

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,

Case No. 88-034734-CE  
Hon. Timothy P. Connors

Plaintiff,

and

CITY OF ANN ARBOR, WASHTENAW COUNTY,  
WASHTENAW COUNTY HEALTH  
DEPARTMENT, WASHTENAW COUNTY  
HEALTH OFFICER ELLEN RABINOWITZ, in her  
official capacity, the HURON RIVER WATERSHED  
COUNCIL, and SCIO TOWNSHIP,

Intervening Plaintiffs,

**INTERVENING PLAINTIFFS'  
BRIEF IN OPPOSITION TO  
GELMAN'S MOTION FOR  
PARTIAL STAY**

-v-

GELMAN SCIENCES, INC., d/b/a PALL LIFE  
SCIENCES, a Michigan Corporation,

Defendant.

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Attorneys for Scio Township

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**INTERVENING PLAINTIFFS' BRIEF IN OPPOSITION TO GELMAN'S MOTION  
FOR PARTIAL STAY**

Gelman's motion for partial stay should be denied. The Court's June 1, 2021 Response Activity Order directed Gelman to "immediately implement and conduct all requirements and activities stated in the Proposed 'Fourth Amended and Restated Consent Judgment.'" **Ex. A**, Response Activity Order.<sup>1</sup> The Court made that directive despite being well aware that Gelman likely would apply for leave to appeal. The Court's Response Activity Order established a very sensible process by which Gelman would begin implementing response activities to address the new cleanup standards and the parties would return to the Court every quarter so that the Court and the parties could address the status of those activities and the cleanup of the site in general (including review of additional requests for cleanup activities beyond that ordered and other relevant modifications). Gelman provides the Court no basis to depart from that reasonable

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<sup>1</sup> Due to its size and length, the attachment referenced in this Order is not included with Exhibit A.

process. Indeed, by seeking a partial stay, Gelman recognizes the need for the Court to exercise its inherent authority to enter an initial order addressing the change in cleanup criteria and requiring the implementation of additional response activities without further delay.

Gelman's principal argument for the stay is based on inadmissible (and misrepresented) settlement discussions. Gelman's reference to an alleged bilateral agreement with EGLE is not part of the record and should not be considered by the Court. Intervenor's counsel objected to Gelman's reference to settlement discussions at the May 3, 2021 hearing and Gelman's continued reference to those discussions is completely inappropriate and violates the Michigan Rules of Evidence and the Court's confidentiality order. MRE 408 provides that "[e]vidence of conduct or statements made in compromise negotiations is...inadmissible." The Court's March 23, 2017 Confidentiality Order likewise protects "[a]ny statements made or positions expressed by any party on any topic" during settlement negotiations and provides that a party may not file or place in evidence statements or other information disclosed during settlement negotiations by another party. **Ex. B**, Confidentiality Order.

The Court later partially rescinded the confidentiality order only so that certain documents could be made public as part of EGLE's public comment process and the Intervenor's public vote process. **Ex. C**, Partial Rescission Order. The Court's directive that all settlement discussions be kept confidential remains in effect to this day.<sup>2</sup>

Gelman's characterization of settlement negotiations not only is inappropriate, it is inaccurate as well. No "bilateral agreement" between Gelman and EGLE to address the change in cleanup criteria has ever been presented to the Court. To the contrary, the parties' positions at

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<sup>2</sup> Gelman's conduct is particularly egregious in light of the fact that Intervenor's provided all proposed public documents and videos to Gelman prior to posting them so that Gelman had a chance to raise any confidentiality concerns. Intervenor's also made changes to those documents and videos prior to posting to address Gelman's concerns.

the May 3, 2021 evidentiary hearing and in their briefs show that Gelman and EGLE do not agree on the changes to the cleanup regime. EGLE advocated for an order requiring implementation of all response activities contained in the Proposed Fourth Amended and Restated Consent Judgment, while Gelman advocated for an order without many of those response activities. In entering the Response Activity Order, the Court appropriately was guided by the briefs and reports filed, and the parties' arguments at the hearing, not by Gelman's misleading history of inadmissible settlement discussions.

For the foregoing reasons, Gelman's motion for stay should be denied.

