

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

JEN JORDAN, Individually and)
On behalf of her constituents of GEORGIA)
SENATE DISTRICT 6; TODD SMITH,)
Individually; and KIM BAYNES, individually)
and as surviving spouse of JIM BAYNES,)
)
Petitioners,)
)
v.)
)
THE STATE OF GEORGIA)
DEPARTMENT OF NATURAL RESOURCES)
ENVIRONMENTAL PROTECTION DIVISION,)
)
Defendant.)

PETITION FOR DECLARATORY JUDGMENT

This is an action for declaratory judgment brought pursuant to O.C.G.A. § 50-13-10 and other applicable Georgia law against the State of Georgia Department of Natural Resources Environmental Protection Division (hereinafter “Georgia EPD”). Petitioners petition the Court to enter a declaratory judgment finding that a Consent Order entered into by the Georgia EPD with Sterigenics U.S., LLC on August 7, 2019 (attached hereto as **Exhibit A**) is invalid and without legal force or effect because the Georgia EPD failed to follow procedural rules that govern how the agency may lawfully enter into a Consent Order. Georgia EPD’s failure to follow its own procedural rules interfered with the legal rights of Petitioners, all of whom are, have been, or may be endangered or harmed by Sterigenics’ conduct at issue in the Consent Order, and all of whom were deprived of the right to be heard in opposition to the Consent Order entered into by the Georgia EPD prior to its entry.

1.

Petitioners are Georgia citizens and residents who submit to the jurisdiction and venue of this Court by filing this action. Petitioners all live, or have lived, in areas located in proximity to the Sterigenics facility described herein and have standing to bring this suit because they have suffered injury in fact by being deprived of their legal rights to contest the Georgia EPD's Consent Order with Sterigenics. Petitioners' ability to be heard is the exact "zone of interest" sought to be protected by the regulations which Georgia EPD violated in regard to the Consent Order.

2.

Further, Petitioners and their family members or constituencies have been or may in the future be endangered or further injured because (a) they live or have lived in areas in close proximity to the Sterigenics facility that have or are likely to have heightened levels of a known carcinogen, Ethylene Oxide ("EtO"), as the result of the release of EtO by Sterigenics; (b) they have all more likely than not breathed and continue to breathe that known carcinogen and have thus suffered injury or endangerment of injury from ingesting a known carcinogen, and/or (c) they or family members have already suffered grievous injury as the result of cancer which they believe to have been caused by EtO released by Sterigenics. Petitioners were deprived of the opportunity to bring before the Georgia EPD the facts about their particular histories, medical and otherwise, from living in proximity to Sterigenics – information which they hope and, indeed, pray, would have been heard by EPD and would have led to a different Consent Order being entered if Georgia EPD had followed the law.

3.

Petitioner Jen Jordan is the duly elected State Senator for Georgia Senate District 6, which District includes the Sterigenics facility at issue as well as many neighborhoods and areas identified by the U.S. Environmental Protection Agency as having elevated EtO levels. In addition, Petitioner Jordan, her husband and her two minor children all lived in one of the affected census tracts for a number of years and have been personally exposed to air infected by the release of carcinogenic EtO from the Sterigenics facility. Thus, she brings this action in both an individual capacity (as her own legal rights were interfered with by the Georgia EPD conduct at issue here) as well as on behalf of her constituents, who have also suffered interference with their legal rights because of Georgia EPD's failure to follow procedural guidelines designed to protect her legal rights and those of her constituents.

4.

Petitioner Todd Smith is a Georgia citizen and resident who currently resides in the Olde Vinings Mill subdivision, a neighborhood of 101 homes which is located in Cobb County, just off of Atlanta Road, less than 3 miles from the Sterigenics facility at issue. Petitioner Smith, who is in his early 40s and had been in generally good health, was diagnosed with Lymphoma earlier this year. Beyond his own diagnosis, Petitioner Smith is also aware of several other households in the Olde Vinings Mill neighborhood who have had members of the household diagnosed with some form of cancer in recent years. Petitioner Smith believes that his health has been endangered or may be further endangered from ongoing exposure to EtO from Sterigenics, and at the very least, would like (and would have liked) the opportunity to present his story to the EPD for consideration prior to it entering into any Consent Order with Sterigenics, but he has been deprived of that right to be heard.

5.

Petitioner Kim Baynes is a Georgia citizen and resident who also currently resides in the Olde Vinings Mill subdivision. While living at that location, and after having lived there for seventeen years, her husband, Jim Baynes, was diagnosed in July 2017 with leukemia. Mr. Baynes passed away on March 13, 2018 from complications related to that leukemia. Upon information and belief, Petitioner Baynes' household is one of some *twenty or more* households (out of 101 homes) in the Olde Vinings Mill neighborhood who have had members of the household diagnosed with some form of cancer in recent years. Petitioner Baynes believes that her husband's health was endangered, and that her own health is presently endangered or may be endangered, by the EtO emissions from Sterigenics, and at the very least, she would like (and would have liked) the opportunity to present their story and that of their neighborhood to the EPD for consideration prior to entering into any Consent Order with Sterigenics, but she has been deprived of that right to be heard.

6.

The Environmental Protection Division of the Department of Natural Resources of the State of Georgia is a creation of the Georgia State Government and is thus subject to jurisdiction in this Court, and in particular is subject to jurisdiction and venue in this Court pursuant to the Georgia Administrative Procedures Act, O.C.G.A. § 50-13-1 *et. seq.* and O.C.G.A. § 50-13-10(b). Defendant Georgia EPD will be served with process of this Complaint by delivery to Chris Carr, the Attorney General of the State of Georgia, as specifically provided for in O.C.G.A. § 50-13-10(b), and to ensure that there is no doubt of it being properly served on all affected government agencies or subdivisions, the Complaint will also be served upon Mark Williams, the Commissioner of the Department of Natural Resources, and Richard E. Dunn, the

Director of the Environmental Protection Division. A courtesy copy is also being delivered to the office of the Honorable Governor Brian Kemp.

MATERIAL FACTS

7.

Sterigenics U.S. LLC (“Sterigenics”) operates an ethylene oxide and propylene oxide sterilization facility located at 2971 Olympic Industrial Drive, Atlanta, GA 30339.

8.

In late 2016, EtO was declared by the United States Environmental Protection Agency (the “US EPA”) to be a known carcinogen – i.e., a substance with is known to cause cancer. Sterigenics uses EtO to sterilize medical equipment and, as part of its ongoing business, releases carcinogenic EtO into the air from its facility after it is used to clean equipment.

9.

In August 2018, “modeling data” (which data actually dates back to 2014) was obtained by the US EPA demonstrating that certain areas in Georgia had higher levels of airborne EtO concentrations than other areas in the State, and at least six (6) of those areas were located in close physical proximity to the Sterigenics plant on Olympic Industrial Drive in Atlanta – two in Cobb County, four in neighboring and nearby Fulton County. These areas (sometimes referred to herein as “affected areas”) include many schools, residential neighborhoods, and businesses, with thousands of women, men and children living, working, shopping, exercising or attending schools in them, including all of the Petitioners.

10.

Upon information and belief, the US EPA shared the “modeling data” showing elevated EtO concentrations in areas in proximity to EtO-releasing facilities like Sterigenics with Georgia

EPD as early as August or September of 2018. At that point, upon information and belief, US EPA asked the Georgia EPD if they intended to conduct air monitoring, but for reasons unknown to Petitioners, Georgia EPD inexplicably did not conduct air monitoring around the Sterigenics facility at issue at that time (or at any other time before entering into the August 7 Consent Order at issue in this action).

11.

Indeed, and also for reasons unknown to the Petitioners, for some 10 or more months after the EPA modeling data became known to US EPA and Georgia EPD, neither entity issued a press release, tweet, post or other publicly directed statement (in any of the many forms of communication available at this time in our society) to alert the public of the concerning modeling data, and also did not take any action of any kind in regard to Sterigenics -- the only known entity emitting significant quantities of EtO in the areas in and around Smyrna/Atlanta that was identified in the modeling data -- such as taking steps to monitor or independently investigate the level of EtO emissions by Sterigenics or the effects on nearby communities in the months that followed.

12.

On July 19, 2019, the online sources WebMD and Georgia Health News “broke the news” and broadcast to the public, via the internet, a report of the concerning modeling data that the EPA and EPD had as of August 2018, and of the very real concerns of heightened EtO findings in areas near the Sterigenics Atlanta facility.

13.

After WebMD and Georgia Health News alerted the public of the need for environmental protection near the Sterigenics Atlanta facility, the Petitioners (and many other members of the

communities in the affected areas) were understandably upset, concerned, and desired for their voices to be formally heard by the Georgia EPD (and Sterigenics) as to how the situation would be handled vis a vis Sterigenics and the regulatory agency going forward. Suffice it to say, the community wanted EPD to take swift and authoritative action to shut down Sterigenics, and even if Georgia EPD made a decision to continue to do nothing, at the very least Petitioners would have had their legal right to be heard preserved and not interfered with.

14.

Procedural rules which require notice and time for public comment before regulatory action is taken exist to protect the interest of people exactly like the Petitioners here – people who have learned of a concerning situation, have been injured or are endangered, and want to vocalize their concerns before a regulatory agency enters into Consent Orders. Petitioners are squarely in the “zone of interest” to be protected by such procedural rules.

15.

As a known carcinogen, EtO is a “regulated substance” that can endanger, may have endangered, or may be endangering to human health. It absolutely cannot be disputed that Sterigenics pumps EtO in the air and it then migrates to adjacent areas, and that before August 7, 2019, the Georgia EPD was aware of that fact. Indeed, Georgia EPD’s own EtO risk analysis concluded that Sterigenics’ current EtO emission levels resulted in a 27 to 61 times higher risk to residents in the areas surrounding the facility than the state finds to be acceptable and that even Sterigenics’ proposed emissions level (the level that the Consent Order is based upon and that supposedly addresses the problem) still exceeds the acceptable annual risk level by 12 to 24 times. (See 6/7/19 Georgia EPD Modeling Analysis Memo as **Exhibit B**). Why Georgia EPD

would enter into a Consent Order that it knows will still result in an unacceptable level of EtO emissions, per its own analysis, is incomprehensible.

16.

Under Georgia law, before executing and issuing any administrative consent order in a situation where the EPD “believes a release of a regulated substance into the environment may have endangered or may be endangering human health,” – which is obviously the case with EtO and Sterigenics -- Georgia EPD was required by law, indeed its own rules posted on its website, Environmental Rule 391-1-3-.01(2)¹ in particular, to “provide notice and opportunity to the public to comment on and provide information regarding the proposed issuance of such orders.”

17.

On August 7, 2019, Georgia EPD entered into a Consent Order with Sterigenics U.S., LLC. See 8/7/19 Consent Order, attached as **Exhibit A**. Prior to doing so, Georgia EPD gave no notice to the public of the contents its proposed consent order and gave no opportunity for public comment. In short, Georgia EPD blatantly violated Georgia law, and in so doing, deprived Petitioners and others of a legal right provided by law to be heard on an issue directly affecting them and their community prior to Georgia EPD acting.

18.

