

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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

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

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.

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

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**GELMAN SCIENCES, INC.'S MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BRIEF IN SUPPORT OF  
MOTION FOR PARTIAL STAY OF -ORDER TO CONDUCT  
RESPONSE ACTIVITIES TO IMPLEMENT AND COMPLY WITH REVISED  
CLEANUP CRITERIA**

Pursuant to MCR 2.119, MCR 2.614(D) and MCR 7.209(A), Defendant Gelman Sciences, Inc. ("Gelman") hereby moves the Court for leave to file the Supplemental Brief in support of its June 8, 2021 Motion for Partial Stay of Order to Conduct Response Activities to Implement and Comply with Revised Cleanup Criteria attached hereto as Exhibit 1 ("Supplemental Brief") for the reasons stated in the brief below.

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

Rather than seek to stay the Court’s Response Activity Order in its entirety, Gelman seeks to stay only those response activities that were not included in the 2017 draft bilateral Fourth Amended and Restated Consent Judgment (the “2017 Bilateral Consent Judgment”) (Exhibit 2) that Gelman and EGLE negotiated before this Court injected Intervenors into the essentially completed negotiations. Gelman seeks this relief not because it recognizes “the need for the Court to exercise its inherent authority to entire an initial order addressing the change in cleanup criteria,” as Intervenors assert. (Intervenor Opposition, p 3). To the contrary, as Gelman has repeatedly asserted in numerous pleadings filed with this Court—including its Motion for Partial Stay—and as it intends to assert on appeal, the entire Response Activity Order and the purported evidentiary hearing from which it resulted are “wholly improper and without legal basis.” (Motion for Partial Stay, p 3). Nevertheless, Gelman, in consultation with EGLE, has agreed to limit the extent of the stay it seeks while pursuing its appellate rights, so that the work that Gelman and EGLE agreed in 2017 would be appropriate to address the then-new change in cleanup criteria can go forward. Only Intervenors—whose untimely and improper intervention delayed entry of an amended consent judgment authorizing this work—could construe the parties’ responsible stewardship of the cleanup as some kind of admission.

In the absence of any substantive basis for opposing Gelman’s motion, Intervenors attempt to distract from the core issue by pointing to the fact that, because of the delay caused by the intervention and the Court’s decision to issue a ruling before any evidence was offered or admitted

during the evidentiary hearing, the 2017 Bilateral Consent Judgment was never entered or made part of the record. Intervenor also make spurious allegations that Gelman improperly disclosed confidential settlement communications.

Gelman seeks leave to file the attached Supplemental Brief to supplement the record to include the 2017 Bilateral Consent Judgment and to briefly respond to Intervenor's baseless allegations that Gelman disclosed confidential settlement communications. Gelman has confirmed with counsel that EGLE does not object to Gelman providing this Court with the 2017 Bilateral Consent Judgment so that the record is complete.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Michael L. Caldwell

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Dated: June 16, 2021

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings on June 16, 2021 by:

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

/s/Brenda Ann Smith  
Brenda Ann Smith

# **EXHIBIT 1**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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JIMENA LOVELUCK,

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GELMAN SCIENCES, INC., a Michigan Corporation,

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

Gelman has asserted many times and will assert again on appeal that the entire Response Activity Order and the purported evidentiary hearing from which it resulted are “wholly improper and without legal basis.” (Motion for Partial Stay, p 3). Nevertheless, after consulting with EGLE, Gelman’s Motion for Partial Stay seeks to stay only those response activities that were not included in the 2017 draft bilateral Fourth Amended and Restated Consent Judgment (the “2017 Bilateral Consent Judgment”) that Gelman and EGLE negotiated before the intervention prevented its entry. (Exhibit A). Gelman agreed to include in the proposed Fourth Amended and Restated Consent

Judgment (“4th Amended CJ”) the response activities it now seeks stayed not because those activities were required to provide a remedy protective of human health and the environment, but rather in exchange for other valuable consideration included in the global settlement package the Intervenor subsequently rejected. Motion for Partial Stay, p 4. Gelman’s willingness to move forward with the work that it and EGLE agree should be included in a properly amended bilateral consent judgment is not—as Intervenor erroneously assert<sup>1</sup>—an admission that what this Court had done is proper. Rather, it is further evidence that Gelman will continue to address responsibly the environmental issues associated with the Site as it has for over thirty years, even while it pursues its legal rights.

In the absence of any substantive basis for opposing Gelman’s motion, Intervenor attempt to distract from the core issue by pointing out the fact that the 2017 Bilateral Consent Judgment was never entered or made part of the record. In other words, Intervenor cannot dispute that the response activities Gelman seeks to have stayed were not part of the 2017 Bilateral Consent Judgment that EGLE deemed protective, but they do not want to concede this point to this Court. Gelman intended to introduce the 2017 Bilateral Consent Judgment during the evidentiary hearing, but never had the opportunity to do so, because the Court shortened the scheduled three-day hearing into fewer than three hours, and issued its ruling before any evidence could be offered. Gelman now attaches the 2017 Bilateral Consent Judgment as Exhibit A to address Intervenor’s concerns in this regard.

Intervenor also make spurious allegations that Gelman’s motion improperly discloses confidential settlement communications. Gelman has done no such thing. The 2017 Bilateral

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<sup>1</sup> Thus there is no basis for Intervenor’s assertion that Gelman’s limited request is a recognition of “the need for the Court to exercise its inherent authority to enter an initial order addressing the change in cleanup criteria.” (Intervenor Opposition, p 3).

Consent Judgment was drafted prior to the entry of, and is not covered by, this Court's March 23, 2017 Confidentiality Order. Moreover, EGLE does not object to Gelman's providing the draft agreement to this Court so the Court will have the entire background. In any event, Gelman's motion merely states that the response activities it seeks stayed were not included in the 2017 Bilateral Consent Judgment and that Gelman agreed to add these additional response activities in order to achieve a global settlement of the intervention—and did so in exchange for valuable consideration Intervenor are no longer providing. Gelman's discussion of its intentions in adding this work does not disclose any settlement discussions or Intervenor's negotiating positions, offers, or demands in any way—and the exchange of consideration between the parties is a matter of public record in any event. Intervenor's assertions to the contrary are entirely without merit and are nothing more than an attempt to distract the Court from the reasonableness of the relief Gelman seeks.

Respectfully submitted,

ZAUSMER, P.C.

/s/ Michael L. Caldwell

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Dated: June 16, 2021

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses as directed on the pleadings on June 16, 2021 by:

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/s/Brenda Ann Smith  
Brenda Ann Smith

# **EXHIBIT A**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ATTORNEY GENERAL FOR THE STATE OF  
MICHIGAN *ex rel.* MICHIGAN DEPARTMENT  
OF ENVIRONMENTAL QUALITY,

Plaintiffs,

-v-

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

GELMAN SCIENCES INC.,  
a Michigan Corporation,

Defendant.

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FOURTH AMENDED AND RESTATED CONSENT JUDGMENT

The Parties enter this Fourth Amended and Restated Consent Judgment in recognition of, and with the intention of, furtherance of the public interest by (1) addressing environmental concerns raised in MDEQ's Complaint; (2) expediting remedial action at the Site; and (3) avoiding further litigation concerning matters covered by this Consent Judgment. Among other things, the Parties enter this Fourth Amended and Restated Consent Judgment to reflect MDEQ's revision of the residential drinking water cleanup criterion for 1,4-dioxane in groundwater to 7.2 micrograms per liter. The Parties agree to be bound by the terms of this Consent Judgment and stipulate to its entry by the Court.

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

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

### **I. JURISDICTION**

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

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

### **II. PARTIES BOUND**

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

### **III. DEFINITIONS**

Whenever the terms listed below are used in this Fourth Amended and Restated Consent Judgment or the Attachments which are appended hereto, the following definitions shall apply:

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

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

C. “Defendant” shall mean Gelman Sciences Inc.

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

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

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

G. “Gelman” shall mean Gelman Sciences Inc.

H. “Gelman Property” shall mean the real property described in Attachment \_\_\_, where Defendant formerly operated a manufacturing facility in Scio Township, Michigan. The Defendant sold portions of the property and retains one parcel only for purposes of operating a water treatment system.

I. “Groundwater Contamination” shall mean the 1,4-dioxane in the groundwater at a concentration in excess of 7.2 micrograms per liter (“ug/L”), as determined by the sampling and analytical method(s) described in Attachment \_\_\_ to this Consent Judgment, subject to review and approval by MDEQ.

J. “MDEQ” shall mean the Michigan Department of Environmental Quality, the successor to the Michigan Department of Natural Resources and Environment, the Michigan Department of Natural Resources, and the Water Resources Commission.

K. “Municipal Water Connection Contingency Plan” or “MWCCP” shall mean a contingency plan developed to identify the steps necessary to connect residences that rely on a private water supply well to municipal water in the event those wells are threatened by the Groundwater Contamination and the estimated time necessary to implement each step of the water connection process.

L. “Parties” shall mean Plaintiffs and Defendant.

M. “Plaintiffs” shall mean the Attorney General of the State of Michigan *ex rel.* MDEQ.

N. “Prohibition Zone” shall mean the area that is subject to the institutional control established by the Prohibition Zone Order and this Consent Judgment. A map depicting the Prohibition Zone, as revised due to MDEQ’s revision of the residential drinking water cleanup criterion for 1,4-dioxane in groundwater to 7.2 ug/L, is attached as Attachment     .

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

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

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

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

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

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

U. "Verification Process" shall mean the process through which Defendant shall test for and verify concentrations of 1,4-dioxane in excess of the applicable threshold at the relevant monitoring wells, using the sampling and analytical method(s) described in Attachment \_\_\_ to this Consent Judgment. Specifically, Defendant shall sample the wells on a quarterly basis unless an alternative schedule is agreed upon with MDEQ. Groundwater samples will be analyzed for 1,4-dioxane, either by Defendant's laboratory or a third-party laboratory retained by Defendant. In the event that 1,4-dioxane concentrations in groundwater sampled from any well exceed the applicable threshold, Defendant shall notify the MDEQ by phone or electronic mail within 48 hours of completion of the data verification and validation specified in the Quality Assurance Project Plan ("QAPP") described in Section V.E. Defendant will resample the same well within five days after the data verification and validation of the original result or at a time agreed upon with MDEQ, if MDEQ opts to take split samples. If a second sample analyzed by Defendant's laboratory or a third-party laboratory retained by Defendant has contaminant levels exceeding the applicable threshold, the exceedance will be considered verified and Defendant shall undertake the required response actions.

In the event that MDEQ opts to take split samples, Defendant shall also collect an additional split sample for potential analysis within the applicable holding time by a mutually agreed-upon third-party laboratory at Defendant's expense. If the results from one sample, but

not both, confirm a verified exceedance, the third sample analyzed by the mutually agreed-upon third-party laboratory, using the sampling and analytical method(s) described in Attachment \_\_\_ to this Consent Judgment, shall serve as the relevant result for verification purposes.

