

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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

Plaintiff,

and

THE CITY OF ANN ARBOR,

Intervenor,

and

WASHTENAW COUNTY,

Intervenor,

and

THE WASHTENAW COUNTY HEALTH  
DEPARTMENT,

Intervenor,

and

WASHTENAW COUNTY HEALTH OFFICER,  
JIMENA LOVELUCK,

Intervenor,

and

THE HURON RIVER WATERSHED COUNCIL,

Intervenor,

and

SCIO TOWNSHIP,

Intervenor,

v

GELMAN SCIENCES, INC., a Michigan  
Corporation,

Defendant.

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

**GELMAN SCIENCES, INC.'S  
MOTION FOR PARTIAL STAY OF  
ORDER TO CONDUCT RESPONSE  
ACTIVITIES TO IMPLEMENT  
AND COMPLY WITH REVISED  
CLEANUP CRITERIA**

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**GELMAN SCIENCES, INC.'S MOTION FOR PARTIAL STAY  
OF ORDER TO CONDUCT RESPONSE ACTIVITIES TO IMPLEMENT AND  
COMPLY WITH REVISED CLEANUP CRITERIA**

Defendant Gelman Sciences, Inc. ("Gelman") hereby respectfully moves the Court pursuant to MCR 2.614(D) and MCR 7.209(A) to partially stay its June 1, 2021 Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria ("Response Activity

Order”). Gelman seeks this partial stay pending a decision on Gelman’s forthcoming Claim of Appeal and Application for Leave to Appeal to the Michigan Court of Appeals from the Response Activity Order and, if either the Claim of Appeal or the Application is accepted/granted, until all appellate proceedings are complete. In support of this Motion, Gelman relies on the accompanying Brief.

**BRIEF IN SUPPORT OF MOTION FOR PARTIAL STAY  
OF ORDER TO CONDUCT RESPONSE ACTIVITIES TO IMPLEMENT  
AND COMPLY WITH REVISED CLEANUP CRITERIA**

Defendant Gelman Sciences, Inc. (“Gelman”) respectfully seeks a partial stay of the Court’s June 1, 2021 Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria (“Response Activity Order”). Exhibit A. Under MCR 7.209(A)(1), “an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders.” This Court has authority to grant such a stay under MCR 2.614(D) and MCR 7.209(A).

To be clear, Gelman opposes the Response Activity Order in its entirety because the order and the Court-ordered process from which it resulted are wholly improper and without legal basis. Nevertheless, after consultation with the State and in the interest of proceeding with the long-delayed remedial work that Gelman first agreed to in 2017, Gelman seeks only a partial stay of certain portions of the Response Activity Order and Proposed Fourth Amended and Restated Consent Judgment (“Fourth Amended CJ”) that go beyond the remedial actions required to protect the public health or the environment. The purpose of Gelman’s request for a partial stay is to preserve the status quo while Gelman is seeking review of the Response Activity Order by the Michigan Court of Appeals. If Gelman’s position is upheld by the Michigan Court of Appeals, the Response Activity Order is void and unenforceable, leaving Gelman and EGLE with the

opportunity to pursue entry of a bilateral amended consent judgment memorializing the agreed-upon response actions—consistent with how this site has been managed for decades.

Gelman seeks only a partial stay of the Response Activity Order so that Gelman and EGLE may proceed with the response activities that EGLE and Gelman agree are necessary to protect the public health and environment.<sup>1</sup> Gelman seeks to stay those response activities that are not required to protect the public health and environment and which were added only to achieve a global settlement with Intervenor, so that in the event the Response Activity Order is vacated, Gelman will not be prejudiced by having been required to implement the additional response activities. Specifically, Gelman seeks to stay only those portions of the Response Activity Order that would: a) require Gelman to immediately implement certain additional response activities that go beyond the terms of the bilateral agreement Gelman and the State reached in 2017; and b) broaden the purpose of the Court's quarterly hearings to include consideration of additional or modified response activities. No prejudice will result to any party by entry of the partial stay, because Gelman will undertake the response activities needed to provide a protective remedy, as it has been prepared to do since the intervention delayed entry of an amended consent judgment in 2017.

Gelman's proposed Order Granting Partial Stay is attached as Exhibit B ("Stay Order"). Attached to Gelman's proposed Stay Order is a redlined version of the Proposed Fourth Amended and Restated Consent Judgment that strikes the provisions that Gelman seeks to stay during the pendency of its forthcoming appeal. If the Court enters the Stay Order, Gelman will proceed to implement the remaining provisions of the Proposed Fourth Amended and Restated Consent

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<sup>1</sup> Gelman's continued implementation of the remedial work required by Third Amended Consent Judgment has and will continue to protect public health and the environment even under the revised cleanup standards. However, Gelman agrees with EGLE that Gelman's implementation of the response activities that Gelman does not seek to stay is appropriate.



Judgment that are incorporated into the Response Activity Order even while its forthcoming appeal of the Response Activity Order is pending before the Court of Appeals.

## ARGUMENT

The Response Activity Order requires Gelman to immediately implement the “requirements and activities stated in the [Fourth Amended CJ]”). Response Activity Order, ¶ 1. The “requirements and activities” identified in the Fourth Amended CJ include extensive additional onsite “source control” measures and the installation of the Parklake extraction/treatment/disposal system—measures that Gelman was willing to add to the response actions EGLE previously agreed would be sufficient to provide a protective cleanup solely in order to reach the settlement the Intervenor later rejected. As is clear from the public record,<sup>2</sup> however, the Fourth Amended CJ was only one of three integrated components of the since-rejected settlement package. The settlement package also included settlement agreements with each of the local units of government (“LUGs”) and an order that would have dismissed the interventions with prejudice. Gelman agreed to offer the onsite and Parklake remedial measures, not because the work was needed to provide a protective remedy, but rather in exchange for the significant additional consideration the other components of the settlement package provided, including dismissal of the intervention, broad releases from the LUGs, and the LUGs’ agreement to cooperate with the State-led cleanup and not to pursue federal Superfund listing and an USEPA takeover of the site.

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<sup>2</sup> See, e.g., City of Ann Arbor, “Gelman Proposed Settlement Documents,” <https://www.a2gov.org/Pages/Gelman-Proposed-Settlement-Documents.aspx> (last visited June 2, 2021) (listing “repository of proposed settlement documents” under consideration, including Proposed Fourth Amended and Restated Consent Judgment, Stipulated Order, and Proposed Settlement Agreements); Fred Dindoffer, “Legal Issues in Public Comments/Questions” Presentation (Sept. 24, 2020), <https://www.a2gov.org/departments/water-treatment/PublishingImages/Pages/Gelman-1,4-Dioxane-Litigation/DindofferGelmanPresentation09242020.pdf> at 2 (listing “three proposed documents” as comprising settlement and stating “[t]hese documents should not be viewed in isolation”).

Gelman will argue on appeal, *inter alia*, that it is manifestly unfair to require Gelman to “immediately implement” the extra measures that Gelman only offered as part of a good-faith effort to reach a settlement in exchange for the benefits and consideration the integrated settlement package provided—particularly in the absence of any evidence offered or admitted during the May 3, 2021 “evidentiary hearing” supporting any need for such work. Gelman asks this Court to stay the requirement that Gelman implement these extra activities during the pendency of Gelman’s appeal of the Response Activity Order, as they are not necessary to protect the public health or environment.

The Response Activity Order also provides that the Court will hold quarterly hearings to, among other things, “consider the implementation of additional or modified Response Activities and other actions.” (*Id.*, ¶ 2). Gelman asks this Court to stay the Response Activity Order to the extent that it would allow the imposition of additional or modified response activities beyond what the Court has already ordered via the Response Activity Order while Gelman’s forthcoming appeal is pending.

Gelman will be significantly prejudiced if it is required to implement the additional onsite work and the Parklake extraction system while its appeal is pending. If the Court of Appeals agrees with Gelman that there was no legal basis for the recent evidentiary hearing or the ensuing Response Activity Order, then Gelman would have expended significant resources to partially implement response activities which are not necessary to protect the public health or environment and which Gelman only offered as part of its good-faith effort to reach a settlement with Intervenorors—a settlement the LUGs ultimately rejected after public opposition. That prejudice and detrimental economic impact will be magnified if this Court considers or orders the

implementation of additional remediation efforts before the Court of Appeals has determined whether the procedures and orders under review may withstand appellate scrutiny.

Moreover, as counsel for the State has observed, these additional measures were the subject of the vast majority of the public criticism of the proposed settlement. EGLE February 1, 2021 Response to Motion for Stay, p 3. The Parklake extraction in particular was and remains controversial and will require the State to issue a NPDES permit that will itself likely face opposition and potential administrative challenges. Pursuing authorization for the Parklake extraction system while Gelman's appeal is pending would not only prejudice Gelman, but also require the unnecessary expenditure of State resources and invite further opposition from the local community.<sup>3</sup>

On the other hand, staying the requirement that Gelman begin implementing this work while its appeal is pending will not prejudice Intervenors, the State, or the community, in part, because Gelman is only seeking a partial stay of the Court's Response Activity Order. Under Gelman's proposed partial stay, Gelman will still be required to implement the remaining response activities included in the Fourth Amended CJ while its appeal is pending. The "un-stayed" response activities that Gelman will immediately begin to implement while its appeal is pending go beyond what EGLE and Gelman agreed was sufficient to protect human health and the environment before that 2017 bilateral agreement was sidelined by the intervention.

Similarly, Gelman should not be forced to defend the sufficiency of the Court-ordered response activities on a quarterly basis during the pendency of its appeal. Staying the Response

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<sup>3</sup> As made clear at the May 3 hearing, members of the public are in opposition to the proposed Parklake extraction system. *See, e.g.*, Hr'g Tr. at 87:10-13 (comments of Kathy Griswold, Ann Arbor City Council) ("I think that there are two deal breakers that we cannot go back to our constituents about; one is the EPA, and the second one is the discharge into the First Sister Lake" from the Parklake system). Exhibit C. Moreover, the passage of time and declining contaminant concentrations in the Parklake area have also rendered the Parklake extraction system technically unsupportable. *See* Brode Technical Report, pp 31-35. Exhibit D.

Activity Order provision that provides that the Court will consider additional or modified response activities during the quarterly hearings will not prejudice any party or the public because Gelman will already be in the process of implementing the significant Court-ordered response activities. Continuing to litigate the Intervenor's evidentiary hearing wish list of response activities every quarter will only interfere with the Gelman's efforts to implement this Court's Response Activity Order. Any such requests for additional/modified response activities will require the expenditure of significant governmental, private, and judicial resources and would likely result in additional appeals if granted. Staying such a costly and distracting process while Gelman's appeal is pending would serve the interests of judicial economy and conserve the parties' resources, as well as provide needed clarity and certainty for the community as the un-stayed portions of the Response Activity Order is carried out.

Entry of the partial stay will not significantly slow or alter the overall cleanup timeframe. As this Court is aware and as all parties have acknowledged, the process of implementing even those uncontested aspects of the Fourth Amended CJ is by its nature time-consuming and cannot be accomplished overnight. Granting the partial stay will allow Gelman to focus its immediate attention on those aspects of the Fourth Amended CJ that it and EGLE agreed were necessary and sufficient to protect the public's health and welfare, likely speeding implementation of those portions of the overall cleanup regimen. If Gelman's appeal is denied, significant progress will have been made on the uncontested aspects of the Fourth Amended CJ, and Gelman will be able to then focus attention to the previously-contested aspects of the Order without further delay.

Gelman therefore asks the Court to enter the attached Order Granting Motion for Partial Stay and partially stay the Response Activity Order pursuant to MCR 2.614(D) and MCR 7.209(A)

pending the Court of Appeals' decision on Gelman's Claim of Appeal and Application for Leave to Appeal, and, if either is accepted/granted, until all appellate proceedings are complete.

Finally, Gelman respectfully submits that enforcement of the Response Activity Order should be stayed without bond. The purpose of a stay bond is to protect the appellee from financial consequences resulting from the appellee's inability to enforce the judgment while the judgment is being reviewed on appeal. *See* MCR 7.209(B)(1) (providing that the trial court must order a stay bond "in an amount adequate to protect the opposite party").

The Response Activity Order is not a money judgment, and Intervenors will not be prejudiced or sustain any adverse financial consequences resulting from their inability to enforce the Order while it is undergoing appellate review. The stay requested is a partial stay of proceedings to enforce the Response Activity Order and permits enforcement of those response activities which EGLE and Gelman agree are necessary and desirable to protect the public and environment. Moreover, the court should not overlook the fact that Gelman has – without any finding by this court or admission of liability on its part – agreed to implement and pay for one of the State's most comprehensive remedial programs, which has successfully protected the public since the Consent Judgment was first entered in 1992. Gelman will continue to implement the required remedial work during the pendency of the appeal, and the court is able to enforce those response activities which are not stayed during the pendency of appellate proceedings. Indeed, because Gelman seeks only a partial stay, it will be proceeding immediately with the remedial work that EGLE agreed was necessary to protect the public. There is no risk of harm to the public, EGLE, or the Intervenors that would require the posting of an appeal bond.<sup>4</sup>

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<sup>4</sup> Indeed, as noted above, if Gelman's appeal is successful, permitting the partial stay will actually save Intervenors from significant additional costs that would be incurred if there was no stay and the parties had to litigate the issues related to the Parklake NPDES permit.

## CONCLUSION

Gelman remains committed to carrying out those remedial actions that are necessary as determined in coordination with EGLE to protect the public from risk to exposure to 1,4-dioxane in the groundwater. Consequently, it is not asking this Court to stay enforcement of the entire Response Activity Order, pursuant to which the Fourth Amended CJ was imposed on the parties, despite opposing that order in its entirety. Rather, it seeks only to stay those portions that were added to the contract through negotiations with the Intervenorors (without requiring the Intervenorors to live up to those terms and conditions that they agreed to in exchange for those concessions by Gelman)—and only until the Court of Appeals determines whether that ruling was appropriate.

Gelman does not object if this Court concludes that a hearing on Gelman's motion and oral argument is not necessary and that scheduling such a hearing will only delay entry of an appropriate order. Should this Court decide to deny the instant motion, Gelman has attached a proposed Order Denying Motion for Partial Stay as Exhibit E for the Court's consideration.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Michael L. Caldwell

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Dated: June 8, 2021

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings on June 8, 2021 by:

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

/s/Brenda Ann Smith  
Brenda Ann Smith

# 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:**

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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  
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 GRANTING MOTION FOR PARTIAL STAY OF ORDER  
TO ORDER TO CONDUCT RESPONSE ACTIVITIES TO IMPLEMENT  
AND COMPLY WITH REVISED CLEANUP CRITERIA**

This matter having come before the Court on Defendant Gelman Sciences, Inc.'s ("Gelman") Motion for Partial Stay of Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED:

1. Upon Gelman's filing of a Claim of Appeal and/or Application for Leave to Appeal to the Michigan Court of Appeals from this Court's June 1, 2021 Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria ("Response Activity Order"), the Response Activity Order shall be partially stayed until all appellate proceedings are complete, as set forth below:

A. Gelman shall not be required to implement the requirements and activities identified in the portions of the “Fourth Amended and Restated Consent Judgment” attached to the Response Activity Order that are struck in the attached redlined version; and

B. Neither Intervenor nor members of the public shall be permitted to seek an order requiring Gelman to implement additional or modified response activities during the pendency of Gelman’s appeal, including during the quarterly hearings set by the Response Activity Order.

2. Except as set forth above, the Court’s Response Activity Order remains in effect during the pendency of the above-described appellate proceedings and absent an order or instructions from the Court of Appeals to the contrary, the partial stay established by this Order shall expire upon completion of the appellate proceedings without further order of the Court.

3. This order does not close the case.

SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Timothy P. Connors  
Circuit Court Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE OF  
MICHIGAN *ex rel.* MICHIGAN DEPARTMENT  
OF ENVIRONMENT, GREAT LAKES, AND  
ENERGY,

Plaintiffs,

-v-

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

GELMAN SCIENCES INC.,  
a Michigan Corporation,

Defendant.

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FOURTH AMENDED AND RESTATED CONSENT JUDGMENT

The Parties enter this Fourth Amended and Restated Consent Judgment (“Consent Judgment” or “Fourth Amended Consent Judgment”) in recognition of, and with the intention of, furtherance of the public interest by (1) addressing environmental concerns raised in Plaintiffs’ Complaint; (2) expediting Remedial Action at the Site; and (3) avoiding further litigation concerning matters covered by this Consent Judgment. Among other things, the Parties enter this Consent Judgment to reflect EGLE’s revision of the generic state-wide residential and non-residential generic drinking water cleanup criteria for 1,4-dioxane in groundwater to 7.2 micrograms per liter (“ug/L”) and 350 ug/L, respectively, and of the generic groundwater-surface



water interface cleanup criterion for 1,4-dioxane in groundwater to 280 ug/L. The Parties agree to be bound by the terms of this Consent Judgment and stipulate to its entry by the Court.

The Parties recognize that this Consent Judgment is a compromise of disputed claims. By entering into this Consent Judgment, Defendant does not admit any of the allegations of the Complaint, does not admit any fault or liability under any statutory or common law, and does not waive any rights, claims, or defenses with respect to any person, including the State of Michigan, its agencies, and employees, except as otherwise provided herein. By entering into this Consent Judgment, Plaintiffs do not admit the validity or factual basis of any of the defenses asserted by Defendant, do not admit the validity of any factual or legal determinations previously made by the Court in this matter, and do not waive any rights with respect to any person, including Defendant, except as otherwise provided herein. The Parties agree, and the Court by entering this Consent Judgment finds, that the terms and conditions of the Consent Judgment are reasonable, adequately resolve the environmental issues covered by the Consent Judgment, and properly protect the public interest.

NOW, THEREFORE, upon the consent of the Parties, by their attorneys, it is hereby ORDERED and ADJUDGED:

#### **I. JURISDICTION**

A. This Court has jurisdiction over the subject matter of this action. This Court also has personal jurisdiction over the Defendant.

B. This Court shall retain jurisdiction over the Parties and the subject matter of this action to enforce this Consent Judgment and to resolve disputes arising under the Consent Judgment.