Respectfully submitted,

Dated: June 14, 2021

ANN ARBOR CITY ATTORNEY'S  
OFFICE

By: /s/ Stephen K. Postema  
Stephen K. Postema (P38871)  
Attorney for Intervenor City of Ann Arbor

Dated: June 14, 2021

BODMAN PLC

By: /s/ Nathan D. Dupes  
Nathan D. Dupes (P75454)  
Attorneys for Intervenor City of Ann Arbor

Dated: June 14, 2021

DAVIS, BURKET, SAVAGE, LISTMAN

By: /s/ Robert Charles Davis  
Robert Charles Davis (41055)  
Attorney for Intervening Washtenaw County  
Entities

Dated: June 14, 2021

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LAW CENTER

By: /s/ Erin E. Mette  
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Attorney for Intervenor Huron River  
Watershed Council

Dated: June 14, 2021

HOOPER HATHAWAY, P.C.

By: /s/ William J. Stapleton  
William J. Stapleton (P38339)  
Attorneys for Intervenor Scio Township

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2021, the foregoing document was filed with the Clerk of the Court via the Court's MiFile Truefiling e-filing system which will give notice of such filing to all parties of record.

BODMAN PLC

By: /s/ Nathan D. Dupes  
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Attorneys for Intervenor City of Ann Arbor

# EXHIBIT A

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.

---

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**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 P. Connors 6/1/2021



**Drafted/Presented By:**

**By: /s/Robert Charles Davis**  
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**Dated: May 27, 2021**

# EXHIBIT B

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE  
OF MICHIGAN *ex rel.* MICHIGAN DEP'T  
OF NATURAL RESOURCES AND  
ENVIRONMENT,

Plaintiff,

Washtenaw County Case No. 88-34734-CE  
Honorable Timothy P. Connors

And

**STIPULATED**  
**SETTLEMENT NEGOTIATION AND**  
**CONFIDENTIALITY ORDER**

THE CITY OF ANN ARBOR,

Intervenor-Plaintiff,

and

WASHTENAW COUNTY,

Intervenor-Plaintiff,

and

THE WASHTENAW COUNTY  
HEALTH DEP'T,

Intervenor-Plaintiff,

and

WASHTENAW COUNTY HEALTH OFFICER  
ELLEN RABINOWITZ,

Intervenor-Plaintiff,

and

THE HURON RIVER WATERSHED  
COUNCIL,

Intervenor-Plaintiff,

and

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CIRCUIT COURT

SCIO TOWNSHIP,  
Intervenor-Plaintiff,

-v-

GELMAN SCIENCES, INC.,  
a Michigan Corporation,

Defendant.

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**STIPULATED SETTLEMENT NEGOTIATION  
AND CONFIDENTIALITY ORDER**

At a session of said Court  
held in the City of Ann Arbor, County of Washtenaw  
on 3/23/2017  
PRESENT Hon. Timothy P. Connors  
Circuit Court Judge

The parties desiring to promote productive settlement negotiations regarding the requirements of a revised Consent Judgment and/or resolution of the claims and defenses asserted in this matter, (collectively, "Settlement Negotiations"); and the parties having stipulated and agreed to entry of this Order; and the Court being fully advised in the premises:

IT IS THEREFORE ORDERED as follows:

1. All discussions, statements, positions taken, and any documents, data or other information exchanged among the parties, collectively and between any subset of the parties during the Settlement Negotiations, shall be considered conduct or statements made in compromise negotiations covered by Michigan Law, the Michigan Rules of Evidence, including, but not limited to, MRE 408, and Michigan Rules of Court, including, but not limited to, MCR 2.412 (regardless if taken in a formal mediation process or exchanged between the parties). Except as set out herein or as may be required under Michigan law, none of the following that occurs during the Settlement Negotiations shall be disclosed, described characterized or disseminated by any party to anyone who is not a party to this case (a "third party"): (i) Any statements made or positions expressed by any party on any topic; (ii) any documents, data or other information disclosed by any other party; or (iii) the fact that such documents, data or other information was exchanged during the Settlement Negotiations by any party. To be clear, nothing in this order shall preclude any party from disclosing to any third party at any time any documents, data, or other information that the party created or that the party came to possess outside of the Settlement Negotiations, or the positions that the party may have on any topic, as long as there is no indication given to such third party that such documents, data, or other information was disclosed/exchanged or that such statements regarding positions were made during the Settlement Negotiations themselves.