V. “Western Area” shall mean that part of the Site located west of Wagner Road.

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

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

#### **V. GROUNDWATER REMEDIATION**

Defendant shall design, install, operate, and maintain the systems described below. The objectives of these systems shall be to extract the contaminated groundwater from the subsurface at designated locations for treatment (as required) and proper disposal to the extent necessary to prevent the plumes of Groundwater Contamination emanating from the Gelman Property from expanding beyond the current boundaries of such plumes as of the date of this Consent Judgment, except into and within the Prohibition Zone, as described below. Defendant also shall prevent 1,4-dioxane from venting into surface waters in the Eastern and Western Areas at concentrations above the groundwater-surface water interface criterion established by the MDEQ for 1,4-dioxane under MCL 324.20120e(1)(a), except in compliance with Part 201, including MCL 324.20120e (“Groundwater-Surface Water Interface Objective”). Defendant also shall implement a monitoring program to verify the effectiveness of these systems.

A. Eastern Area

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

a. Prohibition Zone Containment Objective. Defendant shall prevent Groundwater Contamination, regardless of the aquifer designation or the depth of the groundwater or Groundwater Contamination, from migrating beyond the boundaries of the Prohibition Zone, as may be amended, provided that MDEQ and the Defendant agree that any further expansion of the Prohibition Zone should be avoided, unless there are compelling reasons to do so. Compliance with the Prohibition Zone Containment Objective shall be determined as provided in Section V.A.4.b, below.

b. Groundwater-Surface Water Interface Objective. Defendant shall satisfy the Groundwater-Surface Water Interface Objective for the Eastern Area.

2. Prohibition Zone Institutional Control. Pursuant to MCL 324.20121(8) and the Prohibition Zone Order, the following land and resource use restrictions shall apply to the Prohibition Zone depicted on the map attached hereto as Attachment   :

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

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

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

- d. The prohibitions listed in Subsections V.A.2.a–c do not apply to the installation and use of:
- i. Groundwater extraction and monitoring wells as part of response activities approved by MDEQ or otherwise authorized under Parts 201 or 213 of the Natural Resources and Environmental Protection Act (“NREPA”), or other legal authority;
  - ii. Dewatering wells for lawful construction or maintenance activities, provided that appropriate measures are taken to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a;
  - iii. Wells supplying heat pump systems that either operate in a closed loop system or if not, are demonstrated to operate in a manner sufficient to prevent unacceptable human or environmental exposures to hazardous substances and comply with MCL 324.20107a;
  - iv. Emergency measures necessary to protect public health, safety, welfare or the environment;
  - v. Any existing water supply well that has been demonstrated, on a case-by-case basis and with the written approval of the MDEQ, to draw water from a formation that is not likely to become contaminated with 1,4-dioxane emanating from the Gelman Property. Such wells shall be monitored for 1,4-dioxane by Defendant at a frequency determined by the MDEQ; and
  - vi. The City of Ann Arbor’s Northwest Supply Well, provided that the City of Ann Arbor operates the Northwest Supply Well in a manner that does not prevent

its municipal water supply system from complying with all applicable state and federal laws and regulations.

e. Attachment \_\_\_ [consisting of the map depicting the Prohibition Zone and the above list of prohibitions/exceptions] shall be published and maintained in the same manner as a zoning ordinance at Defendant's sole expense. MDEQ-approved legal notice of the Prohibition Zone expansion reflected in Attachment \_\_\_ shall be provided at Defendant's sole expense.

f. The Prohibition Zone Institutional Control shall remain in effect in this form until such time as it is modified through amendment of this Consent Judgment, with a minimum of 30 days' prior notice to all Parties. The Defendant or MDEQ may move to amend the Consent Judgment to modify the boundaries of the Prohibition Zone to reflect material changes in the boundaries or fate and transport of the Groundwater Contamination as determined by future hydrogeological investigations or MDEQ-approved monitoring of the fate and transport of the Groundwater Contamination.

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

h. Well Identification. To identify any wells newly included in the Prohibition Zone as a result of this modification or any future modification to the Prohibition

Zone, pursuant to an MDEQ-approved schedule, Defendant shall implement a well identification plan for the affected area that is consistent with the Expanded Prohibition Zone Well Identification Work Plan approved by MDEQ on February 4, 2011.

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

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

3. **Monitoring and Extraction Well Installation and Operation.** Defendant shall install the following additional wells in the Eastern Area:

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

- i. Residential area in the general vicinity of Ravenwood and Barber Avenues (MW-A on map attached as Attachment   ); and
- ii. Residential area in the general vicinity of Sequoia Parkway and Archwood Avenues between Delwood and Center (MW-B on map attached as Attachment   ).

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

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

c. Sentinel and PZ Boundary Well Installation and Sampling.

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

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

vertical profiling techniques, which are designed to minimize the amount of water introduced during drilling, unless the MDEQ agrees to alternate techniques.

e. Installation of Additional Groundwater Extraction Well.

Defendant shall install an additional groundwater extraction well (the “Rose Well”) and associated infrastructure in the general area bounded by [NAME] Street and [NAME] Street as designated on Attachment [ ] according to a schedule approved by the MDEQ. The exact location of the Rose Well will be based on an evaluation of relevant geologic conditions, water quality, and other relevant factors, including access.

f. Eastern Area Groundwater Extraction. The Defendant shall operate the Evergreen Subdivision Area extraction wells, LB-4 and the Rose Well (or MDEQ-approved replacement well(s)) (collectively, the “Evergreen Extraction Wells”), and TW-19 and TW-16 (or MDEQ-approved replacement well(s)) (the “Maple Road Wells”), at a combined minimum purge rate of approximately 200 gallons per minute (“gpm”), in order to reduce the mass of 1,4-dioxane migrating through the Evergreen Subdivision Area and the mass of 1,4-dioxane migrating east of Maple Road, until such time as it determines that the Eastern Area Objectives will be met at a reduced extraction rate or without the need to operate these extraction wells. Defendant shall have the discretion to adjust the individual well purge rates in order to optimize mass removal and compliance with the Eastern Area Objectives, provided that it shall operate the Evergreen Extraction Wells at a combined minimum purge rate of approximately 100 gpm, until such time as it determines that the Eastern Area Objectives will be met at a reduced extraction rate without the need to operate these wells. Before significantly reducing or terminating extraction from either the Evergreen Extraction Wells below the 100 gpm minimum

purge rate or the combined Evergreen and Maple Road Wells purge rate of 200 gpm, Defendant shall consult with MDEQ and provide a written analysis, together with the data that supports its conclusion. MDEQ will review the analysis and data and provide a written response to Defendant within 56 days after receiving Defendant's written analysis and data. If the MDEQ disagrees with the Defendant's decision to reduce or terminate extraction, it may initiate dispute resolution under Section XVI of the Consent Judgment. The Defendant shall not significantly reduce or terminate the Wagner Road extraction while MDEQ is reviewing or disputing the Defendant's determination.

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

a. Objectives of Verification Plan. The Verification Plan shall include the collection of data sufficient to measure the effectiveness of the System: (i) ensuring that any potential migration of Groundwater Contamination outside of the Prohibition Zone is detected before such migration occurs; (ii) tracking the migration of the Groundwater Contamination to determine the need for additional investigation and monitoring points to meet the objectives in Section V.A.1, including the determination of the fate and transport of Groundwater Contamination when and if it reaches the portion of the Huron River that is the easternmost extent of the Prohibition Zone; (iii) verifying that the Groundwater-Surface Water Interface Objective is satisfied; and (iv) evaluating potential changes in groundwater flow resulting from adjustments in extraction rates at different extraction well locations. The

Verification Plan shall be continued until terminated pursuant to Section V.D.

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

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

ii. Verification Process for PZ Boundary Wells. Defendant shall conduct the Verification Process as defined in Section III.U for each PZ Boundary Well to verify any exceedance of 4.6 ug/L and/or 7.2 ug/L. A verified detection above 4.6 ug/L will be considered a “Verified PZ Boundary Well Exceedance” and Defendant shall take the response actions set forth in Section V.5.b. A verified detection above 7.2 ug/L will be considered a “Confirmed PZ Boundary Well Noncompliance” and Defendant shall take the response actions set forth in Section V.5.c.

5. Eastern Area Response Actions. Defendant shall take the following response actions:

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

the concentrations of 1,4-dioxane exceed 7.2 ug/L in samples collected from the same Sentinel Well in any three successive monthly sampling events, Defendant shall take the following actions:

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

ii. A focused hydrogeological assessment of the applicable area will be undertaken to analyze the likelihood that 1,4-dioxane at levels above 7.2 ug/L will migrate outside the expanded Prohibition Zone. The assessment shall also opine on the mechanism causing the exceedances and the potential risk of impact to private water wells. Defendant shall provide this assessment within 60 days after installation of the new PZ Boundary Well(s). If the focused hydrogeological assessment determines that there is a low potential for the Groundwater Contamination to migrate beyond the PZ boundary, normal quarterly monitoring of the Sentinel Well and applicable PZ Boundary Wells will resume. If the focused hydrogeological assessment determines that there is a reasonable likelihood for 1,4-dioxane greater than 7.2 ug/L to migrate beyond the Prohibition Zone boundary, the Defendant shall initiate the following response actions:

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

(B) If the Verified Sentinel Well Exceedance occurs in a Sentinel Well to be installed near the northern boundary of the Prohibition Zone, Defendant shall develop a "Remedial Contingency Plan" that identifies the response actions that could be implemented to prevent Groundwater Contamination from migrating beyond the Prohibition Zone Boundary. The Remedial Contingency Plan may identify expansion of the Prohibition Zone as an option, subject to Section V.A.1.a. Defendant shall submit the Remedial Contingency Plan to the MDEQ within 45 days after the focused hydrogeological assessment is completed.

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

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

i. Defendant, in consultation with the MDEQ, shall sample select residential wells in the immediate vicinity of the impacted PZ Boundary Well.

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

iii. If the Verified PZ Boundary Well Exceedance is at the northern boundary of the Prohibition Zone, Defendant shall implement the Remedial Contingency Plan as necessary to prevent contaminant levels above 7.2 ug/L from migrating beyond the Prohibition Zone Boundary.

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

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

ii. Defendant will review the Municipal Water Connection Contingency Plan and implement the remaining activities necessary to provide municipal water

to potentially impacted residential wells.

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

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

e. Triangle Property. If a drinking water supply well is installed on the Triangle Property in the future, Defendant shall take the necessary steps to obtain permission to sample the well on a schedule approved by the MDEQ. Defendant shall monitor such wells on the MDEQ-approved schedule unless or until that property is included in the Prohibition Zone, at which time, the water supply well(s) shall be addressed as part of the well identification process described in Section V.A.2.h.

f. Downgradient Investigation. The Defendant shall continue to implement its Downgradient Investigation Work Plan as approved by the MDEQ on February 4, 2005, to track the Groundwater Contamination as it migrates to ensure any potential migration of Groundwater Contamination outside of the Prohibition Zone is detected before such migration occurs.