## **II. PARTIES BOUND**

This Consent Judgment applies to, is binding upon, and inures to the benefit of Plaintiffs, Defendant, and their successors and assigns.

## **III. DEFINITIONS**

Whenever the terms listed below are used in this Consent Judgment or the Attachments that are appended hereto, the following definitions shall apply:

A. “Consent Judgment” or “Fourth Amended Consent Judgment” shall mean this Fourth Amended and Restated Consent Judgment and all Attachments appended hereto. All Attachments to this Consent Judgment are incorporated herein and made enforceable parts of this Consent Judgment.

B. “Day” shall mean a calendar day unless expressly stated to be a working day. “Working Day” shall mean a day other than a Saturday, Sunday, or a State legal holiday. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State legal holiday, the period shall run until the end of the next working day.

C. “Defendant” shall mean Gelman Sciences Inc.

D. “1,4-dioxane” shall mean 1,4-dioxane released to or migrating from the Gelman Property. This term as it is used in this Consent Judgment shall not include any 1,4-dioxane that Defendant establishes by a preponderance of the evidence to have originated from a release for which Defendant is not legally responsible, except to the extent that such 1,4-dioxane is commingled with 1,4-dioxane released to or migrating from the Gelman Property. Nothing in this Consent Judgment shall preclude Defendant’s right to seek contribution or cost recovery

from other parties responsible for such commingled 1,4-dioxane.

E. “Eastern Area” shall mean the part of the Site that is located east of Wagner Road, including the areas encompassed by the Prohibition Zone.

F. “EGLE” shall mean the Michigan Department of Environment, Great Lakes, and Energy, the successor to the Michigan Department of Environmental Quality, the Michigan Department of Natural Resources and Environment, the Michigan Department of Natural Resources, and the Water Resources Commission. Pursuant to Executive Order 2019-06, effective April 22, 2019, the Michigan Department of Environmental Quality was renamed the Michigan Department of Environment, Great Lakes, and Energy.

G. “Evergreen Subdivision Area” shall mean the residential subdivision generally located north of I-94 and between Wagner and Maple Roads, bounded on the west by Rose Street, on the north by Dexter Road, and on the south and east by Valley Drive.

H. “Gelman” shall mean Gelman Sciences Inc.

I. “Gelman Property” shall mean the real property described in Attachment A, where Defendant formerly operated a manufacturing facility in Scio Township, Michigan. The Defendant sold portions of the property and retains one parcel only for purposes of operating a water treatment system (the “Wagner Road Treatment Facility”).

J. “Generic GSI Criterion” shall mean the generic groundwater-surface water interface (“GSI”) cleanup criterion for 1,4-dioxane of 280 ug/L established pursuant to MCL 324.20120e(1)(a).

K. “Groundwater Contamination” shall mean the 1,4-dioxane in the groundwater at a concentration in excess of 7.2 ug/L, as determined by the analytical method(s) described in Attachment B to this Consent Judgment, subject to review and approval by EGLE.

L. “Municipal Water Connection Contingency Plan” or “MWCCP” shall mean a contingency plan developed to identify the steps necessary to connect properties that rely on a private drinking water well to municipal water in the event those wells are threatened by 1,4-dioxane concentrations in excess of the applicable drinking water cleanup criterion and the estimated time necessary to implement each step of the water connection process.

M. “Part 201” shall mean Part 201 of the Natural Resources and Environmental Protection Act, MCL 324.20101, *et seq.*

N. “Parties” shall mean Plaintiffs and Defendant.

O. “Plaintiffs” shall mean the Attorney General of the State of Michigan *ex rel.* EGLE.

P. “Prohibition Zone” or “PZ” shall mean the area that is subject to the institutional control established by the Prohibition Zone Order and this Consent Judgment. A map depicting the Prohibition Zone established by this Fourth Amended Consent Judgment is attached as Attachment C.

Q. “Prohibition Zone Order” shall collectively mean the Court’s Order Prohibiting Groundwater Use, dated May 17, 2005, which established a judicial institutional control, and the March 8, 2011 Stipulated Order Amending Previous Remediation Orders, which incorporated the Prohibition Zone Order into this Consent Judgment and applied the institutional control to the Expanded Prohibition Zone, as defined in the Third Amendment to Consent Judgment.

R. “PZ Boundary Wells” shall mean those wells on or near the boundary of the Prohibition Zone and designated in Section V.A.3.b herein, whose purpose is to detect movement of 1,4-dioxane near the Prohibition Zone boundary.

S. “Remedial Action” or “Remediation” shall mean removal, treatment, and proper disposal of Groundwater and Soil Contamination, land use or resource restrictions, and institutional controls, pursuant to the terms and conditions of this Consent Judgment and work plans approved by EGLE under this Consent Judgment.

T. “Response Activity” or “Response Activities” shall have the same meaning as that term is defined in Part 201, MCL 324.20101(vv).

U. “Sentinel Wells” shall mean those wells designated in Section V.A.3.a herein, whose purpose is to detect movement of 1,4-dioxane toward the Prohibition Zone boundary.

V. “Site” shall mean the Gelman Property and other areas affected by the migration of 1,4-dioxane emanating from the Gelman Property.

W. “Soil Contamination” or “Soil Contaminant” shall mean 1,4-dioxane in soil at a concentration in excess of 500 micrograms per kilogram (“ug/kg”), as determined by the analytical method(s) described in Attachment D or another higher concentration limit derived by means consistent with Mich Admin Code R 299.18 or MCL 324.20120a.

X. “Verification Process” shall mean the process through which Defendant shall test for and verify concentrations of 1,4-dioxane in excess of the applicable threshold at the relevant monitoring and drinking water wells, using the sampling and analytical method(s) described in Attachment B to this Consent Judgment. Specifically, Defendant shall sample the wells on a quarterly basis unless an alternative schedule is agreed upon with EGLE. Groundwater samples

will be analyzed for 1,4-dioxane, either by Defendant's laboratory or a third-party laboratory retained by Defendant. In the event that 1,4-dioxane concentrations in groundwater sampled from any well exceed the applicable threshold, Defendant shall notify EGLE by phone or electronic mail within 48 hours of completion of the data verification and validation specified in the Quality Assurance Project Plan ("QAPP") described in Section V.E. Defendant will resample the same well within five days after the data verification and validation of the original result or at a time agreed upon with EGLE, if EGLE opts to take split samples. If a second sample analyzed by Defendant's laboratory or a third-party laboratory retained by Defendant has contaminant concentrations exceeding the applicable threshold, the exceedance will be considered verified and Defendant shall undertake the required Response Activities.

In the event that EGLE opts to take split samples, Defendant shall also collect an additional split sample for potential analysis within the applicable holding time by a mutually agreed-upon third-party laboratory at Defendant's expense. If the results from one sample, but not both, confirm a verified exceedance, the third sample analyzed by the mutually agreed-upon third-party laboratory, using the sampling and analytical method(s) described in Attachment B to this Consent Judgment, shall serve as the relevant result for verification purposes.

Y. "Western Area" shall mean that part of the Site located west of Wagner Road.

#### **IV. IMPLEMENTATION OF REMEDIAL ACTION BY DEFENDANT**

Defendant shall implement the Remedial Action to address Groundwater and Soil Contamination at, and emanating from, the Gelman Property in accordance with (1) the terms and conditions of this Consent Judgment; and (2) work plans approved by EGLE pursuant to this Consent Judgment. Notwithstanding any requirements set forth in this Consent Judgment

obligating Defendant to operate remedial systems on a continuous basis, at a minimum rate, or until certain circumstances occur, Defendant may temporarily reduce or shut-down such remedial systems for reasonably necessary maintenance according to EGLE-approved operation and maintenance plans.

## **V. GROUNDWATER REMEDIATION**

Defendant shall design, install, operate, and maintain the systems described below to satisfy the objectives described below. Defendant also shall implement a monitoring program to verify the effectiveness of these systems.

### **A. Eastern Area**

1. Objectives. The remedial objectives of the Eastern Area (“Eastern Area Objectives”) shall be the following:

a. Prohibition Zone Containment Objective. Defendant shall prevent Groundwater Contamination, regardless of the aquifer designation or the depth of the groundwater or Groundwater Contamination, from migrating beyond the boundaries of the Prohibition Zone as may be amended pursuant to Section V.A.2.f. Compliance with the Prohibition Zone Containment Objective shall be determined as provided in Section V.A.4.b, below.

b. Groundwater-Surface Water Interface Objective. Defendant shall prevent 1,4-dioxane from venting into surface waters in the Eastern Area at concentrations above the Generic GSI Cleanup Criterion, except in compliance with Part 201, including MCL 324.20120e (“Groundwater-Surface Water Interface Objective” for the Eastern Area).

2. Prohibition Zone Institutional Control. Pursuant to MCL 324.20121(8)

and the Prohibition Zone Order, the following land and resource use restrictions shall apply to the Prohibition Zone depicted on the map attached hereto as Attachment C:

a. The installation by any person of a new water supply well in the Prohibition Zone for drinking, irrigation, commercial, or industrial use is prohibited.

b. The Washtenaw County Health Officer or any other entity authorized to issue well construction permits shall not issue a well construction permit for any well in the Prohibition Zone.

c. The consumption or use by any person of groundwater from the Prohibition Zone is prohibited.

d. The prohibitions listed in Subsections V.A.2.a–c do not apply to the installation and use of:

i. Groundwater extraction and monitoring wells as part of Response Activities approved by EGLE or otherwise authorized under Parts 201 or 213 of the Natural Resources and Environmental Protection Act (“NREPA”), or other legal authority;

ii. Dewatering wells for lawful construction or maintenance activities, provided that appropriate measures are taken to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a;

iii. Wells supplying heat pump systems that either operate in a closed loop system or if not, are demonstrated to operate in a manner sufficient to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a;

iv. Emergency measures necessary to protect public health,



safety, welfare or the environment;

v. Any existing water supply well that has been demonstrated, on a case-by-case basis and with the written approval of EGLE, to draw water from a formation that is not likely to become contaminated with 1,4-dioxane emanating from the Gelman Property. Such wells shall be monitored for 1,4-dioxane by Defendant at a frequency determined by EGLE; and

vi. The City of Ann Arbor's Northwest Supply Well, provided that the City of Ann Arbor operates the Northwest Supply Well in a manner that does not prevent its municipal water supply system from complying with all applicable state and federal laws and regulations.

e. Attachment E (consisting of the map depicting the Prohibition Zone and the above list of prohibitions/exceptions) shall be published and maintained in the same manner as a zoning ordinance at Defendant's sole expense, which may be accomplished by the City of Ann Arbor maintaining a hyperlink on its public webpage that includes the City of Ann Arbor zoning maps, or another appropriate webpage, that directs the visitor to the portion of EGLE's Gelman Sciences website that identifies the extent of the Prohibition Zone and the Summary of Restrictions. EGLE-approved legal notice of the Prohibition Zone expansion reflected in Attachment F shall be provided at Defendant's sole expense.

f. The Prohibition Zone Institutional Control shall remain in effect in this form until such time as it is modified through amendment of this Consent Judgment, with a minimum of 30 days' prior notice to all Parties. The Defendant or EGLE may move to amend this Consent Judgment to modify the boundaries of the Prohibition Zone to reflect material

changes in the boundaries or fate and transport of the Groundwater Contamination as determined by future hydrogeological investigations or EGLE-approved monitoring of the fate and transport of the Groundwater Contamination. The dispute resolution procedures of Section XVI shall not apply to such motion. Rather, the Prohibition Zone boundary may not be expanded unless the moving Party demonstrates by clear and convincing evidence that there are compelling reasons that the proposed expansion is needed to prevent an unacceptable risk to human health. The above-described showing shall not apply to a motion if the Prohibition Zone expansion being sought arises from or is related to: (1) inclusion of the Triangle Property under the following subsection; (2) the incorporation of a more restrictive definition of Groundwater Contamination (i.e., a criterion less than 7.2 ug/L) into this Consent Judgment; or (3) expansion under V.A.6.c up to and including back to the boundary established by this Fourth Amended Consent Judgment.

g. Future Inclusion of Triangle Property in the Prohibition Zone. The triangular piece of property located along Dexter Road/M-14 ("Triangle Property"), depicted in Attachment C, will be included in the Prohibition Zone if the data obtained from monitoring wells MW-121s and MW-121d and other nearby wells, including any water supply well installed on the property, as validated by the Verification Process, indicate that the Groundwater Contamination has migrated to the Triangle Property.

h. Well Identification. To identify any wells newly included in the Prohibition Zone as a result of this modification or any future modification to the Prohibition Zone, pursuant to an EGLE-approved schedule, Defendant shall implement a well identification plan for the affected area that is consistent with the Expanded Prohibition Zone Well

Identification Work Plan approved by EGLE on February 4, 2011.

i. Plugging of Private Water Wells. Defendant shall plug and replace any private drinking water wells identified in any areas newly included in the Prohibition Zone by connecting those properties to the municipal water supply. Unless otherwise approved by EGLE, Defendant shall also properly plug non-drinking water wells in any areas newly included in the Prohibition Zone.

j. Municipal Water Connection Contingency Plan ("MWCCP"). Defendant shall develop a MWCCP addressing the potential provision of municipal water to properties using private drinking water wells in the Calvin Street, Wagner Road, and Lakeview Avenue areas. The MWCCP will be developed according to a schedule to be approved by EGLE.

3. Monitoring and Extraction Well Installation and Operation. Defendant shall install the following additional wells in the Eastern Area according to a schedule approved by EGLE and subject to access and receipt of any required approvals pursuant to Section VII.D:

a. Sentinel Well Installation. Defendant shall install the following three monitoring well clusters to monitor movement of 1,4-dioxane south of the northern Prohibition Zone boundary, in addition to MW-120, MW-123, and MW-129 that are already in place (collectively referred to herein as "Sentinel Wells"):

- i. Residential area in the general vicinity of Ravenwood and Barber Avenues (Location "A" on map attached as Attachment G);
- ii. Residential area in the general vicinity of Sequoia Parkway and Archwood Avenues between Delwood and Center (Location "B" on map attached as Attachment G); and
- iii. Residential area in the general vicinity of Maple Road and North Circle Drive (Location "C" on the map attached as

Attachment G).

b. PZ Boundary Well Installation. Defendant shall install the following two monitoring well clusters to monitor the movement of 1,4-dioxane near the PZ Boundary (collectively referred to herein as “PZ Boundary Wells”):

- i. Residential, commercial, and vacant area east of South Wagner Road, north of West Liberty Road, west of Lakeview Avenue, and south of Second Sister Lake (Location “D” on map attached as Attachment G); and
- ii. Residential area south/southeast of the MW-112 cluster (Location “E” on map attached as Attachment G).

c. Sentinel and PZ Boundary Well Installation and Sampling. Defendant shall install the new well clusters according to a schedule to be approved by EGLE. Each new Sentinel or PZ Boundary Well cluster will include two to three monitoring wells, and the determination of the number of wells shall be based on EGLE’s and the Defendant’s evaluation of the geologic conditions present at each location, consistent with past practice. The frequency of sampling these monitoring wells and the analytical methodology for sample analysis will be included in the Eastern Area System Monitoring Plan, as amended.

d. Drilling Techniques. Borings for new wells installed pursuant to Section V.A.3 shall be drilled to bedrock unless a different depth is approved by EGLE or if conditions make such installation impracticable. EGLE reserves the right to require alternate drilling techniques to reach bedrock if standard methods are not able to do so. If the Defendant believes that drilling one or more of these wells to bedrock is not practical due to the geologic conditions encountered and/or that such conditions do not warrant the alternative drilling technique required by EGLE, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The wells shall be installed using Defendant’s current vertical profiling

techniques, which are designed to minimize the amount of water introduced during drilling, unless EGLE agrees to alternate techniques. Any material excavated as the result of well installation shall be properly characterized and disposed of or transferred to an appropriate facility for preservation and future scientific investigation, at Defendant's discretion.

e. ~~Installation of Additional Groundwater Extraction Wells.~~

~~———i.———~~ Well. Defendant shall install an additional groundwater extraction well (the "Rose Well") and associated infrastructure in the general area bounded by Rose Street and Pinewood Street as designated on Attachment G or convert former injection well IW-2 to a groundwater extraction well, or both. The decision to install the Rose Well or to convert IW-2 to an extraction well (or to do both) and exact location of the Rose Well if installed will be based on an evaluation of relevant geologic conditions, water quality, and other relevant factors, including access.

~~———ii.———~~ ~~Subject to V.A.3.g., below, Defendant shall install an additional groundwater extraction well (the "Parklake Well") and associated infrastructure in the parcel owned by the City of Ann Arbor bounded by Parklake Avenue and Jackson Road as designated on Attachment G (the "City of Ann Arbor owned parcel"). The exact location of the Parklake Well within the City of Ann Arbor owned parcel will be based on an evaluation of relevant geologic conditions, water quality, and other relevant factors, including access. Terms of access to the City of Ann Arbor owned parcel shall be governed by an access or license agreement between Defendant and the City of Ann Arbor and Defendant's obligation to install and operate the Parklake Well shall be conditioned on negotiation of a mutually acceptable agreement with the City of Ann Arbor.~~

f. Eastern Area Groundwater Extraction.

i. The Defendant shall operate the Evergreen Subdivision Area extraction wells, LB-4 and either the Rose Well or IW-2, or both (including EGLE-approved replacement well(s)) (collectively, the “Evergreen Wells”), and TW-19 and TW-23 (or EGLE-approved replacement well(s)) (the “Maple Road Wells”), at a combined minimum purge rate of approximately 200 gallons per minute (“gpm”) or the maximum capacity of the existing deep transmission pipeline, whichever is less provided Defendant properly maintains the pipeline, in order to reduce the mass of 1,4-dioxane migrating through the Evergreen Subdivision Area and the mass of 1,4-dioxane migrating east of Maple Road, until such time as the Eastern Area Objectives will be met at a reduced extraction rate or without the need to operate these extraction wells. In the event the maximum capacity of the existing deep transmission pipeline is ever reduced to below 180 gpm, Defendant shall repair and/or reconfigure the pipeline and related infrastructure, or take other action, including potentially replacing the pipeline or treating and disposing of some portion of the extracted groundwater at a different location, as needed to once again achieve a capacity of 190 – 200 gpm. Defendant shall have the discretion to adjust the individual well purge rates in order to optimize mass removal and compliance with the Eastern Area Objectives, provided that it shall operate the Evergreen Wells at a combined minimum purge rate of approximately 100 gpm, until such time as the Eastern Area Objectives will be met at a reduced extraction rate without the need to operate these wells. Before significantly reducing extraction below the minimum purge rates described above or permanently terminating extraction from either the Evergreen Wells or the Maple Road Wells, Defendant shall consult with EGLE and provide a written analysis, together with the data that

supports its conclusion that the Eastern Area Objectives can be met at a reduced extraction rate or without the need to operate these extraction wells. EGLE will review the analysis and data and provide a written response to Defendant within 56 days after receiving Defendant's written analysis and data. If Defendant disagrees with the EGLE's conclusion, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The Defendant shall not significantly reduce or terminate extraction from the Evergreen Wells or the Maple Road Wells during the 56-day review period or while Defendant is disputing EGLE's conclusion.

