STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE OF MICHIGAN *ex rel.* MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT,

Plaintiff,

and

THE CITY OF ANN ARBOR,

Intervenor,

and

WASHTENAW COUNTY,

Intervenor,

and

THE WASHTENAW COUNTY HEALTH DEPARTMENT,

Intervenor,

and

WASHTENAW COUNTY HEALTH OFFICER, JIMENA LOVELUCK,

Intervenor,

and

THE HURON RIVER WATERSHED COUNCIL,

Intervenor,

and

SCIO TOWNSHIP,

Intervenor,

v

GELMAN SCIENCES, INC., a Michigan Corporation,

Defendant.

/

Case No. 88-34734-CE

Hon. Timothy P. Connors

GELMAN SCIENCES, INC.'S MOTION FOR RECONSIDERATION OF ORDER SCHEDULING HEARING ON MODIFICATION OF CONSENT AGREEMENT AND BRIEF IN SUPPORT

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GELMAN SCIENCES, INC.'S MOTION FOR RECONSIDERATION OF ORDER SCHEDULING HEARING ON MODIFICATION OF CONSENT AGREEMENT

Defendant Gelman Sciences, Inc. ("Gelman") hereby respectfully moves the Court pursuant to MCR 2.119(F) to reconsider and vacate its Fourth Amended Scheduling Order dated January 27, 2021 (Exhibit 1). In support of this Motion, Gelman relies on the accompanying Brief. Pursuant to MCR 2.119(F)(2), no response to the Motion may be filed, and there is no oral argument, unless the Court otherwise directs.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Michael L. Caldwell

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Dated: January 28, 2021

BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER SETTING HEARING ON MODIFICATION OF CONSENT AGREEMENT

INTRODUCTION

When this Court erroneously permitted—over Gelman's strenuous objection—six new entities to intervene in this decades-old enforcement action, it was for the limited purpose of granting those entities a "seat at the table" in negotiations between Gelman and the State regarding a proposed Fourth Amended Consent Judgment. By that point, the State and Gelman had already reached consensus on a revised agreement that would have fully incorporated the new state-wide cleanup standards made effective on October 27, 2016. But for the ill-fated interventions, Gelman and the State would have entered the new Consent Judgment in 2017, and the fully protective remedy addressing the new state-wide standards would be well underway.

Gelman continues to object to the involvement of the Intervenors in negotiations regarding a remedy that had, for more than 30 years, proceeded only as between Gelman and the regulator authorized by law to oversee precisely this sort of remediation. But despite these objections, and despite the Court's error in awarding intervention, Gelman nevertheless participated in good faith for almost four years in the "intervention negotiations" sponsored by this Court. That process produced a comprehensive resolution that included remedial actions well beyond those necessary to provide a protective remedy and gave Intervenors limited continuing rights regarding implementation of that remedy. As a result, the parties and the Intervenors' counsel represented to this Court on August 12, 2020 that a tentative agreement had been reached.

Soon thereafter, however, in a surprising blow that wiped away four years of work, the Intervenors' elected officials rejected the settlement. They apparently believe either that a "better" resolution is somehow available through this Court or the political process, or that their interests

will be better protected by the U.S. Environmental Protection Agency ("USEPA") than the State. Gelman disagrees in all respects.

As the intervention has clearly failed to achieve a resolution, Gelman submits that there are now only two options: for the Court to dismiss the interventions without prejudice and enter a duly-negotiated settlement reached between the parties to this case (Gelman and the State), allowing Gelman to undertake the remedy it has been ready to implement for four years; or for the Intervenors to file their complaints so that the merits of their claims can be litigated. What is not an option, but what this Court has nevertheless ordered, is for the Court to hold a hearing to weigh evidence and order a remedy in lieu of a negotiated Fourth Amended Consent Judgment—all prior to any adjudication of the merits of the Intervenors' as-yet-unfiled claims. This constitutes palpable error for which reconsideration is required. *See* MCR 2.119(F)(3). Furthermore, it, would be counterproductive to the shared goal of Gelman, EGLE, and this Court to promptly implement a protective remedy via a revised Consent Judgment.

Gelman thus respectfully asks the Court to reconsider and vacate its January 27, 2021 scheduling order setting such a remedy hearing for four reasons:

First, the Court cannot modify either the existing Third Amended Consent Judgment or the proposed Fourth Amended Consent Judgment absent the consent of the parties to those agreements—the State and Gelman. While the Court's frustration with the failure of the "intervention negotiations" is understandable (and shared by Gelman), it would be procedurally improper for the Court to modify those agreements without the parties' consent, and would deprive Gelman of its opportunity to negotiate in good faith with the responsible regulator.

Second, any award of relief to the Intervenors and against Gelman in the form of a new remedy violates Gelman's right to due process. Gelman is entitled to an opportunity to be heard

on its meritorious defenses to the Intervenors' claims, which have not even been filed with the Court. Indeed, Intervenors themselves have acknowledged both Gelman's right to its defenses and the requirement that Gelman's fault and liability be proven before relief against Gelman can be awarded. Intervenor 9/24/2020 Response to Public Comments (Legal), p. 10 (Exhibit 2). It would be procedurally and substantively improper for the Court to proceed directly to the remedy stage of litigation and adjudicate Gelman's liability when litigation has not yet even commenced.

Third, insofar as the Court is seeking to take an active role in mediating the Intervenors' rejection of the proposed Fourth Amended Consent Judgment, as the Court appears to envision under its order, it risks losing its ability to later adjudicate the dispute if necessary. The Court may serve as either the mediator or the fact-finder; it cannot serve as both.

Fourth, the Intervenors are currently seeking USEPA listing of the Gelman site on the National Priorities List for Superfund status. Should the site be listed, the federal government and the federal courts will assume oversight, divesting this Court of jurisdiction. In light of these ongoing overtures by Intervenors, further efforts to produce a revised Consent Judgment through this process would be futile. Further, proceeding with a costly and time-consuming remedy hearing would be a waste of the parties' and this Court's resources, and would not serve the interests of judicial economy.

For these reasons, Gelman respectfully requests this Court reconsider and vacate its Fourth Amended Scheduling Order, and either dismiss the interventions without prejudice (which would allow Gelman and the State to enter a bilateral agreement), or order the Intervenors to file their complaints so that the merits of their claims can be litigated without further delay.

FACTUAL BACKGROUND

This Court has presided over the State of Michigan's environmental enforcement action

involving the Gelman Site for over 30 years. In 1992, the then-Michigan Department of Natural Resources, (n/k/a Department of Environment, Great Lakes, and Energy ("EGLE")) and Gelman successfully negotiated a Consent Judgment setting forth the environmental response actions required to address the 1,4-dioxane contamination associated with former operations of Gelman's Wagner Road facility. Since then, the State and Gelman have successfully negotiated three amended Consent Judgments—the last entered in 2011—to address changing cleanup standards and new legal requirements, and to reflect the parties' evolving understanding of the nature and extent of the contamination. The agreed-upon response actions Gelman has undertaken pursuant to the Consent Judgments have dramatically reduced the contaminant mass present in the environment and successfully protected the public from any unacceptable exposures.

In 2015, Gelman and the State began negotiating a Fourth Amended Consent Judgment in anticipation of the adoption of new, more stringent cleanup criteria. By the time the new standards took effect in October 2016, Gelman and the State had reached agreement on additional response activities required to address the more restrictive criteria and were finalizing a Fourth Amended Consent Judgment to be submitted to this Court for entry. But between November 2016 and January 2017, six new entities sought to intervene in this decades-old case. And by Orders dated January 18, 2017, and February 6, 2017 ("Intervention Orders") (Exhibits 3 and 4), over the vigorous protest of Gelman, this Court granted the motions for intervention filed by the City of Ann Arbor (the "City"), Washtenaw County, Washtenaw County Health Department, and Washtenaw County Health Officer (collectively, "the County"), the Huron River Watershed Council ("HRWC"), and Scio Township (the "Township") (collectively, "Intervenors").

To facilitate the Intervenors' participation in negotiations while avoiding the costs of active litigation, the Orders allowed Intervenors to join the negotiations and, if they were not satisfied

with the progress, to file their complaints and begin litigation:

> [Intervenors] shall refrain from filing [their] proposed complaint[s] at this time. Should [Intervenors], after participating in negotiations on a proposed Fourth Amended Consent Judgment, conclude in good faith that the negotiations have failed or that insufficient progress has been made during negotiations, [Intervenors] may file [their] complaint[s] after providing notice to the other parties.

Exhibit 3, ¶ 1.a.[1] Importantly, the Intervenors were not granted party status; they were invited to have a "seat at the table" for the negotiations, but they have not filed complaints or joined the underlying litigation itself. If that were not the case, it would not have been necessary for the Intervention Orders to toll the statute of limitations until the complaints were filed. Exhibit 3, ¶ 1.e; Exhibit 4, ¶ 1.d *cf.* MCL 600.5856 (tolling statute of limitations when summons and complaint are filed and served on defendant). Thus, although the Intervenors were allowed to—and did—participate in the negotiations, they could not—and still cannot—receive adjudication of their claims or obtain a remedy until their complaints are filed and their claims are litigated.

Gelman argued against the requested intervention for a number of reasons. Adding six new parties to the negotiations would prejudice EGLE, Gelman, and the public by delaying implementation of the Consent Judgment modifications already agreed to by Gelman and EGLE, making discussions logistically difficult, and exponentially increasing the likelihood that the Intervenors' often conflicting priorities would ultimately prevent successful negotiations and entry of a Consent Judgment and the timely implementation of a protective environmental remedy.[2]

Despite these concerns—which have since been fully realized—Gelman negotiated in good faith with the Intervenors for nearly four years to accommodate their many and conflicting

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[1]The Intervention Orders also tolled any statute of limitations. *Id.* ¶ 1.e; Exhibit 4, ¶ 1.d.

[2] The Court of Appeals denied Gelman's Application for interlocutory review for "failure to persuade the Court of the need for immediate appellate review." (July 14, 2017 Order, Exhibit 5). The Court of Appeals, however, did not address the merits of this Court's intervention decision.

demands, and to bring their legal counsel and experts up to speed on this incredibly complex 30-year-old remediation project. Through these discussions, Gelman, EGLE, and the Intervenors eventually reached an agreement that Intervenor counsel and technical experts jointly recommended to their respective clients. The settlement consisted of three interrelated documents:

- A proposed Fourth Amended Consent Judgment.
- A Stipulated Order dismissing the Intervention with prejudice, but reserving for the local units of government ("LUGs") a continuing role in future decisions regarding implementation of the remedy, including via a dispute resolution process.
- Individual Settlement Agreements with the LUGs, which included liability releases and obligated the LUGs to cooperate with the agreed-upon remedy.

The Intervenors and EGLE supported the settlement once it was made public. The City's Mayor publicly endorsed the settlement, as did the Chairperson of the County Board of Commissioners.[3] The City's Water Treatment Manager—the official responsible for ensuring that the City's water supply is safe—promoted the settlement, and the Intervenors' technical expert issued a series of explanatory videos supporting the settlement package.[4] Finally, Intervenors and EGLE solicited and responded to public comments, endorsing the settlement and correcting misinformation that fueled public criticism about the proposed resolution.[5]

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[3] *See, e.g.*, Ryan Stanton, MLive, *A closer look at the proposed Gelman plume cleanup plan. Is it enough?*,https://www.mlive.com/news/ann-arbor/2020/09/a-closer-look-at-the-proposed-gelman-plume-cleanup-plan-is-it-enough.html; Ryan Stanton, MLive, *Landmark cleanup agreement announced for Ann Arbor's Gelman dioxane plume*, https://www.mlive.com/news/ann-arbor/2020/08/landmark-cleanup-agreement-announced-for-ann-arbors-gelman-dioxane-plume.html.

[4] David Fair, WEMU, *Issues of the Environment: Consent Judgment Reached to Better Remediate Gelman 1,4 Dioxane Plume*, https://www.wemu.org/post/issues-environment-consent-judgment-reached-better-remediate-gelman-14-dioxane-plume; City of Ann Arbor, Gelman Proposed Settlement Documents, https://www.a2gov.org/Pages/Gelman-Proposed-Settlement-Documents.aspx.

[5] Intervenor Response to Comments, https://www.washtenaw.org/1789/14-Dioxane; EGLE Responsiveness Summary, https://www.michigan.gov/egle/0,9429,7-135-3311_4109_9846-71595--,00.html.

Despite the unanimous support for the Fourth Amended Consent Judgment among Gelman, EGLE, and the Intervenors' technical and legal experts, this years-long process culminated in a complete failure in the form of the wholesale rejection of the settlement by the LUGs' elected officials. Rather than accepting the recommendations of their legal and technical experts, these boards and committees were swayed by vocal opposition from a small group of long-time critics of the cleanup, endorsing a complete repudiation of the State's supervision of the site and the pursuit instead of federal Superfund status, which would divest this Court and the State of jurisdiction.[6] Indeed, shortly after voting to reject the negotiated resolution, each of the LUGs sent a written request to Governor Whitmer asking her to petition USEPA to list the Gelman site as a federal Superfund site so that USEPA can control the site. (Exhibit 6, LUGs' letters to Governor).

On November 19, 2020, Intervenors' counsel notified the Court that the Intervenors had rejected the recommended settlement. Recognizing that the negotiations had thus failed, Gelman asked the Court to set a date for the Intervenors to file their complaints, as contemplated by the Court's Intervention Orders. Instead, the Court informed counsel that a hearing would be scheduled in early 2021, after which the Court would decide whether and how to modify the Consent Judgment regarding the environmental remedy.[7] The Court issued an Order dated November 24, 2020, scheduling a "Hearing on Modification of the Consent Agreement" in January 2021, and subsequently entered the Fourth Amended Scheduling Order, dated January 27, 2021,

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[6] The City Council and County Board of Commissioners rejected the settlement outright and passed resolutions seeking Superfund listing. The Township and HRWC initially approved the settlement, but conditioned their approval on additional modifications to the fully negotiated settlement documents. Following the election of four new Township Trustees (a majority of the seven-member board), the new Board of Trustees rescinded the previous Board's approval, and later passed a resolution rejecting the settlement and renewing its support for Superfund listing.

[7] It is not clear if the Court was referring to modifications to the Third Amended Consent Judgment or modifications to the now-rejected proposed Fourth Amended Consent Judgment.

establishing a new briefing schedule, setting new hearing dates in March 2021, and vacating the prior orders. Gelman now seeks reconsideration of the Fourth Amended Scheduling Order.

LEGAL STANDARD

"Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted." MCR 2.119(F)(3). Rather, "[t]he moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." *Id.*

A "palpable" error is one that is "easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." *Luckow v Luckow*, 291 Mich App 417, 426; 805 NW2d 453 (2011). MCR 2.119(F)(3) "allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *In re Moukalled Estate*, 269 Mich App 708, 714; 714 NW2d 400 (2006) (quoting *Kokx v Bylenga*, 241 Mich App 655, 659 (2000)). This is true whether or not the motion for reconsideration raises the same issue originally presented to the Court. *In re Moukalled Estate*, 269 Mich App at 713-14.

ARGUMENT

When reconsideration would render a different result, it is appropriately granted. *Three Lakes Ass'n v Kessler*, 101 Mich App 170; 300 NW2d 485 (1980). This is such a case.

I. This Court lacks the authority to modify the existing Third Amended Consent Judgment or to set terms for a proposed Fourth Amended Consent Judgment.

"In general, consent judgments are final and binding on the court and the parties, and, absent fraud, mistake or unconscionable advantage, may not be modified or set aside." 7 Mich Pl & Pr § 45:2 (2d ed) (internal citations omitted). Courts thus have very limited and circumscribed power to modify an existing consent judgment that is still in effect. Because a consent decree is

"primarily the act of the parties to the litigation and proper practice requires approval as to both form and substance," the "generally accepted rule [is] that it may not be set aside without the consent of the parties thereto." *Union v Ewing*, 372 Mich 181, 186; 125 NW2d 311 (1963).

In *Shahan v Shahan*, 74 Mich App 621, 623; 254 NW2d 596 (1977), the Court of Appeals rejected a trial judge's effort to circumvent a consent judgment to do what he considered equitable under the circumstances. When the parties to the settlement in question failed to comply with the agreement's terms, "the learned trial judge became fed up with the situation and decided to take the matter into his own hands." *Id.* at 622. The Court of Appeals was "sympathetic to [the trial judge's] well-intentioned attempt to do equity," but held that he "was powerless to alter the plain unambiguous terms" of the consent judgment, observing that unless "both parties are satisfied to repudiate the quoted proviso" of the settlement, the court was bound to "follow meticulously the terms incorporated in the original consent judgment." *Id.* at 623; *accord Goldberg v Goldberg*, 171 Mich App 643, 646-47; 430 NW2d 926 (1988) (finding that "the circuit court had no authority to enter a modification order, regardless of any possible equities weighing in defendant's favor," where condition precedent to modification set by agreement had not occurred).

This Court's attempt to settle any pending disagreements by modifying the existing Consent Judgment is—like the actions of the court in *Shahan*—certainly "well-intentioned." However, as in *Shahan*, the Court here is similarly powerless to alter the plain and unambiguous terms of the operative agreement. Those terms provide for modification of that document only by agreement of the parties (those parties being Gelman and the State), and the parties have not stipulated to amend the Consent Judgment to allow for judicial resolution of outstanding issues. *See* Section XXIV, 1992 Consent Judgment (Exhibit 7) ("This Consent Judgment may not be modified unless such modification is in writing, signed by all Parties, and approved and entered

by the Court."). This provision barring this Court from unilaterally modifying the Consent Judgment absent consent of the parties is "sacrosanct," *Shahan*, 74 Mich App at 623, quoting *Dana Corp v Emp't Sec Comm'n*, 371 Mich 107, 110; 123 NW2d 277 (1963), and applies with equal force to the amendments to the Consent Judgment that have been entered to date.

The rare circumstances justifying a departure from the general rule against judicial modification of a consent judgment are not present here. For example, judicial modification was upheld in *Royal Oak Twp v City of Huntington Woods*, 313 Mich 137; 20 NW2d 840 (1945), where two municipalities entered a consent judgment settling their rights and liabilities following incorporation of the City from Township land. Claiming that several provisions of the consent judgment were inserted "through a mutual mistake of counsel and the court as to the law applicable to said special assessment bonds," the Township asked the trial court to "sua sponte" order a partial rehearing to strike the mistaken provisions. *Id.* at 140. The trial court granted the motion, ordered a rehearing, struck the affected provisions, and added instead several provisions suggested by the Township. *Id.* On review, the Supreme Court ruled that the trial court properly modified the consent judgment based upon a mistake of fact, but further held that the trial court should have ordered a complete rehearing to address other inaccuracies in the consent judgment. *Id.* at 146.

Several differences between this case and *Royal Oak* dictate a different result. First, a party to the *Royal Oak* consent judgment ***requested*** the trial court hold a rehearing and modify the consent judgment; in this sense, the term "sua sponte" is inapposite. Here, no party has requested this Court hold a hearing or modify the existing Third Amended Consent Judgment or the proposed Fourth Amended Consent Judgment. What this Court has proposed is an actual *sua sponte* hearing and modification of a consent judgment—an action squarely prohibited by both Michigan Supreme Court precedent and by the terms of the operative Consent Judgment itself.

Second, the court in *Royal Oak* modified the consent judgment to remove provisions that were based on an established mistake of fact, one of the recognized bases for modification of judgments. See MCR 2.612; *Union*, 372 Mich at 187-88 (vacating consent decree based on lack of consent); *Shelby Twp v Liquid Disposal, Inc*, 71 Mich App 152, 155-56; 246 NW2d 384 (1976) (allowing judicial modification of consent judgment to extend period for party's compliance where reason for noncompliance "in essence was a mutual mistake"); *cf. Fort Gratiot Charter Twp v Kettlewell*, 150 Mich App 648, 655; 389 NW2d 468 (1986) (observing that "[t]he trial court is allowed to relieve a party from a judgment if it is no longer equitable that the judgment should have prospective application" and affirming modification of consent judgment without parties' agreement based on changed circumstances). Here, no one has asserted mistake of fact, lack of consent, or any other basis allowing for a modification of a judgment. Rather, the Court seeks to impose remedies that the parties and the Intervenors have not agreed to, out of an understandable—but procedurally inappropriate—desire for expediency and finality. Such modifications to an existing judgment are neither justified nor permitted here.

To the extent this Court is instead attempting to modify the terms of the now-rejected proposed Fourth Amended Consent Judgment, that agreement is not before the Court and it would be beyond the Court's present supervisory authority to seek to modify it. A consent judgment is not enforceable unless and until it is entered by the Court. *See Trendell v Solomon*, 178 Mich App 365, 369; 443 NW2d 509 (1989) (holding once a consent judgment is entered, it becomes a judicial act and possesses the same force and character as a contested judgment). A proposed Fourth Amended Consent Judgment has not been submitted to this Court, and none will be filed unless and until the parties to the existing Consent Judgment—Gelman and EGLE—consent to its entry.

II. This Court cannot order a remedy for the Intervenors' claims at this stage.

A. The Court's attempt to grant relief before determining liability violates Gelman's due process rights and the terms of the Intervention Orders.

Another fundamental flaw in the Court's proposed hearing order is that the Court apparently intends to determine whether the Intervenors' proposed additional remediation demands[8] should be incorporated as remedies in an updated Fourth Amended Consent Judgment. This approach is inconsistent with the terms by which the Court allowed the Intervenors to participate in this case. When granting the motions to intervene, this Court ruled that Intervenors are "entitled to participate in any negotiations concerning the proposed Fourth Amended Consent Judgment," and that any of them could file a complaint if they concluded "in good faith that the negotiations have failed or that insufficient progress has been made during negotiations" (Exhibit 3, ¶1; Exhibit 4, ¶ 1). None of the Intervenors has filed a complaint to date.

This is not to say that Intervenors can hold this enforcement action hostage indefinitely or that this Court should not act to move this case forward. But pursuant to this Court's Intervention Orders, the proper action is either to order Intervenors to file their complaints so that their claims to any additional remedy can be litigated, or to enter a Fourth Amended Consent Judgment negotiated and agreed to by the actual parties to this litigation—Gelman and the State. If this Court were to take the latter option, Gelman is confident that EGLE and Gelman, having already twice reached agreement on a protective remedy that comports with applicable law, would be able

[8] For example, on December 9, 2020, the Township passed a resolution with 19 additional demands, ranging from dictating to EGLE which analytical method to use in water sampling to barring Gelman from relying on a "Mixing Zone" to address the Groundwater/Surface Water Interface pathway as permitted under Michigan law (Exhibit 6). It is impossible to know what other demands—whether or not bounded by science or law—may be made by the Intervenors or local critics of the cleanup. And in any event, any such demands would go beyond what has been required by the regulator charged by Michigan law to supervise environmental remediation.

to present a Fourth Amended Consent Judgment to this Court for entry in short order.

In other words, there are several options to move this matter expeditiously toward a resolution. But there is no proper mechanism for the Court to ignore the terms of its own Intervention Orders and circumvent important procedural safeguards by awarding relief to the Intervenors before they have even filed their complaints. Indeed, in granting the Township's motion to intervene, the Court commented that while it hoped agreement could be reached, "if we can't reach a consent judgment[,] this space provides a place for those issues which can't be agreed to which are litigated, a record is established, findings of fact are made and we have appellate review." February 2, 2017 hearing transcript, p. 26 (Exhibit 8). In order to "litigate" the Intervenors' issues that could not be resolved by negotiation, the Intervenors' complaints must be filed to initiate that litigation, and the merits of the Intervenors' claims (and Gelman's defenses thereto)—which were not evaluated by this Court at the motion to intervene stage—must be adjudicated. If the Intervenors' claims survive Gelman's dispositive motions, only then can this Court proceed to discovery and then to the adjudication of the merits of the claims, and only after *that* stage fashion an appropriate remedy. *See, e.g.*, *Reo v Lane Bryant, Inc*, 211 Mich App 364, 367 n4; 536 NW2d 556 (1995) (finding discussion of available remedies premature where Department of Labor had not yet ruled on merits of plaintiff's claim); *Durant v State Bd of Educ*, 424 Mich 364, 395; 381 NW2d 662 (1985) (finding decision on proper remedy premature where factual questions were unresolved and plaintiff's entitlement to relief was undetermined).

