

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
OPPOSITION TO INTERVENORS'
MOTION FOR ENTRY OF AN
ORDER TO SHOW CAUSE
CONCERNING
IMPLEMENTATION OF
RESPONSE ACTIVITY ORDER**

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INTRODUCTION

Intervenors' motion seeks a hearing that this Court does not have jurisdiction to hold and relief that this Court does not have jurisdiction to order. In so doing, Intervenors ask this Court to

violate the Court of Appeals’ partial stay order and the Michigan Court Rules. Intervenor also make the baseless claim that Gelman Sciences, Inc. (“Gelman”) has shown disrespect to this Court by not complying with its June 1, 2021 “Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria” (the “Response Activity Order” or “RAO”). **Ex. 1.** That assertion is entirely unsupported by the sparse and inaccurate factual allegations in Intervenor’s Motion, and, as shown below and in the Summary of Response Activities attached as **Appx A**, completely contrary to the reality of Gelman’s extraordinary efforts to implement the Response Activity Order—and to do so in the midst of an ongoing global pandemic marked by severe supply chain issues. Notably, the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”), the Plaintiff in this enforcement action and the State agency given the constitutional and statutory authority to oversee Gelman’s remediation efforts, has **not** joined Intervenor’s motion. To the contrary, EGLE has informed Gelman on numerous occasions that it is pleased with the progress Gelman has made in implementing the Response Activity Order.

Gelman has complied in good faith with the Response Activity Order issued by this Court—even though Gelman disputes the legal basis for the order.¹ As set forth below and as shown in the attached Summary of Response Activities, even if this Court had jurisdiction to consider Intervenor’s motion and the relief sought—and it does not—there is no basis for Intervenor’s unsupported assertion that Gelman has violated the Response Activity Order. To the contrary, the record demonstrates that Gelman has continued to respect this Court’s decisions, even

¹ Gelman similarly disputed (and sought leave to appeal) this Court’s intervention orders, but nevertheless participated in court-ordered negotiations in good faith and ultimately agreed to undertake significant additional response actions in order to achieve the proposed global settlement that was the result of this Court’s well-intended efforts to shepherd the various factions toward consensus. Gelman has again demonstrated its good faith and respect for this Court by implementing the Response Activity Order, even the parts Gelman maintains are not necessary to protect human health or the environment.

those with which it disagrees, and is complying with the terms of the Response Activity Order in implementing response actions at the former Gelman Site.

ARGUMENT

- I. This Court does not have jurisdiction to entertain this motion, nor to provide the relief Intervenors seek.

On June 1, 2021, this trial court issued its Response Activity Order. As this Court is aware, on June 22, 2021, Gelman filed a claim of appeal and an application for leave to appeal the Response Activity Order. On July 26, 2021, the Michigan Court of Appeals granted Gelman's Application for Leave to Appeal the Response Activity Order. **Ex. 2.** Oral argument before the Court of Appeals is now scheduled for July 7, 2022, three weeks after the hearing date for Intervenor's motion. **Ex. 3.**²

Critically, in addition to granting Gelman leave to appeal, the Court of Appeals' July 26, 2021 Order *stayed* paragraphs 2 and 3 of the Response Activity Order pending resolution of the Appeal or further order from the Court of Appeals. **Ex. 2** ("COA Stay Order"). Those paragraphs provide:

2. The [trial] court retains continuing jurisdiction and will hold further hearings on a quarterly basis to review the progress of Response Activities and other actions required by this order related to releases of 1,4 dioxane at and emanating from the Gelman site and consider the implementation of additional or modified Response Activities and other actions.

3. The first quarterly hearing is scheduled for September 1, 2021 at 9 a.m.

Ex. 1 (emphasis added). As a result of the COA Stay Order, unless and until Gelman's appeal is resolved or a further order is issued by the Court of Appeals, this Court does not retain jurisdiction

² As noted in Intervenor's motion, the Court of Appeals dismissed Gelman's claim of appeal, determining that the Response Activity Order was not a final order. Intervenor Mtn, 2. Neither that decision nor the Supreme Court's recent May 31, 2022 denial of Gelman's application for leave to appeal that decision are relevant to Intervenor's motion.

to “hold further hearings” to either (a) “review the progress of Response Activities or other actions required” by the Response Activity Order, or (b) “consider implementation of additional or modified Response Activities or other actions”—precisely the relief which Intervenor’s motion seeks.

The Intervenor’s mischaracterize the COA Stay Order by describing it as only staying the Court’s ability to consider additional or modified Response Activities. Indeed, Intervenor’s omit any reference to the express prohibition in the COA Stay Order staying this Court’s ability to review Gelman’s progress in implementing the “Response Activities or other actions required” by the Response Activity Order, in the hope that this Court will simply ignore that directive. Intervenor’s Mtn., ¶ 3. (“In fact, *the sole provisions* that the Court of Appeals stayed were those providing for quarterly meetings and potential additional or modified response activities.”) (emphasis added). This Court should not be misled by this obvious misstatement of the COA Stay Order. The COA Stay Order is clear: it specifically stayed the portion of the Response Activity Order that would have otherwise provided this court with continuing jurisdiction to conduct a review of Gelman’s Response Activity progress—including a hearing such as this, purporting to assess Gelman’s progress toward compliance with the Response Activity Order.

In yet another attempt to avoid the unmistakable prohibition in the COA Stay Order, Intervenor’s couch their motion as one seeking an order requiring “Gelman appear and show cause why it is not in violation of the Response Activity Order.” Intervenor’s Mtn., p. 2. But the reality is that Intervenor’s are using the show cause framework as an improper backdoor, inviting the Court to do exactly that which the COA Stay Order prohibits—holding a hearing to “review the progress of Response Activities and other actions” required by the Response Activity Order. Intervenor’s Mtn., ¶ 7 (“Gelman has not made significant *progress* in many other key areas and has *thereby*

failed to ‘immediately implement’ the Response Activity Order, as required.” (emphasis added)). No matter how Intervenor attempt to dress it up, the hearing they seek is nothing more than the progress review hearing the COA Stay Order expressly precludes. As such, this Court lacks jurisdiction to hold the hearing Intervenor request.

II. This Court also lacks jurisdiction to amend the Response Activity Order by adding deadlines for completing Response Activities.

Intervenor further ask this Court to “direct Gelman to complete the remaining requirements under that Order on” what they implausibly characterize as “a workable but aggressive time line.” Intervenor’s Mtn., p. 2. (*See also*, Intervenor’s April 18, 2022 demand letter (“April 18 Demand Letter”), attached as Exhibit B to their motion and as **Ex. 4** hereto).³ Intervenor go on to argue that the entirely new deadlines they seek for implementing the Response Activities and other actions should be measured by a certain number of days after the date of the Response Activity Order. Intervenor’s Mtn., ¶ 13. Setting aside the naivete and unreasonableness of the Intervenor’s request, discussed in Section III below, this Court does not have jurisdiction to issue the requested relief in any event.

First, the requested time line and specific completion deadlines were not included in either the Response Activity Order (*that Intervenor drafted*) or in the proposed “Fourth Amended and Restated Consent Judgment” (“proposed 4th Amended CJ”) incorporated by the RAO (*that Intervenor negotiated*). Adding new deadlines would therefore clearly constitute “additional or modified Response Activities and other actions” that the COA Stay Order expressly prohibits this

³ As an example of the wholly unrealistic nature of the “aggressive time line” Intervenor will apparently ask this Court to order is the Intervenor’s demand contained in an *April 18* letter that Gelman install numerous monitoring wells *by the end of April*—a mere 11 days after Intervenor sent that demand letter. **Ex. 4**, pp 2, 3. Such unreasonable, unworkable, and frankly unachievable types of demands only demonstrate that Intervenor are completely unequipped to undertake the role of regulator that they disclaim they want, but which they clearly seek.

Court from ordering. (*See* the stayed Paragraph 2 of the RAO, **Ex. 1**). It would therefore be improper and a violation of the COA Stay Order for this Court to consider, let alone impose, Intervenor's newly requested time line and/or completion deadlines. Indeed, granting Intervenor's request to add a new "aggressive time line" and specific completion deadlines would create precisely the "moving target" *even Intervenor's admit* the Court of Appeals sought to avoid in issuing its stay order. (Intervenor's Mtn., ¶ 3) ("Presumably, the Court of Appeals stayed those provisions because it *did not want a moving target while the Order is on appeal.*") (emphasis added).

Second, Intervenor's Motion asks this Court to violate the Michigan Court Rules by amending the Response Activity Order after leave to appeal was granted on July 26, 2021. MCR 2.708(A) precludes such amendments while an appeal is pending: "after a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from. . . ." (emphasis added). *See also, Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 314; 486 NW2d 351, 359 (1992) ("After a claim of appeal is filed, a trial court may not set aside or amend the judgment or order appealed from except by order of this Court, by stipulation of the parties, or as otherwise provided by law. MCR 7.208(A).") (emphasis added). The prohibition on amendment of an order after leave is granted clearly and indisputably bars Intervenor's requested relief here. **Ex 2.**⁴

⁴ Intervenor's attempt to analogize this situation to the 2000 Remediation Enforcement Order is completely misplaced; there was no pending appeal in 2000. The single case precedent cited in Intervenor's one paragraph brief, *Cohen v Cohen*, 125 Mich App 206; 335, NW2d 661 (1983), is similarly inapposite. In *Cohen*, the trial court entered the "enforcement orders" before any appeal had been sought, and the merits of those orders were not the subject of the appeal at all. *Id.*, at 211.