Had the Petitioners’ legal right to provide comment not been interfered with by Georgia EPD’s failure to follow the law, they and others would have vocally contested various aspects of the Consent Order entered, including but not limited to its premature conclusions (i.e., conclusions without adequate scientific data) about the levels of EtO emissions, its premature “approval” of a permit to Sterigenics, and its startling agreement with Sterigenics that Sterigenics

¹ See <https://epd.georgia.gov/existing-rules-and-corresponding-laws> (last accessed 9/4/19)

could continue to operate and pump carcinogenic EtO into the Petitioners' neighborhoods, shopping centers, playgrounds, sports fields, and schools while EPD and Sterigenics were still trying to figure out how bad the issue really is and how to fix it (something that is *still* not known).²

19.

The procedural injury caused to Petitioners may be readily redressed by declaring the August 7, 2019 Consent Order invalid and further declaring and requiring that the Georgia EPD follow the law and proper procedure if and when seeking to enter into any valid Consent Order with Sterigenics, including in particular providing public notice and an opportunity for full public comment as required by law.

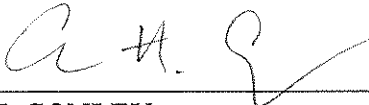
PRAYER FOR RELIEF

Based on the facts and law cited hereinabove, Petitioners hereby move this Court to enter a declaratory judgment (1) declaring and holding that the August 7, 2019 Consent Order is invalid because it was entered into in violation of applicable law, and (2) directing Georgia EPD to follow applicable procedure in regard to any future consent order to be entered into between Georgia EPD and Sterigenics, including but not limited to adequate notice of its intent and opportunity for full public comment.

² If Petitioners had been allowed to be heard, what the Georgia EPD and Sterigenics would have agreed to might have looked very different. Significantly, Sterigenics has another EtO facility in Willowbrook, Illinois, and agreed to enter into another consent order with the State of Illinois that requires, among other things, continuous monitoring of the air, annual EtO usage limits, and stringent EtO emission limits, none of which are required by or even addressed in the Georgia EPD August 7, 2019 Consent Order at issue here. (See Illinois Consent Order attached as **Exhibit C.**) Petitioners and the public were denied the opportunity to present the findings from Illinois to Georgia EPD before the subject Consent Order was entered. Petitioners believe that the citizens of Georgia are entitled to just as much protection from a known carcinogen as the citizens of Illinois.

Respectfully submitted this 6th day of September 2019,

CONLEY GRIGGS PARTIN LLP

By:  _____

CALE H. CONLEY
Georgia Bar No. 181080
4200 Northside Parkway
Building One, Suite 300
Atlanta, GA 30327
404-809-2580
cale@conleygriggs.com

COUNSEL FOR PETITIONERS

APPEARING *PRO BONO* FOR THE BENEFIT
OF THE PETITIONERS AND THEIR
COMMUNITIES AND CONSTITUENTS

EXHIBIT A

**STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

RE: Sterigenics U.S. LLC
2971 Olympic Industrial Drive SE, Suite 116
Atlanta, GA 30339
Cobb County

Order No. EPD-AQC- 6980

CONSENT ORDER

WHEREAS, Sterigenics U.S. LLC (hereinafter "Respondent") operates an ethylene oxide and propylene oxide sterilization facility (hereinafter the "Facility") in Atlanta, Cobb County, Georgia; and

AUTHORITY

WHEREAS, under the "Georgia Air Quality Act" as amended O.C.G.A. § 12-9-1 et seq. (hereinafter the "Air Quality Act"), the General Assembly of Georgia designated the Director of the Georgia Department of Natural Resources, Environmental Protection Division, (hereinafter the "Director" and "Division") to administer the provisions of the Air Quality Act; and

WHEREAS, the Rules for Air Quality Control, Chapter 391-3-1, as amended, (hereinafter the "Rules") are authorized under O.C.G.A. § 12-9-5 of the Air Quality Act, were promulgated in accordance with the Administrative Procedure Act and are effective; and

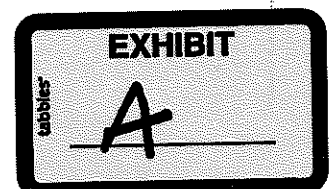
WHEREAS, O.C.G.A. § 12-9-6 of the Air Quality Act assigns the Director the power to issue permits stipulating in each permit the conditions or limitations under which such permit was issued and the power to issue orders as may be necessary to enforce compliance with the provisions of the Air Quality Act and all rules and regulations promulgated there under; and

WHEREAS, O.C.G.A. § 12-9-6(b)(14) of the Air Quality Act provides that the Director shall have and may exercise the power and duty to encourage voluntary cooperation by persons and affected groups to achieve the purposes of the Air Quality Act; and

HISTORY

WHEREAS, the Director issued Air Quality Permit No. 7389-067-0093-S-05-0 (hereinafter the "Permit") to Respondent on May 27, 2014, as amended, for the operation of the Facility; and

Sterigenics U.S. LLC
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WHEREAS, Permit Condition 8.1 stipulates that at any time that the Division determines that additional control of emissions from the Facility may reasonably be needed to provide for the continued protection of public health, safety and welfare, the Division reserves the right to amend the provisions of the Permit pursuant to the Division's authority as established in the Air Quality Act and the Rules adopted pursuant to that Act; and

WHEREAS, to the extent that the Division can ascertain, Respondent is currently operating the Facility in compliance with the Permit and all applicable Federal and State air regulations; and

WHEREAS, in late 2016, U.S. Environmental Protection Agency (hereinafter "US EPA") determined that ethylene oxide was a carcinogen and updated their risk calculations. In August 2018, US EPA released the 2014 National Air Toxics Assessment (hereinafter "2014 NATA"). While previous NATAs had not shown elevated cancer risk from ethylene oxide in Georgia, the 2014 NATA identified some census tracts in Georgia requiring further study, with potentially elevated cancer risks due to ethylene oxide emissions. Two of the census tracts requiring further study are located close to the Facility; and

WHEREAS, the Division requested updated information from the Company in order to conduct a modeling analysis to better characterize the ethylene oxide concentrations in areas surrounding the Facility. In June 2019 the Division completed its modeling analysis of emissions from the Facility, which indicates that risk from ethylene oxide concentrations in residential areas near the Facility does not exceed 100-in-1 million (1 in 10,000), which the US EPA uses in regulations as a general guide for determining the maximum acceptable lifetime cancer risk; and

WHEREAS, the Division requested additional reductions in ethylene oxide emissions at the Facility to occur as expeditiously as possible; and

WHEREAS, Respondent has committed to take further voluntary measures at the Facility to reduce emissions from the Facility; and

WHEREAS, on July 30, 2019, Respondent submitted a permit application 27153, which

describes the planned modifications to the Facility, which include:

- Routing the vacuum pump emissions from the Cellcote scrubber stack to the AAT scrubber, which will further reduce vacuum pump emissions by 99%;
- Routing the AAT stack emissions to one of the 80-foot roof stacks;
- Installing a fugitive emission capture system and routing all indoor emissions through a new dry-bed system. Emissions from the dry beds will be routed to the second 80-foot roof stack; and

WHEREAS, the permit application included an Air Toxics Ambient Impact Assessment; and

CONDITIONS

WHEREAS, both Respondent and the Division agree to the permit condition modifications and additional emission reductions as described in the terms and Conditions of this Order; and

NOW THEREFORE, before taking any testimony and without adjudicating the merits of the parties' position in this matter, and without admission or assignment of liability by or to Respondent, the parties hereby resolve the issues in this case by agreement and upon the order of the Director and the consent of Respondent as follows:

1. As soon as possible and, in any case, within 30 days of execution of this Order, Respondent shall commence construction on planned modifications to the Facility and provide to the Division written notification of the date on which construction will commence accompanied by a detailed schedule for construction completion. Additional time may be added to the schedule for any delays in obtaining all required permits and authorizations from local governmental entities. A written report providing a description of any such delays will be submitted to the Division within seven days of such occurrence.
2. All equipment listed in permit application 27153 shall be installed and operational within 24 weeks of commencing construction.

3. Within 30 days of execution of this Order, Respondent shall provide a Work Practice Plan for immediate implementation. If, upon review of the Work Practice Plan, the Division determines that changes should be incorporated, the Division shall notify Respondent in writing and Respondent shall incorporate those changes into the Work Practice Plan within fifteen days. The plan shall provide for the following:

- a. More frequent monitoring of both the existing and new dry-bed systems;
- b. Details of work practices adopted to minimize fugitive emissions and enhance fugitive emission capture;
- c. Initial and annual training on the work practices for each applicable employee; and
- d. Any additional work practices that relate to new control equipment associated with permit application 27153, which additional work practices shall be implemented upon construction of the new control equipment.

Addresses. Correspondence and other submissions to be made to the Division shall be addressed to: Sean Taylor, Program Manager, Stationary Source Compliance Program, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Correspondence to Respondent shall be addressed to: Kathleen Hoffman, Senior Vice President – Global Environmental, Health & Safety and Technical Services, 2015 Spring Road, Suite 650, Oak Brook, IL 60523 and, separately as well to: Daryl Mosby, General Manager, 2971 Olympic Industrial Drive SE, Suite 116, Atlanta, GA 30339.

Permit Compliance. This Order does not relieve Respondent of any obligations or requirements of the Permit except as specifically authorized herein, which authorization shall be strictly construed.

Time of Essence. Time is of the essence of this Order. Upon it becoming effective, Respondent shall promptly commence its undertakings required herein and shall diligently pursue the accomplishment thereof.

Required Submissions. Upon the submission of any plan, report, or schedule, or any modified

plan, report or schedule, required by this Order, the Division shall review the submission to determine its sufficiency. The Division shall notify Respondent in writing whether the submission is approved or disapproved.

If the Division determines that the submission is disapproved, it shall provide Respondent with a written notice of the deficiencies of the submission. Respondent shall have thirty (30) days from the issuance of the Division's notice of deficiency to modify the submission to correct the deficiencies and resubmit it to the Division. If Respondent does not agree with the Division's initial determination, Respondent shall submit in writing to the Division the grounds for its objection(s) within fifteen (15) days from the issuance of the Division's notice of deficiency. The parties shall confer in an attempt to resolve any disagreement. If no such resolution is reached within thirty (30) days from the date of Respondent's written objection(s), Respondent shall be required to modify its submission in accordance with the Division's comments.

Notwithstanding the foregoing, the failure of Respondent to provide the Division with an ultimately approved submission on or before the specified due date, may, in the sole discretion of the Director, be deemed a violation of this Order. Upon approval by the Division, all submissions required by the terms of this Order are incorporated by reference into, and made a part of, this Order. Except as may be provided by this Order, noncompliance with the contents of such approved submissions shall be deemed noncompliance with this Order.

Division approval of any submission required by this Order is not intended as, nor shall such approval be construed as, certification by the Division that compliance with relevant state and federal laws, regulations, and permits will thereby be achieved, and such approval by the Division shall not provide Respondent with a defense to an enforcement action taken by the Director pursuant to violations of the same. Division approval of any submission is strictly limited to the technical aspects of the submission and is not intended as, nor shall it be construed as, approval or acceptance of any statements, assertions, or representations of fact, of opinion, or of a legal nature that are contained in the document.

Force Majeure. Failure to complete a condition mandated by this Consent Order within the time period specified may be excused and not subject Respondent to enforcement action if the failure is the result of a force majeure event as identified below and Respondent complies the requirements set forth below. Respondent shall have the burden of proving to the Division that it was rendered unable, wholly or in part, by Force Majeure to carry out its obligations.