The Court's proposed hearing skips all of these essential procedural steps—filing of pleadings, dispositive motions, adjudications of the merits—and proceeds directly to remedies. This violates Gelman's procedural due process rights under the Michigan and United States Constitutions to be heard on its defenses and to have the Intervenors meet their burdens of proof

before Gelman is forced to expend resources on additional remedies. US Const Amend XIV and Michigan Const 1963, art I § 17. Indeed, "[d]ue process requires that there be an opportunity to present every available defense," *Lindsey v Normet*, 405 US 56, 66 (1972) (quotations omitted), and this "guaranty of due process extends to state action through its judicial as well as through its legislative, executive, or administrative branch of government," *Brinkerhoff-Faris Trust & Sav. Co v Hill*, 281 US 673, 680 (1930). In its purest form, "due process of law" implies a conformity with natural and inherent principles of justice which forbids the arbitrary taking of another's property. *Holden v Hardy*, 169 US 366, 390-391 (1898).

Here, Gelman's liability has not been established with respect to the claims asserted by either Intervenors or EGLE. In 1991, Judge Conlin granted Gelman's Motion for Involuntary Dismissal following the State's case in chief with respect to all of the significant environmental releases before Gelman even put on its defense. July 25, 1991 Opinion (Exhibit 9). That trial was never completed and Gelman was never found liable. The Consent Judgment expressly states that Gelman does not admit liability. 1992 Consent Judgment, p. 2 (Exhibit 7). Consistent with these prior rulings in this case, and with the above federal and state precedent, the Intervenors themselves have recognized Gelman's due process rights in their response to the public comments, acknowledging that "the Court has not determined Gelman's liability" and that "Gelman's fault and liability would have to be proven with evidence, and decided by a court, and Gelman could assert available defenses." Intervenor 9/24/2020 Response to Public Comments, p. 10 (Exhibit 2).

For the foregoing reasons, it would be clear error for this Court to proceed with the envisioned hearing and to order relief before Gelman's due process rights have been exercised.

B. Gelman has meritorious defenses to Intervenors' claims that must be adjudicated before relief can be granted.

Gelman's insistence that due process be followed is not a matter of form over substance, nor is it an effort to delay its obligations to implement the remedy—a remedy which Gelman committed to and was prepared to implement nearly four years ago. Rather, even a cursory review of Intervenors' claims reveals serious questions regarding their viability, particularly the claims for injunctive relief that purport to form the basis of the remedy hearing. [9]

First, Intervenors' claims are time-barred. Intervenors' unfiled complaints seek injunctive relief under statutory (Part 201 and Part 17 of NREPA, MCL 324.20101, *et seq* and MCL 324.1701, *et seq*, respectively) and common law (nuisance, public nuisance and negligence) causes of action. Intervenors' statutory claims for injunctive relief under the NREPA are subject to the six-year limitations period established by MCL 600.5813. See *Dep't of Env't Quality v Gomez*, 318 Mich App 1, 24; 896 NW2d 39 (2016) (applying six-year limitation period of MCL 600.5813 to NREPA actions). And Intervenors' common law claims for injunctive relief are barred if filed beyond the three-year limitations period established by MCL 600.5805(2). In cases such as this involving alleged environmental contamination, the harm occurs when the alleged contaminant is first present on the plaintiff's property, regardless of when its presence is discovered. *Henry v Dow Chemical Co*, 501 Mich 965; 905 NW2d 601 (2018); *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 479 Mich 378, 387; 738 NW2d 664 (2007). "Later damages may result, but they give rise to no new cause of action, nor does the statute of limitations begin to run anew as each item of damage is incurred." *Connelly v Paul Ruddy's Equip Repair & Serv Co*, 388 Mich 146, 151; 200 NW2d 70 (1972).[10] Here, the State filed this enforcement action asserting essentially the

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[9] Intervenors also seek recovery of unidentified response costs and money damages, but such monetary claims do not justify their intervention into this action or alleged need to be included in the negotiations over a remedy. Such claims must be pursued in independent lawsuits.

[10] Intervenors also cannot rely on the "continuing wrongs" doctrine to toll the statute of limitations because the Supreme Court abolished that mechanism in *Garg v Macomb County Community*

same claims in 1988. Gelman has not used 1,4-dioxane since May 1986. Intervenors' claims accrued decades ago and are therefore time-barred.

Second, Intervenors' claims for injunctive relief under Part 201 are also jurisdictionally defective. Intervenors' complaints conspicuously avoid identifying what section of Part 201 serves as the basis for their injunctive relief claims. The only section of Part 201 that allows a circuit court to award injunctive relief to a non-State claimant is Section 35, MCL 324.20135. Section 35 permits a "person, ***including a local unit of government*** on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from a facility. . . [to] commence a civil action." MCL 324.20135(1) (emphasis added). However, there are two important restrictions on such "citizen-suit"/"local-government" actions. First, the challenging party must provide at least 60 days' written notice to EGLE of its intent to sue to EGLE. MCL 324.20135(3)(a). Second, the citizen or local government action is only permitted if "[t]he state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with this part or a rule or an order under this part." MCL 324.20135(3)(b). Intervenors did not provide EGLE with 60-day notice, and the State has been diligently prosecuting this enforcement action since 1988. Thus, neither condition precedent has been met.

Other defenses bar Intervenors' claims in whole or in part, including the fact that the only significant releases of hazardous substances have already been found to have been "permitted releases." *See* July 1991 Opinion, pp. 19-27 (Exhibit 9); MCL 324.20126a(5) ("A person shall not be required under [Part 201] to undertake response activity for a permitted release."). Additionally,

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Mental Health Services, 472 Mich 263, 284-85; 696 NW2d 646 (2005); *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 288; 769 NW2d 234 (2009) (applying *Garg* holding to environmental trespass and nuisance claims).

the City released in the 2006 Settlement Agreement the very claims it now asserts, rendering those claims substantively and procedurally invalid (Exhibit 10, Section IV).

In short, Gelman has shown it has substantial defenses to the claims asserted by Intervenors in their unfiled complaints, and in turn is entitled to have those defenses adjudicated before this Court determines what relief, if any, to award Intervenors.

III. This Court cannot serve as both a mediator and the trier of fact.

The other inherent problem with the Court's proposal is that it puts the Court in the untenable position of both a mediator/facilitator and the trier of fact. In the analogous context of case evaluation, the court rules state that "[a] judge may be selected as a member of a case evaluation panel, but may not preside at the trial of any action in which he or she served as a case evaluator." MCR 2.403(D)(3). The separation between presiding judge and pre-trial mediator is even more rigid when the judge is the trier of fact—in non-jury trials, a judge who learns the results of a case evaluation before rendering judgment is disqualified from further participation in the action. *Bennett v Medical Evaluation Specialists*, 244 Mich App 227, 232-33; 624 NW2d 492 (2000). A judge is also disqualified from conducting a bench trial if he or she must examine case evaluation summaries to review a case evaluation panel's determination that a claim or defense is frivolous. MCR 2.403(N)(2)(d). These rules are designed to prevent the trial judge from using what he or she has learned in the case evaluation process—including and especially matters that are inadmissible or otherwise outside of the record—from improperly influencing the judge's decision as the trier of fact. See *Bennett*, 244 Mich App at 231 (finding "[o]ne of the main concerns of the mediation rule . . . is judicial impartiality where a mediated case proceeds to trial").

The same impartiality concerns are present here to the extent this Court intends to use the scheduled hearing to mediate the differences that have arisen between Gelman, EGLE, and the Intervenors, and/or push the "parties" toward a settlement. Specifically, to the extent the Court is

attempting to mediate the settlement negotiations, the Court would be disqualified from presiding over future litigation of this matter, including determination of the remedy if those negotiations are not successful. The Court may act as a mediator or fact-finder, but not both. Gelman respectfully suggests that holding the proposed hearing for the envisioned purpose would be potentially in conflict with the Court's continued oversight of the State's enforcement action.

IV. The LUGs' pursuit of Superfund listing requires cancellation of the proposed remedy hearing.

Cancelling the hearing is also appropriate in light of the LUGs' determined efforts to divest this Court of jurisdiction by seeking federal Superfund listing. *See* Exhibit 6, Scio Township 12/9/2020 Letter to Governor (asserting that Superfund listing is "the most viable mechanism to address the environmental risks posed to the community by the Gelman contamination"). The LUGs' pursuit of Superfund listing and desire to have USEPA and the federal courts take jurisdiction from EGLE and this Court is contrary to their pursuit of a state court-supervised consent judgment. Indeed, after a City Council member introduced a resolution to delay asking the Governor to petition USEPA to take over the site until after the Court's remedy hearing is held, the same vocal critics that spurred rejection of the Fourth Amended Consent Judgment forced the sponsor to withdraw the resolution before it was even debated. (Exhibit 11, resolution and emails).

If these maneuvers continue, USEPA may well be taking over this site, which would ultimately divest this Court of jurisdiction.[11] If that occurs, USEPA and the federal courts will be devising the remedy without local control or influence, whether by the Intervenors, EGLE, or this Court. Thus, even if the Court's January 27, 2021 Fourth Amended Scheduling Order were

[11] USEPA acts pursuant to federal law over which federal courts exercise exclusive jurisdiction. 42 U.S.C. 9613(b) ("[T]he United States district courts shall have exclusive original jurisdiction over all controversies arising under [CERCLA].").

procedurally and substantively proper—and it is not—it makes little sense to go forward with the extensive briefing and the envisioned remedy hearing until the USEPA issue is resolved. If the LUGs are seeking Superfund listing in the hopes of leveraging a better settlement from Gelman, they are free to pursue that effort through negotiations.

CONCLUSION AND REQUESTED RELIEF

Gelman shares the Court's desire for an expeditious resolution to the negotiation of a Fourth Amended Consent Judgment. But the Court's proposal to hold a hearing to resolve Intervenors' claims—which have not even been filed, much less adjudicated—and potentially to order remedies against Gelman without an opportunity to litigate its defenses to liability, would violate due process and exceed this Court's power to modify an existing consent judgment. The logic and wisdom of holding such a hearing at this juncture has also been undermined by the LUGs' efforts to divest this Court of jurisdiction by pursuing an USEPA takeover of the site. Gelman respectfully asks this Court to reconsider and vacate its January 27, 2021 order scheduling the remedy hearing, and either dismiss the interventions without prejudice and enter a bilateral agreement reached between Gelman and EGLE, or order the Intervenors to file their complaints so that the merits of their claims can be litigated.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Michael L. Caldwell

MICHAEL L. CALDWELL (P40554)
KAREN E. BEACH (P75172)
Attorney for Defendant Gelman Sciences, Inc.
32255 Northwestern Hwy, Suite 225
Farmington Hills, MI 48334
(248) 851-4111

Dated: January 28, 2021

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings on January 28, 2021 by:

☒ E-FILE ☐ US MAIL ☐ HAND DELIVERY ☐ UPS
☐ FEDERAL EXPRESS ☐ OTHER

/s/Holly Hood
Holly Hood

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE OF MICHIGAN *ex rel*. MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT,

Plaintiff,

and

THE CITY OF ANN ARBOR,

Intervenor,

and

WASHTENAW COUNTY,

Intervenor,

and

THE WASHTENAW COUNTY HEALTH DEPARTMENT,

Intervenor,

and

WASHTENAW COUNTY HEALTH OFFICER, JIMENA LOVELUCK,

Intervenor,

and

THE HURON RIVER WATERSHED COUNCIL,

Intervenor,

and

SCIO TOWNSHIP,

Intervenor,

v

GELMAN SCIENCES, INC., a Michigan Corporation,

Defendant.

_____/

Case No. 88-34734-CE
Hon. Timothy P. Connors

EXHIBIT LOG

GELMAN SCIENCES, INC.'S MOTION FOR RECONSIDERATION OF ORDER SCHEDULING HEARING ON MODIFICATION OF CONSENT AGREEMENT AND BRIEF IN SUPPORT

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/

EXHIBIT LOG

GELMAN SCIENCES, INC.'S MOTION FOR RECONSIDERATION OF ORDER SCHEDULING HEARING ON MODIFICATION OF CONSENT AGREEMENT AND BRIEF IN SUPPORT

Exhibit 1	Fourth Amended Scheduling Order
Exhibit 2	Dindoffer Response to Public Comments
Exhibit 3	January 18, 2017 Intervention Order

Exhibit 4	February 6, 2017 Intervention Order
Exhibit 5	July 14, 2017 Court of Appeals Order
Exhibit 6	LUG Letters Scio Township, Washtenaw County, and City of Ann Arbor)
Exhibit 7	1992 Consent Judgment
Exhibit 8	February 2, 2017 transcript
Exhibit 9	July 25, 1991 Opinion
Exhibit 10	2006 Settlement Agreement with City
Exhibit 11	Proposed City Resolution and emails

EXHIBIT 1

STATE OF MICHIGAN WASHTENAW COUNTY TRIAL COURT	**FOURTH** **AMENDED SCHEDULING ORDER**	CASE NO. 88-034734-CE JUDGE Timothy P. Connors

Court address
101 E. HURON, P.O. BOX 8645, ANN ARBOR, MI 48107

Court telephone no.
734-222-3001

Kelley, Frank J/attorney vs Gelman Sciences Inc

Plaintiff's attorney, bar no.	Defendant's attorney, bar no.
Brian J. Negele; P41846	Michael L CaldwellP40554

There is a Hearing on Modification of the Consent Agreement set for March 22-23 , 2021 at 9:00 AM

Before commencement of the Hearing, counsel shall submit Briefs and Expert reports in accordance with the following schedule:

Intervenors by 2/12/2021

Gelman response by 2/26/2021

EGLE response/Intervenors' reply by 3/12/2021

The Court's previous Scheduling Orders regarding this hearing are vacated and replaced by this Amended Order.

Gelman agrees to this amended schedule, but maintains its previously stated objections to the decision to hold the hearing.

1/27/2021
Date

/s/ Timothy Connors 1/27/2021
Timothy P. Connors
Trial Court Judge

SEAL OF THE CIRCUIT COURT OF WASHTENAW CO. MICH.

EXHIBIT 2

Joint Meeting of the Washtenaw County Board of Commissioners; Scio Township Trustees; and City Council of Ann Arbor, Regarding Gelman Sciences Dioxane

September 24, 2020

Legal Issues

in Public Comments/Questions

Three Proposed Documents :

(1) the Proposed 4th Amended CJ;

(2) the Proposed Stipulated Order, that would dismiss the current intervention while **Preserving Continuing Future Rights** for the Government Intervenors; and

(3) the Proposed Settlement Agreements between Gelman and each of the Government Intervenors.

These documents should not be viewed in isolation

The Negotiations

- Conducted under the Court's Confidentiality Order
- We may not discuss what happened in the Negotiations, such as what was considered proposed, offered, rejected, argued or bargained.
- The court has lifted the order to permit us to discuss the final results and
  - how those Proposals compare to the current CJ and
  - what has been accomplished

What is in the Proposed Documents?

Review the Document Repository

- Suggest that everyone review the Three Proposed Documents in the Repository. Each Local Government has links to the Repository: See, e.g., https://www.a2gov.org/Pages/Gelman-Proposed-Settlement-Documents.aspx
- To aid in understanding, suggest review of
  - Summary of Key Differences document
  - View the seven videos prepared by Professor Lemke

Key Changes -- 4th CJ compared to 3rd CJ:

- III.Q: PZ Boundary expanded to reflect 85 to 7.2 reduction;
  - All within City where wells prohibited, so no risk of dioxane drinking water exposure
- V.A.1.a: Gelman must prevent migration of 7.2 past PZ boundary
- V.A.5.a.ii.B: Gelman must plan/take active remedial actions if Sentinel Well ever greater than 7.2
- V.A.2.f: Gelman avoids active measures only if it proves by "clear and convincing evidence that there are compelling reasons" that PZ expansion is "needed to prevent an unacceptable risk to human health"
- Government Intervenors may contest PZ expansion in court.

Key Changes, cont'd:

- Removes 2800 ppb Maple Road containment – In fact, all areas of plumes east of Wagner Road are below 2800
- GSI to be met: Statute allows use of Mixing Zone to meet 280 ppb
- Added Clusters of MWs for delineation and compliance
- Adds Rose and Parklake Wells – 1.5X volume and 3X dioxane removal
- New Gelman Site actions:
  - 3 new extraction wells, and possibly more
  - Phytoremediation in (1) former pond areas; and (2) Marshy area
  - Heated Soil Vapor Extraction at former Burn Pit and cap after done

The Stipulated Order

- Dismisses Current Intervention
- But, Provides Continuing Rights to Government Intervenors to contest any significant event under the CJ, including, e.g.
  - Changes to CJ
  - Modification, reduction or termination of Gelman actions
  - Proposals to change PZ
  - Termination of CJ
- These Continuing Rights terminate for a particular Intervenor if it later petitions EPA to take over or if it does not support this CJ if some other Government asks EPA to take over.
- HRWC does not have Continuing Rights under the Order

Responses to Comments/Questions

Why does the CJ provide that Gelman does not admit fault or liability?

- standard provision in just about every settlement ever entered, [and the court has not determined Gelman's liability]
- In the event of a dispute, Gelman's fault and liability would have to be proven with evidence, and decided by a court, and Gelman could assert available defenses

If Proposals are accepted, do the Government Intervenors give up all future claims and rights?

- **No**
- The Order preserves Continuing Rights, by which the Government Intervenors may dispute up through the court any proposed significant changes
- The 2006 Ann Arbor Settlement allows future claims by Ann Arbor for
  - Newly discovered plumes (e.g., going to Barton Pond or other areas)
  - Unforeseen change in direction of known plume that breaches PZ
  - Certain Impacts and costs in downgradient part of PZ

Can Gelman **unilaterally** increase the size of the PZ in the future?

- **No**
- Gelman cannot unilaterally change anything in the CJ
- Gelman may ask the court to expand the PZ
- Government Intervenors can contest such a request in court
- To expand PZ, Gelman must convince the court "**by clear and convincing evidence that there are compelling reasons** that the proposed expansion is needed to prevent an unacceptable risk to human health". These are very high burdens of proof and persuasion.

If an area has dioxane greater than 7.2 ppb, is that considered a compelling reason to expand the Prohibition Zone Boundary?

- **No**
- V.A.1.a requires Gelman to prevent migration of 7.2 past PZ boundary
- V.A.5.a.ii.B requires Gelman to determine active response actions to prevent breach of the PZ
- Gelman might ask court to expand PZ to avoid active measures.
- However, Gelman may avoid use of active measures only if it convinces the court, with clear and convincing evidence, that the PZ needs to be expanded to prevent an unacceptable risk to human life.

Can the PZ be contracted in size?

- Yes. In fact, Section V.A.6 creates a PZ boundary review process to occur every five years to determine whether the boundary of the PZ can be contracted.

What will happen if not all Government Intervenors approve the settlement/proposed CJ?

- No clear answer.
- Gelman may tell the court it does not agree with the CJ.
- The court might order Mediation or Facilitation.
- The court might hold hearings on the issues in dispute
- The court might start the litigation process leading to a trial.
- After consideration, the court may simply decide to enter this 4th CJ.
- Other possible results.

What rights will the state and Intervenors have against Danaher if it fails to comply with the CJ?

- If Gelman violates the CJ, following a negotiation, the state can petition the court for an order compelling compliance, and the Government Intervenors have the right to petition the court if Gelman's actions are inconsistent with their Continuing Rights
- Note, Danaher has not been designated as a liable party. Factual and legal research would be needed to determine if Danaher could be held liable here.

If CJ and Stipulated Order are entered, have the local governments given up rights to go to EPA?

- There may be ways to file such a petition, but there would be risks and penalties.
- Such a petitioner would give up its continuing rights under the Order to contest Gelman's actions.
- Financial penalty to Ann Arbor

If the proposed CJ is not approved, are the parties still bound under the current CJ?

- Yes.
- Until the current CJ is vacated or amended, it remains in force.

How does the Financial Assurance Mechanism work? what about 100 years from now?

- XX.C.1 requires Gelman to update and maintain the FAM continuously until no longer needed.

If EGLE does not issue an NPDES permit for the Parklake well discharge into First Sister Lake, then what?

- Gelman could argue that it is not required to address that hot spot.

Are the following comments true?

- "USEPA would halt the dioxane plume and restore the aquifer to drinking water quality".
- "*** the main elements of a Superfund Site clean-up would be: 1) active remediation of the aquifer to a protective drinking water criterion, regardless of whether the plume was in a Prohibition Zone or not.***"
- **No.** Review USEPA's own words at time segment 1:01:05 through 1:02:30 in the video of the January 16, 2020 joint meeting that can be found at: 01/16/2020 EPA Joint Meeting video

What would EPA do, cont'd:

- Joan Tanaka of EPA stated that it is "impossible to say" what USEPA would do.
- Tanaka continued, by stating that USEPA "frequently uses Institutional Controls" (like this Prohibition Zone) to put "controls on the use of water so that no one gets hurt" -- sometimes as a "long term cleanup remedy".
- In other words, USEPA might leave the Prohibition Zone in place, and not require clean up to drinking water standards. It is not appropriate to promise that USEPA will require a different remedy here.

Would USEPA use its Emergency Removal Cleanup Authority to take immediate action to clean up the Gelman Plumes?

- No!
- USEPA stated that it could use such emergency authority only if there was exposure to 1,4-dioxane in a person's drinking water—not groundwater—at a concentration greater than 46 ppb. See, time segment 1:04:10 through 1:05:20 of the above video. Currently there are no residential wells with 1,4-dioxane in excess of the drinking water standard of 7.2ppb.

Three Key Points

- 1. The CJ would require immediate action by Gelman to better delineate the contamination, and increase cleanup, reducing risks that PZ will be breached or exposures will occur.
- 2. The CJ and Order provide continuing rights to the Government Intervenors to contest any attempt by Gelman to reduce actions, expand the PZ or alter the CJ.
- 3. USEPA will take much longer to act and there is no basis to claim USEPA will take the site or require any different or additional actions by Gelman. And under USEPA control, the Government Intervenors would not have direct ongoing rights to challenge changes to the Gelman requirements and actions.

EXHIBIT 3

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE OF MICHIGAN *ex rel.* MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT,

Plaintiffs,

-v-

File No. 88-34734-CE
Honorable Timothy P. Connors

GELMAN SCIENCES, INC., a Michigan Corporation,

Defendant.

ORDER GRANTING MOTIONS TO INTERVENE OF THE CITY OF ANN ARBOR, WASHTENAW COUNTY, AND THE HURON RIVER WATERSHED COUNCIL

At a session of said Court
held in the City of Ann Arbor, County of Washtenaw,
State of Michigan on 1/18/2017

PRESENT: Hon. Timothy P. Connors

Washtenaw County, the Washtenaw County Health Department, Washtenaw County Health Officer Ellen Rabinowitz (collectively, the "Washtenaw County Parties"), the City of Ann Arbor, and the Huron River Watershed Council ("HRWC") having filed motions to intervene in this matter, the parties having submitted briefs and appeared for oral argument, and the Court being fully advised on the premises, it is hereby ORDERED that:

1. The motions to intervene filed by the City of Ann Arbor, the Washtenaw County Parties, and the HRWC are granted, pursuant to MCR 2.209(B) and for the reasons stated on the record, provided that;

   a. The City of Ann Arbor, the Washtenaw County Parties, and the HRWC (the "Intervenors") shall refrain from filing their proposed complaints at

this time. Should any of the Intervenors, after participating in negotiations on a proposed Fourth Amended Consent Judgement, conclude in good faith that the negotiations have failed or that insufficient progress has been made during negotiations, they may file their complaint(s) after providing notice to the other parties.

b. The City of Ann Arbor, the Washtenaw County Parties, and the HRWC are entitled to participate in negotiations concerning the proposed Fourth Amended Consent Judgment to be presented to the Court in this matter.

c. Any party may request a status conference with the Court if that party is unsatisfied with the progress being made in the negotiations, or if they believe that the participation of the court may aid the parties in reaching an agreement.

d. The intervention of the HRWC is limited to any claim or issue that pertains to the surface waters of the Huron River and its tributaries.

e. Any applicable statute of limitations or doctrine of laches that may apply to any of the claims of the City of Ann Arbor, the Washtenaw County Parties, and/or the HRWC are tolled as of December 15, 2016, until such time as a Proposed Fourth Amended Consent Judgment is agreed upon by all the parties and presented to the Court, or until such time as an Intervenor files a complaint.

f. Parties shall work in good faith to promptly schedule meetings and/or conference calls to negotiate a final Proposed Fourth Amended Consent Judgment.

IT IS SO ORDERED.

This is not a final order and does not close this case.