Third, the conclusion that the COA Stay Order and MCR 2.708(A) both bar Intervenor’s requested relief is particularly clear where, as here, Intervenor asks this Court to dramatically revise the structure of the Response Activity Order and usurp EGLE’s role as the regulator even while that same Order is on appeal. It is no accident that neither the Response Activity Order nor the proposed 4th Amended contain the completion deadlines for each response activity Intervenor now demand.⁵ As Intervenor recognized during the course of negotiating the 4th Amended CJ, monitoring of the pace and prioritization of implementation activities under the Response Activity Order is the sole and exclusive province of EGLE, the state regulator vested with the experience, expertise, and statutory authority for this purpose—not Intervenor. That EGLE must be permitted to exercise this oversight and discretion, and do so in coordination with Gelman, is enshrined in the content and structure of the proposed 4th Amended CJ as negotiated. That proposed agreement rightfully leaves the timeline for implementation and prioritization of response activities to be aligned and coordinated amongst EGLE and Gelman in the manner that makes technical sense, reflects the realities of a years-long and highly complex remedial scheme, and which remains protective of public health and the environment. This Court should not accept Intervenor’s invitation to place them in the shoes of the responsible state regulator at any point in this litigation. Both the COA Order and MCR 7.208(A) expressly preclude this Court from even considering such a misguided request while the Response Activity Order is on appeal.

III. There is no support for Intervenor’s assertion that Gelman has violated the Response Activity Order by failing to “immediately” implement the required response activities.

⁵ If Intervenor or this Court had intended to impose such completion deadlines, the Response Activity Order would have simply listed each response activity and the date by which each was to be completed. Rather, the Response Activity Order and the Intervenor-negotiated 4th Amended CJ recognize EGLE’s role as regulator and leave it to EGLE to determine the appropriate schedule for each activity based on the nature of the work and various other factors.

Even if this Court were to conclude that it has jurisdiction to hold a progress review hearing—and it does not—this Court would find that Gelman has complied with the Response Activity Order’s mandate to “immediately” implement the Response Activity Order. As set forth and below and in more detail in the attached Summary of Response Activities, Gelman has implemented the required response activities and has done so without delay, in compliance with all applicable deadlines, and made tremendous progress toward completing the required tasks. In doing so, Gelman has overcome—and is still working to overcome—any obstacles not within its control.

- a. This Court should not adopt Intervenor’s absurd interpretation of the Response Activity Order.

Intervenor’s appear to interpret the Response Activity Order’s directive to “immediately implement” the proposed 4th Amended Consent Judgment to mean that such implementation must somehow be “instantaneous.” This reading is evidenced, for example, by their June 7, 2021 correspondence, in which they demanded that Gelman “provide the status of Gelman’s efforts” to implement the identified Response Activities” *six days* after the Response Activity Order’s entry.

Ex. 5 But Intervenor’s know full well that equating “immediate” with “instantaneous” would lead to an absurd and unachievable result, particularly in the context of an order to “implement and conduct” Response Activities that by their very nature can only be completed over time and with requisite permits and approvals—permits and approvals which Intervenor’s themselves are responsible for reviewing and issuing.

Even if Intervenor’s refuse to acknowledge the absurdity of their position, this Court should not. “Courts should interpret the terms in a judgment in the same manner as courts interpret contracts.” *AFT v State*, 334 Mich App 215, 236; 964 NW2d 113, 127 (2020). “[C]ourts avoid interpreting contracts in a manner that would impose unreasonable conditions or absurd results.”

Bodnar v St John Providence, Inc, 327 Mich App 203, 223; 933 NW2d 363, 375 (2019). This Court could not have intended the Response Activity Order to be interpreted in a way that would “impose unreasonable conditions or absurd results” in the manner Intervenor’s so plainly suggest. *Id.* Rather, the record demonstrates that under any reasonable interpretation of the word “immediately,” Gelman has taken prompt action without delay to comply with the Response Activity Order’s mandate.

- b. The Response Activity Order cannot be fully implemented overnight because of the amount and nature of the work required.

The substantial amount of work the Response Activity Order requires Gelman to undertake cannot be accomplished in the blink of an eye, or even within the course of a year—this latter period being the lapse of time that serves as the sole basis for Intervenor’s allegations. The Summary of Response Activities attached Appendix A sets out each of the many tasks the Response Activity Order requires Gelman to “implement and conduct,” identifies the significant response actions Gelman has taken, lists the approximate date on which those actions were undertaken, and describes the current status of each task.⁶ Importantly, this document demonstrates that Gelman has complied with the terms of the Response Activity Order and done so on as expedited a basis as is reasonably possible.

But the tasks required by the Response Activity Order by their very nature are not tasks that can be implemented “instantaneously,” as Intervenor’s demand. Most require Gelman to build and install some type of remedial system, whether it is a Heated Soil Vapor Extraction (“HSVE”)

⁶ Notably, Gelman has conducted all this work while simultaneously operating the existing remedial systems that have continued to provide a protective remedy during the four year delay caused by Intervenor’s intervention and demands during the protracted negotiation period. A partial list of operation and maintenance activities Gelman has undertaken during the last year is provided in the Response Activity Summary. **Appx A**, p 10.

system or underground pipelines and a subterranean vault in order to connect additional off-site extraction wells to Gelman's existing remedial system. This is not the type of work for which Gelman has control over the completion date, and instead is influenced by a long list of factors that vary by task, including the weather, access to property owned by third parties, the seasonal nature of certain types of work (e.g., planting trees and accessing wetland areas), and importantly, governmental approvals that must be obtained before the work can be conducted. That list has only gotten longer because the response activities delayed by the lengthy (and failed) Intervenor negotiation process are now subject to supply chain disruptions and contractor availability issues brought on by 2020 COVID-related shutdowns.⁷ These are not excuses; they are the real world issues that Gelman has overcome to successfully implement the Response Activity Order to the satisfaction of its regulator. To demand more—and on an instantaneous basis, as Intervenors now do—ignores these realities.

- c. Gelman has worked with EGLE to prioritize the required response activities based on public health considerations.

The Response Activity Order does not offer Gelman the luxury of picking and choosing the Response Activities it will implement—including those that Intervenors seem to focus on. (*See* Intervenors' April 18 Demand Letter and the partial list of required response actions and proposed completion deadlines, **Ex. 4**). Instead, Gelman must implement all of the work required by the Response Activity Order, but it necessarily cannot all be done at once. Consequently, Gelman has worked with its regulator, EGLE, to sequence the response activities in a way that is most

⁷ This is particularly true, for example, with regard to the drilling contractors needed to install monitoring wells that are usually drilled to bedrock some 200+ feet below ground. There are very few qualified drillers with the equipment needed to install such wells, and one of the drillers that Gelman routinely used went out of business, further exacerbating this challenge.

protective of public health and the environment. For instance, because the extent of the Eastern Area groundwater contamination above the new cleanup standard was well defined within the Prohibition Zone, Gelman, with EGLE's concurrence, prioritized installation of the Western Area delineation monitoring wells. 4th Amended CJ, Section V.B.3.b.⁸ With the exception of two locations where Gelman has thus far been unable to secure access to third-party-owned property, Gelman installed all these wells by late fall 2021, **and the results from each well has shown no detectable 1,4-dioxane.** Appx A, pp 6-7.⁹

Oddly, the Intervenor's "Gelman to-do" list ignores the steps needed to implement the Eastern Area Prohibition Zone expansion necessitated by the ten-fold reduction in the cleanup criterion, even though that work will ensure the public is protected from exposure to the groundwater contamination. Naturally, this work was a priority for EGLE and Gelman. So, by August 3, 2021, Gelman had:

- Negotiated with the Attorney General's office the revisions to the legal notice language necessitated by the fact that the proposed 4th Amended CJ was not entered as a "consent" judgment as anticipated, and published the required legal notice.

⁸ Gelman has not ignored the Eastern Area monitoring wells as Intervenor's assert. (Intervenor's Mtn., ¶ 11.a). Gelman was able to quickly obtain the private property access needed to install one of the two required "PZ Boundary" well nests along the Prohibition Zone's southern border in November/December 2021, before the drilling contractor's window of availability closed and after drilling the Western Area monitoring wells. Gelman has also obtained private property access for the second PZ Boundary well nest. Well nests at this location and the remaining locations are currently scheduled to be installed during the drilling contractor's next window of availability in late July/August 2022, subject to obtaining the necessary government approvals.

⁹ Gelman's counsel has written the property owners of the two remaining locations to advise them that the Response Activity Order requires Gelman to petition this Court for access if an agreement is not reached. **Ex. 6.** Legal counsel for one of the two owners has reached out to Gelman and Gelman is attempting to work out a mutually acceptable access agreement without burdening this Court.

- Submitted its draft Expanded Well Identification Work Plan designed to identify any wells in use in the expanded areas to EGLE on July 7, 2021.
- Upon receipt of EGLE's prompt July 26, 2021 approval of the steps outlined in the draft work plan, Gelman submitted the final version of the Well ID Work Plan on August 3, 2021.

Gelman then implemented the laborious parcel-by-parcel investigation of the 2,503 parcels located in the Prohibition Zone expansion areas to identify any potential wells. In the past, this process has taken years to perform and includes review of County well records, municipal water connection dates, property owner/resident surveys, physical inspection of properties where a well could potentially be located. Here, Gelman submitted its Well ID Report summarizing the results of the investigation on April 5, 2022. The Well ID Report confirmed that no drinking water supply wells were in use in the Prohibition Zone expansion areas and that the Prohibition Zone will continue effectively prevent the public from being exposed to the groundwater contamination.

- d. Completion deadlines for the response activities Gelman is required to undertake are not feasible because of the nature of the work and the numerous factors beyond Gelman's control.