6. Operation and Maintenance. Subject to Sections V.A.3.f and V.A.9, Defendant shall operate and maintain the Eastern Area System as necessary to meet the

Prohibition Zone Containment Objective. Defendant shall continuously operate, as necessary, and maintain the Eastern Area System according to MDEQ-approved operation and maintenance plans until Defendant is authorized to terminate extraction well operations pursuant to Section V.C.1.

7. Treatment and Disposal. Groundwater extracted by the extraction well(s) in the Eastern Area System shall be treated (as necessary) using methods approved by the MDEQ and disposed of using methods approved by the MDEQ, including, but not limited to, the following options:

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

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

c. Storm Drain Discharge. Use of the storm drain is conditioned upon issuance of an NPDES permit and approval of such use by the City of Ann Arbor and the

Allen Creek Drainage District. Discharge to the Huron River via the Ann Arbor storm water system shall be in accordance with the NPDES permit and conditions required by the City and the Drainage District. If the storm drain is to be used for disposal, no later than 21 days after permission is granted by the City and the Drainage District to use the storm drain for disposal of purged groundwater, Defendant shall submit to MDEQ, the City of Ann Arbor, and the Drainage District for their review and approval, a protocol under which the purge system shall be temporarily shut down: (i) for maintenance of the storm drain and (ii) during storm events to assure that the storm water system retains adequate capacity to handle run-off created during such events. The purge system shall be operated in accordance with the approved protocol for temporary shutdown.

d. Existing or Additional/Replacement Pipeline to Wagner Road Treatment Facility. Installation of an additional pipeline or a pipeline replacing the existing pipeline to the Wagner Road Treatment Facility is conditioned upon approval of such installation by the MDEQ. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned upon approval of such installation by the City of Ann Arbor, Scio Township, and the Washtenaw County Road Commission, if required by statute or ordinance, or by Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design the pipeline in compliance with all state requirements and install the pipeline with monitoring devices to detect any leaks. If leaks are detected, the system will automatically shut down and notify an operator of the condition. In the event that any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. To reduce the possibility of accidental damage to the pipeline during any future

construction, the location of the pipeline will be registered with MISS DIG System, Inc. Nothing in this Subsection shall relieve Defendant of its obligations to properly treat and dispose of contaminated groundwater in compliance with the Consent Judgment and applicable permit(s), using one or more of the other options for disposal, as necessary.

e. Additional Pipeline from Maple Road Extraction Well(s).

Installation and operation of a proposed pipeline from the Maple Road area to Evergreen area is conditioned upon approval of such installation and operation by the MDEQ. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned upon approval of such installation by the appropriate local authorities, if required by statute or ordinance, or Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design any such pipeline in compliance with all state requirements and install it with monitoring devices to detect any leaks. In the event any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. The pipeline shall be registered with the MISS DIG System, Inc., to reduce the possibility of accidental damage to the pipeline. Defendant may operate such pipeline to, among other things, convey groundwater extracted from the Maple Road Extraction Wells to the Wagner Road treatment systems, where it can be treated and disposed via the Defendant's permitted surface water discharge (capacity permitting).

f. Additional Pipeline from Rose Extraction Well. Installation and operation of a proposed pipeline from the Rose Extraction Well to the existing Evergreen area infrastructure is conditioned upon approval of such installation and operation by the MDEQ. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned

upon approval of such installation by the appropriate local authorities, if required by statute or ordinance, or Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design any such pipeline in compliance with all state requirements and install it with monitoring devices to detect any leaks. In the event any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. The pipeline shall be registered with the MISS DIG System, Inc., to reduce the possibility of accidental damage to the pipeline. Defendant may operate such pipeline to, among other things, convey groundwater extracted from the Rose Well to the Wagner Road treatment systems, where it can be treated and disposed via the Defendant's permitted surface water discharge (capacity permitting).

8. Wagner Road Extraction. The extraction wells currently or in the future located just west of Wagner Road (the "Wagner Road Wells") shall be considered part of the Eastern Area System even though they are located west of Wagner Road. The Defendant shall initially operate the Wagner Road Wells at a combined 200 gpm extraction rate. The Defendant shall continue to operate the Wagner Road Wells in order to reduce the migration of 1,4-dioxane east of Wagner Road at this rate until such time as it determines that the Eastern Area Objectives will be met with a lower combined extraction rate or without the need to operate these wells. Before significantly reducing or terminating extraction from the Wagner Road Wells, Defendant shall consult with MDEQ and provide a written analysis, together with the data that supports its conclusion. MDEQ will review the analysis and data and provide a written response to Defendants within 56 days after receiving Defendant's written analysis and data. If the MDEQ disagrees with the Defendant's decision to reduce or terminate extraction, it may initiate dispute

resolution under Section XVI of the Consent Judgment. The Defendant shall not significantly reduce or terminate the Wagner Road extraction while MDEQ is reviewing or disputing the Defendant's determination.

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

B. Western Area

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

Sections V.B.3.b and c, below (“Western Area Compliance Well Network”) and the Compliance Process set forth in Section V.B.4 (“Western Area Compliance Process”). There is no independent mass removal requirement or a requirement that Defendant operate any particular extraction well(s) at any particular rate beyond what is necessary to prevent the prohibited expansion, provided that Defendant’s ability to terminate all groundwater extraction in the Western Area is subject to Section V.C.1.c and the establishment of property use restrictions as required by Section V.B.3.a. If prohibited expansion occurs, as determined by the Western Area Compliance Well Network and the Western Area Compliance Process, Defendant shall undertake additional response activities to return the Groundwater Contamination to the boundary established by the Western Area Compliance Well Network (such response activities may include recommencement of extraction at particular locations).

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

2. Western Area Groundwater-Surface Water Interface Objective.

a. Defendant shall satisfy the Groundwater-Surface Water Interface Objective in the Western Area.

b. Within      days after the establishment of any downward revision of the groundwater-surface water interface criterion for 1,4-dioxane under Part 201, Defendant shall submit to MDEQ for its review and approval a work plan for investigation of the groundwater-surface water interface in the Western Area and a schedule for implementing the work plan.

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

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

b. Western Area Delineation Investigation. Defendant shall install the following additional groundwater monitoring wells at the approximate locations described

below and on the map attached as Attachment \_\_\_ to address gaps in the current definition of the Groundwater Contamination and to further define the horizontal extent of Groundwater

Contamination in the Western Area:

- i. Commercial area north of Jackson Road (across from April Drive) and south of US-Highway I-94, near MW-40s&d. (Deep well only) (MW-E on Attachment \_\_\_);
- ii. Commercial area north of Jackson Road (across from Nancy Drive) and south of US-Highway I-94, east of MW-40s&d and west of the MW-133 cluster (MW-F on Attachment \_\_\_);
- iii. Residential area west of West Delhi, north of Jackson Road and south of US-Highway I-94 (MW-G on Attachment \_\_\_);
- iv. Residential area southwest of the MW-141 cluster in the vicinity of Kilkenny and Birkdale (MW-H on Attachment \_\_\_); and
- v. Residential area along Myrtle between Jackson Road and Park Road (Shallow Well only) (MW-I on Attachment \_\_\_).

This investigation may be amended by agreement of MDEQ and the Defendant to reflect data obtained during the investigation. Defendant shall promptly provide the data/results from the investigation to the MDEQ so that the MDEQ receives them prior to Defendant's submission of the Compliance Monitoring Plan described in Subsection V.B.3.c, below. Based on the data obtained from the wells described above, Defendant may propose to install additional monitoring wells to potentially serve as Compliance Wells. MDEQ reserves the right to request the installation of additional borings/monitoring wells, if the totality of the data indicate that the horizontal extent of Groundwater Contamination has not been completely defined.

c. Compliance Well Network and Compliance Monitoring Plan.

Within 15 days of completing the investigation described in Subsection V.B.3.b, above, Defendant shall amend its Western Area Monitoring Plan dated \_\_\_\_\_, including Defendant's analysis of the data obtained during the investigation for review and approval by the MDEQ, to identify the network of compliance wells that will be used to confirm compliance with the

Western Area Non-Expansion Cleanup Objective (hereinafter referred to as the “Compliance Monitoring Plan”). The Compliance Monitoring Plan shall include the collection of data from a compliance well network sufficient to verify the effectiveness of the Western Area System in meeting the Western Area Non-Expansion Cleanup Objective. The locations and/or number of the Compliance Wells for the Compliance Monitoring Plan will be determined based on the data obtained from the investigation Defendant shall conduct pursuant to Section V.B.3.b, and shall consist of existing monitoring wells. The MDEQ shall approve the Compliance Monitoring Plan, submit to Defendant changes in the Compliance Monitoring Plan that would result in approval, or deny the Compliance Monitoring Plan within 35 days of receiving the Compliance Monitoring Plan. Defendant shall either implement the MDEQ-approved Compliance Monitoring Plan, including any changes required by MDEQ, or initiate dispute resolution pursuant to Section XVI of this Consent Judgment. Defendant shall implement the MDEQ- (or Court)-approved Compliance Monitoring Plan to verify the effectiveness of the Western Area System in meeting the Western Area Non-Expansion Cleanup Objective. Defendant shall continue to implement the current MDEQ-approved monitoring plan(s) until MDEQ approves the Compliance Monitoring Plan required by this Section. The monitoring program shall be continued until terminated pursuant to Section V.D.

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

Defendant shall develop a MWCCP addressing the potential provision of municipal water to residences using private water supply wells on Elizabeth Road. The MWCCP will be developed according to a schedule to be approved by the MDEQ.

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

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

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

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

i. Sample selected nearby residential water wells. Defendant shall sample select residential wells unless otherwise agreed upon with the MDEQ. Prior to sampling the selected residential wells, Defendant shall submit a list of the wells to be sampled and other sampling details to MDEQ for approval. In selecting residential wells to be sampled, Defendant shall consider data collected from monitoring and residential wells within 1,000 feet of the Compliance Well(s) that exceeded 7.2 ug/L, groundwater flow, hydrogeology and well depth. MDEQ shall respond within seven days after receipt of Defendant’s list of select

residential wells and shall either approve the list or propose alternate or additional residential wells to be sampled.

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

(A) Continue to sample the previously selected residential well(s) unless otherwise agreed upon with the MDEQ.

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

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

(D) Interim Measures Feasibility Study. During the eight month period after the second consecutive Verified Compliance Well Exceedance, Defendant shall evaluate affirmative measures to control migration of the Groundwater Contamination, including adjustments in groundwater extraction rates. Defendant shall submit to MDEQ a feasibility study within 240 days of the Verified Compliance Well Exceedance. The

feasibility study shall include an evaluation of the feasibility and effectiveness of all applicable measures to control expansion of the Groundwater Contamination in light of the geology and current understanding of the fate and transport of the Groundwater Contamination.

