

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

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

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

Intervening Plaintiffs,

-v-

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

Defendant.

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**INTERVENING PLAINTIFFS' MOTION FOR ENTRY OF AN ORDER TO SHOW
CAUSE CONCERNING IMPLEMENTATION OF RESPONSE ACTIVITY ORDER**

Intervening Plaintiffs ("Intervenors") jointly submit this motion concerning the Court's June 1, 2021 Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria ("Response Activity Order"). **Ex. A.**¹ For the reasons described below, Intervenors request that the Court order Gelman to appear and show cause why it is not in violation of the Response Activity Order and direct Gelman to complete the remaining requirements under that Order on a workable but aggressive time line.

1. The Court entered the Response Activity Order one year ago. The central provision of that Order required Gelman to "immediately implement and conduct all requirements and activities in the Proposed 'Fourth Amended and Restated Consent Judgment' which is attached to this Order and incorporated by reference." *Id.* The Proposed Fourth Amended and Restated Consent Judgment ("Proposed 4th CJ") described numerous activities that

¹ Given its length, Intervenors do not include in Exhibit A the Proposed 4th CJ, which was attached to the Response Activity Order.

Gelman was to undertake in order to address the significant changes the State made in 2016 to the cleanup criteria for 1,4-dioxane, the toxic pollutant that Gelman released to the environment, resulting in the contamination of billions of gallons of the public's groundwater.

2. On June 22, 2021, Gelman filed both a claim of appeal and an application for leave to appeal the Response Activity Order. Shortly thereafter, the Court of Appeals *sua sponte* dismissed Gelman's claim of appeal for lack of jurisdiction, holding that the Response Activity Order was not a final order under MCR 7.202(6). On July 26, 2021, the Court of Appeals granted Gelman's application for leave to appeal. That appeal remains pending and has been fully briefed for months, but oral argument has not been scheduled.

3. Gelman also filed with the Court of Appeals a motion to stay the Response Activity Order pending appeal. The Court only granted Gelman's motion in part, expressly refusing to stay the Order's provision requiring Gelman to "immediately implement" the activities in the Proposed 4th CJ, and the provision stating that "Intervening Plaintiffs shall retain their status as Intervenors in this action." In fact, the sole provisions that the Court of Appeals stayed were those providing for quarterly hearings and potential additional or modified response activities. Presumably, the Court of Appeals stayed those provisions because it did not want a moving target while the Order is on appeal.

4. The effect of the Court of Appeals's decision is that this Court retains jurisdiction and enforcement powers over the Response Activity Order pending appeal. Another effect of the Court of Appeals's decision is that Gelman has an incentive to drag its feet in carrying out the Proposed 4th CJ's response activities. Gelman continues to vehemently oppose entry of the Response Activity Order in order to avoid the expense of fully implementing the Proposed 4th CJ. Indeed, even after the Court of Appeals summarily dismissed Gelman's claim of appeal,

Gelman filed an application for leave with respect to that dismissal to the Supreme Court, in which it called the procedure that this Court followed in entering the Response Activity Order a “kangaroo court proceeding.” On May 31, 2022, the Supreme Court denied Gelman’s application because the Court was “not persuaded that the questions presented should be reviewed by this Court.”

5. Keenly aware of Gelman’s incentive, Intervenors repeatedly have asked Gelman to provide updates on the status of its implementation of the Response Activity Order. Gelman has refused to do so, relying on the same tired assertion that this Court has rejected—because Intervenors are not “the regulator,” they have no business receiving the requested information. Gelman forgets that the Court of Appeals expressly refused to stay the provision of the Response Activity Order making clear that Intervenors retain their status in this case. Just as they fully participated in the proceedings leading to the Response Activity Order, Intervenors have every right to ensure that the Response Activity Order is implemented in accordance with its terms.

