

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF DU PAGE)

4 IN THE CIRCUIT COURT OF DU PAGE COUNTY
5 FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

6 PEOPLE OF THE STATE OF)
7 ILLINOIS, ex rel KWAME RAOUL,)
8 Attorney General of the)
9 State of Illinois, and ex rel.)
10 ROBERT BERLIN, State's Attorney)
11 for the County of DuPage,)
12 Illinois,)

13 Plaintiff,)

14 vs.)

15 STERIGENICS U.S., LLC,)
16 a Delaware limited liability)
17 Company,)

18 Defendant.)

19  ORIGINAL

20 No. 18 CH 1329

21 REPORT OF PROCEEDINGS had
22 taken at the hearing of the above-entitled cause,
23 before the HONORABLE PAUL M. FULLERTON, Judge of
24 said Court, recorded on the DuPage County
25 computer-based digital recording system, DuPage
26 County, Illinois, and transcribed by Lisa Marie
27 Novak, commencing on the 24th day of July A.D.
28 2019.

29 LISA M. NOVAK, OFFICIAL COURT REPORTER

30 CERT. # 084-004296

1 PRESENT:

2 MR. KWAME RAOUL

3 Attorney General of the State of Illinois, by

4 MR. STEPHEN J. SYLVESTER and

5 MR. CHRISTOPHER WELLS,

6 Assistant Attorney General,

7 appeared on behalf of the People of the
8 State of Illinois;

9 MR. ROBERT B. BERLIN,.

10 State's Attorney of DuPage County, by.

11 MS. LISA SMITH and

12 MR. GREGORY VACI,

13 appeared on behalf of The People of
14 the State of Illinois;

15 SIDLEY & AUSTIN, LLP, by

16 MR. GERARD D. KELLY,

17 MS. STEPHANIE C. STERN and

18 MS. KATE F. LAMBERT,

19 appeared on behalf of the Defendant,
20 Sterigenics;

21 STORINO RAMELLO AND DURKIN, by ,

22 MR. THOMAS BASTIAN and

23 MR. ANDREW Y. ACKER,

24 appeared on behalf of the.
Village of Willowbrook and the.
Village of Burr Ridge;

18 ROSENTHAL, MURPHEY, COBLENTZ & DONAHUE, by

19 MR. JOHN B. MURPHEY,

20 appeared on behalf of the City of
21 Darien;

22 KLEIN THORPE & JENKINS, LTD., by

23 MR. LANCE C. MALINA,

24 appeared on behalf of the.
Village of Hinsdale.

1 THE COURT: All right. Good afternoon.

2 Clearly this matter that's here before the Court
3 today is of high public interest. And it's in
4 that regard that I'm in this different
5 courtroom, Judge Kleeman's courtroom. He was
6 kind enough to let me use his courtroom so
7 everybody could have a seat. And my
8 understanding at the last court hearing people
9 couldn't hear me, and hopefully everybody can
10 hear me today. The microphone is on as loud as
11 it can.

12 So I also understand that this matter
13 may be an emotional issue for many people;
14 however, as you first -- as I first walked in,
15 the deputy said order in the court. So order in
16 the court means order in the court. And what
17 that means is there will be no outbursts.
18 People need to remain quiet so everybody can
19 speak, the attorneys can speak, the judge can
20 speak, and we can make a record and everybody
21 can be heard.

22 If there are any outbursts, I have a
23 couple of things that I could do. One would be
24 to have that person held in contempt. I don't

1 want to do that. Nobody wants that. The other
2 thing I could do is I could clear the entire
3 room and just have the attorneys and the
4 parties, and I don't think anybody else wants
5 that. So I only make those statements because
6 we have a large crowd here. The last time I was
7 in my courtroom, there was a large crowd there,
8 and everybody was very well-behaved. So that's
9 what I expect today also.

10 So can I have the attorneys -- all the
11 attorneys approach so I can get names for the
12 record.

13 MR. WELLS: Good afternoon, your Honor.
14 Christopher Wells on behalf of the People from
15 the Illinois Attorney General's Office.

16 MR. SYLVESTER: Stephen Sylvester on behalf
17 of the Plaintiff, the People of the State of
18 Illinois, on behalf of the Attorney General's
19 Office.

20 MR. KELLY: Gerard Kelly, your Honor, for
21 Sterigenics.

22 MS. STERN: Stephanie Stern for
23 Sterigenics.

24 MS. LAMBERT: Kate Lambert for Sterigenics.

1 MR. ACKER: Andrew Acker on behalf of the
2 Village of Willowbrook and on behalf of the
3 Village of Burr Ridge.

4 MR. BASTIAN: Thomas Bastian on behalf of
5 the Villages of Willowbrook and Burr Ridge.

6 MR. MALINA: Judge, good afternoon. Lance
7 Malina here on behalf of the Village of
8 Hinsdale.

9 MR. MURPHEY: John Murphy, City of Darien.

10 MS. SMITH: Lisa Smith for the People, your
11 Honor.

12 MR. VACI: Greg Vaci from the State's
13 Attorney's Office.

14 THE COURT: Okay. That's everybody, right?

15 MR. WELLS: I think so, your Honor.

16 THE COURT: Okay. So the Court -- Last
17 week -- We were here last Thursday. I was
18 presented with -- And we were here last Thursday
19 for the issuance of the Villages', the four
20 Villages, Willowbrook, Hinsdale, Darien, and
21 Burr Ridge, their petitions to intervene in this
22 case. But the day before the Court was
23 presented or told it was going to be presented
24 with a consent order that could possibly resolve

1 this situation.