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

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

shall preclude Defendant from seeking contribution or cost recovery from other parties responsible for or contributing to exacerbation of the Groundwater Contamination.

e. Residential Drinking Water Well Response Actions. If, after conducting the focused hydrogeological investigation and statistical analysis, the totality of the data evidences a reasonable likelihood that a residential drinking water supply well will be contaminated with 1,4-dioxane above 7.2 ug/L, Defendant shall evaluate and, if appropriate, implement response activities, including, without limitation, the following:

- i. Sampling of at risk residential drinking water supply well(s) on a monthly basis;
- ii. Implementation of affirmative interim measures to mitigate the migration of the Groundwater Contamination toward the residential drinking water supply well(s) as determined in the feasibility study described in Section V.B.4.c.ii.(D);
- iii. Evaluation of land use restrictions and/or institutional controls to eliminate unacceptable exposures to Groundwater Contamination; and
- iv. Evaluation of water supply alternatives including, but not limited to, providing bottled water, a municipal water connection, and point-of-use treatment systems.

If at any time 1,4-dioxane is detected in an active residential well above 3.0 ug/L, Defendant shall promptly at its expense, offer the resident the option of receiving bottled water and shall sample the residential well monthly. These obligations shall terminate if either (i) the contamination level in the residential well drops below 3.0 ug/L during two consecutive sampling events or (ii) residence is connected to a permanent alternative water supply.

Furthermore, Defendant shall work with MDEQ and municipal authorities to evaluate long-term and economically reasonable water supply options.

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

C. Termination of Groundwater Extraction Systems

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

a. Termination Criteria for Evergreen Extraction Wells/Maple Road Wells/Wagner Road Wells. Except as otherwise provided pursuant to Section V.C.2, Defendant may only reduce (below the stated minimum purge rates) or terminate operation of the Evergreen Extraction Wells/Maple Road Wells as provided in Section V.A.3.f. and of the Wagner Road Wells as provided in Section V.A.8.

b. Termination Criteria for Western Area. Except as otherwise provided pursuant to Section V.C.2, and subject to Section V.B.1., Defendant shall not terminate all groundwater extraction in the Western Area until:

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

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

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

Defendant's request to terminate extraction in the Western Area must be made in writing for review and approval pursuant to Section X of the Consent Judgment. The request must include all supporting documentation demonstrating compliance with the termination criteria. Defendant may initiate dispute resolution pursuant to Section XVI of the Consent Judgment if the MDEQ does not approve the Defendant's request/demonstration. Defendant may terminate Western Area groundwater extraction upon: (i) receipt of notice of approval from MDEQ; or (ii) receipt of notice of a final decision approving termination pursuant to dispute resolution procedures of Section XVI of this Consent Judgment.

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

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

i. a change in legally applicable or relevant and appropriate regulatory criteria since the entry of this Consent Judgment; for purposes for this Subsection,

“regulatory criteria” shall mean any promulgated standard criterion or limitation under federal or state environmental law specifically applicable to 1,4-dioxane; or

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

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

c. If the Defendant and MDEQ agree to a proposed modification, the agreement shall be made by written Stipulation filed with the Court pursuant to Section XXIV of this Amended Consent Judgment.

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

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

persons compensated solely for providing peer review of the Hartung Report, in connection with the subject of this litigation.

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

b. Within a reasonable period of time after selection of all panel members, the panel shall confer and establish a schedule for acceptance of submissions from the MDEQ and the Defendant completing review and making recommendations on the items of difference.

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

D. Post-Termination Monitoring

1. Eastern Area

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

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

2. Western Area. Post-termination monitoring will be required for a minimum of ten years after termination of extraction with cessation subject to MDEQ approval. Except as otherwise provided pursuant to Section V.C.2, Defendant shall continue to monitor the groundwater in accordance with approved monitoring plan(s), to verify that it remains in

compliance with the Non-Expansion Cleanup Objective set forth in Section V.B.1 and the Groundwater-Surface Water Interface Objective set forth in Section V.B.2. If any exceedance is detected, Defendant shall immediately notify MDEQ and take whatever steps are necessary to comply with the requirements of Section V.B.1, or V.B.2, as applicable.

E. Quality Assurance Project Plan (QAPP). Defendant previously voluntarily submitted to MDEQ for review and approval a QAPP, which is intended to describe the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Consent Judgment. MDEQ shall review, and Defendant shall revise accordingly, the QAPP to ensure that it is in general accordance with the United States Environmental Protection Agency's ("U.S. EPA" or "EPA") "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and American National Standard ANSI/ASQC E4-2004, "Quality Systems For Environmental Data And Technology Programs – Requirements With Guidance For Use."

## **VI. GELMAN PROPERTY SOILS**

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

B. Response Activities. If necessary to achieve the Gelman Property Objectives, Defendant shall design and implement remedial systems at the Gelman Property.

C. Monitoring. Defendant shall implement the MDEQ-approved Compliance Monitoring Plan to verify that the Gelman Property soil contamination does not cause or

contribute to non-compliance with the Western Area objectives set forth in Sections V.B.1 and V.B.2, and to verify the effectiveness of any implemented remedial system.

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

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

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

C. Defendant shall include in all contracts entered into by the Defendant for Remedial Action required under this Consent Judgment (and shall require that any contractor include in all subcontracts), a provision stating that such contractors and subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with and all applicable laws, regulations, and permits. Defendant shall provide a copy of relevant approved work plans to any such contractor or subcontractor.

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

1. NPDES Permit No. MI-0048453;
2. An Air Permit for discharges of contaminants to the atmosphere for vapor extraction systems, if such systems are part of the remedial design;

3. A Wetlands Permit if necessary for construction of the Marshy Area System or the construction of facilities as part of the Core or Western Systems;
4. An Industrial User's Permit to be issued by the City of Ann Arbor for use of the sewer to dispose of treated or untreated purged groundwater. Plaintiffs have no objection to receipt by the Ann Arbor Wastewater Treatment Plant of the purged groundwater extracted pursuant to the terms and conditions of this Judgment, and acknowledge that receipt of the purged groundwater would not necessitate any change in current and proposed residual management programs of the Ann Arbor Wastewater Treatment Plant;
5. Permit(s) or permit exemptions to be issued by the MDEQ to authorize the reinjection of purged and treated groundwater in the Eastern Area, Western Area, and Little Lake Area;
6. Surface water discharge permit(s) for discharge into surface waters in the Little Lake System Area, if necessary;
7. Approval of the City of Ann Arbor and the Washtenaw County Drain Commissioner to use storm drains for the remedial programs; or
8. A permit for the use of Defendant's deep well for injection of purged groundwater from the remedial systems required under this Consent Judgment.

### **VIII. SAMPLING AND ANALYSIS**

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

### **IX. ACCESS**

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

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

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

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

B. To the extent that the Site or any other area where Remedial Action is to be performed by the Defendant under this Consent Judgment is owned or controlled by persons other than the Defendant, Defendant shall use its best efforts to secure from such persons access for Defendant, MDEQ, and their authorized employees, agents, representatives, contractors, and consultants. Defendant shall provide MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this Section, "best efforts" includes, but is not limited to, seeking judicial assistance to secure such access pursuant to MCL 324.20135a.

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

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

submittal that would result in approval in the time provided under Part 201 of the Natural Resources and Environmental Protection Act, as amended, MCL 324.20101 et seq. If MDEQ does not respond within 56 days, Defendant may submit the matter to dispute resolution pursuant to Section XVI. Upon receipt of a notice of approval or changes from the MDEQ, Defendant shall proceed to take any action required by the plan, report, or other item, as approved or as may be modified to address the deficiencies identified by MDEQ. If Defendant does not accept the changes proposed by MDEQ, Defendant may submit the matter to dispute resolution pursuant to Section XVI.

#### **XI. PROJECT COORDINATORS**

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

B. MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Judgment. MDEQ's Project Coordinator shall provide Defendant's Project Coordinator with the name, addresses, telephone numbers, positions, and responsibilities of any person designated pursuant to this Section.

## **XII. PROGRESS REPORTS**

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

## **XIII. RESTRICTIONS ON ALIENATION**

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

Defendant shall remain obligated to comply with all terms and conditions of this Consent Judgment.

B. Any deed, title, or other instrument of conveyance regarding the Gelman Property shall contain a notice that Defendant's Property is the subject of this Consent Judgment, setting forth the caption of the case, the case number, and the court having jurisdiction herein.

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

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

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

B. When circumstances occur that Defendant believes constitute Force Majeure, Defendant shall notify the MDEQ by telephone of the circumstances within 48 hours after Defendant first believes those circumstances to apply. Within 14 working days after Defendant

first believes those circumstances to apply, Defendant shall supply to the MDEQ, in writing, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken and the measures to be taken by Defendant to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure of Defendant to comply with the written notice provisions of this Section shall constitute a waiver of Defendant's right to assert a claim of Force Majeure with respect to the circumstances in question.

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

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

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

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

Any delay attributable to the revocation or modification of licenses or permits obtained by Defendant to implement remediation actions as set forth in this Consent Judgment shall not be deemed a violation of Defendant's obligations under this Consent Judgment, provided that such

revocation or modification arises from causes beyond the control of Defendant or of any entity controlled by the Defendant performing Remedial Action, such as Defendant's employees, contractors, and subcontractors.

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

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

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

D. A determination by the MDEQ that an event does not constitute revocation or modification of a license or permit, that a delay was not caused by revocation or modification of a license or permit, or that the period of delay was not necessary to compensate for revocation or modification of a license or permit may be subject to dispute resolution under Section XVI of this Consent Judgment.

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

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

#### **XVI. DISPUTE RESOLUTION**

A. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Judgment and shall apply to all provisions of this Consent Judgment, whether or not particular provisions of the Consent Judgment in question make reference to the dispute resolution provisions of this Section. Any dispute that arises under this Consent Judgment initially shall be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed ten working days

from the date of written notice by MDEQ or the Defendant that a dispute has arisen. This period may be extended or shortened by agreement of the MDEQ or the Defendant.

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

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

the Consent Judgment.

D. The Court shall uphold the decision of MDEQ on the issue in dispute unless the Court determines that the decision is any of the following:

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

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

**XVII. STIPULATED PENALTIES**

A. Except as otherwise provided, if Defendant fails or refuses to comply with any term or condition in Sections IV, V, VI, VII, or VIII, or with any plan, requirement, or schedule established pursuant to those Sections, then Defendant shall pay stipulated penalties in the

following amounts for each working day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th Day	\$ 1,000
15th through 30th Day	\$ 1,500
Beyond 30 Days	\$ 2,000

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

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

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

E. Stipulated penalties shall be paid no later than 14 working days after receipt by Defendant of a written demand from MDEQ. Defendant shall make payment by transmitting a check in the amount due, payable to the "State of Michigan," addressed to the Revenue Control Unit; Finance Section, Administration Division; Michigan Department of Environmental Quality; P.O. Box 30657; Lansing, MI 48909-8157. The check shall be transmitted via Courier to the Revenue Control Unit; Finance Section, Administration Division; Michigan

Department of Environmental Quality; Constitution Hall, 5th Floor South Tower; 525 West Allegan Street; Lansing, MI 48933-2125. To ensure proper credit, Defendant shall include the settlement ID - ERD1902 on the payment.

