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September 20, 2007

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SEP 24 2007

MDEQ - RRD
JACKSON DISTRICT OFFICE

RE: September 12, 2007 DEQ Response to
Performance Review – March 2007 Wagner Road Interim Response
Our File No. 471-1

Dear Ms. Kolon:

I am writing in response to the above-referenced correspondence, which the Department of Environmental Quality (“DEQ”) characterizes as its response to Pall Life Sciences’ (“PLS”) March 2007 Wagner Road Interim Response Performance Review (the “Performance Review”). In reality, it does not appear that this letter actually responds in a meaningful way to the Performance Review. PLS’ Performance Review set forth, in detail, PLS’ conclusion and supporting data that the operation of TW-18 is capable of meeting the objectives of the Wagner Road Interim Response (“WRIR”). Rather than respond to this conclusion, the DEQ appears to be attempting to redefine and broaden the objectives of the WRIR. The DEQ presents four vaguely stated “concerns” and suggests “an intensive technical review meeting to reach consensus on the next steps.” The letter concludes with a promise that DEQ intends to present its “detailed comments” on the Performance Review at some future time. While PLS is happy to meet with the DEQ, PLS cannot provide more than a brief response to the bullet point concerns in the absence of the promised detailed review.

PLS welcomes the DEQ’s suggestion that the parties should try to resolve inevitable differences in opinion through technical discussions rather than by resort to Court filings. The relevance of such technical discussions is, however, defined by the legal requirements imposed on

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PLS by the Consent Judgment and related Orders. For instance, PLS appreciates that the DEQ believes it would be beneficial to capture the D2 plume at Wagner Road. But the neither the Consent Judgment nor the Unit E Order require PLS to capture the D2 plume, or any portion of it, at this location. Consequently, any discussion of the potential benefits of this additional effort is only relevant to the extent such action would increase the efficiency of PLS' groundwater remediation program and is unrelated to the question of whether PLS is satisfying the objectives of the WRIR. Similarly, the suggested future investigation in the area of GSI-96-01 appears designed to answer the largely academic question of how contamination reaches the somewhat deeper wells in the Dupont Circle area (i.e., whether the contamination migrates downward in the area of GSI-96-01 or in the area of Dupont Circle). The answer to this question is irrelevant in light of the fact that PLS has previously demonstrated to the DEQ's satisfaction that, however it gets there, the contamination in the Dupont Circle area is being captured by the Evergreen System extraction wells. PLS also does not understand the relevance of DEQ's concern regarding the definition of the northern edge of the Unit E plume west of MW-100. Leaving aside the question of whether this concern is well founded (and ignoring the data from MW-89, groundwater flow direction, etc.), the presence of contamination in the Unit E north of where the plume is currently understood to be is only relevant if the contamination is both (a) north of the Prohibition Zone boundary and (b) not being captured by the Evergreen System extraction wells. There is no data that suggests that these circumstances exist. In order to further rule out the possibility that groundwater contamination (whether in the Unit E or D2 aquifers) might be migrating to the north or northwest, beyond the capture zone of the Evergreen System extraction wells, PLS has proposed to investigate water levels in the area west and north of Dupont Circle.¹

PLS will await the more detailed comments the DEQ intends to provide before responding further to the additional concerns set forth in the DEQ's letter. PLS agrees that the parties should meet to discuss these technical issues. PLS believes, however, that legal counsel should also be present to help guide the discussion so that the issues relevant to PLS' legal obligations are fully addressed. Please provide us with dates in October when you would be available to meet.

One final comment regarding the September 12, 2007 letter, specifically the following paragraph:

PLS's continued assertions that it has a full understanding of the widespread groundwater contamination found in this highly complex hydrogeological setting have been proven wrong before (most notably the existence of the Unit E plume). Each discovery has resulted in the application of significant PLS and DEQ resources to address

¹ Data from the GSI-96-01 location would not help define the northern edge of the Unit E plume since there are multiple potential sources of any contamination that might be present in the deeper portion of the aquifer at this location.

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problems that may have been resolved with fewer resources had a more methodical and objective approach to investigating this area been followed initially. An honest assessment of this site should lead PLS to acknowledge that additional investigation is needed, starting with installation of the monitoring well cluster near GSI-96-01, during the same mobilization planned for the Evergreen Subdivision Area in the next few weeks.

This paragraph is highly objectionable and, frankly, offensive. It is self-serving revisionism for the DEQ to suggest that the Unit E plume was not initially discovered because PLS failed to investigate the site in a "methodical and objective" manner. The DEQ commented on and ultimately approved every investigation work plan PLS developed and oversaw PLS' implementation of the approved work. The scope of the investigation was both extensive and determined by an objective review of the data available at the time by both PLS and the DEQ. It is pure "Monday-quarterbacking" for individuals not involved in those deliberations to question the process, evolution or integrity of past efforts to investigate this complex site.² These efforts resulted in many successes as well as the "failure" to timely identify the Unit E plume. PLS rejects the DEQ's attempt to use this isolated "failure" to justify otherwise technically unsupported requests for additional investigation. Particularly unjustified is the suggestion that it would be "dishonest" of PLS to question DEQ's baffling request for additional investigation in the area of GSI-96-01. Please be prepared to provide a technical basis for this and any other suggested investigations at our upcoming meeting.

Very truly yours,

ZAUSMER, KAUFMAN, AUGUST,
CALDWELL & TAYLER, P.C.



Michael L. Caldwell

MLC:hlr

cc: Celeste Gill, Esq.
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² The parties employed an iterative approach to the investigation because of the recognized complexities of the geology. Ironically, despite its criticism of the methodology employed by the parties in the past, the DEQ continues to pursue this very approach in its September 12, 2007 letter.