The term "Force Majeure" as used herein shall be limited to the following: Act of God; strike, lockout, or other labor or industrial disturbance not caused by an unfair labor practice by Respondent; act of the public enemy; war; blockade; public riot; fire; storm; flood; explosion; failure to secure timely and necessary federal, state, or local approvals or permits, provided such approvals or permits have been timely and diligently sought; or other delay caused by unforeseeable circumstances beyond the reasonable control of Respondent, its employees, agents, consultants, or contractors, as determined by the Division in its sole discretion. Force Majeure does not include financial inability to perform an obligation required by this Consent Order or a failure to achieve compliance with applicable regulatory permits.

Respondent shall notify the Division verbally within 48 hours (or no later than the beginning of the next business day if the expiration of the 48 hours occurs on a weekend or holiday) from the time Respondent learns, or in the exercise of reasonable diligence should have learned, of any Force Majeure circumstances that may reasonably be expected to cause a schedule or performance delay. Within 10 days of such time, Respondent shall submit to the Division a written notice of as to the anticipated length (if known) and cause of any delay due to Force Majeure. Failure to so notify the Division shall constitute a waiver of any claim to Force Majeure.

Respondent and the Division agree to negotiate informally and in good faith to identify delays resulting from Forces Majeure. Respondent shall comply with the Division's determination as to the appropriate time period to be excused by Force Majeure, which shall be communicated to Respondent in writing. In the event that any circumstance or series of circumstances cause the schedule to extend over thirty (30) calendar days, Respondent and the Division shall meet formally to assess the overall schedule

impact and attempt to mitigate same. Any Force Majeure or Forces Majeure that cause the schedule to extend over sixty (60) consecutive days shall be noticed to the citizens of Atlanta, Smyrna, and Cobb County in a form to be determined by the Division.

If the Division determines that Force Majeure has occurred, the affected time for performance specified in this Consent Order shall be extended for a period of time equal to the delay resulting from such Force Majeure. Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.

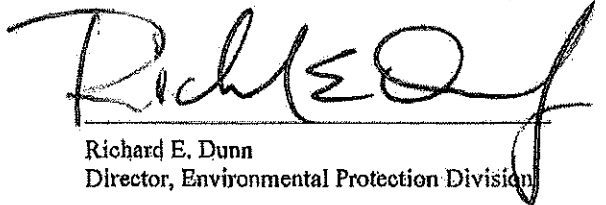
Additional Terms. This Order does not waive the Director's right to take enforcement action against Respondent or imply that the Director will not take such action, either for (1) failure to fully comply with the conditions of this Order, or (2) violations of any relevant requirements of this Order, the law, rules, and permit(s). Issuance of this Order does not waive the Director's right to use any violations, upon sufficient evidence, to show past violations in any enforcement proceeding.

This Order is executed and entered solely for the purpose of encouraging voluntary cooperation to achieve the purposes of the Air Quality Act and does not constitute a finding, adjudication, or evidence of a violation of any law, rule, or regulation by Respondent, and, by consenting to this Order, Respondent does not admit to any factual allegation contained herein or to any violations of State laws. In addition, this Order is not intended to create and it shall not be construed or otherwise deemed to recognize or create any claim, right, liability, estoppel, or waiver of rights in favor of any third-party or parties.

By agreement of the parties, this Order shall have the same force and binding effect as a Final Order of the Director, and shall become final and effective immediately upon its execution by the Director. The parties further agree that this Order shall not be appealable by Respondent, and Respondent hereby waives its right to initiate any administrative or judicial hearing on the terms and conditions of this Order.

Unless modified or terminated by a subsequent order, or otherwise specified in writing by the Director, this Order shall be deemed satisfied and terminated upon full, complete, and timely performance of each and every condition set forth herein.

It is so ORDERED, CONSENTED, and AGREED to this 7 day of August, 2019.


Richard E. Dunn
Director, Environmental Protection Division

FOR RESPONDENT: Sterigenics U.S., LLC

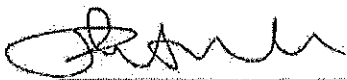
BY: 
NAME: Philip Macnabb (printed)
TITLE: President
DATE: 7 August 2019

EXHIBIT B



ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

Air Protection Branch
4244 International Parkway
Suite 120
Atlanta, Georgia 30354
404-363-7000

MEMORANDUM

June 7, 2019

To: James Boylan
Thru: Byeong-Uk Kim
From: Henian Zhang
Subject: Modeling Analysis for Ethylene Oxide
Sterigenics, Smyrna, Cobb County, GA

GENERAL INFORMATION

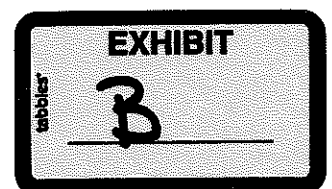
As part of a review on the EPA's 2014 National Air Toxics Assessment (NATA), air dispersion modeling of ethylene oxide was conducted by the Georgia Environmental Protection Division (GA EPD) to assess the impacts of ethylene oxide emissions from sources at Sterigenics on ambient air surrounding the facility. Although this modeling is not for issuance of a permit, GA EPD adopted procedures described in GA EPD's *Guideline for Ambient Impact Assessment of Toxic Air Pollutant Emissions*¹.

This memo discusses modeling results including the procedures used to develop the dispersion modeling. Two emission scenarios were modeled. The facility's current emission release configuration sends fugitive emissions to wall fans. The facility's proposed emission release configuration collects the fugitive emissions and sends them to two stacks on the roof top. For both scenarios, the air toxic impacts from ethylene oxide was below its Acceptable Ambient Concentration (AAC) at the 15-min averaging period, but exceeded its annual AAC. Site-specific risk assessments were performed at the closest four residential areas and the modeled ground-level concentrations exceeded the annual AAC at all four residential areas. The results are summarized in the following sections of this memorandum.

INPUT DATA

1. **Meteorological Data** – Hourly meteorological data (2014 to 2018) used in this review were generated by GA EPD (<http://epd.georgia.gov/air/georgia-aermet-meteorological-data>). Surface measurements were obtained from the Cartersville Airport, Cartersville, GA. Upper air observations were obtained from the Atlanta Regional Airport – Falcon Field, Peachtree City, GA. These measurements were processed using the AERSURFACE (v13016), AERMINUTE (v15272), and AERMET (v18081) with the adjusted surface friction velocity option (ADJ_U*).
2. **Source Data** – Emission release parameters and emission rates were provided by the company and reviewed by the GA EPD Stationary Source Permitting Program. Two emission scenarios were modeled. The current scenario refers to the facility's current emission release configuration that sends fugitive emissions to wall fans (see Appendix A for details). In the proposed scenario, two stacks on the roof top will release the fugitive emissions after collecting them (see Appendix B for details).

1 <https://epd.georgia.gov/air/documents/toxics-impact-assessment-guideline>



3. **Receptor Locations** – Discrete receptors with 25-meter intervals were placed along the property boundary. Receptors extend outwards from the fence line at 100-meter intervals on a Cartesian grid to approximately 2 km and at 250-meter intervals from approximately 2 km to approximately 5 km. Additional receptors were placed at the four closest residential areas. This domain (10 km by 10 km) is sufficient to capture the maximum impact. All receptor locations are represented in the Universal Transverse Mercator (UTM) projections, Zone 16, North American Datum 1983.
4. **Terrain Elevation** – Topography was found to be generally flat in the site vicinity. Terrain data from the USGS 1-sec National Elevation Dataset (NED) were extracted to obtain the elevations of all sources and receptors by the AERMAP terrain processor (v18081).
5. **Building Downwash** – The potential effect for building downwash was evaluated via the “Good Engineering Practice (GEP)” stack height analysis and was based on the scaled site plan submitted by Sterigenics using the BPIPFRM program (v04274). The BPIPFRM model was used to derive building dimensions for downwash assessment and the assessment of cavity-region concentrations appropriate for the AERMOD model.

AIR TOXICS ASSESSMENT

The impacts of facility-wide ethylene oxide emissions were evaluated according to the Georgia Air Toxics Guideline available at <https://epd.georgia.gov/air/documents/toxics-impact-assessment-guideline>. The annual and 15-minute AACs were reviewed based on U.S. EPA Integrated Risk Information System (IRIS) Risk Based Air Concentration (RBAC) and OSHA Permissible Exposure Limit (PEL) according to the Georgia Air Toxics Guideline (see Appendix C for details). The EPA NATA used a different annual AAC value (see Appendix D for details). For this assessment, GA EPD used the annual AAC derived according to the Georgia Air Toxics Guideline and took two approaches to evaluate the impacts. The first approach (described in the Georgia Air Toxics Guideline) selects the year with the highest annual modeled maximum ground-level concentrations (MGLC) from the 5-year period and uses this year in the assessment. The second approach uses the annual modeled concentrations averaged across the 5-year period. The modeled 1-hour and annual ground-level concentrations were calculated using the AERMOD dispersion model (v18081).

Analysis with the Highest 5-Year MGLCs

Table 1 summarizes the AAC levels and the MGLCs from the two modeling scenarios with the highest 5-year MGLCs. The 15-min MGLC is based on the 1-hour MGLC multiplied by a factor of 1.32. The 15-min MGLC was below its corresponding 15-min AAC. However, the annual MGLC exceeded the annual AAC. Figure 1 show the spatial distributions of ground level concentrations estimated with the current scenario and 2016 meteorological data (the year with the highest modeled MGLC). Figure 2 show the spatial distributions of MGLCs estimated with the proposed scenario and 2017 meteorological data (the year with the highest modeled MGLC). Figures 3 and 4 show close-up looks of modeling results with the current and proposed scenarios, centered at the facility with the closest four residential areas labeled. The MGLCs of the four closest residential areas are shown in Table 2. The number of households affected by 10 times of AAC (blue lines on Figures 1 to 4) was reduced from approximately 1,000 with the current emissions scenario to approximately 600 with the proposed emissions scenario.

Table 1. Modeled Highest 5-year MGLCs from the Current and Proposed Scenarios and the Respective AACs.

Averaging period	MGLC ($\mu\text{g}/\text{m}^3$) Current Scenario*	MGLC ($\mu\text{g}/\text{m}^3$) Proposed Scenario#	AAC ($\mu\text{g}/\text{m}^3$)
Annual	1.5	0.16	0.00033
15-min	39	1.4	900

* The highest concentration over all averaging periods was modeled in 2016.

The highest concentration over all averaging periods was modeled in 2017.