The Response Activity Order incorporates the proposed 4th Amended CJ that Gelman negotiated with EGLE and Intervenors, and that jointly negotiate document contains few specific deadlines for completing required response activities. This is not because EGLE, the Intervenors counsel, and the Attorney General's office are poor negotiators. Rather, it is because they recognized when negotiating the proposed 4th Amended CJ that specific deadlines would not be feasible because of the nature of the work Gelman is required to undertake and circumstances beyond Gelman's control. The work related to Gelman's successful compliance with one of

deadlines that is contained in the proposed 4th Amended CJ illustrates the inappropriateness of imposing deadlines for the vast majority of the required response activities.

For example, the Response Activity Order requires Gelman to submit its Western Area Groundwater-Surface Water Interface (“GSI”) investigation work plan to EGLE within 90 days of entry. This work plan is intended to identify the steps needed to investigate the GSI pathway to ensure Gelman remains in compliance with the GSI cleanup objective. If the GSI investigation reveals that groundwater is venting to surface water above the more restrictive Generic GSI criterion, Gelman would be required to perform further evaluations and/or other response actions consistent with Section 20e of Part 201. 4th Amended CJ, Section V.B.2. The deadline for submitting the GSI work plan makes sense because the data and analysis required to develop the work plan are generally within Gelman’s control.

Gelman submitted the GSI Work Plan by August 30, 2021, as required. The Response Activity Order does not contain deadlines for any of the subsequent GSI-related steps, as those steps are necessarily contingent upon review of the Work Plan by EGLE. Nevertheless, Intervenor’s April 18 Demand Letter proposed the following deadlines for Gelman to achieve compliance with the Western Area GSI cleanup objective:

- Completion of Western Area GSI Investigation: May 2022
- Submission of GSI Response Activity Work Plan: June 2022
- Compliance with GSI Objective: July 2022

Intervenor’s proposed deadlines for this work shows a stark unfamiliarity with how remediation efforts are conducted, as demonstrated by the sequence of events that ensued following Gelman’s submission of the GSI Work Plan:

- Gelman met with EGLE’s “TAPS” (technical support) team to review the work plan on October 6, 2021.
- Gelman received EGLE’s comments on October 25, 2021.
- After further discussions with EGLE, Gelman submitted its fully revised GSI Work Plan on January 27, 2022 (Gelman is informed that EGLE may have further comments but has not received any as of the date of this Opposition).
- Following receipt of EGLE’s October 25 comments, which approved Gelman’s proposed installation of several shallow monitoring wells in a wetland area near Third Sister Lake, Gelman applied for the State wetlands permit required to conduct this aspect of the investigation in November 2021.
- In March 2022, after EGLE’s wetland staff determined that the permit application was administratively complete, Gelman submitted its application for the Scio Township wetland permit that is also required (the substance of Scio Application is simply a copy of the EGLE application so the practice is to wait until EGLE determines that the State application is complete before filing the Township application).
- Even though EGLE has not issued its final approval of the Revised GSI Work Plan, Gelman sought and received authorization to complete those elements of the investigation not requiring a wetland permit, but that could be best conducted in the winter when the foliage is less dense and the soggy soils are frozen. This work was conducted in February 2022.
- EGLE issued the State wetland permit in May, 2022. As of the date of this filing, Gelman still has not yet received the Scio Township permit applied for in March.

Until the Scio Township wetlands permit is issued, Gelman cannot install the necessary monitoring wells. Moreover, EGLE’s comments to the work plan require Gelman to sample the wells quarterly for a full year after they are installed. Finally, the well installation cannot be performed without damaging the wetland until the winter months (unless we have an extremely dry summer). Consequently, the earliest the Western GSI investigation can possibly be completed is likely sometime in 2024. Yet despite all of these facts, *Intervenors’ April 18 demand letter proposed an entirely unrealistic deadline for this work of May 2022*. **Ex. 4**, p 2.

The above sequence illustrates both the absurdity of Intervenors’ efforts to impose arbitrary completion deadlines for the response activities and the diligence of Gelman’s implementation of the Response Activity Order, and underscores precisely why Intervenors’ request is not only improper, but entirely unjustified.

- e. Gelman’s good faith compliance with the Response Activity Order is further demonstrated by its compliance with even those provisions it believes are not required to protect public health or the environment.

Intervenors’ main concern seems to be that Gelman will not implement certain of the required Response Activities—particularly the onsite “source control” measures Gelman added to the already protective remedy negotiated with EGLE as part of the proposed global settlement—before the Court of Appeals has an opportunity to review and perhaps overturn the Response Activity Order. Intervenors’ Mtn., ¶ 3 (“Gelman has an incentive to drag its feet in carrying out the Proposed 4th CJ’s response activities.”). Contrary to Intervenors’ baseless supposition, Gelman recognizes and has complied with its obligation to implement this Court’s Response Activity Order even while seeking and after being granted leave to appeal. Although Gelman continues to maintain that the Response Activity Order was improperly issued, it has never failed to implement this Court’s mandate. This is true even of the response activities that are not required to protect

public health and the environment, including the onsite work—activities that were only added in exchange for supporting concessions from Intervenor in order to achieve the global settlement agreement Intervenor subsequently rejected. Indeed, Gelman’s compliance with this Court’s Response Activity Order is perhaps best demonstrated by its immediate implementation of the response activities it sought to have stayed.¹⁰

Contrary to Intervenor’s alleged concerns, Gelman began implementing the onsite source control requirements of the Response Activity Order even while it was still seeking to stay those provisions, and has never stopped implementing this required work. By June 23, 2021, *over a month before the Court of Appeals declined Gelman’s request to stay the additional onsite work*, Gelman had already reengaged the national environmental consulting firm that supported the remedial design for the additional onsite response actions Gelman included in the proposed 4th Amended CJ to complete the necessary design work and to build and install the onsite “source control” measures.¹¹ Since that time, Gelman and its contractors responsible for overseeing and implementing the terms of the proposed 4th Amended CJ have diligently worked to undertake and fulfill each and every one of the applicable obligations.

This “immediate” and sustained effort has allowed Gelman to make tremendous progress in implementing the work required by the Response Activity Order. *See Appx. A*. This progress is especially tangible with regard to the onsite source control measures on which Intervenor focus.

¹⁰ In addition, as Gelman has stated many times, Gelman is prepared to enter into a bilateral consent judgment with EGLE that would include the response activities that EGLE deemed sufficiently protective in 2017.

¹¹ The onsite source control measures included in Section VI of the Response Activity Order—phytoremediation in the former Pond areas and in the “Marshy Area,” installation of a HSVE system in the former Burn Pit Area, and installation of three additional extraction wells—were included in the proposed 4th Amended CJ based on a 90% design as is standard practice. Gelman’s contractor commenced the additional design work needed to install the systems without delay following entry of the Response Activity Order.

(4th Amended CJ, Section VI.C.2). The aerial photos attached as **Ex. 7** show the progress made to install the phytoremediation system in the former Pond I&II areas and that EGLE District staff was present on site to supervise this work. The tree wells have been drilled and the specially engineered soils placed in the boreholes along with oxygen lines that will aerate the tree's root systems to spur root growth deep into the soils where contaminated groundwater is perched on top of a clay layer. The specially designed trees, which need to be planted in the spring or early summer, have already been planted.

The photos attached as **Ex. 8** demonstrate that Gelman has begun relocating the many utilities that run across the Burn Pit area where the HSVE system will be installed. Gelman began this work even before the final design of the HSVE system was completed. Because the Burn Pit remediation area is not located entirely on Gelman's property (as Intervenor's assert), in order to install the HSVE system, Gelman was required to arrange the needed access from Gelman's neighbor, whose truck loading dock will be blocked by the construction work.

In addition, and once again contrary to Intervenor's allegations, two of the three wells called for by the Response Activity Order have been installed and have been operational since April 7, 2022. (4th Amended CJ, Section VI.C.1).¹² The exploratory boring needed to locate and design the third well was drilled in November 2021. Unfortunately, that boring revealed that there was insufficient groundwater to support extraction in that area, and so that extraction well was not installed. Gelman plans to further evaluate this area once it receives the Scio Township wetlands permit in conjunction with its Western GSI investigation to determine if there is an available

¹² The first extraction well, TW-24, was installed, connected, and operational by August 2021. Gelman then drilled the exploratory borings needed to design the two remaining wells in November, 2021. Supply chain issues affecting the availability of the well casing and the valves/connection fittings needed to install and connect the second well, TW-25, to Gelman's collection and treatment systems prevented it from becoming operational until April, 2022.

alternative location for the third well. In the meantime, Gelman has increased its overall onsite extraction rate by 140 gallons per minute (gpm), almost twice the purge rate the Response Activity Order requires for the three additional onsite extraction wells.

Gelman must obtain additional data from the Marshy Area to complete the engineering design of the remaining onsite source control measure required by the Response Activity Order, the Marshy Area Phytoremediation System. (4th Amended CJ, Section VI.C.3). Gelman, however, cannot obtain that data without a wetland permit. Gelman included this wetlands investigation in the same November 2021 wetland permit application as the Western Area GSI investigation. As discussed above, EGLE issued the required State permit in May 2022. Even assuming Scio Township issues the required local wetlands permit in the coming weeks, Gelman almost certainly not be able to undertake the necessary investigation until the winter season, when the wetland soils are frozen. After obtaining the data, Gelman will then complete the engineering design and be in a position to order the trees included in remediation system.

In sum, if anything demonstrates Gelman’s good faith compliance with the Response Activity Order and its respect for this Court’s orders, it is Gelman’s “immediate” and consistent undertaking to implement *all* requirements of the Response Activity Order—even those it contends were not required to protect public health or the environment.