6. Rather than rush to court, however, Intervenors have sought periodic updates on Gelman’s progress from the State. The most recent update Intervenors received from the State was on May 18, 2022. The State’s updates have been very helpful and Intervenors certainly appreciate them, even though they cannot substitute for the information that Gelman could provide as the party directly implementing the Response Activity Order.

7. Although Intervenors do not dispute that Gelman has made limited progress in certain areas of the Proposed 4th CJ, it is clear that Gelman has not made significant progress in many other key areas and has thereby failed to “immediately implement” the Response Activity Order, as required. It also is clear that Gelman in many instances has failed to meet its own projections for conducting certain activities.

8. Equally concerning is Gelman's refusal to commit to a time line for completing the remaining response activities. More than a month ago, on April 18, 2022, Intervenors sent Gelman a letter with a proposed time line for completing what Intervenors understood to be the key remaining response activities. **Ex. B.** Intervenors asked Gelman to commit to the time line or, if it believed that Intervenors' proposal was impractical, to explain why and provide a reasonable alternative. Intervenors further asked Gelman to advise if any remaining response activities were impeded because Gelman was awaiting approval from others.

9. To date, Gelman has not even responded to Intervenors' letter. Instead, the State responded on May 5, 2022. **Ex. C.** In its letter, the State described discussions it had with Gelman concerning the Intervenors' letter and revealed that "Gelman was unwilling to agree to any specific dates for completion of activities under the Order, other than those dates that are already specifically set forth in the Order." The State further confirmed that "deadlines would be desirable for at least some of the response activities listed in the Intervenors' letter, but without Gelman's agreement to do so voluntarily we also believe that modification of the Order is unlikely during the pendency of Gelman's appeals."

10. What Gelman and the State fail to appreciate is that the Response Activity Order directed Gelman to implement "**all** requirements and activities" in the Proposed 4th CJ "**immediately**." **Ex. A;** emphases added. That Order adopted the position the State advocated in the brief it filed and at the hearing forming the basis for the Order. The Order was clear on its face; no modification is necessary. By any definition of the word "immediate," Gelman has failed to fulfill the Court's directive.

11. Below are just some examples of Gelman's failings (with citations to the applicable section of the Proposed 4th CJ):

- a. Failure to install *any* additional monitoring wells in the Eastern Area, despite being required to do so at eight locations (Sections V.A.3.a.; V.A.3.b.; V.A.5.f.);
- b. Failure to install and operate monitoring wells at two locations in the Western Area (Section V.B.3.b.);
- c. Failure to install and operate all of the required on-site extraction wells and the Heated Soil Vapor Extraction (HSVE) system at Gelman's own property (Sections VI.C.1; VI.C.4.), even though Gelman had told the State that it intended to install the on-site extraction wells by the end of 2021 and the HSVE system by First Quarter 2022.

12. Undoubtedly, Gelman will try to place the blame on others. For example, the State has advised that Gelman's position is that the Eastern Area monitoring wells have not been installed due to issues with securing access from the City of Ann Arbor to municipal property. Gelman's position on this issue is unfounded and the City will be happy to explain in more detail at the hearing. But even if there are issues delaying completion of certain activities, Intervenor asked Gelman to provide an explanation and even offered to help Gelman address any bottlenecks. As discussed above, Gelman has failed to even respond. And even if Gelman is having access issues with third parties, that does not explain why Gelman has been unable to address such issues well before now, nearly a full year after entry of the Response Activity Order. Gelman's attempt at displacing its responsibility by referring to "access issues" is inexcusable. No such access issues prevented Gelman from completing other activities, such as all of the on-site activities, which are to take place on Gelman's own property.

13. The Intervenor request that the Court order Gelman to show cause why it is not in violation of the Response Activity Order and direct Gelman to complete the remaining requirements in the Proposed 4th CJ on a workable but aggressive time line, in particular where the Response Activity Order directed that all activities be implemented “immediately.” Previously, this Court has not hesitated to enter similar relief. In 2000, in its Opinion and Remediation Enforcement Order (“REO”) the Court made the following findings:

It is also clear, however, that the purging of dioxane has not occurred fast enough to provide the public, or the Court, with assurance that the plume of dioxane was contained as early as it should have been or that there is an ongoing approved plan that will lead to the removal of unlawful levels of this pollutant from the area’s water supplies.

