

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

FRANK J. KELLEY, Attorney General
for the State of Michigan, ex rel,
MICHIGAN NATURAL RESOURCES COMMISSION,
MICHIGAN WATER RESOURCES COMMISSION,
and MICHIGAN DEPARTMENT OF NATURAL
RESOURCES,

OCT 30 1992

Plaintiffs,

File No. 88-34734-CE

v

Honorable Patrick J. Conlin

GELMAN SCIENCES, INC.,
a Michigan corporation,

Defendant.

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CONSENT JUDGMENT

The Parties enter this Consent Judgment in recognition of, and with the intention of, furtherance of the public interest by (1) addressing environmental concerns raised in Plaintiffs' Complaint; (2) expediting remedial action at the Site; and (3) avoiding further litigation concerning matters covered by this Consent Judgment. The Parties agree to be bound by the terms of this Consent Judgment and stipulate to its entry by the Court.

The Parties recognize that this Consent Judgment is a compromise of disputed claims. By entering into this Consent Judgment, Defendant does not admit any of the allegations of the Complaint, does not admit any fault or liability under any statutory or common law, and does not waive any rights, claims, or defenses with respect to any person, including the State of Michigan, its agencies, and employees, except as otherwise provided herein. By entering into this Consent Judgment, Plaintiffs do not admit the validity or factual basis of any of the defenses asserted by Defendant, do not admit the validity of any factual or legal determinations previously made by the Court in this matter, and do not waive any rights with respect to any person, including Defendant, except as otherwise provided herein. The Parties agree, and the Court by entering this Judgment finds, that the terms and conditions of the Judgment are reasonable, adequately resolve the environmental issues covered by the Judgment, and properly protect the public interest.

NOW, THEREFORE, upon the consent of the Parties, by their attorneys, it is hereby ORDERED and ADJUDGED:

I. JURISDICTION

A. This Court has jurisdiction over the subject matter of this action. This Court also has personal jurisdiction over the Defendant.



B. This Court shall retain jurisdiction over the Parties and the subject matter of this action to enforce this Judgment and to resolve disputes arising under the Judgment.

II. PARTIES BOUND

This Consent Judgment applies to, is binding upon, and inures to the benefit of Plaintiffs, Defendant, and their successors and assigns.

III. DEFINITIONS

Whenever the terms listed below are used in this Consent Judgment or the Attachments which are appended hereto, the following definitions shall apply:

A. "Consent Judgment" or "Judgment" shall mean this Consent Judgment and all Attachments appended hereto. All Attachments to this Consent Judgment are incorporated herein and made enforceable parts of this Consent Judgment.

B. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or a State legal holiday. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State legal holiday, the period shall run until the end of the next working day.

C. "Defendant" shall mean Gelman Sciences, Inc.

D. "Evergreen Subdivision Area" shall mean the residential subdivision generally located north of I-94 and between Wagner and Maple Roads, bounded on the west by Rose Street, on the north by Dexter Road, and on the south and east by Valley Drive.

E. "Gelman" or "GSI" shall mean Gelman Sciences, Inc.

F. "GSI Property" shall mean the real property described in Attachment A, currently owned and operated by GSI in Scio Township, Michigan.

G. "Groundwater Contamination" or "Groundwater Contaminant" shall mean 1,4-dioxane in groundwater at a concentration in excess of 3 micrograms per liter ("ug/l") determined by the sampling and analytical method(s) described in Attachment B.

H. "MDNR" shall mean the Michigan Department of Natural Resources.

I. "Parties" shall mean Plaintiffs and Defendant.

J. "Plaintiffs" shall mean Frank J. Kelley, Attorney General of the State of Michigan, ex rel, Michigan Natural Resources Commission, Michigan Water Resources Commission, and Michigan Department of Natural Resources.

K. "Redskin Well" means the purge well currently located on the Redskin Industries property.

L. "Remedial Action" or "Remediation" shall mean removal, treatment, and proper disposal of groundwater and soil contaminants pursuant to the terms and conditions of this Consent Judgment and work plans approved by the MDNR under this Judgment.

M. "Site" shall mean the GSI Property and other areas affected by the migration of groundwater contamination emanating from the GSI Property.

N. "Soil Contamination" or "Soil Contaminant" shall mean 1,4-dioxane in soil at a concentration in excess of 60 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 R 299.5717.

O. "Spray Irrigation Field" shall mean that area of the GSI site formerly used for spray irrigation of treated process wastewater, as depicted on the map included as Attachment D.

P. "Unit C3 Aquifer" means the aquifer identified as the C3 Unit in reports prepared for Defendant by Keck Consulting.

IV. IMPLEMENTATION OF REMEDIAL ACTION BY DEFENDANT

Defendant shall implement the Remedial Action to address groundwater and soil contamination at, and emanating from, the GSI Property in accordance with (1) the terms and conditions of this Consent Judgment; and (2) work plans approved by the MDNR pursuant to this Consent Judgment.

V. GROUNDWATER REMEDIATION

Defendant shall design, install, operate, and maintain the systems described below to remove, to treat (as required), and to dispose properly of contaminated groundwater. The objectives of these systems shall be to contain the plumes of groundwater contamination emanating from the GSI Property as described below and to extract the contaminated groundwater from the aquifers at designated locations for treatment (as required) and disposal. Defendant also shall implement a monitoring program to verify the effectiveness of these systems.

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

1. Objectives. The objectives of this system shall be: (a) to intercept and contain the leading edge of the plume of groundwater contamination detected in the vicinity of the Evergreen Subdivision area; (b) to remove the contaminated



groundwater from 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.

2. Investigation and Design of System.

a. Pump Test Report. Defendant has constructed a purge/test well in the Evergreen Subdivision and conducted a pump test. No later than five days after entry of this Consent Judgment, Defendant shall submit to MDNR a report showing the well construction details and containing pump test and aquifer performance data.

b. Treatment Equipment. Within five days after entry of this Consent Judgment, Defendant shall submit to MDNR specifications for equipment for the treatment of purged groundwater using ultraviolet light and oxidating agents sufficient to remove 1,4-dioxane from groundwater to levels of 3 ug/l or lower. Defendant shall order such equipment within ten days after receiving approval from MDNR.

c. Obtaining Authorization for Groundwater Reinjection. Within 90 days after entry of the Consent Judgment, Defendant shall do one of the following: (i) submit a complete application to the Water Resources Commission for a groundwater discharge permit or permit exemption to authorize the reinjection



of purged, treated groundwater from the Evergreen System; or (ii) submit a plan to MDNR for reinjection of purged, treated groundwater from the Evergreen System that will assure compliance with and be authorized by the generic Exemption for Groundwater Remediation Activities issued by the Water Resources Commission on August 20, 1992.

d. Work Plan. Within 90 days after entry of the Consent Judgment, Defendant shall submit to MDNR for its review and approval a work plan for continued investigation of the Evergreen Subdivision and design of the Evergreen System. At a minimum, the work plan shall include, without limitation, installation of at least one purge well and associated observation well(s) and a schedule for implementing the work plan. The work plan shall specify the treatment and disposal options to be used for the Evergreen System as described in Section V.A.5. The existing test/purge well can be incorporated into the work plan if appropriate.

3. Implementation. Within 14 days after receipt of the MDNR's written approval of the work plan described in Section V.A.2., Defendant shall implement the work plan. Defendant shall submit the following to MDNR according to the approved time schedule: (a) the completed Evergreen System design; (b) a schedule for implementing the design; (c) an operation and maintenance plan for the Evergreen System; and (d) an effectiveness monitoring plan.

