STATE OF MICHIGAN

IN THE COURT OF APPEALS

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

Plaintiffs/Appellees,

and

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

Intervenors/Appellees,

vs.

GELMAN SCIENES, INC., a Michigan Corporation,

Defendant/Appellant

Court of Appeals
Docket No. 357599

Lower Court
Washtenaw County Circuit Court
Case No.: 88-034734-CE

GELMAN SCIENCES, INC.'S OPPOSITION TO INTERVENOR-APPELLEES' MOTION FOR AN ORDER DIRECTING TRIAL COURT TO RULE ON MOTION SEEKING ENFORCEMENT OF ORDER ON APPEAL

_____/

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GELMAN SCIENCES, INC.'S BRIEF IN OPPOSITION TO INTERVENOR-APPELLEES' MOTION FOR AN ORDER DIRECTING TRIAL COURT TO RULE ON MOTION SEEKING ENFORCEMENT OF ORDER ON APPEAL

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INTRODUCTION

Intervenors-Appellees ("Intervenors") inexplicably ask this Court to grant jurisdiction the lower court correctly concluded it does not have to rule on a motion Intervenors know has no substantive merit. In so doing, Intervenors deliberately failed to provide this Court with Defendant/Appellant Gelman Sciences, Inc.'s ("Gelman") opposition to the trial court "show cause" motion on which Intervenors now seek a substantive ruling.[1] Intervenors' motivation for not providing Gelman's Opposition is obvious. Gelman's Opposition not only explained why the trial court did not have jurisdiction to hear their motion, it also described in detail Gelman's tremendous progress in implementing the required response activities. Thus, even if the trial court had jurisdiction to consider Intervenors' requested relief—which it did not—Intervenors' assertion that Gelman violated the "Response Activity Order"[2] has no merit. Intervenors' decision to burden this Court on the eve of oral argument is, frankly, inexplicable.

Intervenors couch their trial court "show cause" motion as one seeking only to enforce the Response Activity Order on appeal in a transparent ploy to evade the jurisdictional limitations imposed by this Court's partial stay order[3] and MCR 7.208(A). Both of these authorities

[1] Gelman welcomes the opportunity to provide this Court with Gelman's Opposition, attached hereto as **Exhibit 1**. Gelman's Opposition includes a "Summary of Response Activities" attached as Appendix A that provides a detailed status report on each aspect of the work required by the Response Activity Order. Gelman will refer the Court to the facts, arguments and explanations set forth in great detail in Gelman's Opposition to avoid repetition and to streamline this filing.

[2] The trial court's June 1, 2021 "Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria" ("Response Activity Order" or "RAO"). **Ex. 2**.

[3] This Court's July 26, 2021 Order granting leave to appeal and partial stay. ("Partial Stay Order"). **Ex. 3**. Intervenors inaccurately assert that Gelman sought to stay its obligation to implement all of the response activities required by the RAO. Intervenor Mtn., ¶ 3. In fact, Gelman only sought a stay with respect to measures added in exchange for Intervenor concessions that Gelman never received. Gelman never sought to stay the fully protective response activities Gelman and EGLE had agreed to in 2017 ("the 2017 Bilateral CJ"). Because this Court's Partial

unequivocally divest the lower court of jurisdiction to consider Intervenors' demand that an "aggressive time line" and deadlines be imposed. (*See* Section I.a., below; Gelman's Opposition, pp 4 - 8). The trial court quickly came to this obvious conclusion:

> THE COURT: Apologizing in advance for interrupting you but I have to. I told you you have five minutes, you've taken six. You have not convinced me that I can and you certainly have not convinced me that I should hear this motion at this time. I understand the arguments. I am happy to deal with the case. The Court of Appeals has taken jurisdiction, it's just like when the bankruptcy court takes jurisdiction.
>
> (June 16, 2022 Hearing Tr., pp 12-13).

Thus, the trial court was not misled by Intervenors' assertion that it was merely seeking enforcement of the RAO, and the trial court properly held that it lacked jurisdiction to modify the RAO while it was being reviewed on appeal.[4]

Moreover, Intervenors know full well that there is no substantive merit to their claim that Gelman violated the Response Activity Order. Receipt of Gelman's Opposition put Intervenors on full notice that Gelman has made extraordinary progress in implementing the required environmental work in the midst of an ongoing global pandemic marked by severe supply chain issues and despite the need to obtain third party access and other approvals/permits over which Gelman has no control. Intervenors also knew before burdening this Court that the Michigan Department of Environment, Great Lakes, and Energy ("EGLE")—the regulatory agency authorized by State statute and constitution with overseeing the cleanup—is pleased with

Stay Order only stayed the quarterly meetings, Gelman has proceeded with implementation of all of the response activities, including the "extra work". Gelman's Opposition, pp 16 – 19.

[4] The State agrees that modifying the Response Activity Order while it is on appeal by adding deadlines is not permissible. *See,* Attorney General Office's May 5, 2022 response to Intervenors' April 18, 2022 demand letter, p 2 ("we also believe that modification of the Order is unlikely during the pendency of Gelman's appeals.") **Ex. 4**.

Zausmer, P.C.
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Gelman's progress. EGLE's staff provides regular updates to Intervenors' legal counsel regarding the status of Gelman's efforts to implement the response activities described in the incorporated proposed 4th Amended CJ.[5] Not surprisingly, EGLE **has not joined** either Intervenors' trial court motion or their motion to this Court.

Gelman's extraordinary efforts to implement the response activities required by the Response Activity Order—even while pursuing its meritorious appeal of that Order—and the fact that Gelman previously reached agreement with EGLE on the fully protective 2017 Bilateral Consent Judgment should help allay any concerns this Court may have that vacating the Response Activity Order could have adverse environmental consequences. Gelman hopes this Court's resolution of Gelman's appeal will finally provide EGLE and Gelman with the opportunity to finalize and submit to the trial court for entry a fully protective bilateral amended Consent Judgment based on the more restrictive cleanup criteria.[6] *See* Requested Relief, p 12, below.

For these reasons and as explained in more fully below, Gelman asks this Court to deny Intervenors' motion.

Zausmer, P.C.
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[5] *Id*, p 2 ("As we also discussed, EGLE remains willing to continue regular meetings with Intervenor counsel to provide updates on the status of Gelman's implementation of the [Response Activity Order]."

[6] Also, as previously noted, the remedy put in place by the Third Amended Consent Judgment EGLE and Gelman negotiated, along with certain additional response activities Gelman has voluntarily undertaken, continues to be a protective, even when evaluated under the more restrictive revised cleanup criteria. Gelman continues to fully implement that remedy even while undertaking the additional response activities required by the Response Activity Order

ARGUMENT

I. The trial court properly found that it lacked the jurisdiction to consider, let alone grant, Intervenors' requested relief while Gelman's appeal is pending.

Intervenors' trial court "Show Cause" motion did not simply seek "enforcement of the order on appeal" as Intervenors' current motion innocuously suggests. Intervenor Mtn., p 1. Intervenors are not, for example, seeking to enforce one of the deadlines actually included in the Response Activity Order and/or the "proposed Fourth Amended and Restated Consent Judgment" ("proposed 4th Amended CJ") incorporated by the RAO. (Gelman has complied with all such deadlines). Rather, Intervenors sought to impermissibly modify the Response Activity Order while it was on appeal through the imposition of "a workable but aggressive time line" and specific deadlines for completing the required environmental work. Intervenors' Mtn., ¶¶ 5,6; *see also,* Intervenors' April 18, 2022 demand letter seeking to impose specific completion deadlines for listed response activities. **Ex. 5**.

It is undisputed that the requested time line and completion deadlines were not included in either the Response Activity Order (*that Intervenors drafted*) or in the proposed 4th Amended CJ (*that Intervenors negotiated*). Adding such requirements would therefore clearly constitute "additional or modified Response Activities" or "other actions" that this Court's Partial Stay Order expressly prohibited the trial court from ordering. (*See* the stayed Paragraph 2 of the RAO, **Ex 2**). Granting Intervenors' demand to impose such deadlines would unavoidably *amend* the Response Activity Order, and such relief is also expressly prohibited by MCR 7.208(A): ("after a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

the judgment or order appealed from. . . ." (emphasis added)).[7] (*See also* Gelman's Opposition, pp 4 - 8).

II. This Court should reject out of hand Intervenors' absurd interpretation of the Response Activity Order as requiring Gelman to "instantaneously complete" the required response activities.

It is now clear that Intervenors' motion is based entirely on an absurd and unachievable interpretation of the Response Activity Order's mandate to "immediately implement and conduct" the required response activities. Specifically, Intervenors' allegations that Gelman violated the Response Activity Order necessarily assume that phrase requires Gelman to *complete* (not just *begin*) the required work "*instantaneously*":

> Instead, [Intervenors] seek enforcement of the clear terms of the Response Activity Order, which required Gelman to "immediately implement" the activities described therein. Although Intervenors have asked the trial court to impose a time line, that request is an accommodation to Gelman because a strict reading of the Order requires 'immediate' implementation."
>
> Intervenor Mtn., p 5, ¶10. (Emphasis added)

Intervenors know full well that equating "immediate" with "instantaneous" would lead to an absurd and unachievable result, particularly in the context of an order to "implement and conduct" response activities that by their very nature can only be completed over time—precisely why the Response Activity Order included *quarterly hearings* to review Gelman's progress (stayed by the Partial Stay Order). *See* Gelman's Opposition, pp 8 -11. Such an interpretation of the Response Activity Order is also inconsistent with EGLE's satisfaction with Gelman's progress and the

[7] Thus, the cases cited in Intervenors' motion are inapposite as each involves enforcement of the original order on appeal, not an amendment to the order. *See e.g.*, the unpublished decision in *Kohler v Sapp*, 1999 WL 33441238 at 2 (holding that the lower court required defendant to comply with the oft-stated purpose of the order on appeal and did not amend it). **Ex. 6.**

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

intended meaning of the RAO as evidenced by the statements made by both the trial court and Intervenors' own lawyers before and after entry of the Order.

Gelman's Opposition explained in detail how Intervenors' interpretation makes no sense and would lead to an absurd result in the context of an order to implement technically and logistically complex environmental response activities requiring third party access and approvals/permits—many of which Intervenors have themselves delayed. (*See* Gelman Opposition, Appendix A).

The record demonstrates that under any reasonable interpretation of the word "immediately," Gelman has taken prompt action without delay to comply with the Response Activity Order's intended mandate. *See* Gelman Opposition, pp 8-16. EGLE, the state regulator vested with the experience, expertise, and authority to monitor the pace of remedial actions, including 34+ years overseeing Gelman's implementation activities at this site, is fully satisfied with Gelman's progress. EGLE knows what kind of completion timeline is possible given all of the various factors affecting the logistically complex environmental work required at this site.[8]

Finally, it is clear from statements made by the trial court and Intervenor counsel on the record that the Response Activity Order should not be interpreted to require the absurd and unachievable result Intervenors now promote.

The trial court, in describing its *sua sponte* order requiring Gelman to implement the proposed 4th Amended CJ to be drafted, never actually used the word "immediately". Rather the trial court expressed its desire for Gelman to "start" implementation of the response activities and

[8] Intervenors' continued demands for completion deadlines, particularly where their claimed entitlement to such relief is based entirely on an interpretation of the Response Activity Order that is completely at odds with EGLE's position, is undeniable evidence of their continued efforts to usurp EGLE's oversight responsibility for the site as part of their intervention.

Zausmer, P.C.
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"move forward" with the environmental work, likely while one or more of the parties pursued appellate review of the trial court's order. Likewise, the trial court's proposed annual review (subsequently changed to quarterly) is completely inconsistent with Intervenors' interpretation of the RAO as requiring instantaneous completion of the required work. Indeed, the trial court never suggested any timeframe or deadlines for completing the work listed in the 4th Amended CJ that the trial court intended to order. The trial court clearly just wanted to get the process started—a process that the trial court's decision to allow intervention and the Intervenors' elected officials' subsequent rejection of the eventual proposed global settlement delayed for more than four years. *See*, May 5, 2021 Evid. Hr. Tr., pp 31, 69-71, 77, 82, and 120. **Ex.7**.

During the subsequent hearing on Gelman's objections to Intervenors' proposed 7-day Order regarding the Evidentiary Hearing (which the trial court entered without modification), the City of Ann Arbor's attorney also recalled that the trial court intended for Gelman to begin the required work "immediately" not complete it instantaneously:

> So this came out of the hearing because we had proposed whether the title of the order should be called "interim," and Mr. Caldwell responded, 'Well, Judge, there's nothing interim about what we're being asked to do,' and you agreed saying, 'Yes,' you know, 'I'm asking you to immediately implement all these activities,' right? So it wasn't a, you know, 'Maybe I'll think about it decision.' It was, 'No, you are to immediately start implementing these activities." So that was our understanding of what Your Honor meant by final.

May 27, 2021 Hrg. Tr. re Objections to 7-Day Order, p 19. (Emphasis added). **Ex 8.**

Finally, the attorney for Washtenaw County voiced his support for the initially suggested annual reviews precisely because he recognized that the response activities included in the 4th Amended CJ could not be implemented overnight:

> [w]hen I look at some of the activities that are proposed in the current proposed Fourth Amended Consent document some of those activities would likely take a

Zausmer, P.C.
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> year anyways. In other words, to get some of the things constructed, and we probably wouldn't even have some of the decisions necessary to carry out all the activities within that year. And I think the wisdom of the Court saying, "Let's review it in a year," gives us and our clients some time to see what has happened during the year.

Id., at pp 80-81. (Emphasis added).

The County's experienced lawyer's realistic assessment of the process moving forward is completely inconsistent with Intervenors' current unachievable interpretation of the Response Activity Order.

The statements on the record by the trial court judge and Intervenors own legal counsel conclusively repudiate their current revisionist and implausible interpretation of the Response Activity Order as requiring Gelman to instantaneously complete all the response activities—an interpretation on which Intervenors' entire motion relies. Gelman's Opposition provides abundant evidence that it complied with the trial court's intended meaning of the RAO's operative phrase by starting to implement the required response activities without delay.

CONCLUSION AND REQUESTED RELIEF

Intervenors continue to seek to assume EGLE's role of the regulator overseeing the Gelman Site, an effort that began with their intervention into this then 29-year-old environmental enforcement action. The unrealistic deadlines for completing the work required by the RAO Intervenors seek to impose would not only impermissibly modify the order while it is on appeal, they would dramatically revise the entire structure of the Response Activity Order, a structure that is intended to allow EGLE to exercise its constitutional and statutory authority. It is no accident that neither the Response Activity Order nor the proposed 4th Amended contain completion deadlines for each response activity as Intervenors now demand. As Intervenors' legal counsel recognized during the course of negotiating the 4th Amended CJ, monitoring the pace and

Zausmer, P.C.
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prioritization of implementation activities under the Response Activity Order is the sole and exclusive province of EGLE, the state regulator vested with the experience, expertise, and authority for this purpose—not Intervenors. That EGLE must be permitted to exercise this oversight and discretion, and do so in coordination with Gelman, is enshrined in the content and structure of the proposed 4th Amended CJ the Response Activity Order incorporates. That proposed agreement rightfully leaves the timeline for implementation and prioritization of most response. activities to be aligned and coordinated amongst EGLE and Gelman in the manner that makes technical sense, reflects the realities of a years-long and highly complex remedial scheme, and which remains protective of public health and the environment.[9] Intervenors' continuing politically-motivated efforts to supplant EGLE as the responsible regulator of this incredibly complex site should not be tolerated at any point in the litigation, but consideration of such relief is particularly misguided while the Response Activity Order is itself on appeal.

In 2016, Intervenors sought intervention, claiming that they only wanted to have their voice heard in EGLE's essentially completed negotiations with Gelman over a modified remedy for the site. The 2017 Intervention Orders reflected that limited role and required Intervenors to file their proposed complaints if they wanted a larger role as actual parties. Intervenors opposed Gelman's application for interlocutory review of the 2017 Intervention Orders, relying on the limited role they provided in arguing that such review was unnecessary because there was no harm in letting them participate in the "already productive" negotiations. It was in this context and in light of the

[9] Gelman and EGLE have appropriately prioritized the few response activities for which hard deadlines were included and Gelman has complied with each of them. The proposed 4th Amended CJ, however, includes stipulated penalty provisions to address situations where a deadline is missed. *See* proposed 4th Amended CJ, Section XVII. If Gelman had failed to complete a task within the designated timeframe, *EGLE, not Intervenors*, would be entitled to seek per-day stipulated penalties, subject to the other terms and conditions of the proposed 4th Amended CJ and Gelman's right to engage the dispute resolution procedures of Section XVI.

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limited role the 2017 Intervention Orders conferred on Intervenors that this Court denied Gelman's 2017 application for interlocutory review.

The Intervenor-drafted Response Activity Order that is the subject of this appeal, however, superseded the 2017 Intervention Orders by bestowing full party status on Intervenors as "Intervenor-Plaintiffs" without requiring further action. (RAO, ¶ 4). The instant motion confirms that Intervenors view their new role as one mandating their direct oversight of Gelman's environmental activities with rights in that regard at least equal if not superior to EGLE's. *See e.g.*, Intervenors' Mtn., ¶ 5 (asserting that this Court's decision to stay the quarterly hearings involving Intervenors means that Gelman's compliance "has not been monitored on a regular basis" and that "[w]ithout this oversight" Gelman has an incentive to delay the work, completely dismissing EGLE's day-to-day monitoring and oversight of Gelman's compliance with the Response Activity Order.)[10] Intervenors' motion also reveals how unequipped Intervenors are to assume such a regulatory role as their demands for remedial deadlines display a stunning ignorance of what is required to implement environmental response activities and a complete misunderstanding of the incorporated 4th Amended CJ's structure and requirements.[11]

[10] Intervenors' April 18, 2022 demand demonstrates how Intervenors' view their role within the hierarchy of parties not that the Response Activity Order has granted Intervenors full party status. In addition to listing the specific deadlines Intervenors sought to impose on Gelman, Intervenors' April 18, 2022 demand letter ***instructs EGLE***—the actual Plaintiff in this 1988 enforcement action and the State agency authorized by State constitution and statute to oversee contaminated site cleanups—to "provide a time line for completion of its review [of any Gelman request for needed State approvals/permits] and identify what can be done to expedite the matter." **Ex. 5**, p 2.

[11] Intervenors' assertion that Gelman has not completed the RAO-required response activities fast enough also displays a remarkable lack of self-awareness considering that, but for their 2017 insertion into this enforcement action, Gelman would have fully implemented the agreed upon response activities in the 2017 Bilateral CJ based on the new cleanup criteria under EGLE's supervision years ago.

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Intervenors' entirely improper attempt to usurp EGLE's constitutionally and statutorily authorized role as Gelman's regulator provides additional justification for dismissing the Intervention in its entirety as a necessary consequence of vacating the Response Activity Order. At a minimum, in vacating the Response Activity Order, Gelman respectfully asks this Court to instruct the trial court to require Intervenors to each either dismiss their intervention or to file motions seeking to intervene as full parties to this action.[12] Such an instruction is necessary so the trial court and, if necessary, this Court in reviewing an application for interlocutory appellate review of the trial court's resolution of such motions, can evaluate—*for the first time*—the merits of allowing these local governmental entities and a private environmental advocacy group to intervene as full parties—"Intervenor-Plaintiffs"—into this now 34 year-old environmental enforcement action, and if so, what the scope of their regulatory role should be.[13]

Respectfully submitted,

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Dated: July 6, 2022

[12] Gelman would ask that such an instruction make clear to the trial court that these intervention-related proceedings must not interfere with the trial court's consideration of a bilateral amended Consent Judgment submitted by EGLE and Gelman.

[13] The need for such a process was elevated by the Michigan Supreme Court's recent denial of Gelman's application for leave to appeal this Court's dismissal of Gelman's Claim of Appeal, which appears to have effectively closed the door on any further appellate review of the 2017 Intervention Orders. **Ex. 9** .

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PROOF OF SERVICE

The undersigned certifies that on July 6, 2022, a copy of the foregoing document was served on each of the attorneys of record at their respective addresses listed on the pleadings via:

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/s/ Kathy Collings

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EXHIBIT 1

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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

Plaintiff,

and

THE CITY OF ANN ARBOR,

Intervenor,

and

WASHTENAW COUNTY,

Intervenor,

and

THE WASHTENAW COUNTY HEALTH DEPARTMENT,

Intervenor,

and

WASHTENAW COUNTY HEALTH OFFICER, JIMENA LOVELUCK,

Intervenor,

and

THE HURON RIVER WATERSHED COUNCIL,

Intervenor,

and

SCIO TOWNSHIP,

Intervenor,

v

GELMAN SCIENCES, INC., a Michigan Corporation,

Defendant.

/

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

GELMAN SCIENCES, INC.'S OPPOSITION TO INTERVENORS' MOTION FOR ENTRY OF AN ORDER TO SHOW CAUSE CONCERNING IMPLEMENTATION OF RESPONSE ACTIVITY ORDER

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GELMAN SCIENCES, INC.'S OPPOSITION TO INTERVENORS' MOTION FOR ENTRY OF AN ORDER TO SHOW CAUSE CONCERNING IMPLEMENTATION OF RESPONSE ACTIVITY ORDER

INTRODUCTION

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

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

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

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

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

ARGUMENT

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

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

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

> 2. The [trial] court retains continuing jurisdiction and will hold further hearings on a quarterly basis to review the progress of Response Activities and other actions required by this order related to releases of 1,4 dioxane at and emanating from the Gelman site and consider the implementation of additional or modified Response Activities and other actions.
>
> 3. The first quarterly hearing is scheduled for September 1, 2021 at 9 a.m.

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

III. There is no support for Intervenors' assertion that Gelman has violated the Response Activity Order by failing to "immediately" implement the required response activities.

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

a. This Court should not adopt Intervenors' absurd interpretation of the Response Activity Order.

Intervenors appear to interpret the Response Activity Order's directive to "immediately implement" the proposed 4th Amended Consent Judgment to mean that such implementation must somehow be "instantaneous." This reading is evidenced, for example, by their June 7, 2021 correspondence, in which they demanded that Gelman "provide the status of Gelman's efforts" to implement the identified Response Activities" *six days* after the Response Activity Order's entry. **Ex. 5** But Intervenors know full well that equating "immediate" with "instantaneous" would lead to an absurd and unachievable result, particularly in the context of an order to "implement and conduct" Response Activities that by their very nature can only be completed over time and with requisite permits and approvals—permits and approvals which Intervenors themselves are responsible for reviewing and issuing.

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

protective of public health and the environment. For instance, because the extent of the Eastern Area groundwater contamination above the new cleanup standard was well defined within the Prohibition Zone, Gelman, with EGLE's concurrence, prioritized installation of the Western Area delineation monitoring wells. 4th Amended CJ, Section V.B.3.b.[8] With the exception of two locations where Gelman has thus far been unable to secure access to third-party-owned property, Gelman installed all these wells by late fall 2021, **and the results from each well has shown no detectable 1,4-dioxane**. **Appx A**, pp 6-7.[9]

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

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

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

CONCLUSION

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

Zausmer, P.C.
32255 Northwestern Highway, Suite 225, Farmington Hills, MI 48334-1574

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

Respectfully submitted,

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/s/ Michael L. Caldwell

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Dated: June 13, 2022

PROOF OF SERVICE

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

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

/s/ Kathy Collings

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APPENDIX

A

APPENDIX A

RESPONSE ACTIVITY SUMMARY

AS OF June 13, 2022

A. Eastern Area

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

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

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

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

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

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

3. Installation and operation of Sentinel Wells on northern PZ boundary (Locations A, B, C)—4th CJ, V.A.3.a
    - Intervenor Proposed Completion Date: 2Q22.

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

4. Installation and operation of PZ Boundary Well at two locations on southern PZ boundary (Locations D, E)—4th CJ, V.A.3.b
    - Intervenor Proposed Completion Date: April 2022.

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

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

5. Installation and operation of Rose Well (and conversion of IW-2 to extraction well)—4th CJ, V.A.3.e.i
    - Intervenor Proposed Completion Date: 2Q22.

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

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

6. Installation and operation of Parklake Well—4th CJ, V.A.3.e.ii
    - Intervenor Proposed Completion Date: Apply for NPDES Permit by April 2022.

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

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

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

7. Installation and operation of Downgradient Investigation Wells (F, G, H)—4th CJ, V.A.5.f
    - Intervenor Proposed Completion Date: 2Q22.