2 So I entered and continued those
3 petitions to intervene until today so the Court
4 could have an opportunity to review the consent
5 order. And I have a couple of questions with
6 respect to the consent order before I get to
7 these other issues.

8 Now, last week when we were here, the
9 Court specifically brought up this new
10 legislation that was entered on June 21st of
11 2019, specifically referencing Subsection G,
12 which is legislation directed specifically at
13 the Willowbrook facility because the Willowbrook
14 facility is the only facility in the State of
15 Illinois that's subject to a seal order.

16 I asked questions at that time about
17 Subsection G, as well as the entire statute at
18 issue; and I was informed -- I believed I was
19 informed that this statute was all in play and
20 all part of the consent order. So my question
21 today, because on page 8 on the proposed consent
22 order -- I'm sorry -- page 3, paragraph 8, the
23 sentence reads:

24 Public Act 101-0022, and that is this

1 new legislation, took effect on June 21, 2019,
2 and such Public Act applies to Willowbrook I
3 and II. Defendant has stated its intention to
4 comply with Public Act 101-0022 and acknowledges
5 its obligation to do so, which I thought is a --
6 is proper, although I think the second sentence
7 would need to be much more specific in complying
8 with the new legislation, Public Act 101-0022.

9 So it brings me to my question.

10 Specifically, Subsection G deals with a facility
11 permitted to emit ethylene oxide that has been
12 subject to a seal order. And that is this
13 facility at issue, Willowbrook. So I will ask
14 the attorney for Sterigenics and the attorney
15 for the State and the State of Illinois, as well
16 as the State's Attorney. Is Subsection G part
17 of this consent order?

18 MR. WELLS: Your Honor, so I can speak to
19 that. Subsection -- The way that the consent
20 order functions, your Honor, it's both and with
21 the statute. So Sterigenics would be obligated
22 to comply with both the proposed consent order
23 and the requirements in the new statute.

24 THE COURT: Including Subsection G?

1 MR. WELLS: Yes, your Honor. And, in fact,
2 when we were previously before your Honor, one
3 of the things that I pointed out to the Court is
4 that there's an exception in Subsection G. It's
5 what I would categorize as a litigation
6 exception. The certification requirements in
7 Subsection G apply to a facility that has been
8 subject to a seal order and uses ethylene oxide.
9 So that would apply to Sterigenics.

10 However, Sterigenics under the last
11 sentence in Subsection G could potentially
12 through the litigation that we're resolving
13 through the consent order or other claims that
14 it could conceivably have filed have attempted
15 to make use of the exception under Subsection G,
16 which would apply if a court of competent
17 jurisdiction, including this Court, were to
18 find -- were to determine that the findings of
19 the seal order were without merit.

20 So we specifically addressed this in
21 the proposed consent order in a couple of
22 different places, one, the provision that your
23 Honor just acknowledges. Two, with respect to
24 Section 1(c)(2) on page 4, your Honor, the last

1 thing that's in that paragraph, the parties
2 further agree that by entering this consent
3 order, the Court makes no determination as to
4 the merits of the supporting findings of the
5 seal order.

6 This is a specific statement that was
7 included at the State's request to make clear
8 that this consent order and the resolution of
9 this litigation does not get Sterigenics within
10 the scope of that exception. In addition, in
11 the release, your Honor, on page 25, Section
12 3(j)(2) of the proposed consent order --

13 THE COURT: I'm sorry. What page are you
14 on?

15 MR. WELLS: Page 25. I'm sorry. 25 into
16 26.

17 THE COURT: Under the seal release order,
18 seal order release?

19 MR. WELLS: That's correct, your Honor. So
20 the provision seal order release, within two
21 business days of the entry of this consent
22 order, Illinois EPA shall remove the seal order.
23 And, as your Honor is familiar with the
24 remainder of the consent order, the proposed

1 consent order substitutes for the seal order and
2 imposes the restrictions on operations and the
3 prohibitions on operations. The seal order is
4 removed recognizing then the consent order
5 replaces it. At that point in time there's a
6 release that kicks in. And that release is very
7 broad in scope, your Honor. It releases -- it
8 releases all of Defendant's claims, not only
9 that they have asserted in the federal
10 litigation attempting to challenge the seal
11 order in the litigation before this Court
12 attempting to challenge a seal order, but also
13 any claim that they could have asserted as of
14 the date of the entry of this consent order to
15 challenge the seal order.