HON. TIMOTHY P. CONNORS
CIRCUIT COURT JUDGE

APPROVED AS TO FORM ONLY

BRIAN J. NEGELE (P41846)
Attorney for Plaintiffs

MICHAEL L. CALDWELL (P40554)
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THOMAS P. BRUETSCH (P57473)
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Attorneys for City of Ann Arbor

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Attorney for Washtenaw County

ODAY SALIM (P80897)
Attorney for Huron River Watershed Council

EXHIBIT 4

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE OF MICHIGAN *ex rel.* MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT,

Plaintiffs,

-v-

File No. 88-34734-CE
Honorable Timothy P. Connors

GELMAN SCIENCES, INC., a Michigan Corporation,

Defendant.

ORDER GRANTING SCIO TOWNSHIP'S MOTION TO INTERVENE

At a session of said Court
held in the City of Ann Arbor, County of Washtenaw,
State of Michigan on 2-6-2017

PRESENT: Hon. Timothy P. Connors

Scio Township having filed its motion to intervene in this matter, the parties having submitted briefs and appeared for oral argument, and the Court being fully advised on the premises, it is hereby ORDERED that:

1. The motion to intervene filed by Scio Township is granted, pursuant to MCR 2.209(B) and for the reasons stated on the record, provided that;

    a. Scio Township shall refrain from filing its proposed complaint at this time. Should Scio Township, after participating in negotiations on a proposed Fourth Amended Consent Judgement, conclude in good faith that the negotiations have failed or that insufficient progress has been made during negotiations, Scio Township may file its complaint after providing notice to the other parties.

b. Scio Township is entitled to participate in negotiations concerning the proposed Fourth Amended Consent Judgment to be presented to the Court in this matter.

c. Any party may request a status conference with the Court if that party is unsatisfied with the progress being made in the negotiations, or if they believe that the participation of the court may aid the parties in reaching an agreement.

d. Any applicable statute of limitations or doctrine of laches that may apply to any of the claims of Scio Township are tolled as of January 26, 2017, until such time as a Proposed Fourth Amended Consent Judgment is agreed upon by all the parties and presented to the Court, or until such time as Scio Township files a complaint.

f. Parties shall work in good faith to promptly schedule meetings and/or conference calls to negotiate a final Proposed Fourth Amended Consent Judgment.

IT IS SO ORDERED.

This is not a final order and does not close this case.

Tim Connors

HON. TIMOTHY P. CONNORS
CIRCUIT COURT JUDGE

APPROVED AS TO FORM ONLY

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William J. Stapleton (w/permission)
WILLIAM J. STAPLETON (P38339)
Attorney for Scio Township

EXHIBIT 5

Court of Appeals, State of Michigan

ORDER

Attorney General v Gelman Sciences Inc

Docket No. 337818

LC No. 88-034734-CE

Mark T. Boonstra
Presiding Judge

William B. Murphy

Jane E. Markey
Judges

The Court orders that the motions for immediate consideration are GRANTED.

The Court further orders that the motion for stay pending appeal is DENIED.

The Court orders that the motion for leave to exceed the page limit for combined reply to answers is GRANTED and the reply received on May 8, 2017 is accepted for filing.

The Court orders that the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 14 2017
Date

Chief Clerk

EXHIBIT 6

Township of Scio

December 9, 2020

Dear Governor Whitmer,

I am writing on behalf of Scio Township to request your support for the designation of the Gelman Sciences, Inc. site located in Scio Township, Michigan (Gelman Site) as a United States Environmental Protection Agency (USEPA) National Priorities List Site, commonly called a USEPA Superfund Site.

Based upon the USEPA 2017 Preliminary Assessment conducted on the Gelman Site, the Gelman Site qualifies as a USEPA National Priorities List (NPL) Site. We request that you provide a Concurrence Letter to USEPA supporting the continuance of the designation process for inclusion of the Gelman Site as a NPL Site.

Previous investigative work has established that the Gelman Site has already contaminated an approximately four-mile by one-mile area of the local aquifer with 1,4-dioxane (dioxane). The dioxane contamination is a threat to a public potable water supply; private residential water wells; residential buildings from vapor intrusion; and the natural resources. This dioxane pollution presents an imminent and substantial endangerment to public health and the environment.

The communities have worked with the Michigan Department of Environment, Great Lakes and Energy and Gelman through a 1992 Consent Judgment to obtain a protective remedy for this site. However, Gelman has refused to perform work that will protect the public health and the environment from the release and migration of dioxane, which USEPA has categorized as a probable human carcinogen. The proposed August 2020 Fourth Amended Consent Judgment has been rejected by Scio Township and other local communities as not sufficient to protect the lives, homes and environment, see attached Resolution. **The County of Washtenaw, City of Ann Arbor, Ann Arbor Charter Township and Scio Township are now in agreement that placing the Gelman Site on the NPL is the most viable mechanism to address the environmental risks posed to the community by the Gelman contamination.**

Thank you.

Sincerely,

William Hathaway
Supervisor – Scio Township

Enclosure

827 N. Zeeb Road · Ann Arbor, MI 48103
734/369-9400 · 734/665-0825 Fax
www.ScioTownship.org

Scio Township Board Of Trustees
Resolution Rejecting The 4th Amended Consent Judgment And
Renewing The Petition For the Gelman Sciences, Inc. Site
To Be Designated As A USEPA Superfund Site

Whereas, From 1966 and continuing into the 1980s, Gelman Sciences, Inc. (Gelman), generated many tons of 1,4-dioxane as a waste material of its production process at its plant located in Scio Township and, through various means, dumped this hazardous chemical into the natural environment where it contaminated the surface and groundwaters of the State; and

Whereas, Members of the public and environmental advocates have worked for decades to document the problem and seek State of Michigan action to require Gelman to clean up its toxic pollution, but Gelman has evaded responsibility by repeatedly concealing the extent of the contamination, opting for less-effective clean-up methods, and using legal strategies to delay and thereby allow the plume of 1,4-dioxane pollution to spread through the groundwater, contaminating wells and potentially intruding into residential basements; and

Whereas, The State of Michigan has for decades litigated against and attempted to regulate Gelman to enforce the State of Michigan environmental laws, but the dioxane plume continues to spread in multiple directions and toward the Huron River; and

Whereas, Scio Township, Ann Arbor Charter Township, and the Sierra Club joined together in 2016 to petition for action by the United States Environmental Protection Agency (USEPA) to designate the Gelman site a Superfund site; and

Whereas, The Scio Township official position supporting the designation of Gelman site as a USEPA Superfund site was approved by a unanimous vote of the board of trustees on June 14, 2016, and remains in effect; and

Whereas, Scio Township intervened, together with others, in the State's ongoing lawsuit against Gelman pending in Washtenaw County Circuit Court; and

Whereas, Settlement negotiations have occurred since 2017, with Scio Township's participation, toward a new consent judgment that would result in better cleanup of the contamination; and

Whereas, Scio Township is dissatisfied with progress on the delineation, containment and remediation of the contamination under the current third or proposed fourth consent judgment; and

Whereas, The USEPA completed the Preliminary Assessment in 2017 and indicated that the Gelman Site was eligible for the National Priorities List (NPL) but a State Concurrence Letter was required to continue the NPL designation process; and

Whereas, The delineation, containment and remediation of the contamination will be bolstered by USEPA's active involvement and enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the "Superfund" Act, as it applies to the contamination.

Whereas, This renewal of Scio Township's 2016 petition for involvement by USEPA does not preclude simultaneous efforts to obtain a thorough clean-up either through negotiations or a court-ordered ruling from the Washtenaw County Circuit Court;

Resolved, That the Scio Township Board of Trustees rejects the fourth amended consent judgment based on the following specific areas of concern raised by members of the public and asks that the Washtenaw County Circuit Court consider these items as it formulates a new plan for remediation of the Gelman site:

1. Revise the 500 ppb standard for termination of extraction wells to a lower standard of continuing to pump and treat as long mass removal is still occurring.

2. Make explicit the right of the Intervenors to participate in the NPDES permitting process, including the process for any required wetland permits.

3. Do NOT allow the discharge of treated wastewater to First Sister Lake, instead require alternative discharge sites for any water pumped and treated from the Parklake well, either by piping back to the Gelman site or piping to a site east of the Ann Arbor water intakes unless treated to non-detect and in quantities not to exceed 500 gallons a day.

4. Prohibit the expansion of the Prohibition Zone beyond the boundaries established in the third amended consent judgement.

5. Re-establish the Maple Road Containment Objective with the new generic GSI of 280 ppb

6. Re-establish the Little Lake Area System Non-expansion Objective and operation of the Ann Arbor Cleaning Supply Well.

7. Require that Gelman and EGLE perform Method 522 dioxane analytical analysis on all drinking water wells, Sentinel Wells and Compliance Wells samples.

8. Lower the trigger levels for all the delineation/sentinel wells in the Western Area and along the northern boundary of the Prohibition Zone from 7.2 ppb to a level half of the whatever the current State drinking water standard is, to ensure that remedial action takes effect before the measured level exceeds the allowable amount.

9. Require Gelman to conduct quarterly surface water sampling of all the Allen Creek storm water drains east of Maple Road, Honey Creek, First Sister Lake, etc.

10. Establish metrics/standards for the phytoremediation in the source area. For example, specify what action would be triggered if plant detritus is found to contain dioxane rather than to have dispersed it. State how long the phytoremediation will last, how it will be maintained, and under what conditions it will be discontinued.

11. Mandate additional monitoring wells for delineation, particularly toward Barton Pond so that expansion of the contamination plume will be detected well before it reaches Barton Pond, whatever direction it is traveling.

12. Make the three optional extraction wells in the source area mandatory for a total of 6 extraction wells.

13. Perform a Remedial Design Investigation across the plume area to to determine how many extraction wells are required and at what pumping rate to control and capture the dioxane groundwater plume.

14. Locate enough additional Sentinel and Compliance Wells along the northern boundary of the Prohibition Zone, east of Maple Road and across M-14 in the northwestern area near the Wagner Road and Dexter/Ann Arbor Road intersection to ensure that expansion of the contamination plume won't escape detection.

15. Require that the Municipal Water Connection Contingency Plan provide a private land owner with a municipal water supply when the dioxane concentration reaches one-half of the drinking water criterion.

16. Do not permit Gelman to apply a Mixing Zone-Based GSI to attain compliance with the GSI Objective.

17. Change the definition of GSI to the new 280 ug/L dioxane from the old 2,800 ug/L dioxane without placing any preconditions such as the omission of the Maple Road Containment Objective.

18. Require that Gelman provide public, Quarterly Reports including: analytical trends; compliance with CJ objectives and criteria; compliance with Verification Plans, Monitoring Plans, and Down-gradient Investigations; discussion of quarterly analytical results and protocols; extraction system requirement compliance; plume migration compliance; and recommendations for follow-up actions.

19. Protect the ongoing rights of local government to intervene in court processes related to the Gelman contamination so that they can effectively advocate on behalf of the health and safety of their residents.

Resolved, That the Scio Township Board of Trustees supports USEPA active involvement, as the lead agency, and enforcement of CERCLA, the "Superfund" Act, as it applies to the contamination;

Resolved, That the Scio Township Board of Trustees reaffirms its request the USEPA to list the Gelman Site a "Superfund" Site on the National Priorities List under CERCLA;

Resolved, That the Scio Township Board of Trustees authorizes the Township Supervisor to write to the Governor enclosing this resolution and soliciting a Concurrence Letter to USEPA in support of making the Gelman Site into a National Priorities List site;

Resolved, That the Scio Township Board of Trustees authorizes the Township Clerk to send this resolution and any such State Concurrence to the Washtenaw County delegation to the Michigan Legislature, the Director of the Michigan Department of Environment, Great Lakes, and Energy; and Congresswoman Debbie Dingell; and

Resolved, That the Scio Township Board of Trustees authorizes the Supervisor to take such further actions that are consistent with the purposes of this resolution.

The foregoing preamble and resolution were offered by Trustee Kathleen Knol, and supported by Trustee Jacqueline Courteau at the Regular Meeting of the Board of Trustees, Township of Scio, County of Washtenaw, State of Michigan, at the Regular Meeting held remotely at 7:00 p.m. on Tuesday, December 8, 2020.

ROLL CALL VOTE:
Ayes: Supervisor William Hathaway, Treasurer Donna E. Palmer, Trustee Jacqueline Courteau, Trustee Alec Jerome, Trustee Kathleen Knol, Trustee Jane Vogel.
Nays: Clerk Jessica M. Flintoft.

RESOLUTION DECLARED ADOPTED.

Jessica M. Flintoft
Clerk, Township of Scio

CERTIFICATE

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Trustees, of the Township of Scio, County of Washtenaw, State of Michigan, at the Regular Meeting held remotely at 7:00 p.m. on Tuesday, December 8, 2020, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act No. 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Dated: December 9, 2020

Jessica M. Flintoft

Clerk, Township of Scio

COUNTY ADMINISTRATOR

220 North Main Street, PO Box 8645 • Ann Arbor, Michigan • 48107-8645

December 11, 2020

To: Gretchen Whitmer
Governor of the State of Michigan

From: Gregory Dill
County Administrator, Washtenaw County, Michigan

Re: Adding the Gelman Sciences, Inc., 1, 4 Dioxane contamination site to the EPA's National Priorities List

Dear Governor Whitmer,

As the County Administrator for Washtenaw County, I write on behalf of the Board of Commissioners to request your support and concurrence in nominating and taking all other steps necessary to add the Gelman Sciences, Inc., 1, 4 Dioxane contamination site ("Gelman Site") located in Washtenaw County to the EPA's National Priorities List ("NPL"). As you know, the NPL is a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants in the United States. This NPL process is authorized by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") which is more commonly referenced to as Superfund.

Washtenaw County is asking you to nominate and support the Gelman Site as a candidate for the NPL process through a letter of concurrence to the EPA. This will allow the public notice / Federal Register process to start, with the ultimate goal being to compel Gelman Sciences, Inc. to engage in a more robust remedial action cleanup process of the Site as allowed by CERCLA. The County believes the Gelman Site already technically qualifies for the NPL based on a prior score under the Hazardous Ranking System. The County also believes the Gelman Site poses a significant threat to human health and the environment and otherwise constitutes an imminent and substantial endangerment to the public health and welfare and the environment due to the release of pollutant(s) into the groundwater at the Gelman Site.

At this time, and notwithstanding considerable efforts by the County and other communities/members of the impacted public over many years, the County asserts that the US EPA is best positioned to address the Gelman Site and to ensure that the contamination at the Gelman Site is fully delineated, contained and remediated in accordance with the various provisions and regulations under CERCLA. Your concurrence in this matter would be of

immense value to the residents of Washtenaw County. The County's resolution authorizing this measure is attached for your review. Please advise if your Office requires further information.

Thank you for your consideration.

Sincerely,

Greg Dill

Gregory Dill
County Administrator
Washtenaw County, Michigan

WASHTENAW COUNTY BOARD OF COMMISSIONERS
RESOLUTION SUPPORTING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA) DESIGNATION OF THE GELMAN SCEINCES, INC. SITE AS A USEPA SUPERFUND SITE & GOVERNOR CONCURRENCE LETTER TO USEPA FOR A GELMAN SCIENCES, INC. SUPERFUND SITE

WASHTENAW COUNTY BOARD OF COMMISSIONERS

December 2, 2020

Sponsored by: Commissioner Morgan

WHEREAS, the County and its residents have worked for decades to require Gelman to delineate, and clean up City ground water contaminated by 1,4-dioxane ("Dioxane") that originated at the Gelman Sciences ("Gelman") Wagner Road facility (the "Contamination"), and to protect City ground water from further spreading of the Contamination; and

WHEREAS, as part of that work, the City of Ann Arbor sued Gelman in state and federal court more than 10 years ago, and ultimately agreed to settle that lawsuit; and

WHEREAS, the State of Michigan ("State") has for decades separately litigated against, and otherwise regulated, Gelman to enforce State environmental laws that apply to the Contamination; and

WHEREAS, following the State's tightening of its standards for Dioxane groundwater pollution, as part of the County's continuing efforts, it, along with the City of Ann Arbor, Scio Township, the Huron River Watershed Council, intervened in the State's ongoing lawsuit against Gelman pending in Washtenaw County Trial Court; and

WHEREAS, since its intervention, the County has engaged in settlement negotiations over a potential new consent judgment; and

WHEREAS, negotiations aside, the County is not satisfied with the progress of the delineation, containment and remediation of the Contamination; and

WHEREAS, the County recognizes that the Contamination poses a long-term threat to public health and the security of the City of Ann Arbor municipal water system; and

WHEREAS, in 2017 the United States Environmental Protection Agency (USEPA) completed the Preliminary Assessment and indicated that the Gelman Site was eligible for the National Priorities List (NPL) but a State Concurrence Letter was required to continue the NPL designation process; and

WHEREAS, Washtenaw County believes that delineation, containment and remediation of the Contamination will be bolstered by the USEPA active involvement and

enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the "Superfund" Act, as it applies to the Contamination.

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners supports USEPA active involvement, as the lead agency, and enforcement of CERCLA, the "Superfund" Act, as it applies to the Contamination;

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners ask the USEPA to list the Gelman Site a "Superfund" Site on the National Priorities List under CERCLA;

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners directs the County Administrator to write to the Governor enclosing this resolution and soliciting a Concurrence Letter to USEPA in support of making the Gelman Site into a National Priorities List site;

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners direct the County Administrator to send this resolution and any such State Concurrence to the Washtenaw County delegation to the Michigan Legislature, the Director of the Michigan Department of Environment, Great Lakes, and Energy; and Congresswoman Debbie Dingell; and

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners authorize the County Administrator to take such further actions that are consistent with the purposes of this resolution.

Sponsored by:

City of Ann Arbor
City Administrator's Office
301 E. Huron Street, PO Box 8647
Ann Arbor, MI 48107-8647
734-794-6110 x41101

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, MI 48909

Re: City of Ann Arbor Resolution Requesting Referral of Gelman Life Sciences. Inc. Site to the United States Environmental Protection Agency

Dear Governor Whitmer:

Enclosed please find Resolution #R-20-425 approved by the Ann Arbor City Council on November 5, 2020.

As directed by the Resolution, this letter requests you send a Concurrence Letter to the United States Environmental Protection Agency in support of listing and proceeding with the Gelman Life Sciences, Inc., site (currently a Michigan Part 201 site) as a Superfund site on the National Priorities List, as set out more specifically in the Resolution. The City also is continuing as a participant in the Washtenaw County Circuit Court litigation (*Attorney General v. Gelman Sciences, Inc., Case No. 88-34734-CE*).

Sincerely,

Tom Crawford
City Administrator

Enclosure

cc: Ann Arbor Mayor and City Council

Text of Legislative File 19-1887

Resolution Supporting the Environmental Protection Agency's Active Involvement with the Gelman Site and Encouraging its Listing of the same as a "Superfund" Site

The City and its residents have worked for decades to require Gelman to delineate and clean up City ground water contaminated by 1,4-dioxane that originated at the Gelman Sciences Wagner Road facility, and to protect City ground water from further spreading of the Contamination. As part of that effort, the City sued Gelman in state and federal court more than 10 years ago, before agreeing to settle the lawsuit. Separately, the State has for decades litigated against, and otherwise regulated, Gelman to enforce State environmental laws that apply to the Contamination. Those parties have operated under various versions of a consent judgment over the years.

Following the State's recent tightening of its standards for dioxane groundwater pollution, the City, with others, intervened in the State's ongoing lawsuit against Gelman pending in Washtenaw County Trial Court. Since its intervention was allowed in 2017, the City has engaged in settlement negotiations over a potential new consent judgment. Those negotiations aside, however, the City is simply not satisfied with the progress of the delineation, containment and remediation of the contamination. The City believes that delineation, containment and remediation will be bolstered by EPA's active involvement and enforcement of the Superfund law at this site. At this time, the EPA has a single employee assigned to closely monitor this situation and work with the State. Unless the EPA's involvement moves beyond the preliminary assessment that it's completed, that employee may be reassigned.

Prepared by: Councilmember Griswold

Whereas, The City and its residents have worked for decades to require Gelman to delineate, and clean up City ground water contaminated by 1,4-dioxane ("Dioxane") that originated at the Gelman Sciences ("Gelman") Wagner Road facility (the "Contamination"), and to protect City ground water from further spreading of the Contamination;

Whereas, As part of that work, The City sued Gelman in state and federal court more than 10 years ago, and ultimately agreed to settle that lawsuit;

Whereas, The State of Michigan ("State") has for decades separately litigated against, and otherwise regulated, Gelman to enforce State environmental laws that apply to the Contamination;

Whereas, Following the State's recent tightening of its standards for Dioxane groundwater pollution, as part of the City's continuing efforts, it, along with others, intervened in the State's ongoing lawsuit against Gelman pending in Washtenaw County Trial Court;

Whereas, Since its intervention was allowed in 2017, the City has engaged in settlement

negotiations over a potential new consent judgment;

Whereas, Negotiations aside, the City is not satisfied with the progress of the delineation, containment and remediation of the Contamination;

Whereas, City Council directs the City Administrator to continue the fourth consent judgment negotiation process; and

Whereas, The City believes that delineation, containment and remediation of the Contamination will be bolstered by the United States Environmental Protection Agency's ("EPA") active involvement and enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the "Superfund" Act, as it applies to the Contamination;

RESOLVED, That the City Council supports EPA's active involvement, as the lead agency, and enforcement of CERCLA, the "Superfund" Act, as it applies to the Contamination;

RESOLVED, That the City Council encourages the EPA to list the site of the Contamination a "Superfund" site on the National Priorities List under CERCLA;

RESOLVED, That the City Council direct the City Administrator to write to the Governor enclosing this resolution and soliciting a Concurrence Letter to USEPA in support of making the Gelman Site into a National Priorities List site;

RESOLVED, That the City Council direct the City Administrator to send this resolution and any such State concurrence to the Washtenaw County delegation to the Michigan Legislature, the Director of the Michigan Department of Environment, Great Lakes, and Energy, and Congresswoman Debbie Dingell; and

RESOLVED, That the City Council authorize the City Administrator to take such further actions that are consistent with the purposes of this resolution.

Sponsored by: Councilmembers Griswold, Hayner, Bannister, Eaton and Ramlawi

As Amended and Approved by Ann Arbor City Council on November 5, 2020

EXHIBIT 7

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,

Plaintiffs,

v

GELMAN SCIENCES, INC.,
a Michigan corporation,

Defendant.

OCT 30 1992

File No. 88-34734-CE

Honorable Patrick J. Conlin

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)
Alan D. Wasserman (P39509)
Cooper, Fink & Zausmer, P.C.
31700 Middlebelt Road
Suite 150
Farmington Hills, MI 48018
Telephone: (313) 851-4111
Attorneys for Defendant

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.

EXHIBIT 136

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 goundwater 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 Activites 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 Evergeen 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:

Period of Delay	Penalty Per Violation Per Day
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 Deptartment
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

GELMAN SCIENCES, INC.

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

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.

HONORABLE PATRICK J. CONLIN
Circuit Court Judge

A TRUE COPY

EXHIBIT 8

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE OF MICHIGAN ex rel. MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT,

Plaintiffs,

v

Case No. 88-34734-CE

GELMAN SCIENCES, INC., a Michigan Corporation,

Defendant./

MOTION TO INTERVENE

BEFORE THE HONORABLE TIMOTHY P. CONNORS, CIRCUIT JUDGE

Ann Arbor, Michigan - Thursday, February 2, 2017

APPEARANCES:

For the Plaintiff:	BRIAN J. NEGELE (P41846) Department of Attorney General 525 West Ottawa Street PO Box 30212 Lansing, Michigan 48909 (517) 373-7540
For the Defendant:	MICHAEL L. CALDWELL (P40554) Zausmer, August and Caldwell, P.C. 31700 Middlebelt Road, Suite 150 Farmington Hills, Michigan 48334 (248) 851-4111
For the Intervener Scio Township:	WILLIAM J. STAPLETON (P38339) Hooper Hathaway P.C. 126 South Main Street Ann Arbor, Michigan 48104 (734) 662-4426

APPEARANCES (continued):

For the Intervener Huron River Watershed Council:	ODAY SALIM (P80897) Great Lakes Environmental Law Center 4444 Second Avenue Detroit, Michigan 48201 (313) 782-3372
For the Intervener City of Ann Arbor:	ABIGAIL ELIAS (P34941) Ann Arbor City Attorney's Office 301 East Huron Street Ann Arbor, Michigan 48104 (734) 794-6188
Transcript Provided by:	Accurate Transcription Services, LLC Firm # 8493 (734)944-5818
Transcribed by:	Lisa Beam, CER #8647

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Ann Arbor, Michigan

Thursday, February 2, 2017 - 9:15 a.m.

* * * * * *

THE CLERK: Kelley (sic) v Gelman Sciences, 88-34734-CE.

THE COURT: Good morning.