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

B. Western Area

1. Completion of Western Area GSI Investigation—4th CJ, V.B.2.b
    - Proposed Completion Date: Intervenor May 2022.

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

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

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

- Intervenor Proposed Completion Date: June 2022.

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

3. Compliance with Western Area GSI objective—V.B.2.d
   - Intervenor Proposed Completion Date: July 2022.

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

4. Installation and operation of additional Western Area "investigation" wells—V.B.3.b
   - Intervenor Proposed Completion Date: April 2022.

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

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

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

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

5. Amend Western Area Monitoring Plan to identify the network of compliance wells for non-expansion objective—4th CJ V.B.3.c
    - Intervenor Proposed Completion Date: May 2022.

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

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

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

7. Installation and operation of Phase I extraction wells—4th CJ, VI.C.1
    - Intervenor Proposed Completion Date: May 2022.

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

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

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

8. Implementation of phytoremediation systems in former pond areas—VI.C.2
    - Intervenor Proposed Completion Date: 3Q22.

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

    - Upon issuance of the Response Activity Order, Gelman reengaged the national environmental firm that had performed the preliminary engineering design work for each of the four onsite remediation systems to complete the necessary engineering design work for each system.
    - Necessary trees reserved by Phyto subcontractor Q1 2022 based on refined engineering specifications.
    - Site prep work and utility began the week of May 6, 2022 after the remediation system area became sufficiently dry and proximate in time to the ideal tree planting season.
    - Tree wells were installed and air injection, water level monitoring lines, and engineered fill placed within each tree well the week of May 23, 2022, continuing over the Memorial Day weekend. The air injection lines are designed to facilitate tree root growth deep into the tree wells in order to access the contaminated water perched on top of a clay layer in this area.
    - After allowing the engineered fill to settle, tree installation was completed the week of June 6, 2022.
9. Implementation of phytoremediation systems in Marshy Area—VI.C.3
    - Intervenor Proposed Completion Date: 3Q22.

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

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

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

10. Installation of HSVE in former Burn Pit area—VI.C.4
    - Intervenor Proposed Completion Date: 3Q22.

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

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

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

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

4. Numerous Ongoing Operation and Maintenance Activities

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

- Pond cleanings in August of 2021 and June of 2022 – These cleanings included pumping the ponds dry, managing the accumulated iron sludge and inspecting the liner for damage (any necessary repairs made). Improved process to make routine cleaning more efficient.

- Upgrades to the treatment system including significant piping improvements, valve and pump replacements and other items, new chemical pumps.

- Cleaned debris from unnamed tributary to decrease hydraulic blockages.

- Updated processors controlling the treatment system. Provides more capabilities to control and monitor system.

- Energy improvements to reduce overall energy usage at the site: installation of variable speed pumps, lighting retrofits, compressor inspections/repair.

- Accommodation and installation of various inline probes for more complete measurement of key water quality indicators.

- Significant modifications to the hydrogen peroxide feed header to accommodate filters to address particulate matter in bulk hydrogen peroxide.

- The addition of a part time chemist to support the laboratory (currently have one full time and one part time chemist).

- The purchase and installation of new laboratory equipment including new auto samplers and other GS/MS equipment and related software updates.

- Hired a senior level operator.

- Pipelines were replaced to facilitate pigging of the lines.

- Designed backup generator for laboratory to protect sensitive laboratory equipment.

EXHIBIT 2

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-

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.

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

/

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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

Timothy P. Connors
Circuit Court Judge

Drafted/Presented By:

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

EXHIBIT 3

Court of Appeals, State of Michigan

ORDER

Attorney General v Gelman Sciences Inc

Docket No. 357599

LC No. 88-034734-CE

David H. Sawyer
Presiding Judge

Jane E. Markey

Mark T. Boonstra
Judges

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

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

Presiding Judge

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

JUL 26 2021
Date

Chief Clerk

EXHIBIT 4

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

P.O. Box 30755
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DANA NESSEL
ATTORNEY GENERAL

May 5, 2022

SENT VIA EMAIL AT NDUPES@BODMANLAW.COM

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

Dear Mr. Dupes:

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

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

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

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

Sincerely,

/s/ *Brian J. Negele*

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

EXHIBIT 5

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April 18, 2022

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

Dear Mike and Brian:

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

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

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

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

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

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

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

Proposed Time Line

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

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

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

[3] We understand that monitoring wells at Locations K, L, M, and N are already installed and that Locations I and J were in the planning stages as of January 2022.
[4] We understand that one extraction well has been installed and is operational, and the second well has been installed but is not operational.

Very truly yours,

Nathan D. Dupes

cc: Intervenor counsel

EXHIBIT 6

1999 WL 33441238
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Donald L.KOHLER, Sharon L. Kohler and Home Acres Skyranch, Inc., Plaintiffs-Appellees,
v.
Arthur W. SAPP, Jr., Defendant-Appellant,
and
Richard SHIELS, Sandra Shiels, and Robert Burch, Defendants.[1]
Donald L.W. KOHLER, Sharon L. Kohler, and Home Acres Skyranch, Inc., Plaintiffs-Appellees,
v.
Arthur W. SAPP, Jr., Defendant-Appellant,
and
Richard SHIELS, Sandra Shiels, and Robert Burch, Defendants.

No. 205029, 207901.
|
June 11, 1999.

Before: GRIFFIN, P.J., and WILDER and R.J. DANHOF[*], JJ.

Opinion

PER CURIAM.

***1** Defendant Arthur W. Sapp, Jr., appeals as of right following a bench trial verdict in favor of plaintiffs. Defendant also appeals by leave granted from a later order granting plaintiffs' motion for show cause. We affirm both orders.

Following a bench trial, the court determined that defendant breached a restrictive covenant which provided that no resident engage in commercial activity on his or her property. Defendant argues that the judgment was erroneous where the character of the neighborhood had changed and where plaintiffs had waived enforcement of the covenant. We disagree. A trial court's findings will not be set aside unless clearly erroneous. MCR 2.613(C). A trial court's findings are clearly erroneous when the reviewing court is left with a definite and firm belief that it would have reached a different result. *Wiley v. Wiley*, 214 Mich.App 614, 615; 543 NW2d 64 (1995).

Defendant never denied that the operation of his business was a violation of the restrictive covenant prohibiting commercial activity on residential land. He argues that the doctrines of laches and/or waiver apply. In *Rofe v Robinson (On Second Remand)*, 126 Mich.App 151; 336 NW2d 778 (1983), this Court reiterated that, for the doctrine of laches to apply, "it must be shown that there was a passage of time combined with some prejudice to the party asserting the defense of laches." *Id.* at 154, quoting *In re Crawford Estate*, 115 Mich.App 19, 25-26; 320 NW2d 276 (1982). Defendant points out that he has been conducting business on his premises since he began living there full-time in 1980. He argues that plaintiffs' failure to bring suit until some sixteen years later bars plaintiffs' action. However, while it is true that plaintiffs acquiesced to defendant's commercial use of the property, evidence showed that defendant's use substantially changed and increased in the 1990s and that, in 1996, defendant had as many as nineteen cars in front of his property. Plaintiffs brought suit shortly thereafter to enjoin defendant from further commercial activity. Thus, given the circumstances, it does not appear that there was an unjustifiable delay in bringing suit. In addition, defendant has not demonstrated how a delay caused him prejudice. Defendant testified that he repaired the automobiles more as a hobby than as a business and that it provided him with "rest and relaxation." Thus, there was no economic reliance on the business. Defendant also pointed out that in the past three years he either made no profit or approximately $3,000 a year. There are no fixtures or buildings that would need to be removed. Therefore, defendant has failed to show that he would be prejudiced.

Defendant maintains that, even if plaintiffs timely brought suit, enforcement of the restriction is barred by the doctrine of waiver. Defendant points to the fact that others in the neighborhood were guilty of violating the restriction and also points to the fact that the character of the neighborhood had changed over time. *Rofe* affirmed that "the right to enforce a restrictive covenant may be lost by waiver if by one's failing to act he leads another to

believe that he will not insist upon the covenant and the other is thereby damaged." *Id.* at 155. However, this Court in *Rofe* also stated that "where variations from deed restrictions constitute minor violations, the concept of waiver does not apply" and "[t]here is no waiver where the character of the neighborhood intended and fixed by the restrictions remains unchanged." *Id.* at 155.

***2** The evidence demonstrated that many other individuals had been operating businesses in violation of the covenant against commercial use. However, the evidence also demonstrated that these other businesses were innocuous. The trial court had an opportunity to view the neighborhood and concluded that no other property came close to defendant's in terms of commercial activity. While there was testimony that the character of the neighborhood had changed, the court was in the best position to determine the credibility of the witnesses' testimony. *State Farm Fire & Casualty Co v Couvier*, 227 Mich.App 271, 275; 575 NW2d 331 (1998). The court also viewed the neighborhood and stated that "it is clear from my view of the premises that this is a residential plat with homes, people living there" and that "the original intent of the developer here has not changed over a period of time. It's still a residential area." This Court will defer to the trial court's ability to assess the character of the neighborhood given the trial court's unique opportunity to visit the area. *Rofe, supra* at 156. Therefore, defendant failed to show that the character of the neighborhood had changed to such an extent that it would be impossible "to secure in a substantial degree the benefits sought to be realized through the performance of a promise respecting the use of land." *Morgan v. Matheson*, 362 Mich. 535, 545; 107 NW2d 825 (1961).

Defendant next argues that the trial court abused its discretion when it changed the original judgment and imposed additional burdens on defendant by way of a show cause order. We disagree. Whether the trial court was entitled to "amend" the original judgment is a question of law which is reviewed de novo on appeal. *Brucker v McKinlay Transport, Inc (On Remand)*, 225 Mich.App 442, 448; 571 NW2d 548 (1997).

Defendant appealed the trial court's judgment in favor of plaintiffs. While the appeal was pending in this Court, plaintiffs brought a motion to show cause why defendant should not be held in contempt for violating the court's order. While the court did not hold defendant in contempt, the court did point out that defendant had violated the spirit of the original order which prohibited commercial activity. The court then entered an order that provided that defendant remove all "wrecked or disabled vehicles from his property." MCR 7.208(A) provides, "[a]fter a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except by order of the Court of Appeals, by stipulation of the parties, or as otherwise provided by law." However, the trial court retains jurisdiction to enforce its orders. *People v. Norman*, 183 Mich.App 203, 207; 454 NW2d 393 (1989); *Shaw v. Pimpleton*, 24 Mich.App 265, 269; 180 NW2d 384 (1970). Defendant argues that the trial court violated this provision by imposing additional restrictions on him. Rather than amending the order, however, it appears that the court was merely clarifying the purpose of the order and mandating that defendant comply. On more than one occasion the court advised that the purpose of the order was to eliminate commercial activity. The spirit of the order was clear: defendant was not to engage in commercial activity. The court determined that defendant had not ceased operating the business. Defendant admitted that these vehicles were on his property before the trial began. They were in the name of his business. Defendant claimed that the vehicles were not being offered for sale, but were simply being repaired for other family members. The court was in the best position to determine defendant's credibility and whether the order was being complied with. *State Farm, supra* at 275.

***3** Finally, defendant claims that the trial court erroneously ordered defendant to remove the wrecked vehicles from his property in contravention of a township ordinance which provides that a resident may have up to three inoperable vehicles on his land. We disagree. Defendant has failed to preserve the issue for appeal because the issue was never raised or addressed by the trial court. *Environair v. Steelcase, Inc*, 190 Mich.App 289, 295; 475 NW2d 366 (1991). In addition, defendant failed to cite any authority for his position. Insufficiently briefed issues on appeal are deemed waived. *Dresden v. Detroit Macomb Hosp*, 218 Mich.App 292, 300; 553 NW2d 387 (1996).

Affirmed.

All Citations

Not Reported in N.W.2d, 1999 WL 33441238

Footnotes

1 A consent judgment as to these parties was entered by the court.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

End of Document

EXHIBIT 7

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,
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.
_____./

Case No. 88-34734-CE

EVIDENTIARY HEARING HELD VIA ZOOM VIDEOCONFERENCE

BEFORE THE HONORABLE TIMOTHY P. CONNORS

Ann Arbor, Michigan - Monday, May 3, 2021

APPEARANCES:

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TABLE OF CONTENTS

Ann Arbor, Michigan

Monday, May 3, 2021 - 9:09 a.m.

REFEREE SULLIVAN: So Judge, as you can see, we have a lot of people appearing on this case, so if we could keep the, only the people that are parties to the case with their video on and muted when they're not speaking. And I see a whole table full of people that I'm not sure who everybody is, but if everybody could just make sure that all the parties that are supposed to be here are -- are here, that would be really great.

THE COURT: Yes, that would be helpful.

Good morning, everyone. I know we have some observers, and you're welcome to observe. What Referee Sullivan was saying, if you're not a party to the case, if you could just take off your video and keep yourself muted. It's helpful for us to be able to see who's talking.

And then I guess, Mr. Negele, I'll just put it to you. Do we have the attorneys here? I can't -- there's so many people, sir.

MR. CALDWELL: Yes, Your Honor. This is Mike Caldwell on behalf of Gelman Sciences, and we are the group in the room, and I want to assure the Court that we are all wholly vaccinated, and I'm here, again, with Ray Ludwiszewski, Rachel Corley, Bruce Courtade on my far

right, and Jim Brody right behind me.

THE COURT: Okay, good. Thank you. Mr. Caldwell, I appreciate that. So I'm going to speaker view because I could hear you but I could not see you. There are so many people on screen. So I think that's the best way for me to go. But do you think we have all the attorneys here?

MR. POSTEMA: Yes, Your Honor.

MR. CALDWELL: All -- all of our attorneys, sir.

THE COURT: Mr. Postema?

MR. POSTEMA: Yes. If you'd like us to introduce ourselves on behalf of the City. Stephen Postema, City attorney. With me, Abby Elias. The attorneys presenting today will be Fred Dindoffer and Nathan Dupes.

THE COURT: Yes.

MR. POSTEMA: So thank you.

THE COURT: Let's --

MR. POSTEMA: For the City of Ann Arbor.

THE COURT: Yeah, let's do this. Lindsay, why don't you call the case, and then that way we can put all the appearances on the record.

REFEREE SULLIVAN: And just -- just before we get started with that, Your Honor, I know there's members of the press that are present, and if you could just let

them know that recording this hearing is inappropriate. There's only one recording and that happens at the -- at the Court, and if they want a copy of it, they have to go through the regular procedure.

THE COURT: All right.

REFEREE SULLIVAN: They're not --

THE COURT: I think that -- I think that's from the Supreme Court. So why don't we go ahead and have any members of the press, why don't you unmute yourself, put your video on, introduce yourself, and then make sure we understand that. And now's the time to do it.

MS. GOODING: Hi. My name's Lily Gooding. I'm a student at the University of Michigan and I'm also a reporter for the Michigan Daily covering this case.

THE COURT: And you're welcome to cover, but do you understand --

MS. GOODING: Yes.

THE COURT: -- if you want to record -- okay. Whatever notes you take is fine. And the reason for that is there's been, in the past, litigants who have taken portions of the recording and, as if that's the whole recording. Why don't tell us about that big screen behind you with that --

MS. GOODING: Oh, it's a --

THE COURT: -- California -- huh?

MS. GOODING: Yeah, it's a poster on my wall.

THE COURT: Oh, all right. Okay. Well, welcome.

Any other members of the press?

(No verbal response).

THE COURT: Okay. So attorneys, if you could, go ahead and put your appearances on the record.

THE CLERK: Judge, I need to call it.

MR. NEGELE: Good morning, Your Honor. Brian Negele, Assistant Attorney General, you know, representing the Department of Environment, Great Lakes, and Energy. I also have with me the author of our expert report, Kevin Lund. I see him onscreen at the moment now, too.

THE COURT: Thank you.

REFEREE SULLIVAN: Ms. Ostrowski has to call the case, Your Honor.

THE COURT: Oh. All right.

THE CLERK: Now on record, Frank J. Kelley versus Gelman Sciences, case number 88-34734-CE. This is set for an evidentiary hearing.

THE COURT: Thank you again. All right, sorry, sir. Go ahead and let's put the appearances on.

MR. NEGELE: I'll jump in again.

THE COURT: All right, thank you.

MR. NEGELE: Good morning, Your Honor. Brian

Negele, Assistant Attorney General representing the Department of Environment, Great Lakes, and Energy. And I have with, Kevin Lund, who is the author of our expert report.

THE COURT: Thank you.

MR. DINDOFFER: Your Honor, Frederick Dindoffer here representing the City of Ann Arbor.

MR. DUPES: Your Honor, Nathan Dupes, also on behalf of the City of Ann Arbor.

MR. POSTEMA: Stephen Postema with Abby Elias here also. Mr. Dindoffer and Mr. Dupes will be presenting testimony, and we have as our expert today for all of the Intervenors, Larry Lemke, who is on the screen, Your Honor.

MR. CALDWELL: Your Honor, once again, Mike Caldwell on behalf of Gelman Sciences. I'm with Ray Ludwiszewski, Rachel Corley, Bruce Courtade, and our expert, Jim Brody.

THE COURT: Thank you.

MS. METTE: Good morning, Your Honor. Erin Mette on behalf of the Huron River Watershed Council.

THE COURT: Good morning.

Mr. Stapleton, I can see you but I can't hear you. I think you're on this case.

MR. DAVIS: Your Honor, while you're tracking

down Mr. Stapleton, Robert Davis on behalf of the County Intervenors.

THE COURT: Thank you.

Mr. Stapleton, I can see your mouth moving. I can see you're unmuted, but we can't hear you. I think it's your computer. Can you hear us? Thumbs up if you can. We can't hear you. So I think it's in -- I've had this difficulty before. I think it's probably on your screen, down to the bottom right. The little arrow that goes up, if you hit above that, you see a speaker after that comes up. And you have to increase your volume.

While he's doing that, I so miss the courtroom, folks.

Referee Sullivan, can you help him?

REFEREE SULLIVAN: So he is connected by audio. And did you turn your actual computer volume up? So you can hear us, but we can't hear you. So it has something to do with your microphone.

MR. DAVIS: Maybe you should try logging back in.

REFEREE SULLIVAN: That's always an option.

MR. CALDWELL: Your Honor, while we're awaiting Mr. Stapleton's re-login, I don't know but we, if Keith is on yet, but we have another expert witness that is involved here. I can't see all the pictures.

THE COURT: And what is that person's name? Because Ms. Ostrowski can probably --

MR. CALDWELL: Keith Gadway.

THE COURT: Ms. Ostrowski, is he there?

REFEREE SULLIVAN: Nobody by that name.

THE CLERK: No one's in the waiting room.

THE COURT: So maybe, you know, call him and tell him to log in.

Ms. Ostrowski, why don't you let me know when Mr. Stapleton comes back in, okay?

THE CLERK: He's coming right now.

THE COURT: Okay.

REFEREE SULLIVAN: Mr. Stapleton, can you unmute?

No, it's not happening. Can you hear us, Mr. Stapleton?

(No verbal response; brief pause to address technical issues).

THE COURT: Referee Sullivan, same problem?

REFEREE SULLIVAN: Yeah. I'm not sure what the -- my only suggestion is he's going to have to try another device.

THE COURT: Yeah, I'm a little reluctant to proceed without all the attorneys here. I mean, I supposed if he can hear us.

REFEREE SULLIVAN: I don't think he can right now. He did before.

THE COURT: All right. Could we possibly have too many people in the room and -- is that what's causing the problem?

REFEREE SULLIVAN: No, Your Honor.

THE COURT: Okay.

REFEREE SULLIVAN: It's on Mr. Stapleton's end. It's something on his end.

THE COURT: Okay. Thank you.

REFEREE SULLIVAN: Yep.

(At 9:20 a.m., brief pause to continue to address technical issues.)

(At 9:21 a.m., proceedings resume.)

REFEREE SULLIVAN: Mr. Stapleton, can you hear us? Raise your hand if you can hear us. All right, excellent. That's part of it. Now, my guess is there's something wrong with your microphone that's in your computer. The only other suggestion I can make is if you have another device at least for the time being, an iPhone or an iPad, you can try that and you can see if we can get you connected that way.

(At 9:22 a.m., continued pause to address technical issues.)

(At 9:23 a.m., proceedings resume.)

THE COURT: Referee Sullivan, is he back? I can't see.

REFEREE SULLIVAN: He's back, but he cannot -- he can hear us. We cannot hear him still. And I gave him the advice of trying another device.

THE COURT: Okay, I think we're going to have to move forward.

So first of all, good morning. Thank you for joining. I've been reflecting a lot on our hearing today, and I've been re-reading a lot about Abraham Lincoln for various reasons, but one of the things that struck me is before he went on his political career, he was a very great trial lawyer. And the reason he was great is he could explain the most complicated things to a jury. And so that's really what I'm asking of the experts and the lawyers today, to explain to me the problem and what can be done, what should be done, how it can be done, and then for the parties to tell me what they think should be appropriate.

So with that, I'm totally open to an opening statement. I know the Court of Appeals weighed in I think on Thursday or Friday saying we should go ahead and proceed as scheduled, and then whatever decision I make will be subject for appellate review. So I guess I don't -- ah, are you in, Bill? No, we still can't hear you. So

I'm just going to have to proceed without you. I'm sorry. You know, try to find a different setup and everything, but there's so many people involved, Mr. Stapleton, I just, I have to -- I have to go ahead.

So with that I think Mr. Caldwell, if you'd like to make an opening statement, that would be fine, and then we'll go from there.

MR. CALDWELL: I appreciate it, Your Honor. I'm going to defer to Mr. Ludwiszewski on this.

MR. LUDWISZEWSKI: Your Honor --

THE COURT: First of all, good morning to you. I know we've got a difficult thing. It's hard to get a smile out of you, but we start with a smile because we're just really trying to find a resolution here, okay?

OPENING STATEMENTS - GELMAN SCIENCES - 9:26 a.m.

MR. LUDWISZEWSKI: Certainly, Your Honor. Well, I'm afraid I'm going to impose upon the Court for a few minutes. I'll try to be as brief as I can because I'm sure you understand I have an obligation to make my record. And then thereafter I have a third component of my opening that will be something that the Court hasn't heard and ruled on before that we would ask the Court think about as we proceed over the next few days.

We have slides. Is it acceptable to the Court if we project?

THE COURT: Absolutely. Lindsay, can you do the share screen?

THE CLERK: It's activated.

THE COURT: Okay, counsel, I can see this.

MR. LUDWISZEWSKI: Thank you, Your Honor.

Your Honor, we have three components to the opening. As I said, I'll be brief, especially with regard to the first two as I'm treading ground that we've all heard before and predominantly doing so to make sure that the record for any future appeal is preserved.

Your Honor, as you know, we believe that the Court lacks substantive power to hold this hearing on this topic. On the materials that were just given us on Friday, the Intervenors offer the Court three sources of authority for today's hearing. Oddly, or it may appear odd, we actually agree with each of the three powers that are identified by the Intervenors; however, they are facially inapplicable to today's situation.

Of course the Court is an arbiter in each suit between EGLE and Gelman. There is no dispute between EGLE and Gelman. We have a proposed consent decree since 2016 (unintelligible) Fourth Amended Consent Decree ready to go between those parties.

The Intervenors say that EGLE has a right to seek additional, go to the Court and ask for additional

response activities. Of course that's also true. There's no motion for EGLE to do such a thing.

And then finally, the Intervenors offer the fact that the Court has the ability to enforce its own judgments and orders, and again, we take no issue with that except of course this is not hearing to enforce any order of the Court. It is a hearing to either create a new or modify an existing order. So all of the authorities offered to the Court for this hearing are inapplicable, and thus we believe there's no substantive basis for it.

Now, at times in re-reading the Court's transcripts in preparation, it appears as if the Court is saying that it is not re-opening the Consent Judgment, but instead holding a hearing, taking evidence, and making findings of fact, and then thereafter will simply issue an order, and that will just in this case, coming off of this evidentiary hearing, be a remedy order.

We believe there are two fundamental flaws with that approach, Your Honor. The first is the long procedural history of this case. There was a trial, and that trial did not end up with a liability finding against Gelman. It ended up with a, in the federal practice, which is what I'm more used to, a directed verdict in Gelman's favor on most parts of the case, and some

remaining small elements that would have then gone to a defense. At that point, the parties, Gelman and EGLE, decided that a Consent Judgment could be negotiated, and it was, and that Consent Judgment has no liability finding against EGLE. So there's no liability finding which to hook the Court's remedy against EGLE.