~~ii. Defendant shall operate the Parklake Well, at a purge rate of approximately 200 gpm, subject to the yield of the aquifer in that area and discharge volume restrictions imposed in connection with the method of water disposal including discharge restrictions during wet weather events, in order to reduce the mass of 1,4-dioxane migrating from that area. Purged groundwater from the Parklake Well shall be treated with ozone/hydrogen peroxide or ultraviolet light and oxidizing agents at the City of Ann Arbor-owned parcel. Defendant shall operate this extraction and treatment system until the 1,4-dioxane concentration in the groundwater extracted from the Parklake Well has been reduced below 500 ug/L. Once concentrations have been reduced below 500 ug/L, Defendant shall cycle the Parklake Well off and on for several periods of time approved by EGLE to demonstrate that significant concentration rebound is not occurring. Defendant shall not permanently terminate extraction and treatment of water from the Parklake Well before the second anniversary of the date extraction was commenced. Before significantly reducing or terminating extraction from the Parklake Well (beyond the discharge volume restrictions/variations arising from the approved discharge option/above-described cycling), Defendant shall consult with EGLE and provide a~~

~~written analysis, together with the data that supports its conclusion that the foregoing conditions have been satisfied. EGLE will review the analysis and data and provide a written response to Defendant within 56 days after receiving Defendant's written analysis and data. If Defendant disagrees with EGLE's conclusion, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The Defendant shall not significantly reduce or terminate extraction from the Parklake Well during the 56-day review period or while Defendant is disputing EGLE's conclusion.~~

~~g. Prerequisites for Parklake Well. Notwithstanding anything else in this Consent Judgment, Defendant shall not be obligated to install and operate the Parklake Well unless and until EGLE issues Defendant an NPDES permit with effluent limitations, discharge limits (other than volume) and other conditions no more restrictive than those included in Defendant's NPDES Permit No. MI-0048453 dated October 1, 2014 ("2014 NPDES Permit") that authorizes discharge of groundwater extracted by the Parklake Well to First Sister Lake following treatment with ozone/hydrogen peroxide technology.~~

4. Verification Monitoring. Defendant shall amend its Eastern Area System Monitoring Plan dated December 22, 2011 to include the monitoring wells installed under Section V.A.3 within 60 days of their installation. The Eastern Area System Monitoring Plan, as amended (hereinafter the "Verification Plan"), shall be sufficient to meet the objectives of this Section.

a. Objectives of Verification Plan. The Verification Plan shall include the collection of data sufficient to measure the effectiveness of the Remediation and to:

(i) ensure that any potential migration of Groundwater Contamination outside of the Prohibition



Zone is detected before such migration occurs and with sufficient time to allow Defendant to maintain compliance with the Prohibition Zone Containment Objective; (ii) verify that the Groundwater-Surface Water Interface Objective is satisfied; (iii) track the migration of the Groundwater Contamination to determine the need for additional investigation and monitoring points to meet the objectives in Section V.A.1, including the determination of the fate and transport of Groundwater Contamination when and if it reaches the Allen Creek Drain (including its branches) and the portion of the Huron River that is the easternmost extent of the Prohibition Zone; and (iv) evaluate potential changes in groundwater flow resulting from adjustments in extraction rates at different extraction well locations. The Verification Plan shall be continued until terminated pursuant to Section V.D.

b. Compliance Determination. The Verification Plan shall include the following steps for verifying sampling results and confirming compliance or noncompliance with the Eastern Area Objectives.

i. Verification Process for Sentinel Wells. Defendant shall conduct the Verification Process as defined in Section III.X for each Sentinel Well to verify any exceedance of 7.2 ug/L. A verified detection above 7.2 ug/L will be considered a “Verified Sentinel Well Exceedance” and Defendant shall take the Response Activities set forth in Section V.A.5.a.

ii. Verification Process for PZ Boundary Wells. Defendant shall conduct the Verification Process as defined in Section III.X for each PZ Boundary Well to verify any exceedance of 4.6 ug/L and/or 7.2 ug/L. A verified detection above 4.6 ug/L will be considered a “Verified PZ Boundary Well Exceedance” and Defendant shall take the Response

Activities set forth in Section V.5.b. A verified detection above 7.2 ug/L will be considered a “Confirmed PZ Boundary Well Noncompliance” and Defendant shall take the Response Activities set forth in Section V.5.c.

5. Eastern Area Response Activities. Defendant shall take the following Response Activities:

a. Verified Sentinel Well Exceedance. In the event of a Verified Sentinel Well Exceedance, Defendant shall sample that Sentinel Well monthly. If the concentrations of 1,4-dioxane are less than 7.2 ug/L in samples from any two successive monthly sampling events, Defendant shall return to sampling that Sentinel Well quarterly. If, however, the concentrations of 1,4-dioxane exceed 7.2 ug/L in samples collected from the same Sentinel Well in any three successive monthly sampling events, Defendant shall take the following actions:

i. If involving a Sentinel Well in the north, installation of up to two additional well clusters near the Prohibition Zone boundary (the location of which shall be determined based on the location of the initial exceedance). If more than one Sentinel Well in the north exceeds the trigger level, Defendant and EGLE will mutually agree on the number of PZ Boundary Wells to be installed. Defendant shall sample the new PZ Boundary Wells monthly until Defendant completes the hydrogeological assessment described in Section V.A.5.a.ii below.

ii. Completion of a focused hydrogeological assessment of the applicable area that analyzes the likelihood that 1,4-dioxane at levels above 7.2 ug/L will migrate outside the Prohibition Zone. The assessment shall also opine on the mechanism causing the

exceedances and the potential risk of impact to private drinking water wells. Defendant shall provide this assessment to EGLE within 60 days after installation of the new PZ Boundary Well(s). If the focused hydrogeological assessment determines that there is a low potential for the Groundwater Contamination to migrate beyond the Prohibition Zone boundary, normal quarterly monitoring of the Sentinel Well and applicable PZ Boundary Wells will resume. If the focused hydrogeological assessment determines that there is a reasonable likelihood for 1,4-dioxane greater than 7.2 ug/L to migrate beyond the Prohibition Zone boundary, the Defendant shall initiate the following Response Activities:

(A) Defendant shall continue to monitor the affected Sentinel Well(s) and the Prohibition Zone Boundary Wells on a monthly basis.

(B) If the Verified Sentinel Well Exceedance occurs in a Sentinel Well to be installed near the northern boundary of the Prohibition Zone, Defendant shall develop a “Remedial Contingency Plan” that identifies the Response Activities that could be implemented to prevent Groundwater Contamination from migrating beyond the Prohibition Zone Boundary. The Remedial Contingency Plan may identify expansion of the Prohibition Zone as an option, subject to Section V.A.2.f. Defendant shall submit the Remedial Contingency Plan to EGLE within 45 days after the focused hydrogeological assessment is completed.

(C) Defendant will review the Municipal Water Connection Contingency Plan, if applicable, and initiate preliminary activities related to provision of municipal water to potentially impacted private drinking water wells. The amount of work to be completed will be based on the anticipated time frame for water extension and the projected time of migration to potential receptors.

b. Verified PZ Boundary Well Exceedance. In the event of a Verified PZ Boundary Well Exceedance, Defendant shall sample that PZ Boundary Well monthly. If the concentrations of 1,4-dioxane are less than 4.6 ug/L in samples from any two successive monthly sampling events, Defendant shall return to sampling that PZ Boundary Well quarterly. If, however, the concentrations of 1,4-dioxane exceed 4.6 ug/L in samples collected from the same PZ Boundary Well in any three successive monthly sampling events, Defendant shall take the following actions:

i. Defendant, in consultation with EGLE, shall sample select private drinking water wells in the immediate vicinity of the impacted PZ Boundary Well.

ii. Defendant will review the Municipal Water Connection Contingency Plan, and initiate further activities related to potential provision of municipal water to potentially impacted private drinking water wells as appropriate. The amount of work to be completed will be based on the anticipated time frames for water extension and the projected time of migration to potential receptors.

iii. Subject to Section V.A.2.f, Defendant shall implement the Remedial Contingency Plan as necessary to prevent contaminant levels above 7.2 ug/L from migrating beyond the Prohibition Zone Boundary.

c. Confirmed PZ Boundary Well Noncompliance. In the event of a Confirmed PZ Boundary Well Noncompliance, Defendant shall sample that PZ Boundary Well monthly. If the concentrations of 1,4-dioxane are less than 7.2 ug/L in samples from any two successive monthly sampling events, Defendant shall return to sampling that PZ Boundary Well quarterly. If, however, the concentrations of 1,4-dioxane exceed 7.2 ug/L in samples collected

from the same PZ Boundary Well in any four successive monthly sampling events, Defendant shall take the following actions:

i. Defendant shall sample any active drinking water wells in the immediate vicinity of the impacted PZ Boundary Well on a monthly basis.

ii. Defendant will review the Municipal Water Connection Contingency Plan and implement the remaining activities necessary to provide municipal water to properties serviced by private drinking water wells potentially impacted by 1,4-dioxane concentrations above the applicable drinking water cleanup criterion.

iii. Defendant shall connect any such properties to municipal water on a case-by-case basis as determined by EGLE or if requested by the property owner.

iv. Subject to Section V.A.2.f, Defendant shall undertake Response Actions as necessary to reduce concentrations in the affected PZ Boundary Well(s) to less than 7.2 ug/L.

d. Bottled Water. At any time, Defendant shall supply the occupants of any property with a threatened drinking water well with bottled water if, prior to connection to municipal water, 1,4-dioxane concentrations in the drinking water well servicing the property exceed 3.0 ug/L. This obligation shall terminate if either (i) the 1,4-dioxane concentration in the well drops below 3.0 ug/L during two consecutive sampling events or (ii) the property is connected to an alternative water supply.

e. Triangle Property. If a drinking water well is installed on the Triangle Property in the future, Defendant shall take the necessary steps to obtain permission to sample the well on a schedule approved by EGLE. Defendant shall monitor such well(s) on

EGLE-approved schedule unless or until that property is included in the Prohibition Zone, at which time, any water well(s) shall be addressed as part of the well identification process described in Section V.A.2.h.

f. Downgradient Investigation. The Defendant shall continue to implement its Downgradient Investigation Work Plan as approved by EGLE on February 4, 2005, as may be amended, to track the Groundwater Contamination as it migrates to ensure any potential migration of Groundwater Contamination outside of the Prohibition Zone is detected before such migration occurs with sufficient time to allow Defendant to maintain compliance with the Prohibition Zone Containment Objective and to ensure compliance with the Groundwater-Surface Water Interface Objective. Defendant shall, as the next phase of this iterative investigation process investigate the area depicted on the map attached as Attachment G, including the installation of monitoring wells at the following locations subject to access and receipt of any required approvals pursuant to Section VII.D:

- i. A monitoring well nest in the residential area in the general vicinity of intersection of Washington and 7th Streets (Location "F" on Attachment G);
- ii. A shallow well in the residential area in the general vicinity of current monitoring well nest MW-98 (Location "G" on Attachment G); and
- iii. A monitoring well nest in the residential area in the general vicinity of Brierwood and Linwood Streets (Location "H" on Attachment G).

The data from these wells will be used to guide additional downgradient investigations as necessary to ensure compliance with the Eastern Area Objectives.

6. Prohibition Zone Boundary Review.

a. Five years after entry of this Fourth Amended Consent Judgment and then every five years thereafter, Defendant and EGLE shall confer and determine whether

the boundary of the Prohibition Zone can be contracted without either: (i) posing a current or future risk to the public health and welfare, including maintaining an adequate distance between the Groundwater Contamination and the Prohibition Zone boundary; or (ii) requiring Defendant to undertake additional Response Activities to contain the Groundwater Contamination within the contracted Prohibition Zone boundary beyond those Response Activities otherwise required immediately before the proposed contraction. This determination will be based on consideration of the totality of all data from existing Eastern Area monitoring wells.

b. If EGLE and Defendant jointly agree that the Prohibition Zone boundary may be contracted under these conditions, the Parties shall move to amend Attachments C and E of this Consent Judgment for the sole purpose of establishing a revised boundary for the Prohibition Zone. If only one Party concludes that the Prohibition Zone boundary may be contracted under these conditions, that Party may move to amend Attachments C and E of this Consent Judgment for the sole purpose of establishing a revised boundary for the Prohibition Zone, but must demonstrate by clear and convincing evidence that the above conditions are satisfied. The non-moving Party may oppose or otherwise respond to such motion and the showing required under Section XVI shall not apply to the Court's resolution of the motion.

c. If the Prohibition Zone boundary is contracted under Section V.A.6 and the Parties, either jointly or independently, subsequently determine that based on the totality of the data, the Prohibition Zone boundary should be expanded up to and including back to the boundary established by this Fourth Amended Consent Judgment in order to protect the public health and welfare, the Party(ies) may move to amend Attachments C and E of this

Consent Judgment for the sole purpose of establishing a revised boundary for the Prohibition Zone. Neither Section XVI nor the showing required under Section V.A.2.f shall apply to the Court's resolution of the motion, provided that the expansion sought does not extend beyond the boundary established by this Fourth Amended Consent Judgment.

d. To the extent the Prohibition Zone boundary is contracted under Section V.A.6.a, Defendant shall not be required to undertake Response Activities to contain the Groundwater Contamination within the contracted boundary beyond those Response Activities required immediately before the Prohibition Zone was contracted.

7. Operation and Maintenance. Subject to Sections V.A.3.f, V.A.9, and reasonably necessary maintenance according to EGLE-approved operation and maintenance plans, Defendant shall operate and maintain the Eastern Area System as necessary to meet the Prohibition Zone Containment Objective until Defendant is authorized to terminate extraction well operations pursuant to Section V.C.1.

8. Treatment and Disposal. Groundwater extracted by the extraction well(s) in the Eastern Area System shall be treated (as necessary depending on the disposal method(s) utilized) with ozone/hydrogen peroxide or ultraviolet light and oxidizing agent(s), or such other method approved by EGLE to reduce 1,4-dioxane concentrations to the required level and disposed of using methods approved by EGLE, including, but not limited to, the following options:

a. Groundwater Discharge. The purged groundwater shall be treated to reduce 1,4-dioxane concentrations to the level required by EGLE, and discharged to groundwater at locations approved by EGLE in compliance with a permit or exemption



authorizing such discharge.

b. Sanitary Sewer Discharge. Use of the sanitary sewer leading to the Ann Arbor Wastewater Treatment Plant is conditioned upon approval of the City of Ann Arbor. If discharge is made to the sanitary sewer, the Evergreen and Maple Road Wells shall be operated and monitored in compliance with the terms and conditions of an Industrial User's Permit from the City of Ann Arbor, and any subsequent written amendment of that permit made by the City of Ann Arbor. The terms and conditions of any such permit and any subsequent amendment shall be directly enforceable by EGLE against Defendant as requirements of this Consent Judgment.

c. Storm Sewer Discharge. Use of the storm drain or sewer is conditioned upon issuance of an NPDES permit and approval of the appropriate regulatory authority(ies). Discharge to the Huron River via a storm water system shall be in accordance with the relevant NPDES permit and conditions required by the relevant regulatory authority(ies). If a storm drain or sewer is to be used for disposal of purged groundwater, Defendant shall submit to EGLE and the appropriate local regulatory authority(ies) for their review and approval, a protocol under which the purge system shall be temporarily shut down: (i) for maintenance of the storm drain or sewer and (ii) during storm events to assure that the storm water system retains adequate capacity to handle run-off created during such events. Defendant shall not be permitted or be under any obligation under this subsection to discharge purged groundwater to the storm drain or sewer unless the protocol for temporary shutdown is approved by all necessary authorities. Following approval of the protocol, the purge system shall be operated in accordance with the approved protocol.

d. Existing or Additional/Replacement Pipeline to Wagner Road Treatment Facility.

i. The existing deep transmission pipeline, an additional pipeline, or a pipeline replacing the existing deep transmission pipeline may be used to convey purged groundwater from the existing Evergreen Area infrastructure to the Wagner Road Treatment Facility where the purged groundwater shall be treated to reduce 1,4-dioxane concentrations to the level required by NPDES Permit No. MI-0048453, as amended or reissued.

ii. Installation of an additional pipeline or a replacement pipeline from the existing Evergreen Area to the Wagner Road Treatment Facility is conditioned upon approval of such installation by EGLE. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned upon approval of such installation by the appropriate local authority(ies), if required by statute or ordinance, or by Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design and install the pipeline in compliance with all state requirements and install the pipeline with monitoring devices to detect any leaks. If leaks are detected, the system will automatically shut down and notify an operator of the condition. In the event that any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. To reduce the possibility of accidental damage to the pipeline during any future construction, Defendant shall participate in the notification system provided by MISS DIG Systems, Inc., or its successor ("MISS DIG"), and shall comply with the provisions of MCL 460.721, *et seq.*, as may be amended and with the regulations promulgated thereunder. Defendant shall properly mark its facilities upon notice from MISS DIG.

e. Existing, Replacement, or Additional Pipeline from Maple Road Extraction Well(s). Defendant may operate the existing pipeline or install and operate a replacement pipeline or an additional pipeline from the Maple Road Extraction Well(s) to the existing Evergreen area infrastructure to convey groundwater extracted from the Maple Road Extraction Wells to the Wagner Road Treatment Facility, where the purged groundwater shall be treated to reduce 1,4-dioxane concentrations to the level required by NPDES Permit No. MI-0048453, as amended or reissued. Installation and operation of an additional or replacement pipeline from the Maple Road area to Evergreen area is conditioned upon approval of such installation and operation by EGLE. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned upon approval of such installation by the appropriate local authorities, if required by statute or ordinance, or Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design any such pipeline in compliance with all state requirements and install it with monitoring devices to detect any leaks. In the event any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. To reduce the possibility of accidental damage to the pipeline, Defendant shall participate in the notification system provided by MISS DIG and shall comply with the provisions of MCL 460.721, *et seq.*, as may be amended, and with the regulations promulgated thereunder. Defendant shall properly mark its facilities upon notice from MISS DIG.

f. Pipeline from Rose Well. Installation and operation of a proposed pipeline from the Rose Well to the existing Evergreen area infrastructure is conditioned upon approval of such installation and operation by EGLE. If the pipeline is proposed to be installed

on public property, the pipeline installation is conditioned upon approval of such installation by the appropriate local authorities, if required by statute or ordinance, or Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design and install any such pipeline in compliance with all state requirements and install it with monitoring devices to detect any leaks. In the event any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. To reduce the possibility of accidental damage to the pipeline, Defendant shall participate in the notification system provided by MISS DIG and shall comply with the provisions of MCL 460.721, *et seq.*, as may be amended, and with the regulations promulgated thereunder. Defendant shall properly mark its facilities upon notice from MISS DIG. Defendant may operate such pipeline to, among other things, convey groundwater extracted from the Rose Well to the existing Evergreen Area infrastructure and then to the Wagner Road Treatment Facility, where the purged groundwater shall be treated to reduce 1,4-dioxane concentrations to the level required by NPDES Permit No. MI-0048453, as amended or reissued.

