

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois, and
ex rel. ROBERT BERLIN, State's Attorney
for DuPage County, Illinois,
Plaintiff,
v.
STERIGENICS U.S., LLC,
a Delaware limited liability company,
Defendant.

Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 6404188
2018CH001329
FILEDATE: 8/30/2019 3:01 PM
Date Submitted: 8/30/2019 3:01 PM
Date Accepted: 8/30/2019 3:08 PM
AT

No. 2018CH001329

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE THAT on the 30th of August, 2019, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed with the DuPage County Circuit Court Clerk a Joint Stipulation, a true and correct copy is attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

By: /s/ Stephen J. Sylvester
STEPHEN J. SYLVESTER
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CERTIFICATE OF SERVICE

I, Stephen J. Sylvester, Senior Assistant Attorney General, do certify that on this 30th day of August, 2019, I caused to be served the foregoing Notice of Filing and Joint Stipulation upon the persons listed on the service list via email pursuant to Illinois Supreme Court Rule 11(c).

/s/ Stephen J. Sylvester

Stephen J. Sylvester
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JOINT STIPULATION

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* ROBERT BERLIN, State's Attorney for DuPage County (collectively, "Plaintiff"), and Defendant, STERIGENICS U.S., LLC ("Defendant" or "Sterigenics"), hereby submit this Stipulation regarding the applicability of Section 9.16(g) of the Illinois Environmental Protection Act to Sterigenics' Willowbrook facilities located at 7775 South Quincy Street, Willowbrook, DuPage County, Illinois and 830 Midway Street, Willowbrook, DuPage County ("Site"). The Illinois Environmental Protection Act was amended by Public Act 101-22 to add a new Section 9.16, which became effective on June 21, 2019. On July 18, 2019, Plaintiff and Defendant submitted a proposed consent order regarding the Site ("Proposed Consent Order"). Plaintiff's and Defendant's joint motion for entry of the Proposed Consent Order is currently pending before the Court. Subject to entry of the Proposed Consent Order, Plaintiff and Defendant are entering into this Stipulation for the purpose of (i) affirming the applicability of the certification requirements set forth in Section 9.16(g) of Public Act 101-22 to the Site, and (ii)

declaring that Plaintiff will not authorize emergency temporary operations under Section III.D.7 of the Proposed Consent Order without prior approval of the Court and providing notice to the Village of Willowbrook, City of Darien, Village of Hinsdale, and Village of Burr Ridge. Subject to entry of the Proposed Consent Order,¹ Plaintiff and Defendant hereby stipulate as follows:

1. Plaintiff and Defendant acknowledge and agree that, prior to and in order for Sterigenics to use ethylene oxide for sterilization or fumigation purposes at the Site, Sterigenics must first obtain the certifications set forth in Section 9.16(g)(i) and (ii) of the Illinois Environmental Protection Act, as enacted in Public Act 101-22.
2. Plaintiff, in the exercise of its sole discretion, will not authorize emergency temporary operations under Section III.D.7 of the Proposed Consent Order without prior approval of the Court upon a motion with notice to counsel for the Village of Willowbrook, the City of Darien, the Village of Hinsdale, and the Village of Burr Ridge.

SO STIPULATED AND AGREED,

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

By: /s/ Christopher G. Wells

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STERIGENICS U.S., LLC

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¹ This Stipulation shall only be effective if the joint motion is granted and the Proposed Consent Order is entered by the Court.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. ROBERT BERLIN, State's Attorney
for DuPage County, Illinois

By: /s/ Lisa Smith

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PLEASE TAKE NOTICE THAT on the 30th of August, 2019, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed with the DuPage County Circuit Court Clerk Plaintiff's Response to Villages' Comments on Consent Order, a true and correct copy is attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

By: /s/ Stephen J. Sylvester
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CERTIFICATE OF SERVICE

I, Stephen J. Sylvester, Senior Assistant Attorney General, do certify that on this 30th day of August, 2019, I caused to be served the foregoing Notice of Filing and Plaintiff's Response to Villages' Comments on Consent Order upon the persons listed on the service list via email pursuant to Illinois Supreme Court Rule 11(c).

/s/ Stephen J. Sylvester
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Senior Assistant Attorney General
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PLAINTIFF'S RESPONSE TO VILLAGES' COMMENTS ON CONSENT ORDER

The Illinois Attorney General’s Office (“IAG”) and the DuPage County State’s Attorney’s Office (“DCSAO”) acknowledge the deeply felt concerns that underlie the comments to the Proposed Consent Order (“Comments”) submitted by the Village of Willowbrook, the City of Darien, the Village of Burr Ridge, and the Village of Hinsdale (collectively, “Villages”). The Villages’ Comments do not, however, identify any legal basis for this Court to reject or modify the Proposed Consent Order (“PCO”).

This Court’s duty is to assess whether the PCO complies with the law. It does. As Plaintiff explained in its initial brief in support of entry of the PCO, most of the substance of the PCO comes directly from the new statute, 415 ILCS 5/9.16, enacted by the Legislature in response to the ethylene oxide (“EtO”) emissions from the Sterigenics facilities at issue in this litigation. Although many elected officials and residents from the Villages supported passage of the new statute, the Villages’ Comments now suggest that the requirements imposed by the new statute and incorporated in the PCO were adopted prematurely, before “fundamental facts” about “the nature

and extent of Sterigenics’ EtO emissions” had been “evaluated fully”. (Comments, at 2.) Plaintiff respectfully disagrees. There is no uncertainty about the fact that for years Sterigenics has operated in compliance with federal standards that allowed its two Willowbrook facilities to emit up to 36,400 pounds of EtO per year. The IAG and DCSAO brought this lawsuit on October 30, 2018 because those standards failed to adequately protect public health. (10/30/18 Compl. ¶¶ 18-19, 59.) Similarly, the Legislature rightly recognized that those standards were out of date and inconsistent with more recent analysis of the risk presented by sustained exposure to high levels of EtO.¹ As a result of the new law enacted by the Legislature and the PCO, Sterigenics has applied for a construction permit capping its annual EtO emissions from its primary facility in Willowbrook (“Willowbrook I”) at 85 pounds per year, and Sterigenics’ other Willowbrook facility (“Willowbrook II”) remains prohibited from using EtO indefinitely until further order of this Court. This drastic reduction in Sterigenics’ EtO emissions achieves exactly what the recently enacted legislation, Plaintiff’s lawsuit, and the Seal Order issued by the Illinois Environmental Protection Agency (“IEPA”) sought to achieve.

In addition to suggesting that the PCO is premature, the Villages’ Comments also propose various additions to the PCO—such as an ambient air standard for EtO, an immediate shut-down requirement for violating this standard, and regulations on outdoor storage of EtO. Plaintiff appreciates the genuine desire to protect the public that animates these suggestions. Plaintiff respectfully disagrees, however, that the PCO is the appropriate avenue for deciding whether to adopt these proposals. The Villages’ proposals are not required by or reflected in the new statute, leaving Plaintiff and the Court with no ability to compel their implementation. These proposals

¹ In December 2016, the United States Environmental Protection Agency (“USEPA”) issued a revised assessment of EtO through its Integrated Risk Information System that reclassified EtO from “probably carcinogenic to humans” to “carcinogenic to humans.” (10/30/18 Compl. ¶ 30.)

also present regulatory downsides that are best addressed in the legislative context, not here.

Plaintiff welcomes the Villages' suggestions that seek to facilitate transparency and information-sharing in the implementation of the PCO. Plaintiff recognizes the critical importance of the issues addressed by the PCO to the Villages' residents and is committed to keeping the Villages informed of developments during the implementation process.

The IAG and DCSAO are responsible for enforcing the laws passed by the Legislature. That is what the PCO does, and that is why it should be entered by this Court.

I. RESPONSE TO COMMENTS

A. The Villages' request that Sterigenics pay for ambient air testing for a period of five years using independent vendors chosen by the Villages.

The Villages' request for additional ambient air testing (*see* Comments, at 4-5, 10) is duplicative of ambient air testing requirements imposed by both the PCO and the new statute. Both the PCO (Sec. III.D.3.b.) and the new statute, 415 ILCS 5/9.16(e), already require ambient air monitoring, which Sterigenics must pay for, pursuant to a plan that must be reviewed and approved by IEPA. The PCO requires an initial 30-day period of ambient air monitoring in the event Willowbrook I resumes use of EtO. This initial monitoring required by the PCO will be supplemented by the quarterly ambient air monitoring required by the new statute. The quarterly air monitoring requirement in the new statute must continue in perpetuity even if the PCO is terminated by the Court after the five-year compliance period.

Both the PCO and the new statute also ensure the integrity of the monitoring by subjecting the monitoring plan—including the selection of a third-party company to conduct the monitoring—and monitoring results to review and approval by IEPA. (*Compare* PCO, Sec. III.D.3.b., *with* 415 ILCS 5/9.16(e).) While Plaintiff shares the Villages' interest in ensuring the integrity of the required monitoring, the Villages cite to no provision of law authorizing Plaintiff

to seek monetary relief on their behalf to fund duplicative monitoring performed by a consultant of their choosing. The Legislature also specifically delegated the responsibility for oversight of the ambient air monitoring to IEPA, 415 ILCS 5/9.16(e), and the Villages offer no explanation as to why the Court should require a different approach. The Villages' request for additional ambient air monitoring is not a basis for rejecting or modifying the PCO.

B. The Villages' request for an ambient air standard for EtO and an immediate shut-down requirement tied to such a standard.