16 So it is a release that removes
17 Sterigenics' ability to qualify for the
18 exception of Subsection G. So that is the way
19 in which we thought it was appropriate to deal
20 with Subsection G through the consent order
21 recognizing that the consent order doesn't
22 supercede state law. Sterigenics is obligated
23 to comply with both state law and the consent
24 order. However, we thought the consent order

1 played a critical role in taking that exception
2 to the certification requirements that already
3 apply to Sterigenics, taking that exception off
4 the table.

5 THE COURT: All right. Let me be a little
6 more specific then because I want to be clear.
7 Because under Subsection G it says a facility
8 permitted to emit ethylene oxide that has been
9 subject to a seal order under Section 34 -- so
10 that's the Willowbrook facility we're talking
11 about -- is prohibited from using ethylene oxide
12 for sterilization or fumigation purposes unless,
13 one, the facility can provide a certification to
14 the agency by the supplier of a product to be
15 sterilized or fumigated that ethylene oxide
16 sterilization or fumigation is the only
17 available method to completely sterilize or
18 fumigate the product and, two, the agency has
19 certified that the facility's emission control
20 system uses technology that produces the
21 greatest reduction in ethylene oxide emission
22 currently available.

23 And it goes on to state that the
24 certification shall be made by a company

1 representative with knowledge of the
2 sterilization requirements of the product. The
3 certification requirements of this section shall
4 apply to any group of products packaged together
5 and sterilized as a single product if
6 sterilization or fumigation is the only
7 available method to completely sterilize or
8 fumigate more than half of the individual
9 products contained in the package.

10 So what you're telling me is that
11 those two conditions still are in play and they
12 are part of this consent order?

13 MR. WELLS: They are incorporated by
14 reference, your Honor. That is correct.

15 THE COURT: And you agree with that?

16 MR. KELLY: I agree, your Honor.

17 THE COURT: Okay. One other question on
18 the consent order then. On page 16 you've got
19 this emergency temporary operation. I read it.
20 I understand it. It's not within the statute,
21 right?

22 MR. WELLS: That's correct, your Honor.

23 THE COURT: And give me a -- So it says --
24 I'm paraphrasing -- that you, the State, could

1 approve a temporary or limited operations of
2 this facility, Willowbrook I, if the State
3 obtains information identifying a critical need
4 for sterilization of one or more medical devices
5 necessary to protect public health. And then
6 you go through a process.

7 Give me -- Give me an example of what
8 you're talking about.

9 MR. WELLS: Sure. So -- And, your Honor,
10 first I want to be clear about this provision.
11 This is, again, another situation where it's
12 above and. This provision does not exempt the
13 certification requirements under state law that
14 apply to Sterigenics. It does not exempt the
15 State from complying with those certification
16 requirements in ensuring that Sterigenics
17 complies with them. What this provision -- The
18 State included this provision in response to a
19 public notice that was issued by the Federal
20 Food and Drug Administration related to a
21 temporary shortage of tracheostomy tubes that
22 are used with respect to infants in NICU's
23 frankly.

24 As government officials we had to

1 account for the possibility there could be
2 emergency circumstances that would require us to
3 take a different course of action to address
4 those emergency circumstances. But, of course,
5 as the State, as the Chief Law Enforcement
6 Officer of the State, the Chief Legal Officer of
7 the State, the Attorney General cannot violate
8 state law in the course of doing that. So the
9 two provisions, the emergency temporary
10 operations provisions under the consent order
11 and then Subsection G of the new statute would
12 both have to be satisfied in order for temporary
13 emergency operations to occur.

14 THE COURT: Okay. Fair enough. Thank you
15 for the explanation and clarifications. All
16 right. I'll come back to this issue on the
17 consent order in a moment.

18 Let's deal with -- I've got four
19 petitions to intervene, Willowbrook, Darien,
20 Burr Ridge and Hinsdale. Here's what I'm going
21 to do. I'm going to entertain very brief legal
22 argument, and here's one of the reasons why.
23 Each of these petitions to intervene are very,
24 very similar with -- The actual petitions are

1 almost identical. There's differences as to the
2 particulars of the Villages that are involved.
3 In the petitions, each of the petitions, there's
4 no case law cited whatsoever; and it's not until
5 the reply brief that a case law is cited. I
6 know in the response brief there is case law
7 that's cited; and in the reply briefs you
8 distinguish or you counter those cases cited,
9 but then you cite new cases. And by you, I'm
10 talking about the four Villages. You cite new
11 cases that were not raised at all in the
12 petition, which we all know as lawyers that's
13 not appropriate. And I'm just bringing it to
14 your attention. It's not to say that I've read
15 every case that's cited in these briefs -- and
16 really there's about four or five of them that
17 are controlling -- but intervention is under
18 735 ILCS 2-408(a) that says as a matter of
19 right, and then (b) would be the Court's
20 discretion.