~~g. — Surface Water Discharge to First Sister Lake. Groundwater extracted from the Parklake Well may be discharged to First Sister Lake, conditioned on EGLE's issuance of an NPDES permit with effluent limitations, discharge limits (other than volume), and other conditions no more restrictive than those included in Defendant's 2014 NPDES Permit that authorizes discharge of groundwater to First Sister Lake following treatment with ozone/hydrogen peroxide technology. Defendant shall submit a protocol to EGLE and the appropriate local authority(ies) for their review and approval, a protocol under which the Parklake Well shall be temporarily shut down during storm events or high water levels in First~~

~~Sister Lake as necessary to avoid flooding. Defendant shall not be under any obligation to operate the Parklake Well unless the protocol for temporary shutdown is approved by all necessary authorities. Following approval of the protocol, Defendant shall operate the Parklake Well in accordance with the approved protocol.~~

9. Wagner Road Extraction. The extraction wells currently or in the future located just west of Wagner Road (the “Wagner Road Wells”) shall be considered part of the Eastern Area System even though they are located west of Wagner Road. The Defendant shall initially operate the Wagner Road Wells at a combined 200 gpm extraction rate. The Defendant shall continue to operate the Wagner Road Wells in order to reduce the migration of 1,4-dioxane east of Wagner Road at this rate until such time as it determines that the Eastern Area Objectives will be met with a lower combined extraction rate or without the need to operate these wells or that reduction of the Wagner Road extraction rate would enhance 1,4-dioxane mass removal ~~from the Parklake Well and/or the Rose Well/IW-2~~ and Defendant’s efforts to reduce the mass of 1,4-dioxane migrating east of Maple Road and/or through the Evergreen Subdivision Area. Before significantly reducing or terminating extraction from the Wagner Road Wells, Defendant shall consult with EGLE and provide a written analysis, together with the data that supports its conclusion that the above-objectives can be met at a reduced extraction rate or without the need to operate these extraction wells. EGLE will review the analysis and data and provide a written response to Defendants within 56 days after receiving Defendant’s written analysis and data. If Defendant disagrees with EGLE’s conclusion, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The Defendant shall not significantly reduce or terminate the Wagner Road extraction during the 56-day review period or while Defendant is

disputing EGLE's conclusion.

10. Options Array for Transmission Line Failure/Inadequate Capacity. The Defendant has provided EGLE with documentation regarding the life expectancy of the deep transmission line and an Options Array (attached as Attachment H). The Options Array describes the various options that may be available if the deep transmission line fails or the 200 gpm capacity of the existing deep transmission line that transports groundwater from the Eastern Area System to the treatment system located on the Gelman Property proves to be insufficient to meet the Prohibition Zone Containment Objective.

B. Western Area

1. Western Area Non-Expansion Cleanup Objective. The Defendant shall prevent the horizontal extent of the Groundwater Contamination in the Western Area, regardless of the depth (as established under Section V.B.3.b and c), from expanding. Compliance with this objective shall be determined as set forth in Section V.B.4, below. Continued migration of Groundwater Contamination into the Prohibition Zone, as may be modified, shall not be considered expansion and is allowed. A change in the horizontal extent of Groundwater Contamination resulting solely from the Court's application of a new cleanup criterion shall not constitute expansion. Nothing in this Section prohibits EGLE from seeking additional response activities pursuant to Section XVIII.E of this Consent Judgment. Compliance with the Non-Expansion Cleanup Objective shall be established and verified by the network of monitoring wells in the Western Area to be selected and/or installed by the Defendant as provided in Sections V.B.3.b and c, below ("Western Area Compliance Well Network") and the Compliance Process set forth in Section V.B.4 ("Western Area Compliance Process"). ~~Except as provided in~~

~~Section VI.C.1, there~~ There is no independent mass removal requirement or a requirement that Defendant operate any particular Western Area extraction well(s) at any particular rate beyond what is necessary to prevent the prohibited expansion, provided that Defendant's ability to terminate all groundwater extraction in the Western Area is subject to Section V.C.1.c and the establishment of property use restrictions as required by Section V.B.3.a. If prohibited expansion occurs, as determined by the Western Area Compliance Well Network and the Western Area Compliance Process, Defendant shall undertake additional response activities to return the Groundwater Contamination to the boundary established by the Western Area Compliance Well Network (such response activities may include groundwater extraction at particular locations).

As part of the Third Amendment to Consent Judgment, EGLE agreed to modify the remedial objective for the Western Area as provided herein to a no expansion performance objective in reliance on Defendant's agreement to comply with a no expansion performance objective for the Western Area. To ensure compliance with this objective, Defendant acknowledges that in addition to taking further response action to return the horizontal extent of Groundwater Contamination to the boundary established by the Compliance Well Network, Defendant shall be subject to stipulated penalties for violation of the objective as provided in Section XVII. Nothing in this Section shall limit Defendant's ability to contest the assessment of such stipulated penalties as provided in this Consent Judgment.

2. Western Area Groundwater-Surface Water Interface Objective.

a. Defendant shall prevent 1,4-dioxane from venting into surface waters in the Western Area at concentrations above the Generic GSI Cleanup Criterion, except in

compliance with Part 201, including MCL 324.20120e (“Groundwater-Surface Water Interface Objective” for the Western Area).

b. GSI Investigation Work Plan. Within 90 days of entry of this Consent Judgment, Defendant shall submit to EGLE for its review and approval a work plan for investigation of the groundwater-surface water interface in the Western Area and a schedule for implementing the work plan. Defendant’s work plan shall include:

i. An evaluation of the Western Area and identification of any areas where the GSI pathway is relevant, i.e., any areas where 1,4-dioxane in groundwater is reasonably expected to vent to surface water in concentrations that exceed the Generic GSI Criterion based on evaluation of the factors listed in MCL 324.20120e(3); and

ii. A description of the Response Activities Defendant will take to determine whether 1,4-dioxane in groundwater is venting to surface water in any such areas in concentrations that exceed the Generic GSI Criterion.

c. GSI Response Activity Work Plan. With respect to any areas where the above-described GSI investigation demonstrates that 1,4-dioxane in groundwater is venting to surface water in any such areas in concentrations that exceed the Generic GSI Criterion, Defendant shall submit for EGLE review and approval a work plan and a schedule for implementing the work plan that describes the Response Activities, including any evaluations under MCL 324.20120e, Defendant will undertake to ensure compliance with Groundwater-Surface Water Interface Objective within a reasonable timeframe.

d. Compliance with Groundwater-Surface Water Interface Objective. Defendant shall undertake such Response Activities and/or evaluations as necessary to achieve



compliance with the Groundwater-Surface Water Interface Objective. It shall not be a violation of this Consent Judgment nor shall Defendant be subject to stipulated penalties unless and until Defendant fails to achieve compliance with the Groundwater-Surface Water Interface Objective within a reasonable timeframe established by EGLE and then only from that point forward. EGLE's determination of a reasonable timeframe for compliance with the Groundwater-Surface Water Interface Objective is subject to dispute resolution under Section XVI.

3. Western Area Response Activities. Defendant shall implement the following response activities:

a. Groundwater Extraction. The Western Area Response Activities shall include the operation of groundwater extraction wells as necessary to meet the objectives described in Section V.B.1 and 2, including operation of the Marshy Area groundwater extraction system described in Defendant's May 5, 2000 Final Design and Effectiveness Monitoring Plan, as subsequently modified and approved by EGLE. ~~Defendant shall also install and operate additional groundwater extraction wells at the Gelman Property as described in Section VI, below, in order to reduce the mass of 1,4-dioxane in the groundwater. Purged groundwater from the Western Area shall be treated with ozone/hydrogen peroxide or ultraviolet light and oxidizing agent(s), or such other method approved by EGLE to reduce 1,4-dioxane concentrations to the level required by NPDES Permit No. MI-0048453, as amended or reissued. Discharge to the Honey Creek tributary shall be in accordance with NPDES Permit No. MI-0048453, as amended or reissued. The Defendant shall have property use restrictions that are sufficient to prevent unacceptable exposures in place for any properties affected by Soil Contamination or Groundwater Contamination before completely terminating extraction in the~~

Western Area.

b. Western Area Delineation Investigation. Defendant shall install the following additional groundwater monitoring wells pursuant to a schedule approved by EGLE and subject to the accessibility of the locations and obtaining access and any required approvals under Section VII.D at the approximate locations described below and on the map attached as Attachment G to address gaps in the current definition of the Groundwater Contamination and to further define the horizontal extent of Groundwater Contamination in the Western Area:

- i. Commercial area north of Jackson Road (across from April Drive) and south of US-Highway I-94, near MW-40s&d. (Deep well only) (Location "T" on Attachment G);
- ii. Commercial area north of Jackson Road (across from Nancy Drive) and south of US-Highway I-94, east of MW-40s&d and west of the MW-133 cluster (Location "J" on Attachment G);
- iii. Residential area west of West Delhi, north of Jackson Road and south of US-Highway I-94 (Location "K" on Attachment G);
- iv. Residential area southwest of the MW-141 cluster in the vicinity of Kilkenny and Birkdale (Location "L" on Attachment G);
- v. Residential area along Myrtle between Jackson Road and Park Road (Shallow Well only) (Location "M" on Attachment G); and
- vi. Residential and vacant area within approximately 250 feet of Honey Creek southwest of Dexter Road (Location "N" on Attachment G).

This investigation may be amended by agreement of EGLE and the Defendant to reflect data obtained during the investigation. Defendant shall promptly provide the data/results from the investigation to EGLE so that EGLE receives them prior to Defendant's submission of the Compliance Monitoring Plan described in Subsection V.B.3.c, below. Based on the data obtained from the wells described above, Defendant may propose to install additional monitoring

wells to potentially serve as Compliance Wells rather than one or more of the wells identified above. EGLE reserves the right to request the installation of additional borings/monitoring wells, if the totality of the data indicate that the horizontal extent of Groundwater Contamination has not been completely defined.

c. Compliance Well Network and Compliance Monitoring Plan.

Within 30 days of completing the investigation described in Subsection V.B.3.b, above, Defendant shall amend its Western Area Monitoring Plan dated April 18, 2011, including Defendant's analysis of the data obtained during the investigation for review and approval by EGLE, to identify the network of compliance wells that will be used to confirm compliance with the Western Area Non-Expansion Cleanup Objective (hereinafter referred to as the "Compliance Monitoring Plan"). The Compliance Monitoring Plan shall include the collection of data from a compliance well network sufficient to verify the effectiveness of the Western Area System in meeting the Western Area Non-Expansion Cleanup Objective. The locations and/or number of the Compliance Wells for the Compliance Monitoring Plan will be determined based on the data obtained from the investigation Defendant shall conduct pursuant to Section V.B.3.b, and shall be made up of existing monitoring wells. EGLE shall approve the Compliance Monitoring Plan, submit to Defendant changes in the Compliance Monitoring Plan that would result in approval, or deny the Compliance Monitoring Plan within 35 days of receiving the Compliance Monitoring Plan. Defendant shall either implement the EGLE-approved Compliance Monitoring Plan, including any changes required by EGLE, or initiate dispute resolution pursuant to Section XVI of this Consent Judgment. Defendant shall implement the EGLE- (or Court)-approved Compliance Monitoring Plan to verify the effectiveness of the Western Area System in meeting

the Western Area Non-Expansion Cleanup Objective. Defendant shall continue to implement the current EGLE-approved monitoring plan(s) until EGLE approves the Compliance Monitoring Plan required by this Section. The monitoring program shall be continued until terminated pursuant to Section V.D.

d. Municipal Water Connection Contingency Plan (“MWCCP”).

Defendant shall develop a MWCCP addressing the potential provision of township water to properties using private drinking water wells on Elizabeth Road. The MWCCP will be developed according to a schedule to be approved by EGLE.

4. Compliance Determination for Non-Expansion Objective. The Compliance Monitoring Plan shall include the following steps for verifying sampling results and confirming compliance or noncompliance with the Western Area Non-Expansion Cleanup Objective.

a. Monitoring Frequency/Analytical Method. Defendant will sample groundwater from the Compliance Wells on a quarterly basis unless an alternative schedule is agreed upon with EGLE. Groundwater samples will be submitted to a laboratory owned, operated or contracted by Defendant for 1,4-dioxane analysis.

b. Verification Process. Defendant shall conduct the Verification Process as defined in Section III.X for each Compliance Well to verify any exceedance of 7.2 ug/L. A verified detection above 7.2 ug/L will be considered a “Verified Compliance Well Exceedance.” If a second sample does not exceed 7.2 ug/L, monitoring of the well will increase to monthly until the pattern of exceedances is broken by two successive sampling events below 7.2 ug/L. At that point, a quarterly monitoring frequency will resume.

c. Response Activities. In the event of a Verified Compliance Well Exceedance, Defendant shall take the following Response Activities:

i. Sample selected nearby private drinking water wells.

Defendant shall sample select private drinking water wells unless otherwise the Parties otherwise agree. Prior to sampling the selected wells, Defendant shall submit a list of the wells to be sampled and other sampling details to EGLE for approval. In selecting wells to be sampled, Defendant shall consider data collected from monitoring and private drinking water wells within 1,000 feet of the Compliance Well(s) that exceeded 7.2 ug/L, groundwater flow, hydrogeology and well depth. EGLE shall respond within seven days after receipt of Defendant's list of select private drinking water wells and shall either approve the list or propose alternate or additional wells to be sampled.

ii. If a Verified Compliance Well Exceedance occurs in the same Compliance Well in any two successive monthly sampling events, Defendant shall take the following Response Activities:

(A) Continue to sample the previously selected private drinking water well(s) on a monthly basis unless otherwise agreed upon with EGLE.

(B) Conduct focused hydrogeological investigation to determine whether the Verified Compliance Well Exceedance is a temporary fluctuation or evidence of plume expansion. The investigation shall include the measurement of groundwater levels in relevant monitoring wells in the vicinity of the Compliance Well with the Verified Compliance Well Exceedance. Defendant shall report its findings to EGLE within 30 days of completing the hydrogeological investigation.

(C) Conduct Statistical Analysis. During the eight month period after the second consecutive Verified Compliance Well Exceedance, Defendant shall complete a statistical analysis of the data using a Mann-Kendall Trend Test or other statistical technique approved by EGLE.