4. Operation and Maintenance. Upon approval of the Evergreen System design by the MDNR, Defendant shall install the Evergreen System according to the approved schedule and thereafter, except for temporary shutdowns pursuant to Section V.A.6. of this Consent Judgement, continuously operate and maintain the System according to the approved plans until Defendant is authorized to terminate purge well operations pursuant to Section V.D.

5. Treatment and Disposal. Groundwater extracted by the purge well(s) in the Evergreen System shall be treated as necessary using ultraviolet light and oxidizing agents and disposed of in accordance with the Evergreen System design approved by the MDNR. The options for such disposal are the following:

a. Groundwater Discharge. The purged groundwater shall be treated to reduce 1,4-dioxane concentrations to the level required by the Water Resources Commission, and discharged to groundwaters in the vicinity of the Evergreen Subdivision in compliance with the permit or exemption authorizing such discharge referred to in Section V.A.2.c.

b. Sanitary Sewer Discharge. Use of the sanitary sewer leading to the Ann Arbor Wastewater Treatment Plant is conditioned upon approval of the City of Ann Arbor. If discharge is made to the sanitary sewer, the Evergreen System shall be operated and monitored in compliance with the terms



and conditions of the Industrial User's Permit to be issued by the City of Ann Arbor, a copy of which is attached hereto as Attachment G, and any subsequent written amendment of that Permit made by the City of Ann Arbor. The terms and conditions of the Permit and any subsequent amendment shall be directly enforceable by the MDNR against Gelman as requirements of this Consent Judgment.

c. Storm Drain Discharge. Use of the storm drain is conditioned upon approval of such use by the City of Ann Arbor and the Allen Creek Drainage District. Discharge to the Huron River via the Ann Arbor stormwater system shall be in accordance with NPDES Permit No. MI-008453 and conditions required by the City and the Drainage District. If the storm drain is to be used for disposal, no later than 21 days after permission is granted by the City and the Drainage District to use the storm drain for continuous disposal of purged groundwater, Defendant shall submit to MDNR, the City of Ann Arbor, and the Drainage District for their review and approval a protocol under which the purge system shall be temporarily shut down: (i) for maintenance of the storm drain; and (ii) during storm events to assure that the stormwater system retains adequate capacity to handle run-off created during such events. The purge system shall be operated in accordance with the approved protocol for temporary shutdown.



6. Monitoring Plan. Defendant shall implement the approved monitoring plan required by Section V.A.3.d. The monitoring plan shall include collection of data to measure the effectiveness of the System in: (a) hydraulically containing groundwater contamination; (b) removing groundwater contaminants from the aquifer; and (c) complying with applicable limitations on the discharge of the purged groundwater. The monitoring plan shall be continued until terminated pursuant to Section V.E.

B. Core Area System
(hereinafter "Core System")

1. Objectives. For purposes of the Consent Judgment, the "Core Area" means that portion of the Unit C3 aquifer containing 1,4-dioxane in a concentration exceeding 500 ug/l. The objectives of the Core System are to intercept and contain the migration of groundwater from the Core Area and remove contaminated groundwater from the Core Area until the termination criterion for the Core System in Section V.D.1. is satisfied. The Core System shall also prevent the discharge of contaminated groundwater into the Honey Creek Tributary in concentrations in excess of 100 ug/l or in excess of a concentration which would cause groundwater contamination at any location along or adjacent to the entire length of Honey Creek or the Honey Creek Tributary.

2. Evaluation of Groundwater ReInjection Alternative.

No later than 35 days after entry of the Consent Judgment, Defendant will complete and submit to MDNR a report on a pilot test for the treatment system using ultraviolet light and oxidizing agent(s) to be used for treatment of extracted groundwater prior to reinjection. No later than 90 days after entry of this Consent Judgment, Defendant may apply to the Michigan Water Resources Commission for authorization for Defendant to reinject treated groundwater extracted from the Core Area. A reinjection program shall consist of the following: (a) installation of a series of purge wells that will control groundwater flow as described in Section V.B.1. and extract water from the Core Area to be treated and reinjected; (b) the system described in the application shall include a groundwater treatment system using ultraviolet light and oxidizing agent(s) to reduce 1,4-dioxane concentrations in the purged groundwater to the level required for a discharge by the Water Resources Commission; (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 60 ug/l.

3. Groundwater ReInjection. Defendant shall,

no later than 120 days after entry of this Consent Judgment: (a) select, verify, and calibrate a model for the groundwater reinjection system; (b) prepare a final report on the model;



and (c) submit to MDNR for review and approval the final report on the model, Defendant's proposed final design for the Core System, a schedule for implementing the design, an operation and maintenance plan for the system, and an effectiveness monitoring plan for the system.

The Groundwater Reinjection System, including the discharge level for 1,4-dioxane, shall be subject to the final approval of the Water Resources Commission and the MDNR. At a minimum, the System shall be designed and operated so as to ensure that: (a) the purged groundwater is reinjected only into portions of the aquifer(s) where groundwater contamination is already present; (b) the concentration of 1,4-dioxane in the aquifer(s) is not increased; and (c) the areal extent of groundwater contamination is not increased.

4. Surface Water Discharge Alternative. In the event that Defendant elects not to proceed with groundwater reinjection as provided in Section V.B.2., or in the event Defendant is denied permission to install such a system, no later than 90 days after the election or denial, Defendant shall submit to the MDNR for its review and approval Defendant's proposed final design of the Core System, a schedule for implementing the design, an operation and maintenance plan for the System, and an effectiveness monitoring plan for the System. The Core System shall include groundwater purge wells as necessary to meet the

objectives described in Section V.B.1. The Core System also shall include a treatment system using ultraviolet light and oxidizing agent(s) to reduce 1,4-dioxane concentrations in the purged groundwater to the levels required for a discharge described below and facilities for discharging the treated water into local surface waters or sanitary sewer line(s). Discharge to local surface waters shall be in accordance with NPDES Permit No. MI-008453 and any subsequent amendment of that Permit. Use of the sanitary sewer is conditioned upon and subject to an Industrial Users Permit to be obtained from either the City of Ann Arbor or Scio Township, as required by law. If discharge is made to the sanitary sewer, the Core Treatment System shall be operated and monitored to assure compliance with the terms and conditions of the required Industrial User's Permit and any subsequent amendment of that permit. The terms and conditions of the Permit and any subsequent amendment shall be directly enforceable by the MDNR against Gelman as requirements of this Consent Judgment.

5. Implementation of Program. Upon approval by the MDNR, Defendant shall install the Core System according to the approved schedule and thereafter continuously operate and maintain the System according to the approved plans until Defendant is authorized to terminate operation pursuant to Section V.D. Defendant may, thereafter and at its option, continue purge operations as provided in this Section.

6. Monitoring Plan. Defendant shall implement the approved monitoring plan required by Section V.B. The monitoring plan shall include collection of data to demonstrate the effectiveness of the Core System in: (a) hydraulically containing the Core Area; (b) removing groundwater contaminants from the aquifer; and (c) complying with applicable limitations on the discharge of the purged groundwater. The monitoring plan shall be continued until terminated pursuant to Section V.E.

C. Western Plume System
(hereinafter "Western System")

1. Objectives. The objectives of the Western System are: (a) to contain downgradient migration of any plume(s) of groundwater contamination emanating from the GSI Property that are located outside the Core Area and to the northwest, west, or southwest of the GSI facility; (b) to remove groundwater contaminants from the affected aquifer(s); and (c) to remove all groundwater contaminants from the affected aquifer or upgradient aquifers within the Site that are not otherwise removed by the Core System provided in Section V.B. or the GSI Property Remediation Systems provided in Section IV.