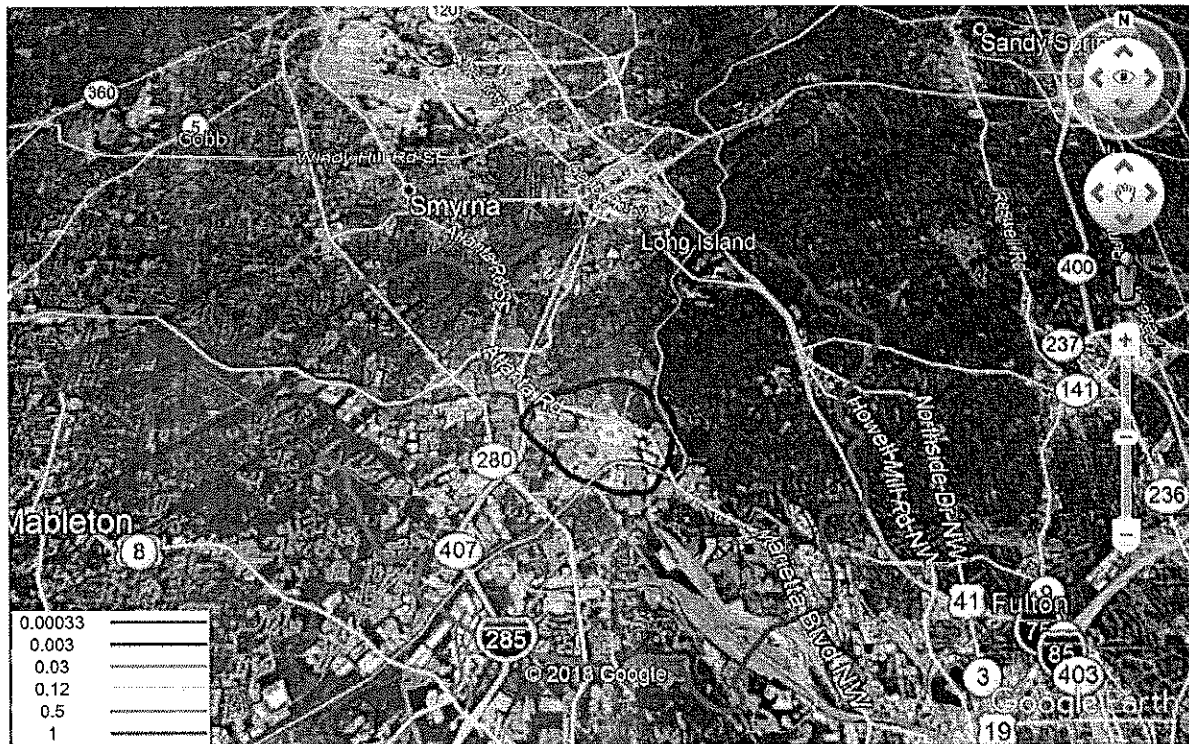


Figure 1. Contours of annual average ground-level concentrations modeled with the current emission scenario overlaid on a Google Earth map for 2016 (the year with the highest modeled MGLC).

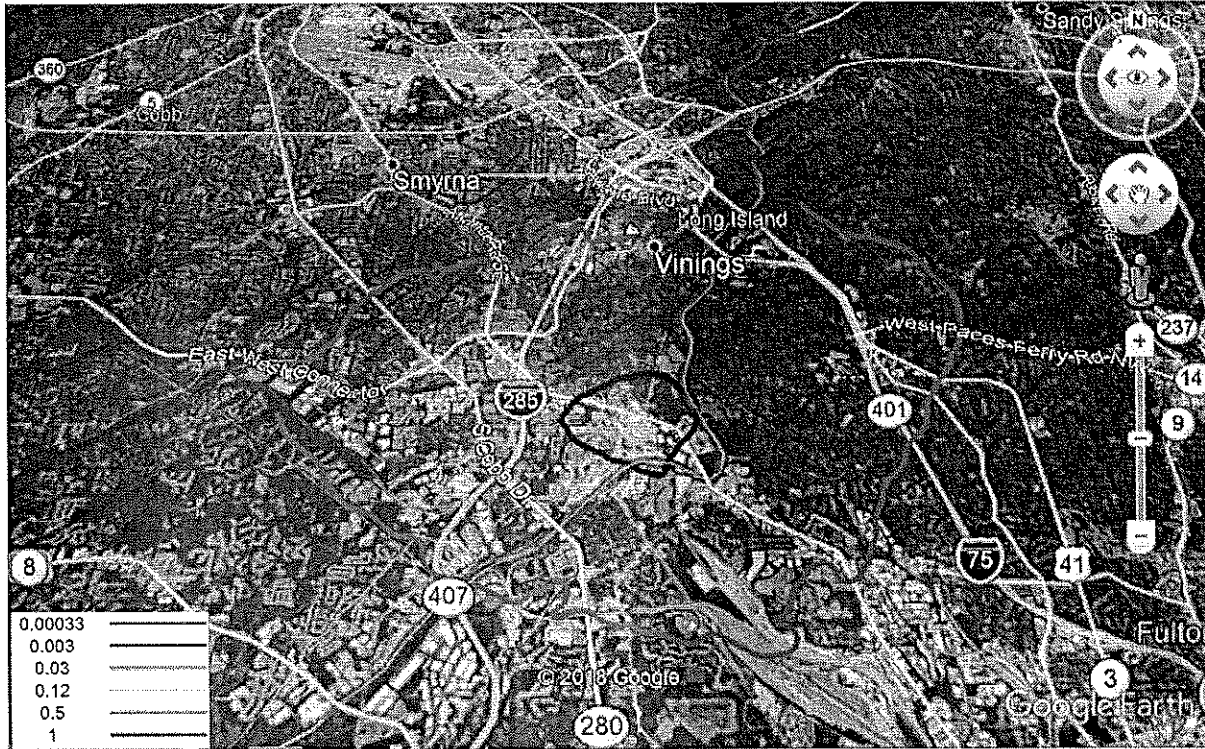


Figure 2. Contours of annual average ground-level concentrations with the proposed emission scenario overlaid on a Google Earth map for 2017 (the year with the highest modeled MGLC).



Figure 3. A close-up look of Figure 1 with the closest residential areas labeled.

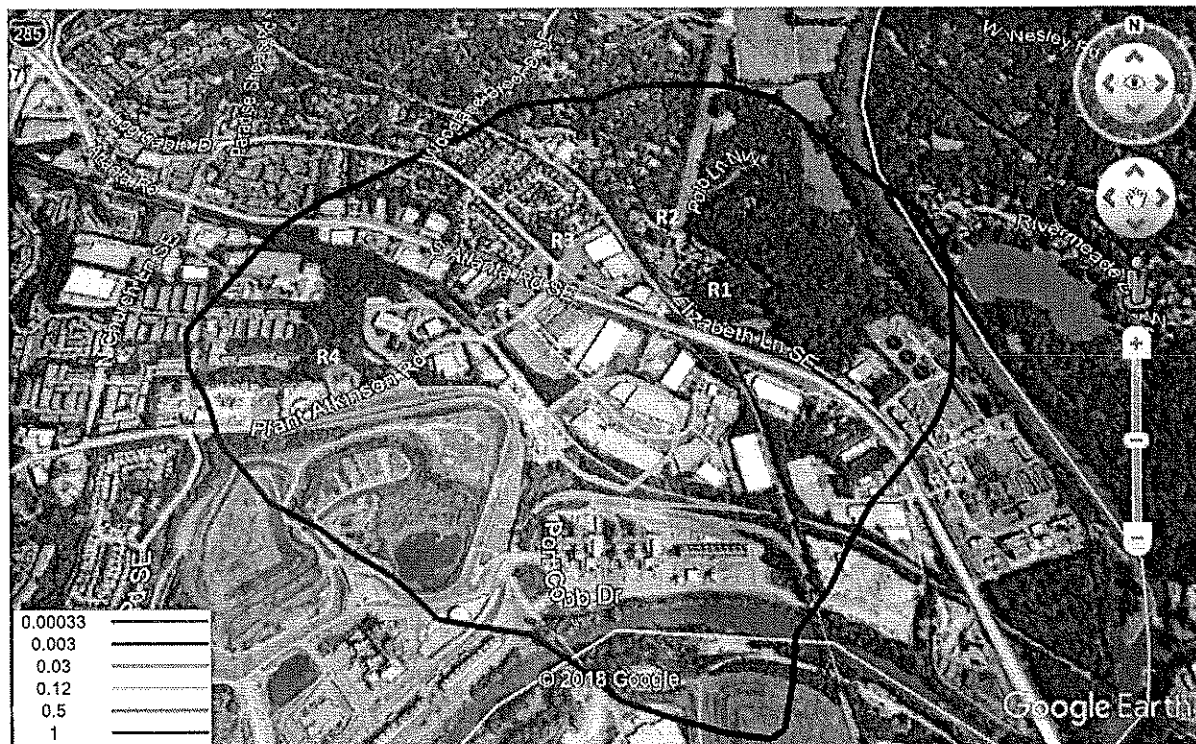


Figure 4. A close-up look of Figure 2 with the closest residential areas labeled.

Table 2. Risk Analysis for Residential Areas with Modeled Highest 5-year MGLCs.

Residential Areas	Receptor UTM Zone:16		MGLC ($\mu\text{g}/\text{m}^3$)		Averaging Period	AAC ($\mu\text{g}/\text{m}^3$)	Ratio of MGLC ($\mu\text{g}/\text{m}^3$) to AAC ($\mu\text{g}/\text{m}^3$)	
	Easting (meter)	Northing (meter)	Current Scenario*	Proposed Scenario#			Current Scenario	Proposed Scenario
R1	734,456.40	3,746,827.10	0.020	0.008	Annual	0.00033	61	24
R2	734,349.30	3,746,923.70	0.015	0.007	Annual	0.00033	45	21
R3	734,073.40	3,746,829.10	0.017	0.007	Annual	0.00033	52	21
R4	733,449.70	3,746,572.40	0.009	0.004	Annual	0.00033	27	12

* The highest concentration over all averaging periods was modeled in 2016.

The highest concentration over all averaging periods was modeled in 2017.

Analysis with 5-Year Average Ground-level Concentrations

To further assess the impact over longer period, maximum values from the 5-year averaged ground-level concentrations from the two modeling scenarios are summarized in Table 3. Contours of modeled annual ground-level concentrations averaged over the 5-year period are shown in Figures 5 and 6. Figures 7 and 8 show close-up looks centered at the facility with the closest four residential areas labeled. The 5-year averaged modeled ground-level concentrations of the four closest residential areas are shown in Table 4.

Table 3. Modeled 5-year Annual Average Ground-level Concentrations from the Current and Proposed Scenarios and the Respective AAC.

Averaging period	MGLC ($\mu\text{g}/\text{m}^3$) Current Scenario ^a	MGLC ($\mu\text{g}/\text{m}^3$) Proposed Scenario ^a	AAC ($\mu\text{g}/\text{m}^3$)
Annual	1.4	0.15	0.00033

* The maximum of ground-level concentration averaged over 5 years.



Figure 5. Contours of 5-year annual average ground-level concentrations modeled with the current emission scenario overlaid on a Google Earth map.



Figure 6. Contours of 5-year annual average ground-level concentrations modeled with the proposed emission scenario overlaid on a Google Earth map.