21 So I'll entertain very brief argument
22 from each representative or attorney for each
23 village. And I need you to identify who you
24 are, what village you're representing, and we'll

1 go down that road. Okay.

2 MR. ACKER: Yes, your Honor. Andrew Acker
3 A-c-k-e-r, appearing on behalf of the Village of
4 Willowbrook and on behalf of the Village of
5 Burr Ridge. The arguments that we intend to
6 submit, your Honor, relate to obviously a
7 significant change in circumstances that's
8 occurred since the petition was filed. We filed
9 our petition on November 30, 2018. We were
10 scheduled to present that petition on December
11 6th. Before we were able to do so there was a
12 removal. And in the interim the Villages were
13 on the sidelines basically waiting for the
14 federal litigation to conclude.

15 Since that time there's been
16 significant factual developments; and we list a
17 number of them, including a significant ambient
18 air testing that resulted in extreme elevated
19 results both interior and exterior at the
20 Village Hall of Willowbrook and the police
21 department. There was a determination made in a
22 report by the Illinois Department of Health
23 regarding the cancer incidents assessments near
24 Sterigenics finding significantly elevated

1 Hodgekin's lymphoma cases in females. There was
2 also a US EPA risk assessment related to cancer
3 risks from Sterigenics that determined that
4 there was a residential lifetime cancer risk
5 from Sterigenics as high as an additional of ten
6 incidents of cancer per 10,000. This is ten
7 times what the US EPA considers acceptable.

8 Since that time, your Honor, there's
9 been the adoption of the Matt Haller Act. And
10 there's been -- the facility has been subject to
11 a seal order. Obviously, this leads us to where
12 we are today. And, you know, the petition that
13 we submitted back in November likely could be,
14 you know, rebriefed, if you would, or amended.
15 I'm not going to -- I don't -- I'm not -- My
16 suggestion is not to use our time to do so. I
17 think it's appropriate that we address what we
18 have before us.

19 What we do have, your Honor, is a
20 situation where the case is about to conclude.
21 And for notions of fundamental fairness and due
22 process the Village submits that this Court
23 should allow the petitions to be slightly
24 modified so that we can seek to present written

1 comments. And we're proposing to have a
2 singular brief on all -- on behalf of all four
3 Villages. We would suggest that 30 to 45 days
4 be appropriate to submit that, and that these
5 comments should be submitted for consideration
6 for the Court. Obviously in order to do that
7 and have standing, the petitions for
8 intervention should be granted.

9 The purpose for requesting
10 intervention to provide comment is to address a
11 number of issues. It allows the Villages to
12 have standing before this Court, so as to
13 provide a global perspective directly from the
14 communities that are most immediately affected.
15 It allows the Court to have an orderly
16 litigation procedure where it can obtain
17 important and unfiltered information related to
18 the topics either not covered in the consent
19 order, or that are covered in the consent order.
20 But need not -- But the notion here, your Honor,
21 as I said, we have been waiting to have our
22 petitions heard. And obviously we understand
23 the factual and legal circumstances that have
24 precluded this. There is an analogous situation

1 for these types of things to occur. In the
2 federal process the Department of Justice is
3 required to provide a 30-day comment period
4 under 50 CFR 50.7 that allows for public comment
5 to be lodged. While this is a little different,
6 we submit that it's not unprecedented to have
7 these types of submissions occur.

8 For example, we are aware of the
9 motion for leave to file an amicus curiae brief
10 submitted by State Representatives, Durkin,
11 Curran and Mazzochi, that raise significant
12 legal issues as to the legislative intent of the
13 statutory provisions contained in 415 ILCS
14 5/9.16(g). The Village joins in those arguments
15 raised in the amicus; however, there are many
16 other matters the Village would like to submit
17 on comment to the consent order.

18 Another example of comment the
19 Villages intend to raise relates to the
20 requirement of obtaining a root risk analysis.
21 Although the consent order requires root risk
22 analysis to be performed for future incidents
23 that may occur at Sterigenics in the event it
24 reopens, there are no similar requirements for

1 Sterigenics to provide a root risk analysis for
2 events occurring before the seal order was
3 entered in February of 2019.

4 The opinion of the Village of
5 Willowbrook having such a requirement is an
6 absolute necessity. Since this case has
7 started, Willowbrook has on numerous occasions
8 through both its elected officials and its
9 attorneys requested Sterigenics to provide it
10 with information related to its operations so as
11 to provide explanation of why the ambient air
12 testing for ethylene oxide have resulted in
13 significant elevated readings.

14 As of this date we have received
15 nothing. The silence has been deafening. While
16 Willowbrook is ground zero of communications
17 with its residence and workers asking legitimate
18 and justifiable questions whether it is safe to
19 even breath the air in which they live, the
20 Village has been given nothing from Sterigenics
21 to begin answering these questions.

