

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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

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

Plaintiff,

and

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

STIPULATED ORDER

Intervening Plaintiffs,

-v-

GELMAN SCIENCES, INC., a Michigan Corporation

Defendant.

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STIPULATED ORDER

At a session of said Court
held in the City of Ann Arbor, County of Washtenaw
on _____
PRESENT _____
Circuit Court Judge

Washtenaw County, Washtenaw County Health Department, Washtenaw County Health Officer, the City of Ann Arbor, and Scio Township and the Huron River Watershed Council having filed their Motions for Intervention in this matter, this Court having entered orders dated January 18, 2017 Granting Motions to Intervene of the City of Ann Arbor, Washtenaw County, and the Huron River Watershed Council, and February 6, 2017 Granting Scio Township's Motion to Intervene, the parties having engaged in productive settlement negotiations regarding the

requirements of a revised Consent Judgment, the Court having entered the Fourth Amended and Restated Consent Judgment, and the Court being further advised in the premises:

IT IS HEREBY ORDERED that the Motions for Intervention filed by Washtenaw County, Washtenaw County Health Department, Washtenaw County Health Officer, currently Jimena Loveluck, in her official capacity, the City of Ann Arbor, and Scio Township (collectively, the “Local Governments”) and the Huron River Watershed Council (“HRWC”) (the Local Governments and HRWC collectively, the “Intervenors”) and all related complaints, claims, causes of action, and court filings (the “Intervention”) are dismissed, with prejudice, subject to paragraphs A and B, below, which provide the Local Governments certain continuing rights and involvement in this matter (“Continuing Rights”):

A. The Intervenors shall not be parties to the Fourth Amended and Restated Consent Judgment (“Consent Judgment”) entered contemporaneously with this Order or have any other role or rights with respect to implementation of the Consent Judgment other than as described in this Order. However, in light of both the Local Governments’ interest on behalf of their citizens in the effective implementation of the Consent Judgment and Plaintiff Michigan Department of Environment, Great Lakes, and Energy’s (“EGLE”) constitutional and statutory role as the sole regulatory agency responsible for enforcing the terms of the Consent Judgment, the Local Governments shall have continuing, but limited, involvement in connection with the implementation of the Consent Judgment, as described below:

1. Termination of Response Activities. Before terminating or significantly reducing the response activities described in Consent Judgment Sections V.A.3.f (Evergreen/Parklake), V.A.9 (Wagner Road), V.C.1 (Termination of Groundwater Systems), and VI.C.1–4 (Gelman Property Source Control):

a. Defendant shall provide each of the Local Governments with its analysis supporting its position that the relevant response activity can be terminated or significantly reduced under the criteria listed in those Consent Judgment Sections when Defendant provides that analysis to EGLE;

b. EGLE shall consult with the Local Governments and consider in good faith their comments and concerns with respect to the proposed termination/reduction of the response activities;

c. After such consultation, EGLE shall provide each of the Local Governments with its written response to Defendant's analysis when it provides that response to Defendant; and

d. Any Local Government may invoke dispute resolution under Paragraph B of this Order if it disagrees with EGLE's response and may fully participate in any dispute resolution process invoked by Defendant under Consent Judgment Section XVI.

2. Prohibition Zone Boundary Modification. With regard to modification of the boundaries of the Prohibition Zone established by Consent Judgment Section V.A.2 under either Sections V.A.2.f (Prohibition Zone Expansion) or V.A.6 (Prohibition Zone Boundary Review):

a. The Parties shall provide each Local Government with all court filings filed pursuant to Sections V.A.2.f and/or V.A.6;

b. EGLE shall consult with the Local Governments and consider in good faith their comments and concerns with respect to the proposed modification of the Prohibition Zone boundaries prior to filing any such filings with the Court; and

c. Any Local Government may invoke dispute resolution under Paragraph B of this Order if it disagrees with EGLE's position taken in such court proceedings and may fully

participate in any dispute resolution process invoked by Defendant under Consent Judgment Section XVI.

3. Modification of Termination or Cleanup Criteria. With regard to modification of the termination or cleanup criteria under Section V.C:

a. Defendant shall provide the Local Governments with any proposal prepared pursuant to Section V.C.2.b when it provides the proposal to EGLE, together with all supporting documentation;

b. EGLE shall consult with the Local Governments and consider in good faith their comments and concerns with respect to the proposed modification of the termination or cleanup criteria;

c. Following such consultation, EGLE shall provide its response to Defendant's proposal when it provides the response to Defendant;

d. Any Local Government may invoke the dispute resolution procedures described in Paragraph B of this Order if it disagrees with EGLE's position. Moreover, any Local Government may fully participate in any dispute resolution process initiated by Defendant under Consent Judgment Section XVI; and

e. If Defendant invokes the procedures set forth in Consent Judgment Section V.C.3:

i. EGLE shall consult with the Local Governments with respect to selection of its panel member under Section V.C.3.a;

ii. The Local Governments may provide the scientific advisory panel with any submissions requested by the panel under Section V.C.3.b;

iii. EGLE shall provide their response to the scientific advisory panel's

recommendations when it provides said response to Defendant pursuant to Section V.C.3.c; and

iv. Any Local Government may invoke the dispute resolution procedures described in Paragraph B of this Order if it disagrees with EGLE's position and may fully participate in any dispute resolution process invoked by Defendant under Consent Judgment Sections V.C.3.c and XVI.