2. Design of System. The Western System shall include a series of groundwater test/purge wells placed and operated so as to create overlapping capture zones preventing the downgradient migration of groundwater contaminants. The System

also may incorporate one or more existing artesian wells with overlapping capture zones preventing the downgradient migration of groundwater contaminants. The System also may incorporate one or more existing artesian wells with overlapping capture zones to prevent the downgradient migration of groundwater contaminated with 1,4-dioxane. Defendant shall apply for authorization to reinject purged groundwater or for a permit for discharge of the purged groundwater into the Honey Creek if facilities are constructed for such discharge as part of the Western System. The Western System shall also include facilities for treating purged groundwater as necessary to meet applicable permit requirements and facilities for monitoring the effectiveness of the System.

3. Remedial Investigation. No later than 60 days after the effective date of this Consent Judgment, Defendant shall submit to the MDNR for its review and approval a work plan for remedial investigation and design of the Western System and a schedule for implementing the work plan. The work plan shall include plans for installation of a series of test/purge wells, conduct of an aquifer performance test(s), groundwater monitoring operations and maintenance plan, and system design.

4. Implementation of Remedial Investigation. Defendant shall implement the approved work plan according to the approved schedule.

5. Installation of System. Upon approval by the MDNR, Defendant shall install the Western System and thereafter continuously operate and maintain the system according to the approved plans and schedules until Defendant is authorized to terminate operation pursuant to Section V.D. of this Consent Judgment.

6. Monitoring. Defendant shall implement the approved monitoring plan to verify the effectiveness of the Western System in meeting the objectives of Section V.C.1. The monitoring plan shall include collection of data to demonstrate the effectiveness of the Western System in: (a) hydraulically containing groundwater contamination; (b) removing groundwater contaminants from the aquifer; and (c) complying with applicable limitations on the discharge of the purged groundwater. The monitoring program shall be continued until terminated pursuant to Section V.E.

D. Termination Of Groundwater Purge Systems Operation

1. Evergreen System. Except as otherwise provided pursuant to Section V.D.2., Defendant shall continue to operate the Evergreen System required under this Consent Judgment until six consecutive monthly tests of samples from the purge well(s) and associated monitoring well(s), including all upgradient monitoring wells in the Core Area, fail to detect the presence

of 1,4-dioxane in groundwater at a concentration which exceeds 3 ug/l.

Western System. Except as otherwise provided pursuant to Section V.D.2., Defendant shall continue to operate the Western System required under this Consent Judgment until six consecutive monthly tests of samples from the purge well(s) and associated monitoring well(s), including all upgradient monitoring wells in the Core Area, fail to detect the presence of 1,4-dioxane in groundwater at a concentration which exceeds 3 ug/l.

Core System. Except as otherwise provided pursuant to Section V.D.2, Defendant shall continue to operate the Core System required under this Consent Judgment until six consecutive monthly tests of samples from the purge well(s) and associated monitoring well(s) fail to detect the presence of 1,4-dioxane in groundwater at a concentration which exceeds 60 ug/l if the Groundwater ReInjection Alternative is selected, or 500 ug/l if Surface Water Discharge Alternative is selected.

2. The termination criteria provided in Section V.D.1. may be modified as follows:

a. At any time two years after entry of this Consent Judgment, Defendant may propose to the MDNR that the termination criteria be modified based upon either or both of the following:

i. a change in legally applicable or relevant and appropriate regulatory criteria since the entry of this Consent Judgment; for purposes of this subparagraph, "regulatory criteria" shall mean any promulgated standard criterion or limitation under federal or state environmental law specifically applicable to 1,4-dioxane; or

ii. scientific evidence newly released since the entry of this Consent Judgment, which, in combination with the existing scientific evidence, establishes that different termination criteria for 1,4-dioxane are appropriate and will assure protection of public health, safety, welfare, the environment, and natural resources.

b. Defendant shall submit any such proposal in writing, together with supporting documentation, to the MDNR for review.

c. If the Parties agree to a proposed modification, the agreement shall be made by written Stipulation filed with the Court pursuant to Section XXIV of this Judgment.

d. If MDNR disapproves the proposed modification, Defendant may invoke the Dispute Resolution procedures contained in Section XVI of this Consent Judgment. Alternatively, if MDNR disapproves a



proposed modification, Defendant and Plaintiffs may agree to resolve the dispute pursuant to subparagraph V.D.3.

3. If the parties do not agree to a proposed modification, Defendant and Plaintiffs may prepare a list of the items of difference to be submitted to a scientific advisory panel for review and recommendations. The scientific advisory panel shall be comprised of three persons with scientific expertise in the discipline(s) relevant to the items of difference. No member of the panel may be a person who has been employed or retained by either party, except persons compensated solely for providing peer review of the Hartung Report, in connection with the subject of this litigation.

a. If this procedure is invoked, each party shall, within 14 days, select one member of the panel. Those two members of the panel shall select the third member. Defendant shall, within 28 days after this procedure is invoked, establish a fund of at least \$10,000.00, from which each member of the panel shall be paid reasonable compensation for their services, including actual and necessary expenses. If the parties do not agree concerning the qualifications, eligibility, or compensation of panel members, they may invoke the Dispute Resolution procedures contained in Section XVI of this Consent Judgment.

b. Within a reasonable period of time after selection of all panel members, the panel shall confer and establish a schedule for acceptance of submissions from the parties completing review and making recommendations on the items of difference.

c. The scientific advisory panel shall make its recommendations concerning resolution of the items of difference to the parties. If both parties accept those recommendations, the termination criteria shall be modified in accordance with such recommendations. If the parties disagree with the recommendations, the MDNR's proposed resolution of the dispute shall be final unless Defendant invokes the procedures for judicial Dispute Resolution as provided in Section XVI of the Judgment. The recommendation of the scientific advisory panel and any related documents shall be submitted to the Court as part of the record to be considered by the Court in resolving the dispute.

4. Notification of Termination. At least 30 days prior to the date Defendant proposes to terminate operation of a purge well pursuant to the criteria established in subparagraph V.D.1., or a modified criterion established through subparagraph V.D.2., Defendant shall send written notice to the MDNR identifying the proposed action and the test data demonstrating compliance with the termination criterion.

5. Termination. Within 30 days after the MDNR's receipt of the notice and supporting documentation, the MDNR shall approve or disapprove the proposed termination in writing. Defendant may terminate operation of the well system(s) in question upon: (a) receipt of written notice of approval from the MDNR; or (b) receipt of notice of a final decision approving termination pursuant to dispute resolution procedures of Section XVI of the Consent Judgment.

E. Post-Termination Monitoring

1. For systems with a termination criterion of 3 ug/l, for a period of five years after cessation of operation of any purge well, Defendant shall continue monitoring of the purge well and/or associated monitoring wells, in accordance with the approved monitoring plan, to verify that the concentration of 1,4-dioxane in the groundwater does not exceed the termination criterion. If such post-termination monitoring reveals the presence of 1,4-dioxane in excess of the termination criterion, Defendant shall immediately notify the MDNR and shall collect a second sample within 14 days of such finding. If the second sample confirms the presence of 1,4-dioxane in excess of the termination criterion:

a. if the confirmed concentrations are in excess of 6 ug/l, Defendant shall restart the associated purge well system; or

b. if the confirmed concentrations are between 3 ug/l and 6 ug/l, Defendant may continue to monitor the well bi-weekly for two months without restart of the associated purge well. At the end of the monitoring period, if concentrations in the monitoring well meet the termination criterion of 3 ug/l, Defendant shall continue to monitor as required by the approved monitoring program; if concentrations do not meet the termination criterion, Defendant shall restart the associated purge well.