MR. CALDWELL: Morning your Honor, Mike Caldwell on behalf of Gelman Sciences.

MR. STAPLETON: Good morning your Honor, William Stapleton appearing for Scio Township. I'm also here this morning with Bryce Kelly, Township Manager and ah -- Board Trustees Christine Green and Kathy Knol are also present in the courtroom.

MR. SALIM: Good morning your Honor, Oday Salim here for the Intervener Huron River Watershed Council.

THE COURT: Okay.

MS. ELIAS: Abigail Elias for Intervener City of Detroit -- City of Ann Arbor.

MR. NEGELE: Brian Negele representing the State.

THE COURT: So -- you know -- I always believe in transparency so I should say I -- there's some additional people I know -- Ms. Green I've known a long time and it's good to see you again.

MS. GREEN: Thank you. Nice to see you.

THE COURT: I haven't seen you in a while; I hope you're doing well.

MS. GREEN: Thank you very much.

THE COURT: And in full disclosure I was a grunt laborer for Mr. Kelley back when I was in college in law school. That won't be --

MR. CALDWELL: Motion to recuse.

THE COURT: -- no, no he treated me very roughly. You want him -- you want me there.

MR. CALDWELL: I'm sure -- I'm sure appropriately your Honor.

THE COURT: Yeah in retrospect he was right and I wasn't but yeah -- good to see you again Mr. Kelley.

MR. KELLEY: Good to see you your Honor.

THE COURT: Mr. Stapleton.

MR. STAPLETON: Yes, your Honor. As I understand it, Gelman is the only party object -- objecting to the intervention by Scio um --

THE COURT: Okay.

MR. STAPLETON: -- the Attorney General does not object to permissive intervention and none of the interveners object to the intervention. Um -- and just a procedural point Judge ah -- Gelman is concerned about additional interveners because negotiations would have to be restarted each time a party is added and -- you know if

Scio were asking to intervene a year from now Judge maybe Gelman would have a point but the negotiations haven't even started. Um -- as the Court is aware -- the Court's order was entered I believe two weeks ago um -- the original intervention order. There have not been any negotiations between the parties yet. No documents have been exchanged. In fact, as I understand it, I believe the parties have scheduled an initial conference with the Court for March 22nd um -- and so intervention by the Township won't cause any delay, won't cause any prejudice um -- and Scio would be able to be at the table for the start of the negotiations.

And so I guess the question is why does Scio want to intervene in this case and I guess -- first Judge I would say that Scio is not just any intervener. It is perhaps the governmental entity with the greatest interest in this matter because Scio -- as I'm sure the Court is aware -- is where everything happened. Um -- that's where the facility is located, it's where all the discharges occurred, it's where the highest concentrations of contaminants remain, um -- it's where there are continuing releases today from the facility and numerous residential wells which are at risk at the -- at the edge of the plume. So our position is that Scio very much deserves to be at the negotiating table when remedial options for the

dioxane con -- contamination are -- are discussed.

Judge, more specifically, the Township has three primary concerns. First, as I said, the Township is where all the releases initially occurred and in fact are still occurring today. These releases are the source of this entire plume that we're all here today talking about. The concentrations in the source area remain in the thousands of parts per billion um -- which is obviously greatly in excess of the new drinking water standard of 7.2 and this is of great concern to the Township. You can't stop the plume from spreading until you stop the releases at the source. Now Gelman doesn't dispute that the releases in the Township are still occurring it's just a fact that all the parties have to deal with and hopefully we'll be able to come up with -- come up with a solution to stop -- stop the releases at the source. And the Township would be interested in a renewed focus in the source area, to reduce the concentrations as much as possible and stop the releases from occurring.

And Judge, the Township -- you know has some thoughts about potential alternative remediation techniques in the source area, for example there's oxidants, microbial agents that can be introduced to the ground water to reduce concentrations and Judge this -- these two -- you know these types of options may turn out

not to be feasible but I think the point of -- of the int -- of all the interveners is it's these sort of ideas that should be on the table um -- and at least discussed and considered and hopefully the parties can come to a consensus on the most effective treatment option for the source area.

The second area of concern Judge for the Township is the residential wells located near the northern edge of the plume. A few of these wells have already registered low levels of dioxane and these wells are located on Elizabeth Drive and I believe they were attached -- the location of the wells and the levels of concentration were attached as Exhibit H to our brief um -- and Gelman doesn't dispute the presence of the dioxane in the wells but the response is well don't worry about it because the plume isn't expanding. Well -- you know Judge as we all know the plume has been expanded greatly over the last 30 years and the Township would just like to be in discussions about containment of the plume particularly in those areas near the residential wells that are really at risk and as I said some have already shown contamination.

And as an example Judge, pumping rates of existing extraction wells could be increased. Additional extraction wells could be added near the edge of the plume

to control the hydraulic gradient and help ensure containment of the plume. There could be additional monitoring wells installed to detect any further migration of the plume and once again Judge, these are just ideas that -- that the township has that we think should be on the table for everyone to consider -- all of the interveners.

And -- and finally Judge the third primary area the Township is concerned about is the western progression of the plume in the Little Lake area. Gelman operates a single extraction well in this area but the plume has migrated beyond the well. I believe the -- the well is operated on a periodic basis only um -- at this point um -- but there are three monitoring wells of concern to the Township and they're all down gradient from the extraction well. There's monitoring Well 53 and this was mentioned in our brief and the results are attached as Exhibit I to our brief um -- and levels of dioxane in this well ranged from 33 parts per billion to 120 parts per billion in 2015, significantly above the drinking water standard. There's monitoring Well 93, that's located just north of the extraction well and levels of dioxane in that well have ranged from three to seven parts per billion ah -- which is just below the drinking water standard. And then I think Judge the -- the well that is of most concern is

monitoring Well 41 and that's because it's located quite a distance from the extraction well and it's near the western edge of the plume. And the levels in this well ah -- in 2015 -- have ranged from 28 to 30 parts per billion, once again significantly in excess of the new drinking water standard. The other issue Judge is -- just as with -- on the northern edge -- there's a lot of residential wells just off the western edge of the plume in the Honey Creek area and so this is of great concern to the Township and once again the Township would just like to be involved in a discussion about how to contain -- better contain this western edge of the plume.

So Judge I guess in summary the Township thinks it has a lot to offer to the negotiations. We'd very much like to be a part of the discussions going forward, to hopefully reach global resolution of this problem that's been vexing all of us for so many years um -- and ah -- and as I said we -- we think we have a lot to add. So for that reason we'd ask the Court to grant our motion for intervention.

THE COURT: Thank you.

MR. CALDWELL: Thank you, your Honor and um -- I think -- and I appreciate Mr. Stapleton's focus on some of the facts um -- that maybe aren't discussed fully in the briefs. I think our dis -- our respective discussions of

the standards for intervention and -- and all that are -- are fully set forth in the brief. I'm not gonna -- as Mr. Stapleton has refrained from doing, I'm gonna refrain from -- at least try to -- from repeating our arguments on those.

Um -- with regard to the general thrust of the Township's pleadings that the plume is expanding in the -- in the Scio Township area, that it's out of control and that residential wells are in danger; I just want to say clearly and unequivocally, none of those things are true. The Township is, of course, where the facility is located. It is also where the majority of the ah -- remedial efforts have been focused for that reason and the um -- I think it's useful to breakdown our understanding of the western area, which is the entire affected area west of Wagner Road into two areas. There's the site area in the immediate vicinity where there's ah -- where there were initially quite high concentrations when the problem was initially discovered and then there's the Honey Creek area further west where these wells -- and the Little Lake area -- where these wells that Mr. Stapleton referred to. Um -- that area has never been the subject of or affected by the extremely high levels of contamination that were initially found on the site. Ah -- where we had -- you know parts per million (ph) levels on the site. The

levels in the Honey Creek/Little Lake area, were never above 500 parts per billion. It's always been kind of an echo of the ah -- onsite plume area and the concentrations -- first of all our aggressive remediation onsite in that immediate vicinity has, as we've set forth in our briefs and I won't belabor it, dramatically re -- reduce the concentrations in the ground water from -- 20 to 25,000 or higher to generally a thousand parts per billion or lower in the ground water and there's -- mister -- Mr. Stapleton cites to an area with 2,000 parts -- more than 2,000 parts per billion. Monitoring Well 5 is -- is a relatively shallow well, it's barely got enough water in it for us to successfully sample it. You know you have to pull certain volumes of water out before you can sample it to get a representative sample. Sometimes it doesn't have enough water to do that. So it is not reflective of an area of -- - of widespread contamination above that level. There's a couple of isolated spots like that that are above 1,000 but generally even on site those levels have been dramatically decreased.

Now with respect to the idea that the plume is expanding, that's simply not the case and we have been obligated under both State law and specifically by the consent judgment through the DEQs enforcement efforts to -- - to keep the plume of contamination from expanding and to

actively remediate that plume of contamination and we have been doing so for many years. The plume has not -- in Scio Township the plume has not been expanding for many, many years. Um -- do -- you know we like to take some credit for that because of our active remediation and aggressive addressing of the plume but the truth is it really is -- had reached a steady state where it's just not going any farther. And that was true when the standard was 85 and when it appeared that the standard may be reduced we went out with no legal obligation to do so and investigated the very areas that Mr. Stapleton is concerned about, monitoring Well 53I which was the one well in the entire Honey Creek/Little Lake area that was above the old standard and that got brought down. It's -- I think currently 58. Um -- monitoring Well 41 and the other -- 93 -- we went out in that area to confirm that not just that 85 part per billion wasn't expanding but that one part per billion wasn't expanding so that we could ensure as we sat down with the DEQ to discuss what additional adjustments needed to be made if the standard did in fact change to a -- to a single digit standard. We went out and investigated that in 2014 and confirmed that the plume even at one part per billion was not expanding and we've been monitoring with those additional monitoring wells in addition to the many other wells that we've been

monitoring in this area for 25 years and it's not expanding.

Um -- the DEQ went out and sampled I think 60 or so maybe more residential wells in that area um -- that had previously not been close enough to the 85 to -- to regularly sample -- just to make sure -- all were non-detect. Ah -- the -- the one area that has had periodic low level hits, I'm talking one, two, three parts per billion, one hit at four part per billion in one well. And on Elizabeth Road those concentrations peaked, if you can use that word, in 2006 or so at -- and that was when the one detect at four parts per billion was had. Since then -- since -- there was one other well in 2013 that had a um -- a low level of one or two, three parts per billion detection in 2013, but other than that one detect and it's been non-detect since, there's not been any dctectable contamination in any of the Elizabeth Lake Road wells except for one well since 2007 I think or something like that. And in that one well -- that one point was four -- one sampling event, since then it has dropped and the last three results over the last couple of years have been non-detect one part per billion, one part per billion.

So the -- and there is -- as our hydro-geologist has testified in his affidavit, he's testified that there are no data that show that any higher levels are heading

out there now after we've literally been sampling that area since 1986 I think and there is no data that suggests that the plume is going towards that area at any levels other than what are already there and those levels are going down. And ah -- it frankly it's an area that's on the -- you know just beyond the edge of a decaying plume. Concentrations have been going down in these areas ever since we've been monitoring them and the idea that the ah -- plume is expanding in Scio Township is simply demonstrably false. This isn't a matter of well they've got their data and we've got our data. This is a -- you know if this was an affirmative claim we would be at summary disposition on that issue.

Ah -- the other issue mentioned in the pleadings from the town --

THE COURT: If I were to grant it.

MR. CALDWELL: If you were to grant it your Honor.

THE COURT: Little --

MR. CALDWELL: I would -- I --

THE COURT: -- addendum there.

MR. CALDWELL: -- did not -- I did not --

THE COURT: Not quite a --

MR. CALDWELL: -- I did not identify that subtlety.

THE COURT: -- a foregone --

MR. CALDWELL: Yes.

THE COURT: All right.

MR. CALDWELL: I -- I would feel comfortable as an officer of the court --

THE COURT: Bringing the claim --

MR. CALDWELL: -- asserting that you should --

THE COURT: -- all right.

MR. CALDWELL: -- grant it but obviously that would be within the Court's purview. Um -- the new vapor intrusion screening level of 29 parts per billion um -- first of all there are very few homes -- or -- and property -- occupied properties ah -- that are in the area of 29 parts per billion. Most of the um -- plume in Scio Township goes along the creek -- the creeks and the tributary for Honey Creek ah -- unoccupied, inaccessible -- you know marshy areas um -- very few homes actually are on top of any contamination at that level. As -- as Mr. Stapleton knows, the shallow groundwater investigation -- 'cuz -- and I'm not sure that this has been made perfectly clear and I apologize if it hasn't been before -- but the 29 parts per billion screening level -- and so the Court knows a screening level is just a level that if you're above that you have to investigate further to see if there are any unacceptable exposures. It doesn't mean that

there actually are unacceptable exposures at that level and it only applies -- that screening level only applies if the groundwater with that level of contamination is shallow enough to come into contact with basements ah -- whether it be -- well residential basements is the scenario and um -- so the State -- before that standard was -- well the draft rules were still out there before the emergency rule was -- was drafted -- the State proactively, and I would argue in terms of adequate representation, more than adequately representing the concerns of the community went out and designed a investigation to see where in the few areas where shallow groundwater -- shallow groundwater exists is -- shallow enough to come into contact ah -- to see if there was any contamination in the neighborhood of 29 parts per billion.

And we agreed to go ahead and do that for the State -- you know after they designed the ah -- the investigation and only in two of the 27 borings was any contamination at all detected at 1.9 and 3.3 parts per billion, in other words like a tenth of the screening level that you have to be above before you even have to look to see if there's any unacceptable exposures and most relevant to this motion neither of those two locations was in Scio Township. So the new vapor intrusion ah -- screening level really doesn't affect or certainly provide

a basis for intervention by the Township.

Um -- and then finally the -- the prohibition zone. There's concern expressed in the -- the Township's pleadings that the pro -- prohibition zone will affect three thousand Scio Township residents. The prohibition zone doesn't extend to Scio Township. It's all east of Wagner Road. So there is no effect of the prohibition zone on Scio Township. There are a couple of Township islands which we discuss in our brief that aren't -- aren't currently affected by that at all.

Um -- and I know in the reply brief the Township has expressed its concern that the prohibition zone might be expanded to Scio Township. It might require the abandonment -- I assume this is what they're referring to -- the abandonment of -- of residential wells. Well your Honor the -- the prohibition zone's not necessary for Scio Township precisely because -- you know Mr. Stapleton cites two administrative rules, one says that once the clean-up starts the -- the plume can't expand and two it says you have to actively remediate groundwater contamination if it's not breaking down through chemical or biological processes. We're -- we're complying with both of those rules already. We don't need a prohibition zone and we wouldn't ask for a prohibition zone ah -- in our current situation because the plume's not expanding and we're

actively remediating.

Now if the -- the consent judgment does provide that if we get to the point where we can demonstrate that the plume's not expanding ah -- even without active remediation we do have the option under State law to turn off the pumps. If -- but only if we have restrictive covenants really rather than a prohibition zone in place but that -- we're not anywhere close to that and that -- that change took place back in 2011 so it doesn't provide any current basis for intervention.

But more generally your Honor um -- we understand -- it's become abundantly clear that there are just basic misunderstandings within the community about what's been accomplished by the clean-up. How the clean-up that the DEQ has demanded and that we have willingly ah -- implemented -- how that is protective of the community. How their interests are being addressed and -- but I think that -- you know to give you an example of the protectiveness -- your Honor I don't think there are too many clean-ups in the State where you could have a 10-fold reduction in the ah -- clean-up standard as we have here -- more than 10 and still have no unacceptable exposures throughout the entire affected area. That's the margin of safety that's been built in to the clean -- the clean-up program that the DEQ has demanded and that we've -- we've

more than willingly provided. We could've done just a bare minimal type approach as everybody seems to think that we have and it wouldn't have been protective with the new clean-up standard and yet we had no unacceptable exposures. Yes, there needs to be a couple more -- you know there needs to be adjustments to ensure that it continues to be protective but it is protective and has prev -- and is continuing to prevent any unacceptable exposures throughout the entire site, not just in Scio Township.

But I think this -- this basic -- and I am cognizant and appreciate the Court's wisdom in -- in talking about the benefits of collective um -- decision making and getting all ah -- perspectives included in those deliberations and -- and Mr. Stapleton has every right to bring it up and he's right to do it. Ah -- but I think that argues more for the type of community engagement that the DEQ is already in the process of implementing, they want facilitated community engagement, interviewing various representatives of the -- of the stakeholders in the community. Ah -- we have -- we have already conveyed our commitment to participate in that and -- you know I think the hope is, to steal somebody else's phrase, but that the people that are in that process that come to understand and -- and I'm not saying we wouldn't

be educated as well from getting ah -- additional viewpoints -- but that the people involved in that process could act as fact ambassadors for the community.

Say -- you know -- and I want to -- and this doesn't directly affect the -- the Township -- well I guess it does but I do want to say affirmatively, unequivocally and hopefully clearly that with regard to Barton Pond which gets mentioned all the time and the -- and the City's water intake at Barton Pond that gets mentioned in the paper, that's been mentioned in pleadings which is kind of shocking -- that -- that Barton Pond and the City's water intake is not threatened by the plume. It's not going to be. Not tomorrow, not five years ago (sic), not 10 years from now, not 100 years from now. The water is simply not heading in that direction and anybody with any technical competence that's looked at that issue agrees including the City's own consultant.

And if there can be a greater understanding through this facilitated community engagement we are all for it and we will participate in that but to allow multiple parties to intervene and in par -- and I'm not gonna -- your Honor I'm not gonna repeat the arguments about timeliness that were made with regard to the previous intervention motions. Um -- respectfully we do believe that those same timeliness arguments apply to the

Township's um -- intervention request, but with regard to the Township there's the additional concern and prejudice to the parties related to the fact that it's coming -- you know a couple months after the hearing where this Court allowed the earlier interventions and it really validates our concern that there will be still additional interested parties and certainly there are more interested parties out there that -- that try to intervene and that uncertain really -- and there's many cases that are cited in our brief that talks about that uncertainty being particularly prejudicial in environmental enforcement actions where the whole statutory framework of Part 201 and CERCLA are set up to um -- authorize and arm the DEQ in this case, the regulatory agency, with the ability to take those competing individualistic interests into account but be the gatekeeper for those -- for those concerns. Be -- with their technical expertise, with their familiarity with what Part 201 ah -- in this case requires, their familiarity with the environmental laws, to fashion a protective clean-up program that takes into account the imbalances of these competing interests. You know we've got -- you know there's limited -- you know permit discharge volume capacity. Ah -- you could have -- you know based on what -- what's in the pleadings from the various intervening interveners there could be fighting

over that capacity. There has to be somebody in charge of ah -- weighing these -- these competing concerns and the way the statute is written, the way Part 201 is written and it's -- it's the same framework as CERCLA, you can't challenge -- you know the DEQ is in charge of that -- of that weighing of competing interests and to allow the par -- additional parties to intervene -- particularly in environmental enforcement -- I mean this is not a no-fault action, this is not -- you know a run of the mill type of litigation ah -- it would be completely contrary to um -- how the environmental statutes are set up and we believe that the Township motion should be denied for that reason your Honor.

THE COURT: Thank you. You need not respond.

MR. STAPLETON: Thanks Judge.

THE COURT: As always I appreciate the um -- depth and the breadth of the pleadings to frame the issues for consideration and to develop a record. Today the request is to have an additional entity, in this case Scio Township, through its elected officials intervene by permission in this litigation. I am going to grant permissive intervention and let me give you the four reasons why I think it is appropriate.

First, the external factors that we've discussed before. There are these new standards, there is the

emergency rule and there is a heightened awareness to the problem, in part because of those new rules. Secondly, the internal factors. When an issue like this that does affect everyone regardless of the degree of the problem but it affects all of us because water is -- as I said before -- it's the basic block of who we are in our bodies and who we are in our communities and where it goes and our obligation. So I think that absolutely when we deal with something that belongs to all of us and affects all of us it should be done in as much as possible with openness and transparency, understanding we all do have different views about what could or should be done.

Third, I want to talk about the process. Counsel has mentioned that this would be antithetical to how litigation involving the environment has been done -- or not typically done -- I told you at the beginning I'm like so what -- I mean I think we should do what makes sense. And to me, given this history that I went over of several decades, representations being made over those decades about things being facts that turned out not to be facts, denials of problems that turned out there are problems. That develops to some extent perhaps what you are referring to, a misinformation in the public and perhaps even a distrust. So the process of openness, of having people at the table, of having open debate about

things can lead to the ability for people to be better informed and to the extent that we are misunderstood at least a forum where we could be understood as opposed to simply that's not true, that's not true and you're not -- you don't get the right to talk about it.

Also in that process I was particularly struck by one of our Supreme Court Justices, Bridget McCormick who's from Washtenaw County when she was sworn in at the Supreme Court and she turned to her colleagues at that moment and she said, I know and expect with our -- our responsibility that at times we will and should disagree on issues, but I promise you I will never be disagreeable in those discussions. And I think as we go into this it's important to remember that this will be one of -- this process will be one of mutual respect in the sense that we all have an internal obligation right on the oath, right there as you walk out, the obligation that we all take as a privilege to practice law in this State and if we follow that people will be truthful, will be honest, will be open even if we disagree and if we vary from it then we are violating the very oath that we all took. So the process will be one of -- of respectful dialogue.

Finally, the reason I'm doing it is that it is an issue of stewardship. I think this is an appropriate entity. Of course we're not going to let everybody who

files a pleading intervene but we need to have responsible entities that can help bring those issues to the table. I was actually pleased to see that you came in because the source, as you've indicated, is in the Township, it's right on the edge of the City of Ann Arbor, I thought these were the two entities absolutely that should be there. The County I thought makes sense and I'm still thankful for the thinking and the -- and the dedication from Great Lakes about that -- on the surface water. So I think we have a good group of people and I think that each of those groups have the ability to tap into even better minds and I think each of those groups can help to get information out, receive information and talk about how do we sit around and come up with the solution -- the best solution that we can agree to if we can agree to it and if we can't reach a consent judgment this space provides a place for those issues which can't be agreed to which are litigated, a record is established, findings of facts are made and we have appellate review. So we're in the right place and I look forward to working with you.

I will again say and I'm glad -- I don't even know who reached out -- somebody reached out about meeting together, absolutely I'm available to do it and absolutely on motion days I'm happy to set up different times so you're not waiting. I'm willing to spend the time

necessary personally in this case to do the best I can ah -- for my responsibility. Okay.

MR. CALDWELL: Very good.

THE COURT: All right.

MR. CALDWELL: Your Honor if I could just --

MR. STAPLETON: Thanks Judge.

MR. CALDWELL: -- say -- two quick things.

THE COURT: Yeah.

MR. CALDWELL: One, I totally hear you with regard to respectful dialogue and you have our commitment, I'm sure everyone else's commitment to that, it's important. And two um -- with -- and maybe Bill, we can talk about this, but I'm assuming that we will enter into the same order that the other interveners entered into um -- with regard to the -- the order.

MR. STAPLETON: Yeah and I'll talk to the Township about it Judge but I think that that makes a lot of sense.

THE COURT: That would make sense if we could do it that way and then --

MR. STAPLETON: Sure.

THE COURT: -- so you're in and then I don't even know apparently there's a date we're gonna set -- get together in March?

MR. CALDWELL: Yeah I think it's March 22nd.

THE COURT: All right and um -- so we will all sit around and talk.

MR. CALDWELL: Thanks Judge.

MR. STAPLETON: Thank you, your Honor.

THE COURT: Great Lakes you want to say anything? You came all the way down here this morning.

MR. SALIM: No, but thank you your Honor. We appreciate the gesture.

THE COURT: All right.

(At 9:52 a.m., proceeding concluded)

* * * * * *

STATE OF MICHIGAN)

COUNTY OF WASHTENAW)ss.

I certify that this transcript, consisting of 29 pages, is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable Timothy P. Connors, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: February 8, 2017

Lisa Beam/S.J.

Lisa Beam, CER #8647

EXHIBIT 9

S T A T E O F M I C H I G A N

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,

Plaintiffs

v. No. 88-34734 CE

GELMAN SCIENCES, INC., OPINION AND ORDER
A Michigan corporation,

Defendant

- - - - - - - - - - - - - - - - - -

OPINION AND ORDER rendered by the HONORABLE PATRICK J. CONLIN, CIRCUIT JUDGE, at Ann Arbor, Michigan, on July 25, 1991.