CONCLUSION

Intervenors improperly ask this Court to violate the COA Stay Order and Michigan Court Rules by holding a hearing to review Gelman’s progress in implementing the Response Activity Order and by substantively amending the Order while it is on appeal. As set forth above, this Court does not have jurisdiction to grant Intervenors’ requested relief and, in any event, such relief

is entirely unnecessary. As demonstrated above, Gelman has complied with this Court's Response Activity Order and will continue to do so under the supervision of EGLE absent further instruction from the appellate courts. It is Gelman's understanding that EGLE has updated Intervenor on Gelman's progress and confirmed its satisfaction with the pace of Gelman's implementation of the required response activities on numerous occasions. Consequently, Intervenor's Motion should be denied and costs awarded to both Gelman and the State for the expense of responding to Intervenor's unnecessary Motion.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Michael L. Caldwell

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

Dated: June 13, 2022

PROOF OF SERVICE

The undersigned certifies that on June 13, 2022, a copy of the foregoing document was served on each of the attorneys of record at their respective addresses listed on the pleadings via:

☒ E-FILE ☐ E-SERVE ☐ U.S. MAIL ☐ HAND DELIVERY
☐ UPS ☐ FEDEX ☐ OTHER ☐ EMAIL

/s/ Kathy Collings

1

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,

-and-

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

CITY OF ANN ARBOR; WASHTENAW COUNTY;
WASHTENAW COUNTY HEALTH DEPARTMENT;
WASHTENAW COUNTY HEALTH OFFICER
JIMENA LOVELUCK, in her official capacity;
HURON RIVER WATERSHED COUNCIL; and
SCIO TOWNSHIP,

Intervening Plaintiffs,

vs.

GELMAN SCIENCES, INC., a Michigan corporation,

Defendant.

Brian J. Negele (P41846)
MICHIGAN DEPARTMENT OF
ATTORNEY GENERAL
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909-7712
(517) 373-7540

Michael L. Caldwell (P40554)
Attorney for Defendant
ZAUSMER, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111

Stephen K. Postema (P38871)
Abigail Elias (P34941)
Attorneys for Intervenor City of Ann Arbor
ANN ARBOR CITY ATTORNEY'S OFFICE
301 E. Huron, Third Floor, P.O. Box 8645
Ann Arbor, MI 48107-8645
(734) 794-6170

Bruce A. Courtade (P41946)
Attorney for Defendant
RHOADS McKEE PC
55 Campau Ave., N.W., Suite 300
Grand Rapids, MI 49503
(616) 235-3500

Bruce T. Wallace (P24148)
William J. Stapleton (P38339)
Attorneys for Intervenor Scio Township
HOOPER HATHAWAY, P.C.
126 South Main Street
Ann Arbor, MI 48104
(734) 662-4426

Fredrick J. Dindoffer (P31398)
Nathan D. Dupes (P75454)
Co-Counsel for Intervenor City of Ann Arbor
BODMAN PLC
1901 St. Antoine, 6th Floor
Detroit, MI 48226
(313) 259-7777

Robert Charles Davis (P41055)
Attorney for Intervening Washtenaw County
Entities
DAVIS, BURKET, SAVAGE, LISTMAN, TAYLOR
10 S. Main Street, Suite 401
Mt Clemens, MI 48043
(586) 469-4300

Erin E. Mette (P83199)
Attorney for Intervenor Huron River
Watershed Council
GREAT LAKES ENVIRONMENTAL LAW CENTER
4444 2nd Avenue
Detroit, MI 48201
(313) 782-3372

**ORDER TO CONDUCT RESPONSE ACTIVITIES TO IMPLEMENT AND COMPLY
WITH REVISED CLEANUP CRITERIA**

This matter having come before the court for hearing on Response Activities necessary to implement and comply with revised cleanup criteria, all parties having filed briefs and technical reports, the court having heard argument of counsel and being otherwise fully advised in the premises;

IT IS HEREBY ORDERED:

1. Gelman Sciences shall immediately implement and conduct all requirements and activities stated in the Proposed “Fourth Amended and Restated Consent Judgment” which is attached to this Order and incorporated by reference.

2. The court retains continuing jurisdiction and will hold further hearings on a quarterly basis to review the progress of Response Activities and other actions required by this order related to releases of 1,4 dioxane at and emanating from the Gelman site and consider the implementation of additional or modified Response Activities and other actions.

3. The first quarterly hearing is scheduled for September 1, 2021 at 9 a.m.

4. Intervening Plaintiffs shall retain their status as Intervenor in this action.
5. This is not a final order and does not close the case.

SO ORDERED.

Dated: 6/1/2021

/s/ Timothy Connors 6/1/2021



Drafted/Presented By:

By: /s/Robert Charles Davis
ROBERT CHARLES DAVIS (P40155)
Attorney for Intervenor
Washtenaw County, Washtenaw County
Health Department and Washtenaw County
Health Officer Jimena Loveluck
10 S. Main St. Suite 401
Mt. Clemens, MI 48043
(586) 469-4300
(586) 469-4303 – Fax
rdavis@dbstattroensy.com

Dated: May 27, 2021

2

Court of Appeals, State of Michigan

ORDER

Attorney General v Gelman Sciences Inc

Docket No. 357599

LC No. 88-034734-CE


David H. Sawyer
Presiding Judge

Jane E. Markey

Mark T. Boonstra
Judges

The motion for partial stay of proceedings pending appeal is GRANTED, in part, and enforcement of paragraphs 2 and 3 of the June 1, 2021 order to conduct response activities to implement and comply with revised cleanup criteria are STAYED pending resolution of this appeal or further order of this Court.

The application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).


Presiding Judge



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

JUL 26 2021

Date


Chief Clerk

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From: MI Appellate Court Notification <MIAppellateCourtNotification@courts.mi.gov>

Date: June 3, 2022 at 10:47:01 AM EDT

To: Gregory Timmer <gtimmer@rhoadesmckee.com>

Subject: MI Court of Appeals - NOTICE OF CASE CALL ASSIGNMENT

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: GREGORY G TIMMER

RE: 357599-G ATTORNEY GENERAL V GELMAN SCIENCES INC

The Court of Appeals has scheduled the above-referenced matter(s) for case call as follows:

DATE/ITEM	PANEL	LOCATION
Thursday, July 7, 2022 11:00 AM Item #19	Panel 4 Elizabeth Gleicher (Presiding) Michael Gadola Christopher Yates	Lansing Courtroom - Hall of Justice 925 W. Ottawa, Second Floor Lansing, MI 48909-7522

NOTE: Absent further notice from the Court, this matter will be heard in person, in the above-referenced courtroom. The parties who are endorsed for argument in this matter may request that one or more of the parties be allowed to present remote oral argument by filing with the clerk a completed Request for Remote Oral Argument form on or before 6/15/2022. Untimely requests will not be accepted, and the Court will not accept any motion to extend the deadline.

Before coming to the courthouse, please consult the Court's website for any COVID-19 protocols that may be in place, including mask and social distance requirements.

The Request for Remote Oral Argument form and a full schedule for this session that includes a listing of attorneys/parties endorsed for oral argument is available on the Court's website at:

<https://www.courts.michigan.gov/courts/court-of-appeals/case-call-schedule/>.

**** All motions relating to this matter should be filed by 6/22/2022. ****

Thank you,
Michigan Court of Appeals Clerk's Office

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NATHAN D. DUPES
NDUPES@BODMANLAW.COM
313-393-7590

BODMAN PLC
6TH FLOOR AT FORD FIELD
1901 ST. ANTOINE STREET
DETROIT, MICHIGAN 48226
313-393-7579 FAX
313-259-7777



April 18, 2022

Michael Caldwell, Esq.
Zausmer, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, Michigan 48334

Brian Negele, Esq.
Michigan Department of Attorney General
525 W. Ottawa Street
P.O. Box 30212
Lansing, Michigan 48909

Re: State of Michigan v. Gelman Sciences, Inc. – Case No. 88-34734-CE

Dear Mike and Brian:

I write for all the Intervenors concerning Gelman's progress implementing the Court's June 1, 2021 Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria ("Response Activity Order").

At Gelman's request, Intervenors have sought updates on the progress of Gelman's response activities from EGLE. Although we appreciate the progress Gelman has made in certain areas, we are disappointed that Gelman has not made significant progress in others. Even more concerning is the apparent lack of any realistic time line for completion of the remaining activities. EGLE could not tell us, for example, when the two additional on-site extraction wells, the heated soil vapor extraction system, or the phytoremediation system would be operational. As you are aware, the Response Activity Order requires Gelman to "immediately implement and conduct all requirements and activities" in the Proposed 4th CJ.

We propose the following time line for the completion of what we understand to be the principal, currently outstanding action items required by the Response Activity Order, as stated in the Proposed 4th CJ.¹ Please confirm that Gelman will meet this time line or, if you believe that any of the proposed dates are impractical, please explain why and offer a reasonable alternative. If we do not receive a satisfactory response, we may need to involve Judge Connors.

We understand that some of these activities require approvals from EGLE and others. To the extent that Gelman awaits feedback from EGLE on any of the below items, please provide a time line for completion of its review and identify what can be done to expedite the matter. To the extent that Gelman awaits feedback from any of the Intervenors, please advise what we can do to expedite that process.