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

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

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

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

1. Claims for injunctive relief to address soil, groundwater, and surface water contamination at or emanating from the Gelman Property;
2. Claims for civil penalties and costs;
3. Claims for natural resource damages;
4. Claims for reimbursement of response costs incurred prior to entry of this

Consent Judgment or incurred by Plaintiffs for provision of alternative water supplies in the Evergreen Subdivision; and

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

C. "Covered Matters" does not include:

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

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

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

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

a. (i) conditions at the Site, previously unknown to the MDEQ, are discovered after entry of this Consent Judgment, (ii) new information previously unknown to MDEQ is received after entry of the Consent Judgment, or (iii) MDEQ adopts one or more new, more restrictive cleanup criteria for 1,4-dioxane pursuant to Part 201 of the NREPA, MCL 324.20101 *et seq.*, after entry of the Consent Judgment; and

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

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

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

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

If MDEQ adopts one or more new, more restrictive, cleanup criteria, MDEQ's rights in Sections XVIII.E.1 and E.2 shall also be subject to Defendant's right to seek another site-specific

criterion(ia) that is protective of public health, safety, welfare, and the environment and/or to argue that MDEQ has not made the demonstration(s) required under this Section.

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

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

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

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

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

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

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

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

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

C. Financial Assurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **XXI. RECORD RETENTION**

Defendant, Plaintiffs, and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Judgment and for a period of ten years after its termination, all records, sampling or test results, charts, and other documents that are maintained or generated pursuant to any requirement of this Consent Judgment, including, but not limited to, documents reflecting the results of any sampling or tests or other data or information generated or acquired by Plaintiffs or Defendant, or on their behalf, with respect to

the implementation of this Consent Judgment. After the ten-year period of document retention, the Defendant and its successors shall notify MDEQ, in writing, at least 90 days prior to the destruction of such documents or records, and upon request, the Defendant and/or its successor shall relinquish custody of all records and documents to MDEQ.

## **XXII. ACCESS TO INFORMATION**

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

## **XXIII. NOTICES**

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

For Plaintiffs:

Daniel Hamel  
Project Coordinator

For Defendants:

Farsad Fotouhi  
Vice President of Corporate Environmental

Michigan Department  
of Natural Resources  
and Environment  
Remediation Division  
301 East Louis Glick Highway  
Jackson, MI 49201

Engineering  
Gelman Sciences Inc.  
600 South Wagner Road  
Ann Arbor, MI 48106

and

Michael L. Caldwell  
Zausmer, August, & Caldwell, P.C.  
31700 Middlebelt Road, Ste. 150  
Farmington Hills, MI 48334

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

#### **XXIV. MODIFICATION**

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

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

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

B. Upon receipt of the Notification of Completion, the MDEQ will review the Notification of Completion and the accompanying draft final report, any supporting documentation, and the actual Remedial Action performed pursuant to this Consent Judgment.

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

**XXVI. EFFECTIVE DATE**

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

**XXVII. SEVERABILITY**

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

### **XXIII. SIGNATORIES**

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

# **EXHIBIT 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 ENVIRONMENTAL QUALITY,

Plaintiffs,

-v-

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

GELMAN SCIENCES INC.,  
a Michigan Corporation,

Defendant.

---

Brian J. Negele (P41846)  
Michigan Department of Attorney General  
525 W. Ottawa St.  
PO Box 30212  
Lansing, MI 48909-7712  
Telephone: (517) 373-7540  
Attorney for the State of Michigan

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

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FOURTH AMENDED AND RESTATED CONSENT JUDGMENT

The Parties enter this Fourth Amended and Restated Consent Judgment in recognition of, and with the intention of, furtherance of the public interest by (1) addressing environmental concerns raised in MDEQ's Complaint; (2) expediting remedial action at the Site; and (3) avoiding further litigation concerning matters covered by this Consent Judgment. Among other things, the Parties enter this Fourth Amended and Restated Consent Judgment to reflect MDEQ's revision of the residential drinking water cleanup criterion for 1,4-dioxane in groundwater to 7.2 micrograms per liter. The Parties agree to be bound by the terms of this Consent Judgment and stipulate to its entry by the Court.

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

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

**I. JURISDICTION**

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

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

**II. PARTIES BOUND**

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

### **III. DEFINITIONS**

Whenever the terms listed below are used in this Fourth Amended and Restated Consent Judgment or the Attachments which are appended hereto, the following definitions shall apply:

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

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

C. "Defendant" shall mean Gelman Sciences Inc.

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

E. "Eastern Area" shall mean the part of the Site that is located east of Wagner Road and the areas encompassed by the Prohibition Zone.

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

G. “Gelman” shall mean Gelman Sciences Inc.

H. “Gelman Property” shall mean the real property described in Attachment \_\_\_, where Defendant formerly operated a manufacturing facility in Scio Township, Michigan. The Defendant sold portions of the property and retains one parcel only for purposes of operating a water treatment system.

I. “Groundwater Contamination” shall mean the 1,4-dioxane in the groundwater at a concentration in excess of 7.2 micrograms per liter (“ug/L”), as determined by the sampling and analytical method(s) described in Attachment \_\_\_ to this Consent Judgment, subject to review and approval by MDEQ.

J. “MDEQ” shall mean the Michigan Department of Environmental Quality, the successor to the Michigan Department of Natural Resources and Environment, the Michigan Department of Natural Resources, and the Water Resources Commission.

K. “Municipal Water Connection Contingency Plan” or “MWCCP” shall mean a contingency plan developed to identify the steps necessary to connect residences that rely on a private water supply well to municipal water in the event those wells are threatened by the Groundwater Contamination and the estimated time necessary to implement each step of the water connection process.

L. “Parties” shall mean Plaintiffs and Defendant.

M. "Plaintiffs" shall mean the Attorney General of the State of Michigan *ex rel.* MDEQ.

N. "Prohibition Zone" shall mean the area that is subject to the institutional control established by the Prohibition Zone Order and this Consent Judgment. A map depicting the Prohibition Zone, as revised due to MDEQ's revision of the residential drinking water cleanup criterion for 1,4-dioxane in groundwater to 7.2 ug/L, is attached as Attachment     .

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

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

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

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

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

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

U. “Verification Process” shall mean the process through which Defendant shall test for and verify concentrations of 1,4-dioxane in excess of the applicable threshold at the relevant monitoring wells, using the sampling and analytical method(s) described in Attachment \_\_\_ to this Consent Judgment. Specifically, Defendant shall sample the wells on a quarterly basis unless an alternative schedule is agreed upon with MDEQ. Groundwater samples will be analyzed for 1,4-dioxane, either by Defendant’s laboratory or a third-party laboratory retained by Defendant. In the event that 1,4-dioxane concentrations in groundwater sampled from any well exceed the applicable threshold, Defendant shall notify the MDEQ by phone or electronic mail within 48 hours of completion of the data verification and validation specified in the Quality Assurance Project Plan (“QAPP”) described in Section V.E. Defendant will resample the same well within five days after the data verification and validation of the original result or at a time agreed upon with MDEQ, if MDEQ opts to take split samples. If a second sample analyzed by Defendant’s laboratory or a third-party laboratory retained by Defendant has contaminant levels exceeding the applicable threshold, the exceedance will be considered verified and Defendant shall undertake the required response actions.

In the event that MDEQ opts to take split samples, Defendant shall also collect an additional split sample for potential analysis within the applicable holding time by a mutually agreed-upon third-party laboratory at Defendant’s expense. If the results from one sample, but

not both, confirm a verified exceedance, the third sample analyzed by the mutually agreed-upon third-party laboratory, using the sampling and analytical method(s) described in Attachment \_\_\_ to this Consent Judgment, shall serve as the relevant result for verification purposes.

V. “Western Area” shall mean that part of the Site located west of Wagner Road.

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

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

#### **V. GROUNDWATER REMEDIATION**

Defendant shall design, install, operate, and maintain the systems described below. The objectives of these systems shall be to extract the contaminated groundwater from the subsurface at designated locations for treatment (as required) and proper disposal to the extent necessary to prevent the plumes of Groundwater Contamination emanating from the Gelman Property from expanding beyond the current boundaries of such plumes as of the date of this Consent Judgment, except into and within the Prohibition Zone, as described below. Defendant also shall prevent 1,4-dioxane from venting into surface waters in the Eastern and Western Areas at concentrations above the groundwater-surface water interface criterion established by the MDEQ for 1,4-dioxane under MCL 324.20120e(1)(a), except in compliance with Part 201, including MCL 324.20120e (“Groundwater-Surface Water Interface Objective”). Defendant also shall implement a monitoring program to verify the effectiveness of these systems.

A. Eastern Area

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

a. Prohibition Zone Containment Objective. Defendant shall prevent Groundwater Contamination, regardless of the aquifer designation or the depth of the groundwater or Groundwater Contamination, from migrating beyond the boundaries of the Prohibition Zone, as may be amended, provided that MDEQ and the Defendant agree that any further expansion of the Prohibition Zone should be avoided, unless there are compelling reasons to do so. Compliance with the Prohibition Zone Containment Objective shall be determined as provided in Section V.A.4.b, below.

b. Groundwater-Surface Water Interface Objective. Defendant shall satisfy the Groundwater-Surface Water Interface Objective for the Eastern Area.

2. Prohibition Zone Institutional Control. Pursuant to MCL 324.20121(8) and the Prohibition Zone Order, the following land and resource use restrictions shall apply to the Prohibition Zone depicted on the map attached hereto as Attachment \_\_\_:

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

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

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

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

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

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

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

iv. Emergency measures necessary to protect public health, safety, welfare or the environment;

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

vi. The City of Ann Arbor’s Northwest Supply Well, provided that the City of Ann Arbor operates the Northwest Supply Well in a manner that does not prevent

its municipal water supply system from complying with all applicable state and federal laws and regulations.

e. Attachment \_\_\_ [consisting of the map depicting the Prohibition Zone and the above list of prohibitions/exceptions] shall be published and maintained in the same manner as a zoning ordinance at Defendant's sole expense. MDEQ-approved legal notice of the Prohibition Zone expansion reflected in Attachment \_\_\_ shall be provided at Defendant's sole expense.

f. The Prohibition Zone Institutional Control shall remain in effect in this form until such time as it is modified through amendment of this Consent Judgment, with a minimum of 30 days' prior notice to all Parties. The Defendant or MDEQ may move to amend the Consent Judgment to modify the boundaries of the Prohibition Zone to reflect material changes in the boundaries or fate and transport of the Groundwater Contamination as determined by future hydrogeological investigations or MDEQ-approved monitoring of the fate and transport of the Groundwater Contamination.