4. Termination of Post-Termination Monitoring. With regard to termination of post-termination monitoring under Consent Judgment Section V.D:

a. Defendant shall provide a copy of any request to terminate post-termination monitoring under V.D to the Local Governments when it submits its request to EGLE;

b. EGLE shall consult with the Local Governments and consider in good faith their comments and concerns with respect to the proposed termination of the post-termination monitoring;

c. Following such consultation, EGLE shall provide its written response to any request to terminate post-termination monitoring under V.D to the Local Governments when it provides the response to Defendant; and

d. Any Local Government may invoke dispute resolution under Paragraph B of this Order if it disagrees with EGLE's response and may fully participate in any dispute resolution process invoked by Defendant under Consent Judgment Section XVI.

5. Groundwater-Surface Water Work Plans. To the extent Defendant is required to submit a work plan(s) describing Response Activities and/or evaluations to be implemented/undertaken to address any area where groundwater is venting to surface water in concentrations that exceed the Generic GSI Criterion with respect to either the Eastern Area or Western Area, EGLE shall consult with the Local Governments and consider in good faith their

comments and concerns with respect to the adequacy of the proposed Response Activities and/or evaluations.

6. Modification of the Consent Judgment. Consent Judgment Sections V.A.3.f (Evergreen/Maple/Parklake), V.A.4 (Verification Monitoring-Eastern Area), V.A.9 (Wagner Road), V.B.4.a - b (Compliance Determination-Western Area), V.C.1 (Termination of Groundwater Systems), VI.C.1-4 (Gelman Property Response Activities), V.A.2.f (Prohibition Zone expansion) and V.A.6 (Prohibition Zone Boundary Review), V.C.2 (Modification of Cleanup Criteria), V.D (Termination of Post-Termination Monitoring), and XXV (Certification and Termination), with respect to which the Local Governments have a continuing role, may not be modified by stipulation under Section XXIV unless each of the Local Governments stipulates to the modification.

7. Certification and Termination. When Defendant submits its Notification of Completion and draft final report under Section XXV.A:

a. Defendant shall provide a copy of its Notification of Completion and draft final report to the Local Governments when it submits these documents to EGLE;

b. EGLE shall consult with the Local Governments and consider in good faith their comments and concerns with respect to the Notice of Completion and draft final report;

c. After such consultation, EGLE shall provide its Certificate of Completion to the Local Governments when it provides the Certificate to Defendant;

d. Any Local Government may invoke dispute resolution under Paragraph B of this Order if it disagrees with EGLE's issuance of a Certificate of Completion and may fully participate in any dispute resolution process invoked by Defendant under Consent Judgment Section XVI related to EGLE's failure to issue such Certificate.

8. Confidential Information. Defendant may redact all trade secrets and proprietary or confidential business information Defendant has identified to EGLE as confidential information under Consent Judgment Section XXII, Access to Information (collectively “CBI”) that is contained in any of the work plans, reports, analyses, or other documents Defendant has agreed to provide to the Local Governments under this stipulated Order.

9. Identification of Representatives. Each Local Government shall identify to Defendant and EGLE one or more representatives to receive the communications described above and update such identifications as necessary. Defendant’s and EGLE’s representatives to receive such communications shall be their individuals identified in Section XXIII of the Consent Judgment, as may be updated with notice to the Local Governments.

B. To the extent the Local Governments are entitled to invoke dispute resolution under this Order, the following procedures shall apply:

1. Any Local Government may invoke dispute resolution under this Order by so notifying the Parties in writing. The dispute initially shall be the subject of informal negotiations between the Parties and the Local Government(s). The period of negotiations shall not exceed ten working days from the date of written notice by the Local Government(s) that a dispute has arisen. This period may be extended or shortened by agreement.

2. Immediately upon expiration of the informal negotiation period (or sooner if upon agreement), EGLE shall provide to the Local Government(s) and Defendant a written statement setting forth EGLE’s proposed resolution of the dispute. Such resolution shall be final unless, within 15 days after receipt of EGLE’s proposed resolution (clearly identified as such under this Order), the Local Government(s) and/or Defendant files a petition for resolution with this Court setting forth the matter in dispute, the efforts made 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.

3. Within ten days of the filing of the petition, EGLE may file a response to the petition, and EGLE will submit to the Court all documents containing information related to the matters in dispute, including documents provided to EGLE by Defendant and the Local Governments regarding the disputed issue(s). Those documents and the 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 EGLE, Defendant, or the Local Government(s) 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.

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

- a. Inconsistent with the Consent Judgment;
- b. Not supported by competent, material, and substantial evidence on the whole record;
- c. Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion; or
- d. Affected by other substantial and material error of law.

C. Termination of Local Governments' Involvement. The Local Governments' Continuing Rights described above shall terminate if any Local Government or any other local unit of government solicits United States Environmental Protection Agency ("USEPA") and/or the

Governor to request USEPA to take a role with jurisdiction over the Gelman Science Site and/or to have the Site listed on the National Priorities List (“NPL”); provided, however, that any Local Government may preserve its Continuing Rights under this Order by, within forty-five (45) days of such solicitation, affirmatively informing USEPA and the Governor in writing that it does not support USEPA involvement and/or NPL listing of the Site.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over enforcement of the Consent Judgment, the rights of the Parties and Local Governments under this Order, the potential termination of the Local Government’s rights under this Order, and enforcement of any settlement agreement entered into between Defendant and the Intervenors in connection with the Intervention.

IT IS FURTHER ORDERED that entry of this order does not resolve all claims between all parties and does not close the case.

Dated: _____

IT IS SO ORDERED

Hon. Timothy P. Connors

STIPULATED TO AND APPROVED BY

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