2. For all other groundwater systems, for a period of five years after ceasing operation of any purge well, Defendant shall continue monitoring of the purge well and/or associated monitoring wells, in accordance with the approved monitoring plan, to verify that the concentration of 1,4-dioxane in the groundwater does not exceed the termination criterion. If such post-termination monitoring reveals the presence of 1,4-dioxane in excess of the termination criterion, Defendant shall immediately notify MDNR and shall collect a second sample within 14 days of such finding. If any two consecutive samples are found at or above the termination criterion, Defendant shall immediately restart the purge well system.

VI. GSI PROPERTY REMEDIATION

Defendant shall design, install, operate, and maintain the systems described below to control, remove, and treat (as required) soil contamination at the GSI Property. The overall objective of these systems shall be to: (1) prevent the migration of 1,4-dioxane from contaminated soils into any aquifer in concentrations that cause groundwater contamination; (2) to prevent venting of groundwater contamination into Honey Creek Tributary; and (3) to prevent venting of groundwater contamination to Third Sister Lake. Defendant also shall implement a monitoring plan to verify the effectiveness of these systems.

A. Marshy Area System (hereinafter "Marshy Area System")

1. Objectives. The objectives of this System are to: (a) remove contaminated groundwater from the Marshy Area located north of former Ponds I and II; (b) reduce the migration of contaminated groundwater from the Marshy Area into other aquifers; and (c) to prevent the discharge of contaminated groundwater from the Marshy Area into the Honey Creek Tributary in concentrations in excess of 100 ug/l or in excess of a concentration which would cause groundwater contamination along or adjacent to the entire length of Honey Creek or Honey Creek Tributary.

2. Design. No later than 150 days after the effective date, Defendant shall submit its proposed design of the Marshy Area System a schedule for implementing the design, an operation and maintenance plan for the System, and an effectiveness monitoring plan to MDNR for its review and approval.

3. Treatment and Disposal. The Marshy Area System shall include: (a) facilities for the collection of contaminated groundwater (either an interceptor trench or sumps); (b) facilities for disposing of the contaminated groundwater (including disposal to local surface waters in accordance with NPDES Permit MI-008453, Defendant's deep well, or in any other manner approved by MDNR and/or the Water Resources Commission); and (c) if the water is to be discharged to the sanitary sewer for ultimate disposal at the City of Ann Arbor Wastewater Treatment Plant, treatment facilities to ensure that discharge to the sanitary sewer complies with the terms and conditions of the Industrial User's Permit authorizing such discharge, and any subsequent amendment to that Permit. The terms and conditions of the Permit and any subsequent amendment shall be directly enforceable by the MDNR against Gelman as requirements of this Consent Judgment. Use of the sanitary sewer is conditioned on approval of the City of Ann Arbor and Scio Township.

4. Installation and Operation. Upon approval by the MDNR, Defendant shall install the Marshy Area System and thereafter continuously operate and maintain the System according to the approved plans until it is authorized to shut down the System pursuant to Section VI.D. of this Consent Judgment.

5. Monitoring. Defendant shall implement the approved monitoring plan to verify the effectiveness of the Marshy Area System in meeting the requirements of this Remedial Action Consent Judgment. The monitoring plan shall be continued until terminated pursuant to Section VI.D. of this Consent Judgment.

B. Spray Irrigation Field

1. Objectives. The objectives of this program shall be to meet the overall objective of Section VI upon completion of the program and to prevent the discharge of groundwater contamination into Third Sister Lake.

2. Remedial Investigation. Defendant shall, no later than 180 days after the effective date, submit to MDNR for review and approval a work plan for determining the distribution of soil contamination in the former spray irrigation area. Soil characteristics for the area may be extrapolated from results of samples taken from representative spray head locations.



3. Soil Flushing System. Defendant shall, no later than 240 days after the effective date, submit to MDNR for review and approval a work plan for the installation of a system to flush the former spray irrigation field with clean water to enhance removal of 1,4-dioxane from contaminated soils. The work plan shall include Defendant's proposed design of the system, a time schedule for implementation of the system, an operating and maintenance plan, and effectiveness monitoring plan.

4. Structures in the Spray Field. The following structures have been constructed over portions of the former spray irrigation area: (a) the Defendant's warehouse; (b) the parking area south of the Defendant's warehouse; and (c) the parking lot between the Medical Device Division Building and the Defendant's warehouse. These structures are identified in Attachment D. With respect to these structures, during such time as they are kept in good maintenance and repair, the soils beneath such structures need not be sampled nor directly addressed in the soils systems remediation plan. In the event that the structures are not kept in good maintenance or repair, or are scheduled to be replaced or demolished, Defendant shall notify MDNR of such a circumstance, and take the following actions:



a. Defendant shall, within 21 days after notification, submit to MDNR for approval a work plan for investigating the extent of contamination (if any) of the soils beneath the structure, along with a schedule for implementation of the work plan.

b. Within 14 days after approval of the work plan by MDNR, Defendant shall implement the work plan and submit a report of the results to MDNR within the time specified in the approved schedule.

c. If soil contamination is identified in any of the areas investigated, Defendant shall submit, together with the report required in Section VI.B.4.b., a remediation plan for that area that provides for induced flushing of contaminants from the impacted soils. The plan shall include a proposed schedule for implementation. The remediation system shall be installed, operated, and terminated in accordance with the approved plan.

5. Installation, Operation, and Monitoring. Upon approval by MDNR, Defendant shall install, operate, maintain, and monitor the Spray Irrigation Field System in accordance with the approved plans and the termination criteria established in Section VI.D.

C. Soils System

1. Objectives. The objectives of this program are to: (a) evaluate the feasibility and effectiveness of available options for remediation of identified source areas; (b) design and implement remedial systems to achieve the overall objectives of Section VI; and (c) verify the effectiveness of those systems.

2. Soils Remediation Plan. Defendant shall, no later than 210 days after the effective date, submit to MDNR for review and approval a soils remediation plan for addressing identified areas of soil contamination. The areas to be addressed include the burn pit; the former Pond I area; the former Pond II area; the former Lift Station area; and Pond III. These areas are depicted on Attachment E. As part of the remediation plan, Defendant may make a demonstration that with respect to any of these areas, cleanup to a level established under Mich Adm Code R 299.5717 ("Type C") is appropriate by addressing the factors set forth in Mich Adm Code R 299.5717(3). Defendant's proposal for the preferred remedial alternative(s) to be implemented to address each area of soil contamination shall be identified in the soils remediation plan. The proposed remedial alternative(s) to be implemented must attain the overall objectives of Section VI. Based upon their review, the MDNR shall either: (a) approve Defendant's proposed remedial alternative(s); or (b) disapprove the proposed remedial

alternative(s) and select the other remedial alternative(s) to be implemented. A decision by MDNR to disapprove Defendant's remedial proposal is subject to Defendant's rights under the Dispute Resolution provisions of Section XVI of the Consent Judgment.

3. Design. Defendant shall, not later than 60 days after: (a) the MDNR's decision approving the proposed remedial alternative(s); or (b) the final decision in Dispute Resolution pursuant to Section XVI of the Consent Judgment, submit the following to the MDNR for review and approval: Defendant's proposed design of each selected remedial system, a time schedule for implementation of the system, an operating and maintenance plan, and effectiveness monitoring plan.

4. Installation, Operation, and Monitoring. Upon approval by MDNR, Defendant shall install, operate, maintain, and monitor the systems in accordance with the approved plans, and the termination criteria established in Section VI.D. of the Consent Judgment.

