



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
JACKSON DISTRICT OFFICE



STEVEN E. CHESTER
DIRECTOR

May 29, 2007

VIA ELECTRONIC AND US MAIL

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

Mr. Alan D. Wasserman
Williams Acosta, PLLC
535 Griswold Street
Suite 1000
Detroit, MI 48226-3535

Mr. Michael L. Caldwell
Zausmer, Kaufman,
August & Caldwell, P.C.
31700 Middlebelt Road,
Suite 150
Farmington Hills, MI 48334

Dear Sirs:

SUBJECT: Gelman Sciences, Inc. Remedial Action
Claim of "Force Majeure", dated April 30, 2006

On April 30, 2007, the Department of Environmental Quality (DEQ) received an electronic copy of a letter from Mr. Michael Caldwell addressed to Assistant Attorney General Celeste Gill, notifying us of a claim of "Force Majeure" with regard to Pall Life Sciences' (PLS) failure to operate extraction well AE-3 at the minimum rate that PLS's modeling had determined to be adequate to capture the groundwater contamination at that location. We also received a "Force Majeure Claim Report" from Mr. Farsad Fotouhi, dated May 17, 2007, that provides PLS's explanation of the events surrounding its claim.

We have reviewed the information provided and determined that the "Force Majeure" provisions in Section XIV of the Consent Judgment do not apply for the following reasons:

- The claim of "Force Majeure" was not made within 48 hours of the event believed to constitute "Force Majeure" and is therefore waived;
- Even if PLS had informed us within 48 hours of the event, the circumstances described were not beyond the control of PLS and do not otherwise qualify as a "Force Majeure".

Section XIV.B. of the Consent Judgment provides that "when circumstances occur that Defendant believes constitute Force Majeure, Defendant shall notify the MDNR by telephone of the circumstances *within 48 hours after Defendant first believes circumstances to apply*. *Within 14 working days after Defendant first believes those circumstances to apply*, Defendant shall supply to the MDNR, in writing an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken and the measures to be taken by Defendant to avoid, minimize, or to overcome the delay, and the timetable for implementation of such measures."

The DEQ was informed via e-mail from Mr. Fotouhi, dated March 15, 2007, that AE-3 had been shut down until March 19, 2007, due to pumping air. On April 3, 2007, the DEQ learned that operation of AE-3 had not yet resumed. During this time, PLS never indicated that it believed the circumstances constituted a Force Majeure. On April 26, 2007, after rehabilitating AE-3, PLS turned it on and operated it at a reduced rate of 14 to 15 gallons per minute. PLS finally informed the DEQ of its claim of Force Majeure based on its inability to operate AE-3 at the minimum required rate on April 30, 2007, four days after it had restarted AE-3. Based on the circumstances as described by PLS, the initial notice should have been made in March and in any event, the notices provided by PLS were untimely. Therefore, any claim of Force Majeure is waived.

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

-2-

May 29, 2007

We do not consider the circumstances described by PLS to constitute a "Force Majeure". PLS has been aware for several years of the difficulty of maintaining the minimum extraction rate at this location. The DEQ believes that, based on previous experience, PLS should have anticipated the reduction in the extraction rate at AE-3 and should have proposed additional measures to ensure that the leading edge of the Evergreen plume is being captured, as required by the Consent Judgment, prior to the recent events.

Such measures could have included the installation of multiple extraction wells in the Allison Street area. A multi-well purge system, spatially segregated and screened at different elevations, would allow flow rate flexibility. Lower pumping rates from multiple wells should reduce the drawdown and fouling encountered at AE-3. We believe PLS still can, and should, propose such measures as soon as possible. Although access may be somewhat difficult, as Mr. Fotouhi indicated in his letter of May 17, 2007, there are legal methods available for obtaining access.

PLS's proposal to address the deficiencies of the AE-3 extraction well, as referenced in Mr. Fotouhi's May 17, 2007 letter, are contained in PLS's May 10, 2007 submittal of the Evergreen System Review (ESR). The ESR proposes to turn off AE-3 and allow the portion of the plume downgradient of LB-1 and LB-3 to migrate without further active remediation. As indicated in the ESR, this would require modification of the Five-Year Plan and the Consent Judgment and it does not excuse existing violations of the Consent Judgment. Our review of the legal and technical issues related to PLS's proposal for AE-3 is still ongoing, but it is unlikely the DEQ would agree to such a proposal unless it can be demonstrated that further active remediation is not feasible. It does not appear that such a demonstration has been made yet.

As stated above, we do not believe this event constitutes a "Force Majeure." Therefore, we are notifying PLS that we consider it to be in violation of the Five-Year Plan and the Consent Judgment for not operating AE-3 at the approved minimum extraction rate. This violation will continue until the minimum extraction rate at AE-3 can again be attained or other measures taken to ensure that the groundwater contamination migrating to this location is contained. Until this issue is resolved, PLS must continue operating AE-3 to the extent possible, including efforts to rehabilitate AE-3, as needed.

Please contact Assistant Attorney General Celeste Gill or me if you wish to discuss this matter in more detail.

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 Cogger, DEQ