

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,

Case No. 88-34734-CE

vs

Hon. Donald E. Shelton

GELMAN SCIENCES INC.,
a Michigan corporation,

Defendant.

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MOTION TO AMEND CONSENT JUDGMENT

Defendant, Gelman Sciences Inc., d/b/a Pall Life Sciences (“PLS”), by and through its attorneys, Zausmer, Kaufman, August, Caldwell & Tayler, P.C., and Williams Acosta, PLLC, and for its Motion to Amend Consent Judgment, states as follows:

1. A Consent Judgment was entered in this case on October 26, 1992. The Consent Judgment requires Defendant, Gelman Sciences, Inc., to implement various remedial actions to address environmental contamination in the vicinity of Defendant’s property in Scio Township, subject to the approval of the Michigan Department of Environmental Quality (“DEQ”).

2. Since the entry of the Consent Judgment, state environmental laws relevant to this action, including the former Michigan Environmental Response Act, 1982 PA 307, as amended, have been recodified and amended as Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 *et seq.* (“Part 201”). Those amendments changed cleanup criteria.

3. The Consent Judgment was amended by stipulation of the parties and Order of the Court on September 23, 1996 (“First Amendment of Consent Judgment”). The First Amendment of Consent Judgment revised the cleanup criteria in the Consent Judgment so that they were consistent with the cleanup criteria developed by the DEQ pursuant to Part 201.

4. The Consent Judgment was amended a second time by stipulation of the parties and Order of the Court on October 20, 1999 (“Second Amendment of Consent Judgment”). The Consent Judgment, inclusive of the First and Second Amendments of Consent Judgment, is attached as Exhibit 1.

CHANGE IN CLEANUP CRITERIA

5. Effective December 20, 2002, the DEQ promulgated administrative rules pursuant to Part 201, at R 299.5101-51021 (the "Administrative Rules"). The Administrative Rules contained further revisions to the cleanup criteria for 1,4-dioxane. The relevant portions of the Administrative Rules setting forth the cleanup criteria for 1,4-dioxane are attached as Exhibit 2.

6. The cleanup criteria for 1,4-dioxane set forth in the Administrative Rules differ from, and are slightly less restrictive than, the cleanup criteria under the Consent Judgment, as a result of the DEQ's re-evaluation of the toxicology of 1,4-dioxane, based on peer-reviewed scientific studies of 1,4-dioxane.

7. MCL 324.20120a and MCL 324.20102a required the DEQ to approve requests by persons implementing response activities to change plans for such response activity, including Consent Judgments like the one entered by this Court, so that they are consistent with the new cleanup criteria.

8. The Consent Judgment should be modified as follows so that it reflects the changes in the cleanup criteria for 1,4-dioxane that have been promulgated by the DEQ:

a. Modify Sections III.G and N to read as follows:

G. "Groundwater Contamination" or "Groundwater Contaminant" shall mean 1,4-dioxane in groundwater at a concentration in excess of 85 micrograms per liter ("ug/l") as determined by the sampling and analytical method(s) described in Attachment B.

N. “Soil Contamination” or “Soil Contaminant” shall mean 1,4-dioxane in soil at a concentration in excess of 1700 ug/kg as determined by the sampling and analytical method(s) described in Attachment C or other higher concentration limit derived by means consistent with Mich Admin Code R 299.5711(2) or MCL 324.20120a.

b. Modify the last clause of Section V.B.2 to read as follows:

(c) the discharge level for 1,4-dioxane in groundwater to be reinjected in the Core Area shall be established based upon performance of further tests by Defendant on the treatment technology and shall, in any event, be less than 85 ug/1.

c. Modify Section V.D.1 as follows:

Change 77 ug/1 to 85 ug/1.

d. Modify Section V.E.1 as follows:

Change 77 ug/1 to 85 ug/1.

e. Modify the first paragraph of Section VI as follows:

Change 2000 ug/1 to 2400 ug/1 in both subsections (b) and (c).

f. Modify Section VI.A.1 as follows:

Change 2000 ug/1 to 2400 ug/1.

g. Modify Section VI.B.1 as follows:

Change 2000 ug/1 to 2400 ug/1.

h. Modify the last clause of Section VI.D.2 to read as follows:

Change 1500 ug/kg to 1700 ug/kg.

EVERGREEN SUBDIVISION SYSTEM OBJECTIVE

9. For the reasons set forth in PLS' supporting Brief and its Petition for Dispute Resolution, the Consent Judgment objective for the Evergreen Subdivision System should be revised as follows:

a. Modify Section V.A.1 to read as follows:

A. Evergreen Subdivision Area System
(hereinafter "Evergreen System")

1. Objectives. The objectives of this system shall be: (a) to prevent groundwater contamination that is present north of Valley Street and west of Evergreen Street within the Evergreen Subdivision area from migrating east of Evergreen Street, except to the extent such groundwater contamination may migrate east of Evergreen Street, but remains within the capture zone of the extraction well or wells located in the immediate vicinity of Evergreen Street; (b) to remove the contaminated groundwater from this portion of the affected aquifer; and (c) to remove all groundwater contaminants from the affected aquifer or upgradient aquifers within the Site that is not otherwise removed by the Core System provided in Section V.B or the GSI Property Remediation Systems provided in Section VI. The objectives of the Evergreen System shall not apply to groundwater

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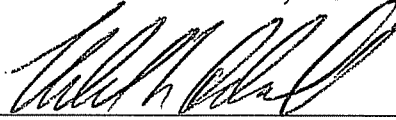
contamination that is addressed by this Court's December 17, 2004 Order and Opinion Regarding Remediation of the Contamination of the "Unit E" Aquifer.

10. These changes are set forth in the proposed "Third Amendment of Consent Judgment" attached to this motion as Exhibit 3.

WHEREFORE, PLS asks this Court to enter the attached Third Amendment of Consent Judgment and to grant such further relief as this Court deems appropriate.

Respectfully submitted,

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