And then finally, there's the procedural flaws in the hearing, the absence of standing by the Intervenors who are seeking relief, the absence of complaints, the absence of an opportunity to mount defenses, the failure of the designation of experts, the absence of discovery, all contravene the Michigan Rule of Evidence and rules of court and the Michigan and U.S. Constitution such that findings of fact would not be sustainable. But we've made those arguments, and now I've made my record, and I thank everyone for indulging me on it.

We have, would, however, like to conclude by, with something that the Court hasn't heard before, and we would ask the Court to think about the future precedent that would come out of this hearing as we move forward over the next few days.

The history of this matter so far is clear; Gelman and EGLE saw the change coming in the criterion, the cleanup standard. They met, negotiated, came up with a proposed Fourth Consent Judgment, and were essentially

ready to lodge that with the Court for entry when the engineers arrived. EGLE would not agree to that Fourth Amended Consent Judgment if it wasn't fully protective of human health, and if it wasn't compliant with Michigan law, didn't satisfy Michigan law.

When the Intervenors arrived it's, there's no question, the record's clear, Gelman strenuously objected to their participation, but I think the record's also equally clear, and I believe the Court's noted it several times on the record, that Gelman participated in good faith for four years in those negotiations. And I can't get into the back and forth with the negotiations obviously, that would be improper, but the documents, as the next slide shows are -- are the result of the documents, of the negotiations, are public documents now, and perusing through them it's clear that the Intervenors offered meaningful consideration to Gelman to make concessions to go beyond what was required by Michigan law and required by EGLE to protect public health and the environment. They agreed to the PZ orders that had previously been negotiated by EGLE and Gelman. They agreed to dismiss their intervention with any future participation. They agreed to Park Lake discharges into First Sister Lake. And they told the public, they told everyone that those documents should all be viewed

together; they're not in isolation. You can't peel them apart. It was a negotiated package.

And from the papers that were filed on Friday evening, it's clear that the engineers now want to revoke all their concessions and take all of Gelman's concessions for free. On top of that, they wish -- they want to add a wish list of additional demands to the agreement. We think that this is fundamentally unfair, but more important, Your Honor, it sets a troubling precedent for settlement negotiations overseen by this Court into the future.

Your Honor's well known as a strong supporter of settlement and for using innovative ways to get to that settlement. This is a very public case. Looking at the way this has proceeded, why would any Defendant in the future negotiate in good faith in settlement contexts under the auspices of this Court, knowing that going forward everything that they gave would be, would be expected, and everything that they thought would be stripped away? And why would any Plaintiff accept the results of those negotiations when they can instead skip the burden of proving their case, sidestep all of the defenses, hold on to every concession they got at the negotiating table, recover all the concessions that they gave at the negotiating table, and come to the Court with

a long list of additional desires, wishes, and see how much they're going to be rewarded by the Court for rejecting four years of hard work at the negotiation table that was recommended to them by their lawyers and their experts?

So, we ask the Court to consider that carefully. Consider the history here. Consider the incentives that it's creating as we move to the future. And with that, Your Honor, we're ready to move forward.

THE COURT: I appreciate the -- let's go ahead and take this off the screen if we can.

I appreciate that opening statement. And I will tell all the parties, because I, you know, I'm going in my fourth decade on the bench, and I've always tried to tell attorneys, don't over state your case thinking I'm going to, you know, figure out somewhere in the middle. Give me your absolute -- give me the argument where it hurts, what you can live with, because that's what is persuasive to me, because I know that people have differences of opinion, but the idea behind this was to get as many people at the table and have them talk. So I do appreciate your comments. I also, I'm not offended about your preserving your appellate review of what I do. I get it. I mean, we all trained as lawyers, so I think that's very good.

I'd like to hear if I could -- or did you want me, Mr. Caldwell, I see you looking at somebody. Did you want me to hear from somebody else on opening statement?

MR. CALDWELL: No, Your Honor. I apologize.

REFEREE SULLIVAN: Your Honor?

THE COURT: I'd like to -- yes?

REFEREE SULLIVAN: Your Honor, before we go any further, for the people that are at the table, if when they're speaking, if they could identify who they are, because we have no way of knowing who is speaking because the whole picture lights up.

And for the gentleman that was just speaking, if he could identify himself and spell his name, just to make sure -- there's going to be I'm sure a transcript that has to be produced, and we want to make it as perfect as possible.

THE COURT: Thank you.

Counsel, that's a good point. Counsel, if you don’t mind, if you could just say your name again and spell it for the record so that when the Court of Appeals looks at it, they'll know that you're the one that made the argument.

MR. LUDWISZEWSKI: Certainly. I apologize for not doing so at the beginning. It's the cost of having us all been together for so very long. The attorney that was

speaking, myself, was, my name is Raymond Ludwiszewski. The last name, Ludwiszewski, is spelled exactly as it sounds. L-u-d-w-i-s-z, as in zebra, -e-w-s-k-i.

THE COURT: I appreciate your humor.

MR. STAPLETON: Your Honor, William Stapleton. Can the Court hear me now?

THE COURT: Yes, we can. Thank you, Mr. Stapleton. I'm glad you're here.

MR. STAPLETON: Thank you. My --

THE COURT: I'm glad you're able --

MR. STAPLETON: -- was able to fix my --

THE COURT: -- to participate. Okay. I think I'd like to hear from the Attorney General next, please. Assistant Attorney General.

OPENING STATEMENTS - ATTORNEY GENERAL - 9:38 a.m.

MR. NEGELE: Yeah. Again, Brian Negele. If I need to spell it out, last name, N-e-g-e-l-e.

Your Honor, this has been a really unusual experiment in trying to craft revisions to a remedy. It's been evolving to like one degree or another for over 30 years. You know, over the nearly four years of negotiations my optimism, you know, waxed and waned, much like all the parties until shortly before we announced in August settlement, or status conference that we'd reached an agreement on the Fourth Amended and restated Consent

Judgment, and we described our plans to seek public comment on the Fourth CJ.

As we're all too aware, the public's comment on the proposed Fourth CJ were almost uniformly negative, which caused the elected officials of the local governor Intervenors to reject the settlement that their very experienced lawyers and experts had recommended to them.

So my statement is short. So, you know, here we are today with arguments about what more or what less should be in an order, you know, that would take place of that negotiated settlement. You know, again, we'd always prefer a negotiated settlement, but you know, we're here to take part in this process. Thank you.

THE COURT: Thank you.

I'm trying to think maybe from the County next?

MR. POSTEMA: Your Honor, I think the Intervenors have set up a, if I may, I think they have set up an opening statement that has a sequence to it that, that makes sense. If I'm wrong, certainly, and you'd like to hear from the County, that's up to you --

THE COURT: No, no, no.

MR. POSTEMA: -- but I would leave it up to them. I think they've set up a presentation. So if I'm incorrect about that -- otherwise I think the Intervenors have set up a certain methodology here.

THE COURT: You know, Mr. Postema, I appreciate that, and I also appreciate the fact when I did let Intervenors in, the argument that how many and, you know, and that. So I have appreciated that the Intervenors have communicated together and have tried to present their statement together, so I think that's entirely appropriate. So who will be speaking first on behalf of the Intervenors?

We actually heard from the two parties in the case who have indicated for the record they have reached accord. They object to the idea that Intervenors should have any say, and that will be subject to appellate review, although it's gone up and back a couple of times. But I have made that decision that I wanted that voice at the table, and I know that the Intervenors have been speaking, as the parties have indicated, for the last four years and had input into this. So go right ahead.

OPENING STATEMENTS - INTERVENORS - 9:43 a.m.

MR. DUPES: Thank you, Your Honor. This is Nathan Dupes, again, one of the outside attorneys representing the City of Ann Arbor. My last name is spelled D-u-p-e-s.

As Mr. Postema indicated, the Intervenors have prepared a joint opening statement, and if the Court will indulge me, we have a slide deck that we think will help

walk the Court through our position and orient ourselves.

THE COURT: I think, Ms. Ostrowski, they still have that ability to share, right?

THE CLERK: That is correct.

MR. DUPES: All right. Can everyone see my screen which the first slide is State versus Gelman Sciences, Inc.?

(No verbal response).

MR. DUPES: All right, I'm seeing Your Honor nod your head, so that's good enough for me.

THE COURT: Yes. Yep. I can see it. Thank you.

MR. DUPES: So, Your Honor, you know, you received a lot of paper from the parties on Friday. I think that's an understatement. So the goal of our joint statement is to really step back, figure out where we are, where we came from, and why we're here today. Before I do that, I just wanted to briefly address some of the points that Mr. Ludwiszewski made on behalf of Gelman, most of which I think are probably properly addressed in a closing argument, but nevertheless, I want to make a couple of comments in response to what he said.

First of all, as to the arguments that he's making for his record on appeal, rather than rehash what we've, what the Intervenors have already argued, we'd rely

on the arguments that we made in response to Gelman's motion for reconsideration as well as the other recent filings that Your Honor considered.

In terms of references to the proposed Fourth Consent Judgment that was made public, I just want to make a couple comments. First of all, as should be, as should go without saying, that was the result of years of negotiations. It was not the end all, be all of what the Intervenors wanted, and of course, as a product of negotiations, there was give and take, and I'm not going to go on to the specifics because that wouldn't be appropriate, but there was certainly never any representation I think to the Court, to the public that that Fourth Consent Judgment contained everything that the Intervenors believed was required by law or the science, which of course is what we're here today to talk about.

There was also references to this document that Gelman says that they had negotiated and finalized with EGLE at the time that Your Honor allowed us to intervene. Such a document has never been submitted to the Court for entry, and we object to any reference to negotiations over that document because, again, they were negotiations. Neither EGLE nor Gelman submitted such a document to the Court, and even today on the day of this hearing neither EGLE nor Gelman has tendered a proposed new Consent

Judgment or amendment that they both agree on. And in fact, if you look at even a cursory review of EGLE's brief that they filed on Friday, and Gelman's, today they are asking for very different things, and we'll talk about what those are later on.

And finally, just to orient ourselves, we are not here to talk about the extent of negotiations, what was offered, what was compromised. We're here today to respond to the purpose of this hearing as the Court set out, which is what is, what does the law and the science dictate should happen with this site? And that's -- and with that I'd like to just start by going through the slides. And Your Honor, I'll start our presentation, but one thing we've done, given the number of Intervenors and the number of subject matters, is we've divided our presentation today up among the attorneys based on subject matter, if you'll indulge that, which we think will make for a more efficient presentation.

So, getting back to why we are here, the first slide, Your Honor, is a picture of the Gelman site located on Wagner Road in Scio Township, and this is what we're here to talk about today. We're here because for decades Gelman, which was a manufacturer of filters, disposed of water containing high levels of 1,4-dioxane into the environment. They discharged it into the ponds that you

can see on the screen here, which were intentionally unlined so that the wastewater could percolate into the ground in the soils, and enter the groundwater. They were designed for that purpose.

Wastewater was also discharged into a, and burned in this former burn pit. I don't know if you can see my cursor there, but it's right next to Gelman Building 1. And wastewater --

THE COURT: And I can -- Mr. Dupes, I can see it. Thank you. This is --

MR. DUPES: Okay, thank you.

THE COURT: -- very helpful, and I think I've disclosed to all of you I'm quite familiar with the area.

MR. DUPES: Yes. And then, and I'll make this brief, Your Honor, and then finally there's the former spray irrigation field where Gelman would spray the wastewater onto an open area. And again, that would percolate down and eventually reach the groundwater.

In all told, there was hundreds of thousands of pounds of this substance that was discharged into the environment from this property. The Gelman -- one of the things you're going to be hearing a lot about today is the orientation of the site and the geology and the hydrogeology because those are important technical points that drive what we're asking for today. So the Gelman

site sits on top of a topographic ridge, meaning water slopes away from the site. And this area that the Gelman property, as well as the surrounding environs, is on a very complex piece of geology. There's sand and gravel aquifers interspersed with clay layers, and I think all the experts who are here today would agree that it's a highly heterogeneous site geologically speaking. And these features have complicated the efforts to remediate --

THE COURT: Mr. Dupes, I will interrupt you and everybody, because when I don't understand what you're saying to me, I ask for clarification.

MR. DUPES: Sure.

THE COURT: So when you're, that term you used about everybody agrees of the geological, you used a term. I don't know what that term means.

MR. DUPES: Heterogeneous, Your Honor?

THE COURT: Yes. I don't know what that means.

MR. DUPES: So I'll certainly defer the better explanation to our experts, but in laymen's terms, rather than have all of the subsurface be comprised of, simply sand or simply clay, right, there's pockets of sand and gravel which allow, you know, basically allow aquifers to form, along with pockets of clay, which are denser and essentially -- and typically prevent groundwater from

moving from place to place. So it's kind of like a Swiss cheese or, where it's all interspersed of different glacial deposits so that, the effect of that meaning that groundwater can flow in many different directions.

THE COURT: And is that why, you know, in this area why we have trouble getting septic systems sometimes and why we need to, you know, individual sites is because of the nature of that? That we have these pockets, like if it's clay we can't really have septic systems coming in, you know, individual properties, a well?

MR. DUPES: I think that's right, Your Honor. I can't speak to it in detail, but I believe that's right. it certainly complicates, you know, well drilling and --

THE COURT: Right.

MR. DUPES: -- and also, and again, the placement -- the placement where you would find groundwater is not necessarily where you'd expect.

THE COURT: Okay. Thank you.

MR. DUPES: All right, so that's the Gelman site.

But what pollutant are we here to talk about? We're here to talk about 1,4-dioxane. This is a technical fact sheet publically available from the U.S. EPA. It's an industrial chemical. It's a likely human carcinogen. And importantly I've got some language here highlighted.

It's highly mobile and does not readily biodegrade in the environment. There is no limit to the amount of 1,4-dioxane that can be dissolved in water. It also doesn't readily stick to the soils. And it doesn't biodegrade. So all of those things combined, again, have led to the difficulty in remediating this contamination and also explain why it's been able to spread so far and for so long.

THE COURT: Let me ask you another question if I may. So is this the same chemical that DOW Chemical was using that went into the river and they're still cleaning up on that, or is this different?

MR. DUPES: No, Your Honor, I believe you're referring to dioxin with an "I."

THE COURT: Yeah.

MR. DUPES: Right, so this is 1 -- I'm -- I assume the parties today are probably going to shorten it to dioxane, but this chemical is 1,4-dioxane. A different substance.

THE COURT: And why was it made? I mean, why did they use, when Gelman did this, why, you know, what was the purpose of it?

MR. DUPES: So Gelman made filters, medical filters, and dioxane was used as a solvent in the manufacturing process. So it was used in the production

of their filters, and then they were, that process created wastewater containing the dioxane, and then that was discharged into the environment, and from there it went into the ground, groundwater, flowed offsite.

THE COURT: Thank you.

MR. DUPES: You're welcome.

So most of us have probably seen this map before. This is the latest map of the Gelman remediation site and the plumes as prepared by the Washtenaw County Health Department. I'm going to zoom into a couple of these areas to just draw Your Honor's attention to particular spots. This is a zoomed in area of this map showing the Gelman site. You can see it sits right on Wagner Road. You can see a large concentration of monitoring wells. Those are the little circular legend with the black and the white, and then you can see a black and white cross, if you will, and then there's also wells with up arrows which are extraction wells which we'll talk about in a bit.

You can also see at the bottom of the page here, there's two arrows, one heading to the left, designated western area, and one to the right. And that's important because I believe from a Third Amendment to Consent Judgment forward, the remedial activities on the site have been divided into western area west of Wagner Road, and

eastern area, east of Wagner Road.

This is an area of the, this is the eastern area essentially, and you'll see, Your Honor, this red hash line around a good portion of the City of Ann Arbor. That is the infamous Prohibition Zone, which we'll talk about a lot today, which essentially prohibits the use of groundwater within the area. And that Prohibition Zone was first entered by this Court in 2005 in a reaction to Gelman discovering that unbeknownst to EGLE or to Gelman, the contamination from the Gelman property had migrated into a deeper aquifer and in fact had spread much farther than any of the parties had anticipated.

This next slide, I put this up here, Your Honor, to orient ourselves a little bit. You know, this is a 1988 case that the State of Michigan brought, and a Consent Judgment was first entered in 1992. And so one might wonder why we're here today with all these filings and argument, and really the main reason is because of what the State of Michigan determined in the fall of 2016, which is despite having, you know, some 20, 30 years of experience with the site and the contaminate concern, the Department of Energy, Great Lakes, and Environment, which we'll just call EGLE today, and at the time was known as the Michigan Department of Environmental Quality, it issued a finding of emergency which found that releases of

dioxane had occurred throughout Michigan that posed a threat to public health, safety, or welfare of its citizens and the environment.

The State went on to find that the extent of contamination is less than 85 parts per billion but greater than 7.2 parts per billion is unknown. And most importantly that the current cleanup criterion for 1,4-dioxane initially established in 2002 are outdated and not protective of public health. And by this rule which was signed by the governor October 27, 2016, this, the EGLE on an emergency basis reduced the cleanup criterion for dioxane for drinking water from 85 parts per billion down by more than order of magnitude, 7.2 parts per billion, and those rules were later made final, and as part of that final rule package, the State also lowered the existing cleanup criterion for the pathway that's protective of the interface between groundwater and surface water from 2,800 parts per billion to 280.

And I want to pause for a second, Your Honor, to talk about what cleanup criterion are. So cleanup criterion are established by EGLE and essential under EGLE's statutes, in particular Part 201 of the Michigan Natural Resources and Environmental Protection Act, which we're going to be talking about a lot today, and these are numerical values for a variety of contaminants that

reflect EGLE's judgment of what's safe essentially for a variety of pathways. So if there's a pathway for drinking water, all right, what level is safe in the drinking water? I mentioned the groundwater/surface water interface pathway, essentially the part where groundwater vents to surface water bodies, such as the Huron River. And there's other criteria that aren't as relevant today. For example, there's direct contact with soil, et cetera.

And so in our minds, and I hope you'll excuse the pun, this was a watershed moment for this site because the criteria that had been used for over ten years the State of Michigan now determined was woefully inadequate to protect public health. So that's really the reason why we're here today, Your Honor, is to talk about what needs to change as a result of that rather drastic change in cleanup criterion.

Just briefly, Your Honor --

THE COURT: Let me -- if you -- Mr. Dupes, could you go back to that?

MR. DUPES: Yep. Sure, Your Honor.

THE COURT: So this, these emergency rules that were filed with the Secretary of State, that's back in October of 2016?

MR. DUPES: Correct.

THE COURT: And so that was sort of the impetus,

am I right, that at least initially Gelman and the State started talking about this? And then when was it that I let the Intervenors in in this process?

MR. DUPES: Your Honor, to answer your first question, yes, the, Gelman and EGLE, I believe they already understood that the rules were going to be changed, so they started negotiating sometime before this, this finding of emergency and the emergency rules, but thereabouts.

And then I believe Your Honor started to allow the Intervenors in shortly after the emergency findings. I don't have the exact date, but it was in, I believe it was that fall.

THE COURT: You think within the same year?

MR. DUPES: I believe so, and somebody else, if -- I see Mr. Postema --

THE COURT: Mr. Postema, do you know, Mr. Postema, because I think you were one of the first Intervenors, or asking if you could step in, I'm just trying to make sure chronologically I understand what this is.

MR. POSTEMA: Yeah, I don't have the exact date, but we went in almost immediately I believe of that fall, and I'm being sent that information I believe right now, and so according to Ms. Elias, Attorney Elias, of course

who knows all of these dates, it would be February 2017, Your Honor.

THE COURT: Okay, so within four months?

MR. POSTEMA: Yes. It was immediately recognized, as Mr. Dupes will talk about it, all of the Intervenors recognized the importance of this order of magnitude and getting in before Your Honor, that's correct.

THE COURT: So Mr. Postema, I know you're on the speaker right now, and I know other attorneys probably have some views on what's being said --

MR. POSTEMA: Yeah.

THE COURT: -- and I understand that, but my recollection is that that decision to allow the Intervenors within this short time period as these negotiations, that that issue went up to the Court of Appeals as to whether you had standing at all to be involved, and that ultimately the Supreme Court either didn't -- I mean, that went up for appellate review; that's right, right?

MR. POSTEMA: I can have Mr. Dupes --

THE COURT: Okay.

MR. POSTEMA: Mr. Dupes can talk about that further, yes.

THE COURT: All right, thank you, Mr. Dupes.

MR. DUPES: Sure. And sorry for not having the exact dates, Your Honor, but I, I believe we moved to intervene that year, and then it may not have been granted until the following year as Ms. Elias pointed out.

But yeah, once Your Honor granted intervention, Gelman applied for leave to the Court of Appeals. That was denied. And they appealed that denial to the Michigan Supreme Court, that was denied. And then we engaged in the settlement negotiations which, you know, Your Honor is familiar about for the ensuing several years until it got to the point of the presenting the proposed Fourth Amended Consent Judgment.

THE COURT: But that, but that legal background is important to me because it was not the case where the Court of Appeals affirmed me; they just denied leave on it. And the same thing with the Supreme Court. So they kind of left it in our hands. Similar, you know, the same kind of thing that happened this week where they said motion for immediate consideration is granted but the appeal is denied, and they will look at whatever we, whatever ruling I do, whatever you all argue, and that anything could happen in the Court of Appeals or the Supreme Court based on what we do here in this hearing. Yes?

MR. DUPES: That's fair, Your Honor.

THE COURT: All right. That's helpful for me to understand. Thank you.

MR. DUPES: All right. So again, just to, back to the topic of where we are, how did we get here, what we talk about in our brief, Your Honor, the current court orders, and that's important because as we've explained in our response to the motion for reconsideration, this is not just a simple story of a bilateral Consent Judgment that's went on its merry way for years without change or without other orders. The Consent Judgment was first entered in 1992. It's been amended three times. This Court entered several separate orders that in our opinion significantly changed the remedial obligations on Gelman, and we have them listed here --

THE COURT: Mr. Dupes, I'm going to --

MR. DUPES: -- and just to --

THE COURT: I'm going to interrupt you again because I want this record clear for the Court of Appeals. When you say "this Court entered," you mean the Washtenaw County Trial Court? I'm the third Judge on this case.

MR. DUPES: That's correct, Your Honor.

THE COURT: Okay.

MR. DUPES: I believe it was your -- I believe it was your predecessor, Judge Shelton, who entered each of the remediation enforcement order, the Unit E order,

and the PZ order.

THE COURT: Thank you.

MR. DUPES: So briefly, the remediation and enforcement order required Gelman to submit a plan to reduce dioxane in all affected water levels -- or excuse me -- in all affected water supplies below acceptable levels within five years, as well as install additional monitoring, extraction, treatment, and increase pumping rate, and, for reasons we'll discuss, Gelman didn't, was not able to achieve that cleanup within the five years that it anticipated.

In 2001, this again was another significant moment in the history of this case, Gelman had discovered that the plume that it had thought that it had a pretty good handle on at the time, had migrated to a deeper aquifer, which the parties have called Unit E, and it was that finding that led Your Honor's predecessor to enter an order first creating the Prohibition Zone, which we're all familiar with, which as I said, is an area, a large area that restricts use of groundwater.

The Prohibition Zone was further expanded already, and once in 2011 with the Third Amendment to Consent Judgment after the plume contamination had migrated in yet another unexpected way.

And we point these things out, Your Honor,

because we now hear Gelman explaining to the Court that they have a very good handle on where the plume is, where it's going to go, and one need look no further than the history of this case to show that for right or wrong, you know, the EGLE, Gelman, everybody looking at the case wasn't able to predict exactly where this plume was going to go, and that's for a lot of the reasons we talked about because of the geology of the site, because of the unique characteristics of dioxane which make it difficult to remediate, and so it's a complicated problem, and it's one that still warrants serious attention and additional activities to handle it.

As Your Honor pointed out in a recent hearing, we're talking about the pollution of our water, right, at bottom, and although the Prohibition Zone may be preventing anybody from drinking contaminated water, you know, it effectively condemns a large area of the City of Ann Arbor and its environs and takes away the beneficial use of that groundwater.

Briefly, our legal, the legal framework we're here to talk about today is really governed by two principal sources: Part 201, which deals with remediation of contaminated sites; and of course the existing set of orders and judgment that the, this Court, the Trial Court has entered over the years.

What I have -- what I have here on the screen is probably the most relevant section of Part 201 for today which talks about the duties of a owner or operator of a property that's a facility, and "facility" is a term of art in the statute which means that there are concentrations of one or more hazardous substances at the property in excess of the cleanup criteria for residential use that we talked about. And there's no question that the, Gelman is the owner of the property at issue, and that the property is a facility under that definition.

