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STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

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

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

No. 18 CH 1329
Hearing

REPORT OF PROCEEDINGS had at the
hearing of the above-entitled cause, before the
Honorable PAUL M. FULLERTON, recorded on the DuPage
County Computer Based Digital Recording System, DuPage
County, Illinois, transcribed by Kristin M. Barnes,
Certified Shorthand Reporter, commencing on the 6th day
of September, 2019.

Kristin M. Barnes, CSR
Official Court Reporter
CSR License No. 084-004026

1 PRESENT:

2 MR. KWAME RAOUL,
3 Attorney General of the State of Illinois, by
4 MR. CHRISTOPHER G. WELLS and
5 MR. STEPHEN J. SYLVESTER,
6 Assistant Attorneys General,

7 appeared on behalf of the The People of the
8 State of Illinois,

9 MR. ROBERT B. BERLIN,
10 State's Attorney of DuPage County,

11 appeared on behalf of The People of the State
12 of Illinois;

13 SIDLEY AUSTIN, LLP, by
14 MR. GERARD D. KELLY,
15 MS. YVETTE OSTOLAZA, and
16 MS. STEPHANIE C. STERN,

17 appeared on behalf of the Defendant;

18 STORINO, RAMELLO AND DURKIN, by
19 MR. ANDREW Y. ACKER and
20 MR. THOMAS M. BASTIAN,

21 appeared on behalf of Village of Willowbrook
22 and Village of Burr Ridge;

23 KLEIN, THORPE AND JENKINS, LTD., by
24 MR. LANCE C. MALINA,

appeared on behalf of Village of Hinsdale;

ROSENTHAL, MURPHEY, COBLENTZ & DONAHUE, by
MR. JOHN B. MURPHEY, JR.,

appeared on behalf of City of Darien.

1 THE COURT: All right. Good morning.

2 Take a seat.

3 All right. Good morning again.

4 You know, it's not lost on me that this is,
5 obviously, a matter of high importance and public
6 interest; however, when I walked in here, the deputy
7 over there said, *Order in the court*, and order in the
8 court means order in the court. So that means
9 everybody remains quiet while I'm speaking or any
10 lawyer is speaking and, basically, you remain quiet
11 during the pendency of this hearing.

12 There are to be no outbursts. If there are,
13 then I have some options that I could pursue. One
14 would be to hold anybody in contempt of court, which
15 could also include putting that person in jail. I
16 don't want to do that. Nobody here wants that done.

17 The other option I have is I could have that
18 person removed from the courtroom, and I don't think
19 anyone wants that.

20 And the other option is I'll remove everybody
21 from the courtroom except for the attorneys.

22 So we need to have a quiet, orderly hearing.
23 Everybody needs to be heard. There's a court reporter
24 taking everything down. The last two hearings I've

1 had, I've had large crowds. Everybody has been
2 fantastic, orderly, and that's what I expect today.

3 So can I have the attorneys state their names
4 for the record.

5 MR. WELLS: Christopher Wells, your Honor, from
6 the Illinois Attorney General's Office, on behalf of
7 the plaintiff.

8 MR. BERLIN: Robert Berlin, DuPage County State's
9 Attorney, on behalf of the plaintiff.

10 MR. SYLVESTER: Stephen Sylvester on behalf of the
11 plaintiff, People of the State of Illinois, for the
12 Illinois Attorney General's Office.

13 MR. MALINA: Judge, good morning.

14 Lance Malina here for the Village of
15 Hinsdale.

16 MR. BASTIAN: Thomas Bastian on behalf of
17 Willowbrook and Burr Ridge.

18 MR. ACKER: Andrew Acker on behalf of the Village
19 of Burr Ridge and Willowbrook.

20 MR. MURPHEY: John Murphey for Darien.

21 MR. KELLY: Good morning, your Honor.

22 Gerard Kelly for Sterigenics.

23 MS. OSTOLAZA: Good morning, your Honor.

24 Yvette Ostolaza for Sterigenics.

1 MS. STERN: Stephanie Stern for Sterigenics.

2 THE COURT: All right. Good morning.

3 Take a seat.

4 Okay. We are here today for the presentation
5 of the proposed consent order.

6 On July 24th of this year, I allowed the
7 Villages of Darien, Hinsdale, Burr Ridge, and
8 Willowbrook to intervene in this case solely for the
9 purposes of commenting on the proposed consent order
10 that was presented by the Illinois EPA, the DuPage
11 County State's Attorney, and Sterigenics.