The Villages' request that the PCO set an ambient air standard for EtO and impose an immediate shut-down requirement based on such a standard is not required by federal or state law. USEPA is responsible for setting national ambient air quality standards ("NAAQS") for pollutants. 42 U.S.C. § 7409. To date, USEPA has not set a NAAQS for EtO. USEPA is also required to set national emissions standards for hazardous air pollutants ("NESHAP"), such as EtO, from commercial sterilizing operations like Sterigenics' Willowbrook facilities. 40 C.F.R. Part 63, Subpart O. Nowhere in the federal Clean Air Act or its implementing regulations is there any "ambient air standard" for EtO. The Villages have also not identified any such requirement in any state in the country. Indeed, the Legislature did not include an ambient air standard for EtO in either of two recently passed statutes regarding EtO, nor did it instruct IEPA to develop such a standard. Given that the governing law does not set or require an ambient air standard for EtO, there is no legal basis for requiring an ambient air standard for EtO in the PCO.²

While Plaintiff does not believe there is a legal basis for including an ambient air standard in the PCO, Plaintiff appreciates the Villages' desire for clarity about what would happen if the

² When USEPA sets a NAAQS standard, the process typically takes several years and involves extensive scientific review of health studies. *See* USEPA, Process of Reviewing the National Ambient Air Quality Standards, available at: <https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards>. USEPA, not this Court, is the appropriate body for deciding whether to undertake such a process.

ambient air monitoring required by the PCO identified elevated levels of EtO. Going forward, if ambient monitoring reveals a level of EtO that is elevated in relation to background concentrations, the State will investigate whether Sterigenics is the source responsible for the occurrence and take appropriate action.³ The PCO provides the State with several previously unavailable tools in this respect. Sterigenics will now be required to employ a continuous emissions monitoring system (Sec. III.D.2.i.) that will help the State quickly determine if Sterigenics is responsible for the elevated levels of EtO. The PCO also requires Sterigenics' facilities to capture 100% of the EtO they use and for the facilities' emissions control systems to meet a stringent required control efficiency of 99.9% or 0.2 parts per million. Sterigenics must demonstrate compliance with these requirements through testing, and failure to comply with the required control efficiency gives the State the unilateral right to immediately stop Sterigenics from using EtO at the facilities. (Sec. III.D.5.)⁴ If Sterigenics' EtO emissions resulted in elevated levels of EtO being detected through ambient air monitoring, then it is likely Sterigenics would be in violation of the required control efficiency, its permit, or another provision of the PCO. As a result, the IAG and the DCSAO could immediately compel compliance or seek other remedies, up to and including cessation of the use of EtO, through contempt proceedings before this Court. Thus, the PCO enables the State to act promptly to respond in the event elevated levels of EtO attributable to Sterigenics are detected,

³ The Villages express concern that cumulative impact of past EtO emissions from Sterigenics is such that any future EtO emissions from Sterigenics present a unique danger. (Comments, at 6-7.) The new statute does not specifically provide a mechanism for addressing potential historical cumulative health effects, and, more importantly, the federal regulatory process of setting emission limits for hazardous air pollutants does not take into account past exposures. (See Comments, Ex. C, at 3 ("... the [US]EPA is required to assess the health and environmental risks that remain after implementation of the technology-based standards").) As noted, the anticipated annual cap on EtO emissions from Sterigenics' Willowbrook I facility will be no greater than 85 lbs. As a result, going forward, the risks associated with Sterigenics' future contribution to EtO background levels observed in DuPage County are likely to be drastically reduced, as the USEPA risk assessment relied upon by the Villages acknowledges. (*Id.*, at 25 (noting the modeled assessment for Willowbrook I shows calculated risks "in the range of 1- to 10-in-1 million").)

⁴ The draft construction permit prepared by IEPA includes additional tools for monitoring Sterigenics' facilities, including the use of parametric and operational monitoring of the 100% capture system, known as a permanent total enclosure ("PTE"). The anticipated permit requirements will ensure that the various components of the PTE are continuously operated and maintained to achieve USEPA criteria for PTE compliance.

and the Villages' request for an ambient air standard and related shut-down provision is neither required by law nor necessary.

C. The Villages' request that the Section 9.16(g) certifications be provided before Sterigenics restarts operations.

Plaintiff respectfully disagrees with the Villages' assertion (Comments, at 6) that the PCO requires modification to comply with the certification requirements in 415 ILCS 5/9.16(g). The Villages' Comments identify two different points in time prior to which they claim the Section 9.16(g) certifications must be obtained: (i) "before the Seal Order is lifted" (Comments, at 6 (emphasis in original)); and (ii) "before Sterigenics reopen[s]," (*id.*, at 10). The new statute is unambiguous, however, that Sterigenics must obtain the certifications required by Section 9.16(g) prior to "using ethylene oxide for sterilization or fumigation purposes . . ." 415 ILCS 5/9.16(g). The new statute does not tie the lifting of a seal order issued under 415 ILCS 5/34, such as the one IEPA issued on February 15, 2019, to whether the Section 9.16(g) certifications have been obtained. Similarly, the Villages identify no textual basis in the new statute for their position that the certifications must be obtained "before Sterigenics reopens."

Although Plaintiff respectfully declines the Villages' request to depart from the language of the new statute, Plaintiff shares the Villages' desire to prevent Sterigenics from resuming use of EtO at its Willowbrook facilities until the new protections afforded by 415 ILCS 5/9.16 are in place. That is why the PCO (*see* Sec. III.D.1-D.4) imposes multiple preconditions that Sterigenics must satisfy—including, most significantly, the installation of new emissions capture and control equipment pursuant to an IEPA-approved construction permit—before Sterigenics can resume use of EtO at its Willowbrook facilities. These preconditions are far more specific and readily enforceable than the Seal Order that the PCO replaces. Furthermore, as counsel for both Plaintiff and Defendant acknowledged at the July 24, 2019 hearing, the PCO ensures that Sterigenics'

Willowbrook facilities are and will continue to be subject to the certification requirements in 415 ILCS 5/9.16(g). (7/24/19 Tr., at 08:01-12:16.)

As affirmation of Sterigenics' obligation to obtain the Section 9.16(g) certifications, Plaintiff and Defendant have submitted a joint stipulation (attached hereto as Exhibit A) stating that "prior to and in order for" Sterigenics to use EtO at its Willowbrook facilities, Sterigenics must obtain the Section 9.16(g) certifications. (Ex. A, ¶ 1.) Thus, there can be no doubt that the PCO comports with 415 ILCS 5/9.16, including the certification requirements, and that Sterigenics can use EtO at its Willowbrook facilities only if it can comply with those requirements.

D. The Villages' request for air dispersion modeling using both Sterigenics' facilities and stack heights allowed by local ordinance.

The Villages' Comments assert that air dispersion modeling submitted by Sterigenics in support of its June 24, 2019 application for a construction permit from IEPA is "deficient" based on: (i) an alleged failure to use a stack height at Willowbrook I that is compliant with local ordinance requirements; and (ii) the omission of hypothetical, future EtO emissions from Willowbrook II. (Comments, at 7-8.) Given the pendency of Sterigenics' permit application, the permit review process is the appropriate forum in which to address these assertions.

To that end, Plaintiff can confirm that IEPA is aware of the Villages' views regarding the modeling submitted by Sterigenics and will address those observations as appropriate through the permit review process. Plaintiff can also confirm that IEPA will enforce and implement the requirements in both the new statute and the PCO regarding air dispersion modeling. Section 9.16(f) of the new statute prohibits Sterigenics from "conduct[ing] ethylene oxide sterilization operations" unless it "has performed dispersion modeling and [IEPA] approves such modeling." 415 ILCS 5/9.16(f). Likewise, the PCO mandates that, in the course of the construction permit application process, Sterigenics must provide IEPA with "[a]ir dispersion modeling"

demonstrating that future EtO emissions from Willowbrook I will be “at or below a level satisfactory” to IEPA. (Sec. III.D.2.a.) The PCO also requires Sterigenics to adhere to the same construction permit application process if it seeks to resume use of EtO at Willowbrook II. (Sec. III.D.9.) That process would necessarily include review of air dispersion modeling assessing the aggregate impact of EtO emissions from Willowbrook I (assuming it remains in operation and still uses EtO) and Willowbrook II. In doing so, IEPA would have to assess the combined impact of emissions from both Willowbrook I and II because the two facilities operate as a single source for purposes of the Clean Air Act Permit Program. *See* 415 ILCS 5/39.5. Because the Villages’ requests regarding air dispersion modeling can and will be addressed, as appropriate, in the permit review process, the Villages’ requests do not require rejection or modification of the PCO.

E. The Villages’ request for Court approval, posting of bond, and notice to Villages before “emergency temporary operations” may occur.

Plaintiff has no objection to the Villages’ request that Plaintiff obtain the Court’s authorization and provide the Villages with notice before authorizing “Emergency Temporary Operations” under Section III.D.7 of the PCO. Plaintiff has submitted a stipulation to the Court reflecting this commitment. (Ex. A, ¶ 2.) Likewise, as Plaintiff’s counsel acknowledged in open court on July 24, 2019, any use of EtO under Section III.D.7 of the PCO would have to comply with the requirements of 415 ILCS 5/9.16. (7/24/19 Tr., at 13:09-14:13.)

F. The Villages’ request that outdoor storage locations be included in the areas covered by the capture and control devices.

Plaintiff understands and appreciates that the Villages’ request (*see* Comments, at 8-9) to include the outdoor space where Sterigenics stores EtO in the area subject to the emissions capture and control systems is motivated by a desire, which Plaintiff shares, to prevent fugitive emissions of EtO. In adopting 415 ILCS 5/9.16, however, the Legislature did not impose requirements on

storage of EtO containers; as a result, neither does the PCO. As a factual matter, it is also unlikely that leakage of EtO from storage containers materially contributed to the elevated EtO levels that gave rise to this litigation, the Seal Order, and the new legislation. Rather, as noted, the elevated EtO levels observed prior to the February 15, 2019 issuance of the Seal Order were a reflection of the unduly permissive federal standard for EtO emissions.