So under MCL 324.20114, a party -- and another term of art is a "liable party," right, so this describes the obligations of a liable party for contamination at the party's property, and these include determining the nature and extent of the release at the facility. So Your Honor's going to hear a lot about the term delineation; delineate the plume, delineate the contamination. And delineation is essentially a fancy way of saying determining the nature and extent of the contamination.

Moving down to subsection (c), "Immediately stop or prevent an ongoing release at the source." There's some disagreement here among the parties about whether in fact there's an ongoing release, but our contention is that, you know, by, at least by purposely taking contaminated wastewater, putting it into storage lagoons,

and letting it seep into the environment, that that certainly is considered a release for purposes of Part 201.

Subsection (d), "Immediately implement measures to address, remove, or contain hazardous substances that are released after June 5th, 1995." You know, Gelman will argue that it's never -- it hasn't used dioxane since the eighties, and our position is that the word "release" in the statute is extremely broad, and includes leeching, omitting, spilling and, and I think the evidence will be clear that the Gelman site continues to be a source of an ongoing release of this hazardous substance.

And finally, subsection (g), "Diligently pursue response activities necessary to achieve the cleanup criteria established under this Part."

There are, EGLE has promulgated rules under Part 201, Your Honor, and there's a couple that we want to draw your attention to. These are from the Michigan Administrative Code, Rule 299.3, and these we call the aquifer protection rules. And you can see down in subsection (5) and (6), essentially what these rules provide, that the horizontal and vertical extent of a plume of contamination in an aquifer shall not increase after remedial actions have been initiated, and that remedial actions to address remediation of an aquifer

shall provide for removal of the hazardous substance from the aquifer, either through act of remediation or as a result of naturally occurring biological or chemical processes. And there is a, there are caveats here, except as provided in certain other sections of Part 201 which deal with waivers, waivers from these rules.

This is, this is just the front page of the currently existing last amendment to the Consent Judgment. This is the Third Amendment, which entered in 2011. And this is just one provision of the Third Amendment, but it's probably one of the most important ones for today, and that is what are the objectives that were set out and established in the Consent Judgment? And the main one I think that's the important one for today in the Third Amendment is the systems that Gelman shall install shall be to, quote:

> "Extract the contaminated groundwater from the aquifers at designated locations for treatment (as required) and proper disposal to the extent necessary to prevent the plumes of groundwater contamination emanating from the GSI Property..."
>
> Which is Gelman's property:
>
> "...from expanding beyond the current boundaries of such plumes, except into and

within the Prohibition Zone and Expanded Prohibition Zone."

At this point I think it's important to talk about where the parties sit today, because it'd be easy to think that with all the papers that have been submitted and the arguments that you've heard today, that the parties are on different planets, and, and actually, Your Honor, in large part the parties are more aligned than you might think, and I think it's important to start by, before talking about what we disagree with, you know, where are areas that we agree.

THE COURT: Mr. Dupes, let me interrupt you again. You're going exactly what, from my standpoint my, what I feel is my responsibility, I really do want to see where we are in agreement, and then when I hear from the experts, you know, I really -- I don't know what this consent, proposed Consent Judgment was. You know, I don't know the details of it. You just told me you had reached and you were going to go out to the public with it. But when I hear from the experts, I'd like to hear -- let's use that as a starting point, what's good about the proposed Consent Judgment, as you said, what we agree on, and then where are the disagreements and why. And so I really do appreciate you saying, "Let's go back to where we are, where we agree with the proposed Consent Judgment,

and then where do we disagree." That helps to, for me, to understand the conversation better. So thank you.

MR. DUPES: Sure, Your Honor. And our experts are prepared to do just that, so.

Just to briefly go over from the attorneys' standpoint where we are, where EGLE is currently arguing for entry of the proposed Fourth Consent Judgment as was made public with some minor modifications, the Intervenors, as you know, agree with what's in the proposed Fourth Consent Judgment, but want some modifications to certain language in there, as well as some additional response activities. And then Gelman's position today is that less than what was in the proposed Fourth Consent Judgment that was made public should be exceptive and protective.

But, as I said, there are significant areas where we're aligned. All parties agree, even Gelman, that the existing regime must be changed in light of the changed cleanup criteria. So every party before you today has submitted or argued for some type of change to the current orders in place. So that's not disputed. We're not here to talk about whether it should be changed; it's just the scope of those changes.

All parties agree what the objectives should be in a new cleanup order. That's -- that's huge. The

parties are not disagreeing on fundamental objectives for the site.

And then you'll hear about this in more detail when we get to our experts, Your Honor, but all parties agree to many of these specific response activities; many of them.

And this, this last point, I've got it underlined because I think it's key and I hope Your Honor keeps it in mind throughout today and the rest of the hearings, that what the Intervenors are seeking beyond all of this are matters of degree and not kind. Okay. So for example, the proposed Fourth Consent Judgment would require new monitoring wells. Okay. The Intervenors are simply asking for several additional monitoring wells. The proposed Consent Judgment, Fourth Consent Judgment, and even today the proposed Consent Judgment that Gelman wants Your Honor to order includes additional extraction, additional pump and treat of groundwater. Well, the Intervenors are just asking for a little bit more of that and with some different termination criteria as you'll hear about. So I think that's important to point out is that we are not walking in here before Your Honor and asking for things that are drastically different than what's already on the table.

It's also important to clarify, given what was

in some of the briefing that you read, Your Honor, is what the Intervenors are not seeking through this hearing. We're not seeking restoration of the aquifer. Okay. We and our technical experts recognize that given where the plume is today and the complexity of the site, that it would be infeasible to remediate the aquifer down to non-detect or even to the new drinking water standard.

We're also not asking for, that Your Honor will, you know, take out a pen and wipe the Prohibition Zone off the map.

I have this next one in quotes because I pulled it from Gelman's brief, we are not asking for a blanket of additional monitoring wells. Okay. There is some, I believe 140 current monitoring well locations at the site, Your Honor. The proposed Fourth Consent Judgment would require an additional 14 monitoring well locations, and the Intervenors are asking for eight additional locations beyond that in terms of monitoring wells. So we are certainly not asking to blanket the site in wells.

And I'm going to pause there for one second to clarify one point. When I say monitoring well locations, Your Honor, these wells, many of them are nested, which means that they have well screens at multiple depths, so either shallow, close to the ground surface, intermediate, a little bit farther below the ground surface, or deep.

THE COURT: Can you show me, or can you tell me where those proposed eight additional monitoring wells are located, or would be located?

MR. DUPES: Sure, Your Honor. Let me jump ahead briefly.

THE COURT: That's okay. If you're going to get to it --

MR. DUPES: We will get to it, Your Honor.

THE COURT: Yeah, that's fine.

MR. DUPES: In fact, let me do this.

THE COURT: Sure, no that's okay.

MR. DUPES: Okay.

THE COURT: You know, if you're going to address it later, that's fine.

MR. DUPES: Okay. All right, we will definitely address it in just a little bit.

And finally, the current Consent Judgment, Your Honor, has a requirement that Gelman prevents concentrations of 1,4-dioxane from migrating down gradient or east of Maple Road, in excess of the then existing groundwater/surface water interface criterion of 2,800 parts per billion. We are not arguing that that containment objective should be maintained with the new cleanup standard.

So again, I point these things out I hope to

impress on the Court and to Gelman and to EGLE that again, what the Intervenors are seeking are not beyond the pale. In our view, they are reasonable, additional asks to address the new cleanup criteria, and are fully supported by the law and science as we'll explain.

All right, so I mentioned that the parties are all in agreement on what the objectives for the system should be going forward, Your Honor, so here are the objective in summary form in the proposed, and I'll just call it for ease of reference, and so with the other attorneys, the proposed Fourth CJ. This is the document that was presented to the public and was voted upon by the Intervenors. So for the eastern area the objective would be Prohibition Zone containment, which is consistent with what, the objective that's already in place through the Third Amendment, meaning Gelman would be required to take actions to prevent 1,4-dioxane from migrating beyond the Prohibition Zone boundary in excess of 7.2 parts per billion, the new cleanup standard.

GSI, again that stands for groundwater/surface water interface, Gelman would need to prevent concentrations of 1,4-dioxane from venting into surface waters above the GSI criterion, or as otherwise allowed by Part 201.

In the western area there, there is no

Prohibition Zone. Right. The Prohibition Zone lies entirely on the eastern area of the site. There the non-expansion objective is for Gelman to prevent the plume from expanding beyond where it currently is. Simply stated. And there are compliance wells in the western area that are used to document whether Gelman is meeting that non-expansion objective.

GSI, essentially the same thing that's required for the eastern area, preventing venting into surface waters above that GSI criterion.

And then the source area, and when we talk about source area, Your Honor, we mean Gelman, the site, the Gelman property. The obligation is to prevent non-compliance with the western area objectives. So essentially take actions that are necessary to prevent the source from triggering non-compliance with that western area, non-expansion and GSI objective.

So all the parties before you today, Your Honor, agree under these objectives.

All right, so now we're going to go into a little bit more detail, Your Honor, on what's in the proposed Fourth Consent Judgment and what are the additional things that the Intervenors are asking for. And here I'm going to deal with --

THE COURT: Mr. Dupes, I'm going to interrupt

you for a minute.

MR. DUPES: Sure.

THE COURT: And I apologize. It's just that this is really helpful to me to be able to have this exchange because I'm the one that has to make the decision. And the reason I'm interrupting is the Intervenors are saying, "We are proposing these modifications," but the Intervenors already had signed off on a proposed Consent Judgment. So is it the position you're trying to take in the various clients that Intervenors have? I mean, nobody -- has anybody even signed off on these proposed changes that the attorneys are arguing? Or is it just like, you know, that's -- that's my difficulty because, you know, in good faith I listened to all of you, and then you went to your clients and your clients rejected it. So as I sit here today, how do you determine what you're asking for, and how is that going to, other than the fact you recognize, okay, we're in the court system now, but you're coming back with some proposed changes, and yet I don't even have -- I don't even have -- I don't even know if the parties you represent agreed to that. Do you know what I'm --

MR. DUPES: Yes. That's a very fair question. Let me answer that and also clarify some points that were made earlier.

Your Honor, as to the Fourth, the proposed Fourth CJ that was made public, I think it's an overstatement to say that there was any signing off on it. I think what the Intervenors and the experts said was that in our mind it represented the farthest that the parties could really come through negotiations, and understanding the uncertainties of everything else in the case, that we were at that time prepared to call, you know, an end to negotiations saying we've resolved as much as we can through this process, and that's why we asked Your Honor to make the document public.

Now, of course as Gelman and EGLE have known from the beginning, the Intervenors are public bodies and can't approve a settlement unless they vote on it, and again, there was a, as Your Honor encouraged and we thought was appropriate as well, there was a robust public comment period where a number of concerns, valid concerns were raised by members of the public, and I believe all of our clients heard those, and that informed their vote on that document. And, but again, I don't, I think it's a mischaracterization to say, which sometimes we hear from the Gelman side, that that was a wholesale rejection of the proposed Fourth Amended Consent Judgment because I think, again, what you'll hear today, Your Honor, is what are the additional things that we think, and when I say

"we" I'll explain where we, why we get there, that would make this document acceptable and appropriate and protective of public health, the environment, and meet Gelman's obligations under the law. So again, that proposed Fourth Amended Consent Judgment was a product of settlement. It was not something that we said was all that should be required, but in light of the negotiations and litigation, that's what we were prepared to put before the clients for approval.

So then you asked me also, Your Honor, where do we get these things that we are currently putting before you as what we want now, and again, it's from input from our clients, and input from the comments from the public, and most importantly, input from our experts on what they believe is technically feasible, appropriate, and necessary to address the change in cleanup criteria.

THE COURT: Thank you, I --

MR. DUPES: And so --

THE COURT: You know, I'm asking you some very direct and hard questions, and I appreciate your candor, so you've answered my questions on that. Thank you.

MR. DUPES: Okay. You're welcome, Your Honor. I'm happy to. You're the most important person here, Judge, so don't apologize for interrupting me. Believe me.

THE COURT: Oh, I am not the most important person here. It's whatever three judges you draw from the Court of Appeals and the two of them who agree are the most important here. So we all know what we're doing here. We're just -- this is just establishing a record that will get appellate review. We all know it's going to happen. But thank you.

MR. DUPES: Thank you, Judge.

All right, so I am going to, Your Honor, talk about the Prohibition Zone and delineation, and at that point I will turn it over to some of my colleagues to talk some of the other components of what we're here to talk about.

So, the Prohibition Zone. The proposed Fourth Consent Judgment, Your Honor, included an expansion of the existing boundary of the Prohibition Zone in order to account for the change in cleanup criteria from 85 down to 7.2. The proposed expansion would be an approximately 25 percent increase in the area covered by the zone, and it would be an expansion both on the north side of the existing PZ, as well as the south side. Again, I have this underlined to emphasize that all parties agree that some expansion of the PZ boundary is appropriate to account for the change in the criteria, and again, provided that it's part of a package of additional

response activities that Gelman would agree to do. The Intervenors don't believe that an expansion by itself is appropriate. It needs to be a part of an entire remedial activity package and set of improvements.

So what is, what are the Intervenors proposing?

The Intervenors would be willing to accept the entirety of the northern expansion proposed by Gelman, but argue for a more limited expansion in the south. And so what do I mean by that?

This Your Honor, is a figure from the expert report that the Intervenors submitted to you on Friday, and this shows, among other things, the redline being the current Prohibition Zone boundary, and then -- or excuse me; actually this includes the expanded as well, but you can see in the blue shading the areas where the Intervenors believe is appropriate for an expansion. So you can see in the north the entirety of that proposed expansion is accepted, but in this south this is where we part ways with the other parties. The green area is the larger expansion to the south, and our experts believe that only the smaller blue area on the south is warranted because of the existing data, and in particular something called the concentration gradient, which essentially means that at this area of the plume there's a sharp drop off, so if you picture it going abruptly down a hill, Your

Honor, the space between 85 parts per billion and 7.2 parts per billion, which is the change in criteria, it drops off relatively quickly. So we don't believe that Gelman's argument for a greater buffer zone is technically justified, and we'll explain that.

Delineation. This is another big category, and again as I said this is tied to that Part 201 obligation of determining the nature and extent of the release. So given the change in cleanup criteria, all parties agree that additional monitoring wells need to be installed. So the proposed Fourth Consent Judgment would implement 14 new monitoring well locations, and I'll show you where those are, Your Honor, as you requested. That's coming up I believe in the next slide. The only caveat, and I'll go back a slide quickly, is Monitoring Well E, which you can see on the bottom of this slide, we have an arrow bumping it up. The Intervenors believe that should be moved to optimize its ability to track 1,4-dioxane, and our expert will explain why that's the case. But with that exception, the parties are in agreement on all of these well locations you now see before you.

So this, this map here was an attachment to the proposed Fourth CJ, and you can see Monitoring Wells A through N, so that's the 14 monitoring well locations, the parties are in agreement on installing each of those

additional monitoring well locations. And again, as I said, in any one of those, in several of these locations they may be nested, meaning that there's actually multiple screens. So Gelman would be monitoring for dioxane at multiple depths in the aquifer. For simplicity's sake, I'm referring to locations as opposed to potential number of wells which could be greater. So those are the wells, those are the well locations we agree with, except with the exception of that location E moving in a little bit.

So one of the things that the Intervenors request in addition to what was in the proposed Fourth Consent Judgment, well the first thing we're asking for, Your Honor, is for Gelman to produce a map of the extent of contamination, and that's 1.0 parts per billion, 7.2 parts per billion, and 280 parts per billion concentration lines. And let me just quickly bump ahead so I can tell you what that, or show you an example of what that means.

So here is an example of an isoconcentration map that Gelman prepared. This one was from, looks like the quarter ending September 2020 of last year. This is a map that Gelman submitted to EGLE. And you can see there's hash lines here, and you can see here's one that says 85, right, so this is what Gelman believes based on data is the extent of contamination in the plume at 85 parts per billion concentration. You can see a few other

concentration lines as you get more in the heart of the plume. Here's 2,000 parts per billion, here's 500. And so what we're talking about when we say a map of the extent of the contaminations, now that the criteria's been lowered, we think it's extremely important to drive, both to have a handle on the nature and extent of the contamination, and to drive response activities for remediation, it's imperative that Gelman publically release a map showing these new concentration values at 7.2 for drinking water, 280 for the groundwater/surface water interface criterion, and also at the detection limit for the method that Gelman uses for monitoring wells, which is at 1.0 parts per billion.

There are some additional monitoring well locations that we believe are appropriate because --

THE COURT: And Mister -- and counsel, this is what I was talking about earlier, so this is answering that question. So there were these additional was it 14 that was agreed to, monitoring wells?

MR. DUPES: Correct.

THE COURT: And so now there's an additional eight that's being requested?

MR. DUPES: Correct.

THE COURT: And that --

MR. DUPES: Well, the --

THE COURT: -- excuse me -- then you're going to show me where the location is of the additional eight, and then I'll hear from the experts why they think that's appropriate, right?

MR. DUPES: Correct.

THE COURT: Okay, go ahead.

MS. CORLEY: Your Honor, with apologies, this is Rachel Corley on behalf of Gelman Sciences. We were kicked out of the Zoom and were hoping that the Court could please let Gelman back in. It should be Zausmer P.C. in the waiting room.

REFEREE SULLIVAN: Erin, I'm --

THE COURT: I'm so sorry.

REFEREE SULLIVAN: I'm going to put you back.

THE COURT: How long have you been out?

(No verbal response).

THE COURT: I'll say it again, I miss the courtroom.

MR. DUPES: I agree, Your Honor.

REFEREE SULLIVAN: I let them in, so they should be in.

THE COURT: Yeah, we should establish for the record how long they've been out, because this is not a good thing.

(At 10:33 a.m., brief pause to address technical

issues.)

(At 10:34 a.m., proceedings resume.)

THE COURT: Referee Sullivan?

REFEREE SULLIVAN: Yes, Your Honor.

THE COURT: You can just imagine, once we start trying to do jury trials again what a mess it's going to be.

REFEREE SULLIVAN: Yes, Your Honor.

So I let them in. They're not muted and their video is not available, so I'm not sure what's happening with them.

THE COURT: Okay. If you can hear us, Gelman Science, if you could hear us if you could please unmute yourselves. We want to make sure that you're hearing what's happening.

(No verbal response).

THE COURT: Mr. Stapleton, maybe you can give them a call and give them advice because you had trouble being in the room.

MS. CORLEY: Your Honor, this is Rachel Corley again for Gelman. We have two different computers going right now. The one that I'm speaking from is my laptop.

THE COURT: Okay.

MS. CORLEY: The system we were using we are trying to reboot. Can you hear me on my laptop?

THE COURT: Yes, thank you. We can hear you, but tell me when you were kicked out on the record. Do you know what time that was? Because I've been hearing the presentation from the Intervenors.

MS. CORLEY: It was prior to the start of the present slide, Your Honor.

THE COURT: All right. So you can see on your laptop?

MS. CORLEY: I can but unfortunately the rest of the group cannot, so this is just --

THE COURT: So they're all going to stand over your shoulder?

MS. CORLEY: I'd be happy to accommodate that.

THE COURT: No, I -- I -- so can we go back, if we could, Mr. Dupes. So I want to know, I'd like us to go back over the slide at least. So were you --

MR. DUPES: Here, let me go two back, Your Honor.

THE COURT: Okay, counsel, were you there for the discussion on the delineation?

MS. CORLEY: I don't believe we saw that either.

THE COURT: Okay, go back again.

MR. DUPES: Actually, that's -- this is the first slide for delineation.

THE COURT: But she says she, counsel for Gelman

has indicated they don't think they were there.

MR. DUPES: Okay, did you hear the part about the Prohibition Zone size?

UNIDENTIFIED SPEAKER: Yes.

THE COURT: You heard that? Okay.

MR. DUPES: I'll start here. I'll start here and kind of go over this from the beginning.

THE COURT: Let -- why don't we do this; why don't we take a five minute break? I'm going to get another cup of coffee, and let's see if Gelman Science -- it looks like maybe they're back on the screen.

MS. CORLEY: I'm still operating from the laptop at the moment, Your Honor. I think with the Court's indulgence a five minute break would be helpful to try and get that back up.

THE COURT: Let's do ten because it's important that you hear what's being presented so that, you know, you -- well, everybody. So let's take a ten minute break. It's currently -- well, why don't we come back at a quarter two. That's nine minutes. Okay?

MR. DUPES: All right, Your Honor.

THE COURT: All right. Thank you.

(At 10:36 a.m., off the record.)

(At 10:45 a.m., proceedings resume.)

THE COURT: Okay, I think -- all right, I think

you're connected on two different things. Am I right, Referee Sullivan?

MR. CALDWELL: We can hear and see you, Your Honor.

THE COURT: Yeah, but then there's still the one, Referee Sullivan, am I right, there's still another connection up there?

MS. CORLEY: Your Honor, that’s a laptop from which we were projecting our (unintelligible). I'd be happy to leave the Zoom, but if it's acceptable, I'd also be happy to stay in as Gelman Sciences for future projection.

THE COURT: What do you think, Referee?

THE CLERK: I think Referee Sullivan left.

THE COURT: What do you think, Ms. Ostrowski?

THE CLERK: I mean, as long as it's not causing feedback.

THE COURT: Okay.

THE CLERK: Which I don’t hear anything.

THE COURT: Okay, so if we could go back, Intervenors, and if you could make that argument again on this so they can hear from Gelman Sciences.

MR. DUPES: Sure, Your Honor.

MR. POSTEMA: Judge, excuse me --

MR. DUPES: Before I do I think --

THE COURT: Mr. Postema?

MR. POSTEMA: I think we needed Bob Davis back in from the County. He had dropped off I believe.

THE COURT: Thank you, Mr. Postema. I can't keep track of all this, so I appreciate that.

MR. DUPES: I think he's in the waiting room, Judge.

THE COURT: Lindsay, can you let him back in?

THE CLERK: He's in now.

THE COURT: All right. Mr. Davis are you there?

MR. DAVIS: I am.

THE COURT: You're there? Okay. Good. Thank you.

All right, deep breath. Try again.

MR. DAVIS: And Judge, thank you.

MR. DUPES: So, going back just a slide or two to delineation, well I started off, Judge, by saying that, observing that in the proposed Fourth Consent Judgment the parties had agreed on 14 new monitoring well locations, and that continues to be the case even today with the exception of a monitoring well E, which the Intervenors believe should be moved slightly to optimize its performance. And what I'm showing on the next slide are the 14 monitoring well locations. This was an attachment to the proposed Fourth CJ, and this represents the areas

where the parties agree monitoring wells should be installed, additional monitoring wells.

So then that brought me to what are the Intervenors seeking for delineation beyond those 14 monitoring wells, and we start off by asking that Gelman be ordered to prepare a map of contamination at different concentrations. and the next slide is an example of such a map. This was prepared by Gelman submitted to EGLE near the end of last year, and these lines that have numbers attached to them are known as isoconcentration lines. So for example, you can see this outermost line with my cursor, it says 85. So this is what Gelman represents is what they believe to be the extent of 85 parts per billion dioxane concentration. There's other lines closer into the plume. Here's one for 2,000. So what this does is show graphically a representation of various concentrations of the plume in this area.

So what we're asking for is now that the standard has been lowered both for drinking water and for the GSI cleanup criteria, that those maps should be done at those new levels as well as the 1.0 part per billion, which is the detection limit for the method, the EPA method that Gelman uses for monitoring wells.

We're also asking for some additional perimeter monitoring wells, which I'll show in the, this slide, Your

Honor. This is what, I think the one you were interested in, that fill gaps in the current state of knowledge about the plume. So you can see here, you can see my cursor, AA is an additional well that the Intervenors propose along the northern boundary, the Prohibition Zone. BB, another well at that northern boundary to fill a gap in the current delineation. CC, which is in the western area, this is meant to take the place of a well that Gelman has taken off, previously took offline, but that we believe could give valuable information about the western area. And then you see three wells north of the expanded Prohibition Zone boundary, DD, EE, FF, and those are meant to, first of all, there's no existing monitoring wells in this area because it's beyond the Prohibition Zone, and these are meant to address the possibility, although admittedly small, that 1,4-dioxane may be migrating toward Barton Pond, which of course as Your Honor is probably aware if off this map to the north, but I think all parties would agree that even though the chances of an issue at Barton Pond may be small, the risk if such a event occurred would be tremendous, because that's where the City of Ann Arbor pulls the water that it uses for its municipal water supply. So our argument is that given the risk and the significant, you know, cost and public health issues that would be occasioned by dioxane reaching that,

that it's worth, you know, the additional incremental expense and work to do those additional monitoring wells. And again, our experts will explain why that's -- why that's scientifically justified.