APPEARANCES;

A. MICHAEL LEFFLER (P24254)
ROBERT P. REICHEL (P31878)
SALLY J. CHURCHILL (P40558)
Assistant Attorneys General

DAVID H. FINK (P28235)
ALAN D. WASSERMAN (P39509)
THOMAS A. BISCUP (P40390)
Attorneys for Defendant

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,

Plaintiffs

v. No. 88-34734 CE

GELMAN SCIENCES, INC., OPINION AND ORDER
A Michigan corporation,

Defendant

- - - - - - - - - - - - - - - - -

At a session of said Court held in the City of Ann Arbor, Washtenaw County, Michigan, on July 25, 1991.

PRESENT: HONORABLE PATRICK J. CONLIN, CIRCUIT JUDGE

FINDING OF FACT

This case involves the use by Gelman Sciences, hereinafter known as "Gelman" of 1,4-dioxane. This substance is one of the raw materials used in the production of cellulose triacetate membrane. Gelman began manufacturing the cellulose triacetate membrane in 1966. In October of 1965 Gelman submitted a statement on new or increased use of water of the state for waste disposal purposes to the Water Resources Commission in accordance with Sec. 8b, Act 245 of

Public Acts of 1929, as amended. In that statement Gelman stated that it was disposing of up to 9,000 gallons per day of processed waste water. In describing the expected characteristics of the waste to be discharged Gelman did not identify 1,4-dioxane by name, but did indicate that among the substances which Gelman proposed to discharge into its lagoon were ethelyne glycol ether. 1,4-dioxane is an ethelyne glycol ether. By submittal of the statement on new or increased water of the state for waste disposal purposes, dated October 26, 1965, Gelman applied for permission to discharge its processed waste water by discharge to the surface of the ground to soak in and evaporate. (Plaintiff's Exhibit 69)

By order of determination dated December 15, 1965, the Water Resources Commission, hereinafter known as the "WRC" authorized Gelman to discharge waste waters containing ethelyne glycol ethers to the ground. (Plaintiff's Exhibit 71)

Order 816 provides as follows:

"STATE OF MICHIGAN

WATER RESOURCES COMMISSION

Order No. 816

Statement of GELMAN INSTRUMENT COMPANY, a: Michigan Corporation, Regarding a New Use: of the GROUND WATERS near ANN ARBOR, MICHIGAN

ORDER OF DETERMINATION

WHEREAS, Gelman Instrument Company, a Michigan Corporation

has filed with the Water Resources Commission a written statement dated October 17, 1965 for a prospective new use of the waters of the State for disposal of sewage and wastes from a proposed filter and instrument manufacturing business to be located at 600 South Wagner Road, Scio Township, Washtenaw County, Michigan; and

WHEREAS, the said written statement sets forth that Gelman Instrument Company proposes to dispose of approximately nine thousand (9,000) gallons per day of process wastes containing 0.5% ethylene glycol, 0.5% ethylene glycol ethers, 0.025% methyl pyrlidone, 0.005% dimethyl formamide and 2 milligrams per liter Triton X-100 and approximately three thousand (3,000) gallons per day of sanitary sewage into the ground, using certain described methods and facilities; and

WHEREAS, the Commission at its meeting on December 15, 1965, after giving due consideration to the statement and to investigations by its staff of the factors involved, is of the opinion and has determined that the restrictions and conditions as hereinafter set forth are necessary to protect the waters of the state against unlawful pollution;

NOW THEREFORE BE IT RESOLVED, that it is the order of the Commission that Gelman Instrument Company, a Corporation, their agents or successors, in disposing of sewage and wastes from a proposed filter and instrument manufacturing business to be located at 600 South Wagner Road, Scio Township, Washtenaw County, Michigan shall comply with the following restrictions and conditions:

1. No waste waters resulting from filter and instrument manufacturing process shall be discharged directly or indirectly into the surface waters of the state, but same shall be disposed of into the ground in such a manner and by means of such facilities and at such location that they shall not injuriously affect public health or commercial, industrial, and domestic water supply use.

2. No human sewage shall be discharged directly or indirectly into the surface waters of the state, but the same shall be disposed of into the ground by subsurface percolation methods.

3. No facilities necessary for compliance with restrictions and conditions set forth in this Order shall be constructed until plans for the

same have been submitted to and approved by the Chief Engineer of the Commission.

BE IT FURTHER RESOLVED, that the aforesaid restrictions and conditions set forth in this Order shall become effective at and from the time this Order becomes final as provided herein and shall remain in effect until further order of the Commission: PROVIDED HOWEVER, that all sewage and wastes from said Gelman Instrument Company shall be connected to any sanitary system, which may be provided by any governmental unit, within sixty (60) days from the date when said sewer becomes available. At that time any restrictions and conditions imposed by said governmental unit shall supersede the restrictions and conditions imposed by this Order and this Order shall then be terminated.

BE IT FURTHER RESOLVED, that this instrument does not obviate the necessity of obtaining such permits as may be required by law from other units of government.

This Order made this 15th day of December, 1965 by the Commission in accordance with Act 245, P. A. 1929, as amended, and shall be final in the absence of request for public hearing filed within 15 days after receipt hereof, on motion by Mr. Vogt, supported by Mr. Ball, and unanimously carried.

PRESENT AND VOTING:

Gerald E. Eddy, for Director of Conservation, Chairman
Lynn F. Baldwin, for Conservation Groups, Vice Chairman
John E. Vogt, for State Health Commissioner
James V. Murray, for State Highway Commission
B. Dale Ball, Director of Agriculture
Jim Gilmore, for Industrial Management Groups
George F. Liddle, for Municipal Groups."

Gelman used a series of three ponds for treatment of its processed waste water. These ponds have been referred to as ponds 1, 2 and 3. Pond 1 was constructed in the early 1960's to accept processed waste water from Gelman's manufacturing.

Pond 1 was used until approximately 1976, at which time

it was filled with dirt.

Pond 2 was located west of the Gelman Sciences plant and to the south of a marshy area. Gelman placed overflow water from pond 1 into pond 2. The water flowing into pond 2 was treated by using aerators and aerobic bacteria. For approximately two years in the late 1960's after water in pond 2 had reached a certain level, the water would overflow through a pipe into a marshy area. The rate of flow was between 5 to 10 gallons per minute. When the Water Resources Commission learned of this overflow in the late 1960's Gelman stopped the overflow from pond 2 by dredging out the bottom of pond 2 and letting the water seep into the ground. The order of determination of the WRC required seepage of the waste water from the bottom of pond 2 <u>into the ground.</u> This waste water did contain 1,4-dioxane. Thus, 1,4-dioxane was seeping into the ground with the approval of the DNR and WRC.

In March of 1970 in response to inquiries by the WRC concerning the status of Gelman's waste water system, Gelman affirmatively represented that the soluble organic solvents contained in the Gelman waste were not toxic or noxious per se.

The DNR had a toxic substance list. However, the substance 1,4-dioxane was not on the Michigan critical materials register at that time.

Pond 3 was constructed in approximately 1973 and continued in service until 1987. Pond 3 is located directly south of pond 2. Process waste water was deposited in pond 3

immediately after it was constructed. The sides of pond 3 were lined with a plastic polymer material. The base in pond 3 was clay.

In the fall of 1976 Gelman applied for a permit to discharge its processed waste water through spray irrigation. The application required Gelman to disclose whether substances listed on the Michigan critical materials register are to be present in the discharge. Again, 1,4-dioxane was not on the critical materials register in 1976. Gelman again reported the discharge would contain "organic solvents" from filter manufacturing.

The order of determination previously issued by the WRC remained in effect until the issuance by the WRC in 1977 of a permit authorizing spray irrigation of processed waste water.

In October of 1970 in response to further inquiries by the WRC, Gelman stated it was forced to originate a new method of treatment because of the waste that was unique to its process. Gelman further represented that they did not damage the environment. Gelman further reported on the status of the waste water treatment system stating that gas chromatography has shown that none of the solvents used were present in pond 2, the last stage in the treatment process except for possible doubtful traces of glycol in some determinations.

The DNR had knowledge in 1970 that Gelman had expanded its use beyond that allowed in the original application and

that there were "traces of glycol" in its discharge.

Gelman acknowledged that in an internal Gelman memorandum that in October of 1970 indicating that Gelman could not definitely, safely continue to drain pond 2 at the rate of 4,000 to 5,000 gallons per day as the waste might reach someone's well and any overflow would be in violation of the WRC order 816.

The WRC permit No. MOO337 superseded the Order of Determination 816 authorizing Gelman to discharge its treated waste waters to the groundwaters of the state in accordance with the conditions specified herein:

"MICHIGAN WATER RESOURCES COMMISSION

PERMIT TO DISCHARGE

In compliance with the provisions of the Michigan Water Resources Commission Act, as amended, (Act 245, Public Acts of 1929, as amended, the "Michigan Act),

GELMAN INSTRUMENT COMPANY
600 South Wagner Road
Ann Arbor, Michigan 48106

is authorized to discharge from a facility located at

600 South Wagner Road
Ann Arbor, Michigan 48106
Washtenaw County

to the ground waters in accordance with effluent limitations monitoring requirements and other conditions set forth in Parts I, II and III hereof.

This permit shall become effective on the date of issuance.

This permit and the authorization to discharge shall expire at midnight, April 30, 1982. In order to receive authorization to discharge beyond the date of expiration, the permittee shall submit such information and forms as are required by the Michigan Water Resources Commission no later than 180 days prior to the date of expiration.

This permit is based on the company's application dated

November 5, 1976, and shall supersede any and all Orders of Determination, Stipulation, or Final Orders of Determination previously adopted by the Michigan Water Resources Commission.

Issued this Twenty-seventh day of May, 1977, for the Michigan Water Resources Commission.

s/ Robert J. Courchaine
Robert J. Courchaine
Executive Secretary"

(See attached for complete Permit No. M 00337)

The permit in paragraph (a) clearly allowed Gelman to pump at 44,000 gallons per day on average with a daily maximum of 112,700 gallons per day disposed of by spray irrigation in such a manner that they will not injuriously affect the public health or welfare, or commercial, industrial, domestic, agricultural, recreational or other uses of the underground waters or surface waters of the state. This permit was issued after the DNR was notified of the overflow with possible traces of glycol.

Again, no one knew that 1,4-dioxane was a possible contaminant. It was not listed on the critical materials register in 1976 when the application was applied for.

It is clear that the overwhelming source of 1,4-dioxane contamination of the aquifers came from seepage by the ponds, specifically pond 2 and by spray irrigation. There were other minor sources.

Aside from the major elements of contamination there is evidence of some other contaminations. One is a 1980 overflow. There was evidence testified to by a DNR conservation officer, Robert McHolme, who testified that in

1980 he observed and photographed a pump located at pond 2 with one hose extending from the pump to a small quantity of liquid standing in the bottom of the pond and a second hose extending from the pump along the bank of the pond toward the fence located along the northern edge of pond 2. He observed that the hose from the pump had a little bit of liquid in it in which the snow had melted. Mr. McHolme gave his report to the DNR. One Sue Morton evidently made a report. For some unknown reason, the DNR, after reviewing his complaint in 1980, did nothing. He was told by his superiors that there was a permit to discharge water in 1980. It is very interesting that this evidence was presented to the Court when the DNR did not consider it to be worth anything in 1980. The DNR after receiving McHolme's whole report never contacted Gelman. The DNR evidently felt that Gelman was in compliance with its order.

There is further testimony regarding a burn pit that was utilized from 1966 to November of 1979. It was Gelman's regular business practice to dispose of scrap polymer and solvent waste used to clean manufacturing equipment by dumping it untreated into an open burn pit dug in the ground behind the Gelman plant building. Scrap and solvent waste generated in the manufacture of cellulose triacetate membranes during that period contained 1,4-dioxane. There were high concentrations of 1,4-dioxane in the burn pit.

Part of the testimony of James Marshall was that the pit had a clay bottom. Five-gallon buckets of scrap polymer were

taken to the pit and burned. In response to an inspection and request by the DNR, Gelman ceased using the burn pit and excavated materials from the burn pit in 1979. The soil from the burn pit was actually excavated and taken in to Wayne County to the Wayne County Waste Disposal Center.

There is further testimony that the lift station developed a crack and that there was leakage. That as soon as Gelman discovered the crack in the lift station this knowledge was disclosed to the DNR. However, testimony of Dr. Chalmer indicated very slow seepage from the lift station. Further, Gelman actually informed the DNR within 15 to 20 minutes after discovery of the crack that there was this leakage.

The DNR further claims that a lawn mower ran over and cut a hose used to transport the waste to pond 3 back to the plant to the deep well injection. Gelman immediately informed the DNR of this incident. The amount of water spilled from the cut line was approximately 18,000 gallons. The total amount of 1,4-dioxane eventually discharged from the cut was 4.8 ounces of 1,4-dioxane. This was testimony of Dr. Paul Chalmer, April 18, 1990.

Gelman has attempted to purge water taken from the wells on the Redskin property immediately north of Gelman's property. Testimony of Dr. Chalmer was that they took over 3800 pounds of 1,4-dioxane out of the aquifer. The most that could possibly have been put into the groundwater from the cut hose was 4.8 ounces of 1,4-dioxane.

There is no evidence of any amount of seepage in the McHolme incident. As to the crack in the lift station, the only evidence is that this leak was a very small amount and certainly the amount taken out by Gelman was more than adequate to account for any amount to this area. In the burn pit, the soil was excavated from the burn pit and taken to another area. The Court finds that the total amount of 1,4-dioxane that could possibly have seeped into the ground waters was, at most, a few pounds. Gelman has extracted 3,800 pounds already. Therefore, these claims by the DNR are insignificant.

Thus, we are back to the same two major areas of contamination: that is, the seepage and overflow from pond 2 and the spray irrigation.

CONTAMINATION

Both of the experts who have testified, Mr. Minning and Mr. Hayes, indicate that there is substantial contamination of the ground waters by the chemical 1,4-dioxane. Mr. Hayes believes there are at least three aquifers present, the shallow, intermediate and the deep. He believes that all three are contaminated and the contamination of all three originated at the Gelman site. He believes that the contamination that has occurred has occurred because of hydraulic communication between the aquifers. His only question is whether or not there is communication between the deepest aquifer to the west. Mr. Minning's testimony was similar. He also believes that the aquifers are

contaminated.

The highest concentrations of 1,4-dioxane have been found in the Redskin well located just north of the Gelman facility. The Redskin well is located in the C3 or intermediate aquifer. Contamination of the ground water with 1,4-dioxane in excess of 3.4 parts per million have been found only in the core area of contamination near the Redskin well. Ground water contaminated with low concentration of 1,4-dioxane has been found west of the Gelman facility extending out towards Park Road and east of the Gelman facility in the Westover Subdivision. Soil borings of the spray irrigation field and other site locations have shown the presence of 1,4-dioxane.

Both sides believe that the Third Sister Lake is contaminated by the intermediate aquifer and that there is a plume of 1,4-dioxane to the west and its extent can be defined. However, Mr. Minning believes that the extent to the north and the east is more difficult to define as it may have entered the 3 subzero aquifer which is in his determination the deepest aquifer.

CARCINOGENISTIC ATTRIBUTES

The evidence indicates that 1,4-dioxane causes cancer in animals, that is, it has caused liver cancer and nasal tumors in rats. Dr. Venman testified on May 9, 1990, that 1,4-dioxane is a possible human carcinogen. The United States Environmental Protection Agency and the International Agency for Research on Cancer have concluded that there is

sufficient evidence that 1,4-dioxane causes cancer in animal studies and have classified it as a probable human carcinogen. The biological mechanism by which 1,4-dioxane causes cancer is not yet known. The DNR has presented evidence that it should be treated as a non-threshold carcinogen, that is, that there is no established threshold level of exposure whereby there would be no increase in the risk of cancer.

The preponderance of the scientific evidence establishes that 1,4-dioxane acts as a promoter and not as an initiator of cancer. A carcinogen is classified as an initiator if it is capable of itself initiating the mutation of genetic material. A carcinogen is a promoter if it takes an existing change in genetic material and causes it to develop into a tumor or carcinogenic end point. There is evidence that 1,4-dioxane does cause cancer in livers and carcinogenetic nasal tumors in rats. This Court could easily infer and does infer that a tame rat is not much different than a wild rat or muskrat. Therefore, this Court does find that there is evidence in that 1,4-dioxane could cause injury to wild animals.

The DNR believes that there is not enough scientific information available concerning an acceptable level of 1,4-dioxane.

Dr. Hartung in his report indicated that the preponderance of scientific evidence establishes that concentrations of 1,4-dioxane below the level established in

his report of 3.4 parts per million do not present a significant health threat to humans (Defendant's exhibit 11, page 101.)

The DNR has presented no evidence on this record suggesting that the 1,4-dioxane concentration found in local surface waters has any adverse effect upon fish, wildlife or other biological material.

REMEDIATION

In 1987 Gelman reorganized technical work-group meetings in order to have discussions and information sharing regarding site conditions, investigation and remediation of the contamination. Representatives of the DNR, the Michigan Department of Public Health and the Washtenaw County Health Department were invited to attend and did attend. At the meetings available data, studies and information were exchanged. At the meetings representatives of the state worked with Gelman to design further investigation and approaches to the expansion of the hydrogeologic study. DNR representatives would not discuss remediation proposals at the site at the technical work meetings. In 1987 Gelman submitted to the DNR a preliminary clean-up program in which they proposed to purge ground water from the most contaminated area, the Redskin Industries, and inject the purged water into a deep well. The DNR refused to accept any remediation. Gelman proceeded on its own to purge ground water from the Redskin well. The purge well operated from July of 1987 to November of 1987, whereupon a change in

regulatory status of the deep well prohibited further use. During that period of time approximately 3,800 pounds of 1,4-dioxane was removed.

In 1987 Gelman submitted a plan to remediate the soil to the DNR. For the initial phases of the program Gelman requested the state to provide a person to attend the meetings to help in the remediation, but the DNR did not send any representative. Defendant's exhibit 7, a deposition exhibit, indicates that at one meeting a DNR agent was at the meeting and was instructed to neither approve nor disapprove the remediation.

Defendant's exhibit 8 was a clean-up proposal. Dr. Chalmer wrote most of it himself. He wanted to purge the most highly concentrated areas with monitoring wells which are called sentinels along the outer area. This would show how and where the 1,4-dioxane was migrating and if it was going in a particular direction. Then they could purge in that area. Further, they could use concentrated purges where the problem was most acute. This document was submitted to the DNR. Dr.Chalmer wanted to start immediately before getting to the other questions as this would stop further dispersal at the most highly concentrated sites. The DNR would not accept the proposal of Dr. Chalmer. However, Dr. Chalmer did attempt to carry out his work regardless of whether it was going to be approved. He sought and obtained permission from Redskin Industries to do this purging. The water from Redskin was to be piped to Gelman with a number of

fail-safe devices and the water was routed to injection wells. The purged water was injected into deep wells. The 1,4-dioxane concentration was 220 parts per million and in November 1987, after treatment, it was down to 60 parts per million. This continued until federal regulations prevented Gelman from continuing.

Dr. Chalmer further believed that most of the 1,4-dioxane in the bog was still on the surface and had not gotten very far into the bog and it could be cleaned out as soon as they cleaned the bog.

The DNR believed that neither the Water Resources Commission nor the DNR had the most complete knowledge of the chemical constituents and that they should therefore do nothing nor allow anything to be done to stem the flow. As Gelman represented the constituents as being not toxic, noxious or deleterious solvents, the DNR believed that Gelman should be held accountable.

WRC and the DNR were required by the Michigan Constitution and the Michigan Water Resources Commission Act to ensure that Gelman permitted discharges would not become injurious to the public health. The DNR employees should not have issued a permit or order of determination without making such a determination. These permits allowed the contamination of our aquifers.

CONCLUSION OF LAW

STANDARDS FOR INVOLUNTARY DISMISSAL

Gelman has moved this Court for involuntary dismissal of

the Plaintiff's complaint. Alternatively, Gelman has asked the Court to dismiss those portions of the complaint which the Plaintiff has failed to show a right to relief. The Michigan Court Rule 2.504(b)(2) provides as follows:

> "In an action tried without a jury, after the presentation of the plaintiff's evidence, the defendant without waiving the right to offer evidence if the motion is not granted may move for dismissal on the grounds that on the facts and the law the plaintiff has not shown the right to relief. The court may then determine the facts and render judgment against the plaintiff or may decline to render judgment until close of all the evidence. If the court renders judgment on the merits against the plaintiff the court shall make the findings provided in MCR 2.517. In a ruling on this motion the court may waive the evidence, pass on the credibility of the witnesses and select between conflicting inferences and make other factual determinations".

WATER RESOURCES COMMISSION ACT

A. Elements of Action Under the WRCA.

Plaintiffs allege that Gelman had violated Section 6(a) and Section 7 of the Water Resources Commission Act, MCLA Sec. 323.6, 323.7 ("WRCA) (Complaint Paragraphs 61-71) In order to establish a violation of Section 6(a), Plaintiffs must demonstrate that:

1. Gelman directly or indirectly discharged
2. into the waters of the state,
3. a substance or substances which is or may become:
    a. Injurious to the public health, safety or welfare; or
    b. Injurious to domestic, commercial, industrial, agricultural, recreational, or other uses which are being or may be made of such waters; or
    c. Injurious to the value or utility of riparian lands; or

d. Injurious to livestock, wild animals, birds, fish, aquatic life, or plants or the growth or propagation thereof be prevented or injuriously affected or whereby the value of fish and game is or may be destroyed or impaired.

See MCLA Sec. 323.6(a). In order to prove a violation of Section 7 of the WRCA, Plaintiffs must prove that Gelman:

1. discharged waste or waste effluent,

2. into the waters of the state,

3. without a valid permit therefor from the WRC.

See MCLA Sec. 323.7.

The evidence adduced during Plaintiffs' case shows that Defendant has been in substantial compliance with the permits issued to it. Further, the relevant regulatory agencies were informed of the nature of Gelman's process wastewater and, in particular, that 1,4-dioxane (ethylene glycol ethers) was being discharged. The permits issued by the WRC and the DNR authorized and instructed Gelman to discharge directly to the groundwaters.

A permit or Order of Determination issued pursuant to Section 7 of the WRCA provides a complete defense to claims that permitted discharges violated Sections 6(a) or 7. To find otherwise would mean that the WRC and the DNR could issue permits for discharges that violate the statute. Further, to hold otherwise would mean that a permit or Order of Determination does not, in actuality, provide any protection to a permittee for discharges in compliance with a permit.

The WRC and the DNR were required by the Michigan

Constitution and the WRCA to insure that Gelman's permitted discharges would not become injurious to the public health. The DNR employees could not issue a permit or Order of Determination pursuant to Sec. 7 of the WRCA without first making such a determination. Plaintiffs now seek to foist upon Gelman the responsibility for protecting the public welfare based on the following general prohibition contained in the permits issued to Gelman:

> No waste water resulting from filter and instrument manufacturing process shall be discharged directly or indirectly into the surface waters of the state, but the same shall be disposed of into the ground in such a manner and by means of such facilities and at such location that they shall not injuriously affect public health or commercial, industrial and domestic water supply use.

(Plaintiffs' Exhibit No. 71) (Order of Determination No. 816) The attempt by Plaintiffs to impose liability on Gelman based on the inclusion of such "boilerplate" language in the permits issued to Gelman is based upon the assertion that as Gelman had the most complete knowledge of the chemical constituents they were discharging, they should be held liable. This action is an attempt by the DNR and the WRC to absolve themselves of their duty to protect the environment and the public health. Having authorized Defendant's discharges, Plaintiffs cannot now impose liability on Gelman. Any threat to the public health would be the result of the failure of the WRC and the DNR to accurately evaluate the effects of the discharges they authorized. The WRC and/or the DNR are supposed to have people that know, study and test

these things. It certainly is an illogical conclusion to say that Gelman should be held responsible because they had more knowledge. If that is followed to its logical conclusion that would mean that in every instance, we are leaving the polluters in charge of determining whether or not they are polluting. That clearly is the "fox in the hen house" theory of control.

There can be no dispute that Order of Determination No. 816 expressly authorized Gelman to discharge its process wastewater containing ethylene glycol ethers directly to the ground. 1,4-dioxane is an ethylene glycol ether. In November, 1969, Pond 2 was deepened to enhance seepage of the wastewater to the ground, at the suggestion of the DNR. This authorized seepage from Pond 2 caused the most substantial amount of the off-site contamination.

A discharge that was permitted and in compliance with the WRCA when made is not converted to a violation of the WRCA by the subsequent discovery of groundwater contamination.

Notwithstanding that Gelman disclosed in its application that the water to be irrigated could contain organic solvents, the spray irrigation permit did not contain any specific discharge limitations for 1,4-dioxane, or any other organic solvents.