(D) Interim Measures Feasibility Study. During the eight month period after the second consecutive Verified Compliance Well Exceedance, Defendant shall evaluate affirmative measures to control expansion of the Groundwater Contamination as necessary to reduce the concentration of 1,4-dioxane in the relevant Compliance Well to below 7.2 ug/L, including adjustments in groundwater extraction rates, the installation of additional groundwater extraction wells or other remedial technologies. Defendant shall submit to EGLE a feasibility study within 240 days of the Verified Compliance Well Exceedance. The feasibility study shall include an evaluation of the feasibility and effectiveness of all applicable measures to control expansion of the Groundwater Contamination as necessary to reduce the concentration of 1,4-dioxane in the relevant Compliance Well to below 7.2 ug/L in light of the geology and current understanding of the fate and transport of the Groundwater Contamination.

iii. If, after conducting the focused hydrogeological investigation and statistical analysis, the totality of the data evidences a reasonable likelihood that the Western Area Non-Expansion Cleanup Objective is not being met, Defendant shall evaluate and, subject to EGLE approval, implement one or more of the potential response activities identified in the feasibility study, or other response activities, as necessary to achieve compliance with the Western Area Non-Expansion Cleanup Objective. Nothing in this Section

shall prevent Defendant from implementing response activities as necessary to achieve the Western Area Non-Expansion Cleanup Objective at an earlier time.

d. Stipulated Penalties/Exacerbation. Defendant shall not be subject to stipulated penalties until concentrations in at least four consecutive monthly samples from a given Compliance Well exceed 7.2 ug/L, at which point Defendant shall be subject to stipulated penalties for violation of the Western Area Non-Expansion Cleanup Objective as provided in Section XVII, provided, however, that Defendant shall not be subject to stipulated penalties with respect to prohibited expansion of the horizontal extent of the Groundwater Contamination if Defendant can demonstrate by a preponderance of the evidence that the migration of the Groundwater Contamination is caused in whole or in part by the actions of an unrelated third party that have contributed to or exacerbated the Groundwater Contamination. In such event, although Defendant is not subject to stipulated penalties, Defendant shall remain responsible for mitigating the migration of the Groundwater Contamination. Nothing in this Consent Judgment shall preclude Defendant from seeking contribution or cost recovery from other parties responsible for or contributing to exacerbation of the Groundwater Contamination.

e. Private Drinking Water Well Response Activities. If, after conducting the focused hydrogeological investigation and statistical analysis, the totality of the data evidences a reasonable likelihood that 1,4-dioxane will be present at concentrations above 7.2 ug/L in a residential drinking water well and/or at concentrations above 350 ug/L in an active non-residential drinking water well, Defendant shall evaluate and, if appropriate, implement response activities, including, without limitation, the following:

i. Sampling of at risk drinking water well(s) on a monthly

basis;

ii. Implementation of affirmative interim measures to mitigate the expansion of 1,4-dioxane at concentrations above the applicable drinking water standard toward the drinking water well(s) as determined in the feasibility study described in Section V.B.4.c.ii.(D);

iii. Evaluation of land use restrictions and/or institutional controls to eliminate drinking water exposures to 1,4-dioxane in the groundwater at concentrations above the applicable drinking water standard; and

iv. Evaluation of water supply alternatives including, but not limited to, providing bottled water, a township water connection, installation of a new drinking water well completed in an uncontaminated portion of the subsurface, and point-of-use treatment systems.

v. If at any time 1,4-dioxane is detected in an active private drinking water well above 3.0 ug/L, Defendant shall promptly at its expense, offer the occupants of the property the option of receiving bottled water and shall sample the well monthly. These obligations shall terminate if either (i) the 1,4-dioxane concentration in the well drops below 3.0 ug/L during two consecutive sampling events or (ii) the property is connected to a permanent alternative water supply. Furthermore, Defendant shall work with EGLE and municipal authorities to evaluate long-term and economically reasonable water supply options. -

vi. If 1,4-dioxane is detected at concentrations above 7.2 ug/L in an active residential drinking water well and/or at concentrations above 350 ug/L in an active non-residential drinking water well, Defendant shall conduct the Verification Process as defined



in Section III.X for each such private drinking water well. If the detection above 7.2 ug/L is verified, Defendant shall monitor each such private drinking water well on a monthly basis if not already doing so and shall continue monthly monitoring until the well is no longer considered at risk under Section V.B.4.e.i. If 1,4-dioxane is detected at concentrations above 7.2 ug/L in four consecutive monthly samples or any seven monthly samples in any 12 month period, Defendant shall provide at its expense a long-term alternative water supply to the property serviced by the affected well. Such long-term alternative water supply may be in the form of a township water connection, installation of a new drinking water well completed in an uncontaminated portion of the subsurface, or a point-of-use treatment system, or other long-term drinking water supply option approved by EGLE. Defendant shall also provide at its expense bottled water to the property owner until the property is serviced by a long-term alternative water supply.

5. Groundwater Contamination Delineation. Additional delineation of the extent of Groundwater Contamination, including within the plume boundary, and/or characterization of source areas shall not be required except as provided in Section V.B.3.c. EGLE reserves the right to petition the Court to require additional work if there are findings that EGLE determines warrant additional Groundwater Contamination delineation.

C. Termination of Groundwater Extraction Systems

1. Defendant may only terminate the Groundwater Extraction Systems listed below as provided below:

a. Termination Criteria for Evergreen Wells/Maple Road Wells/Wagner Road Wells. Except as otherwise provided pursuant to Section V.C.2, Defendant may only reduce (below the stated minimum purge rates) or terminate operation of the Evergreen

Wells/Maple Road Wells as provided in Section V.A.3.f.i. and of the Wagner Road Wells as provided in Section V.A.98.

b. ~~Termination Criteria for Parklake Well. Except as otherwise provided pursuant to Section V.C.2, Defendant may reduce or terminate operation of the Parklake Well as provided in Section V.A.3.f.ii.~~

c. ~~Termination Criteria for Western Area. Defendant may terminate the groundwater extraction described in Section VI.C.1 as provided in that Section. Except as otherwise provided pursuant to Section V.C.2, and subject to Section V.B.1., Defendant shall not terminate all groundwater extraction in the Western Area until all of the following are established:~~

i. Defendant can establish to EGLE's satisfaction that groundwater extraction is no longer necessary to prevent the expansion of Groundwater Contamination prohibited under Section V.B.1;

ii. Defendant's demonstration shall also establish that groundwater extraction is no longer necessary to satisfy the Groundwater-Surface Water Interface Objective under Section V.B.2; and

iii. Defendant has the land use or resource use restrictions described in Section V.B.3.a in place.

Defendant's request to terminate extraction in the Western Area must be made in writing for review and approval pursuant to Section X of this Consent Judgment. The request must include all supporting documentation demonstrating compliance with the termination criteria. Defendant may initiate dispute resolution pursuant to Section XVI of this Consent Judgment if

EGLE does not approve the Defendant's request/demonstration. Defendant may terminate Western Area groundwater extraction upon: (i) receipt of notice of approval from EGLE; or (ii) receipt of notice of a final decision approving termination pursuant to dispute resolution procedures of Section XVI of this Consent Judgment.

2. Modification of Termination Criteria/Cleanup Criteria. The termination criteria provided in Section V.C.1. and/or the definition of "Groundwater Contamination" or "Soil Contamination" may be modified as follows:

a. After entry of this Fourth Amended Consent Judgment, Defendant may propose to EGLE that the termination criteria be modified based upon either or both of the following:

i. a change in legally applicable or relevant and appropriate regulatory criteria since the entry of this Fourth Amended Consent Judgment; for purposes for this Subsection, "regulatory criteria" shall mean any promulgated standard criterion or limitation under federal or state environmental law specifically applicable to 1,4-dioxane; or

ii. scientific evidence newly released since the date of the United States Environmental Protection Agency's IRIS risk assessment for 1,4-dioxane (August 11, 2010), which, in combination with the existing scientific evidence, establishes that different termination criteria/definitions for 1,4-dioxane are appropriate and will assure protection of public health, safety, welfare, the environment, and natural resources.

b. Defendant shall submit any such proposal in writing, together with supporting documentation, to EGLE for review.

c. If the Defendant and EGLE agree to a proposed modification, the

agreement shall be made by written Stipulation filed with the Court pursuant to Section XXIV of this Consent Judgment.

d. If EGLE disapproves the proposed modification, Defendant may invoke the dispute resolution procedures contained in Section XVI of this Consent Judgment. Alternatively, if EGLE disapproves a proposed modification, Defendant may seek to have the dispute resolved pursuant to Subsection V.C.3.

3. If the Defendant invokes the procedures of this Subsection, Defendant and EGLE shall prepare a list of the items of difference to be submitted to a scientific advisory panel for review and recommendations. The scientific advisory panel shall be comprised of three persons with scientific expertise in the discipline(s) relevant to the items of difference. No member of the panel may be a person who has been employed or retained by either Party, except persons compensated solely for providing peer review of the Hartung Report, in connection with the subject of this litigation.

a. If this procedure is invoked, each Party shall, within 14 days, select one member of the panel. Those two members of the panel shall select the third member. Defendant shall, within 28 days after this procedure is invoked, establish a fund of at least \$10,000.00, from which each member of the panel shall be paid reasonable compensation for their services, including actual and necessary expenses. If EGLE and Defendant do not agree concerning the qualifications, eligibility, or compensation of panel members, they may invoke the dispute resolution procedures contained in Section XVI of this Consent Judgment.

b. Within a reasonable period of time after selection of all panel members, the panel shall confer and establish a schedule for acceptance of submissions from

EGLE and the Defendant completing review and making recommendations on the items of difference.

c. The scientific advisory panel shall make its recommendations concerning resolution of the items of difference to EGLE and the Defendant. If both EGLE and Defendant accept those recommendations, the termination criteria shall be modified in accordance with such recommendations. If EGLE and the Defendant disagree with the recommendations, EGLE's proposed resolution of the dispute shall be final unless Defendant invokes the procedures for judicial dispute resolution as provided in Section XVI of this Consent Judgment. The recommendation of the scientific advisory panel and any related documents shall be submitted to the Court as part of the record to be considered by the Court in resolving the dispute.

D. Post-Termination Monitoring

1. Eastern Area

a. Prohibition Zone Containment Objective. Except as otherwise provided pursuant to Section V.C.2, Defendant shall continue to monitor the Groundwater Contamination as it migrates within the Prohibition Zone until all approved monitoring wells are below 7.2 ug/L or such other applicable criterion for 1,4-dioxane for six consecutive months, or Defendant can establish to EGLE's satisfaction that continued monitoring is not necessary to satisfy the Prohibition Zone Containment Objective. Defendant's request to terminate monitoring must be made in writing for review and approval pursuant to Section X of this Consent Judgment. Defendant may initiate dispute resolution pursuant to Section XVI of this Consent Judgment if EGLE does not approve its termination request.

b. Groundwater-Surface Water Interface Objective. Except as provided in Section V.D.1.a, for Prohibition Zone monitoring wells, post-termination monitoring is required for Eastern Area wells for a minimum of ten years after purging is terminated under Section V.C.1.ab. with cessation subject to EGLE approval. Defendant's request to terminate monitoring must be made in writing for review and approval pursuant to Section X of this Consent Judgment. Defendant may initiate dispute resolution pursuant to Section XVI of this Consent Judgment if EGLE does not approve its termination request.

2. Western Area. Post-termination monitoring will be required for a minimum of ten years after termination of extraction with cessation subject to EGLE approval. Except as otherwise provided pursuant to Section V.C.2, Defendant shall continue to monitor the groundwater in accordance with approved monitoring plan(s), to verify that it remains in compliance with the Non-Expansion Cleanup Objective set forth in Section V.B.1 and the Groundwater-Surface Water Interface Objective set forth in Section V.B.2. If any exceedance is detected, Defendant shall immediately notify EGLE and take whatever steps are necessary to comply with the requirements of Section V.B.1, or V.B.2, as applicable.

E. Quality Assurance Project Plan (QAPP). Defendant previously voluntarily submitted to EGLE for review and approval a QAPP, which is intended to describe the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Consent Judgment. EGLE shall review, and Defendant shall revise accordingly, the QAPP to ensure that it is in general accordance with the United States Environmental Protection Agency's ("U.S. EPA" or "EPA") "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and American National Standard

ANSI/ASQC E4-2004, "Quality Systems For Environmental Data And Technology Programs – Requirements With Guidance For Use."

## **VI. GELMAN PROPERTY RESPONSE ACTIVITIES**

A. Gelman Property Objectives. The objectives for the Gelman Property shall be to prevent the migration of 1,4-dioxane from contaminated soils on the Gelman Property into any aquifer at concentrations or locations that cause non-compliance with the Western Area objectives set forth in Sections V.B.1 and V.B.2.

B. Response Activities.

1. Remedial Systems. Defendant shall design and implement remedial systems at the Gelman Property as necessary to achieve the Gelman Property Objectives.

2. Monitoring. Defendant shall implement an EGLE-approved Compliance Monitoring Plan to verify that the Gelman Property Soil Contamination does not cause or contribute to non-compliance with the Western Area objectives set forth in Sections V.B.1 and V.B.2, and to verify the effectiveness of any implemented remedial system.

~~C. Additional Source Control. Defendant shall implement the following Response Activities to reduce the mass of and/or exposure to 1,4-dioxane present in the soils and/or shallow groundwater on the Gelman Property subject to receipt of any required approvals pursuant to Section VII.D:~~

~~1. Additional Groundwater Extraction. Defendant shall install and operate three "Phase I" extraction wells (one of which was previously installed) at the general locations depicted in the attached Attachment I to enhance control and mass removal of 1,4-dioxane from this area of shallow groundwater contamination. Defendant shall operate these extraction wells~~

~~at a combined purge rate of approximately 75 gpm, subject to aquifer yield. Defendant shall have the discretion to adjust the individual well purge rates in order to optimize mass removal. Subject to Defendant's ability to adjust individual well purge rates, Defendant shall continue to extract a combined purge rate of approximately 75 gpm, subject to aquifer yield, from this system until the 1,4-dioxane concentration in the groundwater extracted from each of these extraction wells has been reduced below 500 ug/L and, once the concentrations in all three of the wells have been reduced below 500 ug/L, Defendant shall cycle those wells off and on for several periods of time approved by EGLE to demonstrate that significant concentration rebound is not occurring. Before otherwise significantly reducing or terminating extraction from this system, Defendant shall consult with EGLE and provide a written analysis, together with the data that supports its conclusion that the concentration of 1,4-dioxane in the groundwater extracted from each of these wells has been reduced below 500 ug/L, as stated above. EGLE will review the analysis and data and provide a written response to Defendants within 56 days after receiving Defendant's written analysis and data. If Defendant disagrees with EGLE's conclusion, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The Defendant shall not significantly reduce or terminate the extraction from this system during the 56-day review period or while Defendant is disputing EGLE's conclusion.~~

~~Based on the performance achieved from these extraction wells, the Parties shall evaluate whether installation of up to three additional extraction wells at the general locations indicated on Attachment I would accelerate mass removal to a degree that meaningfully benefits the Remediation. If EGLE determines that additional mass removal from these locations would be beneficial, Defendant shall, subject to its right to invoke Dispute Resolution under Section XVI,~~



~~install and operate these additional wells pursuant to a work plan approved by EGLE.~~

~~Groundwater extracted from the extraction wells described in this subparagraph will be conveyed to the Wagner Road Treatment Facility for treatment and disposal pursuant to Defendant's NPDES Permit No. MI-0048453, as amended or re-issued.~~

~~2. Phytoremediation Former Pond 1 and 2 Area. Defendant shall apply phytoremediation techniques in the treatment area depicted on Attachment I to reduce the potential mass flux of 1,4-dioxane from vadose zone soils in this area to the groundwater aquifers. Defendant shall plant and maintain trees in the treatment area in order to: (i) remove 1,4-dioxane mass by via biodegradation and transpiration; and (ii) extract and reduce the volume of shallow perched groundwater in this area. Defendant shall install and maintain the trees in a healthy state and replace trees as necessary to assure continued success of the phytoremediation system. Defendant shall continue to operate the phytoremediation system as set forth above until it determines that the further reduction of the mass flux of 1,4-dioxane from the vadose zone soils to the groundwater aquifers is not necessary to achieve compliance with the Gelman Property Objectives. Before significantly reducing or terminating phytoremediation in the Former Pond 1 and 2 area, Defendant shall consult with EGLE and provide a written analysis, together with the data that supports its conclusions. EGLE will review the analysis and data and provide a written response to Defendants within 56 days after receiving Defendant's written analysis and data. If Defendant disagrees with EGLE's conclusion, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The Defendant shall not significantly reduce or terminate the phytoremediation during the 56-day review period or while Defendant is disputing EGLE's conclusion.~~

3. ~~Phytoremediation Marshy Area.~~ Defendant will undertake actions to reduce the percolation/infiltration of 1,4-dioxane from Marshy Area to the underlying groundwater through the application of phytoremediation techniques in the area depicted in Attachment I. The initial phase of these Response Activities may include further investigation of the Marshy Area as needed to complete the phytoremediation design regarding methods of enabling roots from trees grown in the Marshy Area to extend into deeper soils containing elevated concentrations of 1,4-dioxane. Defendant shall install and maintain the trees in a healthy state as necessary to assure continued success of the phytoremediation system. Defendant shall continue to operate the phytoremediation system as set forth above until it determines that the further reduction of the percolation/infiltration of 1,4-dioxane from the Marshy Area to the underlying groundwater is not necessary to achieve compliance with the Gelman Property Objectives. Before significantly reducing or terminating phytoremediation in the Marshy Area, Defendant shall consult with EGLE and provide a written analysis, together with the data that supports its conclusions. EGLE will review the analysis and data and provide a written response to Defendants within 56 days after receiving Defendant's written analysis and data. If Defendant disagrees with EGLE's decision to reduce or terminate the phytoremediation in the Marshy Area, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The Defendant shall not significantly reduce or terminate the phytoremediation in the Marshy Area during the 56-day review period or while Defendant is disputing EGLE's conclusion.

4. ~~Former Burn Pit Area.~~ Defendant shall undertake the following Response Activities with respect to the former Burn Pit area depicted on Attachments I and J:

a. ~~Install, operate, and maintain a Heated Soil Vapor Extraction System (“HSVE System”). The HSVE System shall be designed to reduce the mass of 1,4-dioxane present in the soils in the portion of the former Burn Pit area identified as “Heated Soil Vapor Extraction” on Attachment J. Defendant shall operate the HSVE system until 1,4-dioxane concentrations in the HSVE System’s effluent/exhaust has been reduced to levels that indicate that continued operation of the HSVE system will no longer contribute to meaningful reduction of 1,4-dioxane mass in the Former Burn Pit Area Soils or the Soil Contamination in the treatment area is eliminated, whichever occurs first. Before significantly reducing or terminating operation of the HSVE system, Defendant shall consult with EGLE and provide a written analysis, together with the data that supports its conclusion, that one or both of the above conditions has been satisfied. EGLE will review the analysis and data and provide a written response to Defendant within 56 days after receiving Defendant’s written analysis and data. If Defendant disagrees with EGLE’s conclusion, Defendant may initiate dispute resolution under Section XVI of this Consent Judgment. The Defendant shall not significantly reduce or terminate operation of the HSVE system during the 56-day review period or while Defendant is disputing EGLE’s conclusion.~~

~~Following completion of the HSVE treatment, Defendant shall install an impervious barrier over the HSVE Treatment Area to inhibit water from percolating through the soils in the former Burn Pit Area, except with regard to any areas where Defendant can demonstrate to EGLE’s satisfaction that Soil Contamination does not exist. Defendant shall maintain the impervious barrier in place until Soil Contamination is no longer present in the underlying soils.~~

b. ~~Cap the portion of the former Burn Pit area identified as “Capped-~~

Area” on Attachment J with an impervious barrier to inhibit water from percolating through the soils in the former Burn Pit area. Defendant shall maintain the impervious barrier in place until Soil Contamination is no longer present in the underlying soils.

5. After completing installation of the Response Activity systems listed in Sections VI.C.2, VI.C.3 and VI.C.4, the Defendant shall submit a separate installation report (i.e., as built report) for each of the systems. The reports shall describe the systems as installed including, but not limited to, components of a system, location of components within the specific areas, depths of components of a system, and operational specifications of components of a system.