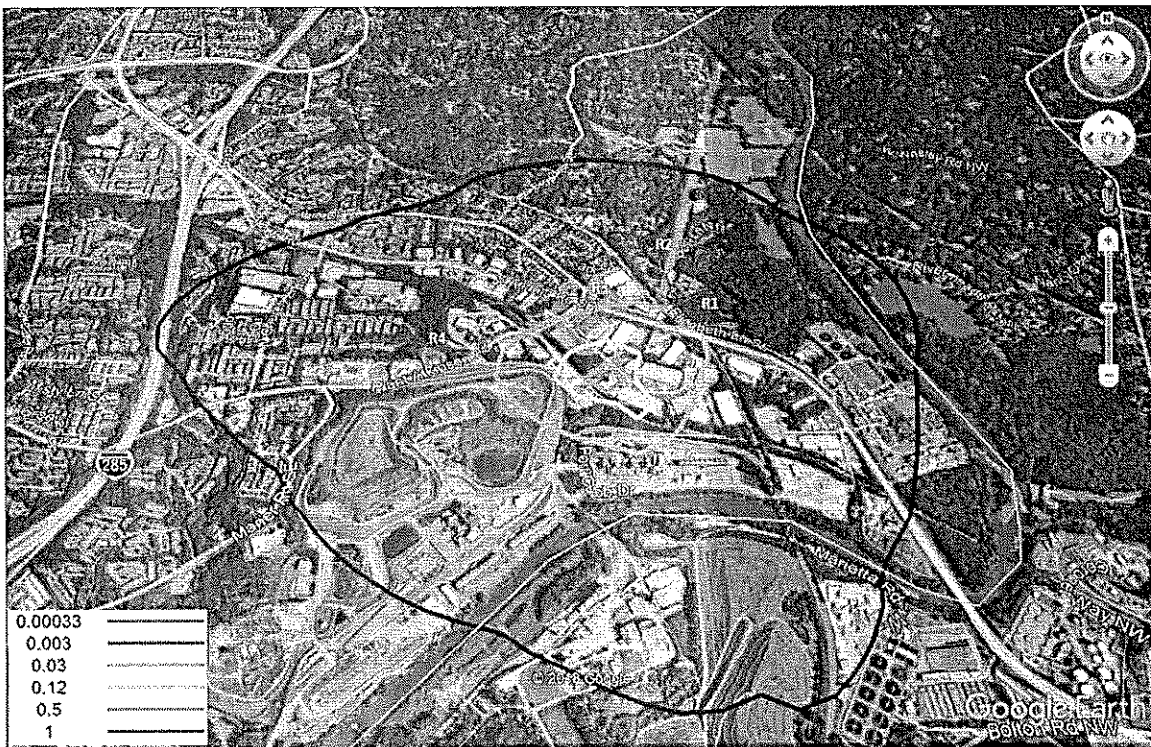


Figure 7. A close-up look of Figure 5 with the closest residential areas labeled.

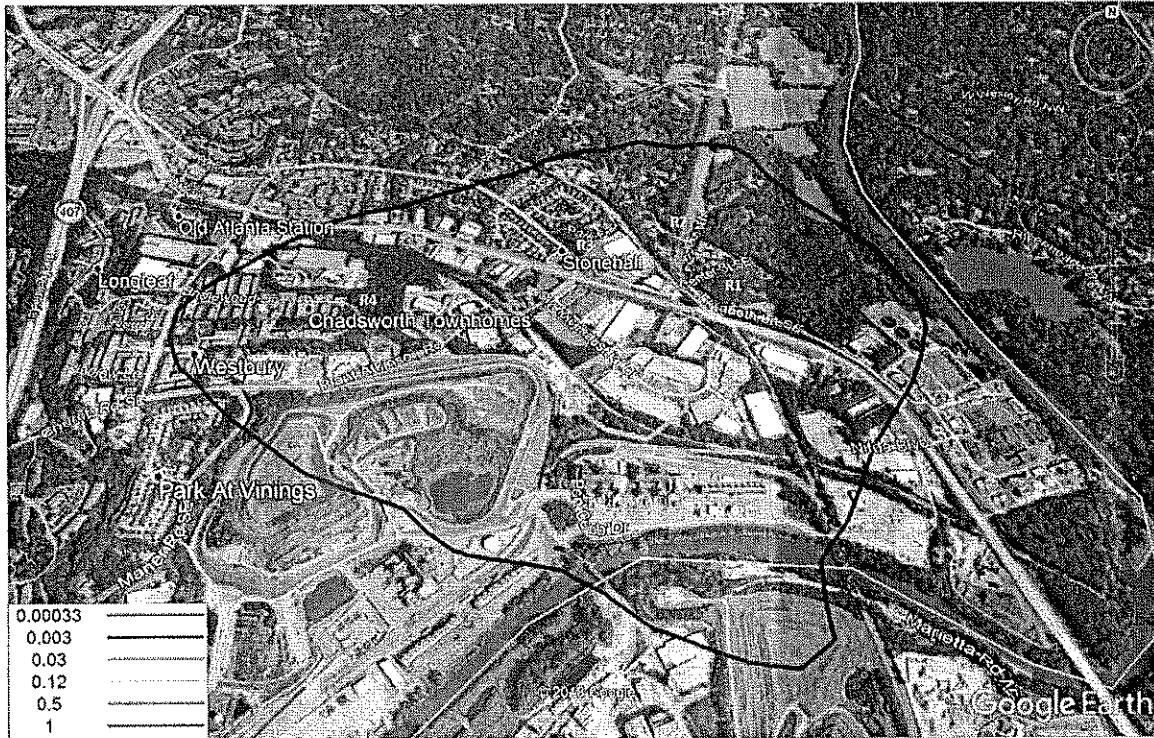


Figure 8. A close-up look of Figure 6 with the closest residential areas labeled.

Table 4. Risk Analysis for Residential Areas with 5-year Average Ground-level Concentrations.

Residential Areas	Receptor UTM Zone:16		Ground-level Concentration ($\mu\text{g}/\text{m}^3$)		Averaging Period	AAC ($\mu\text{g}/\text{m}^3$)	Ratio of Ground-level Concentration ($\mu\text{g}/\text{m}^3$) to AAC ($\mu\text{g}/\text{m}^3$)	
	Easting (meter)	Northing (meter)	Current Scenario	Proposed Scenario			Current Scenario	Proposed Scenario
R1	734,456.40	3,746,827.10	0.020	0.007	Annual	0.00033	61	21
R2	734,349.30	3,746,923.70	0.015	0.006	Annual	0.00033	45	18
R3	734,073.40	3,746,829.10	0.017	0.006	Annual	0.00033	52	18
R4	733,449.70	3,746,572.40	0.009	0.005	Annual	0.00033	27	15

CONCLUSIONS

The dispersion modeling analysis for ethylene oxide shows exceedances at the annual AAC level with the current and proposed emission scenarios. The risk assessment with the current emission scenario indicates that residential areas are well above the AAC level (27-61 times). The risk at residential areas is reduced by approximately 50% with the proposed scenario, but the modeled impacts are still well above the AAC (12-24 times).

Appendix A

Current Emissions and Model Input Parameters

Ethylene Oxide (EtO) Emissions

Emission Source	2017 EtO Emissions (lb/yr)
AAT Scrubber	13.72
Ceilmate Scrubber	3.98
Fugitives	188.39

Model Input Parameters for EtO Emissions Sources

Model ID	Stack Description	Source Type	UTM E ¹ (m)	UTM N ¹ (m)	Elevation ² (m)	Modeled EtO Emissions ³ (g/s)	Stack Height		Stack Temperature		Exhaust Gas Flow Rate (cfm)	Exit Velocity		Stack Diameter	
							(ft)	(m)	(°F)	(K)		(ft/s)	(m/s)	(ft)	(m)
STK1	AAT Scrubber	POINT	734,253.6	3,746,381.0	251.59	1.97E-04	51.0	15.54	98	309.82	12,000	46.8	14.256	2.3	0.71
STK2	Ceilmate	POINT	734,232.1	3,746,355.7	250.08	5.72E-05	51.0	15.54	85	302.59	2,000	42.4	12.936	1.0	0.30
STK3	Roof Fan	POINT	734,267.9	3,746,355.2	251.21	6.02E-04	29.0	8.84	75	297.04	16,000	37.7	11.499	3.0	0.91
STK4	Roof Fan	POINT	734,256.7	3,746,361.0	251.07	6.02E-04	29.0	8.84	75	297.04	16,000	37.7	11.499	3.0	0.91
STK5	Wall Fan	POINTHOR	734,226.1	3,746,349.0	249.61	-	20.0	6.10	75	297.04	200	0.8	0.254	2.3	0.69
STK6	Wall Fan	POINTHOR	734,211.5	3,746,357.1	249.46	-	23.0	7.01	75	297.04	6,000	25.0	7.620	2.3	0.69
STK7	Wall Fan	POINTHOR	734,201.8	3,746,366.6	249.67	-	23.0	7.01	75	297.04	6,000	25.0	7.620	2.3	0.69
STK8	Wall Fan	POINTHOR	734,180.6	3,746,413.3	250.46	1.51E-04	4.8	1.47	75	297.04	5,985	21.3	6.477	2.4	0.75
STK9	Wall Fan	POINTHOR	734,189.0	3,746,420.2	250.93	1.51E-04	12.5	3.81	75	297.04	2,122	6.3	1.930	2.7	0.81
STK10	Wall Fan	POINTHOR	734,197.7	3,746,427.9	251.32	6.02E-04	13.5	4.11	75	297.04	409	20.7	6.299	0.6	0.20
STK11	Wall Fan	POINTHOR	734,201.8	3,746,431.4	251.61	6.02E-04	13.8	4.22	75	297.04	1,031	52.1	15.875	0.6	0.20
STK12	Wall Fan	POINTHOR	734,210.2	3,746,438.3	252.02	-	20.0	6.10	75	297.04	20,000	15.9	4.836	5.2	1.58

Notes:

- Coordinates reflect UTM NAD83, Zone 16.
- Modeled elevations were incorporated using AERMAP. Terrain elevation data was obtained using the National Elevation Data (NED) files from the USGS Multi-Resolution Land Characteristics Consortium (MRLC).
- Smoke testing conducted at the Atlanta facility has shown there are no EtO emissions released from the wall fans associated with STK5 through STK7 and from STK12.

Appendix B

Proposed Emissions and Model Input Parameters

Ethylene Oxide (EtO) Emissions

Emission Source	2017 EtO Emissions (lb/yr)
AAT Scrubber	13.72
Cellcote Scrubber	3.98
Fugitives	188.39

Model Input Parameters for EtO Emissions Sources

Model ID	Stack Description	Source Type	UTM E ¹ (m)	UTM N ¹ (m)	Elevation ² (m)	Modeled EtO Emissions ³ (g/s)	Stack Height		Stack Temperature		Exhaust Gas Flow Rate (cfm)	Exit Velocity		Stack Diameter	
							(ft)	(m)	(°F)	(K)		(ft/s)	(m/s)	(ft)	(m)
STK1	AAT Scrubber	POINT	734,253.61	3,746,381.0	251.59	1.97E-04	51.0	15.54	98	309.82	12,000	46.8	14.256	2.3	0.71
STK2	Cellcote	POINT	734,232.11	3,746,355.7	250.08	5.72E-05	51.0	15.54	85	302.59	2,000	42.4	12.936	1.0	0.30
STK3	Roof Fan	POINT	734,267.91	3,746,355.2	251.21	6.02E-04	29.0	8.84	75	297.04	16,000	37.7	11.499	3.0	0.91
STK4	Roof Fan	POINT	734,256.71	3,746,361.0	251.07	6.02E-04	29.0	8.84	75	297.04	16,000	37.7	11.499	3.0	0.91
STK5	Wall Fan	POINTHOR	734,226.11	3,746,349.0	249.61	-	20.0	6.10	75	297.04	200	0.8	0.254	2.3	0.69
STK6	Wall Fan	POINTHOR	734,211.51	3,746,357.1	249.46	-	23.0	7.01	75	297.04	6,000	25.0	7.620	2.3	0.69
STK7	Wall Fan	POINTHOR	734,201.81	3,746,366.6	249.67	-	23.0	7.01	75	297.04	6,000	25.0	7.620	2.3	0.69
STK812A	Roof Stack A for Fugitive Emissions	POINT	734,206.01	3,746,414.0	251.18	7.53E-04	105.0	32.00	75	297.04	7,500	70.7	21.560	1.5	0.46
STK812B	Roof Stack B for Fugitive Emissions	POINT	734,197.01	3,746,410.0	250.80	7.53E-04	105.0	32.00	75	297.04	7,500	70.7	21.560	1.5	0.46

Notes:

- Coordinates reflect UTM NAD83, Zone 16.
- Modeled elevations were incorporated using AERMAP. Terrain elevation data was obtained using the National Elevation Data (NED) files from the USGS Multi-Resolution Land Characteristics Consortium (MRLC).
- Smoke testing conducted at the Atlanta facility has shown there are no EtO emissions released from the wall fans associated with STK5 through STK7.