The Villages' proposal regarding changes to Sterigenics' practice of storing EtO outside is also best addressed in the legislative context,⁵ not in an environmental enforcement action like this one. Storage of EtO containers is subject to regulatory considerations that are independent of the Illinois Environmental Protection Act ("Act").⁶ Some of the recommended practices for EtO storage also run counter to what the Villages propose. For example, the World Health Organization recommends outdoor storage of EtO to minimize the risks associated with fire and explosion.⁷ Given these countervailing considerations and the lack of a statutory basis for the relief proposed, the Villages' request regarding outdoor storage is not an appropriate subject for resolution by this Court in assessing the PCO.

G. The Villages' request to receive notice of documents, plans, and reports given to IEPA.

Consistent with the State's commitment to transparency and information-sharing during the process of implementing the PCO, IEPA will publicly post on its website all plans, reports, and test results it receives pursuant to the PCO.⁸

⁵ Indeed, in the spring session, legislation was introduced regarding the storage of EtO containers. *See* H.B. 3409.

⁶ *See generally* National Fire Protection Association, NFPA 55: Compressed Gases and Cryogenic Fluids Code (2020 ed.), Ch. 14, "Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation."

⁷ IPCS International Programme On Chemical Safety, Health and Safety Guide No. 16 for Ethylene Oxide, United Nations Environment Programme, International Labour Organisation, and World Health Organization, Section 4.3 "Storage", available at <http://www.inchem.org/documents/hsg/hsg016.htm>.

⁸ IEPA's website related to Sterigenics' Willowbrook facilities is located at:

<https://www2.illinois.gov/epa/topics/community-relations/sites/ethylene-oxide/Pages/default.aspx#documents>.

H. The Villages' request for an admission of violations and penalties.

The Villages challenge the PCO because it does not require any admission of violations, and it does not specifically require payment of a civil penalty. (Comments, at 3.) An admission of violations is not a necessary predicate for approval of a settlement under the Act. *People v. Archer Daniels Midland Corp.*, 140 Ill. App. 3d 823, 825 (3d Dist. 1986). This is true even where there is a prevailing sentiment that the stigma attached to such an admission is appropriate. *Chemetco, Inc. v. Pollution Control Board*, 140 Ill. App. 3d 283, 288 (5th Dist. 1986). Moreover, “even without the findings of a violation, a respondent’s consent to a settlement agreement can carry with it the ‘stigma’ of an admission that its conduct justified remedial action.” *Id.* In addition, the purpose of civil penalties is primarily to aid in the enforcement of the Act; punitive considerations are secondary, and they are discretionary. *People ex rel. Ryan v. McHenry Shores Water Co.*, 295 Ill. App. 3d 628, 638 (2d Dist. 1998).

In this case, Plaintiff exercised its discretion to require payments that can be directed to the affected communities. If Plaintiff had insisted on civil penalties, those penalties would have to have gone to the State Treasury, where they could be used for any purpose, or to the Environmental Protection Trust Fund, where there would be no guarantee that the funds would go to the Willowbrook area. In this case, Plaintiff chose to require that a specific fund be set up, in lieu of penalties, so that the required payments will directly benefit the affected communities.

II. CONCLUSION

The PCO is consistent with Illinois law, including, most significantly, 415 ILCS 5/9.16. Upon entry of the PCO, both the IAG and DCASO will vigorously enforce its provisions in their entirety. Therefore, the People respectfully request that the Court grant the joint motion to enter the PCO and enter it as an order of this Court.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

By: /s/ Christopher G. Wells
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PEOPLE OF THE STATE OF ILLINOIS
ex rel. ROBERT BERLIN, State's Attorney
for DuPage County, Illinois

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STATE OF ILLINOIS**UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT****COUNTY OF DU PAGE**

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EXHIBIT COVER SHEET

Local Court Rules 5.06 and 5.09

EXHIBIT NAME: Exhibit A**TITLE OF DOCUMENT THIS EXHIBIT BELONGS WITH:**

Plaintiff's Response to Villages' Comments on Consent Order

Document File Date: 8/30/2019*(The file date of the document this exhibit belongs with)***EXHIBIT FILED ON BEHALF OF:** People of the State of Illinois*(Case Party Name)*

Submitted by: Office of the Illinois Attorney General

Name: Stephen J. Sylvester Pro Se

DuPage Attorney Number: 400014

Attorney for: People of the State of Illinois

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**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL,)
Attorney General of the State of Illinois, and)
ex rel. ROBERT BERLIN, State's Attorney)
for DuPage County, Illinois,)
Plaintiff,)
v.) No. 2018 CH 001329
STERIGENICS U.S., LLC,)
a Delaware limited liability company,)
Defendant.)

JOINT STIPULATION

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and *ex rel.* ROBERT BERLIN, State's Attorney for DuPage County (collectively, "Plaintiff"), and Defendant, STERIGENICS U.S., LLC ("Defendant" or "Sterigenics"), hereby submit this Stipulation regarding the applicability of Section 9.16(g) of the Illinois Environmental Protection Act to Sterigenics' Willowbrook facilities located at 7775 South Quincy Street, Willowbrook, DuPage County, Illinois and 830 Midway Street, Willowbrook, DuPage County ("Site"). The Illinois Environmental Protection Act was amended by Public Act 101-22 to add a new Section 9.16, which became effective on June 21, 2019. On July 18, 2019, Plaintiff and Defendant submitted a proposed consent order regarding the Site ("Proposed Consent Order"). Plaintiff's and Defendant's joint motion for entry of the Proposed Consent Order is currently pending before the Court. Subject to entry of the Proposed Consent Order, Plaintiff and Defendant are entering into this Stipulation for the purpose of (i) affirming the applicability of the certification requirements set forth in Section 9.16(g) of Public Act 101-22 to the Site, and (ii)

declaring that Plaintiff will not authorize emergency temporary operations under Section III.D.7 of the Proposed Consent Order without prior approval of the Court and providing notice to the Village of Willowbrook, City of Darien, Village of Hinsdale, and Village of Burr Ridge. Subject to entry of the Proposed Consent Order,¹ Plaintiff and Defendant hereby stipulate as follows:

1. Plaintiff and Defendant acknowledge and agree that, prior to and in order for Sterigenics to use ethylene oxide for sterilization or fumigation purposes at the Site, Sterigenics must first obtain the certifications set forth in Section 9.16(g)(i) and (ii) of the Illinois Environmental Protection Act, as enacted in Public Act 101-22.
2. Plaintiff, in the exercise of its sole discretion, will not authorize emergency temporary operations under Section III.D.7 of the Proposed Consent Order without prior approval of the Court upon a motion with notice to counsel for the Village of Willowbrook, the City of Darien, the Village of Hinsdale, and the Village of Burr Ridge.

SO STIPULATED AND AGREED,

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

By: /s/ Christopher G. Wells

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STERIGENICS U.S., LLC

By: /s/ Gerard D. Kelly

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¹ This Stipulation shall only be effective if the joint motion is granted and the Proposed Consent Order is entered by the Court.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. ROBERT BERLIN, State's Attorney
for DuPage County, Illinois

By: /s/ Lisa Smith

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August 30, 2019

By Hand Delivery

The Honorable Judge Paul M. Fullerton
Circuit Court of the 18th Judicial Circuit
505 N. County Farm Road, Courtroom 2005
Wheaton, IL 60187

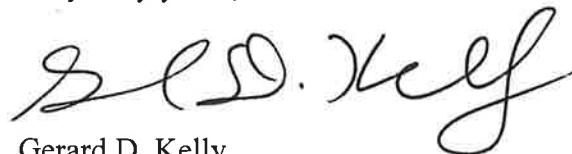
Re: People of the State of Illinois et al. v. Sterigenics U.S., LLC, No. 2018CH001329

Dear Judge Fullerton:

Enclosed please find courtesy copies of the following documents filed today via the court's online filing portal:

- Sterigenics' Reply in Support of the Consent Order; and
- Exhibits 1–8 referenced in the Reply.

Very truly yours,



Gerard D. Kelly

GDK/mjt

Enclosures

cc: Christopher Wells
Matt Dunn
Elizabeth Wallace
Stephen Sylvester
Daniel Rottenberg
Lisa Smith
Gregory Vaci
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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
CHANCERY DIVISION

Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 6404675

2018CH001329
FILEDATE: 8/30/2019 3:17 PM
Date Submitted: 8/30/2019 3:17 PM
Date Accepted: 8/30/2019 3:32 PM
JP

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney General)
of the State of Illinois, and)
ex rel. ROBERT BERLIN, State's Attorney for)
DuPage County, Illinois,)
)
Plaintiff,)
)
v.) No. 2018CH001329
) Hon. Paul M. Fullerton
STERIGENICS U.S., LLC,)
a Delaware limited liability company,)
)
Defendant.)

**STERIGENICS U.S., LLC'S REPLY IN SUPPORT OF THE
AMENDED JOINT MOTION TO ENTER CONSENT ORDER**

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Counsel for Sterigenics U.S., LLC

In their Comments to Consent Order (“Comments”), Village of Willowbrook, City of Darien, Village of Burr Ridge, and Village of Hinsdale (collectively, “Intervenors”) ask this Court to join with them in attempting to usurp the roles of the Illinois Legislature, the Illinois Environmental Protection Agency (“IEPA”), the Illinois Attorney General (“IAG”), and the DuPage County State’s Attorney (“DuPage SA”) (collectively, the “State”), and the management of Sterigenics U.S., LLC (“Sterigenics”). The scattershot “analysis” and baseless demands set forth in the Comments are most notable for what they lack: any supporting citation to Illinois law. Intervenors’ purpose is transparent: to prevent Sterigenics’ Willowbrook Facility from ever resuming operations. Were Intervenors to succeed, all they would accomplish would be to prevent the Willowbrook Facility from performing its critical, life-saving role in the Illinois and nationwide healthcare system. Complaint, ¶¶ 18, 25–27, *Sterigenics U.S., LLC v. Kim et al.*, Case No. 2019CH000566 (the “Seal Order Action”). The Comments’ extreme, legally unsupported positions have as their genesis the anti-scientific, counterfactual uproar that has grabbed the attention of the public based on poorly communicated and misunderstood information regarding ethylene oxide.