2. None of the statements made and none of the documents, data, or other information disclosed by one party to the case during the Settlement Negotiations may be filed, or placed in evidence by a different party to the case for any purpose, including impeachment, in any legal or administrative proceeding whatsoever. However, notwithstanding the preceding sentence, documents, data, or other evidence that was disclosed during the Settlement Negotiations by a party that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during the Settlement Negotiations and any such evidence may be sought in discovery and shall be produced and disclosed in response to such discovery requests (subject to any otherwise applicable privileges or other exemptions from discovery), following which such evidence may be admitted into evidence.

3. All statements made during the course of the Settlement Negotiations are made without prejudice to any of the parties' legal positions.

4. The disclosure during the Settlement Negotiations of any documents, data or other information, and any statements made by individuals during the Settlement Negotiations, that are exempt from discovery or disclosure by virtue of an applicable privilege, attorney work product, or other exemption from discovery or disclosure, shall not (i) operate as a waiver of any claim of privilege, attorney work product, or other exemption from discovery or disclosure, or (ii) change in any way the protected (or unprotected) character of any such materials.

5. All statements made during the Settlement Negotiations and any documents, data or other information disclosed during such Settlement Negotiations by a different party may be disclosed or made available only to the receiving Parties' employees, elected officials, officers, directors and advisors (including without limitation, attorneys and technical consultants) (collectively "**Agents**") who have a need to know such information for the purpose of negotiating a revised Consent Judgment and/or resolving the claims and the defenses asserted in this matter. All Agents must be informed of the confidential nature of such information and agree to be bound by the terms of this Order. Each Party will be responsible for any breach of this Order by any of its Agents.

6. To the extent any of the statements made during the Settlement Negotiations or any documents, data or other information disclosed during such Settlement Negotiations is discussed or reviewed with any of the municipal parties' elected officials or with any employees of the municipality, such municipal party(ies), their elected officials, and their employees shall maintain the privileged and confidential status of such information. Such communications, if oral, shall not be made during an open session of the governing body of the municipality, but may take place during a session of the body that is properly closed in accordance with the Michigan Open Meetings Act. Such communications, if written, shall be identified clearly as privileged and confidential and not subject to disclosure under the Freedom of Information Act (FOIA). If a Governmental Party receives a FOIA or similar request for documents that covers Settlement Negotiations or any related information exchanges, the Governmental Party receiving the request shall, in good faith, assert appropriate grounds for exempting from disclosure the Settlement Negotiations and related information exchanges. The Parties agree that the grounds for exemption may include the terms of this Order, Section 13(1)(f), (g), (h), (m) and (v) of the Michigan Freedom of Information Act, MCL 15.243(1)(f), (g), (h), (m) and (v), and any other applicable exemptions under Michigan law. If a Governmental Party receives a FOIA request or subpoena for Settlement


Negotiations or any related data, documents, or information exchanges, it shall give prompt notice to the other parties and, if the response will include disclosure of any information, data, or documents exchanged during the Settlement Negotiations, including any notes or summaries of the Settlement Negotiations, such notice shall be provided by electronic mail to counsel listed below a minimum of five business days before the Governmental Party responds to the request. The Governmental Party shall also give prompt notice to the other parties if the requesting party appeals the Governmental Party's denial of the request for disclosure. If necessary, any Party may act, and may request that the Court act to maintain the confidentiality of Settlement Negotiations and related information exchanges as set forth in this Order and applicable Michigan law.

7. Any violation of this Order will cause irreparable injury and monetary damages will be an inadequate remedy because the parties are relying on this Order and applicable limits of admissibility under the court rules in disclosing sensitive information. Consequently, any party may obtain an injunction to prevent disclosure of any such confidential information in violation of this Order. Any party violating this Order shall be liable for and shall indemnify the non-breaching parties, for all costs, expenses, liabilities, and fees, including attorney's fees that may be incurred in seeking an injunction, resulting from such violation.