Appendix C

GA EPD Calculation of the Annual and 15-min AAC
for Ethylene Oxide

GA EPD Calculation of the Annual and 15-min AAC for Ethylene Oxide

According to the GA EPD's *Guideline for Ambient Impact Assessment of Toxic Air Pollutant Emissions*, the annual and 15-min AAC for ethylene oxide are calculated as following:

Annual AAC

In the EPA Integrated Risk Information System (IRIS)², the Inhalation Unit Risk (IUR) for ethylene oxide is 3×10^{-3} per $\mu\text{g}/\text{m}^3$. Since ethylene oxide is carcinogenic to humans, it belongs to Group A³ with a cancer risk of 1/1,000,000. Therefore, the annual AAC is calculated as:

$$\text{Annual AAC} = \text{Cancer Risk} / \text{IUR} = (1/1,000,000)/(0.003/\mu\text{g}/\text{m}^3) = \mathbf{0.00033 \mu\text{g}/\text{m}^3}$$

15-min AAC

The OSHA permissible exposure limit (PEL) for ethylene oxide is 5 ppm. To convert the PEL from ppm to mg/m^3 , use the following conversion formula from the guidance:

$$(5 \text{ ppm} \times 44.05 \text{ g/mol}) / (24.45 \text{ L/mol}) = 9 \text{ mg}/\text{m}^3$$

where, 44.05 is the molecular weight for ethylene oxide and 24.45 is the molar volume at 25°C and 760 mmHg. After applying a safety factor of 10 for acute sensory irritants, the 15-min AAC is calculated as:

$$\text{15-min AAC} = 9 \text{ mg}/\text{m}^3 \times 1000 \text{ (convert mg to } \mu\text{g)} / 10 \text{ (safety factor)} = \mathbf{900 \mu\text{g}/\text{m}^3}$$

²https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/1025_summary.pdf

³<https://www.epa.gov/fera/risk-assessment-carcinogenic-effects>

Appendix D

EPA Calculation of the Annual AAC for Ethylene Oxide

EPA Calculation of the Annual AAC for Ethylene Oxide

According to EPA's IRIS, inhalation unit risk (IUR) for ethylene oxide (EtO) is 3×10^{-3} per $\mu\text{g}/\text{m}^3$ (as discussed in Appendix C). However, because of the elevated risk due to the mutagenic mode of action through early-life exposures, EPA multiplied the IUR by 1.6:

$$\text{Modified IUR for EtO} = 3 \times 10^{-3} \text{ per } \mu\text{g}/\text{m}^3 \times 1.6 = 0.005/\mu\text{g}/\text{m}^3$$

EPA's NATA used (100/1,000,000) individual risk for the purpose of determining "acceptable risk" (AR) in their national assessment.

$$\text{AR Exposure Concentration} = \text{Cancer Risk} / \text{IUR} = (100/1,000,000)/(0.005/\mu\text{g}/\text{m}^3) = \mathbf{0.02 \mu\text{g}/\text{m}^3}$$

However, EPA uses (1/1,000,000) individual risk to incorporate an "ample margin of safety" (AMS) for setting emission standards⁴ (e.g., benzene NESHAP).

$$\text{AMS Exposure Concentration} = \text{Cancer Risk} / \text{IUR} = (1/1,000,000)/(0.005/\mu\text{g}/\text{m}^3) = \mathbf{0.0002 \mu\text{g}/\text{m}^3}$$

⁴https://www3.epa.gov/ttn/atw/risk/risk_rep.pdf

EXHIBIT C

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

A. Stipulated Facts.

1. Since at least January 30, 2006, Sterigenics has been and is a Delaware limited liability company duly authorized to transact business in the State of Illinois.

2. Since at least January 30, 2006 to present, Sterigenics has operated an ethylene oxide gas ("EtO") commercial sterilization enterprise.

3. From at least January 30, 2006, Sterigenics conducted EtO sterilization at two facilities located in Willowbrook, Illinois, in DuPage County. The first facility is located at 7775 South Quincy Street in Willowbrook ("Willowbrook I"), and the second facility is located at 830 Midway Street in Willowbrook ("Willowbrook II," and together with Willowbrook I, the "Site").

4. On June 8, 2015, Illinois EPA issued Clean Air Act Program Permit (CAAPP) No. 95120085 to Sterigenics, which permit remains in effect as of the date of this Consent Order.

5. On October 30, 2018, Plaintiff filed the original complaint, which was amended on June 6, 2019. The Complaint alleges that Sterigenics, through its emissions of EtO, (a) caused, threatened or allowed air pollution in violation of Section 9(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9(a) (2016), and Section 201.141 of the Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141; and (b) created and maintained a common law public nuisance.

6. On February 15, 2019, John Kim, Acting Director of Illinois EPA, issued a Seal Order pursuant to 415 ILCS 5/34(b) that sealed "[a]ll storage containers of ethylene oxide" at the

Site (the “Seal Order”).

7. On February 18, 2019, Sterigenics challenged the Seal Order by filing an action in the United States District Court for the Northern District of Illinois, styled as *Sterigenics U.S., LLC v. Kim et al.*, Case No. 19-cv-1219 (U.S. Dist. Ct., N.D. Ill.) (“Federal Litigation”), which the District Court dismissed on May 3, 2019. On May 6, 2019, Sterigenics filed an action in the Circuit Court for DuPage County, *Sterigenics U.S., LLC v. Kim et al.*, Case No. 2019CH000566 (Cir. Ct., DuPage County) (the “State Seal Order Litigation”). In both the Federal Litigation and the State Seal Order Litigation, Sterigenics named Acting Director Kim and Illinois EPA as defendants.

8. Public Act 101-0022 took effect on June 21, 2019, and such Public Act applies to Willowbrook I and II. Defendant has stated its intention to comply with Public Act 101-0022 and acknowledges its obligation to do so.

B. Allegations of Non-Compliance

Plaintiff contends that Defendant has violated the following provisions of the Act, Board regulations and the common law:

Count I: Air Pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2016), and Section 201.141 of the Pollution Control Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

Count II: Common Law Public Nuisance.

C. Non-Admission of Violations

1. Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Defendant does not admit the allegations of violation within the Complaint referenced above, and Defendant’s compliance with this Consent Order shall not be interpreted as including any such admission.

Defendant specifically denies the alleged violations in the Complaint and states that it is agreeing to this Consent Order to avoid the cost of litigation and further disruption of its operations. Except as expressly set forth in Paragraph II.1, this Consent Order shall not be used in any other proceeding.

2. The Parties agree that by entering into this Consent Order, they are resolving the legal challenges made by Sterigenics to the findings and assertions set forth in the Seal Order, without any admission by Sterigenics as to their veracity, reliability or admissibility in other legal proceedings, and which Sterigenics continues to dispute. The Parties further agree that the Seal Order does not represent a final determination of any fact or legal conclusion by a court of law or the Illinois Pollution Control Board under 415 ILCS 5/34(b) or (d) and is not an adjudication of wrongdoing. The Parties further agree that by entering this Consent Order, the Court makes no determination as to the merits of the supporting findings of the Seal Order.

D. Duty to Cooperate

The Parties shall cooperate with each other in the implementation of this Consent Order.

II. APPLICABILITY

1. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, managers, members, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. Plaintiff may use this Consent Order against Defendant in any subsequent enforcement action or permit proceeding as provided by Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2018).

2. Defendant shall notify each contractor to be retained to perform work required in

this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than 30 calendar days after the date of entry of this Consent Order. In addition, Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Order to the prime vendor(s) supplying the control technology systems and other equipment required by this Consent Order.

3. No change in ownership, corporate status or operator of the Site shall in any way alter the responsibilities of Defendant under this Consent Order. In the event that Defendant proposes to sell or transfer any real property or operations subject to this Consent Order, Defendant shall notify Plaintiff 30 calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the Site or a portion thereof. Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant Site access and all cooperation necessary for Defendant to perform to completion any compliance obligation(s) required by this Consent Order. Defendant shall provide a copy of this Consent Order to any such successor in interest and Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. In appropriate circumstances, however, Defendant and such proposed purchaser or operator of the Site may jointly request, and Plaintiff, in its discretion, may consider modification of this Consent Order to obligate such proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, Defendant. This provision does not relieve Defendant from compliance with any regulatory requirement regarding notice and transfer of applicable permits.

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Beneficial Project(s)

1. Within 60 days of entry of this Consent Order, Defendant shall propose to Plaintiff, for its review and approval, one or more projects ("Project(s)") designed to benefit the environment in the State of Illinois, preferably in the Village of Willowbrook or neighboring communities of DuPage County. The Project(s) may include physical improvements or activities, such as educational scholarships or programming. Defendant may either perform the Project(s) or fund the Project(s) in whole or in part. Defendant shall contribute \$300,000.00 towards the Project(s). The Project(s) shall neither displace any other source of funding for the fund, program, or project, nor fund any activity that Defendant is required by law to conduct or for which, as of the date of entry of the Consent Order, the Defendant has committed funds. Within 30 days of entry of this Consent Order, Defendant shall deposit the \$300,000.00 for the Project(s) with an escrow agent approved by the Plaintiff, with instructions approved by the Plaintiff that disbursements shall be made only for Projects approved by Plaintiff under this Section III.A and only upon the joint direction of Plaintiff and Defendant.

2. Defendant's proposal shall include an implementation schedule, which shall be subject to the review and approval of Plaintiff.

3. Upon approval of Plaintiff, Defendant shall implement the Project(s) in accordance with the approved schedule.

4. Defendant shall complete the Project(s) no later than one year from entry of the Consent Order, unless an extended schedule is otherwise agreed to in writing by Plaintiff.

5. Within 30 days after the completion of the Project(s), the Defendant shall submit a Project(s) completion report, including a summary of all expenditures, to the contact persons identified in Section III.I of this Consent Order for review and confirmation that the Project(s) was performed pursuant to this Consent Order.

6. Within 30 days of the determination that any approved Project cannot be completed or the summary of expenditures for the approved Projects do not total the amount in Section III.A.1, above, Defendant shall propose one or more additional Projects designed to benefit the environment in the State of Illinois, preferably in the Village of Willowbrook or neighboring communities of DuPage County following the procedures above in Section III.A.2-5.