22 For example, was an employee -- Did
23 they make a mistake and push the wrong button?
24 Was there a mechanical breakdown? Absent from

1 this consent order is any attempt to require
2 these answers to these types of questions and
3 for purposes of attempting to restore the
4 public's confidence that is being fully and
5 fairly informed of what happened and why these
6 issues must be addressed.

7 Your Honor, I'm not going to spend any
8 further time since you've read and reviewed the
9 arguments contained in the briefs. The Village
10 stands on its briefs and the arguments contained
11 therein.

12 In conclusion for all of these reasons
13 that have been stated, the Village of
14 Willowbrook and Village of Burr Ridge
15 respectfully request that this Court grant their
16 petitions of intervention as requested to be
17 orally modified and grant them leave to submit
18 written comments along with the other villages
19 and to allow a meaningful participation in the
20 finalization of the terms of the consent order.

21 As such, your Honor, we would request
22 that there be a continuance of the ultimate
23 entry of the consent order to allow this process
24 to occur. Thank you.

1 THE COURT: Quick question. You indicated
2 that it -- what you're proposing is a single
3 brief on comments concerning -- comments and
4 then whatever any argument you wanted to make
5 concerning the consent order.

6 Are you talking about all four
7 villages?

8 MR. ACKER: That's correct, your Honor.

9 THE COURT: So, obviously, you've spoken to
10 the other villages?

11 MR. ACKER: I have, your Honor.

12 THE COURT: Okay. Counsel?

13 MR. KELLY: Your Honor, with respect
14 to -- First of all, I would make the point that
15 these arguments that are now being raised have
16 not been raised previously. I would point to
17 the fact that the rule making provision that
18 counsel references, this is not a rule making.
19 Your Honor, as a statutory matter, the
20 enforcement of the environmental laws is within
21 the ambit of the Illinois Environmental
22 Protection Agency represented by the Illinois
23 Attorney General's Office and the State's
24 Attorney of DuPage County.

1 These -- All of these are issues, and
2 everything having to do with the -- what is an
3 appropriate method for dealing with this
4 situation going forward have been exhaustively
5 addressed by the very officials who, as a
6 statutory matter, are entrusted with that role.
7 The Villages simply do not have any such role
8 with respect to the consent order, and that's
9 exactly what they are asking.

10 In our briefs we address the fact that
11 it is inappropriate as a matter of established
12 law for an intervenor to come into a case for
13 the purpose of trying to upset a settlement
14 agreement. And yet that is exactly what counsel
15 has just described that they are doing. It is
16 also -- And then for example, the Chambers case,
17 which is where the intervention was for the sole
18 purpose of delaying a settlement, similarly, the
19 -- And in the Milwaukee Road case, Chicago
20 Milwaukee, the railroad case, your Honor, the
21 intervenors were trying to add new issues. And
22 that is exactly what the intervenors have done
23 here.

24 Some of the issues have to do with

1 their additional legal claims, claims for
2 trespass, you know, strict liability, claims
3 that we think are invalid on their face, but are
4 different from the statutory claims that the --
5 that the government has raised in this -- in
6 this issue -- I'm sorry -- in this case.

7 But the point to keep in mind, your
8 Honor, is that they can bring their own case to
9 the extent they feel that they have -- that they
10 have issues that they want to raise. But they
11 do not have standing to come in and to raise all
12 of these arguments.

13 Now, all of the provisions that
14 counsel has said, and we've heard for the first
15 time today, that the Village would like to see
16 in the consent order, none of them are provided
17 for in the new act, none of them. So if the
18 Villages had wanted to have provisions similar
19 to what counsel just described, the time for
20 doing so was in the legislative process. And
21 that act I believe was passed unanimously. So
22 it would not have been difficult if that was
23 considered meritorious for the people who were
24 putting the new act into place to add the types

1 of provisions that counsel has now requested.

2 It is not for this Court to intervene
3 and to start to entertain an effort to basically
4 rewrite the legislation and rewrite the consent
5 order between the parties for the purpose of
6 allowing parties that have no standing and no
7 role in the enforcement of these laws to come in
8 to make their points.

9 Your Honor, we have been shut down
10 since February. That has caused -- And it's set
11 forth in our papers, and no one contests it --
12 that has caused significant problems in the
13 provision of healthcare services across the
14 country. And what counsel is basically
15 suggesting is further stalling on our resumption
16 of operations. That harms the public. That
17 harms my client. That harms our employees.

18 With respect to the scientific
19 arguments that counsel makes, the one thing I
20 will simply point out is that all of these
21 studies involve levels of exposure to ethylene
22 oxide that are way above what is actually on a
23 regular basis been found in and near Willowbrook
24 or the Sterigenics facility in Willowbrook, and

1 it relates to decades of exposure.

2 Your Honor, our employees are in
3 the -- they're in that facility every day when
4 it's operating. We care very much about them,
5 and we take care of our employees.