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

h. Well Identification. To identify any wells newly included in the Prohibition Zone as a result of this modification or any future modification to the Prohibition

Zone, pursuant to an MDEQ-approved schedule, Defendant shall implement a well identification plan for the affected area that is consistent with the Expanded Prohibition Zone Well Identification Work Plan approved by MDEQ on February 4, 2011.

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

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

3. **Monitoring and Extraction Well Installation and Operation.** Defendant shall install the following additional wells in the Eastern Area:

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

- i. Residential area in the general vicinity of Ravenwood and Barber Avenues (MW-A on map attached as Attachment     );  
and
- ii. Residential area in the general vicinity of Sequoia Parkway and Archwood Avenues between Delwood and Center (MW-B on map attached as Attachment     ).

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

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

c. Sentinel and PZ Boundary Well Installation and Sampling.

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

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

vertical profiling techniques, which are designed to minimize the amount of water introduced during drilling, unless the MDEQ agrees to alternate techniques.

e. Installation of Additional Groundwater Extraction Well.

Defendant shall install an additional groundwater extraction well (the “Rose Well”) and associated infrastructure in the general area bounded by [NAME] Street and [NAME] Street as designated on Attachment \_\_\_ according to a schedule approved by the MDEQ. The exact location of the Rose Well will be based on an evaluation of relevant geologic conditions, water quality, and other relevant factors, including access.

f. Eastern Area Groundwater Extraction. The Defendant shall operate the Evergreen Subdivision Area extraction wells, LB-4 and the Rose Well (or MDEQ-approved replacement well(s)) (collectively, the “Evergreen Extraction Wells”), and TW-19 and TW-16 (or MDEQ-approved replacement well(s)) (the “Maple Road Wells”), at a combined minimum purge rate of approximately 200 gallons per minute (“gpm”), in order to reduce the mass of 1,4-dioxane migrating through the Evergreen Subdivision Area and the mass of 1,4-dioxane migrating east of Maple Road, until such time as it determines that the Eastern Area Objectives will be met at a reduced extraction rate or without the need to operate these extraction wells. Defendant shall have the discretion to adjust the individual well purge rates in order to optimize mass removal and compliance with the Eastern Area Objectives, provided that it shall operate the Evergreen Extraction Wells at a combined minimum purge rate of approximately 100 gpm, until such time as it determines that the Eastern Area Objectives will be met at a reduced extraction rate without the need to operate these wells. Before significantly reducing or terminating extraction from either the Evergreen Extraction Wells below the 100 gpm minimum

purge rate or the combined Evergreen and Maple Road Wells purge rate of 200 gpm, Defendant shall consult with MDEQ and provide a written analysis, together with the data that supports its conclusion. MDEQ will review the analysis and data and provide a written response to Defendant within 56 days after receiving Defendant's written analysis and data. If the MDEQ disagrees with the Defendant's decision to reduce or terminate extraction, it may initiate dispute resolution under Section XVI of the Consent Judgment. The Defendant shall not significantly reduce or terminate the Wagner Road extraction while MDEQ is reviewing or disputing the Defendant's determination.

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

a. Objectives of Verification Plan. The Verification Plan shall include the collection of data sufficient to measure the effectiveness of the System: (i) ensuring that any potential migration of Groundwater Contamination outside of the Prohibition Zone is detected before such migration occurs; (ii) tracking the migration of the Groundwater Contamination to determine the need for additional investigation and monitoring points to meet the objectives in Section V.A.1, including the determination of the fate and transport of Groundwater Contamination when and if it reaches the portion of the Huron River that is the easternmost extent of the Prohibition Zone; (iii) verifying that the Groundwater-Surface Water Interface Objective is satisfied; and (iv) evaluating potential changes in groundwater flow resulting from adjustments in extraction rates at different extraction well locations. The

Verification Plan shall be continued until terminated pursuant to Section V.D.

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

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

ii. Verification Process for PZ Boundary Wells. Defendant shall conduct the Verification Process as defined in Section III.U for each PZ Boundary Well to verify any exceedance of 4.6 ug/L and/or 7.2 ug/L. A verified detection above 4.6 ug/L will be considered a “Verified PZ Boundary Well Exceedance” and Defendant shall take the response actions set forth in Section V.5.b. A verified detection above 7.2 ug/L will be considered a “Confirmed PZ Boundary Well Noncompliance” and Defendant shall take the response actions set forth in Section V.5.c.

5. Eastern Area Response Actions. Defendant shall take the following response actions:

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

the concentrations of 1,4-dioxane exceed 7.2 ug/L in samples collected from the same Sentinel Well in any three successive monthly sampling events, Defendant shall take the following actions:

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

ii. A focused hydrogeological assessment of the applicable area will be undertaken to analyze the likelihood that 1,4-dioxane at levels above 7.2 ug/L will migrate outside the expanded Prohibition Zone. The assessment shall also opine on the mechanism causing the exceedances and the potential risk of impact to private water wells. Defendant shall provide this assessment within 60 days after installation of the new PZ Boundary Well(s). If the focused hydrogeological assessment determines that there is a low potential for the Groundwater Contamination to migrate beyond the PZ boundary, normal quarterly monitoring of the Sentinel Well and applicable PZ Boundary Wells will resume. If the focused hydrogeological assessment determines that there is a reasonable likelihood for 1,4-dioxane greater than 7.2 ug/L to migrate beyond the Prohibition Zone boundary, the Defendant shall initiate the following response actions:

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

(B) If the Verified Sentinel Well Exceedance occurs in a Sentinel Well to be installed near the northern boundary of the Prohibition Zone, Defendant shall develop a "Remedial Contingency Plan" that identifies the response actions that could be implemented to prevent Groundwater Contamination from migrating beyond the Prohibition Zone Boundary. The Remedial Contingency Plan may identify expansion of the Prohibition Zone as an option, subject to Section V.A.1.a. Defendant shall submit the Remedial Contingency Plan to the MDEQ within 45 days after the focused hydrogeological assessment is completed.

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

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

i. Defendant, in consultation with the MDEQ, shall sample select residential wells in the immediate vicinity of the impacted PZ Boundary Well.

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

iii. If the Verified PZ Boundary Well Exceedance is at the northern boundary of the Prohibition Zone, Defendant shall implement the Remedial Contingency Plan as necessary to prevent contaminant levels above 7.2 ug/L from migrating beyond the Prohibition Zone Boundary.

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

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

ii. Defendant will review the Municipal Water Connection Contingency Plan and implement the remaining activities necessary to provide municipal water

to potentially impacted residential wells.

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

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

e. Triangle Property. If a drinking water supply well is installed on the Triangle Property in the future, Defendant shall take the necessary steps to obtain permission to sample the well on a schedule approved by the MDEQ. Defendant shall monitor such wells on the MDEQ-approved schedule unless or until that property is included in the Prohibition Zone, at which time, the water supply well(s) shall be addressed as part of the well identification process described in Section V.A.2.h.

f. Downgradient Investigation. The Defendant shall continue to implement its Downgradient Investigation Work Plan as approved by the MDEQ on February 4, 2005, to track the Groundwater Contamination as it migrates to ensure any potential migration of Groundwater Contamination outside of the Prohibition Zone is detected before such migration occurs.

6. Operation and Maintenance. Subject to Sections V.A.3.f and V.A.9, Defendant shall operate and maintain the Eastern Area System as necessary to meet the

Prohibition Zone Containment Objective. Defendant shall continuously operate, as necessary, and maintain the Eastern Area System according to MDEQ-approved operation and maintenance plans until Defendant is authorized to terminate extraction well operations pursuant to Section V.C.1.

7. Treatment and Disposal. Groundwater extracted by the extraction well(s) in the Eastern Area System shall be treated (as necessary) using methods approved by the MDEQ and disposed of using methods approved by the MDEQ, including, but not limited to, the following options:

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

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

c. Storm Drain Discharge. Use of the storm drain is conditioned upon issuance of an NPDES permit and approval of such use by the City of Ann Arbor and the

Allen Creek Drainage District. Discharge to the Huron River via the Ann Arbor storm water system shall be in accordance with the NPDES permit and conditions required by the City and the Drainage District. If the storm drain is to be used for disposal, no later than 21 days after permission is granted by the City and the Drainage District to use the storm drain for disposal of purged groundwater, Defendant shall submit to MDEQ, the City of Ann Arbor, and the Drainage District for their review and approval, a protocol under which the purge system shall be temporarily shut down: (i) for maintenance of the storm drain and (ii) during storm events to assure that the storm water system retains adequate capacity to handle run-off created during such events. The purge system shall be operated in accordance with the approved protocol for temporary shutdown.

d. Existing or Additional/Replacement Pipeline to Wagner Road Treatment Facility. Installation of an additional pipeline or a pipeline replacing the existing pipeline to the Wagner Road Treatment Facility is conditioned upon approval of such installation by the MDEQ. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned upon approval of such installation by the City of Ann Arbor, Scio Township, and the Washtenaw County Road Commission, if required by statute or ordinance, or by Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design the pipeline in compliance with all state requirements and install the pipeline with monitoring devices to detect any leaks. If leaks are detected, the system will automatically shut down and notify an operator of the condition. In the event that any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. To reduce the possibility of accidental damage to the pipeline during any future

construction, the location of the pipeline will be registered with MISS DIG System, Inc. Nothing in this Subsection shall relieve Defendant of its obligations to properly treat and dispose of contaminated groundwater in compliance with the Consent Judgment and applicable permit(s), using one or more of the other options for disposal, as necessary.

e. Additional Pipeline from Maple Road Extraction Well(s).

Installation and operation of a proposed pipeline from the Maple Road area to Evergreen area is conditioned upon approval of such installation and operation by the MDEQ. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned upon approval of such installation by the appropriate local authorities, if required by statute or ordinance, or Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design any such pipeline in compliance with all state requirements and install it with monitoring devices to detect any leaks. In the event any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. The pipeline shall be registered with the MISS DIG System, Inc., to reduce the possibility of accidental damage to the pipeline. Defendant may operate such pipeline to, among other things, convey groundwater extracted from the Maple Road Extraction Wells to the Wagner Road treatment systems, where it can be treated and disposed via the Defendant's permitted surface water discharge (capacity permitting).

f. Additional Pipeline from Rose Extraction Well. Installation and

operation of a proposed pipeline from the Rose Extraction Well to the existing Evergreen area infrastructure is conditioned upon approval of such installation and operation by the MDEQ. If the pipeline is proposed to be installed on public property, the pipeline installation is conditioned

upon approval of such installation by the appropriate local authorities, if required by statute or ordinance, or Order of the Court pursuant to the authority under MCL 324.20135a. Defendant shall design any such pipeline in compliance with all state requirements and install it with monitoring devices to detect any leaks. In the event any leakage is detected, Defendant shall take any measures necessary to repair any leaks and perform any remediation that may be necessary. The pipeline shall be registered with the MISS DIG System, Inc., to reduce the possibility of accidental damage to the pipeline. Defendant may operate such pipeline to, among other things, convey groundwater extracted from the Rose Well to the Wagner Road treatment systems, where it can be treated and disposed via the Defendant's permitted surface water discharge (capacity permitting).