¹ Our knowledge of Gelman's progress is of course limited to the information that is publicly available or that EGLE (or Gelman) provides us. Gelman could easily clear up any uncertainty over its progress by providing us with direct updates but, to date, it has refused to do so.
DETROIT | TROY | ANN ARBOR | CHEBOYGAN | GRAND RAPIDS

April 18, 2022

Page 2

We remind you that the Intervenor has the right to ensure implementation of the Response Activity Order. Judge Connors explicitly ruled that “Intervening Plaintiffs shall retain their status as Intervenor in this action.” The Court of Appeals rejected Gelman’s request to stay that provision of the Response Activity Order. We have no interest in taking over the role of the regulator, but we do have a significant interest in seeing that the Order is followed.

Finally, as to the Parklake Well, Intervenor continues to object to Gelman’s proposed discharge to First Sister Lake. However, the Proposed 4th CJ requires Gelman to apply for a NPDES permit for the Parklake Well and Intervenor expects Gelman to comply with that requirement, as described below.

Proposed Time Line

Activity	Proposed 4 th CJ section(s)	Proposed Completion date
Installation and operation of Sentinel Wells on northern PZ boundary (A, B, C)	V.A.3.a.	2Q22
Installation and operation of PZ Boundary Wells near Southern PZ boundary (D, E)	V.A.3.b.	April 2022 ²
Installation and operation of Rose Well (or conversion of IW-2 to extraction well)	V.A.3.e.i.	2Q22
Installation and operation of Parklake Well	V.A.3.e.ii.	Apply for NPDES permit by April 2022
Installation and operation of additional downgradient investigation wells (F, G, H)	V.A.5.f.	2Q22
Completion of Western Area GSI Investigation	V.B.2.b.	May 2022

² We understand that a monitoring well at Location D is already installed and Location E was in the planning stages as of January 2022.

April 18, 2022

Page 3

Activity	Proposed 4 th CJ section(s)	Proposed Completion date
Submission of GSI Response Activity Work Plan	V.B.2.c.	June 2022
Compliance with GSI objective	V.B.2.d.	July 2022
Installation and operation of additional Western Area investigation wells (I, J, K, L, M, N)	V.B.3.b.	April 2022 ³
Amend Western Area Monitoring Plan (dated 4/18/11) to identify the network of compliance wells for non-expansion objective	V.B.3.c.	May 2022
Installation and operation of Phase I extraction wells	VI.C.1.	May 2022 ⁴
Implementation of phytoremediation systems in former pond areas and Marshy Area	VI.C.2., 3.	3Q22
Installation of HSVE in former Burn Pit area	VI.C.4.	3Q22

³ We understand that monitoring wells at Locations K, L, M, and N are already installed and that Locations I and J were in the planning stages as of January 2022.

⁴ We understand that one extraction well has been installed and is operational, and the second well has been installed but is not operational.

April 18, 2022
Page 4

Very truly yours,

A handwritten signature in black ink, appearing to read 'N. Dupes', with a stylized, cursive flourish extending from the end.

Nathan D. Dupes

cc: Intervenor counsel

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NATHAN D. DUPES
NDUPES@BODMANLAW.COM
313-393-7590

BODMAN PLC
6TH FLOOR AT FORD FIELD
1901 ST. ANTOINE STREET
DETROIT, MICHIGAN 48226
313-393-7579 FAX
313-259-7777



June 7, 2021

Michael Caldwell, Esq.
Zausmer, P.C.
31700 Middlebelt Road, Suite 150
Farmington Hills, Michigan 48334

Re: State of Michigan v. Gelman Sciences, Inc. – Case No. 88-34734-CE

Dear Mike:

I write for all the Intervenorers regarding the court's June 1, 2021 Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria ("Response Activity Order"). That order requires Gelman to "immediately implement and conduct all requirements and activities" set forth in the Proposed Fourth Amended Consent Judgment ("Proposed 4th CJ"), which is attached to the order. Please provide the status of Gelman's efforts to implement the following requirements of the Proposed 4th CJ. This will help the parties track the progress of the response activities and facilitate the first quarterly review with the court in September. As you will see, the following is not a comprehensive list of the requirements under the Proposed 4th CJ.

Activity	Proposed 4 th CJ section(s)
Installation of Sentinel Wells on northern PZ boundary (A, B, C)	V.A.3.a.
Installation of PZ Boundary Wells near Southern PZ boundary (D, E)	V.A.3.b.
Installation of Rose Well (or conversion of IW-2 to extraction well)	V.A.3.e.i.
Installation of Parklake Well	V.A.3.e.ii.
Installation of additional downgradient investigation wells (F, G, H)	V.A.5.f.
Submission of GSI Investigation Work Plan to EGLE for GSI investigation in Western Area and schedule for implementing the plan	V.B.2.b.
Compliance with GSI objective	V.B.2.d.
Installation of additional Western Area investigation wells (I, J, K, L, M, N)	V.B.3.b.

Michael Caldwell, Esq.
June 7, 2021
Page 2

Activity	Proposed 4 th CJ section(s)
Amend Western Area Monitoring Plan (dated 4/18/11) to identify the network of compliance wells for non-expansion objective	V.B.3.c.
Installation of Phase I extraction wells	VI.C.1.
Implementation of phytoremediation systems in former pond areas and Marshy Area	VI.C.2., 3.
Installation of HSVE in former Burn Pit area	VI.C.4.

Very truly yours,



Nathan D. Dupes

NDD

c: Brian Negele, Esq.
Counsel for Intervenors

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ZAUSMER, P.C.
32255 Northwestern Highway, Suite 225
Farmington Hills, MI 48334-1574
(248) 851-4111 · Fax (248) 851-0100

MICHAEL L. CALDWELL
Shareholder
mcaldwell@zausmer.com

May 23, 2022

VIA EMAIL

Jim Coyle
Relationship Manager
CubeSmart Self Storage
5 Old Lancaster Road,
Malvern, PA 19355

Re: Gelman Sciences Inc.—Request for Property Access
3870 Jackson Road, Scio Township, Michigan

Dear Mr. Coyle:

I represent Gelman Sciences Inc. (“Gelman”) in connection with Gelman’s efforts to address the 1,4-dioxane groundwater contamination. I am writing to follow up on the repeated attempts by Gelman’s consultant, Flies & Vandenbrink, to obtain access to the above-referenced property (the “Property”) to install a monitoring well near the two monitoring wells that are already on the Property. The Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) has asked me to reach out to you personally before Gelman is required to go to Court to seek the necessary access to the Property.

Gelman is the defendant in the State of Michigan’s environmental enforcement action styled, *Attorney General, et al v. Gelman Sciences Inc.*, Washtenaw County Circuit Court case No. 88-34734-CE (“State Enforcement Action”). For almost 30 years, Gelman has implemented agreed upon environmental response activities to address the 1,4-dioxane groundwater contamination in the vicinity of its former South Wagner Road facility pursuant to a Consent Judgment, as amended, that was entered in the State Enforcement Action. In 2020, following the intervention of several local units of government (the “Intervenors”), Gelman, ELGE, and Intervenors negotiated a proposed fourth amendment to the Consent Judgment as part of a global settlement of the intervention. After the Intervenors’ elected officials voted to reject the global settlement, the Washtenaw County Circuit Court overseeing the State Enforcement Actions entered its June 1, 2021, “Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria” (“Response Activity Order” or “RAO”). The Court ordered Gelman to “immediately” implement the proposed fourth Consent Judgment amendment that the Intervenors’ elected officials had rejected, incorporating the “proposed Fourth Amended and Restated Consent Judgment” into its Response Activity Order. Relevant portions of the Response Activity Order are attached hereto as Exhibit 1.

The Response Activity Order requires Gelman to further delineate the boundaries of the groundwater plume through the installation of groundwater monitoring wells at the locations identified in Attachment G to the RAO. (Exhibit 2). The Property is located within “Location I” where Gelman is

required to install a groundwater monitoring well in the deeper portion of the groundwater aquifer in the commercial area north of Jackson Road, near MW-40s&d, which are already located on the Property. RAO, §V.B.3.b.i., pp 33-34. Thus, the Court's Response Activity Order requires Gelman to obtain access to the Property to install the required third monitoring well on the Property.

The RAO also requires Gelman to seek Court-ordered access to private property if the required access is not voluntarily provided. Specifically, Section X.B. provides as follows:

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, EGLE, and their authorized employees, agents, representatives, contractors, and consultants. Defendant shall provide EGLE with a copy of each access agreement secured pursuant to this Section. For purposes of this Section, "best efforts" includes, but is not limited to, seeking judicial assistance to secure such access pursuant to MCL 324.20135a.

Response Activity Order, § X.B, pages 54-55 (emphasis added).

Under Section 35a of Part 201, Gelman "may file a petition in the circuit court of the county in which the facility is located seeking access to the facility in order to conduct response activities approved by the department [EGLE]." MCL 324.20135a(1). The installation of the required deep monitoring well near the two wells already on the Property is not only "approved by [EGLE]", but also required by the Court. Please contact Dan Hamel, EGLE's Project Coordinator for the Gelman Site, to confirm that installation of this monitoring well is required and approved by EGLE:

Michigan Department
of Environment, Great
Lakes, and Energy,
Remediation and Redevelopment
Division
301 East Louis Glick Highway
Jackson, MI 49201
Hameld@michigan.gov
(517) 745-6595

If your company will not enter into a private access agreement voluntarily, the Response Activity Order requires Gelman to petition the Court for access to install the EGLE-approved, Court-required, monitoring well.