6 Some of the ambient readings that are
7 sort of out of left field, ambient readings that
8 counsel mentions, he actually mentions that some
9 of them were internal, inside the -- some of the
10 Villages' offices. It is scientifically
11 impossible for that ethylene oxide to have come
12 from Sterigenics. It is -- Your Honor, it is --

13 THE COURT: Keep it --

14 THE DEPUTY: Quiet in the courtroom.

15 MR. KELLY: Ethylene oxide disperses. So
16 it does not travel some hundreds of yards, go in
17 a window, and all of a sudden concentrate inside
18 a building where there has been -- where there
19 has been construction going on. So citing to
20 that kind of science just shows how out of left
21 field all of this is.

22 So in conclusion, your Honor, the
23 appropriate step here is to enter the consent
24 order to deny the petitions without prejudice to

1 the Villages filing their own action. The
2 claims that they have raised they can raise in
3 their own suit if they see fit. They can pursue
4 them. We will deal with them on the merits, and
5 that is the appropriate way to go. But to allow
6 the Villages to attempt to play a role that is
7 statutorily prescribed to the Illinois
8 Environmental Protection Agency, the Illinois
9 Attorney General's Office, and the State's
10 Attorney's Office is completely unsupported by
11 law.

12 THE COURT: Okay. Thank you.

13 MR. ACKER: State?

14 THE COURT: You know what?

15 MR. ACKER: State? Does the State have any
16 position on this?

17 THE COURT: I'll get to it. I kind of cut
18 out Darien and Hinsdale, unless you're speaking
19 for them.

20 MR. ACKER: Counsel?

21 THE COURT: Anything?

22 MR. MALINA: Judge, on behalf of the
23 Village of Hinsdale, we agree with Mr. Acker's
24 statements. I would only point out that the

1 Villages have their own interest, and we think
2 we've presented them adequately and that it
3 warrants intervention both as of right and in
4 your sound discretion.

5 THE COURT: Okay.

6 MR. MURPHEY: Your Honor, for Darien, just
7 something that occurred to me while standing
8 here listening. We agree with everything
9 Mr. Acker said. If we're in, it will be one
10 brief for the Court to consider as it will.

11 This is a court of equity, and the
12 State and Sterigenics aren't simply saying we
13 settled the case, dismiss the case. They're
14 asking your Honor to place its imprimatur on
15 this document. You know, looking at all the
16 lawyers here with a couple of exceptions, I'm
17 going to guess that combined we've filled out
18 5,000 orders saying and the Court being fully
19 advised on the premises. What does fully
20 advised on the premises mean? It means that the
21 Court has a fully adequate background to issue
22 the order.

23 So I guess my argument is really a
24 request that the Court consider will it

1 potentially aid the Court in placing its
2 signature on an order to have the input from the
3 municipalities. What is -- what is the harm?

4 You know, there's three interests
5 here. There's -- As counsel for Sterigenics
6 said, somebody with a valuable property right
7 that wants to reopen their business and get on
8 with their life. We've got the State of
9 Illinois who are the policemen. Right? They're
10 enforcing the law. We've got the people here
11 who have gone to hell and back in the last year
12 who just want to be heard and have some input on
13 this document. Maybe -- maybe your Honor will
14 reject every single thing we suggest. Maybe
15 there's one nugget in there that will be of
16 assistance to the Court. What would be the
17 harm, regardless of the vehicle, whether you
18 continue the petition for intervention and allow
19 the municipalities to file a single document?

20 Willowbrook is, of course, the dominant one.
21 Darien and the others are in support. What
22 would -- what -- Why would anybody possibly
23 object to something like that? It can only help
24 your Honor. And it's your Honor's discretion.

1 You know, we've -- Salbay (phonetic) says
2 interests may be inadequate. Well, unless you
3 hear it regarding this document we just got a
4 week ago, there might be amiss. So all we're
5 asking is that we be allowed to put our two
6 cents into this.

7 And in closing, I don't know if
8 anybody in this room has ever mentioned. I'd
9 like to close with a thought from Lyndon
10 Johnson. He had a very rocky relationship with
11 J. Edgar Hoover over many years. And I would
12 ask my colleagues from Sterigenics to just put
13 this in their thought basket.

14 But L.B.J. would allow Hoover to
15 participate in all sorts of sensitive meetings.
16 And people asked L.B.J. why would you let him
17 in. And L.B.J. said in his typically earthy
18 fashion, I'd rather have them inside the tent
19 peeing out, than outside peeing in. And, of
20 course, L.B.J. didn't use the word pee.

21 That's all we're asking, Judge, is
22 that we be allowed to comment on this thing
23 before you go final.

24 THE COURT: Okay. State?

1 MR. WELLS: So, your Honor, there's various
2 things that I think that we would agree with
3 with respect to what the Villages articulated.
4 I spoke to Mr. Acker I think yesterday
5 afternoon, and we had spoken before throughout
6 the course of this whole ordeal.

