

ATTORNEY GENERAL, et al v GELMAN SCIENCES, INC.

(Washtenaw County Circuit Court No. 88-34734-CE)

# ATTACHMENT I

UNITED STATES DISTRICT COU.  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THE STATE OF MICHIGAN,

Plaintiff,

v.

GELMAN SCIENCES, INC.,  
a Michigan Corporation,

Defendant.

File No. 90-CV-72946-DT

HONORABLE NANCY G. EDMUNDS

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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  
Attorneys for Plaintiff

David H. Fink (P28235)  
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31700 Middlebelt Road  
Suite 150  
Farmington Hills, MI 48018  
Telephone: (313) 851-4111  
Attorneys for Defendant

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CONSENT JUDGMENT

The Parties enter into this Consent Judgment in recognition of and with the intention of furthering the public interest by resolving the claims for recovery of response costs asserted in the Plaintiff's Complaint without further litigation concerning the 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 Plaintiff, the State of Michigan ("State"), through the Michigan Department of Natural Resources ("MDNR"), has identified the property owned and operated by Defendant Gelman Sciences, Inc. ("Gelman") at 600 South Wagner Road, Scio Township, Michigan, as a site of environmental contamination. The State, through the MDNR and the Michigan Department of Public Health ("MDPH"), has taken and is continuing to take various response activities to address the release and threatened release of hazardous substances from the Gelman Facility into soils, groundwaters, and surface waters. The response activities include, but are not limited to, investigating the origin, nature, and extent of the releases of hazardous substances, providing temporary and permanent replacement drinking water supplies, and taking enforcement actions.

In its Complaint, Plaintiff alleged that Defendant was liable for costs of response activity incurred by the State pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq. Defendant denied certain allegations in the Complaint and asserted various defenses.

By its Order entered January 6, 1992, this Court granted Plaintiff's Motion for Partial Summary Judgment as to Defendant's liability.

The execution of this Consent Judgment by Defendant is neither an admission of liability with respect to any issue dealt with in this Consent Judgment nor is it an admission or denial of any factual allegation or legal conclusion stated or implied herein.

The Parties agree, and the Court by entering this Consent Judgment finds, that the terms and conditions of the Judgment are reasonable, consistent with CERCLA, and properly protect the public interest.

NOW, THEREFORE, before the taking of any testimony, and upon the consent of the Parties, by their attorneys, it is hereby ORDER, ADJUDGED, AND DECREED:

#### I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §9613 and 28 U.S.C. §1331. This Court also has personal jurisdiction over the Defendant.

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

## II. PARTIES BOUND

3. This Consent Judgment shall apply to and be binding upon Plaintiff and Defendant and their respective successors and assigns.

## III. DEFENDANT

4. "Consent Judgment" or "Judgment" means this Consent Judgment and any appendix hereto.

5. "Defendant" means Gelman Sciences, Inc.

6. "Evergreen Subdivision Area" means the residential subdivision generally located north of I-94 and between Wagner and Maple Roads in Washtenaw County, Michigan, bounded on the west by Rose Street, on the north by Dexter Road, and on the south and east by Valley Drive.

7. "Gelman" or "GSI" means Gelman Sciences, Inc.

8. "Gelman Property" means the real property described in Appendix A [legal description] currently owned and operated by GSI in Scio Township, Michigan.

9. "MDNR" means the Michigan Department of Natural Resources.

10. "PH" means the Michigan Department of Public Health.

11. "Parties" means Plaintiff and Defendant.

12. "Plaintiff" means the State of Michigan.

13. All other terms used in this Consent Judgment which are defined in CERCLA, 42 U.S.C. §9601 et seq, shall have the same meaning in this Consent Judgment as in CERCLA.

IV. ENTRY OF JUDGMENT FOR AND PAYMENT OF RESPONSE COSTS

14. Judgment is entered in favor of Plaintiff and against Defendant in the amount of one million one hundred thousand dollars (\$1,100,000). Defendant shall pay that amount, together with interest at the rate of seven and one-half percent (7.5%), compounded annually, according to the schedule specified in paragraph 15, to be deposited in the Environmental Response Fund of the State.

15. Defendant shall pay the amount specified in paragraph 14 according to the following schedule:

(a) One hundred twenty-five thousand dollars (\$125,000) shall be paid not later than thirty (30) days after the effective date of this Judgment.

(b) One hundred twenty-five thousand dollars (\$125,000) shall be paid not later than one (1) year after the effective date of this Judgment.

(c) One hundred six thousand two hundred fifty dollars (\$106,250) shall be paid not later than each of the second through ninth anniversaries of the effective date of this Judgment.

(d) An amount equal to the total accumulated interest on this Judgment, as provided in paragraph 14, shall be paid not later than ten (10) years after the effective date of this Judgment.

16. In the event that Defendant fails to timely pay any of the amounts due under this Judgment, as specified in paragraph 15, Defendant shall pay to Plaintiff a stipulated penalty of one thousand dollars (\$1,000) per day for each day that any required payment is overdue.

17. All payments shall be made by certified check, payable to the "State of Michigan" and shall be sent to:

Assistant Attorney General In Charge  
Environmental Protection Division  
P.O. Box 30212  
Lansing, MI 48909

The check or transmittal letter shall refer to Michigan v Gelman Sciences, Inc.

V. PLAINTIFF'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

18. In consideration of the entry of the Judgment referred to in paragraph 14, Plaintiff covenants not to sue or take any other civil judicial or administrative action against Defendant, other than enforcing the Judgment set forth herein, for Covered Matters.

19. For purposes of this Consent Judgment, "Covered Matters" shall mean any and all claims available to Plaintiff under CERCLA, 42 U.S.C. §9601 et seq, arising out of the subject matter of the Plaintiff's Complaint with respect to the following:

(a) Claims for reimbursement of response costs incurred by Plaintiff prior to entry of this Consent Judgment.