To be clear, Gelman has absolutely no desire to burden your company or the Court by filing such a petition for access. Gelman's clear preference is to work with you to work out a mutually acceptable private access agreement. Thus far, despite Gelman's consultant's many attempts to contact your company, CubeSmart has not been willing to discuss such an access agreement. Please contact Jim Brode from Flies & Vandenbrink so that such an agreement can be worked out. Mr. Brode's contact information is as follows:



May 23, 2022

Page 3

James Brode, CPG
Fleis & VandenBrink
4798 Campus Drive | Kalamazoo | MI | 49008
Direct (269) 585-0018
Cell (269) 993-7585
Email: jbrode@fveng.com

If you are represented by legal counsel, you are welcome to have your legal representative contact me directly. My address and email are listed above; my cell phone number is (248) 444-0247.

I thank you for your consideration of this request and we look forward to hearing from you. If we don't hear from you by June 6, 2022, we will assume your company is not interested in working out an access agreement and that we should file the required petition for access with the Court.

Very truly yours,

ZAUSMER, P.C.

/s/

Michael L. Caldwell

cc: Daniel Hamel, EGLE
James Brode, F&V



ZAUSMER, P.C.
32255 Northwestern Highway, Suite 225
Farmington Hills, MI 48334-1574
(248) 851-4111 · Fax (248) 851-0100

MICHAEL L. CALDWELL
Shareholder
mcaldwell@zausmer.com

May 24, 2022

VIA EMAIL

Curtis Burnstein, CEO
Etkin, LLC
150 W. 2nd Street
Suite 200
Royal Oak, MI 48067

Re: Gelman Sciences Inc.—Request for Property Access
3686 Jackson Road, Scio Township, Michigan

Dear Mr. Brunstein:

I represent Gelman Sciences Inc. (“Gelman”) in connection with the State of Michigan’s environmental enforcement action styled, *Attorney General, et al v. Gelman Sciences Inc.*, Washtenaw County Circuit Court case No. 88-34734-CE (“State Enforcement Action”). Gelman is addressing the 1,4-dioxane groundwater contamination in the vicinity of its former South Wagner Road facility under the supervision of Department of Environment, Great Lakes, and Energy (“EGLE”) and as required by the Consent Judgment, as amended, and related Court orders entered in the State Enforcement Action. Gelman’s consultant, Flies & Vandenbrink, has contacted your company to obtain the access to the above-referenced property (the “Property”) needed to place three nested groundwater monitoring wells that Gelman is required to install and monitor. I wanted to reach out to you personally to determine if your company would be willing to enter into a mutually acceptable access agreement. As set forth below, if such an agreement cannot be reached, Gelman is legally required to petition the Court that is overseeing the State’s Enforcement Action to obtain the necessary access to the Property

In 2020, following the intervention of several local units of government (the “Intervenors”), Gelman, ELGE, and Intervenors negotiated a proposed fourth amendment to the Consent Judgment as part of a global settlement of the intervention. After the Intervenors’ elected officials voted to reject the global settlement, the Washtenaw County Circuit Court overseeing the State Enforcement Actions entered its June 1, 2021, “Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria” (“Response Activity Order” or “RAO”). The Court ordered Gelman to “immediately” implement the “proposed Fourth Amended and Restated Consent Judgment” (“4th Amended CJ”) that was to be part of the global settlement that the Intervenors’ elected officials rejected. Relevant portions of the Response Activity Order and the 4th Amended CJ that the Court incorporated into its Order are attached hereto as Exhibit 1.

The Response Activity Order requires Gelman to further delineate the boundaries of the groundwater plume through the installation of groundwater monitoring wells at the locations identified in

Attachment G to the RAO (attached separately for convenience as Exhibit 2). The Etkin Property is located within Location “J” where Gelman is required to install three nested groundwater monitoring wells “east of [existing] MW-40s&d and west of the [existing] MW-133 cluster.” RAO, §V.B.3.b.ii., pp 33-34.

The Court’s Response Activity Order requires Gelman to use its best efforts to secure access to property owned by third parties such as the Etkin Property to carry out the required response activities. RAO, § X.B, pp 54-55. The Response Activity Order further requires Gelman to seek Court-ordered access to private property if the required access is not voluntarily provided. Specifically, Section X.B. provides as follows:

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, EGLE, and their authorized employees, agents, representatives, contractors, and consultants. Defendant shall provide EGLE with a copy of each access agreement secured pursuant to this Section. For purposes of this Section, “best efforts” includes, but is not limited to, seeking judicial assistance to secure such access pursuant to MCL 324.20135a.

Id. (emphasis added).

Under the referenced Section 35a of Part 201, Gelman “may file a petition in the circuit court of the county in which the facility is located seeking access to the facility in order to conduct response activities approved by the department [EGLE].” MCL 324.20135a(1). The installation of the required monitoring well nest on the Property is not only “approved by [EGLE]”, but also required by the Court. Please contact Dan Hamel, EGLE’s Project Coordinator for the Gelman Site, and/or have your legal counsel contact Brian Negele, the Assistant Attorney General who represents EGLE in the State Enforcement Action to confirm that installation of this monitoring well is approved by EGLE and required by the RAO:

Daniel Hamel
Michigan Department
of Environment, Great
Lakes, and Energy,
Remediation and Redevelopment
Division
301 East Louis Glick Highway
Jackson, MI 49201
Hameld@michigan.gov
(517) 745-6595

Brian Negele, Esq
Assistant Attorney General
Natural Resources Division
300 S. Washington Sq., Suite 530
Lansing, MI 48913
Negeleb@michigan.gov
(517) 335-7664

If your company will not enter into a private access agreement voluntarily, the Response Activity Order requires Gelman to petition the Court for access to install the EGLE-approved, Court-required, monitoring wells.

To be clear, Gelman has absolutely no desire to burden your company or the Court by filing such a petition for access. Gelman’s clear preference is to work with you to work out a mutually acceptable private access agreement. We will certainly work with you and your staff to locate the well nest in an area that will not interfere with your use and the future development of the Property. Please contact Jim Brode from Flies & Vandenbrink so that such an agreement can be worked out. Mr. Brode’s contact information is as follows:



May 24, 2022

Page 3

James Brode, CPG
Fleis & VandenBrink
4798 Campus Drive | Kalamazoo | MI | 49008
Direct (269) 585-0018
Cell (269) 993-7585
Email: jbrode@fveng.com

If you are represented by legal counsel, you are welcome to have your legal representative contact me directly. My address and email are listed above; my cell phone number is (248) 444-0247.

I thank you for your consideration of this request and we look forward to hearing from you. I hope we can work this out. If, however, we don't hear from you by June 6, 2022, we will assume that Etkin is not interested in providing access and that we should file the required petition for access with the Court.

Very truly yours,

ZAUSMER, P.C.

/s/

Michael L. Caldwell

cc: Daniel Hamel, EGLE
Brian Negele, AG
James Brode, F&V

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EXHIBIT

8









APPENDIX

A

APPENDIX A

RESPONSE ACTIVITY SUMMARY

AS OF June 13, 2022

A. Eastern Area

1. Prohibition Zone Expansion, Well ID Plan, Plugging of Private Water Wells—V.A.2.e, h, and i
 - Intervenor Proposed Completion Date: None.

Status: Gelman has published the required legal notice, obtained approval of its Well Identification Plan from EGLE, completed the exhaustive investigation required by the approved Well ID plan, and submitted the required Well ID summary report. The report called for limited additional steps, including the proper abandonment of one out of use well located during the investigation, which Gelman is in the process of carrying out.

- Gelman negotiated minor revisions to the Legal Notice attached as Attachment E to the Gelman submitted its draft Well ID Work Plan to EGLE on July 7, 2021.
- EGLE approved Gelman's draft Well ID Work Plan on July 26, 2021.
- Gelman submitted the finalized version August 3, 2021.
- Gelman began analyzing the necessary County well records, which were available online, in mid-June, 2021.
- Gelman contacted the relevant City staff in July, 2021 to identify and request the City available records/databases. Obtained the necessary City and County records and database information in approximately September, 2021.
- By mid-fall, 2021, Gelman had analyzed the available records on a parcel by parcel basis to confirm that all parcels within the PZ expansion area were either connected to City water or vacant/park property. This evaluation included physically inspecting parcels not connected to City water to confirm the absence of structures.
- Gelman then evaluated the building construction and water main availability/connection records to identify parcels within the PZ expansion area where a well could have been potentially installed prior to connection to City water so that any non-potable and/or out of use wells could be identified.
- In late fall, 2021/early 2022, Gelman sent multiple sets of surveys to residents and owners of properties where wells could possibly be present and evaluated the results and inspected relevant properties as permitted by the owner.
- Gelman submitted its final Well ID Report on April 7, 2022. Gelman is in the process of implementing the few additional steps Gelman identified in its Well ID report.

2. Municipal Water Connection Contingency Plan—V.A.2.j
 - Intervenor Proposed Completion Date: None.

Status: Gelman has retained the Flies & Vandenbrink ("F&V") Municipal Engineering department to prepare this contingency plan. F&V has evaluated the available municipal records to identify the necessary records and information that will

need to be obtained from the City/County and is in the process of reach out to the relevant City/County staff.

3. Installation and operation of Sentinel Wells on northern PZ boundary (Locations A, B, C)—4th CJ, V.A.3.a

- Intervenor Proposed Completion Date: 2Q22.

Status: Currently scheduled for late July/August, 2022 during drilling contractor's window of availability, subject to final negotiation of City Master License Agreement (City equivalent of access agreement) for installation of wells in City ROW.