That takes us up through FF. We have two more wells which are part of the expanded eastern area downgradient investigation. So you can see that Gelman is already agreeing to locations H, G, and F. This is near the West Park area near where dioxane may be venting into the Allen Creek Drain. And the two additional wells are GG and HH, which again are to plug gaps in the current state of information about where the plume is, where it's migrating at what concentrations, and perhaps most importantly to ensure GSI compliance. In other words, making sure that dioxane is not venting to surface water in excess of the new cleanup criterion for GSI, which is 280 parts per billion.

I believe -- let me make sure I went through all of them. Those are the additional monitoring well locations. So then going back a slide --

THE COURT: So Mr. Dupes, let me interrupt again, and I apologize for interrupting, but this is something I've been thinking about. I know the attorneys and the experts sort of had that starting point. We're going to go back and listen to that proposed Consent

Judgment was about, and I'm learning about it for the first time, but tell me, you know, in terms of your lawyers, and you know what the Court of Appeals may or may not do, but tell me if I was, if I were to go and say, "Okay, at least the people who know what we're talking about came to this, and we could move forward where there's agreement on it," so we start to have that, and I continue to have like a yearly review, what would be wrong with that proposal?

MR. DUPES: Your Honor, I don't -- I think from -- people can chime in, but I think from the Intervenor's perspective I don't think we would have a problem with that type of approach. I mean, I think everybody agrees that this is an iterative process, right; our knowledge of where the plume has gone --

THE COURT: Right.

MR. DUPES: -- and treatment technology and the science, it's evolving, right, and so what was good 30 years ago is not good in 2021, so.

THE COURT: Right.

Lindsay, why don't you put the lawyers into a breakout room, because that would be one way we could address this, saying, "Can we at least have this in place with a yearly review by this Court?" And my sense is the appellate court will not fight that. And I'm happy,

otherwise I'm happy to, you know, have a trial.

Counsel, would that be okay with all of you?

(No verbal response).

THE COURT: I see, you're probably like texting each other.

MR. DAVIS: Your Honor, Bob Davis from the County. Are you talking about the Fourth Amended Consent --

THE COURT: Yeah.

MR. DAVIS: -- do that and then --

THE COURT: So what I -- so one suggestion would be that I at least adopt that right now, take whatever appellate issues you want up, and I'll have a review in year. But at least we're moving forward.

MR. DAVIS: Well, Your Honor, one --

THE COURT: By agreement. By agreement. So we could put that --

MR. DUPES: Well, Your Honor, one -- one issue is that, I guess from --

THE COURT: You just got texted.

MR. DUPES: Well, actually, no, this is something else. As you were talking I thought of Your Honor that the proposed Fourth Consent Judgment I guess is no longer on the table from the Gelman side. I mean, their brief basically -- what they're offering is not the

proposed Fourth that was --

THE COURT: I understand that. You're all litigating different things, and so I'm offering something as an alternative and let the -- well, first of all, do you need to talk a little bit first individually and then come back?

MR. CALDWELL: Yeah, Your Honor, I think -- this is Mike Caldwell. I think that it would be helpful if we could talk amongst, you know, our individual --

THE COURT: Right. Right.

MR. CALDWELL: -- and then come back and a later time.

THE COURT: Yeah, I mean I'm happy to try the case, and I'll give you as many days as you need, but as I listen here, that would be one idea.

MR. CALDWELL: And Your Honor, if I may, would your idea because that you would essentially order the negotiated Fourth CJ --

THE COURT: Yes. Yes. With a, and then you can all do whatever appellate review you want, but you always come back to me within a year, let's see what's working, what's not working, what else might be needed. I mean I'm going to have continuing jurisdiction one way or the other. The point is we move forward what we agree to or you agree to, and then see how it's working. Because

otherwise, Mr. Caldwell, it's just, you know, back and forth with the Court of Appeals and legal arguments; nothing's working, we're not moving forward.

MR. CALDWELL: Thank you for that clarification.

MR. POSTEMA: Judge, I think it would be helpful to hear from somebody of the other Intervenors' attorneys. One suggestion would be to finish the introduction so that you have the full scope, and you've obviously made a suggestion here, but I think on the timing it might be useful to finish up where we are, and then perhaps discuss anything at a lunch break. But really it's, it's obviously your call.

THE COURT: Mr. Postema, I've always respected you, I understand that, and I'm happy to listen to opening statements, but if you would like to do that, that's fine with me.

MR. CALDWELL: And Your Honor, if I may, if we do go down that route, we would like the opportunity to respond before we have this caucus. We obviously had a different impression of what the opening statements would be.

THE COURT: I know. Yeah, I hear you. I understand that.

So, actually, Mr. Postema, I'm going to go ahead and let you all talk. Why don’t we come back in, well,

say 11:30.

MR. CALDWELL: Very well.

THE COURT: And then we'll see where we go from there, okay?

MR. DUPES: Thank you, Your Honor.

THE COURT: All right. I'll see you back at 11:30.

THE CLERK: Can you take down the screen share, please?

MR. DUPES: Yes, I will.

MR. DINDOFFER: Just to be clear, Your Honor, you want us all to sign out, and then sign back in at 11:30?

THE COURT: Yeah, I think that would be great.

MR. DINDOFFER: Thank you, Your Honor

THE COURT: Thank you.

(At 10:59 a.m., off the record.)

(At 11:30 a.m., proceedings resume.)

THE COURT: All right. Let's go back to the -- and if we can all -- Lindsay, if you call the case.

THE CLERK: People are still joining right now.

THE COURT: Okay.

MR. DINDOFFER: Your Honor, Mr. Davis asked us to let you know that he would be coming in under William -- oh, I see him there. Never mind. Hi, Bob.

THE COURT: Do you think we have everyone? Lindsay?

THE CLERK: I think so. We're back on the record --

THE COURT: Okay.

THE CLERK: -- in the matter of Frank Kelley versus Gelman Sciences, case number 88-34734-CE.

THE COURT: And thank you. So I think we're all connected, and I can see that Gelman has got their big table there, and welcome. Good to see you.

So, I had the attorneys just talk about an idea, and if it does not work, I'm happy to try the case. So, let me start with Gelman.

MR. LUDWISZEWSKI: Your Honor, we're attempting to reach our client who's on a transcontinental flight, but as Your Honor will recall from the opening today, the Fourth Amended CJ proposal was actually part of three documents: the Fourth Amended CJ, the settlement agreement, and the stipulated order. And the, much of the consideration that was given to Gelman in exchange for their concessions in the Fourth CJ are contained in those other documents. They were always represented within the negotiations and to the public as a package. One of the major parts of consideration was the assurance that we would be able to continue to work with EGLE and that this

matter would not go, would not be referred to EPA. Sadly I believe that's been overcome by events, and I'm attempting to get authority from my client as I said. I believe there's some hope, certainly no guarantee, but some hope I could be persuasive on the Court's proposal if the consideration that we gave was met back with the concessions of the Intervenors' case. We would need not just the Fourth Amended, but also the settlement agreement and the entry of a stipulated order. If that were to happen, we would go and put it back in, this two component of the Fourth Amended CJ that we felt were inappropriate in the documents that you got on Friday, and we would unfortunately have permanently lost the EPA issue, which was very considerable, but I have some hope of talking my client into that. I certainly can't make any promises at this stage.

I don't believe I have any hope of talking my client into an arrangement where all of the consideration that we were given is taken out, so it's just the Fourth Amended CJ and not the other documents that came with it, but we are required to do everything and --

THE COURT: I know.

MR. LUDWISZEWSKI: Okay. Then you understand our position.

THE COURT: Yeah, I do. But, if I ordered this

today, would you start doing it?

MR. LUDWISZEWSKI: If the Court is asking if you order -- if you order, entered the Fourth Amended CJ today as a court order --

THE COURT: Right.

MR. LUDWISZEWSKI: -- and did so without the countervailing protections, the countervailing concessions that were given to entice the entry of that order, entice the concession to the basis of the Fourth Amended CJ, would we start to do that work in lieu of an appeal, I don't have a, you know, I can't answer that question.

THE COURT: I understand that, but if the court order said, "You must start that today," and then you take the appellate issues, will you follow that?

MR. LUDWISZEWSKI: I don't believe we would be -- I don't believe my client has ever indicated it would not (unintelligible) as a court order. It might -- it might seek an immediate appeal on the stay of the court order.

THE COURT: That's fine.

MR. LUDWISZEWSKI: But, but again, Your Honor, we believe it's fundamentally unfair to enter just the Fourth Amended CJ. There is -- there is a stipulated order that would be entered not -- not as stipulated.

THE COURT: Okay.

MR. LUDWISZEWSKI: More or less --

THE COURT: But if I did that, and you go up to the Court of Appeals, which has rejected you, and you're ordered to do it, if I did that as an interim step and reviewed this every year, that would, you know, be some progress, would you agree?

MR. LUDWISZEWSKI: Well --

THE COURT: The things you agreed to.

MR. LUDWISZEWSKI: -- Your Honor, we agreed to them in exchange for concessions that are in the other documents, this is my opening, that, you know, and one of those concessions are permanently gone, but we're willing to, in cooperating with the Court, were willing to go, if it were willing to recognize that those events have occurred and we can't un-ring that bell but --

THE COURT: Okay.

MR. LUDWISZEWSKI: -- but the other protections that are in the stipulated order, and we don’t care if that's entered as a stipulated order or just as an order of the Court or --

THE COURT: Yeah.

MR. LUDWISZEWSKI: -- or the protections in the settlement agreement, then -- then it's hard to see how the Fourth Amended Judgment is fair under those circumstances.

THE COURT: Okay. Believe me. I know all that stuff. Okay, thank you so much.

Mr. Negele.

MR. NEGELE: Well, of course I've got to, you know, talk to the client, and that's not a, something that was able to happen really within the half hour or less, however long it was. And, you know, there are multiple levels of approval and review and all that sort of stuff, taking that approach. But, you know, as we've identified in our filing is that, you know, we think, you know, a lot of the stuff in the Fourth CJ is good and would be an improvement, but, you know, Mister, you know, Ray is talking about the, you know, the stipulated order of dismissal basically that contained all these rights that the Intervenors want to, you know, basically be able to have some sort of an oversight view basically of EGLE, you know, a consultation really. You know, maybe I mischaracterize it by calling it oversight, but consultation and all that sort of stuff, and that's where those come from. And, you know, those are things that we would not have normally done but to settle this. It's a, you know, it's really kind of an unprecedented situation that we agreed to there.

The EPA request, I don't know, maybe that can be undone, but the -- I'd also point out too that there's a

lot of members of the community that believe that EPA is the only way to go.

THE COURT: I appreciate that. Thank you.

Mr. Postema, I don't -- I really don't want to go to the opening statements still; I'd just like to hear about my proposal, and if we don't have agreement -- well, I'd just like to hear from that.

MR. POSTEMA: Yeah, I think Mr. Stapleton was going to go first on this round to hear from the Intervenors, and so we'll -- we'll mix it up a little bit for you to keep everybody engaged around lunchtime, Judge. So, yeah.

MR. STAPLETON: Thank you, Your Honor.

Your Honor, you know, we, none of the Intervenor attorneys has had an opportunity to talk to our clients about this, and as you know, we face the issue of the Open Meetings Act Requirements, and we would, to consider any proposal like this, we would need to follow those procedures and consult with our clients, and we haven't had the ability to do that.

One point I would make, though, is if the Court was inclined to enter an order at this stage, one thing that is critical for the Intervenors, and I think the Court recognizes this, is to stay involved as Intervenors and retain our status as Intervenors. And the Court's

suggestion of a one year review, you know, we would, the Intervenors would want to be part of that review as, as Intervenors in the case.

So it's a little bit difficult for us at this juncture, Your Honor, because we haven't had an opportunity to talk to our clients, but, you know, obviously it's up to the Court to decide on this issue, but that, just once again, the Intervenors maintaining status so that we can continue to have input, ongoing input in terms of what happens at this site is absolutely critical. And not -- I'll pass it to Mr. Davis at this point.

MR. DAVIS: Your Honor, Robert Davis on behalf of the County Defendants including the Health Department and the Health Director.

Your Honor, having carried Mr. Stapleton's briefcase throughout the duration of this case, I would agree with what he just said, but I would offer the following, I would be happy to take this suggestion that the Court has made to the County for review. I say that, Your Honor, both from a legal and from a science standpoint. When I look at some of the activities that are proposed in the current proposed Fourth Amended Consent document, some of those activities would likely take a year anyways. In other words, to get some of the

things constructed, and we probably wouldn't even have some of the decisions necessary to carry out all the activities within that year. And I think the wisdom of the Court saying, "Let's review it in a year," gives us and our clients some time to see what has happened during the year. Maybe we, along with Dr. Lemke, we learn that there is a better position for one of those additional monitoring wells. I know Dr. Lemke is always looking at data, and I know Gelman is always looking at data, as is Brian, and maybe we all learn in one year there's a better location for something that's going on. But given the fact that some of this may take a year anyways, and as long as the County maintained a seat at the table to be heard next year, I would -- I would welcome the opportunity to present this to the County clients.

You know, Judge, I gave you a short brief on behalf of the Health Department and the Health Director. I know you read it with great intensity. And, you know, the duties that arrive from the Public Health Code with respect to two of my intervening parties are fairly unique, and you know, they are looking for certainty on some of these issues, which I think immediate action could help. They have to make day-to-day decisions, Judge. They have to make day-to-day decisions about drinking water wells, safe water, distances; they have to make

decisions when the plume is within 100 feet of the proposed drinking water well. These decisions are critical, and you know, the more knowledge we have, the faster we have it, the better for my Health Department to carry out their statutory duties going forward. So as long as we have a seat at the table, Judge, you know, I would be more than happy to take this conversation to the County.

THE COURT: Thank you.

Ms., is it pronounced Mette?

MS. METTE: Yes, that's correct, Your Honor.

Yes, I agree with what my colleagues have stated, and we're certainly open to considering this proposal. I would of course need to consult with my client. But I also want to reiterate that a key issue for us is maintaining our status as Intervenors, and with that, you know, I would also be happy to present this proposal to my client.

THE COURT: So the idea would be as an interim order, I will order the consent agreement with review, and the Intervenors are still there, and so, you know, we can do all that appellate review, but at least we take one step forward. And I will keep continuing jurisdiction on this case with an annual review. Nobody has to come back. You know, I can do it six months if you want. But I'm

comfortable with that.

But I'd like to hear from the people who are in the waiting room, and there's like -- who is Kathy Knol? What do you think? What do you think?

BEGIN PUBLIC COMMENT - 11:44 a.m.

MS. KNOL: I have some concerns and --

THE COURT: First of all, tell us who you are.

MS. KNOL: Okay.

THE COURT: You know, just introduce yourself, why you're here --

MS. KNOL: Kathy Knol.

THE COURT: -- and then --

MS. KNOL: Scio Township Trustee.

THE COURT: Okay.

MS. KNOL: I have been involved for over four years on Gelman issues. I'm a member of CARD. I've gotten communication from CARD members during this hearing this morning. I have major concerns about the fact that the CJ would have to stand alone. It should not be linked with the settlement agreement or the proposed order. And I hear that you are ordering it to stand alone, correct?

THE COURT: I'm doing that now.

MS. KNOL: Okay.

THE COURT: But I can tell you right now, I don't know what the Court of Appeals is going to do.

MS. KNOL: Okay, I just wanted --

THE COURT: But we're going to make progress.

MS. KNOL: -- okay, to verify. I don't know how our Township Board is going to feel about this. I have been in touch with one other Board Member during this hearing. She is very concerned. So there are issues we'll have to discuss. I'm glad we are maintaining Intervenor status; that will be important to all of the Intervenors. And I would want to clarify that any order that you've entered would not impact our petition for EPA involvement.

THE COURT: It would not.

MR. POSTEMA: Would not.

MS. KNOL: Correct.

THE COURT: It would not.

MS. KNOL: Okay. Okay, so I have reservations, and I've got --

THE COURT: Well, I do, too. I live in the plume. I'm in the plume.

MS. KNOL: I know.

THE COURT: I live right in the plume. I'm right across from it. I understand.

All right, Kevin. Can you hear me?

MR. LUND: Good afternoon, Judge. Yeah, I -- I live in a neighborhood there, too. My daughter delivered

your paper when they were still delivering papers.

We're, as you said, we've got a lot of process on our end, and the agreements that were made were made, and concessions that were made are a bundle. They get to pluck one thing out of that bundle and use that makes the bundle less supportive, but we can go ahead from that.

And there's many things in the agreement that are, are protective of human health and the environment, the major role of EGLE is protection, and we want to verify. We created a model that we believe is pretty robust to better understand where things are and where they're not, and we'll continue to use that model more publically than we have in the past. I'm hopeful that we can put that on the internet in about a month or two, and I think that might help clarify some of the information that is being misrepresented, and be helpful for people to better understand where it is.

So in concept I think, and I speak for Brian too, but I think, you know, going forward is the best thing, finding a path forward and getting something, some of the work in the ground and start collecting data, and as are common with projects like this, your analysis evolves with more information. And EGLE's analysis has evolved over the years, and what that involvement, analysis has been in the big picture is EGLE and Gelman

are reaching more consensus on the data than we have in the past. But again, the biggest part of what we do at EGLE is ensuring that there is no exposures and protection of human health and the environment and doing what we need to do that's allowed under the law.

THE COURT: Thank you.

Okay, I'm not doing a thing with City Council or Commissioners, but the next one on my screen is the one who gives me any funding to do anything. So Ms. Shink, if you don't mind, unmute yourself and just tell me what you think. And I need your help. I'm trying to do peacemaking. I keep telling you that, but go ahead. We can't hear you.

MS. SHINK: Thank you, Your Honor. I appreciate that you're interested in our input.

I'm trying to --

(At 11:50 a.m., connection issues occur.)

THE COURT: We can't hear you. We might have to go to Ms. Griswold.

MR. POSTEMA: And we have two Council members on. Thank you. And again, the Open Meetings Act issues and speaking for the whole Council, but we have two representatives here, so thank you, Judge.

THE COURT: Yeah, we -- Ms. Griswold -- Ms. Shink, I can't hear you, but we're going to go to Ms.

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

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

I really appreciate this hearing. I appreciate your solution-oriented approach. There are, 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. I cannot -- I don't represent all of Council, but as one of the two Council members who has been most involved in this, I can tell you that I would appreciate some type of solution where we can immediately start applying the stricter standards.

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

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

MS. GRISWOLD: I'm sorry?

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

MS. GRISWOLD: I -- I represent all of the citizens of Ann Arbor when it comes to water quality and cleanup, but no, you're not in my geographic area.

THE COURT: Okay, so I think I'm in -- I don't know if Commissioner Shink is in my district or not, but, no, I think that's the point; that we would have ongoing input, transparency --

MS. GRISWOLD: Uh-huh.

THE COURT: -- public hearings like this; what's working, what's not working.

MS. GRISWOLD: Uh-huh.

THE COURT: It goes solution driven, you know, so I can guarantee that to you, to the Council, even though you're not mine.

MS. GRISWOLD: Thank you.

THE COURT: So I'd like to go back to my, the head of the Commissioners. We couldn't hear you before.

MS. SHINK: Thank you, Your Honor. I added a hotspot. I hope that works. Can you hear me now?

THE COURT: Yes. Absolutely.

MS. SHINK: Thank you. Thank you for wanting to hear our opinions. I appreciate that. and thank you for trying to take a peacemaking approach in what is a very public situation. This is not a contractual situation between business -- business entities; this is about our

community.

For the County, I would, you know, I am Chair of the Board, however I can't make decisions like this alone. I would be very willing to take this back to the Commission to have a conversation about it. The things that were sticking points for us, it was -- it was -- you know, we care about the public involvement, but we also, there were issues within the CJ that were problems kind of no matter what the public thought of them. Being able to go to EPA and have that process begin was important. Continuing to have a seat at the table as this cleanup continues, and the stricture standards, the 7.2, and then the discharge into Sister Lake and the lack of appropriate monitoring going toward Barton Pond, which is the source of water for the City of Ann Arbor, and also could potentially result if, you know, many years from now dioxane contaminating Ann Arbor Township's water.

So, as I said, I'd be very willing to take it back to the Commission. I don't know where that will come out. And there are a few issues that are, that are issues, but I think, you know, as long as it can go to EPA and we continue to have a seat at the table, and Sister Lake is protected, I think those are some of the big points. So thank you.

THE COURT: Yeah. You're welcome. And I don't,

you know, I'm just doing my job. I'm going to make a decision on, you know, I'm trying to give the power back, you know, for the input, but you absolutely will have a seat at the table, and I understand you can't speak for others. I could never speak for my other Judges because we have different views, so, I really appreciate that.

All right, I think we're to Mr. Hayner.

MR. POSTEMA: Yes, Mr. Hayner and Mr. Lemke, too. Yeah, thank you, Judge.

MR. HAYNER: Well, thank you, Your Honor, for recognizing me to speak here. I agree with what my elected colleagues said prior to this to specific things. I guess the most important thing to me is that we start operating under the new criteria, the new State criteria. I mean, I think that's critical, and I think my time on -- my time on CARD has shown me that there's differences in the data. People have different views of different data and it's not fully complete all the time, and I think when we start operating under the new criteria, we're going to see that we are on the edge with what's happening here and with this site.

With all due respect to the laws around with our Health Department and the State, the protective remedies are not the same as cleanups, and we've watched -- well, I mean I got really re-involved in this in '92 when I moved

back here to Ann Arbor, '91, '92, and you know, we've watched it spread. I mean I, at the risk of holding something up here and not being seen, I mean this is what protection has got us; a huge spread of this plume from '92 to 2017. And so I feel strongly that protective remedies are not the same, which is one of the reasons I think it's essential that the EPA take a second look at this and, and we got it to be that way, and I know that was a challenge for this process, and I appreciate how challenging that was for our attorneys and everybody involved, but I'm just really concerned that continued protection is going to lead to a place where Ann Arbor is bound, like we are now, paying a huge fortune to filter out our water like we do with PFAS where the polluters aren't held accountable, and so, you know, we're paying a million a year to do that, and what's going to happen when dioxane is there?

And so I'm really concerned that protective remedies are not enough, and so anything that we can do and this Court can do to move that forward to, to change the mindset to more of a cleanup would be appreciated by me, and I'm sure a lot of folks in our city, so. Thank you.

THE COURT: Thank you. And Mr. Stapleton told me, you know, of course if the EPA comes in, I'll follow

whatever directive they do. I'm just trying to -- I'm just, like all of you, I just live here. I'm just trying to use whatever I can do to move it forward. But I do appreciate your position. I have not ruled it out. I'm just trying to figure out what's the best step next, okay?

I see you nodding your head. Which I appreciate.

Okay, Michigan Daily, you've got to show your screen there. What have you learned today? What are you going to report out? What are you going to tell the community about what you saw? That's the real question. Because what you write will reach other ears, and that's your responsibility.

MS. GOODING: Yeah, well this, I would just like to say this is my first time sort of covering Gelman plume related issues, and it's an issue that we have tracked continuously, so this was sort of my first real experience listening to this sort of back and forth. But I think the main thing that's come out of this is obviously this proposal to sort of adopt the agenda right now, so I think that's probably going to be the focus. Yeah.

THE COURT: Thank you.

I know Jack Eaton from a while. Come on, Jack. What do you think?

MR. EATON: Well, I don't hold any elected

office, and so I'm just speaking as a concerned resident and a member of CARD. I've remained involved with CARD. And I would point out, I appreciate that you want to get something rolling. You know, there are new criteria that need to be applied, but there are a number of things in this agreement that really trouble some of us, such as not allowing the Intervenors to seek EPA intervention. The idea that we might use Sister Lake as a depository for partially cleaned up water, including a 500 part per billion standard in this Consent Judgment, it has no basis in science or law. That -- that number was just pulled out of somebody's hat.

So, I do have some real concerns with applying the Consent Judgment that was rejected because of the problems that are included in that, especially if the polluter is going to insist that we take it as a package deal with the other two documents. So, that's just my thinking, Judge. And thank you for the opportunity to talk.

THE COURT: Are you kidding me? Good to see you again.

Okay, I think we have Kristen. Tell us who you -- or oh, it's actually Beth Collins. No, Kristen. I'm sorry. Kristen, go ahead.

MS. SCHWEIGHOEFER: I'm not sure why my video's

not on, but.

THE COURT: Yeah, we don't know.