6. Required Approvals. Notwithstanding the above, Defendant’s obligation to implement any of the additional source control Response Activities described in Section VI.C is conditioned upon receipt of any required approvals pursuant to Section VII.D.

## **VII. COMPLIANCE WITH OTHER LAWS AND PERMITS**

A. Defendant shall undertake all activities pursuant to this Consent Judgment in accordance with the requirements of all applicable laws, regulations, and permits.

B. Defendant shall apply for all permits necessary for implementation of this Consent Judgment including, without limitation, surface water discharge permit(s) and air discharge permit(s).

C. Defendant shall include in all contracts entered into by the Defendant for Remedial Action required under this Consent Judgment (and shall require that any contractor include in all subcontracts), a provision stating that such contractors and subcontractors, including their agents and employees, shall perform all activities required by such contracts or

subcontracts in compliance with and all applicable laws, regulations, and permits. Defendant shall provide a copy of relevant approved work plans to any such contractor or subcontractor.

D. The Plaintiffs agree to provide reasonable cooperation and assistance to the Defendant in obtaining necessary approvals and permits for Remedial Action. Plaintiffs shall not unreasonably withhold or delay any required approvals or permits for Defendant's performance of Remedial Action. Plaintiffs expressly acknowledge that one or more of the following permits and approvals may be a necessary prerequisite for one or more of the Response Activities set forth in this Consent Judgment:

1. Renewal of NPDES Permit No. MI-0048453 with respect to the discharge of treated groundwater to the unnamed tributary of Honey Creek.

~~2. An NPDES Permit that authorizes the discharge of groundwater to First Sister Lake in connection with operation of the Parklake Well following treatment with ozone/hydrogen peroxide technology that has effluent limitations, discharge limits (other than volume), and other conditions no more restrictive than those included in Defendant's 2014 NPDES Permit.~~

~~3. Negotiation and execution of an access agreement between Defendant and the City of Ann Arbor providing reasonable and necessary access to the City-owned parcel at Parklake Avenue and Jackson Road with respect to installation and operation of an extraction well, operation and maintenance of a groundwater treatment unit, and disposal of treated groundwater.~~

4. An Air Permit for discharges of contaminants to the atmosphere for vapor extraction systems, including the HSVE system described in Subsection VI.C.4, under terms

reasonably acceptable to Defendant and as necessary if such systems are part of the remedial design.

~~5. — 3. A Wetlands Permit(s) from EGLE and/or Seio Township if necessary for the response activities described in Section VI.C.3 with terms reasonably acceptable to Defendant.~~ construction of the Marshy Area system or the construction of facilities as part of the Western Systems;

64. An Industrial User's Permit to be issued by the City of Ann Arbor for use of the sewer to dispose of treated or untreated purged groundwater from the Evergreen and/or Maple Road Wells. Plaintiffs have no objection to receipt by the Ann Arbor Wastewater Treatment Plant of the purged groundwater extracted pursuant to the terms and conditions of this Consent Judgment, and acknowledge that receipt of the purged groundwater would not necessitate any change in current and proposed residual management programs of the Ann Arbor Wastewater Treatment Plant.

75. Permit(s) or permit exemptions to be issued by EGLE to authorize the reinjection of purged and treated groundwater in the Eastern Area and Western Area.

86. Surface water discharge permit(s) for discharge into surface waters in the area of Little Lake, if necessary.

97. Approval of the City of Ann Arbor and the Washtenaw County Drain Commissioner to use storm drains or sewers for the remedial programs.

108. Washtenaw County permits as necessary for the installation of extraction wells, monitoring wells, and borings.

## **VIII. SAMPLING AND ANALYSIS**

Defendant shall make available to EGLE the results of all sampling, tests, and/or other data generated in the performance or monitoring of any requirement under this Consent Judgment. Sampling data generated consistent with this Consent Judgment shall be admissible in evidence in any proceeding related to enforcement of this Consent Judgment without waiver by any Party of any objection as to weight or relevance. EGLE and/or their authorized representatives, at their discretion, may take split or duplicate samples and observe the sampling event. EGLE shall make available to Defendant the results of all sampling, tests, and/or other data generated in the performance or monitoring of any requirement under this Consent Judgment. Defendant will provide EGLE with reasonable notice of changes in the schedule of data collection activities included in the progress reports submitted pursuant to Section XII.

## **IX. ACCESS**

A. From the effective date of this Consent Judgment, EGLE, its authorized employees, agents, representatives, contractors, and consultants, upon presentation of proper identification, shall have the right at all reasonable times to enter the Site and any property to which access is required for the implementation of this Consent Judgment, to the extent access to the property is owned, controlled by, or available to the Defendant, for the purpose of conducting any activity authorized by this Consent Judgment, including, but not limited to:

1. Monitoring of the Remedial Action or any other activities taking place pursuant to this Consent Judgment on the property;
2. Verification of any data or information submitted to EGLE;
3. Conduct of investigations related to 1,4-dioxane concentrations at the Site;

4. Collection of samples;
5. Assessment of the need for, or planning and implementing of, Response Activities at the Site; and
6. Inspection and copying of non-privileged documents including records, operating logs, contracts, or other documents required to assess Defendant's compliance with this Consent Judgment.

All Parties with access to the Site or other property pursuant to this Section shall comply with all applicable health and safety laws and regulations.

B. To the extent that the Site or any other area where Remedial Action is to be performed by the Defendant under this Consent Judgment is owned or controlled by persons other than the Defendant, Defendant shall use its best efforts to secure from such persons access for Defendant, 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.

#### **X. APPROVALS OF SUBMISSIONS**

Upon receipt of any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Judgment, as soon as practicable, but in no event later than 56 days after receipt of such submission, EGLE will: (1) approve the submission or (2) submit to Defendant changes in the submission that would result in approval of the submission. EGLE will (1) approve a feasibility study or plan that proposes a risk based cleanup or a remedy that requires public comment, or (2) submit to Defendant changes in such submittal that would result



in approval in the time provided under Part 201. If EGLE does not respond within 56 days, Defendant may submit the matter to dispute resolution pursuant to Section XVI. Upon receipt of a notice of approval or changes from EGLE, Defendant shall proceed to take any action required by the plan, report, or other item, as approved or as may be modified to address the deficiencies identified by EGLE. If Defendant does not accept the changes proposed by EGLE, Defendant may submit the matter to dispute resolution pursuant to Section XVI.

## **XI. PROJECT COORDINATORS**

A. Plaintiffs designate Daniel Hamel as EGLE's Project Coordinator. Defendant designates Lawrence Gelb as Defendant's Project Coordinator. Defendant's Project Coordinator shall have primary responsibility for implementation of the Remedial Action at the Site. EGLE's Project Coordinator will be the primary designated representative for Plaintiffs with respect to implementation of the Remedial Action at the Site. All communication between Defendant and EGLE, including all documents, reports, approvals, other submissions, and correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Judgment, shall be directed through the Project Coordinators. If any Party changes its designated Project Coordinator, that Party shall provide the name, address, email address and telephone number of the successor in writing to the other Party seven days prior to the date on which the change is to be effective. This Section does not relieve Defendant from other reporting obligations under the law.

B. EGLE may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Judgment. EGLE's Project Coordinator shall provide Defendant's Project Coordinator

with the names, addresses, telephone numbers, positions, and responsibilities of any person designated pursuant to this Section.

## **XII. PROGRESS REPORTS**

Defendant shall provide to EGLE written quarterly progress reports that shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Judgment during the previous three months; (2) describe data collection and activities scheduled for the next three months; and (3) include all results of sampling and tests and other data received by Defendant, its consultants, engineers, or agents during the previous three months relating to Remedial Action performed pursuant to this Consent Judgment. Defendant shall submit the first quarterly report to EGLE within 120 days after entry of this Consent Judgment, and by the 30th day of the month following each quarterly period thereafter, as feasible, until termination of this Consent Judgment as provided in Section XXV.

## **XIII. RESTRICTIONS ON ALIENATION**

A. Defendant shall not sell, lease, or alienate the Gelman Property until: (1) it places an EGLE-approved land use or resource use restrictions on the affected portion(s) of the Gelman Property; and (2) any purchaser, lessee, or grantee provides to EGLE its written agreement providing that the purchaser, lessee, or grantee will not interfere with any term or condition of this Consent Judgment. Notwithstanding any purchase, lease, or grant, Defendant shall remain obligated to comply with all terms and conditions of this Consent Judgment.

B. Any deed, title, or other instrument of conveyance regarding the Gelman Property shall contain a notice that Defendant's Property is the subject of this Consent Judgment, setting

forth the caption of the case, the case number, and the court having jurisdiction herein.

#### **XIV. FORCE MAJEURE**

Any delay attributable to a Force Majeure shall not be deemed a violation of Defendant's obligations under this Consent Judgment.

A. "Force Majeure" is defined as an occurrence or nonoccurrence arising from causes beyond the control of Defendant or of any entity controlled by the Defendant performing Remedial Action, such as Defendant's employees, contractors, and subcontractors. Such occurrence or nonoccurrence includes, but is not limited to: (1) an Act of God; (2) untimely review of permit applications or submissions; (3) acts or omissions of third parties for which Defendant is not responsible; (4) insolvency of any vendor, contractor, or subcontractor retained by Defendant as part of implementation of this Consent Judgment; and (5) delay in obtaining necessary access agreements under Section IX that could not have been avoided or overcome by due diligence. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, or nonattainment of the treatment and termination standards set forth in Sections V and VI.

B. When circumstances occur that Defendant believes constitute Force Majeure, Defendant shall notify EGLE by telephone of the circumstances within 48 hours after Defendant first believes those circumstances to apply. Within 14 working days after Defendant first believes those circumstances to apply, Defendant shall supply to EGLE, in writing, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken and the measures to be taken by Defendant to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure of Defendant to

comply with the written notice provisions of this Section shall constitute a waiver of Defendant's right to assert a claim of Force Majeure with respect to the circumstances in question.

C. A determination by EGLE that an event does not constitute Force Majeure, that a delay was not caused by Force Majeure, or that the period of delay was not necessary to compensate for Force Majeure may be subject to dispute resolution under Section XVI of this Consent Judgment.

D. EGLE shall respond, in writing, to any request by Defendant for a Force Majeure extension within 30 days of receipt of the Defendant's request. If EGLE does not respond within that time period, Defendant's request shall be deemed granted. If EGLE agrees that a delay is or was caused by Force Majeure, Defendant's delays shall be excused, stipulated penalties shall not accrue, and EGLE shall provide Defendant such additional time as may be necessary to compensate for the Force Majeure event.

E. Delay in achievement of any obligation established by this Consent Judgment shall not automatically justify or excuse delay in achievement of any subsequent obligation unless the subsequent obligation automatically follows from the delayed obligation.

#### **XV. REVOCATION OR MODIFICATION OF LICENSES OR PERMITS**

Any delay attributable to the revocation or modification of licenses or permits obtained by Defendant to implement remediation actions as set forth in this Consent Judgment shall not be deemed a violation of Defendant's obligations under this Consent Judgment, provided that such revocation or modification arises from causes beyond the control of Defendant or of any entity controlled by the Defendant performing Remedial Action, such as Defendant's employees, contractors, and subcontractors.

A. Licenses or permits that may need to be obtained or modified by Defendant to implement the Remedial Actions are those specified in Section VII.D. and licenses, easements, and other agreements for access to property or rights of way on property necessary for the installation of remedial systems required by this Consent Judgment.

B. A revocation or modification of a license or permit within the meaning of this Section means withdrawal of permission, denial of permission, a limitation or a change in license or permit conditions that delays the implementation of all or part of a remedial system. Revocation or modification due to Defendant's violation of a license or permit (or any conditions of a license or permit) shall not constitute a revocation or modification covered by this Section.

C. When circumstances occur that Defendant believes constitute revocation or modification of a license or permit, Defendant shall notify EGLE by telephone of the circumstances within 48 hours after Defendant first believes those circumstances to apply. Within 14 working days after Defendant first believes those circumstances to apply, Defendant shall supply to EGLE, in writing, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken and the measures to be taken by Defendant to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure of Defendant to comply with the written notice provisions of this Section shall constitute a waiver of Defendant's right to assert a claim of revocation or modification of a license or permit with respect to the circumstances in question.

D. A determination by EGLE that an event does not constitute revocation or modification of a license or permit, that a delay was not caused by revocation or modification of a license or permit, or that the period of delay was not necessary to compensate for revocation or

modification of a license or permit may be subject to dispute resolution under Section XVI of this Consent Judgment.

E. EGLE shall respond, in writing, to any request by Defendant for a revocation or modification of a license or permit extension within 30 days of receipt of the Defendant's request. If EGLE does not respond within that time period, Defendant's request shall be deemed granted. If EGLE agrees that a delay is or was caused by revocation or modification of a license or permit, Defendant's delays shall be excused, stipulated penalties shall not accrue, and EGLE shall provide Defendant such additional time as may be necessary to compensate for the revocation or modification of a license or permit.

F. Delay in achievement of any obligation established by this Consent Judgment shall not automatically justify or excuse delay in achievement of any subsequent obligation unless the subsequent obligation automatically follows from the delayed obligation.

## **XVI. DISPUTE RESOLUTION**

A. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Judgment and shall apply to all provisions of this Consent Judgment except for disputes related to Prohibition Zone boundary modification under Sections V.A.2.f and V.A.6, whether or not particular provisions of this Consent Judgment in question make reference to the dispute resolution provisions of this Section. Any dispute that arises under this Consent Judgment initially shall be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed ten working days from the date of written notice by EGLE or the Defendant that a dispute has arisen. This period may be extended or shortened by agreement of EGLE or the Defendant.

B. Immediately upon expiration of the informal negotiation period (or sooner if upon agreement of the parties), EGLE shall provide to Defendant a written statement setting forth EGLE's proposed resolution of the dispute. Such resolution shall be final unless, within 15 days after receipt of EGLE's proposed resolution (clearly identified as such under this Section), Defendant files a petition for resolution with the Washtenaw County Circuit Court setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Judgment.

C. Within ten days of the filing of the petition, EGLE may file a response to the petition, and unless a dispute arises from the alleged failure of EGLE to timely make a decision, EGLE will submit to the Court all documents containing information related to the matters in dispute, including documents provided to EGLE by Defendant. In the event of a dispute arising from the alleged failure of EGLE to timely make a decision, within ten days of filing of the petition, each party shall submit to the Court correspondence, reports, affidavits, maps, diagrams, and other documents setting forth facts pertaining to the matters in dispute. Those documents and this Consent Judgment shall comprise the record upon which the Court shall resolve the dispute. Additional evidence may be taken by the Court on its own motion or at the request of either party if the Court finds that the record is incomplete or inadequate. Review of the petition shall be conducted by the Court and shall be confined to the record. The review shall be independent of any factual or legal conclusions made by the Court prior to the date of entry of this Consent Judgment.

D. The Court shall uphold the decision of EGLE on the issue in dispute unless the

Court determines that the decision is any of the following:

1. Inconsistent with this Consent Judgment;
2. Not supported by competent, material, and substantial evidence on the whole record;
3. Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion; or
4. Affected by other substantial and material error of law.

E. The filing of a petition for resolution of a dispute shall not by itself extend or postpone any obligation of Defendant under this Consent Judgment, provided, however, that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue as provided in Section XVII. Stipulated penalties that have accrued with respect to the matter in dispute shall not be assessed by the Court and shall be dissolved if Defendant prevails on the matter. The Court may also direct that stipulated penalties shall not be assessed and paid as provided in Section XVII upon a determination that there was a substantial basis for Defendant's position on the disputed matter.

## **XVII. STIPULATED PENALTIES**

A. Except as otherwise provided, if Defendant fails or refuses to comply with any term or condition in Sections IV, V, VI, VII, or VIII, or with any plan, requirement, or schedule established pursuant to those Sections, then Defendant shall pay stipulated penalties in the following amounts for each working day for every failure or refusal to comply or conform:

Period of Delay

Penalty Per Violation Per Day



1st through 15th Day	\$ 1,000
15th through 30th Day	\$ 1,500
Beyond 30 Days	\$ 2,000

B. Except as otherwise provided if Defendant fails or refuses to comply with any other term or condition of this Consent Judgment, Defendant shall pay to EGLE stipulated penalties of \$500.00 per working day for each and every failure to comply.

C. If Defendant is in violation of this Consent Judgment, Defendant shall notify EGLE of any violation no later than five working days after first becoming aware of such violation, and shall describe the violation.

D. Stipulated penalties shall begin to accrue upon the next day after performance was due or other failure or refusal to comply occurred. Penalties shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Judgment. Penalties may be waived in whole or in part by EGLE or may be dissolved by the Court pursuant to Section XVII.

E. Stipulated penalties shall be paid no later than 14 working days after receipt by Defendant of a written demand from EGLE. Defendant shall make payment by transmitting a check in the amount due, payable to the "State of Michigan," addressed to the Revenue Control Unit; Finance Section, Administration Division; Michigan Department of Environment, Great Lakes, and Energy; P.O. Box 30657; Lansing, MI 48909-8157. The check shall be transmitted via Courier to the Revenue Control Unit; Finance Section, Administration Division; Michigan Department of Environment, Great Lakes, and Energy; Constitution Hall, 5th Floor South Tower; 525 West Allegan Street; Lansing, MI 48933-2125. To ensure proper credit, Defendant

shall include the settlement ID - ERD1902 on the payment.

F. Plaintiffs agree that, in the event that an act or omission of Defendant constitutes a violation of this Consent Judgment subject to stipulated penalties and a violation of other applicable law, Plaintiffs will not impose upon Defendant for that violation both the stipulated penalties provided under this Consent Judgment and the civil penalties permitted under other applicable laws. EGLE reserves the right to pursue any other remedy or remedies to which they may be entitled under this Consent Judgment or any applicable law for any failure or refusal of the Defendant to comply with the requirements of this Consent Judgment.

#### **XVIII. PLAINTIFFS' COVENANT NOT TO SUE AND RESERVATION OF RIGHTS**

A. Except as otherwise provided in this Consent Judgment, Plaintiffs covenant not to sue or take administrative action for Covered Matters against Defendant, its officers, employees, agents, directors, and any persons acting on its behalf or under its control.