* * *

Based upon the evidence submitted, this Court is going to grant equitable relief in the sense that the Court will use its equitable powers to enforce the consent judgment to insure that dioxane levels in these water supplies is brought within acceptable standards as soon as possible. Both sides in this dispute appear to need the intervention of the Court to keep them moving toward this goal.

Ex. D. The Court then ordered numerous response activities on a tight time line, including the installation of additional monitoring and extraction wells within 60 days of the Order and installation of an additional treatment unit which was to be operational within 75 days of the Order. The Court’s REO was designed to ensure that the Consent Judgment’s existing requirements were met. In the same vein, the Court should take appropriate steps to ensure that its Response Activity Order is implemented. The longer that Gelman delays implementing the Order, the greater the threat to the public interest and the environment, as Gelman’s plume continues to expand.

Respectfully submitted,

ANN ARBOR CITY ATTORNEY'S OFFICE

By: /s/ Atleen Kaur
Atleen Kaur (P66595)
Attorney for Intervenor City of Ann Arbor

Dated: June 2, 2022.

BODMAN PLC

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

Dated: June 2, 2022.

DAVIS, BURKET, SAVAGE, LISTMAN

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

Dated: June 2, 2022.

GREAT LAKES ENVIRONMENTAL
LAW CENTER

By: /s/ Erin E. Mette
Erin E. Mette (P83199)
Attorney for Intervenor Huron River
Watershed Council

Dated: June 2, 2022.

HOOPER HATHAWAY, P.C.

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

Dated: June 2, 2022.

**BRIEF IN SUPPORT OF INTERVENING PLAINTIFFS' MOTION FOR ENTRY OF AN
ORDER TO SHOW CAUSE CONCERNING IMPLEMENTATION OF RESPONSE
ACTIVITY ORDER**

In support of their Motion for Entry of an Order to Show Cause Concerning Implementation of Response Activity Order, Intervening Plaintiffs rely on the facts and law in their Motion and the Court's inherent authority to enforce its directives. See, e.g., MCL 600.611; *Cohen v Cohen*, 125 Mich App 206, 211; 335 NW2d 661 (1983).

Respectfully submitted,

ANN ARBOR CITY ATTORNEY'S OFFICE

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Dated: June 2, 2022.

BODMAN PLC

By: /s/ Nathan D. Dupes
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Dated: June 2, 2022.

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Dated: June 2, 2022.

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

Dated: June 2, 2022.

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2022, the foregoing document was filed with the Clerk of the Court via the Court's MiFile e-filing system which will give notice of such filing to all parties of record.

/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 Intervenors 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
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Dated: May 27, 2021

EXHIBIT B

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April 18, 2022

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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

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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

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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

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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

EXHIBIT C

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

May 5, 2022

SENT VIA EMAIL AT NDUPES@BODMANLAW.COM

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Detroit, MI 48226

Re: *Attorney General for the State of Michigan ex rel. Michigan Department
of Environment, Great Lakes, and Energy v Gelman Sciences Inc.*
Case No.: 88-34734-CE

Dear Mr. Dupes:

This follows up on your April 18, 2022, letter to Mike Caldwell and me on behalf of the Intervenor regarding the Court's June 1, 2021 Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria (Order) seeking deadlines for Gelman to complete performance of certain response activities set forth in the Proposed Fourth Amended and Restated Consent Judgment incorporated by reference in the Order.

In our April 29, 2022 phone call, I related to you my discussions with Mr. Caldwell regarding the Intervenor's proposed completion dates listed in the letter and possible alternative completion dates. Mr. Caldwell stated that Gelman was unwilling to agree to any specific dates for completion of activities under the Order, other than those dates that are already specifically set forth in the Order.