MS. SCHWEIGHOEFER: It's set to be on. Anyway, it was working earlier. Apologies.

THE COURT: It's okay. It's okay. We all deal with it. I mean, in this hearing we've been struggling. But just tell us who you are and why you care about this and what you think.

MS. SCHWEIGHOEFER: Sure. My name is Kristen Schweighoefer. I'm the Environmental Health Director with the Washtenaw County Health Department. So I've been involved in this --

THE COURT: There you go --

MS. SCHWEIGHOEFER: There I am.

THE COURT: We can it.

MS. SCHWEIGHOEFER: I just had to apparently -- technically.

I've been involved in this since I, well, I've been with the Health Department for 21 years, but I, probably this site for the better part of seven or eight years with the position I'm in now. And I've seen a lot of newer things, and you know, I'm excited about a lot of the progress that's been made. It's been very interesting to be part of this history-making process.

You know, I share a lot of what I've heard today

about concerns with others on some of the aspects of Consent Judgments, but everything is a give and take; nothing is going to be perfect.

THE COURT: Yeah.

MS. SCHWEIGHOEFER: So I appreciate all the work that's been done, and I have given this a lot of thought, and I don't know that I have a perfect answer for any of this. You know, I hear from the members of CARD and citizens and our elected officials and, you know, I'm in many of those meetings, and again I think that the decision before everyone is very difficult today, and I don't know that I have a lot of wisdom to answer beyond what you've already heard here. Thank you.

THE COURT: No, that was wisdom. It helped me. There is no perfect answer. Every time I have to make a decision about everything, you know, and there's no good answer. So I think that was great wisdom. Thank you.

Okay, Ms. Collins, I think you're up. That's the next one on my screen.

MS. COLLINS: Hi.

THE COURT: Hi.

MS. COLLINS: Your Honor.

THE COURT: Tell us about yourself and who you are and why you care.

MS. COLLINS: I'm a resident and I'm across the

Sister Lake from you.

THE COURT: Okay.

MS. COLLINS: And, yes, your council members are Ali Ramlawi and Erica Briggs.

THE COURT: Thank you.

MS. COLLINS: Our council, so.

But, no, I got involved and just started reading the old articles. I grew up in Ann Arbor, so it wasn't a new topic to me, but when I moved to this neighborhood, you know, the one that the wells were contaminated, I started reading old district library articles on Gelman, and it's funny because when you search Gelman, you get all the profits and all those years of really doing well, too, in addition to contaminating our wells and our aquifer.

I mean, I just -- so lately I've enjoyed that we've maybe been getting some more justice for the public, and the polluter needs to start realizing that this is 2021, and it's different than it was in the eighties. We can't keep contaminating the environment. The, for Sister Lake discharge of course upset me a lot because it's person here, and I think there have been studies even since the CJ that showed that, you know, it probably would damage the wetlands and do damage. And so most of us residents we're all against this, and there are experts within the public too is something I've learned that --

thank you for listening to us and having all the public comments that we were able to have at all the different public meetings we did. And, so, thank you for listening, and I really enjoyed this. I wish we were in person in court, but.

THE COURT: Yeah, me too. I hate this, I just hate it, and we'll probably meet on the street, but tell me which high school you went to?

MS. COLLINS: Pioneer.

THE COURT: Ah.

MS. COLLINS: I grew up in Georgetown. I was born I Georgetown, and then we moved to Brockman a little later, so.

THE COURT: Yeah, I understand. I was like the opening one with the River Rats --

MS. COLLINS: Oh, good.

THE COURT: -- at Huron High School. Yeah, I know. And so --

MS. COLLINS: Well.

THE COURT: And so you know why we are the River Rats. Do you know why?

MS. COLLINS: Right on the Huron.

THE COURT: No.

MS. COLLINS: But I don't know why the rats.

THE COURT: No. No. Because of you. Because

of all of you. I was on the school board and, you know, student council. When we first opened up in 1969, of course it was very controversial back then, and they thought it was the Taj Mahal, and Pioneer was just backed up -- did your parents go to Pioneer?

MS. COLLINS: No, they were both Detroiters --

THE COURT: All right.

MS. COLLINS: -- that met at Eastern --

THE COURT: All right.

MS. COLLINS: -- and said, "We're not moving back to Detroit," so.

THE COURT: All right, so I'm going to give you the background.

MS. COLLINS: Okay.

THE COURT: The school opens up, 1972. They already thought they overspent, they over did, and we're down there, and the principal who had left Pioneer, said, "We're going to be the green and gold," which is what the athletic director said. We said we're okay with that. And the mascots were actually like, I don't even remember what it was, the Trojans or something, and so we opened up school and you know how hockey is so big in Ann Arbor, right? So, you know, we're kind of pulled apart, but the hockey kids were really competitive, and we beat them, you know, in the first game. And so the Pioneer kids stole

all these white rats out of the science labs, threw them on the ice, kind of like, you know, Joe Louis with the octopus, and said, "You're a bunch of skanky rats down by the river." This is the true story.

MS. COLLINS: That's great.

THE COURT: So they came back and we said, "We're going to embrace, we are going to embrace that insult, and we will be the River Rats." And the principal was so offended by that.

So I was part of student council. We went to the school board. The school board said they have the right to vote, every school that opens up. We said, "We're fine with the colors, but we want to be the River Rats," because that's the insult. And it had to go all the way up to the appellate process. So they said, "You've got to vote on it." And so we voted on it, but the principal said, "I'm not putting that name on the ballot." We had a write-in ballot; 99 percent said, "We want to be the River Rats." So. And so we, we used to joke about Pioneer saying, "And you were the ones who gave us an insult? You're the Pioneer Pioneers. You can't come up with anything original." So anyway.

MS. COLLINS: Oh.

THE COURT: Thank you for, you know, I hope to meet you on the street.

MS. COLLINS: Thank you.

THE COURT: All right. Let's go to, I can't even see who else is here.

Oh, Mr. Rayle. On the next screen. Mr. Rayle, go ahead. Tell us about yourself and why you're here.

MR. RAYLE: Well, I really appreciate that story about the River Rats. I've heard that again that there was maybe three options that the administration proposed for mascots.

THE COURT: Right.

MR. RAYLE: And the students said, "No way. We're going to embrace the River Rats with the write-in."

THE COURT: Right.

MR. RAYLE: Which shows the power of the public in a situation like that, which is really not unlike what we're dealing with right now, because I've been involved with the Gelman thing since 1993, so I'm in my twenty-eighth year as a citizen volunteer watching over this site. It wasn't -- I expected to be involved maybe a year or two, and in fact, at the end of the second year I helped negotiate a settlement with the then president of the company, Kim Davis, that everybody agreed to. We had all the, the same stakeholders that are involved in CARD now, and Chuck Gelman took the cleanup back away from Kim Davis and reneged on that agreement.

So, I've been trying to get back to some proper settlement ever since, because I might be the only one on the screen who is on a well in Scio Township real close to the Honey Creek, so this affects me personally. But at the time this happened, I lived in the City where the plume is now. It wasn't there when I lived there. And at the time I got involved, I worked over the western plume in Parkland Plaza on top of what we're still dealing with with the spreading of the western plume. And my whole career I've dealt with information technically systems for local governors and other public organizations for 40 years. So it's like fate tapped me on the shoulder and said, you know, "You're it. We need your resources." And I've taken that to heart, because once I see a problem, I really try to get it solved.

So I the intervening years, as a result of early involvement by other citizens and citizen involvement groups, in 1995 we set up a non-profit so we could get some information out to the public. Scio Residents for Safe Water was formed, and that's still providing a lot of the resources that you see when you go to the CARD meeting and the CARD site, because we have a funding mechanism through that non-profit to provide support for CARD. And since nineteen -- since CARD was more formalized, it was formed originally in 2006 as an output of the

Intergovernmental Partnership Organization by the local governments and citizens, but we formalized it in 2006 as a kind of a loose coalition of local governments and citizens to have regular meetings to discuss the Gelman situation. And then in 2016 it was formalized even more with bylaws and that. The members elected me as Chair of CARD.

And so I'm still Chair of CARD, founding member, founding member and Chair of Scio Residents for Safe Water. And I probably have studied this site more than anybody on the screen, and it's kind of a little upsetting to me when I see misstatements, even today, that are allowed to stand. It's, you know, maybe I'm being nitpicky, but when it comes to water, clean drinking water, we have to be as -- we have to be as persistent as the compound we're trying to get cleaned up. And dioxane is one of those forever compounds that once it gets anaerobic in groundwater, it tends to stay there. The preferred treatment is pump and treat, and there are methods to treat it to non-detect. We actually had that in that 1995 agreement, to treat to less than 3 parts per billion. The company has shown they can do that. Even recently with their ozone treatment, just this last month new data showed that they were able to treat to less than, to zero to two parts per billion, even with their ozone

treatment. Of course the ozone creates a new carcinogen, bromate, so that's why we don't like the ozone treatment.

But the fact that there's this information that's out there that's not getting to some of the decision makers, including you, is troubling. You haven't seen a lot -- I haven't seen in any court documents any of the plume displays that SRSW has created and provided at various CARD meetings. We have CARD meetings once a month that last two years, so we're discussing this all the time. The problem is that we go, we revert back to the court situation, and some of that information is not making it to you or to some of the other parties.

I like your idea of moving forward, and there are a lot of problems with the Fourth Consent Judgment proposal. It wasn't made public until September. August 30th I think it was. We had a short period of time to comment on it. We made our elected officials aware of those problems. Now, there are some good things about it, one of which has already been discussed, which is to tighten the cleanup standards, 7.2 parts per billion for discharge, and to 284 groundwater/surface water interface.

So one of the things I've been suggesting is that instead of going, jumping straight to Consent Judgment 4.0, take it as a step like, do a Consent Judgment 3.1, and have those cleanup standards be in

effect immediately. Because that's something that we -- it's been more than 10 years since the EPA guidelines suggested that that's going to happen. And we know the company is already prepared for that because there's even been a couple plume maps that they apparently created a 7.2 isocontour for their own use, and then erased those contours except for a couple segments before they made it public. You may not know this; maybe some of the people on the -- you know, the 7.2 is something the company was prepared for because they actually had a map that had some 7.2 lines on it, and they just didn't erase them all before they made it public.

The issue about the deep aquifer, E aquifer being contaminated and only being discovered in 2001. Now, the company knew about that in the late eighties, 1980s, because their own supply well was contaminated at 3 parts per billion, according to their data. Now, of course that data is not in electronic form; that's on paper form.

And then their NW30D, which is in the E aquifer, was the only well east of Wagner Road, and that was contaminated three times what the cleanup standard was in 1993. And then the company was allowed to not sample that well for seven or eight years until dioxane was discovered at other points in the site. They went back and resampled

that well, and it was over 60 parts per billion in nineteen -- or 2000 I think it was. And then it went on to be over 1,000 parts per billion, and that's the part that's heading north/northeast or maybe even northwest from the Evergreen area.

So there's a lot we don't know yet about this that has to be taken, like you say, a step at a time. We have to continue to review it because there's always new information.

But my well is closer to the Honey Creek, and about the same depth as the home owner well on Breezewood that was contaminated at 1 part per billion a year or so ago. And that could be happening all along Honey Creek, and we don't know if it's from the plume moving straight there, if it's from leakage from the creek from the discharge up to the 7 parts per billion. But we need to find this out; we need to take action now, take action now to prevent future problems. We can't wait for those problems to happen because as you can see, it's really hard to clean up the aquifer once it's been contaminated. So we have to do a better job of constraining -- of doing this -- we need -- we need due diligence to match the scale of the problem. This is probably the nation's, maybe the world's largest dioxane contamination of its type because they used it pure, most of the dioxane sites

were used as a stabilizer and other industrial solvents. But here Gelman used it pure to make their high-tech filters. And we haven't found another site that's like that. This is the largest site of its type, so.

I'm available later to answer any questions you might have, but I just wanted to get that in. I really appreciate you taking comments from the public because this really makes a difference to me.

THE COURT: Thank you. That's great, Mr. Rayle. I want to tell you something that, when you talk about the history of this project, I'm going into my fourth decade on the bench, but before that Judge Conlin, who was the first Judge while this was being litigated, and then it was Judge Shelton and now Judge me, but I was a lawyer, and the litigation used to, on the docket would, I mean it just, nobody else could be heard. And so finally Judge Conlin said, "I'm going to make Connors a special master just to get through the discovery motions and make a recommendation." So we've been around a while together.

And then on Honey Creek, I want to tell you that, it's so interesting, so, to me, probably not to -- well, I think because you will share it, I know all about Honey Creek, and my wife is the, I mean, she's the great supporter of my life, but her grandparents grew right up next to Honey Creek, I mean, and they had the house, and

my wife remembers going there, and we show our grandkids and everything, the joy there, so I know everything about Honey Creek.

But the only, the last thing I just want to ask is, tell me a little bit about where you grew up and what your background is? I understand you, you know, you found this tap on the shoulder about Gelman, but your story is bigger than that.

MR. RAYLE: Well, I grew up in Traverse City.

THE COURT: I know Traverse City.

MR. RAYLE: So I grew up on Incochee Farm. Do you know where that is?

THE COURT: I don't know that. I know the tribes up there very, very well.

MR. RAYLE: No, the Incochee was actually a name borrowed from a Georgia tribe.

THE COURT: Okay.

MR. RAYLE: By the early owner of Incochee Farm.

THE COURT: Okay.

MR. RAYLE: It means, oh gosh, good will or something like that. I'd have to look it up again. But it was right on the edge of the city limits, so I had full range of this 160 acre farm.

THE COURT: Right.

MR. RAYLE: But I also was able to go to city

schools. In fact, I used to walk through the apple orchard to get to the elementary school. And we could see the bay from the upstairs window of the farmhouse, which is no longer there because it's been developed and the whole property is, you know, the lots start at like 100,000 or something like that.

THE COURT: Right.

MR. RAYLE: But I was basically a son of a former sharecropper.

THE COURT: Okay.

MR. RAYLE: So.

THE COURT: I got it.

MR. RAYLE: I went to Michigan, met my wife, had our kids here. Well, not here. Actually I'm in California right now with our first grandchild. We'll finally be able to see her in person after, I don't know, a whole year, so.

THE COURT: Man.

MR. RAYLE: We just had her birthday celebration yesterday. Anyway, I went to school at Michigan, studied industrial engineering, bachelor's and master's, and got involved in local government systems for all my career, and then as I wound down, I helped with the entrepreneurial community and things like that that I still help with.

But I appreciate your being special master. Just to -- the fact that somebody thinks they know everything about this site, no one could know everything about this site.

THE COURT: I know that.

MR. RAYLE: I learned from you that you were special master. That was news to me. I didn't know there was a special master in those early days.

THE COURT: I'm not even sure, I didn't know that either, so we share that.

MR. RAYLE: Yeah, and we were asking for a special master be appointed, use the fees from the, Gelman got charged fees by the DNR at the time, it became DEQ, assess those fees to Gelman, hire a special master, this is something your predecessor could have done, and help, so the Judge can have somebody to gather all the complex information and present it to them to help with decisions. And you might be under the same boat. You might need to have a special master if you're going to review this every year.

THE COURT: Oh, oh. You're talking about, yeah, early on when I had that. Yeah, early on in my career. Yeah, you're right about that, but it --

MR. RAYLE: Well, you might even need that now -

-

THE COURT: I know but --

MR. RAYLE: -- because there's so much complexity on the site.

THE COURT: And I do want to acknowledge, we're still on the record, and the Court of Appeals is going to think I'm crazy for listening to all of you, and they could all object, but I'm just going to do it. And so I really thank you for that. And I do love the Traverse City area, and congratulations on your grandchild. My wife and I are blessed. We've got six, but two of them have special needs, and so we're home schooling right now. They got COVID when they went back to school, and then my son-in-law has COVID and he's been in the hospital, so we're all dealing with this.

MR. RAYLE: Jeeze.

THE COURT: But the grandchildren are something special. And I learn more about being a grandparent from them then I ever learned from anybody in school. So good luck on your trip there.

MR. RAYLE: Thank you.

We should talk about where your parents or wife's parents, or whatever, lived on Honey Creek. I'd like to know more about that.

THE COURT: Yeah, we'll talk all about it. I'm, you know, you can reach out to me. I'm happy to talk to

you. But I see there's --

MR. RAYLE: Thank you.

THE COURT: -- Mr. McKee? Is that you? Hand is up, wants to be heard. There you go.

MR. MCKEE: Hi --

THE COURT: Hi.

MR. MCKEE: -- Judge Connors. We crossed paths many years ago playing basketball at Mack School.

THE COURT: Yes, we did. I forgot that.

MR. MCKEE: Remember Mike Stemford (phonetic) and (unintelligible) --

THE COURT: Yes, we did.

MR. MCKEE: -- were in that game, too, as a regular Monday night game at Mack School for --

THE COURT: Yes, we did, didn't we?

MR. MCKEE: And I was not one of the better players, but I had a good time.

THE COURT: And I wasn't either, but we did it together.

MR. MCKEE: We had a good time.

THE COURT: Yeah.

MR. MCKEE: I just, I want to, and I appreciate very much your willingness to let the public speak here, and I'll try to be to the point. I wanted to amplify and echo what Jack Eaton and Roger Rayle and Beth Collins

said, and I think -- I think I wanted to briefly go through what my view of the history is. I've lived in Ann Arbor since '71. I used to work at the U-Seller Warehouse (phonetic) across Jackson Plaza from Gelman. And I've only been recently involved in following this issue. I always figured there's a lot of people involved, and I had a busy law practice back then.

But now the recent history is troubling, and the, this Consent Judgment was negotiated by the Intervenors and Gelman and EGLE, and was presented in, back in September as a good agreement. And it was the activists, Mr. Rayle, Mr. Bicknell, and many other CARD members that said, "No, this is not a good deal." The activist residents were overwhelmingly opposed to the Fourth Consent Judgment. At the various public hearings there was not one single resident who spoke in favor of that deal; not one. There were at least 100 people that spoke against. And the reasons I think are important.

There are many good things about this Consent Judgment, but it had and has a number of what I'd call poison pills in it. And I think that the appropriate way to understand how it was reached, and again, I wasn't in the room so I, you know, the ins and outs and the details of the negotiation are way beyond what I know, but what my understanding is, is that it came to a point and the City

Council Ann Arbor people said to their lawyers, "Please bring back whatever you can get from Gelman because we need to end this process." And the fact is that the offer that was made by Gelman was simply as far as they would go, which is pretty typical in a negotiation. You know, they weren't going to go any farther than this. And I think to characterize it as a settlement that had been reached is not accurate because the clients, which the Intervenor, elected officials, and public, have never agreed to anything. Their lawyers asked Gelman to put the best deal that they were willing to put on the table, and they did. It was soundly rejected. And to treat it now as kind of a basis, this we should just use it, is really going against pretty much the wishes of the entire public. And I think there, like I said at the beginning, there are a lot of good parts of it, but those poison pill cannot be agreed to, the EPA piece and the -- there's a provision in there that allows Gelman to not run any of the extraction wells if parked, if something, if those wells are brought down to 500 parts per billion. There's no scientific basis for that number as Mr. Eaton said. I think all the experts would, that are on the screen here would agree with that.

So there are definitely pieces that should be done, like immediately going to the lower cleanup criteria

and many other things, but the agreement is lacking in its scope, and it also has these poison pills. So I think to just take the Fourth Consent Judgment and enter it on an interim basis would not be appropriate here. There would have to be at a minimum some excision of the parts that are, that are not appropriate and were rejected by the public. And that's a process that can be done, but I think where Mr. Dupes was in his presentation was really sort of showing, "Okay, this is what we need to add." I don't think he started to even get to what we should subtract because the, after you made your proposal obviously he hadn't, you know, really had an opportunity to respond to that part of it. And I think that part is really important to recognize and deal with.

That's what I have. Thank you for letting me speak.

THE COURT: Of course. And I really, you know, first of all, thank you for reminding me that we played basketball together all those years ago.

You know, this is not the end. I've lived in this community forever, and I'm going to stay on this case as long as I'm a Judge, and I hope I have a few more years. I just want to take the next step, but I appreciate that you, you know, you care; you care about this and you speak up. And, you know, we'll just go see

what the next step is, but thank you very much. Okay.

MR. MCKEE: Thank you.

THE COURT: All right. Who else has not had a chance to speak? And if you'd like to, please do.

And I need to tell you, Ralph, all these lawyers are furious at me for letting you talk like this on the record, but.

MR. MCKEE: Well, I'm -- I'm retired, so you know.

THE COURT: It doesn't matter. It doesn't matter. They could be objecting like crazy and they're probably --

MR. MCKEE: Mike Caldwell is an old friend of mine. We worked a lot of cases together, so.

THE COURT: All right, you want to talk about basketball then?

MR. DAVIS: Your Honor, Rob Davis --

THE COURT: You know Mike Caldwell? Mike Caldwell used to be a great basketball player, except the only good basketball player on this screen is Bill Stapleton. He was All-City with Magic Johnson in East Lansing. And Bill Stapleton actually drove us to the Hall of Fame in the Macker stuff. So the fact you know Mike Caldwell, and Mike Caldwell can't stand that, can he, Bill?

MR. CALDWELL: Your Honor, that has been something that has been under my skin since I found out about it, considering all the Gus Mackers I played in. And I, but I do agree with your assessment of the relative basketball skills of the people involved; that Stapleton clearly is way out front.

MR. STAPLETON: Your Honor, I concur with everything that's been said about my basketball skills.

MR. DAVIS: Your Honor, Robert Davis. Is it possible Mr. Lemke, or, do you, would you like to speak?

MR. LEMKE: Yes.

THE COURT: Yeah, I think Mr. Lemke was there. I'm sorry, Mr. Lemke. I saw you earlier, but then my screen keeps, you know, changing. So yes, I'd like to hear from Mr. Lemke.

MR. LEMKE: No problem. Thank you, Your Honor. My name is Lawrence Lemke. I'm one of the experts for the Intervenors. I've been familiar with this site since 1997 when I moved to Ann Arbor, and I've used it, along with many of my students, as a case study, and an opportunity to move some of the many things we've learned along the way into more generalizations that can help here and elsewhere as well.

I think that this idea of implementing what's contained within the proposed Fourth Consent Judgment now

is a step in the right direction. I think that it's essential that we get some forward progress and some action and the ability to address the new significantly lower cleanup standards that have been adopted by the state. And I think it's entirely likely that it's going to take more than a year to implement all the things, at least to begin all of the things that are contained within the Fourth Consent Judgment. There are some things in there that I'm not particularly fond of, but it is a negotiated agreement, and I think everybody's been upfront about that from the beginning.

But what I'm really excited about, the parts that I think are really most beneficial are the remediation activities in the source area, the additional mass removal from pumping wells, and just the whole idea of adding those additional monitoring wells in key sensitive locations.

There are strong technical arguments I believe for additional activities that are really needed and necessary because what in my opinion is contained within the Fourth Consent Judgment is necessary, important, but not sufficient to completely address everything that needs to be done. But if we have an opportunity to come back in a year after we've learned probably a great deal from the implementation of those wells and have a chance to make

technical arguments and review that material, I think that maybe there is additional things that could be done.

And I agree with what Mr. Lund said, that there would be potential changes along the way, but the community's concerns, particularly the concerns over First Sister Lake and discharges into First Sister Lake need to be addressed. I'm not an expert on NPDES permits, but it's probably likely that if a permit were applied for, that process would take more than a year to play out, so there's time to review that as well.

Other than that, I don't have any other comments to make other than it has been a very interesting process to watch this play out. I think that the idea that all of the parties involved have a lot more in common than they differ is true. I think we're differing in the area of degree that we would approach to solve these problems, and I think that moving forward now is helpful because dioxane and groundwater and these plumes, they continue to evolve, they continue to move, they're not static, and any delays make it all the more harder to address the problem. Thank you.

ORDER - 12:35 p.m.

THE COURT: Thank you, sir.

Counsel, what I'm thinking is what I, in the order of Mr. Stapleton, I think they've kind of always

told you you have to draft up the opinion or the order from what I say. But I'm thinking that of course it would be the year review, but should I put in either a monthly status conference the first of the month just to see if there's any issues, or quarterly or, you know, whenever you think? And I'd like counsel to weigh in on that because I care about this obviously; I live here. And, so what do you think? What do you think about when you want to see me again? I know I'm probably kind of difficult to deal with, but.