This Court should not and cannot allow itself to get caught up in this unlawful effort. It should immediately grant the Amended Joint Motion to Enter Proposed Consent Order (“Joint Motion”). The Consent Order was arduously negotiated, drafted and approved by the *only* governmental entities tasked by the Illinois Legislature to have a role in this process – IEPA, IAG, and DuPage SA. It is beyond rational dispute that the Consent Order goes *further* than the requirements of Illinois law regarding ethylene oxide – which are already the most stringent in the nation. It is time to resolve this lawsuit on the terms to which the parties themselves have agreed. As this Court has observed, if Intervenors wish to pursue their putative claims against

Sterigenics, they may bring their *own* lawsuits. Transcript of July 24, 2019 proceedings at 36:21–24, attached as Ex. 1. And as IAG has acknowledged (*id.* at 32:1–8), the Consent Order cannot be changed without Sterigenics’ approval. Thus, if Intervenors succeed in blocking the Consent Order, the result would just be continued litigation.

I. The Comments Would Have This Court Usurp the State’s Authority by Rejecting the Already Agreed-Upon Consent Order.

IEPA, IAG and DuPage SA – not Intervenors – have been entrusted by the Illinois Legislature with protecting the environment of Illinois. *See* 415 ILCS 5/4, 415 ILCS 5/34(b) (IEPA’s authority over the subject matter covered by the Consent Order); 15 ILCS 205/4 (IAG’s role in protecting the environment); 415 ILCS 5/42 (IAG and DuPage SA’s authority to bring this action). These entities are charged with representing all of the people of Illinois, including residents of Intervenors, and there is no evidence to rebut the presumption that these governmental entities are discharging their duties in good faith.

In contrast, Intervenors have been assigned no role here by the Illinois Legislature. Nevertheless, their Comments ask the Court to usurp the authority conferred by the Illinois Legislature on IEPA, IAG and DuPage SA by refusing to enter the Consent Order that they have arduously negotiated and drafted. Moreover, the Comments are legally baseless. Intervenors imply that the Consent Order is somehow inconsistent with Subsection G of 415 ILCS 5/9.16. Comments p. 5–6, 8, 9. This is incorrect. This Court specifically inquired of IAG whether Subsection G was a “part of the consent order.” Ex. 1 at 7:16–17. IAG responded affirmatively, noting that the conditions set forth in Subsection G are “incorporated by reference” in the Consent Order. *Id.* at 7:18–8:1, 12:10–16. Sterigenics acknowledged this to be correct. *Id.* Plus, the parties have now submitted to the Court a Joint Stipulation confirming the applicability of Subsection G to Sterigenics, in the event the Consent Order is entered.

In fact, it is only through the Consent Order that the State can make sure Subsection G applies to Sterigenics. Subsection G only applies to a facility that has been subject to a seal order. If a court determines that the seal order is without merit, it does not apply. The State agreed to the Consent Order in order to “remove[] Sterigenics’ ability to qualify for [this] exception [to] Subjection G,” *Id.* at 10:16–22. Without the Consent Order, Sterigenics can pursue the Seal Order Action, and the end result could (and, in Sterigenics’ view, would) be a ruling in Sterigenics’ favor, thus obviating the applicability of Subsection G to Sterigenics.

The Comments contain no citations to Illinois law supporting Intervenors’ demand for the denial of the Consent Order or for their litany of demands for extensive changes thereto. Moreover, Sterigenics’ counsel reached out to counsel for the Village of Willowbrook before the Joint Motion was filed and to counsel for all Intervenors after intervention was granted, but they declined to enter into any dialogue to resolve this dispute. Intervenors should not be allowed to refuse to talk and then to ask this Court to upset the careful work of the State and Sterigenics.

See People v. Archer Daniels Midland Corp., 489 N.E.2d 887, 888–89 (3d Dist. 1986) (“[T]he public interest is better served by a procedure which encourages respondents to enter into settlement discussions . . . and assist the State in effectuating the goals of the [Illinois Environmental Protection Act] in those cases where the proof is tenuous or difficult to establish. By allowing the State and respondents to reason together the result will conserve resources which would otherwise be expended in litigation”); *see also McAllister v. Hayes*, 519 N.E.2d 71, 72 (3d Dist. 1988) (“Settlements are to be encouraged and given full force and effect.”).

As this Court noted, if the Intervenors “have actions they want to pursue against Sterigenics, they should do so.” Ex. 1 at 36:23–24. But, Intervenors have no lawful basis to try to block the entry of the Consent Order.

Finally, the Comments are, essentially, a regurgitation of the August 15, 2019 comments by two Intervenors to the June 25, 2019 draft Construction Permit, Application No. 19060030 (the “CP”), issued for Sterigenics’ Willowbrook I facility.¹ *See* Comments Ex. D. The CP is manifestly the purview of IEPA under Illinois law. 415 ILCS 5/39. This Court cannot, under Illinois law, interfere with that process, which is what Intervenors are now asking it to do.

II. The Studies Upon Which Intervenors Attempt to Rely Neither Support Their Claims Nor Change the Requirements of Illinois Law.

Intervenors attempt to rely on reports from the Agency for Toxic Substances and Disease Registry (“ATSDR”) and the Illinois Department of Public Health (“IDPH”). *See* Comments pp. 1–2. However, both of these reports were published *before* the Joint Motion was filed and were cited in the Amended Complaint in this action. *See* Am. Compl. ¶¶40–44, ¶¶48–49. Thus, these reports were considered by the State prior to the negotiation of the Consent Order.

The Comments also reference and attach the August 2019 “Risk Assessment Report for the Sterigenics Facility in Willowbrook, Illinois” issued by United States Environmental Protection Agency (“USEPA”). *See* Comments p. 2 and Ex. C thereto. However, USEPA calculated, with respect to possible future operations by Sterigenics in Willowbrook, that “[t]he maximum lifetime (residential) individual cancer risk is 1-in-1 million [and all] cancer risks at census block are less than 1-in-1 million.” *See* Comments Ex. C, p. 5.² USEPA concludes that “[t]hese estimates indicate low cancer risk and we do not expect any chronic or acute noncancer risks to occur.” *Id.* USEPA’s “acceptable risk range” goes up to 100-in-1 million, which is 100

¹ Although often referred to as a single operation, Sterigenics’ operations in Willowbrook actually consist of two nearby buildings, commonly called “Willowbrook I” and “Willowbrook II.”

² USEPA’s prospective assumptions were slightly, but not materially, different from IEPA’s. Also, although USEPA’s report contains significant factual and analytical inaccuracies in its retrospective discussion of ethylene oxide exposure, the retrospective review has no bearing on USEPA’s prospective analysis.

times (or more) higher than what it calculated for Willowbrook. 70 Fed. Reg. 61404, 61407 (Oct. 24, 2005). Clearly, the Consent Order is highly protective of human health in view of both the extremely low levels of ethylene oxide emissions thereunder and the tremendous benefit to the people of Illinois and the entire country from medical devices sterilized by ethylene oxide.

III. The Comments Misstate and Misinterpret the Provisions of the Consent Order.

Intervenors' Comments misstate basic terms of the Consent Order and inappropriately ask the Court to second-guess the State. Intervenors request numerous changes to the Consent Order which will not advance the health and safety of the residents of Illinois, are not required by Illinois law, and were not sought by the State in the Consent Order. Moreover, Sterigenics will *not* agree to those changes, as would be required for them to take effect.

For example, Intervenors ask this Court to require Sterigenics to "acknowledge that it committed violation of State law," and to pay a "fine or penalty." Comments p. 3. The Court has no authority to do so based only on Intervenors' demand, and Sterigenics will agree to no such terms. The Willowbrook facility was, through February 15, 2019, operating in full compliance with the operating permits issued by IEPA and all applicable statutes and regulations. Seal Order Action Compl. ¶¶ 42–46. The State's decision not to seek such an acknowledgement, fine or penalty was a prudent and lawful exercise of its authority.

Intervenors also seek to make Sterigenics "pay for ambient air testing to occur at sites in each of the Villages for a continuous ongoing period of time . . . to be performed by a vendor chosen by the Villages" and periodically reported to the Court. Comments p. 4. Again, Intervenors do not cite any legal authority to support this request. Moreover, Intervenors neglect to mention that Illinois law *already* requires quarterly ambient air testing at community locations by an independent third party company, with which requirement Sterigenics must and will

comply. 415 ILCS 5/9.16(e)(1)(A). The “Consent Order in no way affects the responsibilities of [Sterigenics] to comply with any other federal, state or local laws or regulations . . .” Paragraph III.D.12. There is no basis for this Court to order Sterigenics to pay for additional monitoring.

Nor is there any legal ground for Intervenors’ demand that the Air Monitoring Plan discussed in Paragraph III.D.3.b of the Consent Order be prepared and submitted prior to the entry of the Consent Order and lifting of the Seal Order. Comments p. 4. Section 9.16 sets forth the framework for such plans, and it does not require the submission of an Air Monitoring Plan prior to the lifting of a seal order. *See* 415 ILCS 5/9.16(e).