Plaintiffs contend that the spray irrigation permit did not authorize the discharge of 1,4-dioxane. The only evidence on record establishes that the DNR and/or WRC knew

that Gelman's process water could contain 1,4-dioxane going back to 1965. Plaintiffs did not offer a single witness who was familiar with the permit issued to Gelman and who could testify as to what it did, or did not, authorize. Similarly, Plaintiffs have presented no evidence or testimony establishing any spray permit violations by Gelman.

Plaintiffs have failed to demonstrate that the discharge of 1,4-dioxane through spray irrigation by Gelman violated the WRCA.

Defendant claims that alleged violations of Gelman's permits are barred by the applicable statute of limitations (either two years under MCLA Sec. 660.5809 for civil penalties or three years under MCLA Sec. 600.5805(8)) Specifically, Defendant claims that Plaintiffs' allegations under the WRCA regarding alleged violations of the Order of Determination are untimely. The Order of Determination was terminated in 1977 by issuance of the spray irrigation permit by the DNR. The spray irrigation permit expressly superseded the Order of Determination. The evidence shows that discharge pursuant to the Order terminated well beyond the applicable limitations period.

With respect to spray irrigation, the uncontroverted evidence introduced during presentation of Plaintiffs' case establishes that Gelman stopped spray irrigation in Fall, 1984. At that time, Plaintiffs knew that the irrigated wastewater contained 1,4-dioxane. Yet Plaintiffs failed to bring this action until December, 1988, more than four years

later. Accordingly, any claim that Gelman violated its spray irrigation permit is time-barred.

However, as there is evidence of unauthorized overflows from Pond 2 to the marshy area, beyond the permit, the Court will decline to enter judgment against Plaintiffs on this issue. Claims based on continuing harm are not barred by the applicable limitation period. Defnet v. City of Detroit, 327 Mich 254 (1950); Moore v. Pontiac, 143 Mich App 610 (1985). Judgment is rendered against Plaintiffs on all other issues.

MICHIGAN ENVIRONMENTAL PROTECTION ACT

Plaintiffs have brought a claim under MEPA seeking "equitable relief to protect the water and other natural resources, or the public trust therein."

A. Elements of the MEPA Action.

In order to sustain a claim under MEPA, Plaintiffs must make out a prima facie case. The elements to a prima facie case under MEPA are:

1. that air, water, or other natural resources are involved;

2. that Defendant's conduct is involved;

3. that such conduct has, or is likely to, pollute, impair, or destroy the natural resource involved.

MCLA Sec. 691.1203(1).

Consistent with a constitutional mandate, MEPA imposes a duty upon the government and the citizens of this State to prevent the pollution, impairment, or destruction of the natural resources of this State. MCLA Sec. 691.1202. From and after October 1, 1980, the effective date of MEPA,

in issuing wastewater discharge permits to Gelman, the State was required to make a determination that the proposed discharges would meet the mandates of the WRCA, the Constitution and MEPA. Having made such a finding, Plaintiffs now cannot challenge collaterally their own determination.

The proofs establish that the great majority of groundwater contamination was caused by Gelman's compliance with its wastewater discharge permits. Plaintiffs cannot seek to hold Gelman responsible for complying with permits issued by Plaintiffs, especially where, as here, Plaintiffs made the determination that issuance of said permits was consistent with protection of human health and the environment. However, in paragraph 76 of the Complaint, Plaintiffs state that:

> "Gelman's unauthorized release of wastewater into the ground and into a neighboring wetland violates MEPA Sec. 3(1), MCL 691.1203; MSA 14.528(203), in that its conduct has and is likely to pollute, impair, or destroy water or other natural resources, or the trust therein." (Emphasis added)

The Plaintiffs have shown that there were unauthorized releases of wastewater in a neighboring wetland. The Court, therefore, declines to render judgment on this issue, as 1,4-dioxane continues to leak and migrate from their unauthorized discharge, Hodgeson v. Drain Commissioner, 52 Mich App 411 (1974); Defnet v. City of Detroit, supra; Moore v. Pontiac, supra. However, judgment is rendered against Plaintiffs upon all other issues.

MICHIGAN ENVIRONMENTAL RESPONSE ACT

In Count III, Plaintiffs sought to recover $474,000.00 incurred under MEPA ("Act 307") for provision of bottled water, extension of the municipal water system, and other response activities. By Opinion and Order dated October 15, 1989, this Court granted Gelman's Motion for Partial Summary Disposition related to this Count of the Complaint. This Court determined that Gelman could not be responsible for any funds expended by State agencies when the DNR had ignored its legal duty to promulgate administrative rules necessary to carry out Act 307. This Court concluded:

> As the Department of Natural Resources has had since 1982 the obligation to promulgate rules necessary to carryout the requirements of MERA; and as they did not do it, Gelman cannot be held liable for any evaluation costs or response activity related to the site for which Gelman is responsible.

(Opinion and Order, p. 4) Plaintiffs cannot recover those costs incurred under Act 307 as alleged in the Complaint.

In response to Gelman's Motion in Limine, Plaintiffs have suggested that the costs may be recovered under alternative theories (i.e., Sec. 10 of the WRCA and public nuisance). At the hearing on November 22, 1989, this Court indicated that Plaintiffs may only obtain relief that has been specifically identified in the Complaint (If, of course, Plaintiffs carry their burden of proof).

Plaintiffs have not introduced any evidence regarding the amount allegedly expended at the Gelman site. There is not enough evidence on the record to even deduce the scope of activities of State agencies. Plaintiffs may be able to

recover some costs under MERA for the unauthorized discharge, however. The Court, therefore, refuses to enter judgment on this issue, but does on all other issues. Claims based on continuing harm are not barred by the statute of limitations. Hodgeson v. Genesee County Drain Commissioner, supra; Defnet v. City of Detroit, supra.

COMMON LAW PUBLIC NUISANCE

A. Elements of Claim for Public Nuisance.

To establish their claim regarding public nuisance, Plaintiffs must demonstrate that Defendant's discharges have unreasonably interfered with the public's use and enjoyment of its land. In the context of this case, Plaintiffs must establish that the alleged contamination poses a threat to the public health. Garfield Township v. Young, 348 Mich 337 (1957); McDonell v. Brozo, 285 Mich 39 (1938).

Toxicological studies and expert testimony regarding 1,4-dioxane demonstrate that, except for the "core" area, the levels of 1,4-dioxane found in the aquifers do not pose any threat to the public health and thus do not constitute a public nuisance. See Section II.B., supra. With respect to 1,4-dioxane found in the "core" area, no nuisance exists because there is no evidence that these waters are being used as a drinking water source or for any other purposes.

It is well established that the State cannot prosecute as a public nuisance activities which it has authorized. Rohan v. Detroit Racing Association, 314 Mich 326 (1946); Grand Rapids & I.R. Company v. Heisel, 39 Mich 62 (1878);

Chope v. Detroit and H. Plank Road Company, 37 Mich 195 (1877). As set forth above, Defendant's discharges which allegedly carried the groundwater contamination have, for the most part, been explicitly authorized by the WRC and the DNR pursuant to discharge permits.

However, again, this Court refuses to enter judgment against Plaintiffs because of the aforesaid unauthorized discharge, but does as to all other issues.

Therefore, the Court hereby dismisses all claims against Gelman under the WRCA, MEPA, MERA and for nuisance, except for those relating to the unpermitted discharge of processed wastewater in the late 1960s.

The Court may determine the percentage of cost of all the remediation attributable to Gelman, if such be necessary after the close of proofs. The WRCA does not contain a complete list of specific remedies that a trial court may order, Attorney General v Biewer, 140 Mich App 1 (1985). However, this Court will fashion a remedy

Regarding the DNR request for preliminary injunction, Bratton v DAIIE, 120 Mich App 73 (1982) sets forth the standards for reviewing the grant of a preliminary injunction:

> "The grant or denial of a preliminary injunction is within the sound discretion of the trial court. Grand Rapids v. Central Land Co., 294 Mich 103, 112; 292 NW 579 (1940); Michigan Consolidated Gas Co. v. Public Service Comm, 99 Mich App 470, 478; 297 NW2d 874 (1980). The object of a preliminary injunction is to preserve the status quo, so that upon the final hearing the rights of the parties may be determined without injury to either. Gates v. Detroit & M R Co. 151 Mich 548, 551; 115 NW 420 (1908). The status

> quo which will be preserved by a preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy. Steggles v. National Discount Corp, 326 Mich 44,51; 39 NW2d 237 (1949); Van Buren School Dist v. Wayne Circuit Judge, 61 Mich App 6, 20; 232 NW2d 278 (1975). The injunction should not be issued if the party seeking it fails to show that it will suffer irreparable injury if the injunction is not issued. Niedzialek v. Barbers Union, 331 Mich 296, 300; 49 NW2d 273 (1951); Van Buren School Dist, supra, 16. Furthermore, a preliminary injunction will not be issued if it will grant one of the parties all the relief requested prior to a hearing on the merits. Epworth Assembly v. Ludington & N R Co. 223 Mich 589, 596; 194 NW 562 (1923). Finally, a preliminary injunction should not be issued where the party seeking it has an adequate remedy at law. Van Buren School Dist. supra, p 16." See also Council 25, AFSCME v. Wayne County, 136 Mich App 21, 25-26; 355 NW2d 624 (1984).

Gelman is the only party that has done anything to halt the plume of 1,4-dioxane. Of its own volition, without any assistance from the DNR, Gelman has made substantial efforts to remove the 1,4-dioxane from the aquifers. The DNR has done nothing, They have been at meetings wherein Gelman has tried to formulate a successful plan to halt and eliminate the plume of 1,4-dioxane. Yet, the DNR has done nothing. They, incredibly enough, would not allow their agents to either approve or disapprove any formulation of any plan to dissipate the plume. The DNR has, in fact, hindered Gelman from removing the contaminated 1,4-dioxane from the aquifers. As the DNR has done nothing to halt the onward movement of the plume of 1,4-dioxane and as they have permitted the contaminants to enter into the soil, the Court will not issue a preliminary injunction.

As the State is primarily at fault, the Court believes that the State would be much better off submitting a plan to

eliminate 1,4-dioxane from the aquifers to this Court rather than continuing extensive litigation. The people of Washtenaw County are not being well served by prolonged litigation while the plumes of 1,4-dioxane continue to expand to the west and north.

The Motion for Preliminary Injunction is denied.

Patrick J. Conlin (P12126)
Circuit Judge

EXHIBIT 10

RELEASE OF CLAIMS AND SETTLEMENT AGREEMENT

This Release of Claims and Settlement Agreement ("Settlement Agreement" or "Agreement") is made and entered into this 20th day of November, 2006, between the City of Ann Arbor ("City"), a Michigan municipal corporation, with offices at 100 N. Fifth Ave, Ann Arbor, Michigan, 48104, and Gelman Sciences, Inc., a Michigan Corporation, d/b/a Pall Life Sciences ("PLS"), with offices at 600 South Wagner Road, Ann Arbor, Michigan, 48103.

I. GENERAL PROVISIONS

A. Proceedings. The City and PLS (collectively, the "Parties") acknowledge that this Settlement Agreement is a compromise of claims made in the following proceedings:

1. *City of Ann Arbor v. Gelman Sciences, Inc. d/b/a Pall Life Sciences,* Case No. 04-513-CF (Washtenaw Cty. Cir. Ct.) ("State Lawsuit");
2. *City of Ann Arbor v. Gelman Sciences, Inc. d/b/a Pall Life Sciences,* Case No. 05-73100 (U.S. Dist. Ct., E.D. Mich.) ("Federal Lawsuit"); and
3. *In Re Point Source Pollution Control National Pollution Discharge Elimination System (NPDES) Petition of the City of Ann Arbor on Permit NPDES No. MI 0048453 (Pall Life Sciences)* ("Contested Case").

B. Compromise of Claims. The Parties recognize that this Settlement Agreement is a compromise of disputed claims and defenses. By entering into this Settlement Agreement, neither Party admits any fault or liability under any statutory or common law, and does not waive any rights, claims, or defenses with respect to any person except as otherwise provided herein. By entering into this Settlement Agreement, neither Party admits the validity or factual basis of any of the positions or defenses asserted by the other Party. The Settlement Agreement and the compromises reflected therein shall have

no *res judicata* effect and shall not be admissible as evidence in any other proceeding, except in a proceeding between the Parties seeking enforcement of this Agreement.

C. Parties Bound. This Settlement Agreement applies to and is binding upon and inures to the benefit of the City, PLS, and their successors and assigns. This Settlement Agreement shall be binding upon the successors and assigns, if any, of PLS to its obligations and rights under the Consent Judgment entered into in *Attorney General v. Gelman Sciences,* Case No. 88-34734-CE (Washtenaw Cty. Cir. Ct.) (as modified by subsequent orders of the court) (the "Consent Judgment").

II. DEFINITIONS

The following terms, when capitalized in this Agreement, shall have the meanings specified in this Section II.

A. 1,4-Dioxane means the 1,4-dioxane present in surface water and the groundwater aquifers in the vicinity of the PLS Property, including the Unit E Aquifer, but this term as it is used in this Agreement shall not include any 1,4-dioxane that PLS establishes by a preponderance of the evidence to have originated from a release for which PLS is not legally responsible. For purposes of this Agreement only, "1,4-Dioxane" includes the 1,4-dioxane currently identified in the Unit E Aquifer, including but not limited to that which currently is below 85 ppb in concentration, which is located either (a) in the Prohibition Zone; or (b) at and in the vicinity of the Northwest Supply Well. PLS acknowledges that, as of the date of this Agreement, it is not aware of another source of the currently known 1,4-dioxane. Accordingly, the Parties agree that any 1,4-dioxane found in and near the Prohibition Zone or in and near the vicinity of the Northwest Supply Well shall be presumed to be within the above definition unless PLS can make

the proof stated above to the contrary. This definition shall not have any evidentiary effect in any future dispute or litigation between PLS and any person or entity other than the City.

B. Bromate means the bromate present in the surface water and the groundwater aquifers in the vicinity of the PLS Property, including the unnamed tributary to Honey Creek, which is the location of Outfall 001 under the NPDES Permit (the "Honey Creek Tributary"), Honey Creek and Unit E Aquifer, but this term as it is used in this Agreement shall not include any bromate that is established by PLS to have originated from a release or discharge for which PLS is not legally responsible.

C. City Property means property, buildings and facilities owned by the City.

D. Claims means any claim, allegation, demand, order, directive, action, suit, cause of action, counterclaim, cross-claim, third-party action, or arbitration or mediation demand, whether at law or in equity, and whether sounding in tort, equity, nuisance, trespass, negligence, strict liability or any other statutory, regulatory, administrative, or common law cause of action of any sort, asserted and unasserted, known and unknown, anticipated and unanticipated, past, present, and future of any nature whatsoever, including, without limitation, any and all claims for injunctive relief, declaratory relief, contribution, indemnification, reimbursement, Response Costs, Response Activity Costs, loss in the value of property, statutory relief, damages, expenses, penalties, costs, liens, or attorney fees.

E. Effective Date: The Effective Date of this Agreement shall be the latest date of the entry of the orders of dismissal specified in Section III. This Agreement shall be effective only if all of the orders of dismissal specified in Section III are entered.

F. Escalator Factor shall be calculated by as follows:

Escalator Index (Month of Trigger) - Escalator Index (November 2006)
Escalator Index (November 2006)

The percentage change from the November 2006 Index to the Index for the month during which the Contingent Payment is triggered under Section VI.B will be calculated to the second decimal place.

G. Escalator Amount shall be computed by multiplying the Escalator Factor by the Contingent Payment.

H. Escalator Index shall be the Engineering News Record Construction Cost Index, available at the www.enr.com web site. In the event the Escalator Index is no longer published by McGraw Hill or its successor, the Parties agree to establish an alternative method of determining the Escalator Amount based on a currently published and generally accepted construction cost index.

I. Federal Maximum Contaminant Level means the maximum contaminant level established by the Environmental Protection Agency under the Federal Safe Drinking Water Act. 42 U.S.C. 300f, et seq.

J. GCGI means the generic residential criterion for groundwater based on ingestion of groundwater developed by the MDEQ for 1,4-dioxane under Part 201 of the Michigan Natural Resources and Environmental Protection Act ("NREPA") MCL 324.20101 *et seq.*, and Mich. Admin. Code R. 299.710, as such criteria may be amended, adjusted or replaced.

K. Hazardous Substances has the same definition as that term in Section 20101(1) of NREPA, MCL 324.20101(1).

L. HCT Water Treatment System means the system used by PLS to treat water collected by the PLS remediation systems and to discharge that water to the Honey Creek Tributary at Outfall 001, as described in the NPDES Permit.

M. Major Reports means those reports that PLS is required to submit under the Consent Judgment or a MDEQ-approved work plan that address response activities affecting properties within the City or City Property, and any other final reports that PLS in good faith determines would be of significant interest to the City.

N. MDEQ means the State of Michigan Department of Environmental Quality, and its successor state agencies.

O. NPDES Permit means, unless specified otherwise, National Pollutant Discharge Elimination System Permit No. MI 0048453, as amended, renewed, or replaced, that authorizes PLS' discharge of treated water and effluent limits for such discharge.

P. Northwest Supply Well means the City's municipal water supply wells located on Montgomery Street in the City of Ann Arbor.

Q. Northwest Supply Wellfield means the municipal well field associated with the Northwest Supply Well.

R. Prohibition Zone means the area within which groundwater use is restricted pursuant to the Prohibition Zone Order, the boundaries of which are as depicted on the attached Figure 3, including a proposed expansion of the Prohibition Zone boundary that, as of the date of this Agreement, has not been approved by the MDEQ. The Prohibition Zone as that term is used in this Agreement shall include the proposed expansion as approved by the MDEQ. Upon MDEQ approval of the expansion, the document attached as Figure 3 and identified as "PROPOSED EXPANSION 4/18/06" will be replaced with a new Figure 3 showing the

expansion as approved by the MDEQ. The Prohibition Zone, as that term is used in this Agreement, shall not include any further expansion of the Prohibition Zone beyond the boundaries depicted on Figure 3.

S. Prohibition Zone Order means the May 17, 2005 Order Prohibiting Groundwater Use entered in *Attorney General, et al. v. Gelman Sciences, Inc.* Case No. 88-34734-CE (Washtenaw Cty. Cir. Ct.).

T. PLS Property means the PLS facility located at 600 S. Wagner Road, Ann Arbor, Michigan.

U. PLS Remediation means the response activities PLS is required to undertake by the Consent Judgment, associated court orders and MDEQ-approved workplans.

V. Response Activity Costs has the same meaning as the definition of that term in Section 20101(1)(ff) of NREPA, MCL 324.20101(1)(ff).

W. Response Costs has the same meaning as the definition of that term in 42 U.S.C. 9607(a).

X. State Maximum Contaminant Level means the maximum contaminant level established by the State under Michigan's Safe Drinking Water Act, MCL 325.1001, *et seq.*

Y. Trigger Level, as of the date of this Agreement, means the current GCGI for 1,4-dioxane of 85 parts per billion ("ppb"). If a new GCGI value is promulgated by the MDEQ, that value will become the Trigger Level from the time of promulgation forward, unless the new GCGI value is based on the development by the State of Michigan of a State Maximum Contaminant Level for 1,4-dioxane that is not a Federal Maximum Contaminant Level developed by USEPA. If, however, a Federal Maximum Containment Level is developed for 1,4-dioxane, a change in the GCGI value based on

that Federal Maximum Containment Level will become the new Trigger Level upon promulgation of the revised GCGI value by the MDEQ.

Z. Unit E Aquifer means the groundwater aquifer that is the subject of the Unit E Order.

AA. Unit E Order means the December 17, 2004 Order and Opinion Regarding Remediation of the Contamination of the "Unit E" Aquifer in *Attorney General, et al. v. Gelman Sciences, Inc.*, Case No. 88-34734-CE (Washtenaw Cty. Cir. Ct.), as may be amended.

BB. USEPA means the United States Environmental Protection Agency.

CC. Verified Monitoring Results shall be the results of the laboratory analysis of groundwater samples obtained from the Series A and Series B Wells described in Section VI, below, following completion of the Quality Assurance/Quality Control ("QA/QC") and verification procedures described in Appendix A.

DD. Well Information Database means the information PLS maintains with groundwater monitoring well information and outfall water quality information, including the following: well identification information (address, X and Y coordinates, top of casing and ground elevations, well and screen depths, survey information), dates of sampling, and sampling results.

III. SETTLEMENT PAYMENT AND DISMISSAL OF PROCEEDINGS.

A. Settlement Payment By PLS. Within Twenty-one (21) days after the Effective Date of this Agreement, PLS shall pay to the City the sum of Two Hundred Eighty Five Thousand Dollars ($285,000). The payment shall be made by check or draft payable to "The City of Ann Arbor" and be sent by overnight delivery to: Stephen K. Postema, City Attorney, 100 N. Fifth Avenue, Ann Arbor, Michigan 48104.

B. Dismissal of Proceedings. Upon execution of this Agreement, the City shall promptly dismiss with prejudice all Claims in the State Lawsuit, the Federal Lawsuit, and the Contested Case, with each Party to bear its own costs. Each Party shall, at its own expense, take whatever steps are necessary on its behalf to effectuate such dismissals.

IV. RELEASE OF CLAIMS AND RESERVATION OF RIGHTS

A. City Release. Except as provided in Paragraph IV.B, below, the City hereby irrevocably and unconditionally forever releases, discharges, and covenants not to sue, proceed against, or seek contribution from PLS, and any of its predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, directors, employees, attorneys, agents, and/or representatives (the "Released Parties") and shall forever relinquish, remise, discharge, waive, and release any and all Claims that it may now or in the future have against the Released Parties in connection with the Covered Matters. Covered Matters are defined as:

1. All Claims arising directly or indirectly from Hazardous Substances in soil, groundwater, and surface water at or emanating, released, or discharged from the PLS Property (collectively "Contamination"), including, without limitation, all Claims that were or could have been asserted in the State Lawsuit, the Federal Lawsuit and/or the Contested Case.
2. All Claims, past, present and future, for civil fines, penalties and costs.
3. All Claims and rights under the Administrative Procedures Act to petition, challenge or contest any future NPDES permit issued to PLS that authorizes the discharge to the Honey Creek Tributary from PLS' groundwater treatment system(s).

B. Exceptions and Reservation of Rights. Notwithstanding Paragraph IV.A, above, the City reserves, and this Agreement is without prejudice to, its right to petition, challenge, sue, proceed against or otherwise seek reimbursement, contribution, indemnification and/or other remedy from PLS, with respect to:

1. Enforcement of this Agreement.

2. Any future necessary Response Activity Costs or Response Costs to address a new plume of Contamination or Contamination in a previously uncontaminated aquifer that is discovered after the date of this Agreement that could not have been brought in the State Lawsuit or Federal Lawsuit ("New Contamination"). This exception to the general release set forth in Paragraph IV.A shall not apply to:

   a. The future migration of Contamination within the Prohibition Zone;

   b. Contamination present in the groundwater at levels below the then applicable GCGI or State or Federal Maximum Contaminant Level, if any, that is associated with the plumes of Contamination known to exist as of the date of this Agreement ("Known Plumes") or;

   c. Contamination present at the Northwest Supply Wellfield or the property on which the Northwest Supply Well is located.

3. Claims that arise from the unforeseen change in the migration pathway of a Known Plume that: (a) Results in the presence of 1,4-Dioxane at levels above the then applicable GCGI or State or Federal Maximum Contaminant Level at locations where such concentrations are not present as of the date of this Agreement; and (b) causes a City Property to be considered a "facility" as defined under Part 201. This exception to the general release set forth in Paragraph IV.A shall not apply to any Claims associated with:

a. The migration of Contamination within the Prohibition Zone; or

b. The Northwest Supply Wellfield or the property on which the Northwest Supply Well is located.

4. The presence of Contamination at the Steere Farm Wellfield.

5. Necessary Response Costs and/or Response Activity Costs to extent the City may recover such costs under 42 U.S.C. 9607a and/or MCL 324.20126a that arise from the continued presence of 1,4-Dioxane at levels above the GCGI within the Prohibition Zone and one or more of the following:

a. Soil and/or water sampling and analysis from areas within the Prohibition Zone, to determine if 1,4-Dioxane is present in wells, excavations, and similar locations where groundwater is present or evident;

b. Dewatering costs and disposal costs, including permit costs, for soil and groundwater removed from the Prohibition Zone that is contaminated with 1,4-Dioxane if permits are required for such dewatering or disposal;

c. Worker training and use of protective gear;

d. Increased costs of contracting in areas affected by 1,4-Dioxane (e.g., need to use 40-hour OSHA hazardous substance/waste trained personnel rather than standard contractors; increased time for completion of projects and the like); and

e. The City's due care obligations under MCL 324.20107a and 42 U.S.C. 9607(q)(1)(A)(iii).