MR. STAPLETON: Yes, Your Honor, William Stapleton. I think -- I think maybe quarterly reviews would be an excellent idea. You know, as everyone has said, this is an iterative process, and I think if we were able to sort of, you know, review and reconvene every quarter, you know, I think that would be sufficient to sort of check in and see how things are going at the site because there's constantly data being gathered at this site from the monitoring wells, from the extraction wells. It's an evolving process and it's important to stay on top of it. So you know, I think just, you know, speaking for Scio, I think Scio would very much support a quarterly review process.

THE COURT: And so counsel, you know, if we just had that on the agenda, I'm open to anybody joining in on

that to have this discussion. I just want to make sure it's not like swept under the rug. But you know, if issues come up, we could do it that way.

Mr. McKee, what do you think?

MR. MCKEE: I think --

THE COURT: Is that good?

MR. MCKEE: -- a quarterly review would be fine if you, if we don't get stuck with the provisions in the order that are poison pills.

THE COURT: Well, we're going to start with that, and then we're going to do a quarterly review. I'll listen. But I just want to make sure, it's not like a motion or a, you know, a formal thing; that I'm on it, okay?

And the Court of Appeals is going to do whatever they want to do. Counsel, are you okay with that?

MR. DAVIS: I'm good, Judge. Quarterly sounds reasonable to me. It gives time for things to evolve.

MR. CALDWELL: Your Honor, we'll review whatever the order provides with our client.

THE COURT: Okay. I understand.

MR. POSTEMA: Judge, you're talking about -- excuse me, Judge. You're talking about the proposed interim order that would get started that you would like to take, us to take to our clients, and we've said that we

would all take to them, and adding this additional thing about quarterly reviews to actually deal with issues come up. Is that correct?

THE COURT: That's correct. Instead of -- so first of all, I'm going to order Mr. Stapleton, I'm going to order that we put into effect right now the proposed Consent Judgment. I would still like to have quarterly review of where things stand, because I know things go up to the Court of Appeals and then I finally -- I mean, I heard on Thursday or Friday. So I'd like to just be able to let people weigh in, where it stands, so it's more than an annual review. I'm just proposing quarterly review.

MR. STAPLETON: And Your Honor, just for clarification, if the Fourth CJ were to be entered now, would the Intervenors retain Intervenor status so we could --

THE COURT: Absolutely.

MR. POSTEMA: Yes.

THE COURT: Absolutely.

MR. STAPLETON: Thank you.

THE COURT: And so the idea, I'm going to have quarterly review just to see where things are standing, instead of annual review. I want to know what's going on. And then the Court of Appeals, you know, all parties are free to appeal me, and the Court of Appeals is free to

tell me what I'm doing is wrong.

MR. POSTEMA: And Judge, did you, you talked about doing an interim order on your own, not a consent order --

THE COURT: No, it's my order. That's right, it's my order.

MR. POSTEMA: And the Fourth CJ, the additional documents that they had talked about, the settlement and the other orders, those are not part of it because --

THE COURT: No.

MR. POSTEMA: -- the EPA is gone --

THE COURT: No.

MR. POSTEMA: -- it doesn't make any sense. Right.

THE COURT: No. I am absolutely just saying I'm ordering the proposed Consent Judgment, and then I want to say on it every quarter, and the Court of Appeals, you know, can decide whether that's appropriate or not. And then I'd like the Court of Appeals to weigh in frankly before I take any additional steps. Are you with me?

MR. STAPLETON: So Your Honor, and just so I'm clear --

THE COURT: Sure.

MR. STAPLETON: -- because it sounds like you would like me to draft something and send it out to

counsel.

THE COURT: Yes, I do.

MR. STAPLETON: So three components: entry of the proposed Fourth Amended CJ now.

THE COURT: Yes.

MR. STAPLETON: Quarterly review where the parties and the Intervenors review the progress at the site.

THE COURT: Yes.

MR. STAPLETON: And Intervenors retain their status as Intervenors.

THE COURT: Yes.

MR. STAPLETON: Okay.

MR. DAVIS: Bill Stapleton and Judge, Bob Davis here. Bill, on the wording, wouldn't it be more appropriate if the Judge was simply ordering all of the actions set forth in the proposed Consent, Fourth Amended Consent, not adopting a new consent?

THE COURT: Yeah, that might be -- that might be smart.

MR. STAPLETON: Correct.

MR. DAVIS: All right.

MR. STAPLETON: Correct.

THE COURT: For appellate review, I agree.

MR. DAVIS: I learned -- I learned -- everything

I know, Judge, from Bill Stapleton.

MR. STAPLETON: Now that part I --

THE COURT: All right, Mr. Caldwell, Mr. Negele, are you okay? I mean I know you object to this, but are you okay with at least in terms of form not substance?

MR. CALDWELL: Well, Your Honor, I -- for the order that gets entered should not, in our view, refer to a consent agreement --

THE COURT: Proposed. Proposed. Not consent. Proposed consent agreement.

MR. CALDWELL: As long as it's clear that we're not consenting to it.

THE COURT: I understand that.

MR. CALDWELL: All right.

THE COURT: And you can fight with the Court of Appeals. I understand that. But it'd be proposed. Okay?

MR. CALDWELL: Understood.

THE COURT: With all your table of lawyers there.

Mr. Negele?

MR. NEGELE: Yeah, I think we understand what you're saying, and, you know, we'll move forward as we need to.

THE COURT: Let me just thank everybody. I'm on the case, I'm going to stay with the case.

Commissioner? Commissioner, you've learned something here about peacemaking, and I know you came in the early ones, right?

MR. PRATT: That was --

THE COURT: I mean you were there in the room when we could all get in that courtroom and rub elbows, right?

MR. PRATT: As best as possible, yes.

THE COURT: I know. So Commissioner --

MR. PRATT: Are you open for comment or feedback as well?

THE COURT: Yeah, sure, absolutely, but I, Commissioner, I just, you know, I keep talking to you about an approach, and you were part of it today.

MR. PRATT: Yes, so the action-oriented approach is greatly appreciated. Despite having a fancy title of Water Resources Commissioner, my office has really had no standing in this case until, and I'm not sure we really have standing now, but we've not been directly impacted because my office doesn't have jurisdiction over groundwater.

As you've seen in some of the recent documents, however, because it's now, the dioxane is physically in some of the pipes that my office is responsible for and there's a federal rule about the owner of the pipe is

responsible for getting the water that's contaminated out of there, or the contaminant more to the point, I'm in the awkward position of being, you know, yet another entity or person who's impacted by something that didn't previously have an impact. I'm now more involved than I previously was, not by my own choice, and I think that's a story that's come up over and over here, right, whether it's the Breezewood well that Mr. Rayle mentioned, or the Elizabeth Street wells previously, the impacts seem to keep on coming. And so the action-oriented, "Let's try to make more progress," is greatly approached in the context that everyone else has previously raised of course, the two or three showstoppers that had been brought out there by those other folks. So that's appreciated because the impacts continue to keep going.

And I'll just add one more thing, for folks who, it's great that somebody gets bottled water or gets a municipal water supply. When somebody gets annexed from a township to a city, they have a number of costs that are not accounted for and are not paid for by someone else. So when someone gets annexed into the city, one of the first things they have to do is hook up to city water and sewer. Even if those costs are covered, their annual cost of paying for those services are much greater than the cost that they used to have for electricity on a well.

So when we see the word "prevent" in prior Consent Judgments, I think that's the greatest concern that's out there, and quite frankly, you know, one of the reasons there's so many people here is that trust is not there the way it used to be I suppose, if it ever was there before.

I would just say one thing in the context of what's being discussed, these regular meetings, my observation, the one thing that's been missing that would be helpful from a trust standpoint is, whether it's an annual report or every couple of years, there's never a visual. There's never something that you can point to, to my mom -- could my mom understand, "Oh, that's why it's better this year; I see." We never have that visual. There's nothing the public gets to see. And quite honestly, even as someone who sees more of the information, maybe not every document in the legal process, it's difficult for me to look at any visuals and really be able to sort out in my own mind, "Well, this is something I could explain to somebody why things are better than they were." And I think that's the crux of it; just to restore that trust.

So, to switch from that, I want to assure you and Mr. McKee that absent COVID, the Mack basketball game has been active. It should fire up again this fall. To

call me an active participant might be a stretch, but I do try to hustle back on defense anyway. So that game is still alive. I've got a senior exiting Huron and a freshman coming into Huron, so we're River Rats as well there. So I -- all a way of saying I care about this as a community member.

And last thing, back to the professional side, on the Sister Lakes, if you were to go to the west side of Wagner Road, there is a pipe that's the end of a county drain, and what you will see is as soon as the water gets across Wagner Road, it can't go anywhere. There's a big swamp that prevents that water from moving, so that's yet another reason why maybe it's not the best idea to be pumping extra water into First Sister Lake. I don't know if that's really in the pleadings or not, but I've taken photographs and shared them with counsel and such. But again, when it's raining it would be a bad idea to have water coming into that area because it actually comes to a hard stop on the other side of Wagner Road.

And with that, I appreciate the opportunity for the comments and your desire to see some form of action going forward. Let's have more progress while, as you say, there's ongoing litigation about are these the right technical details. Thank you very much.

THE COURT: Thank you, Evan.

And I think Commissioner Shink, I think Ms. City Councilperson Griswold has her hand up. So we'll go there next, okay?

MS. GRISWOLD: Thank you. I appreciate the forward movement. I think that we need to very carefully control the message to the public. We have to realize that the public was almost unanimously against the proposed Fourth CJ, and so if we simply announce today that we're going to have a court order for the proposed Fourth CJ, you know, people are going to be out in the streets regardless of COVID. So I would just say let's -- let's make sure it's carefully communicated.

THE COURT: That's a very good point. And I've got Kevin in my own neighborhood probably doing a stuff -- you know, I've got to walk around my neighborhood, and my neighborhood is telling me, trying to, what to do. I get that. That's why I'm trying to be careful to say it's one step.

MS. GRISWOLD: Yes.

THE COURT: It's one step with ongoing review. But at least in the order it's like we're going to, that's the first step, and I'm going to stay on the case.

MS. GRISWOLD: Thank you.

MR. DAVIS: Can the order be --

THE COURT: I hope you all --

MR. DAVIS: So can the order be --

THE COURT: I hope you all keep it up.

MR. DAVIS: Can we title the order "Interim"?

THE COURT: Huh?

MR. DAVIS: Will the title of the order be "Interim order"?

MR. POSTEMA: Yes.

THE COURT: Probably a good idea.

MR. CALDWELL: Your Honor, we lose some -- I can't see who --

THE COURT: I --

MR. CALDWELL: Your Honor, from our position --

THE COURT: Okay, I can see him now.

MR. CALDWELL: -- I don't know what the interim nature of this order is.

THE COURT: No, that's --

MR. CALDWELL: It's an order --

THE COURT: No, Mr. Caldwell --

MR. CALDWELL: -- that is undertaken --

THE COURT: Yeah, Mr. Caldwell is -- I think we have to have it in the language, it's order to implement the proposed judgment with all the things we talked about, Mr. Stapleton --

MR. STAPLETON: Yes.

THE COURT: -- annual review, but I think it

could be, maybe we should add some language saying it's an order with review waiting for -- we're wordsmithing here. But something about sensitive to appellate review.

MR. DAVIS: Well, it's not a final order, right, Judge?

MR. POSTEMA: Right.

MR. DAVIS: It's not a final --

THE COURT: No, not -- what Mr. Caldwell is saying, we need to have a final order.

MR. CALDWELL: Yes, Your Honor.

THE COURT: Language in the final order to say this is, you know, this is the steps we're going to go forward, ongoing jurisdiction, on -- you know, still open to let's see how this works, and still keeping open the idea of arguments, you know, with, as we go forward. Because I understand what Mr. Caldwell is saying; he's got to have a final order --

MR. CALDWELL: Yes, Your Honor.

THE COURT: -- to deal with.

MR. CALDWELL: Yes. And we don't want to -- as we sample them, if we have to implement activities, I mean, you know, there's nothing interim about that, but, yes, we do need --

THE COURT: Right.

MR. CALDWELL: -- for appellate --

THE COURT: Right, and part, Mr. Caldwell, I mean part of it, all attorneys can sign off on this, but I'm ordering that you start this right now.

MR. CALDWELL: I understand.

THE COURT: And so, so I think he's right. He needs a final order so that if he has to go up to the Court of Appeals and say, "This is," whatever, he's got that ability.

MR. CALDWELL: Thank you.

THE COURT: Are you with me, Bill?

MR. STAPLETON: Yes, I -- absolutely, Your Honor. We will include that language.

THE COURT: Okay.

Mr. Negele, are you okay? Not with the substance, just --

MR. NEGELE: Yes, I -- I am.

THE COURT: Okay. All right. My Board of Commissioners, what do you think?

MS. SHINK: Thank you, Your Honor, for caring what we think, and for working hard to try to find a resolution. I hope that this results in cleanup happening, because really at the end of the day, that's what we need, so I'm hopeful.

THE COURT: Thank you.

Kevin, are you okay? I gotta see you in the

neighborhood.

MR. LUND: Well --

THE COURT: No, you're not. Okay.

MR. LUND: I moved.

THE COURT: Okay.

MR. LUND: I moved from the neighborhood a few years ago --

THE COURT: Oh, okay.

MR. LUND: -- when my daughter graduated from school. But yeah the -- talking to some of my -- my management, I think we're in agreement with every -- with getting started with something and moving forward. If we had started something in 2016 we'd be further along than we are today.

THE COURT: I know.

MR. LUND: We'd have more information to make better decisions. So, yeah. Getting started is great.

THE COURT: All right, Roger? Are you okay with it right now?

MR. RAYLE: I'd rather see -- I'd rather see the parts of the Fourth Consent Judgment that were agreed to be implemented.

THE COURT: I'm sure we can do that.

MR. RAYLE: Because it's -- because pulling back on the parts that are a disagreement is going to be harder

than adding them later.

THE COURT: Yeah, I think -- I think that, if we could, if you could just send Roger whatever that is, that would be helpful.

MR. RAYLE: And the public really needs to have more chance to review this. I mean this, this current hearing, the documents were released last Friday, and I think I got 'em maybe Saturday, or maybe it was even yesterday, and I didn't have time to read them all even.

THE COURT: I know. Same for me.

MR. RAYLE: It's similar to what happened back in August, and it's --

THE COURT: Same for me.

MR. DAVIS: Well, Roger, the Court --

MR. RAYLE: So if we're going to have --

THE COURT: I've been reading all weekend, so.

MR. DAVIS: Roger, the Court of Appeals didn't rule --

MR. RAYLE: Yeah, but you can't possibly, you can't possibly absorb it all in that short amount of time to make an important decision like this. So if I were, if I were doing this, I would say let's take the parts of the Fourth Consent Judgment that were agreed to --

THE COURT: That's what we did.

MR. RAYLE: -- and then submit those --

THE COURT: That's what we did.

MR. RAYLE: Well, I -- but I'm not sure that that's spelled out. It's very important that that gets spelled out in detail because there's certain things like, as was said, there's poison pills in there that we cannot have in the order because that, the company will take that and run with it, and we'll be left stuck with that poison pill for the rest of our lives, and our children's and grandchildren's lives. So we have to make the right decision now. And the parts that are agreed to, why not just implement those in the order and take on the rest of that in the quarterly follow ups?

THE COURT: That's what we're doing, sir. That's exact what I ruled.

MR. RAYLE: Okay, I appreciate that.

THE COURT: Okay. All right.

Anybody else? Be safe. Stay safe.

Good to see you again, Jack. I'm talking to Jack Eaton. Good to see you again.

All right, stay safe everybody. And -- oh, Ms. Ostrowski, we should probably set up the quarterly review. It's now May. Why don't we start with -- why don't we start like June 1st or something? Would that work?

MR. CALDWELL: That's a month, Your Honor.

THE COURT: Yeah, I know. All right, you want

me to go all the way to -- I want to do it like on the calendar year.

UNIDENTIFIED SPEAKER: September 1st.

THE COURT: Would that be good?

MR. CALDWELL: Put it in September, so it'd be on a three month --

THE COURT: Right. What about September 1st? What day is that, Ms. Ostrowski?

UNIDENTIFIED SPEAKER: Wednesday.

THE COURT: Let's do it 9:00 a.m.

THE CLERK: That's a Wednesday.

THE COURT: Yeah. Let's just do it, and then December 1st. Just do it on the calendar.

THE CLERK: Okay.

MR. POSTEMA: So June, September, and December, Judge? Is that it?

THE COURT: No. Mr. Caldwell said, you know, June is a month; he's right.

MR. POSTEMA: Okay.

THE COURT: So we'll do September and then quarterly after that.

MR. CALDWELL: That's the limit of my ability to count.

THE COURT: So Mr. Stapleton, just put that in the order, okay?

MR. STAPLETON: I will do that, Judge.

THE COURT: Quarterly reviews starting September 1st.

MR. STAPLETON: Yep. I will do that, and I will circulate a draft order. Hopefully we'll be able to present it to the Court.

THE COURT: Thank you.

All right, Michigan Daily, come back on. You have a responsibility here. You're talking to the public. have you listened to everything they've said?

MS. GOODING: I think so, yes.

THE COURT: All right. They're going to be looking to see if you report it out accurately, especially Roger.

MS. GOODING: I'll --

THE COURT: Okay?

MS. GOODING: -- do my best, yeah.

THE COURT: All right.

MR. POSTEMA: Yeah, Judge, we also have Mr. Stanton from the MLive here.

THE COURT: Well, Mr. Stanton, you were supposed to identify yourself and announce yourself. Do it.

MR. STANTON: Can you guys see me?

THE COURT: No.

MR. STANTON: Let's see.

THE COURT: Invisible media.

MR. STANTON: Oh, yeah. Sorry, I've got a thing over the --

THE COURT: Yeah, you're supposed to be representing the public. Have you been listening?

MR. STANTON: I have been listening, yes, I --

THE COURT: Have you heard what they had to say?

MR. STANTON: I've heard all sides and I will do what I always do and summarize all sides fairly and report what happened here today.

THE COURT: Well, you strive to do that.

MR. STANTON: That's what I strive to do, yeah.

THE COURT: That's the goal. Just like me as the Judge, trying to be fair.

MR. STANTON: This will -- I've tried to do that on this issue with probably 200 stories on this issue over the last decade or so, so this will just be --

THE COURT: Why don't you tell, you know, tell everybody a little bit about yourself, because other people introduced themselves. Tell us why you went into the media. Tell us why you care about it. Tell us what's important.

MR. STANTON: Why I went into journalism?

THE COURT: Yeah.

MR. STANTON: Initially in high school I wanted

to be a sports reporter, and then I started writing for my college paper and decided there were much more important issues to write about, so I got hooked on those and have been a government reporter for, you know, what, I think 17 years now. So yeah, I've been writing for the Ann Arbor News for well over a decade now and covering this issue at that time, and a lot more since 2016 when things started heating up and following it ever since and reporting at every twist and turn, and this is, like I said, probably just one of many more to come, and I'll probably be writing about this issue for as long as I'm with the Ann Arbor News, and whoever takes over my job after me will pick it up.

THE COURT: Well, come back any time. You're always welcome.

MR. STANTON: Thanks.

THE COURT: All right.

MS. ELIAS: Your Honor, can I add one thing?

THE COURT: Yes. Yes, Ms. Elias, it's great to see you again.

MS. ELIAS: Well, I retired two years ago, so who knows, but the, all of the pleadings that were filed on Friday, all the briefs, exhibits, and technical reports, have now been posted on the City's website under the Gelman Litigation Information page. So if the members

of the public or anyone else who hasn't read them all, it's like 1,500 pages, it's at a2gov.org, and you can just search for Gelman. Look for the litigation page and scroll down to briefings, and you can read them individually at your pleasure, et cetera, et cetera.

THE COURT: Good. That's helpful. Thank you, Ms. Elias. And it's good to see you again. I know you retired, but I'm really glad you're still back on the case.

All right, anything else? We're good?

(No verbal response).

THE COURT: Good luck. Stay safe.

MR. STAPLETON: Thank you, Your Honor.

MR. DUPES: Thank you, Your Honor.

MULTIPLE PARTICIPANTS: Thank you.

(At 1:00 p.m., proceedings concluded; off the record.)

STATE OF MICHIGAN

COUNTY OF WASHTENAW)ss.

I certify that this transcript is a complete, true, and correct transcript to the best of my ability of the Zoom videoconference hearing in the matter of ATTORNEY GENERAL FOR THE STATE OF MICHIGAN v. GELMAN SCIENCES, case number 88-34734-CE, held May 3, 2021.

Digital proceedings were recorded and provided to this transcriptionist by the court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any unintelligible, inaudible, and/or indiscernible response by any person or party involved in the proceeding or for the content of the digital media provided.

I also certify that I am not a relative or employee of the parties involved and have no financial interest in this case.

DATED: May 6, 2021

S/*Kristen Shankleton*

_____

Transcription provided by:

Kristen Shankleton (CER6785)

Modern Court Reporting & Video, L.L.C.

EXHIBIT 8

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,
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.
_____./

Case No. 88-34734-CE

MOTION HEARING ON DEFENDANT'S OBJECTION TO SEVEN DAY ORDER

HELD VIA ZOOM VIDEOCONFERENCE

BEFORE THE HONORABLE TIMOTHY P. CONNORS

Ann Arbor, Michigan - Thursday, May 27, 2021

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TABLE OF CONTENTS

Ann Arbor, Michigan

Thursday, May 27, 2021 - 9:02 a.m.

REFEREE SULLIVAN: Now on record, Frank J. Kelley versus Gelman Sciences, case number 88-34734-CE. This is Defendant's objections to the proposed seven day order.

THE COURT: Good morning. This is Judge Connors. Can we have appearances on the record, please?

MR. CALDWELL: Hello, Your Honor. Mike Caldwell on behalf of Gelman Sciences. With me I have Ray Ludwiszewski and Bruce Courtade.

MR. DAVIS: Your Honor, Robert Davis for the County Defendants.

MR. POSTEMA: Your Honor, Stephen Postema on behalf of the City of Ann Arbor. With me today are outside counsel Fred Dindoffer and Nathan Dupes.

MR. STAPLETON: Your Honor, William Stapleton for Scio Township.

MS. METTE: Good morning, Your Honor. Erin Mette on behalf of Huron River Watershed Council.

MR. NEGELE: Good morning, Your Honor. Assistant Attorney General Brian Negele representing the Michigan Department of Environment, Great Lakes, and Energy.

MR. CALDWELL: I believe that's everybody.

Your Honor, if I may proceed, I believe these are our objections to the Intervenors' proposed order regarding the evidentiary hearing; a few discrete issues for the Court's consideration.

I want to be clear at the outset that we tried to work out the language of this order with the Intervenors and repeatedly followed up with the Intervenor counsels' designated contact, but they simply didn't respond. I think it's clear that the intent is, of the Intervenors, is to take another bite at the apple following the hearing that was governed by a process that they wanted regardless of what the Court ordered on May 3rd.

We sent an annotated response to the Intervenors' proposed order which includes specific references to the hearing transcript that supported our proposed order. Intervenors chose to attach that offer of compromise to their response, which is bad enough, but they also deleted the comments, the explanatory comments and the references in the record that supported our proposals. And after receiving that initial response that I interpreted as positive that indicated we might be able to reach a settlement on this, we got barely the Intervenors, the larger group of Intervenors caucused and they decided to not respond to any of our suggested

revisions, so we're unfortunately forced to bring this matter to the Court's attention.

The Intervenors', in my mind, clear intent in seeking another bite at the apple is, nowhere is that more clear than with respect to the issue of the finality of the order. The Court could not have been more clear that this order was to be a final order, not an interim order or an interlocutory order, but a final order specifically because that type of order was necessary for appellate purposes. The Intervenors' counsel promised that that language would be included in the order. That exchange is, was included in our annotated order that we sent the Intervenors, and it was also included in objections we provided to the Court. And yesterday, just so there was no question about the context of that discussion and the Court's unequivocal ruling, I provided the entire conversation that led up to that ruling.

Nevertheless, the Intervenors' order provides that the order is not final. That's simply not what the Court ordered. Again, we refer the Court to the transcripts we provided that note that the Intervenors haven't provided -- excuse me -- any transcript citation in support of their position. I would again believe that the Intervenors are simply playing games, trying to put as many hurdles in front in the way of our appellate rights

as they can. And the thing is, Your Honor, I don't -- I think the Court was clear during the hearing that it was not interested in those types of games. I would agree with the transcript, and I believe the Court referred to the likely appellate review of its decision 17 times. At one point you said you were ordering the proposed Consent Judgment and with the quarterly reviews, and then you said, and I quote:

> "And then I'd like the Court of Appeals to weigh in frankly before I take any additional steps. Are you with me?"