B. "Covered Matters" shall mean any and all claims available to Plaintiffs under federal and state law arising out of the subject matter of the Plaintiffs' Complaint with respect to the following:

1. Claims for injunctive relief to address soil, groundwater, and surface water contamination at or emanating from the Gelman Property;
2. Claims for civil penalties and costs;
3. Claims for natural resource damages;
4. Claims for reimbursement of response costs incurred prior to entry of this Consent Judgment or incurred by Plaintiffs for provision of alternative water supplies in the Evergreen Subdivision; and

5. Claims for reimbursement of costs incurred by Plaintiffs for overseeing the implementation of this Consent Judgment.

C. "Covered Matters" does not include:

1. Claims based upon a failure by Defendant to comply with the requirements of this Consent Judgment;
2. Liability for violations of federal or state law which occur during implementation of the Remedial Action; and
3. Liability arising from the disposal, treatment, or handling of any hazardous substance removed from the Site.

D. With respect to liability for alleged past violations of law, this covenant not to sue shall take effect on the effective date of this Consent Judgment. With respect to future liability for performance of response activities required to be performed under this Consent Judgment, the covenant not to sue shall take effect upon issuance by EGLE of the Certificate of Completion in accordance with Section XXV.

E. Notwithstanding any other provision in this Consent Judgment: (1) EGLE reserves the right to institute proceedings in this action or in a new action seeking to require Defendant to perform any additional response activity at the Site; and (2) EGLE reserves the right to institute proceedings in this action or in a new action seeking to reimburse EGLE for response costs incurred by the State of Michigan relating to the Site. EGLE's rights in Sections XVIII.E.1 and E.2 apply if the following conditions are met:

1. For proceedings prior to EGLE's certification of completion of the Remedial Action concerning the Site,

a. (i) conditions at the Site, previously unknown to EGLE, are discovered after entry of this Consent Judgment, (ii) new information previously unknown to EGLE is received after entry of this Consent Judgment, or (iii) EGLE adopts one or more new, more restrictive cleanup criteria for 1,4-dioxane pursuant to Part 201 after entry of this Consent Judgment; and

b. these previously unknown conditions, new information, and/or change in criteria indicate that the Remedial Action is not protective of the public health, safety, welfare, and the environment; and

2. For proceedings subsequent to EGLE's certification of completion of the Remedial Action concerning the Site,

a. (i) conditions at the Site, previously unknown to EGLE, are discovered after certification of completion by EGLE, (ii) new information previously unknown to EGLE is received after certification of completion by EGLE, or (iii) EGLE adopts one or more new, more restrictive cleanup criteria for 1,4-dioxane pursuant to Part 201, after certification of completion by EGLE; and

b. these previously unknown conditions, new information, and/or change in criteria indicate that the Remedial Action is not protective of the public health, safety, welfare, and the environment.

If EGLE adopts one or more new, more restrictive, cleanup criteria, EGLE's rights in Sections XVIII.E.1 and E.2 shall also be subject to Defendant's right to seek another site-specific criterion(ia) that is protective of public health, safety, welfare, and the environment and/or to argue that EGLE has not made the demonstration(s) required under this Section.

F. Nothing in this Consent Judgment shall in any manner restrict or limit the nature or scope of Response Activities that may be taken by EGLE in fulfilling its responsibilities under federal and state law, and this Consent Judgment does not release, waive, limit, or impair in any manner the claims, rights, remedies, or defenses of EGLE against a person or entity not a party to this Consent Judgment.

G. Except as expressly provided in this Consent Judgment, EGLE reserves all other rights and defenses that they may have, and this Consent Judgment is without prejudice, and shall not be construed to waive, estop, or otherwise diminish EGLE's right to seek other relief with respect to all matters other than Covered Matters.

**XIX. DEFENDANT'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS**

A. Defendant hereby covenants not to sue and agrees not to assert any claim or cause of action against EGLE or any other agency of the State of Michigan with respect to environmental contamination at the Site or response activities relating to the Site arising from this Consent Judgment.

B. Notwithstanding any other provision in this Consent Judgment, for matters that are not Covered Matters as defined in Section XVIII.B, or in the event that Plaintiffs institute proceedings as allowed under Section XVIII.E., Defendant reserves all other rights, defenses, or counterclaims that it may have with respect to such matters and this Consent Judgment is without prejudice, and shall not be construed to waive, estop, or otherwise diminish Defendant's right to seek other relief and to assert any other rights and defenses with respect to such other matters.

C. Nothing in this Consent Judgment shall in any way impair Defendant's rights, claims, or defenses with respect to any person not a party to this Consent Judgment.

## **XX. INDEMNIFICATION, INSURANCE, AND FINANCIAL ASSURANCE**

A. Defendant shall indemnify and save and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives from any and all claims or causes of action arising from, or on account of, acts or omissions of Defendant, its officers, employees, agents, and any persons acting on its behalf or under its control in carrying out Remedial Action pursuant to this Consent Judgment. EGLE shall not be held out as a party to any contract entered into by or on behalf of Defendant in carrying out activities pursuant to this Consent Judgment. Neither the Defendant nor any contractor shall be considered an agent of EGLE. Defendant shall not indemnify or save and hold harmless Plaintiffs from their own negligence pursuant to this Section.

B. Prior to commencing any Remedial Action on the Gelman Property, Defendant shall secure, and shall maintain for the duration of the Remedial Action, comprehensive general liability insurance with limits of \$1,000,000.00, combined single limit, naming as an additional insured the State of Michigan. If Defendant demonstrates by evidence satisfactory to EGLE that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor, Defendant need provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor.

C. Financial Assurance

1. Defendant shall be responsible for providing and maintaining financial assurance in a mechanism approved by EGLE in an amount sufficient to cover the estimated cost to assure performance of the response activities required to meet the remedial objectives of this Consent Judgment including, but not limited to, investigation, monitoring, operation and maintenance, and other costs (collectively referred to as “Long-Term Remedial Action Costs”). Defendant shall continuously maintain a financial assurance mechanism (“FAM”) until EGLE’s Remediation and Redevelopment Division (“RRD”) Chief or his or her authorized representative notifies it in writing that it is no longer required to maintain a FAM.

2. The Letter of Credit provided in Attachment K is the initial FAM approved by EGLE. Defendant shall be responsible for providing and maintaining financial assurance in a mechanism acceptable to EGLE to assure the performance of the Long Term Remedial Action Costs required by Defendant’s selected remedial action.

3. The FAM shall remain in an amount sufficient to cover Long Term Remedial Action Costs for a 30-year period. Unless Defendant opts to use and satisfies the Financial Test or Financial Test/Corporate Guarantee as provided in Section XX.C.8, the FAM shall remain in a form that allows EGLE to immediately contract for the response activities for which financial assurance is required in the event Defendant fails to implement the required tasks, subject to Defendant’s rights under Sections XIV and XVI.

4. Within 120 days of the Effective Date of this Fourth Amended Consent Judgment, Defendant shall provide EGLE with an estimate of the amount of funds necessary to assure Long Term Remedial Action Costs for the following 30-year period based upon an annual

estimate of costs for the response activities required by this Fourth Amended Consent Judgment as if they were to be conducted by a person under contract to EGLE (the “Updated Long Term Remedial Action Cost Estimate”). The Updated Long Term Remedial Action Cost Estimate shall include all assumptions and calculations used in preparing the cost estimate and shall be signed by an authorized representative of Defendant who shall confirm the validity of the data. Defendant may only use a present worth analysis if an interest accruing FAM is selected. Within 60 days after Defendant’s submittal of the Updated Long Term Remedial Action Cost Estimate, Defendant shall capitalize or revise the FAM in a manner acceptable to EGLE to address Long Term Remedial Action Costs unless otherwise notified by EGLE. If EGLE disagrees with the conclusions of the Updated Long Term Remedial Action Cost Estimate, Defendant shall capitalize the FAM to a level acceptable to EGLE within 30 days of EGLE notification, subject to Dispute Resolution under Section XVI.

5. Sixty days prior to the 5-year anniversary of the Effective Date of this Fourth Amended Consent Judgment and each subsequent 5-year anniversary, Defendant shall provide to EGLE a report containing the actual Long Term Remedial Action Costs for the previous 5-year period and an estimate of the amount of funds necessary to assure Long Term Remedial Action Costs for the following 30-year period given the financial trends in existence at the time of preparation of the report (“Long Term Remedial Action Cost Report”). The cost estimate shall be based upon an annual estimate of maximum costs for the response activities required by this Fourth Amended Consent Judgment as if they were to be conducted by a person under contract to EGLE, provided that, if Defendant is using the Financial Test or Corporate Guarantee/Financial Test under Section XX.C.8, below, Defendant may use an estimate on its



internal costs to satisfy the Financial Test. The Long Term Remedial Action Cost Report shall also include all assumptions and calculations used in preparing the necessary cost estimate and shall be signed by an authorized representative of Defendant who shall confirm the validity of the data. Defendant may only use a present worth analysis if an interest accruing FAM is selected.

6. Within 60 days after Defendant's submittal of the Long Term Remedial Action Cost Report to EGLE, Defendant shall capitalize or revise the FAM in a manner acceptable to EGLE to address Long Term Remedial Action Costs consistent with the conclusions of the Long Term Remedial Action Cost Report unless otherwise notified by EGLE. If EGLE disagrees with the conclusions of the Long Term Remedial Action Cost Report, Defendant shall capitalize the FAM to a level acceptable to EGLE within 30 days of EGLE notification, subject to dispute resolution under Section XVI. If, at any time, EGLE determines that the FAM does not secure sufficient funds to address Long Term Remedial Action Costs, Defendant shall capitalize the FAM or provide an alternate FAM to secure any additional costs within 30 days of request by EGLE, subject to dispute resolution under Section XVI.

7. If, pursuant to the Long Term Remedial Action Cost Report, Defendant can demonstrate that the FAM provides funds in excess of those needed for Long Term Remedial Action Costs, Defendant may request a modification in the amount. Any requested FAM modifications must be accompanied by a demonstration that the proposed FAM provides adequate funds to address future Long Term Remedial Action Costs. Upon EGLE approval of the request, Defendant may modify the FAM as approved by EGLE. Modifications to the FAM

pursuant to this Section shall be approved by EGLE RRD Chief or his or her authorized representative, subject to dispute resolution under Section XVI.

8. If Defendant chooses to use the Financial Test or Corporate Guarantee/Financial Test attached as Attachment L (hereinafter, the term “Financial Test” refers to both an independent financial test or a financial test utilized in conjunction with a corporate guarantee), Defendant shall, within 90 days after the end of Defendant’s next fiscal year and the end of each succeeding fiscal year, submit to EGLE the necessary forms and supporting documents to demonstrate to the satisfaction of EGLE that Defendant can continue to meet the Financial Test requirements. If Defendant can no longer meet the financial test requirements, Defendant shall submit a proposal for an alternate FAM to satisfy its financial obligations with respect to this Consent Judgment.

9. If the Financial Test is being used as the FAM, EGLE, based on a reasonable belief that Defendant may no longer meet the requirements for the Financial Test, may require reports of financial condition at any time from Defendant, and/or require Defendant to submit updated Financial Test information to determine whether it meets the Financial Test criteria. Defendant shall provide, with reasonable promptness to EGLE, any other data and information that may reasonably be expected to materially adversely affect Defendant’s ability to meet the Financial Test requirements. If EGLE finds that Defendant no longer meets the Financial Test requirements, Defendant shall, within 30 days after notification from EGLE, submit a proposal for an alternate FAM to satisfy its financial obligations with respect to this Consent Judgment, subject to dispute resolution under Section XVI.

10. If the Financial Test/Corporate Guarantee is used as the FAM, Defendant shall comply with the terms of the Corporate Guarantee. The Corporate Guarantee shall remain in place until Long-Term Remedial Action Costs are no longer required or Defendant establishes an alternate FAM acceptable to EGLE.

11. If Defendant wishes to change the type of FAM or establish a new FAM, Defendant shall submit a request to EGLE for approval. Upon EGLE approval of the request, Defendant may change the type of FAM or establish the new FAM as approved by EGLE. Modifications to the FAM pursuant to this Section shall be approved by EGLE RRD Chief or his or her authorized representative, subject to dispute resolution under Section XVI.

12. If Defendant dissolves or otherwise ceases to conduct business and fails to make arrangements acceptable to EGLE for the continued implementation of all activities required by this Consent Judgment, all rights under this Consent Judgment regarding the FAM shall immediately and automatically vest in EGLE in accordance with the FAM.

## **XXI. RECORD RETENTION**

Defendant, Plaintiffs, and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Judgment and for a period of ten years after its termination, all records, sampling or test results, charts, and other documents that are maintained or generated pursuant to any requirement of this Consent Judgment, including, but not limited to, documents reflecting the results of any sampling or tests or other data or information generated or acquired by Plaintiffs or Defendant, or on their behalf, with respect to the implementation of this Consent Judgment. After the ten-year period of document retention, the Defendant and its successors shall notify EGLE, in writing, at least 90 days prior to the

destruction of such documents or records, and upon request, the Defendant and/or its successor shall relinquish custody of all records and documents to EGLE.

## **XXII. ACCESS TO INFORMATION**

Upon request, EGLE and Defendant shall provide to each other copies of or access to all non-privileged documents and information within their possession and/or control or that of their employees, contractors, agents, or representatives, relating to activities at the Site or to the implementation of this Consent Judgment, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Remedial Action. Upon request, Defendant shall also make available to EGLE, their employees, contractors, agents, or representatives with knowledge or relevant facts concerning the performance of the Remedial Action. The Plaintiffs shall treat as confidential all documents provided to Plaintiffs by the Defendant marked “confidential” or “proprietary.”

## **XXIII. NOTICES**

Whenever under the terms of this Consent Judgment notice is required to be given or a report, sampling data, analysis, or other document is required to be forwarded by one Party to the other, such notice or document shall be directed to the following individuals at the specified addresses or at such other address as may subsequently be designated in writing:

### **For Plaintiffs:**

Daniel Hamel  
Project Coordinator  
Michigan Department  
of Environment, Great  
Lakes, and Energy,  
Remediation and Redevelopment

### **For Defendants:**

Lawrence Gelb  
Gelman Sciences Inc.  
642 South Wagner Road  
Ann Arbor, MI 48106

Division  
301 East Louis Glick Highway  
Jackson, MI 49201

and

Michael L. Caldwell  
Zausmer, P.C.  
32255 Northwestern Hwy., Ste. 225  
Farmington Hills, MI 48334

Any party may substitute for those designated to receive such notices by providing prior written notice to the other parties.

#### **XXIV. MODIFICATION**

This Consent Judgment may not be modified unless such modification is in writing, signed by the Plaintiffs and the Defendant, and approved and entered by the Court. Remedial Plans, work plans, or other submissions made pursuant to this Consent Judgment may be modified by mutual agreement of the Defendant and EGLE.

#### **XXV. CERTIFICATION AND TERMINATION**

A. When Defendant determines that it has completed all Remedial Action required by this Consent Judgment, Defendant shall submit to EGLE a Notification of Completion and a draft final report. The draft final report must summarize all Remedial Action performed under this Consent Judgment and the performance levels achieved. The draft final report shall include or refer to any supporting documentation.

B. Upon receipt of the Notification of Completion, EGLE will review the Notification of Completion and the accompanying draft final report, any supporting documentation, and the actual Remedial Action performed pursuant to this Consent Judgment. After conducting this review, and not later than three months after receipt of the Notification of Completion, EGLE shall issue a Certificate of Completion upon a determination by EGLE that

Defendant has completed satisfactorily all requirements of this Consent Decree, including, but not limited to, completion of all Remedial Action, achievement of all termination and treatment standards required by this Consent Judgment, compliance with all terms and conditions of this Consent Judgment, and payment of any and all stipulated penalties owed to EGLE. If EGLE does not respond to the Notification of Completion within three months after receipt of the Notification of Completion, Defendant may submit the matter to dispute resolution pursuant to Section XVI. This Consent Judgment shall terminate upon motion and order of this Court after issuance of the Certificate of Completion. Upon issuance, the Certificate of Completion may be recorded.

#### **XXVI. EFFECTIVE DATE**

The effective date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

#### **XXVII. SEVERABILITY**

The provisions of this Consent Judgment shall be severable. Should any provision be declared by a court of competent jurisdiction to be inconsistent with federal or state law, and therefore unenforceable, the remaining provisions of this Consent Judgment shall remain in full force and effect.

#### **XXVIII. SIGNATORIES**

Each undersigned representatives of a Party to this Consent Judgment certifies that he or she is fully authorized by the Party to enter into this Consent Judgment and to legally bind such Party to the respective terms and conditions of this Consent Judgment.

# EXHIBIT C

STATE OF MICHIGAN

IN THE 22nd CIRCUIT COURT (WASHTENAW COUNTY)

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

Case No. 88-34734-CE

And

THE CITY OF ANN ARBOR,  
Intervenor,

And

WASHTENAW COUNTY,  
Intervenor,

And

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.

./



EVIDENTIARY HEARING HELD VIA ZOOM VIDEOCONFERENCE

BEFORE THE HONORABLE TIMOTHY P. CONNORS

Ann Arbor, Michigan - Monday, May 3, 2021

APPEARANCES:

FOR THE PLAINTIFF:

BRIAN J. NEGELE (P41846)  
Michigan Department of Attorney General  
525 West Ottawa Street  
P.O. Box 30212  
Lansing, Michigan 48909-7712  
(517) 373-7540

INTERVENING PLAINTIFFS:

For the City of Ann Arbor:

FREDERICK J. DINDOFFER (P31398)  
NATHAN D. DUPES (P75454)  
Bodman PLC  
1901 St. Antoine, 6th Floor  
Detroit, Michigan 48226  
(313) 259-7777

AND:

STEPHEN K. POSTEMA (P38871)  
ABIGAIL ELIAS (P34941)  
Ann Arbor City Attorney's Office  
301 East Huron, Third Floor  
Ann Arbor, Michigan 48107  
(734) 794-6170

For Washtenaw County, Washtenaw County  
Health Department, and Washtenaw Health Officer:

ROBERT CHARLES DAVIS (P40155)  
Davis Burket Savage Listman Taylor  
10 South Main Street, Suite 401  
Mt. Clements, Michigan 48043  
(586) 469-4300

(Appearances continued)

1       Griswold and she's been involved, and I appreciate that,  
2       and we'll come back to you Commissioner, okay?