This exception to the general release set forth in Paragraph IV.A shall not apply to any Claims associated with the Northwest Supply Wellfield or the Northwest Supply Well itself.

6. The issuance of any future NPDES Permit or renewal of PLS' current NPDES Permit that authorizes PLS' discharge of treated groundwater to the Honey Creek Tributary, but only to the extent that a future proposed NPDES Permit/renewal:

a. Contains a new effluent limitation for a compound that is less restrictive than the effluent limitation in the current NPDES Permit;

b. Contains an effluent limitation for a compound that is not subject to an effluent limitation in the current NPDES Permit;

c. Allows the discharge of compounds that are not present in PLS' current effluent; or

d. Authorizes PLS to discharge a greater volume of treated water to the Honey Creek Tributary than the current NPDES Permit.

Unchanged portions of any future NPDES Permit shall not be subject to petition, challenge or contest.

7. The City's rights, if any, to take action to require the MDEQ to enforce violations of the NPDES Permit.

V. HONEY CREEK RESPONSE ACTIONS REGARDING BROMATE

A. Monitoring. Except as otherwise provided in this Agreement, monitoring for Bromate shall be accomplished at a single location. Sampling procedures and methods shall be as follows:

1. *Monitoring Location and Frequency:* PLS will sample surface water for Bromate on a daily basis, Monday through Friday, at the confluence of Honey Creek and the Huron River (hereinafter, "HC/HR"), as generally depicted in the diagram attached as Figure 1. The City may, at its discretion, collect samples on Saturday and Sunday of each week and is responsible for retaining any such samples. Except as provided below, PLS will only be responsible for analyzing one of the City's weekend samples (Saturday or Sunday) per month on the Monday following collection if and when the City collects such samples. PLS will also analyze the City's weekend samples if equipment malfunction or other

circumstance causing an "upset" condition occurs or is discovered on a Friday or Monday.

2. *Sampling Method and Transmission of Results*: Surface water will be collected as a grab sample. Samples will be collected between 7:00 a.m. and 10:00 a.m. or as soon as weather permits. For any samples PLS is required to obtain under this Section, the PLS analytical laboratory will analyze and report the results on the same day (for Monday through Friday samples) by email to the City's Environmental Coordinator and to the City's Water Quality Manager. Bromate analyses at PLS shall be conducted using USEPA Method 317 (or an equivalent, USEPA approved, method). The method detection limit (MDL) for Bromate using this method is currently 2 ppb, which constitutes the MDL that will be used with reference to determining action under this section. A lower MDL may be substituted for the agreed MDL if future changes in laboratory capabilities using acceptable methods allow.

3. *Split Sampling:* The City: (1) may split samples with PLS at any time, with 24 hours notice to PLS; (2) may collect samples at any time independent of the PLS sampling schedule; and (3) may utilize the PLS analytical laboratory as a backup laboratory for analyzing the City's split samples at a reasonable charge not to exceed PLS' costs.

B. Action Plan. If an analysis of a sample by PLS or the City indicates that the concentrations of Bromate at the HC/HR exceed 2 ppb, PLS will take the following actions:

1. PLS will perform a quality control and quality assurance review to determine if the monitoring result was due to an analytical or reporting error.

2. PLS will review the performance of its HCT Water Treatment System to determine if that system is operating properly, and, if it determines the functioning of the HCT Treatment System to be a possible cause of the monitoring result, PLS will make such adjustments as it deems necessary and collect an effluent sample shortly after those adjustments to determine system performance after such adjustments.

3. Within thirty-six (36) hours after completing the actions in subparagraphs 1 and 2, PLS will collect another surface water sample at HC/HR ("Confirming Sample"). PLS will collect another surface water sample at HC/HR on any Saturday following a Friday with a monitoring result in excess of 2 ppb. The City may collect a split sample of the Confirming Sample. If the Confirming Sample shows that Bromate at HC/HR is no longer present at concentrations in excess of 2 ppb, then monitoring shall resume as provided in this Section and no further action is necessary.

4. If the Confirming Sample shows the presence of Bromate in excess of 2 ppb, PLS will take actions as soon as practicable to reduce Bromate levels at HC/HR below 2 ppb. The initial actions may include, but are not limited to, the following:

    a. PLS may alter the flow composition into the HCT Water Treatment System so as to reduce the Bromate levels, but maintain the total flow of water treated and discharged by the system.

    b. PLS may reduce the total flow at the point of discharge to the Honey Creek Tributary (Outfall 001 in NPDES Permit MI 00 48453).

5. If the steps outlined in the previous subsections are not sufficient to reduce concentrations of Bromate to 2 ppb at the HC/HR within a reasonable time, PLS will take additional actions to achieve this reduction. Such actions may include, but are not limited to, the following:

   a. PLS may replace the current HCT Water Treatment System technology (ozone and hydrogen peroxide) with a combination of ultraviolet light (UV) and ozone technologies or other technology.

   b. PLS may install a pipeline to deliver treated water to a point along the Huron River downstream from the City's water intake.

C. Unavailability of PLS' Laboratory. In the event PLS' laboratory is no longer available, the Parties agree to negotiate in good faith to make appropriate adjustments, if any, to the laboratory turn around times set forth in this Section V. All commercially reasonable efforts will be made by PLS to identify and use a laboratory that will meet the turn around times set forth in this Section V.

D. Termination of Honey Creek Monitoring. PLS' obligations under this Section V shall terminate once PLS is no longer discharging treated groundwater to the Honey Creek Tributary or any other surface water body connected to Honey Creek or the Huron River or if PLS' HCT Water Treatment System is changed to a system that does not produce or otherwise cause Bromate to be present in the discharge.

VI. NORTHWEST SUPPLY WELL RESPONSE ACTIVITIES

A. Groundwater Monitoring Plan. PLS will undertake the following groundwater monitoring:

1. *Series A Well Location.* Within 90 days of the Effective Date of this Agreement, PLS will install a nested well configuration at the approximate location identified on the map attached hereto as Figure 2 (the "Series A Wells").

2. *Monitoring of Series A Wells.* PLS shall sample the Series A Wells for 1,4-Dioxane quarterly until termination using the procedures set forth in Appendix A.

3. *Series B Wells.* If the Verified Monitoring Result obtained from any Series A Well exceeds one-half (1/2) of the Trigger Level, PLS will install a nested well configuration at each of the locations described below within 90 days of obtaining access (the "Series B Wells"). One location will be in the general vicinity of Bemidji as shown on the map attached as Figure 2. The second well location will be determined by the Parties at the time the Verified Monitoring Result obtained from any Series A Well exceeds one-half (1/2) of the Trigger Level.

4. *Monitoring of Series B Wells.* PLS shall sample the Series B Wells for 1,4-Dioxane quarterly until termination as provided in Paragraph VI.A.6 using the procedures set forth in Appendix A.

5. *Well Installation.* Wells required under this Section VI are to be installed by PLS and shall follow the well construction procedures described in Appendix A.

6. *Termination.* PLS' obligations under this Section VI will continue until such time as the earliest of the following occurs:

    a. The MDEQ (or other regulatory body with oversight of the PLS Remediation) no longer requires groundwater monitoring in the Unit E Aquifer upgradient of the Northwest Supply Well;

    b. The Northwest Supply Wellfield is rendered unsuitable for drinking because of reasons other than the presence of 1,4-Dioxane;

    c. The Northwest Supply Well fails or becomes unusable and cannot legally be replaced for reasons other than the presence of 1,4-Dioxane; or

    d. By mutual agreement of the Parties.

B. Contingent Payment.

1. *Trigger of Contingent Payment.* In the event the Verified Monitoring Results indicate that the average concentration of 1,4-Dioxane in the nested wells at either Series B Well location exceeds the Trigger Level, then PLS shall make the payments described in Paragraphs VI.B.2 and 3. PLS' obligation to make such payments shall not be affected or reduced by the presence of 1,4-dioxane other than "1,4-Dioxane" (as defined in this Agreement) if the Trigger Level would have been exceeded even absent the presence of such 1,4-dioxane.

2. *Contingent Payment.* In the event the Contingent Payment is triggered, as described in Paragraph VI.B.1, PLS shall pay the City the sum of Four Million Dollars ($4,000,000) (the "Contingent Payment") within Sixty (60) days of receipt of the Verified Monitoring Results. The payment shall be made by check or draft payable to "The City of Ann Arbor" and be sent by overnight delivery to: Stephen K. Postema (or his successor), City Attorney, 100 N. Fifth Avenue, Ann Arbor, Michigan 48104.

3. *Escalator Payment.* In the event the Contingent Payment is triggered, as described in Paragraph VI.B.1, PLS shall, in addition to the Contingent Payment, pay the City the Escalator Payment within Sixty (60) days of the date the Escalator Index for the month during which the Contingent Payment is triggered becomes publicly available.

C. Additional Provisions

1. *Operation of Northwest Supply Wellfield.* The City shall only operate the Northwest Supply Wellfield in a manner that benefits the City's public water

supply system. The City shall not operate the Northwest Supply Well or install and operate a new well in the Northwest Supply Wellfield for the purpose of moving the plume of 1,4-Dioxane toward the Northwest Supply Well.

2. *Response Activities.* PLS may undertake additional response activities in the vicinity of the Northwest Supply Well to provide additional assurance that concentrations of 1,4-Dioxane in the monitoring wells do not reach the Trigger Level. If these additional response activities entail installation of infrastructure within the City, the City will cooperate with such activities in a manner consistent with Section IX of this Agreement.

VII. ADDITIONAL RESPONSE ACTIVITIES

A. PLS Performance of Future Laboratory Analyses.

1. *Analysis of City Samples.* PLS at its sole cost will perform laboratory analyses for 1,4-Dioxane, and provide the results of same and related laboratory QA/QC documentation to the City, with regard to samples the City obtains from the City's source waters. PLS' obligation to analyze such samples shall be limited to samples taken at the following frequencies and from the following locations:

   a. Quarterly groundwater samples from either the Northwest Supply Well or from the existing monitoring well located at the Northwest Supply Wellfield.

   b. Monthly groundwater samples from the transmission main from the Steere Farm Wellfield. If 1,4-dioxane is detected in a monthly sample from the transmission main, PLS will analyze monthly groundwater samples obtained by the City from the individual Steere Farm production wells.

   c. Monthly surface water samples from the Huron River and from Barton Pond.

2. *Split Sampling.* PLS agrees that, for quality control and quality assurance (QA/QC) purposes, on occasion the City may obtain duplicate (split) samples of water from the same sources or locations noted in Paragraph VII.A.1, above, and will cause those duplicate samples to be analyzed by a separate, independent laboratory. PLS will reimburse the City the amounts it pays in the future to obtain such independent laboratory analyses, provided that the number of such split samples is not greater than that reasonably required for appropriate QA/QC purposes.

3. *City Staff Time.* The City shall be responsible for obtaining the water samples from the locations described in Paragraph VII.A, above, and for following all appropriate sampling protocols and procedures. Except for Claims reserved in Section IV, above, PLS will not be required to reimburse the City for costs of obtaining such samples, including City staff time.

4. In the event PLS' laboratory is not available, PLS will be responsible for the cost of obtaining the laboratory analyses described in this Section VII.

VIII. TRANSPARENCY

A. Well Information Database. Within 30 days after the Effective Date, PLS shall transmit to the City its current Well Information Database as of the date of transmittal. This information shall be provided electronically in one or more Excel® files. Data to be provided in the Well Information Database will include at a minimum: the well or other sample location information (X and Y coordinates, top of casing and ground elevations, well and screen depths, address, etc.); sampling results for 1,4-Dioxane and/or Bromate; and other water quality data from the analysis. Submittals from PLS may also include

other fields of data mutually agreed upon by the City and PLS. Thereafter, no later than the 20th day of the first full month following the initial submittal, and continuing monthly thereafter, PLS will provide to the City an update to the Well Information Database ("Update") in Excel® format. Each Update shall include dates and sample results for the previous month and any new well information developed and entered into the Well Information Database by PLS after the last submittal.

B. Major Reports. PLS will provide the City with copies of final versions of Major Reports submitted to the MDEQ at the same time and in the same format they are submitted to the MDEQ, provided that the City can request any Major Report, or portion thereof, in electronic form, and PLS will then provide the requested material in electronic form when reasonable. PLS shall also provide copies of additional reports reasonably requested by the City. PLS shall also provide copies of requests by PLS to the MDEQ for permit modifications and copies of reports showing trend analysis of 1,4-Dioxane or Bromate concentrations in surface or groundwater. If any of the foregoing reports or documents is in paper format, the City may request that the report or document or portion(s) thereof be provided electronically, and PLS will cooperate to the extent practicable. Except as explicitly modified above, PLS will continue to provide to the City all data and reports that it is otherwise required to provide and/or which it already is providing to the City. The data and reports addressed in this Section VIII are in addition to or are modifications of those data and reports.

C. Use of Information and Data. The City may manipulate data and information provided under this Section in any manner it chooses and understands. The City may release the data and any reports the City creates, in either paper or electronic format, provided,

however, that any such document or electronic file shall clearly state on its face that it has been created by the City. The City will provide PLS with copies of all reports that are released or that are subject to release to the public. The City shall not release any of the reports or data provided by PLS pursuant to this Section VIII in the form provided by PLS in either paper or electronic format except in response to a Freedom of Information Act ("FOIA") request. The City shall not publish any of the reports or data PLS provides to the City on the Internet in the form provided by PLS. PLS is responsible for marking each document that PLS asserts is protected by copyright.

D. Data Gaps. The City may review the Well Information Database and Updates and identify any perceived data gaps to PLS. After the City identifies such a gap, PLS will fill in the field(s) with information, if it is available, with the next Update. PLS will identify those gaps for which there is no information. To the extent practical, within 90 days after the City identifies a data gap to PLS, PLS will complete the dataset(s) or document why data are incomplete. The Parties acknowledge that the PLS Remediation has been ongoing for many years, and, in some cases, information regarding wells may not have been collected or may be missing or lost.

E. Provision of Reports from the City to PLS. The City will provide PLS with any final reports that the City in good faith determines would be of significant interest to PLS. The City shall also provide copies of additional reports reasonably requested by PLS. If any of the foregoing reports is in paper format, PLS may request that the report or portion(s) thereof be provided electronically, and the City will cooperate to the extent practical.

F. Disputes. Any issue arising under this Section which cannot be resolved quickly at a staff level shall be referred to the Coordination Committee for discussion and resolution.

IX. COOPERATION AND COORDINATION

A. Access. The City shall provide access to City Property and rights of way to facilitate the installation of monitoring wells PLS is required to install under MDEQ-approved work plans at appropriate locations and pursuant to mutually acceptable license agreements. The City shall process PLS' access requests in an expeditious manner. The City has the right to discuss the proposed location with PLS and to recommend an alternate location(s) for the well prior to submittal of sites to the MDEQ. PLS will submit to the City an application for a license for a monitoring well at that location, subject to approval by the MDEQ. PLS will endeavor to provide both the City and property owners on the same and intersecting street(s) within 200 feet of the well location with a minimum of seventy-two (72) hours notice prior to the installation date for any such well(s).

B. Master Bond. PLS will provide a "Master Bond" in the form attached hereto as Appendix B. The Master Bond will satisfy the surety bonding requirements of all current license agreements between the City and PLS for existing monitoring wells on City Property or rights of way and up to an additional ten (10) monitoring wells that may be installed by PLS on City Property or rights of way in the future.

C. Communication.

1. *Communications from PLS.* PLS will use reasonable efforts to inform the City contemporaneous with the MDEQ of any unexpected findings regarding conditions on City Property and property within the City limits, conditions both inside or outside City boundaries that may or do affect property within the City limits, City-owned facilities or City-provided services, and any other findings PLS in good faith deems to be of significant concern to the City. PLS will copy

the City (if in writing) on any communications with the MDEQ and will use reasonable efforts to inform the City of other communications from PLS regarding the foregoing. To the extent possible, Mr. Fotouhi will contact Ms. McCormick and/or Mr. Naud by telephone, facsimile, or email to communicate the relevant information.

PLS will copy the City (if in writing) on any communications with the MDEQ and will use reasonable efforts to inform the City of other communications from PLS regarding the promulgation of a maximum contaminant level ("MCL") for 1,4-dioxane. To the extent possible, Mr. Fotouhi will contact Ms. McCormick and/or Mr. Naud by telephone, facsimile, or email to communicate the relevant information.

2. *Communications from the City.* The City will copy PLS (if in writing) on any communications with the MDEQ and will use reasonable efforts to inform PLS of other communications from the City regarding City comments on PLS' cleanup efforts or regarding the promulgation of a maximum contaminant level ("MCL") for 1,4-Dioxane. To the extent possible, Mr. Naud and/or Ms. McCormick will contact Mr. Fotouhi by telephone, facsimile, or email to communicate the relevant information.

D. Meetings.

1. *City Council Meetings.* In the event that City Council intends to consider an issue that the City in good faith deems to be a significant concern to PLS, the City will use reasonable efforts to provide PLS with advance notice and the opportunity to make a written or oral presentation to City Council. To the extent possible, Mr.

Naud or Ms. McCormick will contact Mr. Fotouhi by telephone, facsimile, or email to communicate the relevant information.

2. *Public Meetings.* In the event the City intends to hold or co-sponsor a public meeting related to PLS, the City will provide PLS with advance notice and the opportunity to participate in the meeting. PLS will use reasonable efforts to participate in any such public meeting. The City agrees that its participation in any such meeting shall be consistent with its agreement to cooperate with PLS' implementation of the Unit E Order and all MDEQ-approved plans entered under the Unit E Order.

3. *Intergovernmental or Citizen/Governmental Coalitions and Organizations.* In the event the City participates in any intergovernmental coalitions or citizen/governmental coalitions or organizations regarding the PLS Remediation, the City's participation shall be consistent with its agreement to cooperate with PLS' implementation of the Unit E Order and all MDEQ-approved plans entered under that Order. The City will use reasonable efforts to have a PLS representative included in any such coalition or organization. The City will copy PLS (if in writing) on any communications to such groups and will use reasonable efforts to inform PLS of other communications that the City in good faith determines would be of interest to PLS.

4. *Quarterly/Semiannual Meetings of Coordination Committee.* The City and PLS shall meet on a regular basis to discuss issues of interest to the City and/or to PLS related to the PLS Remediation. Issues of interest to the City and/or to PLS are issues related to conditions on City Property, to conditions on property within the

City limits, and to conditions both within and outside the City boundaries that may or do affect City-owned facilities or City-provided services and any other topics mutually agreed upon by the Parties. The meetings will take place quarterly for the first two years, followed by semiannual meetings thereafter, unless a different schedule is mutually agreed upon by the Parties. The participants shall be Mr. Fotouhi, Mr. Naud, and Ms. McCormick. Ms. Bartlett will participate in such meetings by telephone. Members of City Council also may participate. This group shall be referred to as the Coordination Committee. At least one week prior to each meeting, Mr. Naud and/or Ms. McCormick will notify Mr. Fotouhi of any questions or topics they wish Mr. Fotouhi to answer or address at the meeting, and Ms. Bartlett and/or Mr. Fotouhi will notify Mr. Naud and Ms. McCormick of any questions or topics they wish Mr. Naud and/or Ms. McCormick to answer or address at the meeting.

E. Use of City Utilities. The City shall evaluate any application by PLS to use the City sanitary sewer system in accordance with the provisions of Chapter 28 of the Ann Arbor City Code. PLS understands that sanitary sewer services may be extended to a property outside the City under only certain, limited circumstances, that a service connection to the sanitary sewer within the City may only be made by agreement with the owner of the property that is serviced, and that Chapter 28 requires users of the sanitary sewer system to comply with specified pretreatment standards. If PLS requires use of the City's sanitary or storm water sewer systems in the future as a short-term method of disposing of purged groundwater, the City will consider such requests on a case-by-case basis in accordance with the provisions of Chapters 28 and 33 of the Ann Arbor City Code.

F. City Resolution. To the extent it is inconsistent, City Council Resolution No. R-583-12-96, entitled Resolution Regarding the Immediate Cleanup of Gelman Sciences' Groundwater Contamination, is superseded by the provisions of this Agreement.

G. Cooperation with Implementation of Unit E Order. The City shall cooperate with PLS' implementation of the Unit E Order and all MDEQ-approved plans entered under the Unit E Order. The City's cooperation shall include, but is not limited to, maintaining the Prohibition Zone Order and the attached map that depicts the Prohibition Zone established by the Prohibition Zone Order, as amended, in the same manner as the City already has done pursuant to the Prohibition Zone Order.

H. *Successor Responsibilities.* All references to specific persons in this Section IX also include the individual's successor in the event he or she leaves the employ of the respective Party.

X. FORCE MAJEURE

A. Force Majeure. Any delay attributable to a Force Majeure shall not be deemed a violation of a Party's obligations under this Agreement. "Force Majeure" is defined as an occurrence or nonoccurrence arising from causes beyond the control of a Party or of any entity controlled by the Party. Such occurrence or nonoccurrence includes, but is not limited to: (1) an Act of God; (2) acts or omissions of third parties for which the Party is not responsible; (3) insolvency of any vendor, contractor, or subcontractor retained by a Party as part of implementation of this Agreement; and (4) delay in obtaining necessary access agreements that could not have been avoided or overcome by due diligence. "Force Majeure" does not include unanticipated or increased costs or changed financial circumstances.

B. When circumstances occur that a Party believes constitute Force Majeure, the Party shall notify the other Party by telephone, facsimile, or email of the circumstances within 48 hours after the Party first believes those circumstances to apply. Within 14 working days after the Party first believes those circumstances to apply, the Party shall supply to the other Party, 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 the Party to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures.

XI. TERMINATION OF AGREEMENT

The Parties' obligations under this Agreement shall terminate upon PLS' receipt of the Certificate of Completion from the MDEQ confirming that PLS has completed satisfactorily all requirements of the Consent Judgment, as provided in Section XXV of the Consent Judgment, or after the MDEQ determines that 1,4-Dioxane within the Prohibition Zone does not exceed the applicable GCGI, whichever is later. Notwithstanding the foregoing, Section IV shall survive the termination of this Agreement.

XII. MISCELLANEOUS

A. Severability. The provisions of this Agreement 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 Agreement shall remain in full force and effect.

B. Warranties. The Parties each represent and warrant that:

1. The execution and delivery of this Agreement has been duly and validly authorized and approved by all requisite action required under applicable law and that no further action is necessary to make this Agreement valid and binding.

2. Each is fully authorized to enter into this Agreement and is duly organized and validly existing in good standing under the laws of one of the states of the United States of America.

3. Each has taken all necessary governmental, corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or other internal approval is necessary.

4. The making and performance of this Agreement will not, to the knowledge of either of the Parties, violate any provision of law or of their respective articles of incorporation, charter or by-laws.

5. Knowledgeable officials, officers, employees and/or agents of each Party have read this entire Agreement and know the contents hereof and that the terms of the Agreement are contractual and not merely recitals. Each Party has authorized this Agreement to be signed of its own free act, and, in making this Agreement, each has obtained the advice of legal counsel.

C. Signatories. Each person executing this Agreement warrants that he or she has the authority and power to execute this Agreement from the Party on whose behalf he or she is executing.

D. Change of Circumstances. Each Party to this Agreement acknowledges that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matter of this Agreement. The Parties each expressly accept

and assume the risk of such possible difference in facts and agree that this Agreement shall be and remain effective notwithstanding such difference in facts.

E. No Rights to Non-Parties. Except as expressly provided herein, this Agreement is intended to confer rights and benefits only upon the City and PLS, and is not intended to confer any right or benefit upon any other person or entity. Except as expressly provided herein, no person or entity other than PLS and the City shall have any legally enforceable right under this Agreement.

F. Arms-Length Negotiations. This Agreement is the product of arms-length negotiation, and the language in all parts of this Agreement shall be construed as a whole according to its meaning, and not strictly for or against any Party. The Parties hereto agree that this Agreement shall not be construed according to any special rules of construction applicable to contracts of adhesion and/or insurance contracts.

G. Modification. This Agreement may not be modified in whole or in part except by written agreement signed by the City and PLS.

H. Headings. The headings used in this Agreement are for convenience only and shall not be used to construe the provisions of this Agreement.

I. Cooperation. The City and PLS shall execute promptly any and all voluntary dismissals, stipulations, supplemental agreements, releases, affidavits, waivers and other documents of any nature or kind which the other Party may reasonably require in order to implement the provisions or objectives of this Agreement.