- Scouted out appropriate locations for each well nest within the area identified in the 4th CJ September, 2021.
- In January, 2022, began negotiating to include the three northern boundary and three Downgradient (see below) monitoring well locations in a "Master License Agreement" covering all of the wells to be installed in the City ROWs pursuant to Response Activity Order and previously installed wells already placed in City ROWs/property. Counsel for Gelman and the City Attorney's Office have exchanged several drafts and met virtually on June 9, 2022 to go over the remaining issues.
- Applied for required City License Agreements for each well location in February 2022 (2/15/2022) as part of City engineering review process.
- Applied and promptly received the required County boring permits for these wells in March, 2022.
- Received final engineering approval on May 27, 2022 (City online permit system indicates approval as of locations on May 4, 2022; received affirmative City approval on May 27, 2022 after Gelman submitted slightly revised plans per City request).
- In mid-May, upon learning of City engineering approval, Gelman contacted drilling contractor and obtained earliest available window of late July/August 2022 to install the wells to be located in the six City ROW locations, including the northern PZ boundary Sentinel Wells.

4. Installation and operation of PZ Boundary Well at two locations on southern PZ boundary (Locations D, E)—4th CJ, V.A.3.b

- Intervenor Proposed Completion Date: April 2022.

Status: Installed well nest at Location D on private property in November/December, 2021. Gelman has also obtained private access for second well nest at Location E, which will be installed during drilling contractor availability window in late July/August, 2022.

- Upon receipt of the necessary County boring permit, Well nest at Location D installed November 29 - December 7th, 2021 on private property in conjunction with Western Area well installations.
- Access to Location E obtained from private property owner in January 2022; will install this well nest in late July/August window, subject to finalization of the City Master License Agreement for the City ROW wells so the drilling contractor only needs to mobilize once.

5. Installation and operation of Rose Well (and conversion of IW-2 to extraction well)—4th CJ, V.A.3.e.i

- Intervenor Proposed Completion Date: 2Q22.

Status: Necessary design work and borings to locate the new Rose Well completed and location selected. Engineering design work for the necessary 8' x 10' subterranean vault and related pipelines for conversion of IW-2 and conveyance of water extracted from both wells has also been completed. Necessary private access agreement to locate a portion of the vault on private property obtained. Have submitted City License Agreement application for infrastructure to be located in City ROW. Final engineering drawings have been submitted to City for the required infrastructure, including 8' x 10' subterranean vault that will straddle private property line and ROW. Currently waiting for City engineering approval and City issuance of draft license agreement for review by legal.

- After initial engineering design and inspection of potential locations for new Rose well, Gelman applied for and obtained the necessary City and County permits and installed three borings along Valley Drive and location for Rose Well selected in Q4 2021.
- Necessary infrastructure for connecting new Rose Well and IW-2 to existing deep transmission line includes a 10' X 8' underground vault where piping, valves, etc. will be accessible. Vault will straddle private property and City ROW—consequently both private and City ROW access/License Agreements required.
- Private Access Agreement signed January 19, 2022 after extended negotiation that began in Q3 2021.
- Initiated discussions with City staff in November 2021 regarding necessary permits, approvals, fees, etc. regarding the vault and related pipelines. Arranged a Zoom meeting with City staff and City Attorney's office on December 15, 2021.
- Submitted License Agreement application and required check to City in February, 2022. Application initially "lost" within City system, causing some delay in City's initial review.
- After further discussions with City regarding information they needed to have included in engineering plans for work to be approved, Gelman submitted final engineering plans for vault/related piping on April 22, 2022.
- Currently waiting for City engineering approval and issuance of draft license agreement for legal review.

6. Installation and operation of Parklake Well—4th CJ, V.A.3.e.ii

- Intervenor Proposed Completion Date: Apply for NPDES Permit by April 2022.

Status: Gelman recently submitted application for necessary NPDES permit for the discharge of treated groundwater into First Sister Lake as contemplated by Response Activity Order.

- Based on Intervenor's and the community's opposition to the First Sister Lake discharge contemplated by the Response Activity Order, Gelman asked Intervenor counsel whether they wanted Gelman to prioritize the NPDES permit application in March 2022.

- On April 15, 2022, informed State that in the absence of a response from Intervenor, Gelman intended to move forward and submit the NPDES permit application after obtaining the results of water chemistry sampling from First Sister Lake needed to support the permit application.
- Intervenor counsel first responded to Gelman's March inquiry in Intervenor's April 18, 2022 demand letter, indicating that Intervenor expected Gelman to move forward with the NPDES permit application even though Intervenor opposed the previously negotiated First Sister Lake discharge.
- Obtained the necessary samples and submitted them to an outside laboratory for analysis in April/May, 2022.
- Upon obtaining water quality analysis, Gelman completed the NPDES permit application and submitted it to EGLE for review in June, 2022.

7. Installation and operation of Downgradient Investigation Wells (F, G, H)—4th CJ, V.A.5.f

- Intervenor Proposed Completion Date: 2Q22.

Status: Waiting necessary governmental approvals (EGLE approval of Downgradient/Allen Drain GSI Work Plan and finalization and City approval of Master License Agreement so these wells can be installed in City ROW during the late July/August 2022 drilling contractor window.

- In January, 2022, began negotiating to include three Downgradient well locations (Locations F, G, and H) along with the three northern boundary Sentinel Well locations in a "Master License Agreement" covering the wells to be installed in the City ROWs pursuant to Response Activity Order and previously installed wells already placed in City ROWs/property. Counsel for Gelman and the City Attorney's Office have exchanged several drafts and met virtually on June 9, 2022 to go over the remaining issues.
- Applied for required City License Agreements for each well location in February 2022 (2/15/2022) as part of City engineering review process.
- Received final engineering approval on May 27, 2022 (City online permit system indicates approval as of locations on May 4, 2022; received affirmative City approval on May 27, 2022 after Gelman submitted slightly revised plans per City request).
- In mid-May, upon learning of City engineering approval, Gelman contacted drilling contractor and obtained earliest available window of late July/August 2022 to install the wells to be located in the six City ROW locations, including the northern PZ boundary Sentinel Wells.
- Submitted Downgradient and Allen Drain GSI Investigation Work Plan to EGLE on February 2, 2022.
- Participated in EGLE TAPs Team review meeting on April 6, 2022.
- Gelman and EGLE are scheduling meeting to go over comments on the Work Plan in early July, 2022. If EGLE approval of entire Work Plan will not be obtained in time for the Downgradient wells to be installed during the drilling contractor's late July/August window, Gelman will seek and would expect to receive from EGLE, its approval of the well locations and authority to proceed with that aspect of the Work Plan.

B. Western Area

1. Completion of Western Area GSI Investigation—4th CJ, V.B.2.b

- Proposed Completion Date: Intervenor May 2022.

Status: Gelman submitted Western Area GSI work plan by August 30, 2021 as required by Response Activity Order and submitted required wetland permit applications. Gelman has already implemented the part of investigation not requiring a wetland permit that needed to be completed during winter season with EGLE’s approval. Currently waiting for EGLE approval of Revised GSI Work Plan dated January 2022 and Scio Township wetlands permit applied for in March, 2022 to implement remaining portion of investigation. The wetland area investigation will require one year of monitoring of wells to be installed in wetland area. Because these wells cannot likely be installed until winter months, the Western Area GSI investigation cannot likely be completed until sometime in 2024, assuming issuance of necessary approvals in time to complete the well installation Q1 2023.

- Submitted original GSI Work Plan on August 30, 2021 as required by Response Activity Order.
- Met with TAPs (technical support) Team on October 6, 2021.
- Received comments from EGLE on October 25, 2021, following TAPS Team review.
- Upon receiving TAPs Team comments, Gelman submitted wetlands permit application to EGLE in November, 2021.
- Submitted Revised GSI Work Plan on January 27, 2022. Have not received final approval/additional comments from EGLE.
- Implemented portion of investigation not requiring a wetlands permit that needed to be completed in February, 2022 with EGLE’s approval.
- Upon receiving EGLE notification that its wetlands permit application was administratively complete, Gelman submitted the administratively complete EGLE application to Scio Township as part of its application for the necessary Township wetlands permit in March 2022.
- EGLE issued the required State wetlands permit on May 4, 2022; Scio Township has not yet responded to Gelman’s March 2022 Township permit application.
- As demanded by EGLE’s TAPs Team comments to Gelman’s August 2021 GSI Work Plan, Gelman’s Revised GSI Work Plan contemplates obtaining seasonal sampling results for a period of one year following approval of Revised Work Plan, issuance of necessary Scio Township wetlands permit and installation of monitoring wells.
- The monitoring wells likely cannot be installed until the winter of 2024 (assuming the necessary governmental approvals are issued). Consequently, the earliest that Gelman will likely be able to complete the GSI investigation is sometime in 2024.
- Gelman’s Revised GSI Work Plan, which provides for the one year of seasonal sampling, has been available on EGLE’s Gelman website for Intervenor review and Scio Township has Gelman’s wetland permit application.

2. Submission of GSI Response Activity Work Plan—4th CJ, V.B.2.c

- Intervenor Proposed Completion Date: June 2022.

Status: Cannot prepare or submit RA Work Plan or undertake additional response activities—if any are required—until GSI Investigation is completed, which likely cannot be completed until sometime in 2024.

3. Compliance with Western Area GSI objective—V.B.2.d

- Intervenor Proposed Completion Date: July 2022.

Status: Believe Gelman is currently and has been in compliance with Western Area GSI objective. Cannot determine whether additional response activities are required in order to comply with objective until GSI investigation is completed, which will likely cannot be completed until sometime in 2024. If additional evaluations and/or response activities are determined to be necessary in order to achieve compliance with the Western Area GSI objective, those evaluations/activities will take some additional time to design and implement.

4. Installation and operation of additional Western Area “investigation” wells—V.B.3.b

- Intervenor Proposed Completion Date: April 2022.

