Gelman Sciences, Inc. site, I would be the appropriate person to notify of this information. The DEQ did not learn about

the shutdown or the leak until August 17, 2005, after I reviewed PLS's July 2005 operational data and inquired as to why the Evergreen System extraction wells were not operating from July 18 through the end of July. We also have no record of receiving any information from Mr. Fotouhi on July 25 or August 11 regarding the shutdown or leak, as stated in the chronology provided by Mr. Fotouhi on October 26, 2005. Our detailed response to the PLS chronology was sent to PLS by electronic mail on October 27, 2005.

The Consent Judgment requires PLS to continuously operate the Evergreen System (paragraph V.A.4), and to notify the DEQ within five working days of becoming aware of any violation (paragraph XVII.C) of the Consent Judgment. PLS did not operate the Evergreen System from July 19 through August 1, 2005, and did not notify the DEQ until August 17, 2005, after the DEQ became aware of the violation through routinely submitted reports. PLS also did not operate the Evergreen System from September 20 through October 23, 2005.

In order to prevent the escape of the leading edge of the Evergreen plume, the DEQ conditionally approved the use of the leaking NTP as a temporary measure on October 21, 2005. The DEQ is currently focused on PLS's efforts to identify and implement an alternate method of transporting the contaminated groundwater from the leading edge of the Evergreen plume to a location where it can be treated and discharged. A decision regarding assessment of stipulated penalties for the violations noted above has not been made; however, we are informing you that PLS is subject to stipulated penalties for these violations and the DEQ will evaluate whether the assessment of any penalties is warranted, and the amount of any such penalties, based upon PLS's actions and timeliness to replace the leaking NTP and correct several associated problems that have been revealed by these events.

These problems include:

- The apparent inadequacy of the leak detection system and possibility that the leak began before July 18, 2005
- The lack of notice to Mr. Fotouhi for at least two weeks by PLS operators when equipment problems were identified on or before July 1, 2005
- The absence of a plan to monitor the condition of the pipelines
- The absence of a contingency plan in the event of a pipeline failure
- The condition of the South Transmission Pipeline

We have received Mr. Fotouhi's November 17, 2005 electronic mail that indicates PLS's contractor will begin lining the North Horizontal Well (HZ-N) on November 28, 2005. PLS has also indicated it will take at least two weeks to perform this work. In the event that lining the HZ-N is not successful, PLS intends to install a new, shallower pipeline along the same route as the HZ-N and NTP. PLS should provide the DEQ with a proposal and schedule for addressing the problems mentioned above for the alternate groundwater transport method by December 12, 2005.

PLS should also continue to provide regular updates on the status of the temporary use of the NTP, as well as any new information on the progress of installing the alternate groundwater transport method and the expected schedule for initiating its use.

Mr. Farsad Fotouhi
Mr. Alan D. Wasserman
Mr. Michael L. Caldwell

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PLS should fully evaluate the circumstances that led to these events to avoid such problems in the future. It is our sincere desire to work cooperatively with PLS to address these issues to ensure that the remediation of the contaminated groundwater is performed as efficiently and expeditiously as possible, while protecting the public health, safety and welfare, and the environment.

Sincerely,

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

SK/KJ

cc: Ms. Mary Ann Bartlett, Pall Corp.
Mr. Robert Reichel, Department of Attorney General
Ms. Celeste Gill, Department of Attorney General
Mr. Mitchell Adelman, DEQ/Gelman File
Mr. James Cogger, DEQ