7 Your Honor, we acknowledge that these
8 communities may have a distinct set of claims.
9 We are not purporting to resolve those claims.
10 The consent order is an order agreed to by the
11 State and Sterigenics. So we agree that there
12 may be additional avenues for the Villages to
13 seek relief. With respect to whether or not
14 that means intervention in this case, as I
15 explained to Mr. Acker and as I've said before
16 to your Honor, we do not object to the Villages
17 intervening. To the extent that they wish to
18 comment on the proposed consent order, as I also
19 expressed to Mr. Acker yesterday, we are willing
20 to hear what comments are raised and to respond
21 to them.

22 I also mentioned to Mr. Acker with
23 respect to expectations as to what -- what that
24 comment process looks like. I think the

1 challenge here, your Honor, is that any comments
2 that are proposed would need to be agreed to,
3 not only by us -- I mean, there's been some
4 ideas here that I think the State would love to
5 implement. At the same time Sterigenics would
6 also have to agree to those, and your Honor
7 would have to agree to modify the consent order
8 in order to implement those provisions.

9 So while we are more than happy to
10 have the Villages be heard and to I think really
11 educate the public as to what's in the consent
12 order and to respond to the many, many questions
13 that we are receiving, I just want to be clear,
14 as I was with Mr. Acker, as to what the nature
15 of that process looks like.

16 THE COURT: Mr. Berlin's Office?

17 MR. VACI: Judge, we join into the
18 statement made by Mr. Wells. We also did not
19 take the position as to intervention. We
20 continue to not have a position. So I was --
21 I'm not going to sandbag the Court with an
22 argument regarding whether we agree or disagree
23 at this point.

24 THE COURT: Okay.

1 MR. KELLY: Your Honor, if I may be heard
2 in response?

3 THE COURT: Briefly.

4 MR. KELLY: Your Honor, the -- We're here
5 today for -- This was an agreement, as we say,
6 with -- between us and the Attorney General's
7 Office and the State's Attorney's Office for
8 entry of this order.

9 The comments that counsel would like
10 to make, one thing I'd like to point out,
11 there's a permit that has been issued by IEPA
12 with respect to the resumption of operations,
13 which we had to submit. It was part of the
14 whole process here. Their public comment is
15 permitted on that. In fact, I believe there's a
16 hearing coming up on August 1st. That is the
17 proper avenue, your Honor, for comment. That
18 August 1st hearing will give them the
19 opportunity. They can make every single
20 argument that they just identified in the proper
21 forum on August 1st. The AG's Office says that
22 it has no objection to hearing them. That is
23 the time for them to be heard. That is the
24 milieu for them to be heard in and not this

court with respect to this consent order.

The consent order should be entered.

We should move forward, and the permit comment process is where all of these issues can be addressed, your Honor.

MR. WELLS: Your Honor, the one clarification I would note is that there's been a draft permit that's been proposed by Illinois EPA. It has not been issued. There's an August 1st public meeting in which the public will have the opportunity to express their views on the permit, and then there's -- through August 15th there's a written comment submittal period. Under the statute it's a 90-day review window.

MR. KELLY: And I thank counsel for his clarification. That's correct.

THE COURT: Okay. Well, let's go back to the statute for intervention. There's two ways you can intervene or a party can intervene as a matter of right. And then that's under Subsection A of 408(a), and then under (b), under the Court's discretion. And the statute starts out by saying upon timely application. There's no dispute that the applications are

1 timely.

2 So turning to Subsection A, there's
3 three prongs under A in which intervention as a
4 matter of right would exist and the movants --
5 or Petitioners requested under Subsection 2,
6 which says that representation of an applicant's
7 interest by existing parties is or may be
8 inadequate and the applicant will or might be
9 bound by an order or judgment in the action.

10 And then the parties cited the cases
11 that analyze that particular section about
12 inadequacy. And the Court believes that both
13 the State and the State's Attorney has provided
14 adequate representation. The interests are not
15 that divergent between the people in those
16 particular communities and the people of the
17 County of DuPage represented by Mr. Berlin's
18 Office, as well as the Attorney General's Office
19 which represents all of the People in the State
20 of Illinois.

21 So the petitions to intervention under
22 Subsection A are denied. Under Subsection B --
23 Under Subsection B, that's the discretion of the
24 Court. And there's two factors. One is when a

1 statute confers a conditional right -- we don't
2 have that -- or, two, when an applicant's claim
3 or defense and the main action have a question
4 of law or fact in common.

5 So clearly that's -- that's right on
6 here. So now it's up to the Court's discretion.
7 Generally I don't think I've ever had a case
8 where settlement is proposed and somebody is
9 seeking to intervene and one or a number of the
10 parties involved in the settlement are in favor
11 of the intervention. And that's what I have
12 here from both the State and the State's
13 Attorney's Office.

14 So in using the Court's discretion, I
15 am going to allow the petitions to intervene
16 with caveats. And echoing what Mr. Acker said,
17 the Court will entertain a single brief
18 representing all four entities. And the brief
19 is going to be solely related to this consent
20 order.

