



COUNTY ADMINISTRATOR

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TO: Wesley Prater, Chair
Board of Commissioners

THROUGH: Robert E. Guenzel
County Administrator

FROM: Richard M. Fleece Environmental Services Director
Department of Planning and Environment

DATE: July 6, 2005

SUBJECT: Requesting Michigan Department of Environmental Quality
Appeal Gelman Science Institutional Control Ruling

BOARD ACTION REQUESTED:

Washtenaw County Planning and Environment is requesting that the Chair of the Board of Commissioners request the Michigan Department of Environmental Quality (MDEQ) appeal the Washtenaw County Circuit Court May 17, 2005 order regarding the prohibition of groundwater use in the case of the State of Michigan Vs. Gelman Sciences.

BACKGROUND:

On May 17, 2005 following a December 17, 2004 court ruling, a Washtenaw County Circuit Court issued an order that will allow groundwater contamination from Gelman Sciences to continue to migrate east under the City of Ann Arbor toward the Huron River. The order sets forth a process that restricts the use of groundwater that is or may become contaminated. The order prohibits the County from issuing a permit to drill certain types of new wells including drinking water wells and requires the abandonment and connection to city water of certain existing wells within a "Prohibition Zone" at Pall Life Science's expense. These wells are typically contained within what are considered "Township Islands" and are located within the geographic boundary of Ann Arbor City. The order attempts to protect human health from the risk of exposure. This type of action of restricting potential exposure to contaminants without removing the contamination is commonly referred to as "Institutional Controls"

It has been the consistent policy goal of the Washtenaw County Board of Commissioners that 1,4-dioxane contamination be cleaned up to a level of 3.0 parts per billion (ppb) utilizing the best available technology (BAT). Reference BOC Resolutions 96-0278, 98-0036, 98-202, 99-106, 03-0236, 04-0102. This order would allow levels up to

2800 ppb in the prohibition zone, and virtually assures that the remaining contamination will never be cleaned up to the level desired by Washtenaw County and its citizens.

DISCUSSION:

The Court order referenced in this memorandum was established after the MDEQ published several options to remediate contamination by Gelman Sciences of what is commonly referred to as the “E Aquifer”. This contamination discovered in 2002 is by all accounts much larger than was previously known and based on predictive models is expected to migrate easterly towards the Huron River. Among the remediation options offered by MDEQ was a far more aggressive approach that would treat greater volumes of contaminated water and discharge the treated water through a pipeline to the Huron River, The Washtenaw County policy group endorsed this proposal. However it was eventually deemed unacceptable by MDEQ primarily due to opposition it received by residents of the impact the pipeline would have on their individual properties.

MDEQ instead collaborated with Pall Life Science to develop the Institutional Control Plan identified in court order although they called for all drinking and irrigation wells in the prohibition zone be abandoned and included the Ann Arbor City Northwest Supply well in its proposed prohibition zone.(Both provisions were rejected by the court)

This order has set a new direction in this ongoing issue and has the potential for setting a precedent that will have consequence beyond this case. By restricting exposure rather than aggressively remediating contamination the door is open for other groundwater contamination in the county being allowed to spread as long as the county doesn't issue a well permit in the area of contamination. We therefore request that the order be appealed and that the MDEQ pursue a revised plan that assures adequate cleanup be implemented.

IMPACT ON HUMAN RESOURCES:

None.

IMPACT ON BUDGET:

None.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

None.

CONFORMITY TO COUNTY POLICIES:

The request is consistent Resolution 03-0236 which adopts policy goals regarding 1,4-dioxane contamination by Pall Life Sciences.

ATTACHMENTS/APPENDICES:

- Court Order dated May 17,2005
- 1,4-Dioxane Plume and Prohibition Zone map
- Resolution 03-0236

**A RESOLUTION AUTHORIZING THE ADOPTION OF POLICY GOALS REGARDING
1,4-DIOXANE CONTAMINATION BY PALL LIFE SCIENCES**

WASHTENAW COUNTY BOARD OF COMMISSIONERS

November 19, 2003

WHEREAS, 1,4-dioxane released by Pall Life Sciences has resulted in wide-spread groundwater contamination in Washtenaw County; and

WHEREAS, that contamination continues to spread; and

WHEREAS, it is in the interest of the County to safeguard groundwater and other potable water sources for drinking water and other purposes; and

WHEREAS, many residents and local governments have expressed concern with the lack of progress;

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby adopts the following policy goals regarding groundwater contamination and remediation, as attached hereto and made a part hereof

COMMISSIONER	Y	N	A	COMMISSIONER	Y	N	A	COMMISSIONER	Y	N	A
Armentrout	X			Irwin	X			Sizemore	X		
Bergman	X			Kern	X			Solowczuk	X		
Brackenbury	X			Peterson	X			Yekulis	X		
Gunn	X			Prater	X						

CLERK/REGISTER'S CERTIFICATE - CERTIFIED COPY **ROLL CALL VOTE: TOTALS** **11 0 0**

STATE OF MICHIGAN) I, Peggy M. Haines, Clerk/Register of said County of Washtenaw and Clerk of Circuit Court for said County, do hereby certify that the foregoing is a true and accurate copy of a resolution adopted
COUNTY OF WASHTENAW)SS. by the Washtenaw County Board of Commissioners at a session held at the County Administration Building in the City of Ann Arbor, Michigan, on November 19, 2003, as it appears of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Ann Arbor, this _____ day of _____.

PEGGY M. HAINES, Clerk/Register

BY: _____
Deputy Clerk

Res. No. 03-0236

A RESOLUTION REQUESTING THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY APPEAL A COURT RULING REGARDING 1, 4-DIOXANE CONTAMINATION BY PALL LIFE SCIENCES

WASHTENAW COUNTY BOARD OF COMMISSIONERS

July 6, 2005

WHEREAS, contaminated groundwater can have considerable impact to public health and quality of life, the reputation of the County and the ability to keep and attract economic development and talent to the area; and

WHEREAS, groundwater contamination of 1, 4-dioxane by Gelman Sciences, Inc. (currently Pall Life Sciences) continues to spread; and a recent court ruling will allow the contamination to migrate east under the City of Ann Arbor; and allow levels of 2800 ppb in the "Prohibition Zone"; in conflict with previous Board resolutions calling for a cleanup standard of 3.0 ppb; and

WHEREAS, The Michigan Department of Environmental Quality is responsible to oversee the cleanup of said contamination; and it is the opinion of the county that Department of Environmental Quality has failed to provide sufficient resources and effective legal representation to ensure a positive outcome; and

WHEREAS; this order has set a new direction in this ongoing issue and has the potential for setting a precedent that will have consequences statewide. By allowing the contamination to spread and restricting exposure rather than aggressively remediating the contamination, the door is open for other groundwater contamination in the county being allowed to spread as long as the county doesn't issue a well permit in the area of contamination; and

WHEREAS, in the opinion of the Washtenaw County Board of Commissioners this is an undesirable outcome that severely affects the quality of life in Washtenaw County

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby authorizes the Chair of the Board to request the Michigan Department of Environmental Quality Appeal the May 17, 2005 Order regarding the prohibition of groundwater use in the case of the State of Michigan vs. Gelman Sciences.

BE IT FURTHER RESOLVED that the county urges the State of Michigan to provide sufficient resources and assign qualified technical and legal resources to this appeal to assure this water resource is restored to a point that is safe and beneficial for the visitors and residents of Washtenaw County.