EGLE agrees that deadlines would be desirable for at least some of the response activities listed in the Intervenor's letter, but without Gelman's agreement to do so voluntarily we also believe that modification of the Order is unlikely during the pendency of Gelman's appeals. As we also discussed, EGLE remains willing to continue regular meetings with Intervenor counsel to provide updates on the status of Gelman's implementation of the Order.

Nathan D. Dupes, Esq.

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May 5, 2022

Please feel free to contact me if you have any questions.

Sincerely,

/s/ Brian J. Negele
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BJN/rc

cc: Michael L. Caldwell
Frederick J. Dindoffer
Timothy S. Wilhelm
Erin E. Mette
William J. Stapleton
Robert Charles Davis

LF: Gelman Sciences CIR/AG #1989-001467-A/Letter – Mr. Dupes 2022-05-05

EXHIBIT D

COPY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

JENNIFER GRANHOLM, Attorney
General for the State of Michigan, ex rel,
MICHIGAN NATURAL RESOURCES
COMMISSION, MICHIGAN WATER
RESOURCES COMMISSION, and
MICHIGAN DEPARTMENT OF NATURAL
RESOURCES,

Plaintiff,

Case No. 88-34734-CE

vs

Honorable Donald E. Shelton

GELMAN SCIENCES, INC.,

Defendant.

OPINION AND REMEDIATION ENFORCEMENT ORDER

At a Session of the Court held in the
Washtenaw County Courthouse in
the City of Ann Arbor, on July 17, 2000

PRESENT: HONORABLE DONALD E. SHELTON, Circuit Judge

This case was originally filed in 1988 by the State to require Gelman Sciences, Inc. to clean up pollution of local water supplies caused by the discharge of dioxane from its manufacturing facility. A consent judgment identifying the required remediation actions was agreed to by the parties and entered on October 22, 1992. In the 12 years this case has been pending, many things have changed, including the identity of the participants. The successor to the plaintiff agency is now called the Michigan Department of Environmental Quality ("MDEQ"). The defendant corporation has been acquired by another company and is now known as Pall/Gelman Sciences, Inc. ("PGSI").

The original judge retired and the case was reassigned and has subsequently been reassign to this Court as companion to other litigation involving this issue. The original consent judgment was amended by the parties and the Court on September 23, 1996 and again on October 20, 1999.

On February 14, 2000 plaintiff filed a motion to enforce the consent judgment. The MDEQ claims that PGSI has not complied with the terms of the consent judgment as amended and seeks equitable relief in the form of an order requiring PGSI to perform specific "environmental response activities" to achieve the cleanup requirements of the consent judgment. The MDEQ also seeks to an order requiring the payment of certain "stipulated penalties" provided in the consent judgment. PGSI asserts that it has actively sought to remediate the pollution and that no penalties are due under the terms of the judgment. The issues were defined in a Joint Prehearing Statement filed by the parties on June 21, 2000. An evidentiary hearing was conducted on July 6, 7 and 10, 2000. The parties were also given the opportunity to respond to the Court's proposed Order. The Court's findings and conclusions, in part, are set forth below in this Opinion and Order.

The monitoring and purging of dioxane from the aquifers flowing under and around the Gelman facility is an ongoing process. The defendant, particularly since the change in ownership, has acted in good faith to meet its obligations to identify and clean up the polluted water supplies. It is also clear, however, that the purging of dioxane has not occurred fast enough to provide the public, or the Court, with assurance that the plume of dioxane was contained as early as it should have been or that there is an ongoing approved plan that will lead to the removal of unlawful levels of this pollutant from the area's water supplies. In part this appears to be because Gelman, especially

early on, did not know how to detect or remove the pollutant or act quickly enough to find out and do so. In part, however, this also appears to be because the MDEQ itself did not know how to monitor or purge the pollutant or it just acted far too slowly in its "reactive only" mode to Gelman's proposed work plans. It also appears that some of the delay has been the result of the inability to obtain land and other access to install the necessary monitoring, purging and treating equipment.