21 Counsel for Sterigenics made an
22 excellent point that if these particular
23 Villages have actions they want to pursue
24 against Sterigenics, they could do so. But at

1 this point this is not the place or time for
2 that. So I will allow, again, a single brief.
3 It's going to comply with the local court rules.
4 The brief is going to be ten pages in length.
5 You can attach exhibits. And then I'm going to
6 give Sterigenics and/or the Attorney General and
7 the State's Attorney's Office an opportunity to
8 respond.

9 Now you asked for 45 days to file this
10 single brief. I'll give you 30 days to file
11 this single brief.

12 MR. KELLY: Your Honor, I have to object to
13 30 days. This is -- these -- this is important
14 to the -- to my client. It's important to the
15 community. It's obvious that there has been
16 a lot of work done in terms of generating these
17 arguments. If you're going to give them -- I
18 would respectfully request two weeks and one
19 week, your Honor. There's no question with the
20 fire power we have here that they can be ready.

21 THE COURT: I understand your request.
22 I'll give them the 30 days, and I'll give you
23 one week if you want one week to respond. And
24 then we'll have a hearing date with respect

1 to -- What we're talking about is the consent
2 order. Okay?

3 MR. ACKER: Understood.

4 THE COURT: I don't need to see arguments
5 about other claims or things of that nature.
6 This is related to the consent order.

7 I think counsel for Darien was correct
8 in the Court should at least listen to what
9 these communities have to say with respect to
10 this consent order that's proposed by the State
11 and the State's Attorney when they don't even
12 object to you folks having your say. To me it
13 makes sense. So 30 days from today.

14 MR. KELLY: August 23, your Honor.

15 THE COURT: Thank you. August 23. And you
16 want until August 30th to --

17 MR. KELLY: Yes, your Honor. And we would
18 just respectfully ask counsel to serve us by
19 e-mail. I've had some issues with some of the
20 intervenors. I'm sure Mr. Acker, if he's taking
21 the lead, we've had no difficulties with getting
22 service from his office.

23 THE COURT: Okay.

24 MR. ACKER: That's correct.

1 MR. SYLVESTER: Courtesy copies?

2 THE COURT: Yeah, I need courtesy copies.

3 So movant gets me a full set of courtesy copies.

4 I think Mr. Acker --

5 MR. ACKER: I'll take care of it, your
6 Honor.

7 THE COURT: -- knows the whole routine.

8 MR. ACKER: Yes, your Honor.

9 THE COURT: And now I'm going to look for a
10 hearing date. September 6th, a week after that.
11 We'll do it at 10:00 o'clock in the morning.
12 You can say courtroom 2005.

13 MR. ACKER: Okay.

14 THE COURT: If we have to move, we'll move.

15 MR. ACKER: Very good, your Honor.

16 THE COURT: Okay. The final issue I think
17 I have is an amicus brief was sent to me
18 yesterday at 4:00 o'clock, asked that it be --
19 leave to file the amicus brief. I'm going to
20 grant leave to file the amicus brief. The only
21 comments I will say is that it was very well
22 written and it was informational. Beyond that,
23 it really doesn't come into play with what I
24 have here. Okay.

1 MR. ACKER: So that would represent that
2 the motion for a consent order would be entered
3 and continued, your Honor?

4 THE COURT: Right, to September 6th at
5 10:00 o'clock.

6 MR. ACKER: Very good, your Honor.

7 THE COURT: All right.

8 MR. MALINA: Thank you.

9 MR. BASTIAN: Thank you.

10 MR. ACKER: Thank you.

11 THE COURT: See you then.

12 MR. ACKER: Order to come.

13 THE COURT: Okay. Order to come.

14 MS. SMITH: Thank you, your Honor.

15 MR. KELLY: Thank you, your Honor.

16 THE COURT: Do we do electronic orders in
17 here?

18 THE CLERK: No.

19 THE COURT: Mr. Acker, we do handwritten
20 orders in here.

21 MR. ACKER: Okay, your Honor.

22 THE COURT: We're not as advanced as over
23 across the hall.

24 MR. SYLVESTER: Are we doing a written

1 order?

2 THE COURT: You have to do a written order
3 just like Abe --

4 MR. SYLVESTER: We were just talking about
5 that a couple of weeks ago.

6 THE COURT: -- just like Abe Lincoln days.

7 (WHICH were all of the
8 proceedings had at the
9 hearing of the above-
10 entitled cause, this date
11 and time aforesaid.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)

4 I, LISA MARIE NOVAK, hereby certify
5 that I am a Certified Shorthand Official Court
6 Reporter assigned to transcribe the
7 computer-based digital recording of proceedings
8 had of the above-entitled cause, Administrative
9 Order No. 99-12, and Local Rule 1.03(b). I
10 further certify that the foregoing, consisting of
11 Pages 1 to 42, inclusive, is a true and accurate
12 transcript hereinabove set forth.

13
14 
15 Official Court Reporter
16 Eighteenth Judicial Circuit of Illinois
17 DuPage County
18 Certificate # 84-4296