3               MS. GRISWOLD: Kathy Griswold from City Council.  
4       I'm a member of CARD. I've been a very strong advocate of  
5       bringing in the EPA, especially because they have stronger  
6       polluter pay laws. I did not want to discredit the good  
7       work of EGLE in any way, but EGLE is bound by our state  
8       polluter pay laws, and so that's the big distinction.

9               I really appreciate this hearing. I appreciate  
10      your solution-oriented approach. There are, I think that  
11      there are two deal breakers that we cannot go back to our  
12      constituents about; one is the EPA, and the second one is  
13      the discharge into the First Sister Lake. I cannot -- I  
14      don't represent all of Council, but as one of the two  
15      Council members who has been most involved in this, I can  
16      tell you that I would appreciate some type of solution  
17      where we can immediately start applying the stricter  
18      standards.

19              So, thank you. I'll answer any questions you  
20      have.

21              THE COURT: No, no. Council person, first of  
22      all, are you my Council person?

23              MS. GRISWOLD: I'm sorry?

24              THE COURT: Are you in -- are you the one I  
25      report to?

# EXHIBIT D

# **Technical Report on the Gelman Sciences Site Remediation**

**Scio Township, Washtenaw County, Michigan**

**Prepared for the Washtenaw County  
Circuit Court**

**April 30, 2021**

## SECTION 3 – AN EVALUATION OF RESPONSE ACTIVITIES INCLUDED IN THE INTERVENOR 4<sup>TH</sup> AMENDED CJ

As disclosed in the proposed settlement documentation made public in August 2020, which was ultimately rejected by the Intervenor, Gelman offered some additional remedial actions/CJ Amendments during its negotiations with the Intervenor. These proposed CJ amendments were in addition to those amendments negotiated with EGLE. Although Gelman was willing to offer these amendments in good faith, the additional amendments were not and are not necessary to be protective of human health and the environment or to comply with Part 201. Given the Intervenor's rejection of the 4<sup>th</sup> Amended CJ, Gelman is no longer offering many of these amendments. Technical justification for why these CJ amendments are not required for compliance with Part 201 or for the protection of human health and the environment is provided below.

### Proposed Parklake Extraction System – Eastern Area

Gelman had previously proposed to extract groundwater from the area near Parklake Avenue and Jackson Road. This is an area that has been interpreted to feed 1,4-dioxane migrating to the northeast (toward the Evergreen Subdivision) and to a limited extent, east toward Maple Village. 1,4-Dioxane concentrations in the Parklake area are shown on Attachment 2. Gelman is no longer offering this proposed extraction for these reasons.

Gelman's initial plan was to position a treatment system the City sewer lift station at the corner of Parklake and Jackson with the plan of discharging treated water to the sanitary sewer. It is our understanding that discharge into the sanitary sewer has been rejected.

Alternatives to discharging to the sewer include after treatment discharge into First Sister Lake, transporting the water in a pipeline to the Gelman Wagner Road treatment facility for treatment/discharge, and after treatment re-injection of the water into the subsurface.

The treated groundwater could be discharged into First Sister Lake under a NPDES permit. Water discharged into First Sister Lake eventually flows into the unnamed tributary on the west side of the lake near Wagner Road, and continues downstream where it merges with Gelman's current outfall (Outfall-001). This discharge would require approval by EGLE. The NPDES permitting process for the proposed Parklake treatment system discharge would take into account the ability of the receiving waters (both the lake and wetlands) to handle the proposed rate of discharge and level of contaminants. We anticipate that EGLE would approve the discharge because the discharge is not expected to cause water quality issues in the receiving water or cause hydrological issues such as flooding. That said, there has been significant opposition to this proposed disposal method and it is anticipated that there would be considerable opposition to issuance of a permit from the public, perhaps including an administrative challenge to the permit.

A pipeline back to the Gelman Site is a possibility, but the installation of a pipeline will cause considerable disruption and also raise citizen concerns as the pipeline would go through Dolph Park or portions of the Westover Subdivision. A pipeline is a solution more appropriate for a permanent remedial activity. This proposed extraction was not intended to be a long-term remedial approach that is needed to meet cleanup objectives rather a short-term “hot-spot” extraction. As discussed below, 1,4-dioxane concentrations in this area have already significantly declined and will decline even further before the multiple approvals for this project would be granted and infrastructure installed, significantly reducing the effectiveness of this extraction.

Extracting/treating and injecting the water is possible but not at all practical. Installing the infrastructure would also result in considerable disruption. Additionally, injection wells are prone to fouling (primarily due to high iron levels typical in the plume areas) and would require considerable maintenance which results in further disruption. A permit would also be required from EGLE which would likely be difficult to obtain due to concerns of displacing the plume.

The dilemmas of what to do with the water at the formally proposed Parklake extraction system are examples of the difficulties Gelman faces when managing the 1,4-dioxane plumes and underscores some of the difficult logistical issues facing this cleanup. Extracting and treating a recalcitrant chemical like 1,4-dioxane is not easy as it requires significant infrastructure and the use of hazardous chemicals (strong oxidants and sodium bisulfite). To date, Gelman has faced significant opposition to implementing these alternatives, despite the general community desire that Gelman should be required to do more.

Overcoming these types of challenges would be appropriate if the remedial benefit to be gained required it. However, 1,4-dioxane concentrations in the Parklake area have been on a general decline to the point where the disruption and risks associated with this proposed work are no longer justified. These declines are evident on the 1,4-dioxane trend graphs for two wells positioned in the general vicinity of the proposed Parklake extraction (see MW-108s and MW-108d graphs below). Due to the continued delays in implementing this remedial action, 1,4-dioxane concentrations in the vicinity of the proposed Parklake extraction area have declined even further, thus lessening the effectiveness of this proposed remedial action. MW-108s had a peak concentration of 2,946 ug/L and is now at 280 ug/L, a 10-fold decrease. MW-108d had a peak concentration of 4,054 ug/L and is now at 670 ug/L, a 6-fold decrease. These declines reflect the effectiveness of Gelman's Wagner Road extraction. The Wagner Road extraction has resulted in less 1,4-dioxane migrating toward the Parklake area which is why 1,4-dioxane concentrations of 1,4-dioxane have been decreasing in this area. By the time Gelman were to gain its approvals to install the infrastructure for this system from all the parties that will be involved, and work through the significant local opposition to this plan, these trend data suggest the 1,4-dioxane concentrations in this area will be even less and the value of installing this system will diminish even further.



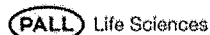
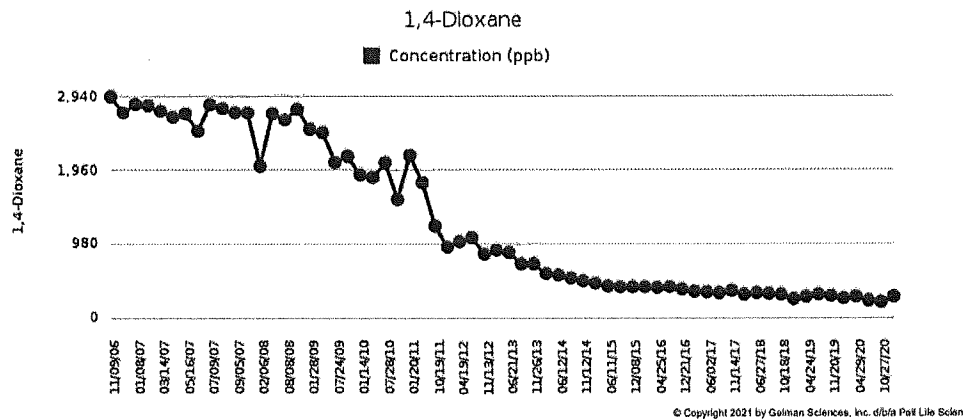
Gelman Sciences, Inc. d/b/a  
Pall Life Sciences  
642 South Wagner Road  
Ann Arbor, MI 48103-9019 US  
www.pall.com

### Analytical Data Graph

Printed: 04/07/2021

Well Name: MW-108s

Aquifer:	E	Date Installed:	10/24/2008	Boring Depth:	155.00 Feet bgl	Screen 1:	155.00 to 150.00 Feet
Map Location:	K-21	Well Driller:	Stearns	Ground Elevation:	Unknown Feet	Screen Length:	5.00
X Coordinate:	13278563.99	Well Type:	Monitoring Wells	TOC Elevation:	810.38 Feet	Screen 2:	Unknown to Unknown Feet
Y Coordinate:	285774.15	Sampling Interval:	Quarterly	TOC to screen bottom:	155.00 Feet		
Comments:							



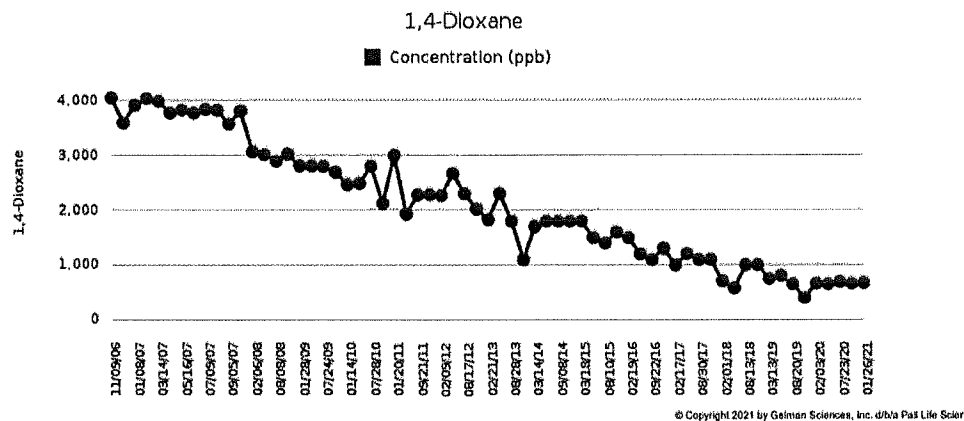
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Pall Life Sciences  
642 South Wagner Road  
Ann Arbor, MI 48103-9019 US  
www.pall.com

### Analytical Data Graph

Printed: 04/07/2021

Well Name: MW-108d

Aquifer:	E	Date Installed:	10/23/2006	Boring Depth:	228.00 Feet bgl	Screen 1:	182.00 to 177.00 Feet
Map Location:	K-21	Well Driller:	Stearns	Ground Elevation:	Unknown Feet	Screen Length:	5.00
X Coordinate:	13278564.36	Well Type:	Monitoring Wells	TOC Elevation:	810.84 Feet	Screen 2:	Unknown to Unknown Feet
Y Coordinate:	285780.64	Sampling Interval:	Quarterly	TOC to screen bottom:	182.00 Feet		
Comments:							



{03575414}  
806500

Our data indicate 1,4-dioxane mass from the Parklake area will migrate either toward the proposed Rose extraction area, or to a limited degree, east toward Maple Village. 1,4-Dioxane concentrations in the plume core to the east of the Parklake lake area have been declining. For example, the next key downgradient indicator well to the east is the MW-72 cluster. Concentrations at this location have been on a steady decline since their peak. MW-72s had a peak concentration of 168 ug/L and is now at 1 ug/L. MW-72d had a peak concentration of 3,788 ug/L and is now at 610 ug/L. 1,4-Dioxane trends at these locations suggest continued declines. These declines are related to Gelman's remedial efforts both upgradient (Wagner Road and onsite) as well as downgradient at Maple Village. It's important to note that Gelman has operated a long-term extraction along Wagner Road since 2005.

In sum, the highest concentrations from the Parklake area peaked in 2006 and have long-since migrated away from the area of the previously proposed Parklake extraction. There is no reason that the continued migration of 1,4-dioxane from the Parklake area at the current much lower concentrations toward either the MW-72/Maple Village area or the Evergreen Subdivision will cause any compliance issues.

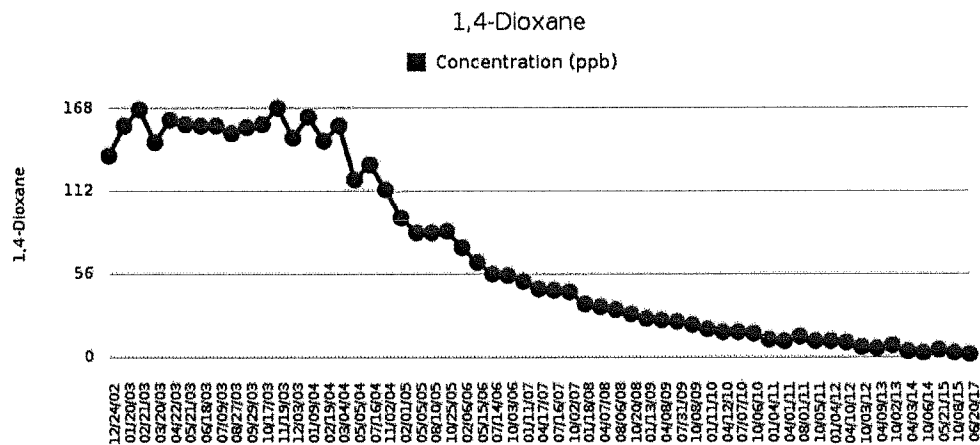
### Analytical Data Graph

Printed: 04/08/2021

[www.pall.com](http://www.pall.com)

Well Name: MW-72s

Aquifer:	E	Date Installed:	12/18/2002	Boring Depth:	123.50 Feet bgl	Screen 1:	123.50 to 118.50 Feet
Map Location:	K-25	Well Driller:	Sloans	Ground Elevation:	943.00 Feet	Screen Length:	5.00
X Coordinate:	13280450.66	Well Type:	Monitoring Wells	TOC Elevation:	942.93 Feet	Screen 2:	NA to NA Feet
Y Coordinate:	286914.03	Sampling Interval:	Semi-Annual	TOC to screen bottom:	123.50 Feet		
Comments:							





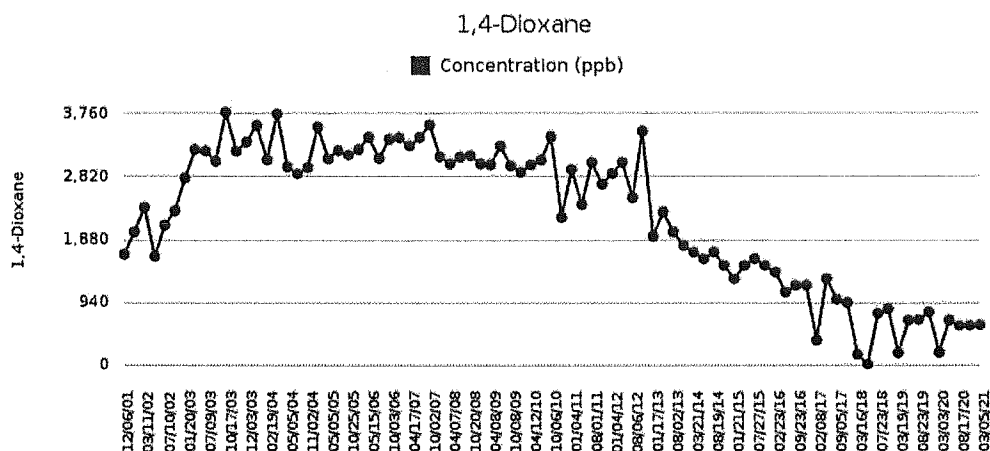
## Analytical Data Graph

Printed: 04/08/2021

www.pall.com

Well Name: MW-72d

Aquifer:	E	Date Installed:	11/28/2001	Boring Depth:	280.00 Feet bgl	Screen 1:	200.00 to 150.00 Feet
Map Location:	K-25	Well Driller:	Stearns	Ground Elevation:	943.00 Feet	Screen Length:	10.00
X Coordinate:	13280561.00	Well Type:	Monitoring Wells	TOC Elevation:	942.49 Feet	Screen 2:	NA to NA Feet
Y Coordinate:	285943.00	Sampling Interval:	Quarterly	TOC to screen bottom:	200.00 Feet		
Comments:							



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Available data support that most of the mass migrating from the Parklake area is, and has been, moving toward the Evergreen Area, more specifically toward the proposed Rose extraction area. The peak concentrations that have already migrated past the Parklake area have either migrated through the Evergreen Subdivision or are working their way through the Rose extraction area and towards the LB4 extraction well. These higher concentrations have not caused dispersion/diffusion of 1,4-dioxane beyond the existing PZ boundary at levels above 7.2 pbb, but extraction in the Rose area where higher concentrations are present to be used in concert with the existing Evergreen system is considered to be an important extra layer of protection in this area. Capturing the mass between Parklake and the Rose extraction area is not practical considering the presence of Jackson Road (a boulevard in this area), I-94 and a hotel.

#### On/Off-Site Extraction – Western Area

Gelman had previously offered additional, voluntary on and offsite extraction in the Western Area. This extraction is no longer part of Gelman's proposed 4<sup>th</sup> CJ amendments, with the exception of one new extraction well to be identified as TW-24. This well is in the area south of former Pond II (between former Pond II and the Green Pond). This well has been installed by Gelman and will be operated at a flow rate of 50 gpm.

Gelman has been extracting groundwater in on-site areas for nearly three decades. This work has resulted in the removal of a significant amount of 1,4-dioxane (see Figure 9). While there are remaining limited areas of higher concentrations of 1,4-dioxane, the voluntary extraction program from these localized zones is not required in order to meet Gelman's non-expansion objective or be protective of human health or the environment.

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# EXHIBIT E

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 DENYING MOTION FOR PARTIAL STAY OF ORDER  
TO ORDER TO CONDUCT RESPONSE ACTIVITIES TO IMPLEMENT  
AND COMPLY WITH REVISED CLEANUP CRITERIA**

This matter having come before the Court on Defendant Gelman Sciences, Inc.'s ("Gelman") Motion for Partial Stay of Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that Gelman's Motion for Partial Stay of Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria is denied.

IT IS FURTHER ORDERED that this order does not close the case.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Timothy P. Connors  
Circuit Court Judge