Intervenors also misread Section 9.16 when they claim that IEPA can only give its Section 9.16(g) certification that the facility uses technology that produces the greatest reduction of ethylene oxide emissions *after* construction is complete and IEPA has tested the facility’s operation. Comments p. 6. The law contains no such requirement. Nor would such a requirement make sense – IEPA is capable of reviewing the facility’s construction plans and determining as part of the permit review process whether those plans will use the required technology. Nothing about construction aids this determination. This Court should not try to add a term to the Consent Order to constrain IEPA’s discretion.³

Intervenors claim that the CP is deficient because it includes air dispersion modeling based on an 87-foot stack and “the Village of Willowbrook’s ordinances do not allow the construction of a stack at Willowbrook I to the height of 87 feet as a matter of right.” Comments p. 7. However, the Village modified its ordinance to restrict stack height only *after* IEPA issued the CP and has the authority to allow an 87-foot stack. Even if a shorter stack ultimately is built

³ Intervenors are also wrong in saying that the Section 9.16(g) technology certification is required before the Seal Order is lifted. The statute requires that facilities that have received a seal order obtain this certification before using ethylene oxide for sterilization, not before the seal order is lifted.

(as the CP allows), Sterigenics has submitted air dispersion modeling to IEPA showing that concentrations will still be safe. In any case, these are determinations for IEPA, not the Court. Putting aside the question of the legality or illegality of the Village's new ordinance – not to mention the dubious advisability of such a restriction – the Village's obstructionist purpose is quite plain.

Intervenors also misstate how the Consent Order addresses Willowbrook II. *See* Comments pp. 6–8. Under the Consent Order, Willowbrook II cannot resume operations without fully complying with Illinois law, obtaining IEPA's approval, and getting a Court-ordered amendment to the Consent Order. *See* Consent Order, Section III(D)(9). Thus, Intervenors' complaints regarding the Consent Order's alleged failure to account for Willowbrook II simply are not well-founded.

Intervenors also argue the Consent Order is deficient because it "fails to address Sterigenics's outdoor storage of EtO drums prior to use." Comments p. 8. The Illinois Environmental Protection Act, however, does not require that drums be stored indoors. This Court is not the appropriate authority to set new rules in this area. In fact, outside storage complies with applicable fire protection codes and minimizes fire risk. Declaration of Kevin Wagner ¶¶ 6–7, attached as Ex. 2.⁴ Further, there has been no evidence of ethylene oxide emissions during drum delivery or storage, and Sterigenics has procedures in place to check drums when delivered and to ensure that they are not opened until the drums are inside. *Id.* ¶¶ 3–5. The Comments' drum storage discussion is nothing more than another red herring.

⁴ Sterigenics' storage methods comply with World Health Organization standards, which advise that "[e]thylene oxide should be stored in a cool, well-ventilated, fire-proof area, preferably away from other chemicals *and outdoors*." World Health Organization for the International Programme on Chemical Safety, *Ethylene Oxide Health and Safety Guide* (1988), available at <http://www.inchem.org/documents/hsg/hsg016.htm#SectionNumber:4.3> (emphasis supplied).

Finally, Intervenors ask the Court to impose a “term in Consent Order requiring Court approval, posting of bond, and notice to Villages before ‘emergency temporary operations’ may occur.” Comments p. 10. Under the Consent Order, “the State may approve temporary, limited Operations at Willowbrook I if the State obtains information identifying a critical need for sterilization of one or more medical devices necessary to protect public health.” Consent Order Part III.D.7. Though not required to do so, the State has agreed to expanded notice in the Joint Stipulation. There is, of course, no legal requirement for the posting of a bond.

In sum, the Comments distort the Consent Order and the law related thereto. Sterigenics will not agree to Intervenors’ proposed revisions to the Consent Order.

IV. Intervenors’ True Purpose is to Prevent Settlement at All Costs.

Intervenors’ purpose is clear: to prevent or delay the reopening of any part of the Willowbrook facility by any means possible. In a May 3, 2019 letter to IAG and DuPage SA, Intervenors state they “emphatically oppose any settlement with Sterigenics that would permit the Seal Order to be lifted or in any manner allow Sterigenics to use Ethylene Oxide.” *See* Ex. 3. On June 26, 2019, a Village of Burr Ridge representative made clear in an email that Burr Ridge “will not support ANY scenario that lifts the Seal Order or allows Sterigenics to open or apply to open and use EtO or its equivalent- period.” *See* Ex. 4 (emphasis in original). And, as described above, the Village of Willowbrook has recently gone so far as to revise its zoning ordinance to attempt to prevent any reopening. *Supra* at 6–7. No matter how fairly negotiated, legally supported and appropriate the Consent Order actually is, Intervenors will settle for nothing less than a complete and permanent shut-down of the Willowbrook Facility.

Ironically, Intervenors have previously acknowledged that the ATSDR report – the genesis of this controversy – is deeply flawed and has been greatly misinterpreted. They have

described the ATSDR report as “hastily writ[en] and release[d],” have acknowledged that the ATSDR report does *not* indicate there is any imminent health threat to the public, characterized the ATSDR report as a “health scare,” and quoted a USEPA official as explaining that “the cancer risk was only greater assuming you were sitting in a lawn chair with ‘70 years of exposure 24 hours per day.’”⁵ Mayor Mickey Straub of Burr Ridge has noted:

Among other things, Toxicologist Mark Johnson of ATSDR and the person who submitted the report that erupted all the concern to the public told me this about Sterigenics International: 1. The ATSDR Report was highly technical and not intended for public distribution. 2. This is . . . NOT a Public Emergency situation. 3. There is NO IMMEDIATE HEALTH THREAT from Sterigenics. A local official also told me that the report was ‘exaggerated’ to be able to obtain more funding for research and that he asked members of the ATSDR and EPA, ‘Should I have any concern with opening my office windows right near the Sterigenics facility?’ He was told, ‘It is absolutely safe to open up your windows and there is no health risk.’

See Ex. 6 (emphasis in original).

Mark Johnson of the ATSDR emailed Mayor Straub to assure him that there is no immediate threat to public health, that this is not an emergency situation, and even forwarded a fact sheet detailing that the highest measured levels of ethylene oxide around the Willowbrook Facility were 1,000 times lower than the levels associated with cancer risks in studies of works with industrial exposure. *See Ex. 7.* Helen Neal of the Village of Willowbrook, Dyron Hamlin, of the Village’s environmental consultant, GHD, and Renee Cipriano, counsel for the Village and author of its comments to the CP, had an email exchange discussing USEPA’s “flawed test announcement,” as to which USEPA “should highlight how mistaken they were to hastily write and release a report based on that flawed data!,” and with respect to which USEPA “should never have used 24 hour samples to predict long term cancer risk.” *See Ex. 8.*

⁵ See Oct. 2, 2018 email from Mickey Straub, the mayor of the Village of Burr Ridge to Cathy Stepp, USEPA, attached as Ex. 5.

Unfortunately, Intervenors and their representatives have now gotten caught up in a false health scare that disregards any consideration of the actual impact on the health care system in Illinois and the nation in general. The Comments are an unfortunate manifestation of how anti-scientific, untruthful rhetoric can capture the public imagination and subvert the public interest.

The Consent Order represents an appropriate exercise of the State's authority with respect to this matter. IEPA – not Intervenors, and not this Court – is charged with “safeguard[ing] environmental quality, consistent with the social and economic needs of the State, so as to protect health, welfare, property and the quality of life.”⁶ IEPA has exercised its judgment. Intervenors can (and have already begun to) raise their concerns with the CP before IEPA. As this Court has recognized, if Intervenors want to pursue the claims set forth in their Petitions, they can file their own legal actions. The Joint Motion should be granted, and the Consent Order should be entered. This matter has gone on long enough. It is now time for it to end.

CONCLUSION

For the foregoing reasons, Sterigenics respectfully requests that this Court enter the Consent Order.

Dated: August 30, 2019

Respectfully submitted,

STERIGENICS U.S., LLC

By: /Gerard D. Kelly/
One of its Attorneys

⁶ *About Us*, ILLINOIS ENVT'L PROTECTION AGENCY, <https://www2.illinois.gov/epa/about-us/Pages/default.aspx> (last visited Aug. 22, 2019).

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Counsel for Sterigenics U.S., LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, I served a copy of the foregoing on the following counsel by electronic mail:

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/s/ Stephanie Stern
Stephanie Stern

EXHIBIT 1

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

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

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

14 vs.) No. 18 CH 1329
15)
16 STERIGENICS U.S., LLC,)
17 a Delaware limited liability)
18 Company,)
19)
20 Defendant.)

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
computer-based digital recording system, DuPage
County, Illinois, and transcribed by Lisa Marie
Novak, commencing on the 24th day of July A.D.
2019.

25 LISA M. NOVAK, OFFICIAL COURT REPORTER
26 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;

ROSENTHAL, MURPHEY, COBLENTZ & DONAHUE, by

MR. JOHN B. MURPHEY,

appeared on behalf of the City of
Darien;

KLEIN THORPE & JENKINS, LTD., by

MR. LANCE C. MALINA,

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

1 court with respect to this consent order.

2 The consent order should be entered.

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

6 MR. WELLS: Your Honor, the one
7 clarification I would note is that there's been
8 a draft permit that's been proposed by Illinois
9 EPA. It has not been issued. There's an August
10 1st public meeting in which the public will have
11 the opportunity to express their views on the
12 permit, and then there's -- through August 15th
13 there's a written comment submittal period.
14 Under the statute it's a 90-day review window.