(b) Claims for reimbursement of response costs incurred by Plaintiff for provision of replacement water supplies in the Evergreen Subdivision.

(c) Claims for reimbursement of costs incurred by Plaintiff for overseeing the implementation of remedial action by Defendant, provided that such remedial action is carried out in accordance with the terms of a judicially-approved settlement in the related action, Frank J. Kelley, et al v Gelman Sciences, Inc. (Washtenaw County Circuit Court No. 88-34734-CE).

(d) Claims for natural resource damages, provided that Defendant satisfactorily completes a program of remedial action in accordance with the terms of a judicially-approved



settlement of the related action, Frank J. Kelley, et al v Gelman Sciences, Inc. (Washtenaw County Circuit Court No. 88-34734-CE).

20. The Plaintiff expressly reserves, and this Consent Judgment shall be without prejudice to, any claims that the Plaintiff may have other than for Covered Matters. "Covered Matters" shall, without limitation, not include any of the following:

(a) Claims based upon a failure by Defendant to comply with the requirements of this Consent Judgment.

(b) Claims for reimbursement of response costs incurred by Plaintiff other than those specified in paragraph 19.

21. Notwithstanding any other provision in this Consent Judgment, (1) Plaintiff reserves the right to institute proceedings or to issue an administrative order seeking to require Defendant to perform any additional response activity at the Site; and (2) Plaintiff reserves the right to institute proceedings in this action or in a new action seeking to reimburse Plaintiff for response costs incurred by the State of Michigan relating to the Site. Plaintiff's rights in 21(1) and 21(2) apply if and only if the following conditions are met:

(a) For proceedings prior to Plaintiff's certification of completion of the remedial action concerning the Site,

- (i) conditions at the Site previously unknown to Plaintiff, are discovered after the entry of this Consent Judgment or new information previously unknown to Plaintiff is received after the effective date of this Consent Judgment;
- (ii) these previously unknown conditions or this new information, together with any other relevant information, indicate that the remedial action is not protective of the public health, safety, welfare, and the environment; and

(b) For proceedings subsequent to Plaintiff's certification of completion of the remedial action concerning the Site,

- (i) conditions at the Site, previously unknown to Plaintiff, are discovered after the certification by Plaintiff or new information previously unknown to Plaintiff is received after the certification of completion by Plaintiff, and
- (ii) these previously unknown conditions or this new information, together with any other relevant information, indicate that the remedial action is not protective of

the public health, safety, welfare, and  
the environment.

22. Nothing in this Consent Judgment shall in any manner restrict or limit the nature or scope of response actions that may be taken by Plaintiff in fulfilling its 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 Plaintiff against a person or entity not a party to this Consent Judgment.

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

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

24. Defendant hereby covenants not to sue and agrees not to assert any claim or cause of action against Plaintiff with respect to the subject matter of Plaintiff's Complaint.

25. Except as expressly provided in this Consent Judgment, Defendant reserves all other rights and defenses that it may have, and this Consent Judgment is without prejudice to,

and shall not be construed to waive, estop, or otherwise diminish Defendant's right to seek other relief and to assert any and all other rights and defenses with respect to all matters other than Covered Matters.

#### VII. CONTRIBUTION PROTECTION

26. Pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), Defendant shall not be liable for claims for contribution regarding Covered Matters.

#### VIII. NOTICES

27. Whenever, for purposes of this Consent Judgment, a notice is required to be given, or other document is required to be forwarded by one party to the other, such correspondence shall, unless specified otherwise in this Consent Judgment, be directed to the following individuals at the specified addresses or at such other addresses as may subsequently be designated in writing:

For the Plaintiff:

Assistant Attorney General In Charge  
Environmental Protection Division  
P.O. Box 30212  
Lansing, MI 48909

-and-

Chief, Compliance and Enforcement Section  
Environmental Response Division  
Michigan Department of Natural Resources  
P.O. Box 30028  
Lansing, MI 48909

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

For the Defendant

David H. Fink  
Cooper, Fink & Zausmer, P.C.  
31700 Middlebelt Road  
Suite 150  
Farmington Hills, MI 48018

-and-

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

IX. TERMINATION

28. The Court shall retain jurisdiction to enforce the provisions of this Consent Judgment.

29. This Consent Judgment shall be terminated upon the written certification by Plaintiff that Defendant has fully satisfied its obligations under this Judgment.

X. EFFECTIVE DATE

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

IT IS SO STIPULATED AND AGREED:

FOR THE STATE OF MICHIGAN

FRANK J. KELLEY  
Attorney General  
Attorneys for Plaintiff

A. Michael Leffler  
Assistant Attorney General  
In Charge

By: \_\_\_\_\_

Robert P. Reichel (P31878)  
Assistant Attorney General  
Environmental Protection  
P.O. Box 30212  
Lansing, MI 48909  
Telephone: (517) 373-7780

Dated: \_\_\_\_\_

FOR GELMAN SCIENCES, INC.

By: \_\_\_\_\_

Charles Gelman  
Chairman, President, and  
Chief Executive Officer

Dated: \_\_\_\_\_

Approved as to form:

COOPER, FINK & ZAUSMER, P.C.  
Attorneys for Defendant

By: \_\_\_\_\_

David H. Fink (P28235)  
Alan D. Wasserman (P39509)  
31700 Middlebelt Road  
Suite 150  
Farmington Hills, MI 48334  
Telephone: (313) 851-4111

Dated: \_\_\_\_\_

IT IS SO ORDERED, ADJUDGED, AND DECIDED:

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Honorable Nancy G. Edmunds  
United States District Court Judge

Dated: \_\_\_\_\_  
js/rpr6/gcj