B. Stipulated Penalties, Interest and Default

1. If Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Consent Order, Defendant shall provide notice to Plaintiff of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$400 per day per violation for up to the first 15 days of violation, \$500 per day per violation for the next 15 days of violation, and \$1,000 per day per violation thereafter until such time that compliance is achieved. Plaintiff may make a demand for stipulated penalties upon Defendant for its noncompliance with this Consent Order. However, failure by Plaintiff to make this demand shall not relieve Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within 30 calendar days of the date Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

2. If Defendant fails to make any payment required by this Consent Order on or before

the date upon which the payment is due, Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. The stipulated penalties shall be enforceable by Plaintiff. Nothing herein shall preclude Plaintiff from seeking remedies or sanctions arising from the failure to comply with this Consent Order, other than additional civil penalties under the Act.

C. Stipulated Penalty and Interest Payment Procedures

1. All payments required by Section III.B of this Consent Order shall be made by certified check or money order payable to Illinois EPA for deposit into the Environmental Protection Trust Fund. Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Daniel Rottenberg
Assistant Attorney General

Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. *Prohibition on Operations at Willowbrook I.* Subject to Paragraph III.D.7 (Emergency Temporary Operations) herein, Defendant shall not conduct any EtO sterilization operations (hereinafter "Operations") at Willowbrook I until Defendant has satisfied the requirements, and obtained the written approval, specified in Paragraph III.D.4(a) (Conditions Precedent to Restarting Operations at Willowbrook I). Upon Defendant's restart of Operations at Willowbrook I in accordance with the terms of this Consent Order, Defendant shall continue to comply with the terms of this Consent Order.

2. *Construction Permit for Additional Capture and Control Measures at Willowbrook I.* On June 24, 2019, Defendant submitted to Illinois EPA a construction permit application, requesting the issuance of a construction permit containing additional capture and control measures at Willowbrook I (the "Construction Permit"). Defendant addressed or included at least the following in its construction permit application for Willowbrook I:

a. Air dispersion modeling demonstrating that the planned modifications at Willowbrook I will be sufficient to ensure that the maximum long-term average modeled concentrations of EtO in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) attributable to any future Operations at Willowbrook I will be at or below a level satisfactory to the Illinois EPA. The air dispersion modeling shall not include background EtO;

b. A description of the installation of the additional capture and control measures at Willowbrook I, including (i) permanent total enclosure providing 100% capture in accordance with U.S. Environmental Protection Agency Method 204 of all areas

containing EtO (namely, processed product shipping areas, processed product storage areas, chamber areas and chamber work aisles) (aeration rooms, which are already under negative pressure, shall be included within the permanent total enclosure) (“PTE”) and (ii) an overall control efficiency of 99.9% based on total mass of EtO measured at the inlet and the exhaust of the control system or 0.2 parts per million at the exhaust of the control system (“Required Control Efficiency”);

c. A description of the air emission controls necessary to comply with the Required Control Efficiency;

d. A description of the routing of the existing Chemrox DEOXX packed tower chemical scrubber that currently exhausts through its own stack at Willowbrook I into the two-stage Advanced Air Technologies Safe Cell emission control system and dry bed reactor for additional treatment of the vacuum pump/chamber emissions;

e. A proposed annual EtO usage limit;

f. A proposed annual emissions limit;

g. A description regarding the elimination of the stack currently associated with the DEOXX scrubber;

h. A description with supporting technical information of the height to which the remaining stack will be raised to eliminate building-induced adverse effects of downwash; and

i. A description of continuous emissions monitoring to continuously measure EtO utilizing an enhanced FTIR following PS-15 or such other method approved by Illinois EPA.

3. ***Additional Plan Submissions to Illinois EPA.*** No later than 30 days after the date

of entry of this Consent Order:

a. Defendant shall have submitted to Illinois EPA, for review and approval as set forth in Paragraph III.D.8, a protocol (“Stack Test Protocol”) for emissions testing of the control system at Willowbrook I to demonstrate compliance with the Required Control Efficiency (“Stack Testing”). The Stack Test Protocol shall include, at a minimum:

- i. A requirement that Defendant submit a written notification of the expected date of the Stack Testing;
- ii. A description of the specific procedures for the Stack Testing, which shall be representative of actual Operations and includes agreed-upon operating conditions and addresses the full cycle of the batch sterilization process commencing with the introduction of EtO from the sterilization chambers into the control system (first evacuation of chamber) and concluding when sterilized materials have been in the aeration room for at least one hour. Such procedures shall also include:
 - aa. The person(s) who will be performing sampling and analysis and their experience with similar stack tests;
 - bb. The specific conditions under which testing will be performed, including a discussion of why these conditions will be representative and the means by which the operating parameters for the emission unit(s) and any control equipment will be determined;

- cc. The specific determinations of emissions and operations which are intended to be made, including sampling and monitoring locations;
 - dd. The test method(s) that will be used, including the specific U.S. Environmental Protection Agency-approved analytical and sampling technique if the specified test method can be used with different analytical and sampling techniques; and
 - ee. Any changes in standard methodology proposed to accommodate the specific circumstances of testing, with justification;
- iii. A requirement that at least 5 business days prior to the actual date of the Stack Testing, Defendant shall submit to Illinois EPA a written notification of the actual date and expected time of the Stack Testing;
 - iv. A proposed schedule that provides Stack Testing will occur within 14 days after Defendant's restart of Operations at Willowbrook I; and
 - v. A requirement that as soon as practicable but no later than 30 days after the date of the Stack Testing, Defendant shall submit to Illinois EPA, for review and approval as set forth in Paragraph III.D.8, a report of the results of such testing (the "Stack Test Results Report"). The Stack Test Results Report shall include, at a minimum:

- aa. A summary of results;
- bb. A detailed description of the test method(s), including a description of sample points, sampling train, analysis equipment and test schedule;
- cc. A detailed description of test conditions, including process information and control equipment information, *e.g.*, equipment condition and operating parameters during testing; and
- dd. Data and calculations, including copies of all raw data sheets, and records of laboratory analyses, sample calculations and data on equipment calibration.

b. Defendant shall have submitted to Illinois EPA, for review and approval as set forth in Paragraph III.D.8, an ambient air monitoring plan (“Air Monitoring Plan”) that includes, at a minimum:

- i. a detailed description of the process for collecting and analyzing air samples for EtO at various locations near the Site and in the community every third day over a 30-day period while the Site is in operation;
- ii. a schedule for implementation that includes a commencement date for ambient air monitoring not later than 14 days of the date of Illinois EPA’s written approval of the Stack Test Results Report, provided, however, in the event that Willowbrook I is not in

operation, Defendant shall propose an alternative start date to Illinois EPA for its approval; and

- iii. A requirement that as soon as practicable but no later than 30 days after the date of the collection of the air samples pursuant to the approved Air Monitoring Plan, Defendant shall submit to Illinois EPA, for review and approval as set forth in Paragraph III.D.8, a report of the results of such testing (the “Air Monitoring Results Report”). The Air Monitoring Results Report shall include, at a minimum:
 - aa. A summary of results;
 - bb. A description of the test method(s), including a description of sample locations; and
 - cc. Wind and weather information for the sampling period.

4. ***Conditions Precedent to Restarting Operations at Willowbrook I.***

a. Construction Completion Report.

i. Prior to Defendant’s restart of Operations at Willowbrook I, Defendant shall have submitted to the State, for review and approval as set forth in Paragraph III.D.8, a report (the “Construction Completion Report”) which includes, at a minimum:

- aa. A detailed description of Defendant’s compliance with the Construction Permit issued by Illinois EPA;
- bb. The dates of Illinois EPA’s written approval of the (i) Stack Test Protocol and (ii) Air Monitoring Plan; and

cc. A certification of Defendant's demonstration of 100% capture of all areas containing EtO in accordance with U.S. Environmental Protection Agency Method 204 ("PTE Demonstration").

ii. The State's approval of the Construction Completion Report shall be conditioned upon Defendant's compliance with the Illinois EPA-issued Construction Permit, Illinois EPA's approval, in writing, of the Stack Test Protocol and Air Monitoring Plan and Defendant's certification of the PTE Demonstration. If such conditions are met, the State shall provide written approval of the Construction Completion Report to Defendant.

5. ***Cessation of Operations Upon Test Failure.*** If the Stack Testing demonstrates that the Required Control Efficiency is not being met, without any further order of Court, Defendant shall immediately cease Operations at Willowbrook I until (a) measures are in place that ensure the Required Control Efficiency is met and (b) the State approves such measures in writing.

6. ***Best Management Practices ("BMPs").*** Following Defendant's restart of Operations at Willowbrook I, Defendant shall implement and maintain the following BMPs:

a. Reduce the Lower Explosive Limit ("LEL") trigger for opening sterilization chambers to remove product from 25% to 5% of the LEL;

b. Minimize the generation of EtO emissions within the facility, including:

i. when emptying sterilization chambers of product, remove and immediately transport pallets directly to an aeration room, and in no event shall pallets be staged in the aisle before transporting to an aeration room; and

- ii. maximize, to the extent practicable, the duration that a product remains in an aeration room before removal, consistent with approvals by the U.S. Food and Drug Administration and customer shipping demands for each particular product;
- c. Monitor and manage the dry bed reactor media;
- d. Review and update the BMPs identified in Paragraphs 6(a)-(c) at Willowbrook I on an annual basis; and
- e. Keep a record, in writing, at Willowbrook I of all of the BMPs identified in Paragraphs 6(a)-(c) for up to 3 years, which record shall be made available for review by Illinois EPA upon request.

7. ***Emergency Temporary Operations.*** Notwithstanding any other provision in this Consent Order, and solely at the discretion of the State, 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. The State's approval of temporary limited Operations, if granted under this paragraph, will be in writing and will include specific parameters that will govern such Operations. Defendant's operations under this paragraph shall comply with the terms and conditions in the State's written approval. Defendant acknowledges and agrees that the decision to approve temporary, limited re-opening under this provision is not subject to Dispute Resolution under Section III.H or review by the Court.

8. *Review Process for Defendant's Submittals Required Under This Consent Order.*

With respect to each of the plans and reports that Defendant submits to Illinois EPA or the State, as applicable, under this Consent Order, the following review process shall apply:

a. Illinois EPA's review and approval of any of Defendant's submissions shall be in consultation with Plaintiff.

b. For submissions subject to review and approval by the State, the State shall provide a single, joint response accepting, accepting with conditions, or rejecting each such submission.

c. If any plan or report is accepted with conditions or rejected, within 10 business days after the date of the written notice of such acceptance with conditions or rejection, Defendant shall submit a revised plan or report to Illinois EPA or the State, as applicable, that addresses all of the identified conditions or deficiencies.

d. Upon issuance of a written approval of any plan or report, Defendant shall implement such plan or report in accordance with its approved terms and schedule.

e. Illinois EPA and the State, as applicable, shall make every effort to expedite review of Defendant's submittals with a goal of providing a written response within 30 days of receipt of each submittal. If Illinois EPA or the State, as applicable, is unable to provide a response within 30 days of receipt, Defendant shall be notified that additional time for review is required and shall provide the reason why additional time is necessary. Following such notification, Illinois EPA or the State, as applicable, shall have no more than 15 days to complete the review. Defendant may seek relief from the Court to the extent the process of reviewing and approving any submittal has become unreasonably delayed beyond the additional time requested for review. Notwithstanding anything herein to the

contrary, the provisions set forth in the Act regarding permit applications, including any required deadlines, govern Illinois EPA's review of the construction permit application described in Paragraph III.D.2. In addition to the foregoing, Illinois EPA or the State, as applicable, shall not unreasonably withhold its written approval of a submission made by Defendant under this Consent Order.