To Intervenors' counsel.

As the Court recognized, it would be completely inappropriate for the Court to order Gelman to implement the Fourth Amended CJ and not make that order final for appellate purposes. Implementing the Fourth Amended CJ is a massive undertaking, and it impacts not just Gelman, but the community as a whole.

So I would ask the Court to stick to its guns. The Court ordered what it did. I'm sure you did that because you felt that that was the best thing for the community. So, you know, I would urge the Court to stand by its order and let the appellate chips fall where they may and not to engage in the kind of gamesmanship that the Intervenors are suggesting.

In terms of, I don't think there's any question that the order itself is final. It disposes of all claims and adjudicates the rights and liabilities of all the parties. And first of all, the only parties to this action are Gelman and the State, but certainly, this order certainly resolves our pending claims and rights. But even with respect to the Intervenors, they're not full parties because they haven't filed their Complaints. There are no pending claims. They have not been adjudicated. The Court ordered this evidentiary hearing process in lieu of filing their Complaints, and the Intervenors did not object, but rather enthusiastically supported that process. And the Court ordered the relief it did, and there are no other claims pending. So this order is in fact a final order.

Now, the, clearly the Court has inherent authority to enforce its orders, and we have quarterly reviews and status conferences that the Court has scheduled, first one for September 1st, and in our proposed order, although an inherent authority of the Court, our proposed order explicitly reserves that right of enforcement and continuing jurisdiction for the Court. But that doesn't mean that the order's not final and resolves all pending claims. It is, and it is final.

Now, Intervenors appear to argue that the fact

that we put in our last sentence, as we're required to do by MCR 2.602, we stated that this order does not close the case, and they argue that that is somehow inconsistent with the order being final. In fact, as the Court is probably more aware than the rest of us, that provision is a docket management issue or provision that a group of, a Judge's Association suggested be inserted. Ironically I believe that originated from a Wayne County local court rule that I believe my former partner, Rick Kaufman, was the Chief Judge at the time, put in place. And it doesn't have, that docket management provision doesn't have anything to do with whether the order is final for appeal purposes, and the Intervenors conflating those two issues is simply misplaced. So I think that's it for the finality issue.

There are a few other issues that I think to some degree we agree on that we can quickly march through if I could. I think Intervenors' response indicates that they're in agreement with us that the order should reflect the, what the status of the Third Amended Consent Judgment is, and that their order was deficient because it didn't include that provision. Our paragraph number 1 clearly resolves this by stating that the Court's order would modify and replace the Third Amended CJ as the Fourth Amended CJ would have done if it were entered by the, by

consent.

Now, I don't understand, the only objection they have it seems in this regard is that they don't want to include the word "modify," but clearly entry of this order is going to modify and replace the previous Consent Judgment, so I frankly don't understand how that is not proper to conclude that.

And I would also point out they refer to other, you know, remedial orders. The stipulation that was entered in March 2011 with the, that led to the entry of the Third Amended Consent Judgment made it clear that the Third Amended Consent Judgment is the operable document; that the objectives of the previous remediation orders were either incorporated into the Third Amended Consent Judgment or eliminated to the extent that they were inconsistent. So the Third Amended Consent Judgment is the only operable document at this point.

The next issue relates to how clearly, frankly how clearly we do what the, I think everybody agrees, was the Judge's, the Court's intent. And it's -- they do, the Intervenors concede that they do intend for the Fourth Amended Consent Judgment to be an order of the Court and be incorporated into the Court's order. I would suggest that their, you know, incorporation by reference is not clear enough in that regard; that it should be using the

language of our proposed order where we say that the proposed Fourth Amended CJ is fully incorporated and made part of this order. I think that language is necessary to make that issue clear.

And the other issue related to this paragraph is the Intervenors' order says we should implement the requirements of the Fourth Amended, set forth in the Fourth Amended CJ, but it fails to say that that work, that implementation is to be conducted subject to and consistent with the terms of the Fourth Amended CJ, which is necessary for a couple reasons. There are, the Fourth Amended CJ is an integrated document, and you can't just say implement, install a bunch of monitoring wells without the related, the terms and conditions set forth in the Fourth Amended CJ. For instance, we have to get access, we have to submit a work plan to -- work plans to EGLE. And without the provision that the work to be ordered by the Court is subject to and consistent with those terms that are in the Fourth Amended CJ, you really kind of usurp EGLE's role as the regulator of this work.

You know, I think, at least I hope I have some credibility in this regard because unlike the other counsel involved in this matter, I have very extensive experience with this site in putting the pedal to metal, if you will. When we were ordered to attempt to restore,

you know, clean up the site within five years, we had to really move, and we, you know, quadrupled our purge rate over the objection of some of the Intervenors. We installed, you know, multiple wells, but we just didn't run off like, you know, my farm girl mother used to say, like a chicken with its head cut off. We had a plan. We had a plan, a five-year plan that was approved by the EGLE and approved by the Court. And that's what the Consent Judgment is. That's what the Fourth Amended CJ would be.

And so the work that we're doing has to be subject to and consistent with those terms for it to make any sense, and in order to, for EGLE to retain its role as the regulator in this matter. And I think that's important, and may be a subtle issue that the Intervenors didn't -- weren't aware of.

The next objection I think Intervenors are on board with regarding their status as Intervenors rather than Intervening Plaintiffs, and so I think we can recommend that the Court use our paragraph 6 rather than their paragraph 4.

And then the only remaining issue relates to whether the order, the purpose of the quarterly meetings and the description of those quarterly meetings and whether the order should presuppose that the purpose of the quarterly meetings as the Intervenors suggest is to

consider implementation of additional or modified response activities. Obviously the Court, and as recognized by our order, the Court has inherent authority to enforce its orders and Gelman's proposed order reflects that, and it's certainly possible that after being advised of the progress and any changes of circumstances that have occurred between each quarterly meeting, that there may need to -- that there may need to be further actions taken by the Court to enforce its response activity order. I don't think it's likely, but we may not be proceeding as fast as the Court would like. We may, you know, as provided in the Fourth Amended CJ, if data, you know, we get from the response activities we're required to do comes back and it suggests that there are additional response activities required, we'll have to take those.

But I don't think we should, and I mean, my goodness, as we know, there could be a new cleanup criteria imposed at some point in the future, and we'll all have to react to those change in circumstances. But I don't think the order should presuppose or assumes facts not in evidence and state that the purpose of the quarterly reviews is to consider additional response activities, and we certainly don't think that it was the Court's intent to turn these quarterly meetings into quarterly evidentiary hearings like the one we just had.

I mean, that would be more expensive than simply litigating the Intervenors' claims. And perhaps more importantly and more to the point, that type of process would, again, usurp EGLE's role as the regulating agency, which I don't think this, was this Court's intent, or even the Intervenors' intent to do that.

But in a nutshell, Your Honor, those are our objections to the Intervenors' proposed order. I think our order reflects both the Court's rulings. It's clearly announced during the hearing, and the proper process to follow going forward. Thank you.

THE COURT: Thank you, Mr. Caldwell.

Mr. Negele, did you have a position on this?

MR. NEGELE: Yeah. I only have some, you know, very brief comments. You know, we're looking for, looking for certainty in the order, and appreciate the changes that the parties have made, and those, you know, they confirm EGLE's understanding of what you ordered during the May 3rd hearing, and most importantly two of those are the, you know, the order makes all provisions of proposed Fourth CJ effective, and also clarifying the status of the Third Amended CJ so we don't have, you know, two conflicting orders basically there.

Regarding the quarterly hearings though, however, we do have some issues, and we interpreted Your

Honor's discussion of them to be more along the lines of a traditional status conference, not as an avenue to open up the order and obtain additional or modified response activities. The order itself, the Fourth CJ, provides, you know, for, you know, that as a possibility, you know, under certain circumstances. And, you know, among other things with that we're concerned that, you know, this could bog down the actual on the ground work through attempts to basically relitigate the issues from the May 3rd hearing.

And I also want to point out, too, is that you should understand that implement, and I think Mr. Caldwell was kind of, address this, it's like implementation of these remedies doesn't move very quickly necessarily. There are many time consuming steps that are, you know, involved, including, you know, getting access to rights of way for properties to install the extraction and monitoring wells, and also to, you know, install a pipeline to connect to the pipeline that brings contaminated groundwater back to the treatment system.

So it might be that for the first quarterly report there might not be much to report, you know, so at least, you know, that, you know, we should understand that. You know, these things move kind of slowly. There's a lot involved.

And that's really all I have. Thanks.

THE COURT: Thank you.

Mr. Stapleton, I think I had asked you to prepare the proposed order. Would you be the one responding?

MR. STAPLETON: Yes, Your Honor, you did, however Mr. Dupes is going to be responding on behalf of Intervenors.

THE COURT: Thank you.

Mr. Dupes.

MR. DUPES: Thank you, Your Honor.

First of all, I'm a little beside myself that we're, the Intervenors are being accused of gamesmanship by a party that fought us tooth and nail on a scheduling order. Something I've never experienced. I'm sure some of my senior colleagues on the phone have never experienced. So it's a little ridiculous to be now being accused of gamesmanship or a second bite at the apple. We've done everything we can in our power to try and work things out with Gelman over the past several years and, you know, they're a scorched earth, you know, litigation type of party, and I think we've all seen that. So we certainly object to that characterization.

And it's also pretty rich to hear that after Gelman files yet another unsanctioned brief last night,

you know, before this hearing, as the Court knows, a party doesn't just get to willy-nilly file briefs without leave of the Court, and they don't bother to seek Your Honor's permission to file supplemental reply briefs; they just do it, okay? And so anyway, I just think, I hope Your Honor doesn't give that point that Mr. Caldwell made several times even the time of day, but I feel like I needed to address it.

The first --

THE COURT: Let me just say to both of you, I could care less about arguments like that. I'm just waiting for you to finish so we can get to the substance.

MR. DUPES: Okay.

THE COURT: You can call each other names --

MR. DUPES: Thank you, Your Honor.

THE COURT: You two can call each other names on the phone, on a Zoom, in front of me, I don't pay any attention to it. I just wait to get, wait for the two of you to get it out of your system and let's get to the substance of it, all right?

MR. DUPES: Yeah, I appreciate that, Your Honor.

THE COURT: So what about the final, what about this issue of the final order? Because it -- I do know that we need to have something that the Court of Appeals would accept, and I do want the Court of Appeals to weigh

in. The last thing I want to do is go down a path only to have it reversed by the Court of Appeals and we're starting all over somewhere.

MR. DUPES: Your Honor, that is --

THE COURT: That -- it makes sense.

MR. DUPES: Yeah, so that is, as you point out, that's the main issue. And, you know, and I apologize for starting with the other issue, but we're on the record and I felt like I needed to respond, okay?

But on the finality issue, as we all know, that's a term of art, right? So this came out of the hearing because we had proposed whether the title of the order should be called "interim," and Mr. Caldwell responded, "Well, Judge, there's nothing interim about what we're being asked to do," and you agreed saying, "Yes," you know, "I'm asking you to immediately implement all these activities," right? So it wasn't a, you know, "Maybe I'll think about it decision." It was, "No, you are to immediately start implementing these activities." So that was our understanding of what Your Honor meant by final.

But in terms of what goes in the order, a final order is a term of art, and in the court rules the only time we use a final order is, again, in that, in the court rule that we cited, which is, which Gelman doesn't even

respond to. It's 2.604, and it says a final order is only one that resolves all pending claims, and all the rights and liabilities of the parties. Okay. This order doesn't do that, okay? And Mr. Caldwell has gone to pains in other hearings to say that it's the rights and liabilities of the Intervenors haven't been determined. The Intervenors' claims and potential claims, Gelman's potential defenses of those claims haven't been determined; none of that was addressed at this hearing, right?

So the hearing was final I guess in the sense of it requires immediate action by Gelman and it resolved what the Court thought was appropriate to do to reflect the change in cleanup criteria, but for purposes of the court rules it's not a final order. And the reason -- so the question is, well, does that mean that the Court of Appeals can't look at it? Well, of course not. All it means is that Gelman has to apply for leave just like they would for any other interlocutory order, right? And if the Court of Appeals thinks, "Yeah, we need to take a look at this," then they'll take the appeal.

So it's a difference between a direct appeal, so if we had gone through a full trial, everybody's rights and liabilities were determined, there's a final judgment and order, case closed, Gelman takes a direct appeal,

versus they just have to file the interlocutory route, just like they did, by the way, years ago when Your Honor let us into the case as Intervenors, right? There were no claims filed by the Intervenors at that time, there were no pending claims by the State of Michigan, and then Gelman applied for leave to the Michigan Court of Appeals and then applied for leave to the Supreme Court.

So this order being an interlocutory order, which is exactly what it is, does not prevent Gelman from applying for leave to the Michigan Court of Appeals, which is presumably what they're planning on doing. All this is, all that Mr. Caldwell wants to do is to try and avoid that process and somehow convince the Court of Appeals that this is a direct appeal after all the rights and liabilities have been determined, which of course this order did not do.

So this, it's kind of, Mr. Caldwell is misusing this term finality to try and create a new basis for a direct appeal which aren't, which simply isn't in the Michigan Court Rules. So the federal court process, which is maybe what he's trying to import in this case, will occasion -- will allow a district court to certify an interlocutory order for appeal. Okay, there is no such process in the Michigan Court Rules. In the Michigan Court Rules you either have a directly appealable final

order that resolves everything in the case, in which case you just file a notice of appeal. Or, all other orders that aren't such an order are interlocutory and you apply for leave, and then it's up to the Court of Appeals to decide whether it wants the case. So that's what we're talking about. We're not talking about barring the doors to the Court of Appeals to Gelman. We're just saying you need to follow the proper process, just like you did appealing the order letting us into the case as Intervenors. So that's that --

THE COURT: I --

MR. DUPES: -- Your Honor. It's not --

THE COURT: Right. I understand that. What about the status, their proposed paragraph 6 rather than your proposed paragraph 4 as the status of the Intervenors?

MR. DUPES: So, Your Honor, again I hope you have -- you appreciate, or Mr. Caldwell appreciates that we tried in our response to meet Gelman halfway to, again, avoid this back and forth. If we're called Intervenors versus Intervening Plaintiffs, I don't think we really care because in our mind there isn't really a material difference. Have we filed our Complaints? No, but we don't -- all we need to do -- I went back and read one of the orders Your Honor entered last night that let in the

Intervenors to the case, all we need to do to file our Complaints is to provide notice to Gelman and then we can file our Complaints. So there is no, you know, we don't need to attain further leave to file claims, you know, so I -- if we don't, if Gelman doesn't want us to be called Intervening Plaintiffs, and we use the term Intervenors for ourselves frequently, then so be it, you know. So we don't object to calling ourselves Intervenors.

And then, Your Honor, moving on, which I think was the other point of contention is, and Mr. Negele also addressed this, was the words "Consider the implementation of additional or modified response activities and other actions," right? That's the characterizing the nature of the quarterly reviews. So again, when we first sent a order to Gelman and they responded, they kept in this language. So I'm not sure if they, they all of a sudden had a change of heart, they wanted one more thing to fight about, but they, Gelman had this very sentence, this very phrase, "Consider the implementation of additional response activities" in their own order. So I'm not exactly sure what the dispute is now.

But they're also just misreading that provision. Okay, it says, "Consider the implementation." That doesn't presuppose anything. Your Honor doesn't -- Your Honor isn't saying in this language that you're going to

order anything at those further quarterly reviews. But, we think it's fair to say that this is a possible topic for those reviews, and that was something that was discussed at the hearing. Your Honor made clear that you wanted Gelman to immediately implement the activities in the Fourth, proposed Fourth CJ because you didn't want further delay, but you also recognized I think that from the Intervenors' perspective we were looking for more to be done. We have some particular concerns about what was in the proposed Fourth CJ, and we thought that one of the purposes of having those quarterly reviews was not only to just check-in status as Mr. Negele suggested, but if things aren't working, we should be able to discuss those with the Court and the Court's perfectly capable of managing that process.

So I'll just give you one example. One of the issues is the Park Lake well, right? Under the proposed Fourth CJ, Gelman is to apply for a permit from the State of Michigan to be able to, you know, put in an extraction well and discharge water to First Sister Lake, okay? The way the proposed Fourth CJ is worded is if Gelman is not granted that permit, it doesn't have to install the extraction well, okay, and our position as Intervenors is, well that's not really -- we all recognize that well is an important well, and so if it turns out down the road, and

maybe it's not in the first quarterly review, maybe it's in the second or third, depending on EGLE's process, that there's issues with that permit, then I think we would come back to Your Honor and say, "Okay, Your Honor, that permit maybe isn't going to work. Let's talk about an alternative discharge solution for that well so that the meaningful contribution to, or mediation of the plume that that well would cause is still being implemented."

So it's that type of thing. It's not -- it's not re-opening the evidentiary hearing. It's the parties coming to you and saying, where are we, you know, how are things moving along, and I think it's also just to keep a check on the parties to make sure they're implementing your clear order at the hearing, which is this needs to happen right away, right? We don't want to wait, you know, several months before Gelman applies for a permit for something, or if it's taking EGLE a certain period of time to review something, you know, then let's all talk about what the bottlenecks are and see if we can loosen those.

So, but in any event, getting back to our language, all it says is we're going to consider whether there be an implementation of an additional modified response activities. It does not presuppose any result. So that's the point.

And then as for -- sorry, I'm just -- bear with me, Your Honor. I'm pulling up Gelman's proposed order again making sure I'm addressing all these.

As for the status of the Third Amendment Consent Judgment, Your Honor, part of what's a little confusing about this is previously, there was the 1992 Consent Judgment, and then there were three amendments, okay? Every time it was amended there was no restatement of the prior provisions. So basically you had to look back at the First Consent Judgment and then look at what the first amendment did, and then what the second amendment did, and the third amended. So when the parties were putting together proposed Fourth, I think the idea was, okay, that's confusing; let's get rid of that. It's a proposed Fourth Amended and Restated, right? So basically all you need to do is look at the terms in the proposed Fourth. It's an all-inclusive document.

So in our mind, you know, we're fine with language, and maybe, you know, maybe the language is as simple as, you know, the provisions in the proposed Fourth Amended are, you know, adopted by this order, and we think the language above incorporated by reference is sufficiently clear. If the Court thinks that that's, there needs to be a little more clarity, we're fine with making that clear, but it's not a modification, okay, and

I think Your Honor was clear about that at the hearing. Your Honor is not modifying the Consent Judgment. You made clear at the hearing that this order you were entering was an independent order in reaction to what the parties had filed, reaction to the change in cleanup criteria, okay, and something that you felt was needed to be done right away to address these things, okay?

The reason we're referring to the proposed Fourth Amended CJ is really for convenience. It's like, instead of incorporating the pages and pages and pages of that document into this order, it's being attached and incorporated by reference. So I don't, I think the issue of it being not clear is pretty overstated. I mean, it's going to be attached to the order, and the provisions are going to be effective. So, again, we're not exactly sure what Gelman's objection is there because we think it's clear.

And then, sorry, let me just look at my notes, Your Honor.

We talked about the Park Lake well.

Oh, there was comments made about usurping EGLE's role. I really don't know where that's coming from. I mean, the intent is, the proposed Amended Fourth Consent Judgment by its terms, which, again, in our proposal would be incorporated by reference and attached

to the order, reserves the regulatory oversight and authority of EGLE. And remember, EGLE at the hearing was advocating for adoption of that document, okay, so EGLE still retains its role to review work plans that Gelman submits, and to, you know, give the first, you know, give the review and order certain activities or order approvals of certain work plans, so all that's incorporated in the Fourth Consent Judgment. That's not going anywhere. So again I'm not sure what the concern is.

So again, Your Honor, I think, I believe that resolves the remaining issues that were, you know, between the parties, unless Your Honor has other questions for us, or obviously if any of the other Intervenor attorneys want to chime in, but I think that addresses the remaining disputes.

MR. CALDWELL: Your Honor --

THE COURT: I think that -- go ahead.

MR. CALDWELL: I'm happy to, if the Court has questions. I do have a few brief comments in response, but I can wait.

THE COURT: Well, I think -- I think that it is, while I would like to also urge the Court of Appeals to weigh in on this, it is not a final order. It is an interim order. And Mr. Dupes is right, I mean, I think that unfortunately for you, you have to ask for leave to

appeal on it.

And frankly, I think Mr. Stapleton the order that you proposed captures the spirit and my intent. These are quarterly reviews. I don't know where they're, you know, where things are going to be. Certainly I'll consider what developments might have occurred. Certainly I'll consider what the Court of Appeals may have done. I have three-and-a-half years left on the bench, so a different Judge is going to be taking this over. So part of the reason I have the quarterly reviews is I want to make sure it's being addressed and looked at and that, you know, there's been some concern in the community that the Court hasn't been involved with it or there hasn't, you know, there hasn't been full transparency, and I want to make sure that isn't the way it is viewed from here.

So I'm comfortable, Mr. Stapleton, with the order that you proposed.

MR. STAPLETON: Thank you, Your Honor.

MR. POSTEMA: Thank you, Your Honor.

MR. CALDWELL: Your Honor, if I may briefly make a couple points for the record?

THE COURT: Sure.

MR. CALDWELL: Your Honor, with regard to the finality issue, this order does resolve all pending claims. I mean, the evidentiary hearing we had was in

lieu of them, the Intervenors filing their Complaints. They have not been filed. And I don't know how, what circumstances -- and frankly perhaps for the benefit of the appellate review, I mean what, I'm going to ask the Court, what claims are out there that have not been resolved that are actually pending?

THE COURT: I always thought the Judge is the one that asked the lawyers --

MR. CALDWELL: And I don't mean to cross-examine the Court, but I --

THE COURT: I always thought that the lawyer had to defend their position, not the Judge.

I'll sign the interim order, Mr. Stapleton. I'll sign the order that you proposed, and I'll see you in September and get --

MR. STAPLETON: Thank you, Your Honor.

MR. POSTEMA: Thank you, Your Honor.

THE COURT: All right.

MR. DUPES: Thank you, Your Honor.

THE COURT: So Ms. Fire or Ms. Rolowski?

THE CLERK: I'm here.

THE COURT: Yeah. Make sure that that, the order that I'm talking, the one that's proposed, we get the signature on it, okay?

THE CLERK: Can you -- can they re-efile it?

Sorry.

THE COURT: Mr. Stapleton, could you re-efile it?

MR. STAPLETON: Yes.

MR. POSTEMA: Yes.

MR. STAPLETON: Yes, we will do that, Your Honor. Thank you.

THE COURT: All right.

MR. DAVIS: Your Honor, I think I actually filed that. Bill, I'll work with you and we'll get it re-filed today.

MR. STAPLETON: Okay, great.

THE COURT: Thank you.

MR. POSTEMA: Thank you, Judge.

THE COURT: Okay.

MR. NEGELE: Thank you, Your Honor.

(At 9:40 a.m., proceedings concluded; off the record.)

STATE OF MICHIGAN

COUNTY OF WASHTENAW)ss.

I certify that this transcript is a complete, true, and correct transcript to the best of my ability of the Zoom videoconference hearing in the matter of ATTORNEY GENERAL FOR THE STATE OF MICHIGAN v. GELMAN SCIENCES, case number 88-34734-CE, held May 27, 2021.

Digital proceedings were recorded and provided to this transcriptionist by the court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any unintelligible, inaudible, and/or indiscernible response by any person or party involved in the proceeding or for the content of the digital media provided.

I also certify that I am not a relative or employee of the parties involved and have no financial interest in this case.

DATED: June 1, 2021

S/*Kristen Shankleton*

_____

Transcription provided by:

Kristen Shankleton (CER6785)

Modern Court Reporting & Video, L.L.C.

EXHIBIT 9

Order

Michigan Supreme Court
Lansing, Michigan

May 31, 2022

Bridget M. McCormack,
Chief Justice

163603

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

ATTORNEY GENERAL *ex rel* DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY and NATURAL RESOURCES COMMISSION,
Plaintiffs-Appellees,

and

CITY OF ANN ARBOR, WASHTENAW COUNTY, WASHTENAW COUNTY HEALTH DEPARTMENT, WASHTENAW COUNTY HEALTH OFFICER, HURON RIVER WATERSHED COUNCIL, and SCIO TOWNSHIP,
Intervening Plaintiffs-Appellees,

v

SC: 163603
COA: 357598
Washtenaw CC: 88-034734-CE

GELMAN SCIENCES, INC.,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the June 29, 2021 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

a0523

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 31, 2022

Clerk