

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

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,

No. 88-34734-CE

HON. TIMOTHY P. CONNORS

**DEPARTMENT OF ENVIRONMENT,
GREAT LAKES, AND ENERGY'S
RESPONSE TO GELMAN SCIENCES,
INC.'S MOTION FOR STAY OF
ORDER SCHEDULING HEARING ON
MODIFICATION OF CONSENT
AGREEMENT**

and

SCIO TOWNSHIP,

Intervenor,

v

GELMAN SCIENCES, INC., a
Michigan
Corporation,

Defendant.

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**DEPARTMENT OF ENVIRONMENT, GREAT LAKES,
AND ENERGY'S RESPONSE TO GELMAN SCIENCES, INC.'S
MOTION FOR STAY OF ORDER SCHEDULING HEARING
ON MODIFICATION OF CONSENT AGREEMENT**

The Department of Environment, Great Lakes, and Energy (EGLE) takes no position on Gelman Sciences, Inc.'s motion for stay. However, it is essential that response activities continue to progress at the Gelman site while this Court considers the best course of action to address the risks from contamination at the site. Nearly four years were expended negotiating the now rejected Fourth Amended and Restated Consent Judgment (4th CJ). In order to ensure continued response activity progress, EGLE intends to seek this Court's approval to move forward with long overdue, and uncontested, response activities necessary to protect public health and the environment while proceedings in this case continue.

During the November 19, 2020 status conference, the parties informed the Court that the elected officials of the local government Intervenors had, contrary to the recommendations of their experienced environmental counsel and experts, rejected the 4th CJ after nearly four years of negotiations.

The elected officials rejected the 4th CJ to seek U.S. Environmental Protection Agency (USEPA) takeover of the Gelman Sciences, Inc. (Gelman) Site as a "Superfund" site, adopting the belief asserted by community activists that USEPA will force Gelman to clean up the contaminated aquifer to drinking water standards. Somewhat inconsistently, the elected officials also directed their legal counsel to simultaneously pursue a "better" resolution than the 4th CJ through litigation before this Court.

The result of the November status conference was the Court’s December 17, 2020 Scheduling Order, as modified by its January 27, 2021 Scheduling Order, that directs the parties to submit Briefs and Expert Reports both supporting the proposed 4th CJ and identifying revisions to address its perceived inadequacies.

On January 7, 2021, Gelman filed a motion for reconsideration of the December 17, 2020 Scheduling Order and, on January 22, 2021, moved this Court to stay the Scheduling Order’s briefing schedule and hearings pursuant to MCR 2.614(D) and MCR 7.209(A).¹

EGLE takes no position on the appropriateness of the stay requested by Gelman. EGLE’s interest and statutory obligation in this litigation is to ensure expeditious compliance with the law under an enforceable schedule, which the 4th CJ accomplishes. EGLE anticipates that the Intervenors will bring forward arguments about how the 4th CJ should be improved. But EGLE has substantial concerns that no revisions ordered by this Court, short of aquifer restoration to drinking water standards²—the primary reason the elected officials rejected the 4th CJ and are seeking USEPA takeover—will satisfy the elected officials.

¹ On January 28, 2021, Gelman withdrew its motion for reconsideration and brief and refiled its motion and brief to reflect the revised Scheduling Order issued January 27, 2021.

² EGLE does not oppose aquifer restoration, but aquifer restoration is not required under Michigan law; even if Michigan law authorized the Court to order such a remedy (it does not expressly do so), EGLE notes that the Intervenors’ own expert hydrogeologist, Dr. Lemke, stated his professional opinion is that the “site is too large and too complex to remediate completely.” Part 7 Summary and Concluding Thoughts - YouTube, at 1:39–2:15, posted August 28, 2020.

As noted by Gelman in its recent filings, at the time of the original intervention hearings, EGLE and Gelman had reached agreement on the substance of a proposed 4th CJ that would have updated the existing Consent Judgment to current cleanup standards, required substantial additional investigation, including potential surface water impacts, and remedial work. That work has been on hold due to the subsequent years-long and now ultimately failed negotiations for the 4th CJ.

Therefore, EGLE requests that the Court take into consideration when considering Gelman's Motion for Stay and the upcoming filings, should they proceed, that EGLE's highest priority is to address the now years-overdue updating of the Consent Judgment through an amended 4th CJ incorporating the uncontested response activities. The arguments and proceedings about what more can or should be done can proceed after the updated Consent Judgment is in place. EGLE intends to ensure that entry into an amended 4th CJ will not preclude any further proceedings or discussion by the parties.

This approach will allow the substantial amount of work required under the 4th CJ to proceed immediately—the work that is not in dispute and was not objected to by the public³ during public comment periods—while the proceedings before this

³ EGLE's responses to public comments regarding the proposed 4th CJ remain valid because EGLE does not anticipate adding any new terms. Therefore, there will be no need to engage in another public comment period prior to entry of an amended 4th CJ. The Court should note that EGLE engaged in the public comment period because of community interest in the 4th CJ. That is, the public comment period was not a legal requirement.

Court or the Court of Appeals play out. The amended 4th CJ will be fully protective and compliant with Michigan law.

Respectfully submitted,

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LF: Gelman Sciences CIR/AG#1989-001467-A/Response to Motion for Stay 2021-02-01