D. Termination Criteria for GSI Property Remediation

1. Remedial Systems Collecting or Extracting Contaminated Groundwater.

a. Except as otherwise provided pursuant to Section VI.D.3., Defendant shall continue to operate the Marshy Area System and any groundwater remediation program developed as part of the Soils System required under this Consent Judgment until six consecutive monthly tests of samples from the purge well(s) and associated monitoring well(s) fail to detect the presence of 1,4-dioxane in groundwater at a concentration at or above 500 ug/l. Notwithstanding this criterion, Defendant shall continue to operate the portions of the such systems necessary to assure that contaminated groundwater does not vent into surface waters in concentrations in excess of 100 ug/l until such time as Defendant demonstrates to Plaintiff that venting in excess of 100 ug/l is not occurring from the Marshy Areas or Soils Systems and Defendant demonstrates that venting into surface waters will not cause groundwater contamination along or adjacent to the entire length of Honey Creek or the Honey Creek Tributary. These Systems shall also be subject to the same post-shutdown monitoring and restart requirements as those Systems described in Section V.E.

b. Except as otherwise provided pursuant to Section VI.D.3., Defendant shall continue to operate the purge wells for the Spray Irrigation Field System until six consecutive monthly tests of samples from the purge well(s) fail to detect the presence of 1,4-dioxane in groundwater at a concentration at or above 500 ug/l. Notwithstanding this criterion, Defendant

shall continue to operate such purge wells as necessary to assure that contaminated groundwater does not vent into Third Sister Lake. These Systems shall also be subject to the same post-shutdown monitoring and restart requirements as those Systems described in Section V.E.

2. All Other GSI Property Remedial Systems. Except as provided in Section VI.D.3., each GSI Property Remedial System not subject to termination pursuant to Section VI.D.1. shall be operated until Defendant demonstrates, through representative soil sampling and analysis in accordance with the effectiveness monitoring plan approved by the MDNR, that the concentration of 1,4-dioxane in soils in the area in question does not exceed 60 ug/kg or other higher concentration derived by means consistent with Mich Admin Code R 299.5711(2) or R 299.5717.

3. The termination criteria provided in Section VI.D. may be modified in the same manner as specified in Sections V.D.2. and V.D.3.

4. At least 30 days prior to the date Defendant proposes to terminate operation of a system pursuant to Section VI.D., Defendant shall send a written notice to the MDNR identifying the proposed action and shall send test data demonstrating compliance with the termination criterion.



5. Within 30 days after the MDNR's receipt of the written notice and supporting documentation, the MDNR shall approve or disapprove the proposed termination in writing. Defendant may terminate operation of the system(s) in question upon: (a) receipt of written notice of approval from Plaintiffs; or (b) if the Dispute Resolution procedures of Section XVI are invoked, receipt of a final decision pursuant to that Section.

VII. COMPLIANCE WITH OTHER LAWS AND PERMITS

A. Defendant shall undertake all activities pursuant to this Consent Judgment in accordance with the requirements of all applicable laws, regulations, and permits.

B. Defendant shall apply for all permits necessary for implementation of the Consent Judgment including, without limitation, surface water discharge permit(s) and air discharge permit(s).

C. Defendant shall include in all contracts entered into by the Defendant for Remedial Action required under this Consent Judgment (and shall require that any contractor include in all subcontract(s), a provision stating that such contractors and subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with and all applicable laws, regulations, and permits. Defendant shall provide a copy of relevant approved workplans to any such contractor or subcontractor.

D. The Parties agree to provide reasonable cooperation and assistance to the Defendant in obtaining necessary approvals and permits for Remedial Action. Plaintiffs shall not unreasonably withhold or delay any required approvals or permits for Defendant's performance of the Remedial Action. Plaintiffs expressly acknowledge that one or more of the following permits and approvals may be necessary for Remedial Action:

1. NPDES Permit No. MI-008453.
2. An Air Permit for discharges of contaminants to the atmosphere for vapor extraction systems, if such systems are part of the remedial design;
3. A Wetlands Permit if necessary for construction of the Marshy Area System or the construction of facilities as part of the Core or Western Systems;
4. An Industrial User's Permit to be issued by the City of Ann Arbor for use of the sewer to dispose of treated or untreated purged groundwater. Plaintiffs have no objection to receipt by the Ann Arbor Wastewater Treatment Plant of the purged groundwater extracted pursuant to the terms and conditions of this Judgment, and acknowledge that receipt of the purged groundwater would not necessitate any change in current and proposed residual management programs of the Ann Arbor Wastewater Treatment Plant;



5. Permit(s) or permit exemptions to be issued by the Water Resources Commission to authorize the reinjection of purged and treated groundwater in the Evergreen, Core, and Western System Areas;
6. Surface water discharge permit(s) for discharge into surface waters in the Western System area, if necessary;
7. Approval of the City of Ann Arbor and the Washtenaw County Drain Commissioner to use storm drains for the remedial programs; or
8. A permit for the use of Defendant's deep well for injection of purged groundwater from the remedial systems required under this Consent Judgment.

VIII. SAMPLING AND ANALYSIS

Defendant shall make available to Plaintiffs the results of all sampling, tests, and/or other data generated in the performance or monitoring of any requirement under this Consent Judgment. Sampling data generated consistent with this Consent Judgment shall be admissible in evidence in any proceeding related to enforcement of this Judgment without waiver by any Party of any objection as to weight or relevance. Plaintiffs and/or their authorized representatives, at their discretion, may

take split or duplicate samples and observe the sampling event. Plaintiffs shall make available to Defendant the results of all sampling, tests, and/or other data generated in the performance or monitoring of any requirement under this Consent Judgment. Defendant will provide Plaintiffs with reasonable notice of changes in the schedule of data collection activities included in the progress reports submitted pursuant to Section XII.

IX. ACCESS

A. From the effective date of this Consent Judgment, the Plaintiffs, their authorized employees, agents, representatives, contractors, and consultants, upon presentation of proper identification, shall have the right at all reasonable times to enter the Site and any property to which access is required for the implementation of this Consent Judgment, to the extent access to the property is owned, controlled by, or available to the Defendant, for the purpose of conducting any activity authorized by this Consent Judgment, including, but not limited to:

1. Monitoring of the Remedial Action or any other activities taking place pursuant to this Consent Judgment on the property;
2. Verification of any data or information submitted to the Plaintiffs;



3. Conduct of investigations related to contamination at the Site;
4. Collection of samples;
5. Assessment of the need for, or planning and implementing of, Response Actions at the Site; and
6. Inspection and copying of non-privileged documents including records, operating logs, contracts, or other documents required to assess Defendant's compliance with this Consent Judgment.

All Parties with access to the Site or other property pursuant to this paragraph shall comply with all applicable health and safety laws and regulations.

B. To the extent that the Site or any other area where Remedial Action is to be performed by the Defendant under this Consent Judgment is owned or controlled by persons other than the Defendant, Defendant shall use its best efforts to secure from such persons access for Defendant, Plaintiffs, and their authorized employees, agents, representatives, contractors, and consultants. Defendant shall provide Plaintiffs with a copy of each access agreement secured pursuant to this paragraph. For purposes of this Paragraph, "best efforts" includes, but is not limited to, seeking judicial assistance to secure such access. If access is not obtained within 30 days after the MDNR approves any work plan or design for which such access is necessary,

Defendant shall notify the Plaintiffs promptly. Plaintiffs thereafter shall assist Defendant in obtaining access. Plaintiffs agree to use appropriate authority available under state law, including authority provided under the Michigan Environmental Response Act, as amended, MCL 229.601 et seq, to obtain access to property on behalf of themselves and Defendant for the purpose of implementing Remedial Action under this Consent Judgment.