Assigning responsibility for these delays however is not this Court's priority. The fact is that the consent judgment of the Court, as subsequently amended, was intended to bring about a cleanup of this pollution and it has not yet done so. It is far less important to fix blame for that failure than it is to enforce its terms to bring about the cleanup. Based upon the evidence submitted, this Court is going to grant equitable relief in the sense that the Court will use its equitable powers to enforce the consent judgment to insure that dioxane levels in these water supplies is brought within acceptable standards as soon as possible. Both sides in this dispute appear to need the intervention of the Court to keep them moving toward this goal.

The Court's remediation order is designed first to require PGSI to submit an enforceable long range plan which will reduce all dioxane in these water supplies below legally acceptable levels and second to order immediate measures to move that process along faster than it has moved in the past. As to the request for monetary penalties, there has been considerable testimony about whether PGSI is liable for stipulated penalties under the amended consent judgment. The Court will take these requests for penalties under advisement. However, the parties are advised that the Court intends to enforce the consent judgment and the equitable

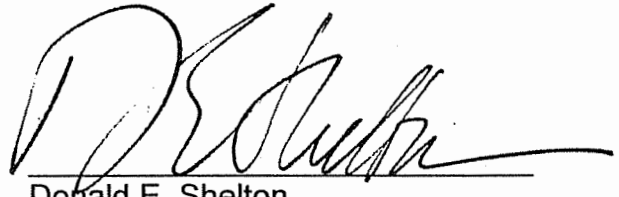
remediation measures in this order by virtue of its contempt powers and all of the sanctions available thereunder.

Remediation Enforcement Order

1. PGSI shall submit a detailed plan, with monthly benchmarks, which will reduce the dioxane in all affected water supplies below legally acceptable levels within a maximum period of five years from the date of this Order. The plan will also provide for subsequent monitoring of those water supplies for an additional ten year period thereafter. This plan will be submitted to the MDEQ for review within 45 days of this Order. MDEQ will respond within 75 days of this Order and the parties will confer and discuss the issues raised by the MDEQ review, if any. The plan will then be submitted to this Court within 90 days of this Order, for review and adoption as an Order of the Court.
2. As to the area in which monitoring well "10d" is located, the additional monitoring wells requested by the MDEQ will be installed within 60 days of this Order. An additional two purging wells in the monitoring well 10d area will be also be installed and operational within 60 days of this Order.
3. PGSI will install an additional ultraviolet treatment unit which shall be operational within 75 days of this Order. The capacity of the unit shall be consistent with the Court's maximum total remediation period of 5 years described in paragraph 1 of this Order.

4. Purging from the horizontal well in the Evergreen area shall commence within 30 days after the additional ultraviolet treatment unit is installed.
5. The combined pumping rate of the LB1, LB2 and AE1 purging wells will be increased to 200 gpm within 30 days after the additional ultraviolet treatment unit is installed.
6. Monitoring wells in the Dupont section of the Evergreen area will be installed as requested by the MDEQ. These wells will be operational within 45 days after access is obtained. PGSI shall secure access for those wells within 30 days of this Order or, if necessary, commence legal action to do so within that time.
7. In the Western area, PGSI shall install monitoring wells as requested by MDEQ. These wells will be operational within 45 days after access is obtained. PGSI shall secure access for those wells within 30 days of this Order or, if necessary, commence legal action to do so within that time. In the event that monitoring of those wells for five months thereafter shows an increasing concentration of dioxane above legally acceptable levels, then a purging well will be installed and be operational within 60 days after that five month period. The Court reserves judgment as to any other remedial measures in this area in the event that there is no evidence of such increasing levels.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Shelton', written over a horizontal line.

Donald E. Shelton
Circuit Judge