8. Wagner Road Extraction. The extraction wells currently or in the future located just west of Wagner Road (the "Wagner Road Wells") shall be considered part of the Eastern Area System even though they are located west of Wagner Road. The Defendant shall initially operate the Wagner Road Wells at a combined 200 gpm extraction rate. The Defendant shall continue to operate the Wagner Road Wells in order to reduce the migration of 1,4-dioxane east of Wagner Road at this rate until such time as it determines that the Eastern Area Objectives will be met with a lower combined extraction rate or without the need to operate these wells. Before significantly reducing or terminating extraction from the Wagner Road Wells, Defendant shall consult with MDEQ and provide a written analysis, together with the data that supports its conclusion. MDEQ will review the analysis and data and provide a written response to Defendants within 56 days after receiving Defendant's written analysis and data. If the MDEQ disagrees with the Defendant's decision to reduce or terminate extraction, it may initiate dispute

resolution under Section XVI of the Consent Judgment. The Defendant shall not significantly reduce or terminate the Wagner Road extraction while MDEQ is reviewing or disputing the Defendant's determination.

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

B. Western Area

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

Sections V.B.3.b and c, below (“Western Area Compliance Well Network”) and the Compliance Process set forth in Section V.B.4 (“Western Area Compliance Process”). There is no independent mass removal requirement or a requirement that Defendant operate any particular extraction well(s) at any particular rate beyond what is necessary to prevent the prohibited expansion, provided that Defendant’s ability to terminate all groundwater extraction in the Western Area is subject to Section V.C.1.c and the establishment of property use restrictions as required by Section V.B.3.a. If prohibited expansion occurs, as determined by the Western Area Compliance Well Network and the Western Area Compliance Process, Defendant shall undertake additional response activities to return the Groundwater Contamination to the boundary established by the Western Area Compliance Well Network (such response activities may include recommencement of extraction at particular locations).

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

2. Western Area Groundwater-Surface Water Interface Objective.

a. Defendant shall satisfy the Groundwater-Surface Water Interface Objective in the Western Area.

b. Within    days after the establishment of any downward revision of the groundwater-surface water interface criterion for 1,4-dioxane under Part 201, Defendant shall submit to MDEQ for its review and approval a work plan for investigation of the groundwater-surface water interface in the Western Area and a schedule for implementing the work plan.

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

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

b. Western Area Delineation Investigation. Defendant shall install the following additional groundwater monitoring wells at the approximate locations described

below and on the map attached as Attachment \_\_\_ to address gaps in the current definition of the Groundwater Contamination and to further define the horizontal extent of Groundwater

Contamination in the Western Area:

- i. Commercial area north of Jackson Road (across from April Drive) and south of US-Highway I-94, near MW-40s&d. (Deep well only) (MW-E on Attachment \_\_\_);
- ii. Commercial area north of Jackson Road (across from Nancy Drive) and south of US-Highway I-94, east of MW-40s&d and west of the MW-133 cluster (MW-F on Attachment \_\_\_);
- iii. Residential area west of West Delhi, north of Jackson Road and south of US-Highway I-94 (MW-G on Attachment \_\_\_);
- iv. Residential area southwest of the MW-141 cluster in the vicinity of Kilkenny and Birkdale (MW-H on Attachment \_\_\_); and
- v. Residential area along Myrtle between Jackson Road and Park Road (Shallow Well only) (MW-I on Attachment \_\_\_).

This investigation may be amended by agreement of MDEQ and the Defendant to reflect data obtained during the investigation. Defendant shall promptly provide the data/results from the investigation to the MDEQ so that the MDEQ receives them prior to Defendant's submission of the Compliance Monitoring Plan described in Subsection V.B.3.c, below. Based on the data obtained from the wells described above, Defendant may propose to install additional monitoring wells to potentially serve as Compliance Wells. MDEQ reserves the right to request the installation of additional borings/monitoring wells, if the totality of the data indicate that the horizontal extent of Groundwater Contamination has not been completely defined.

c. Compliance Well Network and Compliance Monitoring Plan.

Within 15 days of completing the investigation described in Subsection V.B.3.b, above, Defendant shall amend its Western Area Monitoring Plan dated \_\_\_\_\_, including Defendant's analysis of the data obtained during the investigation for review and approval by the MDEQ, to identify the network of compliance wells that will be used to confirm compliance with the

Western Area Non-Expansion Cleanup Objective (hereinafter referred to as the “Compliance Monitoring Plan”). The Compliance Monitoring Plan shall include the collection of data from a compliance well network sufficient to verify the effectiveness of the Western Area System in meeting the Western Area Non-Expansion Cleanup Objective. The locations and/or number of the Compliance Wells for the Compliance Monitoring Plan will be determined based on the data obtained from the investigation Defendant shall conduct pursuant to Section V.B.3.b, and shall consist of existing monitoring wells. The MDEQ shall approve the Compliance Monitoring Plan, submit to Defendant changes in the Compliance Monitoring Plan that would result in approval, or deny the Compliance Monitoring Plan within 35 days of receiving the Compliance Monitoring Plan. Defendant shall either implement the MDEQ-approved Compliance Monitoring Plan, including any changes required by MDEQ, or initiate dispute resolution pursuant to Section XVI of this Consent Judgment. Defendant shall implement the MDEQ- (or Court)-approved Compliance Monitoring Plan to verify the effectiveness of the Western Area System in meeting the Western Area Non-Expansion Cleanup Objective. Defendant shall continue to implement the current MDEQ-approved monitoring plan(s) until MDEQ approves the Compliance Monitoring Plan required by this Section. The monitoring program shall be continued until terminated pursuant to Section V.D.

d. Municipal Water Connection Contingency Plan (“MWCCP”). Defendant shall develop a MWCCP addressing the potential provision of municipal water to residences using private water supply wells on Elizabeth Road. The MWCCP will be developed according to a schedule to be approved by the MDEQ.

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

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

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

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

i. Sample selected nearby residential water wells. Defendant shall sample select residential wells unless otherwise agreed upon with the MDEQ. Prior to sampling the selected residential wells, Defendant shall submit a list of the wells to be sampled and other sampling details to MDEQ for approval. In selecting residential wells to be sampled, Defendant shall consider data collected from monitoring and residential wells within 1,000 feet of the Compliance Well(s) that exceeded 7.2 ug/L, groundwater flow, hydrogeology and well depth. MDEQ shall respond within seven days after receipt of Defendant’s list of select

residential wells and shall either approve the list or propose alternate or additional residential wells to be sampled.

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

(A) Continue to sample the previously selected residential well(s) unless otherwise agreed upon with the MDEQ.

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

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

(D) Interim Measures Feasibility Study. During the eight month period after the second consecutive Verified Compliance Well Exceedance, Defendant shall evaluate affirmative measures to control migration of the Groundwater Contamination, including adjustments in groundwater extraction rates. Defendant shall submit to MDEQ a feasibility study within 240 days of the Verified Compliance Well Exceedance. The

feasibility study shall include an evaluation of the feasibility and effectiveness of all applicable measures to control expansion of the Groundwater Contamination in light of the geology and current understanding of the fate and transport of the Groundwater Contamination.

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

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

shall preclude Defendant from seeking contribution or cost recovery from other parties responsible for or contributing to exacerbation of the Groundwater Contamination.

e. Residential Drinking Water Well Response Actions. If, after conducting the focused hydrogeological investigation and statistical analysis, the totality of the data evidences a reasonable likelihood that a residential drinking water supply well will be contaminated with 1,4-dioxane above 7.2 ug/L, Defendant shall evaluate and, if appropriate, implement response activities, including, without limitation, the following:

- i. Sampling of at risk residential drinking water supply well(s) on a monthly basis;
- ii. Implementation of affirmative interim measures to mitigate the migration of the Groundwater Contamination toward the residential drinking water supply well(s) as determined in the feasibility study described in Section V.B.4.c.ii.(D);
- iii. Evaluation of land use restrictions and/or institutional controls to eliminate unacceptable exposures to Groundwater Contamination; and
- iv. Evaluation of water supply alternatives including, but not limited to, providing bottled water, a municipal water connection, and point-of-use treatment systems.

If at any time 1,4-dioxane is detected in an active residential well above 3.0 ug/L, Defendant shall promptly at its expense, offer the resident the option of receiving bottled water and shall sample the residential well monthly. These obligations shall terminate if either (i) the contamination level in the residential well drops below 3.0 ug/L during two consecutive sampling events or (ii) residence is connected to a permanent alternative water supply.

Furthermore, Defendant shall work with MDEQ and municipal authorities to evaluate long-term and economically reasonable water supply options.

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

C. Termination of Groundwater Extraction Systems

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

a. Termination Criteria for Evergreen Extraction Wells/Maple Road Wells/Wagner Road Wells. Except as otherwise provided pursuant to Section V.C.2, Defendant may only reduce (below the stated minimum purge rates) or terminate operation of the Evergreen Extraction Wells/Maple Road Wells as provided in Section V.A.3.f. and of the Wagner Road Wells as provided in Section V.A.8.

b. Termination Criteria for Western Area. Except as otherwise provided pursuant to Section V.C.2, and subject to Section V.B.1., Defendant shall not terminate all groundwater extraction in the Western Area until:

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

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

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

Defendant's request to terminate extraction in the Western Area must be made in writing for review and approval pursuant to Section X of the Consent Judgment. The request must include all supporting documentation demonstrating compliance with the termination criteria. Defendant may initiate dispute resolution pursuant to Section XVI of the Consent Judgment if the MDEQ does not approve the Defendant's request/demonstration. Defendant may terminate Western Area groundwater extraction upon: (i) receipt of notice of approval from MDEQ; or (ii) receipt of notice of a final decision approving termination pursuant to dispute resolution procedures of Section XVI of this Consent Judgment.

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

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

i. a change in legally applicable or relevant and appropriate regulatory criteria since the entry of this Consent Judgment; for purposes for this Subsection,

“regulatory criteria” shall mean any promulgated standard criterion or limitation under federal or state environmental law specifically applicable to 1,4-dioxane; or

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

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

c. If the Defendant and MDEQ agree to a proposed modification, the agreement shall be made by written Stipulation filed with the Court pursuant to Section XXIV of this Amended Consent Judgment.

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

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

persons compensated solely for providing peer review of the Hartung Report, in connection with the subject of this litigation.

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

b. Within a reasonable period of time after selection of all panel members, the panel shall confer and establish a schedule for acceptance of submissions from the MDEQ and the Defendant completing review and making recommendations on the items of difference.

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

D. Post-Termination Monitoring

1. Eastern Area

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

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

2. Western Area. Post-termination monitoring will be required for a minimum of ten years after termination of extraction with cessation subject to MDEQ approval. Except as otherwise provided pursuant to Section V.C.2, Defendant shall continue to monitor the groundwater in accordance with approved monitoring plan(s), to verify that it remains in

compliance with the Non-Expansion Cleanup Objective set forth in Section V.B.1 and the Groundwater-Surface Water Interface Objective set forth in Section V.B.2. If any exceedance is detected, Defendant shall immediately notify MDEQ and take whatever steps are necessary to comply with the requirements of Section V.B.1, or V.B.2, as applicable.