X. APPROVALS OF SUBMISSIONS

Upon receipt of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Judgment, as soon as practicable, but in no event later than 56 days after receipt of any such submission, the Plaintiffs will: (1) approve the submission; or (2) submit to Defendant changes in the submission that would result in approval of the submission. If Plaintiffs do not respond within 56 days after receipt of the submittal, Defendant may submit the matter to Dispute Resolution pursuant to Section XVI. Upon receipt of a notice of approval or changes from Plaintiffs, Defendant shall proceed to take any action required by the plan, report, or other item, as approved or as may be modified to address the deficiencies identified by Plaintiffs. If Defendant does not accept the changes proposed by Plaintiffs, Defendant may submit the matter to Dispute Resolution, Section XVI.

XI. PROJECT COORDINATORS

A. Plaintiffs designate Leonard Lipinski as Plaintiffs' Project Coordinator. Defendant designates James Fahrner, Vice President and Chief Financial Officer, as Defendant's Project Coordinator. Defendant's Project Coordinator shall have primary responsibility for implementation of the Remedial Action at the Site. Plaintiffs' Project Coordinator will be the primary designated representative for Plaintiffs with respect to implementation of the Remedial Action at the Site. All communication between Defendant and Plaintiffs, including all documents, reports, approvals, other submissions and correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Judgment, shall be directed through the Project Coordinators. If any Party changes its designated Project Coordinator, that Party shall provide the name, address, and telephone number of the successor in writing to the other Party seven days prior to the date on which the change is to be effective. This paragraph does not relieve Defendant from other reporting obligations under the law.

B. Plaintiffs may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Judgment. Plaintiffs' Project Coordinator shall provide Defendant's Project Coordinator

with the names, addresses, telephone numbers, positions, and responsibilities of any person designated pursuant to this section.

XII. PROGRESS REPORTS

Defendant shall provide to Plaintiffs written quarterly progress reports that shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Judgment during the previous three months; (2) describe data collection and activities scheduled for the next three months; and (3) include all results of sampling and tests and other data received by the Defendant, its consultants, engineers, or agents during the previous three months relating to Remedial Action performed pursuant to this Consent Judgment. Defendant shall submit the first quarterly report to MDNR within 120 days after entry of this Consent Judgment, and by the 30th day of the month following each quarterly period thereafter, as feasible, until termination of this Consent Judgment as provided in Section XXV.

XIII. RESTRICTIONS ON ALIENATION

A. Defendant shall not sell, lease, or alienate the GSI Property unless the purchaser, lessee, or grantee provides prior written agreement with Plaintiffs that the purchaser, lessee, or grantee will not interfere with any term or condition of this

Consent Judgment. Notwithstanding any purchase, lease, or grant, Defendant shall remain obligated to comply with all terms and conditions of this Consent Judgment.

B. Any deed, title, or other instrument of conveyance regarding the GSI Property shall contain a notice that Defendant's Property is the subject of this Consent Judgment, setting forth the caption of the case, the case number, and the court having jurisdiction herein.

XIV. FORCE MAJEURE

Any delay attributable to a Force Majeure shall not be deemed a violation of Defendant's obligations under this Consent Judgment.

A. "Force Majeure" is defined as an occurrence or nonoccurrence arising from causes beyond the control of Defendant or of any entity controlled by the Defendant performing Remedial Action, such as Defendant's employees, contractors, and subcontractors. Such occurrence or nonoccurrence includes, but is not limited to: (1) an Act of God; (2) untimely review of permit applications or submissions; (3) acts or omissions of third parties for which Defendant is not responsible; (4) insolvency of any vendor, contractor, or subcontractor retained by Defendant as part of implementation of this Judgment; and (5) delay in obtaining necessary access agreements under Section IX

that could not have been avoided or overcome by due diligence. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, or nonattainment of the treatment and termination standards set forth in Sections V and VI.

B. 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 those 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 overcome the delay, and the timetable for implementation of such measures. Failure of Defendant to comply with the written notice provisions of this paragraph shall constitute a waiver of Defendant's right to assert a claim of Force Majeure with respect to the circumstances in question.

C. A determination by the MDNR that an event does not constitute Majeure, that a delay was not caused by Force, or that the period of delay was not necessary to compensate for Force Majeure may be subject to Dispute Resolution under Section XVI of this Judgment.

D. The MDNR shall respond, in writing, to any request by Defendant for a Force Majeure extension within 30 days of receipt of the Defendant's request. If the MDNR does not respond within that time period, Defendant's request shall be deemed granted. If the MDNR agrees that a delay is or was caused by Force Majeure, Defendant's delays shall be excused, stipulated penalties shall not accrue, and the MDNR shall provide Defendant such additional time as may be necessary to compensate for the Force Majeure event.

E. Delay in achievement of any obligation established by the Consent Judgment shall not automatically justify or excuse delay in achievement of any subsequent obligation unless the subsequent obligation automatically follows from the delayed obligation.

XV. REVOCATION OR MODIFICATION OF LICENSES OR PERMITS

Any delay attributable to the revocation or modification of licenses or permits obtained by Defendant to implement remediation actions as set forth in this Consent Judgment shall not be deemed a violation of Defendant's obligations under this Consent Judgment, provided that such revocation or modification arises from causes beyond the control of Defendant or of any entity controlled by the Defendant performing Remedial Action, such as Defendant's employees, contractors, and subcontractors.

A. Licenses or permits that may need to be obtained or modified by Defendant to implement the Remedial Actions are those specified in Section VII.D. and licenses, easements, and other agreements for access to property or rights of way on property necessary for the installation of remedial systems required by this Consent Judgment.

B. A revocation or modification of a license or permit within the meaning of this section means withdrawal of permission, denial of permission, a limitation or a change in license or permit conditions that delays the implementation of all or part of a remedial system. Revocation or modification due to Defendant's violation of a license or permit (or any conditions of a license or permit) shall not constitute a revocation or modification covered by this section.

C. When circumstances occur that Defendant believes constitute revocation or modification of a license or permit, Defendant shall notify the MDNR by telephone of the circumstances within 48 hours after Defendant first believes those 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 overcome the delay, and the

timetable for implementation of such measures. Failure of Defendant to comply with the written notice provisions of this paragraph shall constitute a waiver of Defendant's right to assert a claim of revocation or modification of a license or permit with respect to the circumstances in question.

D. A determination by the MDNR that an event does not constitute revocation or modification of a license or permit, that a delay was not caused by revocation or modification of a license or permit, or that the period of delay was not necessary to compensate for revocation or modification of a license or permit may be subject to Dispute Resolution under Section XVI of this Consent Judgment.

E. The MDNR shall respond, in writing, to any request by Defendant for a revocation or modification of a license or permit extension within 30 days of receipt of the Defendant's request. If the MDNR does not respond within that time period, Defendant's request shall be deemed granted. If the MDNR agrees that a delay is or was caused by revocation or modification of a license or permit, Defendant's delays shall be excused, stipulated penalties shall not accrue, and the MDNR shall provide Defendant such additional time as may be necessary to compensate for the revocation or modification of a license or permit.

F. Delay in achievement of any obligation established by the Consent Judgment shall not automatically justify or excuse delay in achievement of any subsequent obligation unless the subsequent obligation automatically follows from the delayed obligation.