Status: Required wells at locations K, L, M, and N were installed during the late summer/fall of 2021. Still seeking access to private property owners to permit installation and operation of nested wells at locations I and J. Gelman legal counsel sent letters to each property owner in May, 2022 advising that the Response Activity Order requires Gelman to petition this Court for necessary access if a access agreement cannot be obtained voluntarily.

- This effort began in June 2021 when Gelman identified appropriate locations for the Western Area delineation wells.
- Gelman sought and obtained private access agreements from the relevant property owners (and one from the Washtenaw County Road Commission for a well nest in the County ROW) for Locations K, L, M, and N by the end of the summer.
- Also identified qualified drilling contractors, bid out the drilling work, and contracted with the selected drilling contractor in late summer, 2021.
- Gelman installed Western Area delineation wells at Locations K, L, M, and N and Eastern Area well Location D between October and December, 2021.
- Also identified and contacted the property owners of Locations I and J and provided proposed access agreements to the in summer of 2021. Although both owners have at various times indicated that they would be willing to grant access, the owners have recently either ceased responding to inquiries or affirmatively indicated that they would not voluntarily provide access.
- Have reached out to EGLE/AG’s Office and they have conveyed their willingness to speak to owners to facilitate obtaining access and confirming the importance of the monitoring well installation.
- On May 23 and 24, 2022, Gelman’s legal counsel sent both property owners letters advising each that the Response Activity Order requires Gelman to petition this Court for access if a voluntary access agreement cannot be negotiated and providing EGLE’s

contact information for them to contact with any questions regarding the necessity of the work.

- Counsel for one of the property owners has reached out to EGLE and the AG's Office and contacted Gelman's counsel regarding negotiation of an access agreement, which Gelman is pursuing.
- Gelman will continue to pursue access and, if necessary, will petition this Court so that these wells can be installed during the drilling contractor's late July/August window.

5. Amend Western Area Monitoring Plan to identify the network of compliance wells for non-expansion objective—4th CJ V.B.3.c

- Intervenor Proposed Completion Date: May 2022.

Status: Cannot amend the Western Area Monitoring Plan until the two remaining well nests (Locations I and J) are installed.

6. Municipal Water Connection Contingency Plan—V.A.2.j

- Intervenor Proposed Completion Date: None.

Status: Gelman has retained F&V Municipal Engineering department to prepare the required contingency plan. F&V has evaluated the available municipal records to identify the necessary records and information that will need to be obtained from the City/County and is in the process of reach out to the relevant City/County staff.

7. Installation and operation of Phase I extraction wells—4th CJ, VI.C.1

- Intervenor Proposed Completion Date: May 2022.

Status: TW-24 was installed and operational in August 2021. The pilot borings needed to locate and design the other two extraction wells contemplated by the Response Activity Order, TW-25 and TW-26, were installed in November 2021. Two of the three Phase I extraction wells—TW-24 and TW-25—have been installed and are currently operational.

- Gelman began operating TW-24 in August 2021.
- The pilot borings needed to install TW-25 and TW-26 were installed November 2021.
- TW-25 was installed in February 2022 (installation delayed slightly due to lead time required for ordering stainless steel well materials).
- TW-25 was connected to treatment system and began operating on April 7, 2022 (again, connection of TW-25 to treatment system delayed slightly due to supply chain issues/availability of necessary valves, connectors and other necessary parts).
- The results obtained from the third boring near the western wetland area indicate that the geology in that area will not support a groundwater extraction well. This area will be further evaluated during the Western Wetland investigation, which is anticipated to occur in Q3 2022 (if we have a dry summer) or Q1 of 2023, subject to issuance of the necessary governmental approvals discussed above.
- TW-24 and TW-25 are currently operating intermittently while Gelman adjusts its treatment system to accommodate the unusual water chemistry from portion of aquifers in which these wells are screened.

- While Gelman is not currently operating these two wells at the purge rates contemplated by the Response Activity Order, Gelman has increased its overall onsite purge rate by 140 gallons per minute (gpm), almost double the anticipated 75 gpm from these three extraction wells.

8. Implementation of phytoremediation systems in former pond areas—VI.C.2

- Intervenor Proposed Completion Date: 3Q22.

Status: The engineered phytoremediation system for the former pond areas has been installed and the specially designed trees have been planted.

- Upon issuance of the Response Activity Order, Gelman reengaged the national environmental firm that had performed the preliminary engineering design work for each of the four onsite remediation systems to complete the necessary engineering design work for each system.
- Necessary trees reserved by Phyto subcontractor Q1 2022 based on refined engineering specifications.
- Site prep work and utility began the week of May 6, 2022 after the remediation system area became sufficiently dry and proximate in time to the ideal tree planting season.
- Tree wells were installed and air injection, water level monitoring lines, and engineered fill placed within each tree well the week of May 23, 2022, continuing over the Memorial Day weekend. The air injection lines are designed to facilitate tree root growth deep into the tree wells in order to access the contaminated water perched on top of a clay layer in this area.
- After allowing the engineered fill to settle, tree installation was completed the week of June 6, 2022.

9. Implementation of phytoremediation systems in Marshy Area—VI.C.3

- Intervenor Proposed Completion Date: 3Q22.

Status: Additional investigation and evaluation of Marshy Area is needed to complete design of the phytoremediation system for the Marshy Area. This investigation requires issuance of wetland permits from both Scio Township and EGLE. Currently waiting for approval of the Township permit in order to perform necessary investigation/evaluation of Marshy Area.

- Completed remaining engineering design work and submitted wetlands permit application to EGLE in November, 2021.
- Revised application at request of EGLE and resubmitted application in January 2022.
- Submitted application to Scio Township based on EGLE application in March 2022 upon EGLE's confirmation that the State permit application was administratively complete.
- Received EGLE wetland permit on May 4, 2022.
- Anticipate implementing required investigation in either Q3 2022 (if we have a dry summer) or Q4 2023 when wetland soils are frozen, assuming issuance of necessary Township wetland permit.
- Would anticipate reserving trees for Marshy Area Phyto in Q1 2023 after completion of design based on additional data obtained during the wetland investigation if weather

permits investigation to go forward this summer and if Township issues wetland permit so investigation can go forward in the summer of 2022.

10. Installation of HSVE in former Burn Pit area—VI.C.4

- Intervenor Proposed Completion Date: 3Q22.

Status: Installation of HSVE system requires a significant amount of preparation work because of existing subterranean conveyance infrastructure in area and current owner's desire to install new fire suppression system/pipelines in that area. Gelman engaged remediation contractor to conduct further engineering design work immediately upon issuance of Response Activity Order. Site prep work began the week of May 6, 2022 with the removal of asphalt materials covering HSVE area. Following removal of asphalt and soil cover, Gelman has evaluated the precise location of numerous existing pipelines/powerlines within area that must be relocated and where the new waterlines for new fire suppression system will need to be installed. That work is ongoing.

- Completed design for former Burn Pit Area in December 2021.
- Contacted Boone & Darr in November 2021 and scoped out necessary remediation area prep work; formally retained in January 2022 as general contractor to prepare the Burn Pit area for installation of the HSVE system. The preparation work will include:
 - Removal of asphalt cover;
 - Excavation of overburden soils and relocation of environmental pipelines that currently run through area;
 - Removal of existing fire suppression lines (and other infrastructure identified during excavation); and
 - Design and installation of new fire suppression pipeline infrastructure so that it will not interfere with HSVE system.
- Developed Bid Package for construction and installation of HSVE system in November – December 2021.
- Issued Bid Packages to prospective subcontractors in January 2022.
- Bid walks with prospective subcontractors occurred in February 2022.
- Bid review and subcontractor selection occurred in March-April 2022.
- Pre-construction activities including contract execution with selected subcontractor, preparation of Health & Safety Plan, completion of subsurface clearance evaluation, and coordination with local Gelman team May – June 2022.
- Local Team currently in discussions with Detroit Edison regarding installation of required power drop.

11. Financial Assurance Mechanism—4th CJ, XX.C.4

Status: As required by the RAO, on September 29, 2021, Gelman submitted to EGLE its Financial Assurance Mechanism ("FAM") cost estimate of the costs for implementing the work required by the Response Activity Order over the next 30 years. EGLE has informed Gelman that it will object to certain aspects/assumptions of the calculation, but has not provided formal comments.

4. Numerous Ongoing Operation and Maintenance Activities

Status: Gelman has continued to operate its existing remedial systems that have continued to provide a protective remedy even while also undertaking the substantial additional work required by the Response Activity Order. A partial list of the O&M activities undertaken since issuance of this Court's Response Activity Order is provided below:

- Pond cleanings in August of 2021 and June of 2022 – These cleanings included pumping the ponds dry, managing the accumulated iron sludge and inspecting the liner for damage (any necessary repairs made). Improved process to make routine cleaning more efficient.
- Upgrades to the treatment system including significant piping improvements, valve and pump replacements and other items, new chemical pumps.
- Cleaned debris from unnamed tributary to decrease hydraulic blockages.
- Updated processors controlling the treatment system. Provides more capabilities to control and monitor system.
- Energy improvements to reduce overall energy usage at the site: installation of variable speed pumps, lighting retrofits, compressor inspections/repair.
- Accommodation and installation of various inline probes for more complete measurement of key water quality indicators.
- Significant modifications to the hydrogen peroxide feed header to accommodate filters to address particulate matter in bulk hydrogen peroxide.
- The addition of a part time chemist to support the laboratory (currently have one full time and one part time chemist).
- The purchase and installation of new laboratory equipment including new auto samplers and other GS/MS equipment and related software updates.
- Hired a senior level operator.
- Pipelines were replaced to facilitate pigging of the lines.
- Designed backup generator for laboratory to protect sensitive laboratory equipment.