J. No Representations. The Parties represent and agree that in executing this Agreement they do not rely and have not relied upon any representation or statement made by any other Party or by any other person or entity released herein with regard to the subject

matter, basis, or effect of this Agreement, or otherwise, which is not specifically set forth herein.

K. Entire Agreement. This Agreement represents the entire understanding of the City and PLS, and this Agreement shall supersede and control any and all prior communications, correspondence, and memorialization of agreement or prior communication between the City and PLS or their representatives relative to the matters contained herein.

L. Counterpart Signatures. This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument and agreement.

M. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed under the law of the State of Michigan and the law of the United States without regard to Michigan's conflict of laws principles.

N. No Waiver. The failure of any of the Parties to exercise any power given such Party hereunder or to insist upon strict compliance by any Party with its obligations under this Agreement, and no custom or practice of the Parties at variance with the terms of this Agreement shall constitute a waiver of the Parties' right to demand exact compliance with the terms hereof.

O. Enforcement. The Parties agree that the Washtenaw County Circuit Court and the United States District Court for the Eastern District of Michigan each may retain jurisdiction to enforce the terms of this Agreement as appropriate.

****SIGNATURE PAGE FOLLOWS****

IN WITNESS WHEREOF, the Parties have executed this Agreement, consisting of Thirty (30) pages plus Appendices A and B and Figures 1 – 3, by their duly authorized representatives as set forth below.

City of Ann Arbor

By: John Hieftje,
Its: Mayor

By: Jacqueline Beaudry,
Its: City Clerk

Roger W. Fraser,
City Administrator

Sue F. McCormick, Public Services Administrator

Stephen K. Postema,
City Attorney
Counsel for the City of Ann Arbor

Fredrick J. Dindoffer,
Bodman, LLP
Counsel for the City of Ann Arbor

Gelman Sciences, Inc., d/b/a Pall Life Sciences

By: Mary Ann Bartlett
Its: Secretary and Director

Michael L. Caldwell,
Zausmer, Kaufman, August & Caldwell, PC
Counsel for Gelman Sciences, Inc. d/b/a Pall Life Sciences

Alan D. Wasserman,
Williams, Acosta, PLLC
Counsel for Gelman Sciences, Inc. d/b/a Pall Life Sciences

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By: Mary Ann Bartlett
Its: Secretary and Director

Michael L. Caldwell,
Zausmer, Kaufman, August & Caldwell, PC
Counsel for Gelman Sciences, Inc. d/b/a Pall Life Sciences

Alan D. Wasserman,
Williams, Acosta, PLLC
Counsel for Gelman Sciences, Inc. d/b/a Pall Life Sciences

EXHIBIT 11

Brenda Smith

From: cardcore@googlegroups.com on behalf of Beth Collins <rdhbeth@gmail.com>
Sent: Sunday, December 6, 2020 9:55 AM
To: cardcore@googlegroups.com; WC Card
Subject: [CARDcore] Gelman- City Resolution to Delay Letter to Governor in Support of Gelman Superfund Site

Dear CARDcore Members,

There is a Resolution on the December 7, 2020 City Council Meeting Agenda to **delay** asking the Governor to reque the process to designate the Gelman Site as a USEPA Superfund Site, see below Resolution. The City November 5, 2 passed supported a Gelman USEPA Superfund Site and asked that the Governor send a Concurrence Letter to USEP/ USEPA designation process.

If this December 7 Resolution passes, it will continue the over four year delay in getting federal government help to c Site.

One of our County Commissioners has said that they believe that getting federal assistance is an Environmental Justi Resolution it would be - Justice delayed is justice denied.

Sincerely,

Beth Collins, CARD secretary

Here is the resolution:

DC-3

Title

Resolution to Clarify and Modify R-20-425 Regarding United States Environmental Protection Age with the Gelman Site

Memorandum

On November 5, 2020, City Council approved Resolution R-20-425, "Resolution Supporting the En Protection Agency's Active Involvement with the Gelman Site and Encouraging its Listing of the sa Site." Since then the Washtenaw Circuit Court has scheduled a hearing in early 2021 in the lawsuit k General v. Gelman Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE, in which the City is a Although City Council intended continued participation in the litigation, the reference only to negoti from clarification that City Council intends to pursue the City's interests in the court proceedings.

In addition, to allow the court hearing to go forward and to consider the court's decision following th of the request to Governor Whitmer for a concurrence Letter to the United States Environmental Pro place the Gelman Site on the National Priority List and treat it as a Superfund site is warranted. A de brief period of time after the trial court's decision will allow City Council to consider the decision be Environmental Protection Agency action is sent.

Body

Whereas, The City wishes to continue to participate in and allow the litigation process in Attorney G Sciences, Inc., 22nd Circuit Court, File No. 88-34734-CE, to proceed; and

Whereas, Clarification and modification of Resolution R-20-425 are warranted for that purpose;

RESOLVED, That the seventh "Whereas" clause of R-20-425, which directed the City Administrato fourth consent judgment negotiation process," is clarified to include direction to the City Administra Attorney to proceed with litigation in Attorney General v. Gelman Sciences, Inc.;

RESOLVED, That the direction to the City Administrator in the fourth "RESOLVED" clause of Res "to write to the Governor enclosing this resolution and soliciting a Concurrence Letter to USEPA in the Gelman Site into a National Priorities List site" be delayed until 30 days after the decision by the Circuit Court following its hearing in early 2021 in Attorney General v. Gelman Sciences, Inc.;

RESOLVED, That Resolution R-20-425, as approved by City Council on November 5, 2020, otherw unchanged and in effect; and

RESOLVED, That the City Council authorize the City Administrator and City Attorney to take such are consistent with the purposes of this resolution.

Sponsored by: Councilmembers Briggs and Disch

--

Brenda Smith

From:	cardcore@googlegroups.com on behalf of Erica Briggs <ericafora2@gmail.com>
Sent:	Sunday, December 6, 2020 12:35 PM
To:	Beth Collins
Cc:	cardcore@googlegroups.com; WC Card; Briggs, Erica
Subject:	Re: [CARDcore] Gelman- City Resolution to Delay Letter to Governor in Support of Gelman Superfund Site

Beth, thanks for sharing information about DC-3. However, I disagree that this resolution would delay justice. The intent is to ensure that the City does not take any steps that might unintentionally delay or jeopardize the litigation we are currently engaged in with Gelman. Before us now is the prospect of justice in a matter of months, not decades. All of our community partners have said they want litigation to continue. I introduced this resolution because I am concerned a request for Superfund treatment before the state court hearing and decision are done could raise questions as to whether the City is serious about seeking relief in the state court hearing. It is important for the community to recognize that with the rejection of the 4th CJ the legal terrain has shifted. The circuit court judge will decide and order the remediation requirements with which Gelman will need to comply. It won't be a negotiated remediation plan. The court will also decide the role of the City and other Intervenors after judgment is entered.

I live directly above the plume. This is not an abstract threat. I am outraged that the polluter has been allowed to get away with doing so little for so long. I will not do anything to jeopardize the process we are in now, when the opportunity to hold Gelman to a much higher standard could be reached in just a few short months.

Thank you and I welcome dialogue with anyone on this matter who wants to discuss it at greater length. I have office hours at 4pm today and you can sign-up at my website below.

--
Erica Briggs
Ann Arbor City Councilmember, 5th Ward
(c) 734-355-3931
www.ericafora2.com

On Sun, Dec 6, 2020 at 9:55 AM Beth Collins <rdhbeth@gmail.com> wrote:

Dear CARDcore Members,

There is a Resolution on the December 7, 2020 City Council Meeting Agenda to **delay** asking the Governor to requ the process to designate the Gelman Site as a USEPA Superfund Site, see below Resolution. The City November 5.

Brenda Smith

From: cardcore@googlegroups.com on behalf of Beth Collins <rdhbeth@gmail.com>
Sent: Sunday, December 6, 2020 1:06 PM
To: CARDcore
Subject: [CARDcore] Fwd: Gelman - City Resolution to Delay Gelman USEPA Superfund Site Designation

---------- Forwarded message ---------
From: **DANBICKNELL** <danjbicknell@live.com>
Date: Sun, Dec 6, 2020 at 10:59 AM
Subject: Gelman - City Resolution to Delay Gelman USEPA Superfund Site Designation
To: Lisa Disch@a2gov.org <LDisch@a2gov.org>, Erica Briggs@a2gov.org <EBriggs@a2gov.org>, Linh Song@a2gov.org <LSong@a2gov.org>, Travis Radina@a2gov.org <TRadina@a2gov.org>, Jen Eyer@a2gov.org <JEyer@a2gov.org>
Cc: Taylor, Christopher (Mayor) <CTaylor@a2gov.org>, Griswold, Kathy <KGriswold@a2gov.org>, Hayner, Jeff <JHayner@a2gov.org>, <JGrand@a2gov.org>, <ENelson@a2gov.org>, <ARamlawi@a2gov.org>, Steglitz, Brian <BSteglitz@a2gov.org>, Elias, Abigail <AElias@a2gov.org>, Crawford, Tom <TCrawford@a2gov.org>, Jason Maciejewski <maciejewskij@washtenaw.org>, Andy LaBarre <labarrea@washtenaw.org>, Sue Shink <shinks@washtenaw.org>, Shannon Beeman <beemans@washtenaw.org>, Felicia Brabec <brabecf@washtenaw.org>, Ricky L. Jefferson <jeffersonr@washtenaw.org>, Jason Morgan <morganj@washtenaw.org>, Katie Scott <scottk@washtenaw.org>, Gregory Dill <dillg@washtenaw.org>, Evan Pratt <pratte@ewashtenaw.org>, Jimena Loveluck <loveluckj@washtenaw.org>, Kristen Schweighoefer <schweighoeferk@washtenaw.org>, Jennifer Conn <connj@washtenaw.org>, Will Hathaway <hathwill@gmail.com>, Kathy Knol <kknol1@comcast.net>, <townshipboard@sciotownship.org>, <depalmer@sciotownship.org>, <JFlintoft@sciotownship.org>, Michael Moran <moran@aatwp.org>, Diane O'Connell <supervisor@aatwp.org>, <d2@debbiedingell.com>, <Greg.Sunstrum@mail.house.gov>, Jesaitis, Katie <Katie.Jesaitis@mail.house.gov>, Jeff Irwin <jeffmirwin@gmail.com>, State Representative Yousef Rabhi <yousefrabhi@house.mi.gov>, <DonnaLasinski@house.mi.gov>, Nancy Shiffler <nshiffler@comcast.net>, James Carl D'Amour <james@peoplepowerunlimited.com>, Roger Rayle <rmrayle@gmail.com>, Rita Mitchell <ritalmitchell@gmail.com>, McCall, Patti <Patti.Mccall@tetratech.com>, Beth Collins <rdhbeth@gmail.com>, Bailey, Robert <bob.bailey@tm.net>, Vince Caruso <vrcaruso@comcast.net>, Rita Caruso <rlochcaruso@gmail.com>, Jack Eaton <jackeaton@live.com>, Anne Bannister <bannister4council@gmail.com>, <spencer@fourthviewmedia.com>, Dylan Thomas <dylan@fourthviewmedia.com>, O'Rielly, Steve <sorielly@umich.edu>, <mjnaud@gmail.com>, Environmental Commission <ec@a2gov.org>, Ryan J Stanton <RStanton@mlive.com>, Jim Crowfoot <crowfoot@umich.edu>

New City Council Members:

As you know, the December 7 City Council meeting will consider a Resolution to delay asking the Governor to send a Concurrence Letter to USEPA in support of designating the Gelman Site as a USEPA Superfund Site. The City attorneys and Mayor have stated that if the City asks for the Governor Concurrence Letter now that it will upset Gelman and the Consent Judgment negotiations. This fabrication has been told over the last four years to all the City, County, and Townships elected officials in an attempt to never make progress towards a Gelman USEPA Superfund Site. This assertion has been rejected by all the local governments. As new members of the City Council, please use your common sense. You are the decision-makers responsible and accountable for protecting the public health and the environment.

We need two paths to combat this Gelman dioxane pollution that is adversely impacting our public health and the environment. The path of obtaining a better Consent Judgment and the path towards a Gelman USEPA Superfund Site., Asking that the Governor not now send the Concurrence Letter will continue the obstruction of the federal Superfund path.

A basic principle In any negotiation is that pressure must be created against the opposition to gain favorable terms and condition, especially in a Consent Judgment (CJ). Gelman has established that it does not want a Gelman USEPA Superfund Site, in part, by requiring in the 4th Amended CJ related Settlement Agreement that the City not ask for a Gelman USEPA Superfund Site or pay a $1M penalty. The concept that Gelman will get upset and walk away from the CJ negotiations if the City requests now a Governor Concurrence Letter is nonsense. If Gelman walks away, then the current CJ will remain in-place, except that the Court will be required to update the CJ with the current EGLE drinking water and groundwater-surface water criteria to comply with current State of Michigan laws and regulations. As stated recently by the State of Michigan - Assistant Attorney General on this case, this will then immediately place Gelman in violation of the CJ, thereby, triggering requirements for Gelman to take actions now to stop the dioxane plume migration and remediate the groundwater contamination.

After spending over $1M and three years on CJ negotiation, the result under the current treatment of Gelman has been a totally deficient proposed 4th Amended CJ. Applying additional pressure on Gelman is now required; not less pressure.

Attorneys make recommendations (in this case for many different reasons) and Council make decisions using good reasoning.

Please take action to protect our homes and community by not passing the December 7 Resolution. Please do not make one of your first votes a vote that you will later regret.

If you have any questions or comments, please contact me at your convenience.

Thank you.

Best regards,

Daniel J. Bicknell, MPH

President

Global Environment Alliance, LLC

Phone -248-720-9432

danjbicknell@live.com

--
[sent via cardcore@googlegroups.com]

You received this message because you are subscribed to the Google Groups "CARDcore" group.
To unsubscribe from this group and stop receiving emails from it, send an email to cardcore+unsubscribe@googlegroups.com.
To view this discussion on the web visit https://groups.google.com/d/msgid/cardcore/CALY%3DzNKFHmgByiLHNzZ-co6tZCtSnYW7z9YH%3DGHOs%2BTC7w64sw%40mail.gmail.com.

Brenda Smith

From:	cardcore@googlegroups.com on behalf of Ralph McKee <rmckee2258@gmail.com>
Sent:	Sunday, December 6, 2020 3:54 PM
To:	Erica Briggs
Cc:	Beth Collins; cardcore@googlegroups.com; WC Card; Briggs, Erica
Subject:	Re: [CARDcore] Gelman- City Resolution to Delay Letter to Governor in Support of Gelman Superfund Site

I am writing to respond to the email you sent earlier today to Beth Collins and other CARD members re your DC-3 resolution. I am dismayed that, despite my detailed critique of the resolution and the state court Gelman litigation sent to you this morning, you persist in making public statements which are factually unsupported and disingenuous. You say your resolution is to ensure that the City does not "unintentionally delay or jeopardize the litigation," and that the EPA request "could raise questions as to whether the City is serious about seeking relief in the state court…". You have not provided any support for those statements, because there isn't any. Frankly, as I told you this morning, all that is needed is for City counsel to tell the judge 1) the EPA will not be here for quite some time, 2) therefore, this litigation is very important to the City, and 3) the City is going to proceed full bore with litigation. Quite simple.

Your expressed expectations as to the timing and the results of the January hearings are naive at best because they ignore numerous litigation realities, including that there has been no discovery, no motion practice and no pretrial order; to have a full blown trial under these circumstances on a month's notice would be highly unusual. Other intervenor counsel are perplexed by the judge's order re the hearings and are asking for clarification. City counsel have regularly said state law is vey weak. The judge may order more hearings, or take the matter under advisement for months. And if the judge does order Gelman/Danaher to do something beyond what it wants to do, they will certainly appeal. That will take at least a year, maybe two or more, to resolve. Given all that, to think that we will get an enforceable order that we like in "just a few short months" is wildly unrealistic. I will note that you're not a lawyer and have no litigation experience remotely close to this, but to be fair, I would say the same thing to City counsel.

Finally, to undercut the negotiating leverage provided by the EPA request via this resolution is unfathomable. Every qualified lawyer I have discussed this matter with agrees that the best card we have is that leverage, and that to undercut it is the worst move that we could make.

Given all the above, why you are persisting with your resolution is beyond explanation. I am asking to have this sent to all CARD members.

> On Dec 6, 2020, at 12:34 PM, Erica Briggs <ericafora2@gmail.com> wrote:
>
> Beth, thanks for sharing information about DC-3. However, I disagree that this resolution would delay justice. The intent is to ensure that the City does not take any steps that might unintentionally delay or jeopardize the litigation we are currently engaged in with Gelman. Before us now is the prospect of justice in a matter of months,

not decades. All of our community partners have said they want litigation to continue. I introduced this resolution because I am concerned a request for Superfund treatment before the state court hearing and decision are done could raise questions as to whether the City is serious about seeking relief in the state court hearing. It is important for the community to recognize that with the rejection of the 4th CJ the legal terrain has shifted. The circuit court judge will decide and order the remediation requirements with which Gelman will need to comply. It won't be a negotiated remediation plan. The court will also decide the role of the City and other Intervenors after judgment is entered.

I live directly above the plume. This is not an abstract threat. I am outraged that the polluter has been allowed to get away with doing so little for so long. I will not do anything to jeopardize the process we are in now, when the opportunity to hold Gelman to a much higher standard could be reached in just a few short months.

Thank you and I welcome dialogue with anyone on this matter who wants to discuss it at greater length. I have office hours at 4pm today and you can sign-up at my website below.

--
Erica Briggs
Ann Arbor City Councilmember, 5th Ward
(c) 734-355-3931
www.ericafora2.com

On Sun, Dec 6, 2020 at 9:55 AM Beth Collins <rdhbeth@gmail.com> wrote:

Dear CARDcore Members,

There is a Resolution on the December 7, 2020 City Council Meeting Agenda to **delay** asking the Governor the process to designate the Gelman Site as a USEPA Superfund Site, see below Resolution. The City Nover passed supported a Gelman USEPA Superfund Site and asked that the Governor send a Concurrence Letter t USEPA designation process.

If this December 7 Resolution passes, it will continue the over four year delay in getting federal government Site.

One of our County Commissioners has said that they believe that getting federal assistance is an Environmer Resolution it would be - Justice delayed is justice denied.

Sincerely,

Beth Collins, CARD secretary

Here is the resolution:

Brenda Smith

From:	cardcore@googlegroups.com on behalf of Michael Moran <moranmc@prodigy.net>
Sent:	Sunday, December 6, 2020 10:30 PM
To:	Beth Collins; Erica Briggs
Cc:	cardcore@googlegroups.com; WC Card; Briggs, Erica
Subject:	Re: [CARDcore] Gelman- City Resolution to Delay Letter to Governor in Support of Gelman Superfund Site

Erica, while your intent may be to bring about a speedier, acceptable resolution of this 30+ year litigation, your proposed resolution will do just the reverse. We have not met, I was Ann Arbor Township's Supervisor for the last 18 years, retiring June 1, 2020. I remain an Ann Arbor Township Trustee, having been elected in November. I am also a retired lawyer who had a trial and appellate practice in local, state and federal courts with an office in Ann Arbor. I spent much of those 18 years as Supervisor dealing with the Gelman pollution issues and case. AA Township was a founding member of CARD, the Committee for Action on Remediation of Dioxane, and I am Vice-Chair of CARD. We founded CARD because our citizens were getting no help from the MiciganDepartment of Environmenta Quality in forcing Gelman to remedy the spreading plume of pollution it created. During those years I traveled on many occassions to Lansing along with other local officials to engage with the AttorneysGeneral and the Headsof the MDEQ to force them to pay attention to this spreading problem that they seemed unable to focus on. I attended several court proceedings during those years and witnessed how Gelman's lawyers were masters of creating delay after delay, thwarting any possibility of holding Gelman to account. for its recklesness. Along with other CARD members we have spend thousands of hours on doing what the state agencies were not doing and thousands of hours more keeping a living record of this problem for others to follow when we were no longer able to carry to load.

You do not seem to have an understanding of the Gelman lawsuit, or even lawsuits in general. Your assertion that the Judge will "render a judgment" after the three days of hearing in January is simply incorrect. Those hearings are in the manner of a status conference to determine after four years of negotiations whether an agreed upon resolution has been reached--a consent judgment, indeed a Fourth Consent Judgment CJ4.That proposed judgment was negotiated without any community involvement. It is a 93 page document, that when read discloses, once again, that Gelman simply wants to forestall any directive to make it clean up its mess. The proposed remedies identified in CJ4 were wholly inadequate to even keep the current plume from spreading across our contiguous local jurisdictions. Experts hired by the City of Ann Arbor found that the number of proposed new sentinal and purge wells were wholly inadequate to remediate the pollution or to even prevent it spread. Dr Lemke, an expert hired by the City, could not even say that the plume of pollution would not spread to Barton Pond, the source of 85% of the City's drinking water. Likewise, he advised that there were not enought wells proposed in CJ4 to tell us in teh future whether the plume is heading to Barton Pond. CJ4 in fact removed several goals established in the Third CJ to prevent the spread of the pollution. The proposed CJ4 even set out a strategy for Gelman to withdraw from the remediation efforts and walk away from the problem. A serious reading of the related Settlement AGreement makes it clear that Gelman desperately wants to keep the EPA out of any leadership role in forcing Gelman to clean up this mess at its expense. There is so much wrong with this proposed CJ4 that no amount of tinkering with its provisions can make it acceptible. Your assertion that we are within months of achieving justice is so profoundly wrong. The delay you want to create will not bring us justice, it will just bring us another delay; it will not bring us a "judgment" it will just give Gelman yet another delay, and another victory.

You seem to want to help the residents in your political district, but your action will not help them. Please realzethat those of us who have been figinting Gelman for these many years have learned some things,about this substance 1-4- Dioxane and about Gelman. Please reconsider your approach and withdraw your motion. I would be happy to talk with you more about this problem if you like. My cell phone is 734-649-7666.

Michael Moran

On Sunday, December 6, 2020, 12:49:10 PM EST, Erica Briggs wrote:

Brenda Smith

From:	cardcore@googlegroups.com on behalf of Erica Briggs <ericafora2@gmail.com>
Sent:	Sunday, December 6, 2020 11:25 PM
To:	Michael Moran
Cc:	Beth Collins; cardcore@googlegroups.com; WC Card; Briggs, Erica
Subject:	Re: [CARDcore] Gelman- City Resolution to Delay Letter to Governor in Support of Gelman Superfund Site

CM Disch and I appreciate all of the public feedback, particularly from members of this group, we have received on this issue and we would like CARD members to know we are withdrawing our resolution in the morning so it will not be on the agenda.

Sincerely,
Erica Briggs, 5th Ward CM

On Dec 6, 2020, at 10:32 PM, Michael Moran wrote:

Erica, while your intent may be to bring about a speedier, acceptable resolution of this 30+ year litigation, your proposed resolution will do just the reverse. We have not met, I was Ann Arbor Township's Supervisor for the last 18 years, retiring June 1, 2020. I remain an Ann Arbor Township Trustee, having been elected in November. I am also a retired lawyer who had a trial and appellate practice in local, state and federal courts with an office in Ann Arbor. I spent much of those 18 years as Supervisor dealing with the Gelman pollution issues and case. AA Township was a founding member of CARD, the Committee for Action on Remediation of Dioxane, and I am Vice-Chair of CARD. We founded CARD because our citizens were getting no help from the MiciganDepartment of Environmenta Quality in forcing Gelman to remedy the spreading plume of pollution it created. During those years I traveled on many occassions to Lansing along with other local officials to engage with the AttorneysGeneral and the Headsof the MDEQ to force them to pay attention to this spreading problem that they seemed unable to focus on. I attended several court proceedings during those years and witnessed how Gelman's lawyers were masters of creating delay after delay, thwarting any possibility of holding Gelman to account. for its recklesness. Along with other CARD members we have spend thousands of hours on doing what the state agencies were not doing and thousands of hours more keeping a living record of this problem for others to follow when we were no longer able to carry to load.

You do not seem to have an understanding of the Gelman lawsuit, or even lawsuits in general. Your assertion that the Judge will "render a judgment" after the three days of hearing in January is simply incorrect. Those hearings are in the manner of a status conference to determine after four years of negotiations whether an agreed upon resolution has been reached--a consent judgment, indeed a Fourth Consent Judgment CJ4.That proposed judgment was negotiated without any community involvement. It is a 93 page document, that when read discloses, once again, that Gelman simply wants to forestall any directive to make it clean up its mess. The proposed remedies identified in CJ4 were wholly inadequate to