9. ***Prohibition on Operations at Willowbrook II.*** Defendant shall not conduct Operations at Willowbrook II unless and until: (a) it receives a final, effective construction permit from Illinois EPA; (b) the Parties amend this Consent Order by attaching that final, effective construction permit to this Consent Order; and (c) the Court enters such amendment. The Parties' intent is for any resumption of Operations at Willowbrook II to adhere to a similar process to that which is required for resumption of Operations of Willowbrook I and include an enforceable schedule, recognizing, however, that the modifications that will be made to Willowbrook II prior to any resumption of Operations are likely to differ in scope and in kind. The Parties agree that the construction permit application must include, at a minimum:

a. A schedule for Defendant's submission of a construction permit application for Willowbrook II, and a list of items that must be set forth in such application, including, without limitation, 100% capture and an overall control efficiency of 99.9% based on total mass of EtO measured at the inlet and the exhaust of the control system or 0.2 parts per million at the exhaust of the control system;

b. A schedule for Defendant's submission of a stack test protocol and ambient air monitoring plan for Willowbrook II, and a list of items that must be included in such protocol and plan;

c. The conditions precedent to Defendant's restart of Operations at

Willowbrook II, including the requirement that Defendant shall submit to the State for approval a Construction Completion Report and receive approval from the State prior to the resumption of Operations at Willowbrook II;

d. The cessation of Operations at Willowbrook II if the stack testing at Willowbrook II demonstrates that the Required Control Efficiency is not being met; and

e. A list of the best management practices at Willowbrook II.

10. ***Operating Permit Renewal.*** The terms and conditions of any Construction Permit(s) issued by Illinois EPA shall be included in the facility's operating permit renewal application for the Site.

11. Illinois EPA, its employees and representatives, shall have the right of entry into and upon Defendant's Site which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, Illinois EPA, its employees and representatives, may take photographs, collect samples and collect information, as they deem necessary. Defendant shall have the opportunity to assert that any such photographs or information collected from the Site be handled as trade secrets or confidential business information. Defendant shall be permitted to retain a copy of any documents collected from the Site. The Attorney General, his employees and representatives, and the DuPage County State's Attorney, his employees and representatives, may attend any inspection of the Site with Illinois EPA.

12. This Consent Order in no way affects the responsibilities of Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations.

13. Defendant shall (a) comply with the Illinois EPA-issued Construction Permit, and

(b) cease and desist from future violations of the Act and Board regulations that were the subject matter of the Complaint.

E. Complete Agreement

This Consent Order constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than reports or other documents that are subsequently submitted and approved pursuant to this Consent Order, the Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Order.

F. Force Majeure

1. *Force majeure* is an event arising solely beyond the control of Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, Defendant shall orally notify Illinois EPA (James Morgan at 217.524.1376) within 48 hours of obtaining knowledge of the occurrence. Written notice shall be given to Plaintiff's representatives as listed in Section III.I of this Consent Order as soon as practicable, but no later than 10 calendar days after the claimed occurrence. This

section shall be of no effect as to the particular event involved if Defendant fails to comply with these notice requirements.

3. Within 10 calendar days of receipt of any written *force majeure* notice, Plaintiff shall respond in writing regarding Defendant's claim of a delay or impediment to performance. If Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If Plaintiff does not accept Defendant's claim of a *force majeure* event, the Defendant must file a petition with the Court within 20 calendar days of receipt of Plaintiff's determination in order to contest the imposition of stipulated penalties. Plaintiff shall have 20 calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

G. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court

shall retain jurisdiction of this matter and shall consider any motion by any Party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Parties agree that notice of any subsequent proceeding to enforce this Consent Order may be made by certified mail, and waive any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court (except relating to any restart of Operations at Willowbrook II in accordance with Paragraph III.D.9). A request for any modification shall be made in writing and submitted to the representatives designated in Section III.I of this Consent Order. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

H. Dispute Resolution

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to Illinois EPA's or the State's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or other submission, or Plaintiff's rejection of a request for modification or termination of the Consent Order. Plaintiff reserves the right to seek enforcement by the Court where Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a Party through a written

notice describing the nature of the dispute and the party's position with regard to such dispute. The other Party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than 14 calendar days from the receipt of such notice. These informal negotiations shall be concluded within 30 calendar days from the date of the first meeting between the Parties, unless the Parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution; provided, however, while stipulated penalties may continue to accrue during any dispute resolution period, such stipulated penalties need not be paid until 30 days after the dispute is resolved. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the Parties are unable to reach agreement during the informal negotiation period, Plaintiff shall provide Defendant with a written summary of its position regarding the dispute. The position advanced by Plaintiff shall be considered binding unless, within 20 calendar days of Defendant's receipt of the written summary of Plaintiff's position, Defendant files a petition with this Court seeking judicial resolution of the dispute. Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within 20 calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, Plaintiff's written summary of its position, Defendant's petition before the Court and Plaintiff's response to

the petition. Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

I. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

FOR PLAINTIFF

Daniel Rottenberg
Stephen Sylvester
Assistant Attorneys General, Environmental Bureau
Office of the Illinois Attorney General
69 W. Washington Street, 18th floor
Chicago, Illinois 60602
Phone: (312)814-3816/2087
Fax: (312)814-2347
drottenberg@atg.state.il.us
ssylvester@atg.state.il.us

Lisa A. Smith
Assistant State's Attorney
DuPage County State's Attorney
503 N. County Farm Road
Wheaton, IL 60137
Lisa.smith@dupageco.org

FOR ILLINOIS EPA

James Morgan
Deputy General Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
P.O. Box 19276
1021 North Grand Avenue East
Springfield, IL 62794-9276
James.morgan@Illinois.gov

Kevin Mattison
Compliance Section, Des Plaines (3rd Floor)
Illinois Environmental Protection Agency
9511 Harrison Street
Des Plaines, IL 60016
Kevin.Mattison@illinois.gov
(one hard copy of each submittal, and email copy)

Compliance Section #40
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794
kent.mohr@illinois.gov
(one hard copy of each submittal, and email copy)

FOR DEFENDANT
Sterigenics U.S., LLC
Attn: President, Vice President Environmental Health and Safety, and General
Counsel
2015 Spring Road, Suite 650
Oak Brook, IL 60523

Byron F. Taylor
Sidley Austin LLP
1 S. Dearborn
Chicago, IL 60603

J. Release Provisions

1. *Seal Order Release.* Within 2 business days of the entry of this Consent Order, Illinois EPA shall remove the Seal Order. Upon removal of the Seal Order by Illinois EPA, (a) Defendant releases, waives and forever discharges the State, and any agent, officer, or employee thereof, from all actions, claims, causes of actions and demands for any costs, attorney's fees, damages or other relief that Defendant asserted in the Federal Litigation and the State Seal Order Litigation or could have asserted to challenge the Seal Order, including without limitation claims for damages based on the issuance of the Seal Order, as of the date the Court enters this Consent

Order, and (b) within 2 business days of Illinois EPA's removal of the Seal Order, the Parties shall file a joint stipulation of dismissal of the State Seal Order Litigation with prejudice.

2. *Complaint Release.*

a. Upon written confirmation of the escrow agent's receipt of the escrow funds required under Section III.A. of this Consent Order, the State releases, waives and forever discharges Defendant from any monetary penalties or other monetary payments for alleged violations of the Act, Board regulations and common law that were the subject matter of the Complaint or that could have been asserted as of the date the Court enters this Consent Order based on the facts asserted in the Complaint.

b. Upon the earlier to occur of (i) Illinois EPA's written approval of the Construction Completion Report or (ii) any termination of this Consent Order pursuant to Section III.K. below, the State releases, waives and forever discharges Defendant from any and all further injunctive relief or any other liabilities, subject to Paragraph III.J.2.a above, for the alleged violations of the Act, Board regulations and common law that were the subject matter of the Complaint or that could have been asserted as of the date the Court enters this Consent Order based on the facts asserted in the Complaint.

c. Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State against Defendant with respect to all other matters, including but not limited to the following:

- i. criminal liability;
- ii. liability for future violations;
- iii. liability for natural resources damage arising out of the alleged violations; and

- iv. Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than Defendant.

K. Termination

1. *Continued Operations.*

a. Defendant may request that this Consent Order terminate no sooner than 5 years after Defendant has completed all actions required of Defendant in the Consent Order, provided that Defendant has been in compliance with the terms of the Consent Order for the 5 years preceding the request. Any such request must be made by notice to Plaintiff and include a statement that Defendant has completed all actions required by this Consent Order and has been in compliance with the terms of the Consent Order for the 5 years preceding the request and the following certification by a responsible corporate official of Defendant:

I certify under penalty of law that this statement was prepared under my direction or supervision, and that the information submitted in or accompanying this statement of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and or imprisonment for knowing violations.

b. Plaintiff shall notify Defendant of its decision on the request within 45 calendar days of Plaintiff's receipt of the request. If Plaintiff agrees to terminate this Consent Order, Plaintiff and Defendant shall jointly file a notice with the Court that the

Consent Order is terminated. If Plaintiff does not agree to terminate this Consent Order, Plaintiff shall provide Defendant written notification stating the reasons why this Consent Order should not be terminated and Defendant may then invoke the Dispute Resolution provisions. The Consent Order shall remain in effect pending resolution of any dispute by the Parties or the Court concerning whether Defendant has completed its obligations under this Consent Order and is in compliance with the terms of the Consent Order.

2. *Permanent Cessation of Operations.*

If Defendant permanently ceases Operations at either Willowbrook I and/or Willowbrook II, including surrendering its Illinois EPA-issued permits relating to such Operations, the Parties shall jointly file a request that the Consent Order be terminated, solely as to the facility ceasing Operations, pursuant to the provisions of Paragraph III.K.1., except that Defendant need not comply with the 5-year time requirement as to the affected facility ceasing Operations.

3. The provisions of Paragraph III.D.13 and Section III.J (Release Provisions) of this Consent Order shall survive and shall not be subject to and are not affected by the termination of any other provision of this Consent Order.

L. Execution and Entry of Consent Order

This Consent Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Consent Order may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each Party certify that they are fully authorized by the Party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

[Remainder of Page Blank; Text Continues on Page 30]

WHEREFORE, the Parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

By: Elizabeth Wallace
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: 7/16/19

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

BY: _____
Lisa Smith
Assistant State's Attorney

Date: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: _____
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: _____

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

By: _____
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: _____

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

BY: Lisa Smith
Lisa Smith
Assistant State's Attorney

Date: July 16, 2019

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: _____
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: _____

WHEREFORE, the Parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

By: _____
Elizabeth Wallace, Chief
Environmental Bureau
Assistant Attorney General

Date: _____

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

BY: _____
Lisa Smith
Assistant State's Attorney

Date: _____


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: *Dana Vetterhoffer*
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: 7-16-19

FOR DEFENDANT STERIGENICS U.S., LLC

BY:  _____

Philip W. Macnabb
President of Sterigenics U.S., LLC

DATE: 16 July 2019

ENTERED: _____
JUDGE

DATED: _____