XVI. DISPUTE RESOLUTION

A. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Judgment and shall apply to all provisions of this Consent Judgment, whether or not particular provisions of the Consent Judgment in question make reference to the dispute resolution provisions of this Section. Any dispute that arises under this Consent Judgment initially shall be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed ten working days from the date of written notice by any Party that a dispute has arisen. This period may be extended or shortened by agreement of the Parties.

B. Immediately upon expiration of the informal negotiation period (or sooner if upon agreement of the parties), the MDNR shall provide to Defendant a written statement setting forth the MDNR's proposed resolution of the dispute. Such resolution shall be final unless, within 15 days after receipt of the MDNR's proposed resolution (clearly identified as such

under this Section), Defendant files a petition for resolution with the Washtenaw County Circuit Court setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Judgment.

C. Within ten days of the filing of the petition, Plaintiffs may file a response to the petition, and unless a dispute arises from the alleged failure of MDNR to timely make a decision, MDNR will submit to the Court all documents containing information related to the matters in dispute, including documents provided to MDNR by Defendant. In the event of a dispute arising from the alleged failure of MDNR to timely make a decision, within ten days of filing of the petition, each party shall submit to the Court correspondence, reports, affidavits, maps, diagrams, and other documents setting forth facts pertaining to the matters in dispute. Those documents and this Consent Judgment shall comprise the record upon which the Court shall resolve the dispute. Additional evidence may be taken by the Court on its own motion or at the request of either party if the Court finds that the record is incomplete or inadequate. Review of the petition shall be conducted by the Court and shall be confined to the record. The review shall be independent of any factual or legal conclusions made by the Court prior to the date of entry of the Consent Judgment.

D. The Court shall uphold the decision of MDNR on the issue in dispute unless the Court determines that the decision is any of the following:

1. Inconsistent with this Consent Judgment;
2. Not supported by competent, material, and substantial evidence on the whole record;
3. Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion; and
4. Affected by other substantial and material error of law;

E. The filing of a petition for resolution of a dispute shall not by itself extend or postpone any obligation of Defendant under this Consent Judgment, provided, however, that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue as provided in Section XVII. Stipulated penalties that have accrued with respect to the matter in dispute shall not be assessed by the Court and shall be dissolved if Defendant prevails on the matter. The Court may also direct that stipulated penalties shall not be assessed and paid as provided in Section XVII upon a determination that there was a substantial basis for Defendant's position on the disputed matter.

XVII. STIPULATED PENALTIES

A. Except as otherwise provided, if Defendant fails or refuses to comply with any term or condition in Sections IV, V, VI, VII, or VIII, or with any plan, requirement, or schedule established pursuant to those Sections, then Defendant shall pay stipulated penalties in the following amounts for each working day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th Day	\$ 1,000
15th through 30th Day	\$ 1,500
Beyond 30 Days	\$ 2,000

B. Except as otherwise provided if Defendant fails or refuses to comply with any other term or condition of this Consent Judgment, Defendant shall pay to Plaintiffs stipulated penalties of \$500.00 per working day for each and every failure to comply.

C. If Defendant is in violation of this Consent Judgment, Defendant shall notify Plaintiffs of any violation no later than five working days after first becoming aware of such violation, and shall describe the violation.

D. Stipulated penalties shall begin to accrue upon the next day after performance was due or other failure or refusal to comply occurred. Penalties shall continue to accrue until the final day of correction of the noncompliance. Separate penalties

shall accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Judgment. Penalties may be waived in whole or in part by Plaintiffs or may be dissolved by the Court pursuant to Section XVII.

E. Stipulated penalties shall be paid no later than 14 working days after receipt by Defendant of a written demand from Plaintiffs. Defendant shall make payment by transmitting a check in the amount due, payable to the "State of Michigan", addressed to the Assistant Attorney General in Charge, Environmental Protection Division, P.O. Box 30212, Lansing, Michigan 48909.

F. Plaintiffs agree that, in the event that an act or omission of Defendant constitutes a violation of this Consent Judgment subject to stipulated penalties and a violation of other applicable law, Plaintiffs will not impose upon Defendant for that violation both the stipulated penalties provided under this Consent Judgment and the civil penalties permitted under other applicable laws. Plaintiffs reserve the right to pursue any other remedy or remedies to which they may be entitled under this Consent Judgment or any applicable law for any failure or refusal of the Defendant to comply with the requirements of this Consent Judgment.

XVIII. PLAINTIFFS' COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

A. Except as otherwise provided in this Consent Judgment, Plaintiffs covenant not to sue or take administrative action for Covered Matters against Defendant, its officers, employees, agents, directors, and any persons acting on its behalf or under its control.

B. "Covered Matters" shall mean any and all claims available to Plaintiffs under federal and state law arising out of the subject matter of the Plaintiffs' Complaint with respect to the following:

1. Claims for injunctive relief to address soil, groundwater, and surface water contamination at or emanating from the GSI Property;
2. Claims for civil penalties and costs;
3. Claims for natural resource damages;
4. Claims for reimbursement of response costs incurred prior to entry of this Consent Judgment or incurred by Plaintiffs for provision of alternative water supplies in the Evergreen Subdivision; and
5. Claims for reimbursement of costs incurred by Plaintiffs for overseeing the implementation of this Consent Judgment.

C. "Covered Matters" does not include:

1. Claims based upon a failure by Defendant to comply with the requirements of this Consent Judgment;
2. Liability for violations of federal or state law which occur during implementation of the Remedial Action; and
3. Liability arising from the disposal, treatment, or handling of any hazardous substance removed from the Site.

D. With respect to liability for alleged past violations of law, this covenant not to sue shall take effect on the effective date of this Consent Judgment. With respect to future liability for performance of response activities required to be performed under this Consent Judgment, the covenant not to sue shall take effect upon issuance by MDNR of the Certificate of Completion in accordance with Section XXV.

E. Notwithstanding any other provision in this Consent Judgment: (1) Plaintiffs reserve the right to institute proceedings in this action or in a new action seeking to require Defendant to perform any additional response activity at the Site; and (2) Plaintiffs reserve the right to institute proceedings in this action or in a new action seeking to reimburse Plaintiffs for response costs incurred by the State of Michigan relating to the Site. Plaintiffs' rights in D.1. and D.2. apply if and only

if the following conditions are met:

1. For proceedings prior to Plaintiffs' certification of completion of the Remedial Action concerning the Site,
 - a. conditions at the Site, previously unknown to the Plaintiffs, are discovered after the entry of this Consent Judgment, or new information previously unknown to Plaintiffs is received after the effective date of the Consent Judgment; and
 - b. these previously unknown conditions indicate that the Remedial Action is not protective of the public health, safety, welfare, and the environment; and
2. For proceedings subsequent to Plaintiffs' certification of completion of the Remedial Action concerning the Site,
 - a. conditions at the Site, previously unknown to the Plaintiffs, are discovered or new information previously unknown to Plaintiffs is received after the certification of completion by Plaintiffs; and

b. these previously unknown conditions indicate that the remedial action is not protective of the public health, safety, welfare, and the environment.

F. Nothing in this Consent Judgment shall in any manner restrict or limit the nature or scope of response actions that may be taken by Plaintiffs in fulfilling their responsibilities under federal and state law, and this Consent Judgment does not release, waive, limit, or impair in any manner the claims, rights, remedies, or defenses of Plaintiffs against a person or entity not a party to this Consent Judgment.

G. Except as expressly provided in this Consent Judgment, Plaintiffs reserve all other rights and defenses that they may have, and this Consent Judgment is without prejudice, and shall not be construed to waive, estop, or otherwise diminish Plaintiffs' right to seek other relief with respect to all matters other than Covered Matters.