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

17 THE COURT: Okay. Well, let's go back to
18 the statute for intervention. There's two ways
19 you can intervene or a party can intervene as a
20 matter of right. And then that's under
21 Subsection A of 408(a), and then under (b),
22 under the Court's discretion. And the statute
23 starts out by saying upon timely application.
24 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 COUNTY OF DU PAGE) SS:
3

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 *Lisa M. Novak*

15 Official Court Reporter
16 Eighteenth Judicial Circuit of Illinois
17 DuPage County
18 Certificate # 84-4296
19
20
21
22
23
24

LISA M. NOVAK
Official Court Reporter
505 County Farm Road - Rm. 366
Wheaton, IL 60187
(630-407-8897)

BILLING DATE: July 26, 2019
INVOICE NO. 7665

TO: Lisa Modaff
Sidley & Austin, LLP
312-853-7383

IN RE THE MATTER OF:
People vs. Sterigenics
No. 18 CH 1329

HEARD BEFORE:
Judge Paul M. Fullerton on 7-24-19

42 PAGES @ \$2.00/Page (copy)

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PAYMENTS/CREDITS: \$87.20
BALANCE OWED: 0

EXHIBIT 2

DECLARATION OF KEVIN WAGNER

I, Kevin Wagner, declare as follows:

1. I am Kevin Wagner, Director, Environmental, Health & Safety (“EHS”) at Sterigenics U.S., LLC. The matters set forth below are within my personal knowledge and if called upon as a witness, I could and would testify competently as to each of them.

2. In my role as director of EHS, I am responsible for managing EHS matters and assisting all of Sterigenics’ facilities in implementing the company’s EHS programs. I am familiar with the EHS programs and the legal/regulatory compliance status of Sterigenics’ Willowbrook I facility.

3. Ethylene oxide is delivered to the Willowbrook I facility in drums, by truck. Before the facility will accept a drum from an arriving truck, facility personnel test each drum for leaks, and the facility does not accept any drum that is found to be leaking. Drums are then kept in a designated storage area just outside the facility until the drums are needed for use in the sterilization process.

4. Because drums are tested for leaks when they arrive and are afterwards not used in the drum storage area, ethylene oxide is not emitted from this area. The facility confirms this through ethylene oxide monitoring ports in the drum storage area.

5. When a drum is needed in the sterilization process, facility personnel bring the drum inside the facility before opening the drum. Inside the facility, personnel connect the drum to the piping system that feeds the sterilization chambers. Facility personnel are trained in the connection process, which is designed to create a secure connection between the drum and piping system with no emissions to air from the drum or the connection. This connection process takes place inside the building, in what will be part of the permanent total enclosure. As a result,

if any leak of ethylene oxide were to occur during the connection of a drum to the system, its use, or its disconnection, the release would be captured within the enclosure and routed to the pollution control devices being installed to address fugitive emissions.

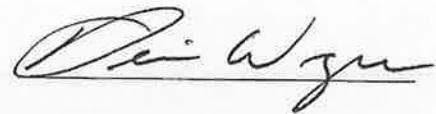
6. An outdoor drum storage area is an option under the National Fire Protection Association's Compressed Gases and Cryogenic Fluids Code, known as "NFPA 55." NFPA 55 contains an entire chapter on the storage, handling, and use of ethylene oxide for sterilization and fumigation. NFPA 55 contains requirements for the design, layout, and construction of storage areas, required safety features for those areas, and "fire ratings" for walls and other features in the areas.

7. It would be challenging to design a drum storage area at the Willowbrook facility inside the planned permanent total enclosure and still be in compliance with NFPA 55. For example, NFPA 55 would require an indoor storage area to have "explosion panels," also known as "explosion vents," on outdoor-facing walls or the roof. Explosion panels are not air-tight and, therefore, they can leak. Balancing the air flow to prevent this leakage would be challenging.

8. After a drum is fully dispensed at the Willowbrook I facility, personnel disconnect the drum from the piping system, close both valves on the drum, insert valve plugs into each valve, and then tighten the plugs with a wrench to prevent any inadvertent later opening of the valves. Facility personnel do not move the empty drum back to the storage area to await transport from the facility until these steps have been taken.

9. I have reviewed the new Section 9.16 of the Environmental Protection Act. That section does not require that drums be stored indoors or within the permanent total enclosure. Once the permanent total enclosure is constructed at the Willowbrook I facility, it will capture 100 percent of ethylene oxide emissions from the facility, as Section 9.16 requires.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the
30th day of August, 2019, in Oak Brook, Illinois.



KEVIN WAGNER

EXHIBIT 3



Willowbrook

835 Midway Drive
Willowbrook, IL 60527-5549

Phone: (630) 323-8215 Fax: (630) 323-0787 www.willowbrookil.org

Mayor

Frank A. Trilla

Village Clerk

Leroy R. Hansen

Village Trustees

Sue Berglund

Umberto Davl

Terrence Kelly

Michael Mistele

Gayle Neal

Paul Oggerino

Village Administrator

Tim Halik

Chief of Police

Robert Schaller

Director of Finance

Carrie Dittman

May 3, 2019

Kwame Raoul, Esq.
Illinois Attorney General
110 W. Randolph Street, 12th Floor.
Chicago, IL 60601

Robert Berlin, Esq.
DuPage County States Attorney
421 N. County Farm Road
Wheaton, IL 60187

RE: State of Illinois, County of DuPage v. Sterigenics, #18 CH 1329 (DuPage County)

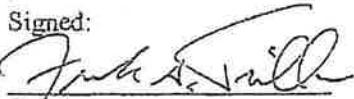
Attorney General Raoul and States Attorney Berlin:

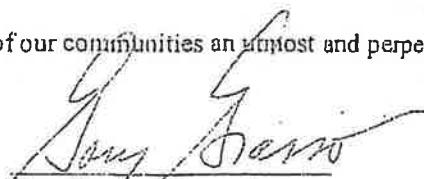
The municipalities of Willowbrook, Burr Ridge, Darien, Hinsdale and Indian Head Park emphatically oppose any settlement with Sterigenics that would permit the Seal Order to be lifted, or in any manner allow Sterigenics to use Ethylene Oxide or a similar chemical at its Willowbrook or any other facilities in our vicinities.

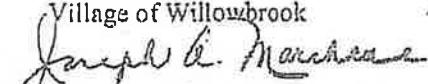
As you both know well, the first job of good government is to protect the public's safety. You have both provided that leadership in fighting Sterigenics for all those who live, work and visit our communities. Once the Seal Order was imposed on Sterigenics, there was a significant drop in concentrations of Ethylene Oxide. There can be no settlement with Sterigenics that abrogates or weakens the health effects and public message of the Seal Order.

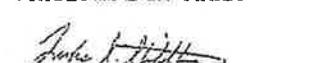
Please continue to make protection of our communities an ~~un~~post and perpetual priority.

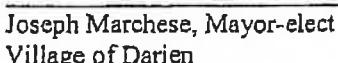
Signed:

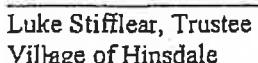

Frank Trilla, Mayor
Village of Willowbrook


Gary Grasso, Mayor-elect
Village of Burr Ridge


Joseph Marchese


Luke Stifflear


Joseph Marchese, Mayor-elect
Village of Darien


Luke Stifflear, Trustee
Village of Hinsdale


Tom Hinshaw, Mayor
Village of Indian Head Park



Proud Member of the
Illinois Route 66 Scenic Byway

EXHIBIT 4

From: Douglas Pollock
To: Douglas Pollock
Date: Wednesday, June 26, 2019 2:08:31 PM

Doug: please say the following on my behalf tomorrow: "Mayor Grasso wants to thank Illinois Attorney General Raoul and DuPage County States Attorney Berlin for all their collaboration and advocacy for our communities, but he respectfully will not support ANY scenario that lifts the Seal Order or that allows Sterigenics to open or apply to open and use EtO or its equivalent- period. Sterigenics' credibility is zero and it's a public health travesty that Sterigenics has knowingly polluted our air with blind indifference from the IEPA. The fact that the USEPA had to alert the public- and delayed in doing so- itself is an abomination of responsible government. The primary purpose of government is to protect human life. Sterigenics, the IEPA and USEPA have all failed us miserably."

Doug Pollock
Village Administrator
Village of Burr Ridge

EXHIBIT 5

From: Rimer, Kelly
To: Mayor Mickey; Woods, Clint
Cc: Davis, Alison; Douglas Pollock; Evan Walter
Subject: RE: EPA Sterigenics webpage
Date: Friday, October 5, 2018 2:56:24 PM

Mr. Mayor,

Thank you for including me in this email. Speaking of updates, below is what I just sent to Mayor Trilla (as he is the main point of contact). I am of course happy to include both you and Mayor Trilla on communications going forward.

Kelly Rimer

Mayor Trilla,

Below is a status and next steps update. We understand from the meeting last week that this is some of the information that you requested. Next week we will send answers to the questions we received along with information regarding the ATSDR letter.

We also plan to post this update to the EPA website identified below.

Also, I would be happy to share this information with anyone you would like me to.

I will reach out again to you on Tuesday to check in and to see if we can connect about the community meeting. Please do not hesitate to call if you have any questions.

Sincerely,
Kelly Rimer
U.S. EPA Office of Air Quality Planning & Standards
919-541-5368

Ethylene Oxide in Willowbrook: Status and Next Steps

What is EPA doing to reduce ethylene oxide from the Sterigenics facility?

What has been done to date:

Sterigenics has taken steps to further control ethylene oxide emissions from the Willowbrook facility and estimates that those controls have reduced ethylene oxide by about 92 percent. On September 20 and 21 2018, a contractor hired by Sterigenics conducted stack tests to measure the actual emissions from the control devices at the facility. U.S. EPA and Illinois EPA experts were present to observe the tests.

What happens next:

- Once the final report from the stack test is complete, and delivered to U. S. EPA, the Agency will review the results to confirm how much ethylene oxide the pollution

controls are reducing. EPA will use that information to estimate *current* emissions from the Sterigenics facility.