8. Entry of this order does not resolve all claims between all parties and does not close the case.

**IT IS SO ORDERED**

Dated: 3/23/2017

  
Hon. Timothy P. Connors

STIPULATED TO AND APPROVED BY

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# EXHIBIT C

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,

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

Plaintiff,

and

CITY OF ANN ARBOR, WASHTENAW COUNTY,  
WASHTENAW COUNTY HEALTH  
DEPARTMENT, WASHTENAW COUNTY  
HEALTH OFFICER ELLEN RABINOWITZ, in her  
official capacity, the HURON RIVER WATERSHED  
COUNCIL, and SCIO TOWNSHIP,

**STIPULATED ORDER  
RESCINDING IN PART  
THE COURT'S MARCH 23, 2017  
CONFIDENTIALITY ORDER**

Intervening Plaintiffs,

-v-

GELMAN SCIENCES, INC., a Michigan Corporation,

Defendant.

---

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Attorneys for Huron River Watershed Council

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**STIPULATED ORDER RESCINDING IN PART  
THE COURT'S MARCH 23, 2017, CONFIDENTIALITY ORDER**

At a session of said Court  
held in the City of Ann Arbor, County of Washtenaw  
on 8/31/2020  
PRESENT Timothy P. Connors  
Circuit Court Judge

The parties having desired to promote productive settlement negotiations regarding the requirements of a revised Consent Judgment and/or resolution of the claims and defenses asserted in this matter, (collectively, "Settlement Negotiations"); the parties having previously stipulated and agreed to entry by this Court of a Confidentiality Order dated March 23, 2017 ("Confidentiality Order"), that governs and protects the confidentiality of the Settlement Negotiations; the parties having concluded the Settlement Negotiations; the governmental Intervening Plaintiffs now needing to make public the proposed settlement documents in order to consider and vote on them publicly in accordance with the Michigan Open Meetings Act; Plaintiff now needing to make public the proposed settlement documents for purposes of public notice and comment; and the Court being fully advised in the premises:

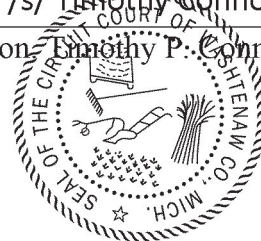
IT IS THEREFORE ORDERED as follows:

1. The requirements of the Court's Confidentiality Order are rescinded and shall not apply to the following documents that are products of the Settlement Negotiations: proposed Fourth Amended and Restated Consent Judgment, proposed Order of Dismissal, proposed Settlement Agreement between Defendant and the City of Ann Arbor, proposed Settlement Agreement between Defendant and Washtenaw County and its Health Department and Health Officer, and proposed Settlement Agreement between Defendant and Scio Township.
2. The requirements of the Court's Confidentiality Order also are rescinded and shall not apply to documents that may be prepared and published on the Intervenor's joint information repository website ("Intervenor's joint website") to explain or answer questions about any of the documents listed in Paragraph 1, so long as none of those other documents discloses any content or aspect of the Settlement Negotiations otherwise protected by the Court's Confidentiality Order, and are based on or otherwise disclose only information in the documents listed in Paragraph 1 and/or information that is otherwise publicly available and not subject to the restrictions of the Confidentiality Order.
3. To prevent inadvertent disclosures of confidential information that is subject to the Confidentiality Order, prior to publicly posting any documentation or information on the Intervenor's joint website under Paragraph 2, the producing party shall provide the documentation/information to the other parties. The documentation/information may be made public if no party objects in writing by 5:00 PM of the second business day after the documentation/information is sent. Writings for purposes of this paragraph may be by electronic mail. The only basis for objection shall be that the documentation/information contains information the Court's Confidentiality Order makes confidential and has not been rescinded by the terms of this Order. If an objection is made, the parties shall negotiate in good faith to resolve the objection. If the objection cannot be resolved and an impasse is declared in writing by any party, the documentation/information at issue may be made public unless the objecting party files a petition for resolution with the Court by 5:00 PM of the second business day after the written declaration of impasse is sent. Each party may file a response in accordance to a schedule set by the Court. All documents/information included in or attached to the petition and any party's response shall be filed with the Court under seal.
4. Except as rescinded in Paragraphs 1 through 3, all the provisions of the Court's March 23, 2017, Confidentiality Order remain in effect.
5. Entry of this order does not resolve all claims between all parties and does not close the case.

Dated: 8/31/2020

**IT IS SO ORDERED**

/s/ Timothy P. Connors 8/31/2020  
Hon. Timothy P. Connors



STIPULATED TO AND APPROVED BY

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/s/ Michael L. Caldwell  
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