XIX. DEFENDANT'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

A. Defendant hereby covenants not to sue and agrees not to assert any claim or cause of action against Plaintiffs or any other agency of the State of Michigan with respect to environmental contamination at the Site or response activities relating to the Site arising from this Consent Judgment.



B. Notwithstanding any other provision in this Consent Judgment, for matters that are not Covered Matters as defined in Section XVIII.E., or in the event that Plaintiffs institute proceedings as allowed under Section XVIII.E., Defendant reserves all other rights, defenses, or counterclaims that it may have with respect to such matters and this Consent Judgment is without prejudice, and shall not be construed to waive, estop, or otherwise diminish Defendant's right to seek other relief and to assert any other rights and defenses with respect to such other matters.

C. Nothing in this Consent Judgment shall in any way impair Defendant's rights, claims, or defenses with respect to any person not a party to this Consent Judgment.

XX. INDEMNIFICATION AND INSURANCE

A. Defendant shall indemnify and save and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives from any and all claims or causes of action arising from, or on account of, acts or omissions of Defendant, its officers, employees, agents, and any persons acting on its behalf or under its control in carrying out Remedial Action pursuant to this Consent Judgment. Plaintiffs shall not be held out as a party to any contract entered into by or on behalf of Defendant in carrying out

activities pursuant to this Consent Judgment. Neither the Defendant nor any contractor shall be considered an agent of Plaintiffs. Defendant shall not indemnify or save and hold harmless Plaintiffs from their own negligence pursuant to this paragraph.

B. Prior to commencing any Remedial Action on the Gelman Property, Defendant shall secure, and shall maintain for the duration of the Remedial Action, comprehensive general liability insurance with limits of \$1,000,000.00, combined single limit, naming as an additional insured the State of Michigan. If Defendant demonstrates by evidence satisfactory to Plaintiffs that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor, Defendant need provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor.

XXI. RECORD RETENTION

Defendant, Plaintiffs, and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Judgment and for a period of ten years after its termination, all records, sampling or test results, charts, and other documents that are maintained or

generated pursuant to any requirement of this Consent Judgment, including, but not limited to, documents reflecting the results of any sampling or tests or other data or information generated or acquired by Plaintiffs or Defendant, or on their behalf, with respect to the implementation of this Consent Judgment. After the ten year period of document retention, the Defendant and its successors shall notify Plaintiffs, in writing, at least 90 days prior to the destruction of such documents or records, and upon request, the Defendant and/or its successor shall relinquish custody of all records and documents to Plaintiffs.

XXII. ACCESS TO INFORMATION

Upon request, Plaintiffs and Defendant shall provide to the requesting Party copies of or access to all nonprivileged documents and information within their possession and/or control or that of their employees, contractors, agents, or representatives, relating to activities at the Site or to the implementation of this Consent Judgment, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Remedial Action. Upon request, Defendant shall also make available to Plaintiffs, their employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of the Remedial Action. The

Plaintiffs shall treat as confidential all documents provided to Plaintiffs by the Defendant marked "confidential" or "proprietary."

XXIII. NOTICES

Whenever under the terms of this Consent Judgment notice is required to be given or a report, sampling data, analysis, or other document is required to be forwarded by one Party to the other, such notice or document shall be directed to the following individuals at the specified addresses or at such other address as may subsequently be designated in writing:

For Plaintiffs:

Leonard Lipinski
Project Manager
Michigan Department
of Natural Resources
Environmental Response Division
301 East Louis Glick Highway
Jackson, MI 49201

For Defendants:

James Fahrner
Vice President
Gelman Sciences, Inc.
600 South Wagner Road
Ann Arbor, MI 48106

and

David H. Fink
Cooper, Fink & Zausmer, P.C.
31700 Middlebelt Road
Suite 150
Farmington Hills, MI 48334

Any party may substitute for those designated to receive such notices by providing prior written notice to the other parties.

XXIV. MODIFICATION

This Consent Judgment may not be modified unless such modification is in writing, signed by all Parties, and approved and entered by the Court. Remedial Plans, work plans, or other submissions made pursuant to this Consent Judgment may be modified by mutual agreement of the Parties.

XXV. CERTIFICATION AND TERMINATION

A. When Defendant determines that it has completed all Remedial Action required by this Consent Judgment, Defendant shall submit to the MDNR a Notification of Completion and a draft final report. The draft final report must summarize all Remedial Action performed under this Consent Judgment and the performance levels achieved. The draft final report shall include or refer to any supporting documentation.

B. Upon receipt of the Notification of Completion, the MDNR will review the Notification of Completion and the accompanying draft final report, any supporting documentation, and the actual Remedial Action performed pursuant to this Consent Judgment. After conducting this review, and not later than three months after receipt of the Notification of Completion, the MDNR shall issue a Certificate of Completion upon a determination by the MDNR that Defendant has completed satisfactorily all requirements of this Consent Decree, including, but not limited

to, completion of all Remedial Action, achievement of all termination and treatment standards required by this Consent Judgment, compliance with all terms and conditions of this Consent Judgment, and payment of any and all stipulated penalties owed to Plaintiffs. If the MDNR does not respond to the Notification of Completion within three months after receipt of the Notification of Completion, Defendant may submit the matter to Dispute Resolution pursuant to Section XVI. This Consent Judgment shall terminate upon motion and order of this Court after issuance of the Certificate of Completion. Upon issuance, the Certificate of Completion may be recorded.

XXVI. RELATED SETTLEMENT

The Parties' agreement to be bound by this Consent Judgment is contingent upon the stipulation by the Parties to, and the entry by the Court of, the proposed Consent Judgment in the related case State of Michigan v Gelman Sciences, Inc. (E.D. Mich. No. 90-CV-72946-DT), a copy of which is attached hereto as Attachment F. In the event that the related Consent Judgment in Michigan v Gelman Sciences, Inc. is not entered, this Consent Judgment shall be without force and effect.

XXVII. EFFECTIVE DATE

The effective date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XXVIII. SEVERABILITY

The provisions of this Consent Judgment shall be severable. Should any provision be declared by a court of competent jurisdiction to be inconsistent with federal or state law, and therefore unenforceable, the remaining provisions of this Consent Judgment shall remain in full force and effect.

XXIX. SIGNATORIES

Each undersigned representative of a Party to this Consent Judgment certifies that he or she is fully authorized by the Party to enter into this Consent Judgment and to legally bind such Party to the respective terms and conditions of this Consent Judgment.

IT IS SO STIPULATED AND AGREED:

PLAINTIFFS

FRANK J. KELLEY
Attorney General for
the State of Michigan
Attorney for Plaintiffs

Robert P. Reichel

A. Michael Leffler (P24254)
Robert P. Reichel (P31878)
Assistant Attorneys General
Environmental Protection Division
P.O. Box 30212
Lansing, MI 48909
Telephone: (517) 373-7780

Dated: 10/23/92

DEFENDANT

Charles H. Gelman

GELMAN SCIENCES, INC.

Approved as to form:
Cooper, Fink & Zausmer, P.C.
Attorneys for Defendant
Gelman Sciences, Inc.

[Signature]

David H. Fink (P28235)
Alan D. Wasserman (P39509)
Thomas A. Biscup (P40380)
Cooper, Fink & Zausmer, P.C.
31700 Middlebelt Road
Suite 150
Farmington Hills, MI 48334

Dated: 10/16/92

IT IS SO ORDERED AND ADJUDGED this _____ day of
OCT 26 1992, 1992.

Patrick J. Conlin
19 12/1/92

HONORABLE PATRICK J. CONLIN
Circuit Court Judge

A TRUE COPY
Robert P. ...
ATTORNEY AT LAW