- U.S. EPA needs the emissions estimates to help the agency determine how far any remaining ethylene oxide emissions will disperse and what the levels of ethylene oxide in the air nearby the facility are likely to be. EPA will determine this using a computer model.
- The information also will help EPA determine the best places to monitor the air for ethylene oxide in the area. EPA will work with local elected officials in the area as it develops its monitoring plan.
- Existing monitoring methods are not sensitive enough to detect ethylene oxide at all levels in the outdoor air. Because of this, EPA cannot use monitoring alone to determine the levels of ethylene oxide in the air around the facility.
- EPA will conduct a risk assessment for the Willowbrook area. This assessment will be more comprehensive than either NATA or the ATSDR analysis. It will be similar to the types of risk assessments EPA conducts when it is reviewing its regulations for industries that emit air toxics to determine whether those rules need to be updated to improve protection of public health.
- EPA will update this information as this work proceeds on our NATA website at: <https://www.epa.gov/il/sterigenics-willowbrook-facility>

From: Mayor Mickey [mailto:Mickey@mayormickey.com]
Sent: Friday, October 05, 2018 3:49 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Rimer, Kelly <Rimer.Kelly@epa.gov>; Davis, Alison <Davis.Alison@epa.gov>; Douglas Pollock <DPOLLOCK@BURR-RIDGE.GOV>; Evan Walter <EWalter@burr-ridge.gov>
Subject: EPA Sterigenics webpage

Hello Clint,

I totally understand and I thank you for not minding my persistence! This issue is causing quite a stir and concern in our parts and we appreciate any/all clarification and future testing.

Kelly/Alison, nice to meet you and thank you in advance! Please add me in to any updates or correspondence?

Stay in touch and let me know if I/we can be of any help?

Patriotically yours, Mickey

From: Woods, Clint <woods.clint@epa.gov>
Sent: Friday, October 5, 2018 10:41 AM
To: Mayor Mickey <Mickey@mayormickey.com>

Cc: Rimer, Kelly <Rimer.Kelly@epa.gov>; Davis, Alison <Davis.Alison@epa.gov>
Subject: RE: EPA Sterigenics webpage

Mayor,

Please excuse my delay - Attached is more context regarding the IRIS number. Copied here is Kelly Rimer and Alison Davis, who are leading our rapid response effort and can likely answer any additional questions more quickly.

Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Mayor Mickey [<mailto:Mickey@mayormickey.com>]
Sent: Tuesday, October 2, 2018 1:32 PM
To: Woods, Clint <woods.clint@epa.gov>
Subject: EPA Sterigenics webpage

Hi Clint,

I just wanted to keep you in the loop...please see below. Unless I am missing something, this update is missing critical information and I think will do nothing but fuel fear across the community!

And for your information, law firms are now holding workshops in our town to teach people how to sue Sterigenics. Welcome to Illinois!

On a related note, are you still going to be able to send that statement of clarification that we discussed in the car? This week, I hope? Thanks!

All the best, Mickey

Mickey Straub

Mayor | Village of Burr Ridge
7660 S. County Line Road, Burr Ridge, IL 60527
MStraub@Burr-Ridge.gov
Mickey@MayorMickey.com
Village: 630-654-8181

From: Mayor Mickey <Mickey@mayormickey.com>
Sent: Tuesday, October 2, 2018 12:13 PM

To: 'Stepp, Cathy' <stepp.cathy@epa.gov>
Cc: 'Evan Walter' <EWalter@burr-ridge.gov>; Douglas Pollock <DPOLLOCK@BURR-RIDGE.GOV>
Subject: RE: EPA Sterigenics webpage

Dear Cathy,

Thank you for the update, but it appears to me that additional information and clarification is necessary? I think this excerpt will likely just increase the health scare, unless it included more details as to what level of exposure is necessary:

“ATSDR concluded: “if measured and modeled data represent typical ethylene oxide ambient concentrations in ambient air, an elevated cancer risk exists for residents and offsite workers in the Willowbrook community surrounding the Sterigenics facility. These elevated risks present a public health hazard to these populations.”

For example, one of your high ranking EPA officials told me that the cancer risk was only greater assuming you were sitting in a lawn chair with “70 years of exposure 24 hours per day”. Why wasn’t something like that clearly specified?

Also, why weren’t the results of the most recent Stack Test included and explained in layman’s terms. (Pardon me if I missed them.)

Thank you for your efforts.

All the best, Mickey

Mickey Straub

Mayor | Village of Burr Ridge
7660 S. County Line Road, Burr Ridge, IL 60527
MStraub@Burr-Ridge.gov
Mickey@MayorMickey.com
Village: 630-654-8181

From: Stepp, Cathy <stepp.cathy@epa.gov>
Sent: Tuesday, October 2, 2018 11:24 AM
To: clarisol_duque@durbin.senate.gov; jasmine_hunt@durbin.senate.gov; Tran_Nguyen@durbin.senate.gov; david_applegate@duckworth.senate.gov; Radha_adhar@duckworth.senate.gov; Hilary.Denk@mail.house.gov; Gary.Timmins@mail.house.gov; Samantha.warren@mail.house.gov; Joe.Fawell@mail.house.gov; lee.campuzano@mail.house.gov

hannah.chargin@mail.house.gov; joel.creswell@mail.house.gov; sam.pfister@illinois.gov; brian.oszakiewski@mail.house.gov; kweaver@darienil.gov; bnava@darienil.gov; senatorcurran@gmail.com; repdurkin@hotmail.com; durkin@ilhousegop.org; ftrilla@willowbrook.il.us; Mickey@MayorMickey.com; dpollock@burr-ridge.gov; alec.messina@illinois.gov; laura.roche@illinois.gov; Julie.Armitage@illinois.gov; lissa@serafin.com; rcipriano@schiffhardin.com; mmahoney@hrs.ilga.gov; greg.hart@dupageco.org; Lise.T.Spacapan@illinois.gov; patty.schuh@illinois.gov; Dan.Cronin@dupageco.org; Cynthia_Bajjalieh@durbin.senate.gov; marina_faz-huppert@duckworth.senate.gov; bill.dart@illinois.gov
Cc: Thiede, Kurt <thiede.kurt@epa.gov>; Payne, James <payne.james@epa.gov>
Subject: EPA Sterigenics webpage

Good Morning –

I wanted to let you all know the EPA Sterigenics webpage has been expanded to include additional information to help explain the work being done in and around the Sterigenics facility in Willowbrook, IL. Thank you all for your attention to this matter, as well as your willingness to work with us to understand how best to communicate to the community.

The webpage can be found at: <https://www.epa.gov/il/sterigenics-willowbrook-facility>

Thank you,

Cathy Stepp
Regional Administrator

EXHIBIT 6

MAYOR MICKEY'S STERIGENICS UPDATE (9/15/18): I would like the residents to know that the Village takes this topic very seriously and is proceeding to research and explore the facts and rumors on this issue. We have dedicated many hours this week alone and been in contact with officials of local municipalities and I even spoke directly with **Mark Johnson, PhD** of the **Agency for Toxic Substances and Disease Registry (ATSDR) Statement** about their "Letter Health Consultation".

Among other things, **Toxicologist** Mark Johnson of ATSDR and the person who submitted the report that erupted all the concern to the public told me this about **Sterigenics International**:

- 1) **The ATSDR Report was highly technical and not intended for public distribution.**
- 2) **This is not NOT a Public Emergency situation.**
- 3) **There is NO IMMEDIATE HEALTH THREAT from Sterigenics.**

A local official also told me that the report was "exaggerated" to be able to obtain more funding for research and that he asked members of the ATSDR and EPA, "Should I have any concern with opening my office windows right near the Sterigenics facility?" He was told, "***It is absolutely safe to open up your windows and there is no health risk.***"

The **Friday Wrap** is not an official village publication and contains my opinion may not be shared by all, but here are my observations based on the facts, research, reports and documents that I/we have conducted which I will be happy to collect and distribute separately at a later time. One of my first lessons as mayor were that I will not always agree with everyone, nor can I make everyone happy. I'm sorry, but as much as my try, that's just not possible.

I can't blame anyone for getting caught up in the hysteria of this situation, especially if you read some of the rumors and fears that have been posted on social media and even more if you attended Willowbrook's Town Hall Meeting at Ashton Place with hundreds of people yelling and blaming many physical ailments on Ethylene Oxide. Which, by the way, according to one of their letters, "Ethylene oxide is a chemical used to sterilize medical equipment in hospitals and industrial settings. Ethylene oxide is also used to fumigate items that cannot be sterilized by steam such as spices, cosmetics, and plastic devices. Workers in facilities using ethylene oxide may be exposed to it during the sterilization process. The general public can be exposed to ethylene oxide in some consumer products such as tobacco, food, and spices that are often fumigated with ethylene oxide for sterilization. Ethylene oxide is also used in the production of synthetic fibers (e.g., upholstery, carpet), plastics, PVC pipe and cosmetics and therefore can be found in indoor air. It is even present in car exhaust."

At this time, I/WE HAVE RECEIVED NO INFORMATION THAT INDICATES ANY IMMEDIATE HEALTH SCARE BY STERIGENICS. *It would have been easy decision to jump on the bandwagon calling for Sterigenics to cease operations immediately, but leadership is not about making easy or emotional decisions, it is about making the right decisions based on the FACTS.* On top of that, I think it would have been careless, because Sterigenics sterilizes thousands of surgical kits, equipment and catheters DAILY for virtually of our local hospitals and such a closure could have been life-threatening for patients needing surgery.

So, please, let's exercise calmness and prudence as the Village of Burr Ridge continues to work with the Village of Willowbrook as well as the EPA, CDC and ATSDR to obtain all the facts and further assess it to keep our citizenry safe. We will keep you informed every step of the way.

EXHIBIT 7

From: [Johnson, Mark](#)
To: [Mickey Straub](#)
Subject: Information about Sterigenics and Ethylene Oxide
Date: Friday, September 14, 2018 4:18:07 PM
Attachments: [UIC- EtO factsheet .pdf](#)
[Sterigenics ATSDR Public Statement- FINAL 8-27-18.pdf](#)

Mayor Straub

It was good to speak with you this afternoon. I am sending you some information (see attachments) that will hopefully clarify what our assessment has concluded and the recommendations that we have made for Sterigenics to reduce their exposure.

