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September 23, 2011

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**Re: Final Well Identification Report Dated March 12, 2010  
DEQ Response Dated October 27, 2010  
Our File No. 4710-0001**

Dear Ms. Gill:

This correspondence will respond to the Michigan Department of Environmental Quality's ("DEQ") October 27, 2010 response ("October 2010 Response") to Gelman Sciences, Inc.'s ("GSI") Final Well Identification Report dated March 12, 2010. GSI submitted its Final Well Identification Report in compliance with the Court's September 2, 2009 Order Resolving Plaintiffs' Motion to Enforce Order Prohibiting Groundwater Use ("Final Well ID Order").

GSI was surprised and quite disappointed to receive the October 2010 Response, some seven months after GSI submitted its Final Well ID Report. Clearly none of the identified issues could be related to any real public health concerns – otherwise the DEQ would not have waited seven months to raise them. The response was particularly troubling in that it demanded that additional actions be taken beyond those required by the Court's Final Well ID Order.<sup>1</sup> As you will recall, the DEQ filed its Motion to Enforce Order Prohibiting Groundwater Use pursuant to the Court's May 21, 2009 Order, which required the DEQ to file such a motion as to any unresolved disputes regarding the Well ID process. The unequivocal intent of the Court, as expressed in its order and directly to counsel during the preceding status conference, was that all disputes regarding the Well ID process (and the cleanup plan modifications) should be brought to the Court for final resolution if the parties were unable to reach agreement. Therefore, the

<sup>1</sup> The DEQ's recent August 23, 2011 correspondence demanding that GSI take the actions listed in the DEQ's the October 2010 Response by September 16, 2011 has no legal effect. The October 2010 Response was not a "denial" or "conditional approval" of a work plan under the Consent Judgment. Therefore, GSI is not required to comply with the conditions set forth or initiate dispute resolution by the date in the August correspondence. The disputed scope of the Court's Order Prohibiting Groundwater Use and GSI's responsibilities under the Well ID Workplan were resolved by the Court through its Final Well ID Order. Thus, only the Court, can require GSI to take further action if it finds that GSI has not complied with its order.

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Court's Final Well ID Order represents the final word on the subject. (I note that the DEQ's October 2010 Response correctly characterizes the Court's order as the "Resolution Order"). This correspondence will only respond to the October 2010 Response to the extent it raises issues regarding GSI's compliance with the Court's Final Well ID Order.

a. Resident v Owner. GSI has confirmed that all but two owners are listed as living at the same address as the one GSI used to mail the survey. GSI also believes that it is highly unlikely that a tenant would have failed to forward the survey to the owner if this situation exists. However, GSI acknowledges that the Final Well ID Order, which was drafted by the parties at a time when it was assumed that the surveys would be hand-delivered, states that GSI must affirmatively request that the survey be forwarded to the owner and GSI's cover letter does not explicitly say that. Rather than merely resend the survey to the property address with a revised cover letter, GSI will independently survey the few owners that have a different address listed on the County tax rolls. This step goes well beyond what the Final Well ID Order required.

b. 1259 North Main Street. Although this issue was not raised by the DEQ in connection with the Final Well ID Order, it arguably relates to whether a required survey was sent to the owner of this property and so GSI will address it here. The October 2010 Response claims that the only building on this property was torn down. In fact, there were two buildings at this address and only one of the buildings has been taken down. The owner of the property, Harry P. Hawkins, LLC, also owns Hawkins Body Shop, which is still operating at that location in the remaining building.

c. Use of Return Envelopes. GSI does not know whether to be insulted or amused that the DEQ is questioning whether GSI sent the surveys in envelopes with a return address. GSI certainly did not send out the surveys anonymously. The surveys were mailed via first-class mail in GSI's standard #10 envelope, imprinted with the return address. This information would have enabled the postal service to return any letters delivered to a property that was unoccupied. Moreover, the Post Office's practice is to open undeliverable packages that do not have a return address on the outside of the envelope. A self-addressed, stamped return envelope was included in each envelop with the survey and the cover letter itself identified GSI's address and contact information. Given the above, there is no question that any undeliverable surveys would have been returned to GSI. Please consider this letter "documentation" of that fact.

d. Category "L" Properties. GSI will confirm that it sent the letters it said it would in its October 24, 2008 correspondence. If it cannot, GSI will send an appropriate letter. The cover letter attached to the DEQ's April 18, 2006 correspondence is not appropriate because it was intended to enclose a survey. These properties have already been surveyed and GSI will not do so again. The letter GSI will send will be consistent with its October 24, 2008 response.

e. Additional Documentation. As the October 2010 Response acknowledges, the parties agreed that GSI could provide documentation confirming the availability of City water within one year of construction. GSI believes that the information and documentation it has

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submitted -- including the name of the City of Ann Arbor staff who provided confirmatory information, previous Well ID reports confirming that GSI had previously surveyed the properties and conducted an in-person review of City records – is more than sufficient to establish that a survey of these properties is not necessary. GSI also refers the DEQ to its October 24, 2008 correspondence, which documents its demonstration that the date listed for meter installation (preferred by the DEQ) does not necessarily correspond to the date the property was actually connected to City water. GSI has previously confirmed that the properties located at 1600, 2015, and 2101 Arbor View were in the City when built (see previously submitted Well ID reports and City boundary maps). With regard to 2106 Dexter, GSI has previously sent with this property a survey and conducted a “hard record review” of the City’s files to confirm that it was connected when built (see previous Well ID reports and spreadsheets). Regardless of whether the home located at 2020 Dexter is currently in the Ann Arbor Township or the City of Ann Arbor, the tap date for the property was constructed within one year of the year the home was built. GSI does not believe it is plausible that this is merely a coincidence, but rather demonstrates that the property was connected when built. GSI understands that the DEQ does not view this coincidence of dates to be sufficient to remove a property from the “vulnerable” category as that term was used in the original Well ID Workplan. The DEQ is simply wrong in this regard.

Notwithstanding the above, in order to remove any questions regarding its compliance with the Final Well ID Order, and to demonstrate that GSI has gone the extra mile to meet the DEQ’s demands even when GSI believes these demands have no basis, GSI will survey the seven properties identified in the DEQ’s October 2010 Response.

f. Well Sampling. With regard to the long out-of-use former wells located at 1605 Miller and 2005 Pencraft, these wells were extremely old, out-of-use, and not capable of being sampled. Nor, given their location, was there any reason to make the Herculean efforts that would have been necessary to obtain a sample from these long abandoned wells.

g. Cemetery Well. Since the DEQ’s October 2010 Response, GSI has requested an exception from the prohibition on groundwater use with regard to this well.

Additional Comments Regarding *Prior* Well Identification Work Plan Results.

GSI declines to respond to the DEQ’s request for actions beyond what the Court required in its Final Well ID Order. The Court’s Final Well ID Order listed the few additional steps GSI was required to take in order to finalize the Well ID process. The Court intended that Order to be, and the Order clearly is, the final word as to what additional investigation/notice is necessary and appropriate. Having completed the few additional steps specified by the Court, GSI is done. Moreover, any attempt by the DEQ to unilaterally take additional actions beyond those specified by the Court in terms of contacting additional homeowners would be a violation of the Court’s Final Well ID Order.

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GSI will not respond further on this topic.

Sincerely yours,

ZAUSMER KAUFMAN AUGUST  
CALDWELL & TAYLER, P.C.

/s/

Michael L. Caldwell

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