E. Quality Assurance Project Plan (QAPP). Defendant previously voluntarily submitted to MDEQ for review and approval a QAPP, which is intended to describe the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Consent Judgment. MDEQ shall review, and Defendant shall revise accordingly, the QAPP to ensure that it is in general accordance with the United States Environmental Protection Agency's ("U.S. EPA" or "EPA") "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and American National Standard ANSI/ASQC E4-2004, "Quality Systems For Environmental Data And Technology Programs – Requirements With Guidance For Use."

## **VI. GELMAN PROPERTY SOILS**

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

B. Response Activities. If necessary to achieve the Gelman Property Objectives, Defendant shall design and implement remedial systems at the Gelman Property.

C. Monitoring. Defendant shall implement the MDEQ-approved Compliance Monitoring Plan to verify that the Gelman Property soil contamination does not cause or

contribute to non-compliance with the Western Area objectives set forth in Sections V.B.1 and V.B.2, and to verify the effectiveness of any implemented remedial system.

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

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

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

C. Defendant shall include in all contracts entered into by the Defendant for Remedial Action required under this Consent Judgment (and shall require that any contractor include in all subcontracts), a provision stating that such contractors and subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with and all applicable laws, regulations, and permits. Defendant shall provide a copy of relevant approved work plans to any such contractor or subcontractor.

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

1. NPDES Permit No. MI-0048453;
2. An Air Permit for discharges of contaminants to the atmosphere for vapor extraction systems, if such systems are part of the remedial design;

3. A Wetlands Permit if necessary for construction of the Marshy Area System or the construction of facilities as part of the Core or Western Systems;
4. An Industrial User's Permit to be issued by the City of Ann Arbor for use of the sewer to dispose of treated or untreated purged groundwater. Plaintiffs have no objection to receipt by the Ann Arbor Wastewater Treatment Plant of the purged groundwater extracted pursuant to the terms and conditions of this Judgment, and acknowledge that receipt of the purged groundwater would not necessitate any change in current and proposed residual management programs of the Ann Arbor Wastewater Treatment Plant;
5. Permit(s) or permit exemptions to be issued by the MDEQ to authorize the reinjection of purged and treated groundwater in the Eastern Area, Western Area, and Little Lake Area;
6. Surface water discharge permit(s) for discharge into surface waters in the Little Lake System Area, if necessary;
7. Approval of the City of Ann Arbor and the Washtenaw County Drain Commissioner to use storm drains for the remedial programs; or
8. A permit for the use of Defendant's deep well for injection of purged groundwater from the remedial systems required under this Consent Judgment.

## **VIII. SAMPLING AND ANALYSIS**

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

## **IX. ACCESS**

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

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

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

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

B. To the extent that the Site or any other area where Remedial Action is to be performed by the Defendant under this Consent Judgment is owned or controlled by persons other than the Defendant, Defendant shall use its best efforts to secure from such persons access for Defendant, MDEQ, and their authorized employees, agents, representatives, contractors, and consultants. Defendant shall provide MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this Section, "best efforts" includes, but is not limited to, seeking judicial assistance to secure such access pursuant to MCL 324.20135a.

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

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

submittal that would result in approval in the time provided under Part 201 of the Natural Resources and Environmental Protection Act, as amended, MCL 324.20101 et seq. If MDEQ does not respond within 56 days, Defendant may submit the matter to dispute resolution pursuant to Section XVI. Upon receipt of a notice of approval or changes from the MDEQ, Defendant shall proceed to take any action required by the plan, report, or other item, as approved or as may be modified to address the deficiencies identified by MDEQ. If Defendant does not accept the changes proposed by MDEQ, Defendant may submit the matter to dispute resolution pursuant to Section XVI.

#### **XI. PROJECT COORDINATORS**

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

B. MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Consent Judgment. MDEQ's Project Coordinator shall provide Defendant's Project Coordinator with the name, addresses, telephone numbers, positions, and responsibilities of any person designated pursuant to this Section.

## **XII. PROGRESS REPORTS**

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

## **XIII. RESTRICTIONS ON ALIENATION**

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

Defendant shall remain obligated to comply with all terms and conditions of this Consent Judgment.

B. Any deed, title, or other instrument of conveyance regarding the Gelman Property shall contain a notice that Defendant's Property is the subject of this Consent Judgment, setting forth the caption of the case, the case number, and the court having jurisdiction herein.

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

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

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

B. When circumstances occur that Defendant believes constitute Force Majeure, Defendant shall notify the MDEQ by telephone of the circumstances within 48 hours after Defendant first believes those circumstances to apply. Within 14 working days after Defendant

first believes those circumstances to apply, Defendant shall supply to the MDEQ, in writing, an explanation of the cause(s) of any actual or expected delay, the anticipated duration of the delay, the measures taken and the measures to be taken by Defendant to avoid, minimize, or overcome the delay, and the timetable for implementation of such measures. Failure of Defendant to comply with the written notice provisions of this Section shall constitute a waiver of Defendant's right to assert a claim of Force Majeure with respect to the circumstances in question.

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

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

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

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

Any delay attributable to the revocation or modification of licenses or permits obtained by Defendant to implement remediation actions as set forth in this Consent Judgment shall not be deemed a violation of Defendant's obligations under this Consent Judgment, provided that such

revocation or modification arises from causes beyond the control of Defendant or of any entity controlled by the Defendant performing Remedial Action, such as Defendant's employees, contractors, and subcontractors.

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

B. A revocation or modification of a license or permit within the meaning of this Section means withdrawal of permission, denial of permission, a limitation or a change in license or permit conditions that delays the implementation of all or part of a remedial system.

Revocation or modification due to Defendant's violation of a license or permit (or any conditions of a license or permit) shall not constitute a revocation or modification covered by this Section.

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

D. A determination by the MDEQ that an event does not constitute revocation or modification of a license or permit, that a delay was not caused by revocation or modification of a license or permit, or that the period of delay was not necessary to compensate for revocation or modification of a license or permit may be subject to dispute resolution under Section XVI of this Consent Judgment.

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

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

#### **XVI. DISPUTE RESOLUTION**

A. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Judgment and shall apply to all provisions of this Consent Judgment, whether or not particular provisions of the Consent Judgment in question make reference to the dispute resolution provisions of this Section. Any dispute that arises under this Consent Judgment initially shall be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed ten working days

from the date of written notice by MDEQ or the Defendant that a dispute has arisen. This period may be extended or shortened by agreement of the MDEQ or the Defendant.

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

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

the Consent Judgment.

D. The Court shall uphold the decision of MDEQ on the issue in dispute unless the Court determines that the decision is any of the following:

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

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

#### **XVII. STIPULATED PENALTIES**

A. Except as otherwise provided, if Defendant fails or refuses to comply with any term or condition in Sections IV, V, VI, VII, or VIII, or with any plan, requirement, or schedule established pursuant to those Sections, then Defendant shall pay stipulated penalties in the

following amounts for each working day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th Day	\$ 1,000
15th through 30th Day	\$ 1,500
Beyond 30 Days	\$ 2,000

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

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

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

E. Stipulated penalties shall be paid no later than 14 working days after receipt by Defendant of a written demand from MDEQ. Defendant shall make payment by transmitting a check in the amount due, payable to the "State of Michigan," addressed to the Revenue Control Unit; Finance Section, Administration Division; Michigan Department of Environmental Quality; P.O. Box 30657; Lansing, MI 48909-8157. The check shall be transmitted via Courier to the Revenue Control Unit; Finance Section, Administration Division; Michigan

Department of Environmental Quality; Constitution Hall, 5th Floor South Tower; 525 West Allegan Street; Lansing, MI 48933-2125. To ensure proper credit, Defendant shall include the settlement ID - ERD1902 on the payment.

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

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

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

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

1. Claims for injunctive relief to address soil, groundwater, and surface water contamination at or emanating from the Gelman Property;
2. Claims for civil penalties and costs;
3. Claims for natural resource damages;
4. Claims for reimbursement of response costs incurred prior to entry of this

Consent Judgment or incurred by Plaintiffs for provision of alternative water supplies in the Evergreen Subdivision; and

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

C. “Covered Matters” does not include:

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

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

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

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

a. (i) conditions at the Site, previously unknown to the MDEQ, are discovered after entry of this Consent Judgment, (ii) new information previously unknown to MDEQ is received after entry of the Consent Judgment, or (iii) MDEQ adopts one or more new, more restrictive cleanup criteria for 1,4-dioxane pursuant to Part 201 of the NREPA, MCL 324.20101 *et seq.*, after entry of the Consent Judgment; and

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

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

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

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

If MDEQ adopts one or more new, more restrictive, cleanup criteria, MDEQ's rights in Sections XVIII.E.1 and E.2 shall also be subject to Defendant's right to seek another site-specific

criterion(ia) that is protective of public health, safety, welfare, and the environment and/or to argue that MDEQ has not made the demonstration(s) required under this Section.

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

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

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

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

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

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

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

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

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

C. Financial Assurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **XXI. RECORD RETENTION**

Defendant, Plaintiffs, and their representatives, consultants, and contractors shall preserve and retain, during the pendency of this Consent Judgment and for a period of ten years after its termination, all records, sampling or test results, charts, and other documents that are maintained or generated pursuant to any requirement of this Consent Judgment, including, but not limited to, documents reflecting the results of any sampling or tests or other data or information generated or acquired by Plaintiffs or Defendant, or on their behalf, with respect to

the implementation of this Consent Judgment. After the ten-year period of document retention, the Defendant and its successors shall notify MDEQ, in writing, at least 90 days prior to the destruction of such documents or records, and upon request, the Defendant and/or its successor shall relinquish custody of all records and documents to MDEQ.

**XXII. ACCESS TO INFORMATION**

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

**XXIII. NOTICES**

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

For Plaintiffs:

Daniel Hamel  
Project Coordinator

For Defendants:

Farsad Fotouhi  
Vice President of Corporate Environmental

Michigan Department  
of Natural Resources  
and Environment  
Remediation Division  
301 East Louis Glick Highway  
Jackson, MI 49201

Engineering  
Gelman Sciences Inc.  
600 South Wagner Road  
Ann Arbor, MI 48106

and

Michael L. Caldwell  
Zausmer, August, & Caldwell, P.C.  
31700 Middlebelt Road, Ste. 150  
Farmington Hills, MI 48334

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

#### **XXIV. MODIFICATION**

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

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

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

B. Upon receipt of the Notification of Completion, the MDEQ will review the Notification of Completion and the accompanying draft final report, any supporting documentation, and the actual Remedial Action performed pursuant to this Consent Judgment.

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

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

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

#### **XXVII. SEVERABILITY**

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

### **XXIII. SIGNATORIES**

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