- 1) ATSDR Statement to Mayor Trilla on Aug. 27 clarifying that this is not an immediate health threat or an emergency situation. We concluded that there is an increased cancer risk from exposure to ethylene oxide that we recommend be addressed through a regulatory process with USEPA and Illinois EPA. The engineering improvements have been implemented and the verification of effectiveness are awaiting follow-up testing at their facility.
- 2) Fact Sheet about Ethylene Oxide from the Great Lakes Center for Childrens Environmental Health at the Univ. of Illinois-Chicago School of Public Health.

We have prepared a summary fact sheet for the general public, as an explanation of our assessment of the very technical document that was given to EPA to inform and support their regulatory decisions. It also includes FAQs to address questions that we are hearing from residents and public officials. The fact sheet is undergoing final clearance at CDC/ATSDR in Atlanta. I will send it to you when it is available.

Just so you know, ATSDR is part of the Centers for Disease Control and Prevention (CDC). We provide consultation support to federal/state environmental agencies and state/local health departments to address environmental health concerns in communities. I am the Regional Director and a Toxicologist by training.

I support your efforts to provide some calming messages to the public and would be very willing to review your messages to the residents of Burr Ridge.

Mark

Mark D. Johnson, PhD, DABT
Regional Director/Toxicologist
Agency for Toxic Substances and Disease Registry
77 W. Jackson Blvd
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cell: 312-307-7415

Fact Sheet on Ethylene Oxide

August 2018



Introduction:

The information provided in this fact sheet is intended to provide the public with basic information regarding the potential health impacts from exposure to ethylene oxide vapors. Physicians who specialize in the assessment of this type of exposure are available for consultation with residents and healthcare providers who are concerned about exposure to ethylene oxide from the Sterigenics International, Inc. facility in Willowbrook, Illinois.

What is ethylene oxide and how can I be exposed?

Ethylene oxide is a chemical used to sterilize medical equipment in hospitals and industrial settings. Ethylene oxide is also used to fumigate items that cannot be sterilized by steam such as spices, cosmetics, and plastic devices. Workers in facilities using ethylene oxide may be exposed to it during the sterilization process. The general public can be exposed to ethylene oxide in some consumer products such as tobacco, food, and spices that are often fumigated with ethylene oxide for sterilization. Ethylene oxide is also used in the production of synthetic fibers (e.g., upholstery, carpet), plastics, PVC pipe and cosmetics and therefore can be found in indoor air. It is also present in car exhaust. When ethylene oxide vapors are released into the air from an industrial source such as the Sterigenics facility in Willowbrook, people can be exposed by breathing contaminated air. Compared to adults, children receive larger doses because they have greater lung surface area and increased lung volume per body weight.

How long does ethylene oxide stay in the body?

After inhaling ethylene oxide it takes about 45 to 60 minutes for half of it to break down and be exhaled back out of the body (the "half-life"). That means that ethylene oxide will be completely eliminated from the body within 1-2 days to a week after being exposed. When the contaminant is present in the air continuously, levels will also be present in the body continuously.

How can ethylene oxide affect my health?

Much of what we know about the health effects of ethylene oxide exposure are based on studies of workers in sterilization facilities. The exposures to workers occur at much higher levels than what has been detected in the air of the Willowbrook community near the Sterigenics facility. An evaluation of 18,000 sterilizer facility workers by the National Institute of Occupational Safety and Health determined that workers have experienced nausea, vomiting, bronchitis, pulmonary edema, emphysema and miscarriages. Long-term exposures at lower levels for several months to years may cause irritation of the eyes, skin, and respiratory passages and nervous system effects, such as headache, nausea, memory loss, and numbness.

The National Toxicology Program at the US Department of Health and Human Services (DHHS) has determined that ethylene oxide “may reasonably be anticipated to be a human carcinogen.” Long-term exposures may increase the risk of leukemia, lymphoma, and breast cancer compared to people who have not been exposed. It is not known how long a person needs to be exposed to ethylene oxide to have a higher risk for these cancers, but it is believed that the longer the exposure, the higher the risk of cancer. The exact level of risk, or “chances”, of cancer to residents of the contaminated area of Willowbrook is not known exactly, since it depends on many factors such as weather patterns that disperse contaminants, how much time is spent indoors compared to outdoors, individual health factors such as smoking, and hereditary factors.

Can I get tested for Ethylene Oxide?

The ability to detect ethylene oxide in the body is dependent on the level of exposure and how much time has passed since the exposure has ended. There are two basic tests – blood test and exhaled air test – that can verify that exposure has occurred in the last few days to a week. The problems with testing are: 1) these tests cannot determine where the exposure is from. There may be some exposure from products you use every day. 2) It is not known what levels cause which health effects. 3) There is no way to predict if someone is going to get cancer. The statistics used by EPA and ATSDR show only the level of risk, or “chances” of getting cancer in people exposed to the highest levels taken in May 2018 prior to the emission controls installed at the Sterigenics facility.

No special medical screening is recommended for this community- level exposure to ethylene oxide. But it is important for all of us to continue to reduce our exposures to cancer-causing chemicals and follow medical advice to get regular screening mammograms for breast cancer and routine blood testing for cancer and other health problems. Healthcare providers needing more information may contact us at the number below.

Contact information for the Great Lakes Center for Children’s Environmental Health at the University of Illinois at Chicago*

Website: <http://publichealth.uic.edu/great-lakes/childrens-health>

Phone: 866-967-7337

Email: ChildrensEnviro@uic.edu

Additional resources about ethylene oxide:

EPA:

<https://www.epa.gov/sites/production/files/2016-09/documents/ethylene-oxide.pdf>

<https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/frequent-questions-ethylene-oxide>

National Institutes of Health/National Cancer Institute:

<https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/ethylene-oxide>

This material was supported by the American Academy of Pediatrics (AAP) and funded (in part) by the cooperative agreement FAIN: 1U61TS000237-02 from the Agency for Toxic Substances and Disease Registry (ATSDR). Acknowledgement: The U.S. Environmental Protection Agency (EPA) supports the PEHSU by providing partial funding to ATSDR under Inter-Agency Agreement number DW-5-95877701. Neither EPA nor ATSDR endorse the purchase of any commercial products or services mentioned in PEHSU publications.

Agency for Toxic Substances and Disease Registry (ATSDR) Statement about the Letter Health Consultation "Evaluation of Potential Health Impacts for Ethylene Oxide Emissions"

The Agency for Toxic Substances and Disease Registry (ATSDR) on August 21, 2018, released a Letter Health Consultation report, "Evaluation of Potential Health Impacts for Ethylene Oxide Emissions," in relation to the Sterigenics International, Incorporated facility in Willowbrook, IL. Sterigenics uses ethylene oxide to sterilize medical equipment and other products. ATSDR prepared the report at the request of the U.S. Environmental Protection Agency-Region 5, and posted the findings on the ATSDR website to share with the public.

The emissions of ethylene oxide from the Sterigenics International, Inc. facility in Willowbrook, IL are not an immediate threat to public health and are not considered to be an emergency situation. ATSDR recommended to U.S. EPA that actions be taken to reduce emissions of ethylene oxide from this facility to protect the public from long-term exposures that could harm their health.

The conclusion in the ATSDR Letter Health Consultation report,

"If measured and modeled data represent typical EtO ambient concentrations in ambient air, an elevated cancer risk exists for residents and off-site workers in the Willowbrook community surrounding the Sterigenics facility. These evaluated risks present a public health hazard to these populations"

is to inform and support the regulatory decisions being made by the state and EPA to reduce emissions from that facility to protect public health.

ATSDR based this conclusion on estimated cancer risks that are calculated using conservative assumptions about a lifetime exposure to the highest levels of ethylene oxide that were measured in Willowbrook commercial and residential areas near the facility. The highest measured levels of ethylene oxide in those areas were about 1,000 times lower than levels associated with cancer risks in scientific studies of workers with industrial exposure to EtO.

U.S. EPA has been working with Illinois EPA and Sterigenics to reduce emissions of ethylene oxide from the company's facility. In July 2018, the company installed additional pollution controls to capture ethylene oxide emissions. U.S. EPA and Illinois EPA will monitor the effectiveness of the new equipment to determine whether any other actions are needed to protect public health.

EXHIBIT 8

Christina Dimopoulos

From: Cipriano, Renee <RCipriano@schiffhardin.com>
Sent: Wednesday, November 21, 2018 9:40 PM
To: Dyron.Hamlin@ghd.com
Cc: helen.neal; Benjamin.Chandler@ghd.com; Lucy Fraiser; Paul Farber; Tim Halik; Tom Bastian
Subject: Re: Re: Attorney Client Privilege- news item

Or should have never used 24 hour samples to predict long term cancer risk.

Excuse Typos
Sent from my iPhone

On Nov 21, 2018, at 8:53 PM, "Dyron.Hamlin@ghd.com" <Dyron.Hamlin@ghd.com> wrote:

Next they should highlight how mistaken they were to hastily write and release a report based on that flawed data!

Dyron Hamlin, MS, PE, CIH

A GHD Principal

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On Nov 21, 2018, at 20:02, helen neal <hgn11lsd@att.net> wrote:

TF,

The USEPA's flawed test announcement (made today) has now hit the news agencies. Here are links to ABC, NBC and the Chicago Sun Times newspaper.

Gayle

<https://www.nbcchicago.com/news/local/sterigenics-epa-test-wrong-501044891.html>

<https://abc7chicago.com/health/sterigenics-air-quality-measurements-flawed-epa-says/4735722/>

<https://chicago.suntimes.com/environment/epa-says-it-may-have-overstated-carcinogenic-gas-levels-outside-sterigenics/>

Excuse iPhone typos

Sent from Yahoo Mail for iPhone

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