12 The Villages, in one combined brief, did
13 present this Court with their comments, which the Court
14 has read. There were numerous exhibits attached to
15 those comments also. The EPA and Sterigenics responded
16 to those comments, and I've read them all.

17 I will give any of the parties a very, very
18 brief opportunity to make any statements they'd like
19 with respect to those comments, as long as it's not a
20 rehash of all of the comments that I've already read.

21 So, I think, Mr. Acker, you're representing
22 the Villages?

23 MR. ACKER: I am, your Honor.

24 THE COURT: If you want to make any comments that

1 are brief and to the point with respect to the
2 comments, I'd be more than happy to hear them.

3 MR. ACKER: Yes, your Honor. Thank you.

4 Your Honor, one of the common responses that
5 we received in both the State as well as in
6 Sterigenics' responses was that the proposed
7 suggestions that the Villages had made were
8 inappropriate because this wasn't provided for by law.

9 I would submit that this Court is a chancery
10 court, sitting in equity, and certainly has inherent
11 equitable powers to not only effectuate the intent of
12 the legislature in its adoption of the Matt Haller Act,
13 but as well to do justice among the parties and to
14 protect public health, safety, and welfare.

15 The comments that the Villages had proposed
16 were specifically related to certain issues that the
17 Villages and their residents have identified as being
18 issues that, if they were to be addressed, that maybe
19 our village residents could sleep better at night.

20 Specifically, your Honor, there are a number
21 of items that I will briefly go through that brings us
22 to the point, and the point is that the legislature in
23 the Matt Haller Act has provided a new statute.

24 There have been no cases interpreting this,

1 and one of the criticisms that was rampant among both
2 the State and Sterigenics' comments were the Villages
3 didn't cite any case law. Well, guess what? There is
4 no case law. The statute was adopted June 23, 2019.
5 There have been no decided cases interpreting these
6 sections.

7 What we're looking for, your Honor, is common
8 sense; and the common sense, I believe, arises from
9 plain and ordinary meaning of the language contained in
10 the statutes.

11 There are a number of points that, I think,
12 are appropriate and, specifically, the primary one is
13 contained in Section 5/9.16(b) and it begins, *Beginning*
14 *180 days after the effective date of this amendatory*
15 *Act, no person shall conduct ethylene oxide*
16 *sterilization operations, unless the ethylene oxide*
17 *sterilization source captures, and demonstrates that it*
18 *captures, 100 percent of all ethylene oxide emissions.*
19 100 percent; captures all of it.

20 The notion that the Villages have raised --
21 and a specific example of the concerns that we have are
22 that the facility of Sterigenics has an outdoor storage
23 of ethylene oxide storage tanks. To the extent that
24 these tanks are located outside of their facility, it

1 doesn't take much, and I don't believe it's an
2 unreasonable stretch of the imagination to have
3 concerns that, in the event that these tanks are not
4 contained within the negative pressure facility that's
5 being proposed to be constructed by Sterigenics, that
6 there may be a chance that ethylene oxide would be
7 emitted from either tanks that have been used and
8 ethylene oxide is still retained in them, whether
9 there's some puncture or some accident that occurs,
10 somebody drives by and takes a potshot at these things,
11 and what happens next.

12 Your Honor, these concerns have been raised
13 in Villages' comments and they have been basically
14 dismissed as, well, that's not the statute, we can't do
15 that.

16 I would submit, your Honor, that this is one
17 area where this Court, using common sense, could
18 fashion a suggestion to the parties to consider an
19 inclusion into the consent order that would address the
20 outside storage of the ethylene oxide.

21 The other notion, your Honor, that we
22 presented related to the ambient air monitoring; and,
23 again, this is something that, you know, there is
24 provisions within the Matt Haller Act dealing with the

1 ambient air monitoring.

2 The Villages suggested that this is an issue
3 that presents significant concerns to the residents.
4 In order to give the residents peace of mind, that they
5 know that they are no longer being exposed to emissions
6 of ethylene oxide, we propose that there should be a
7 continuing establishment of ambient air testing in the
8 villages for a period of time, performed by independent
9 vendors, that would provide the villages with the
10 ability to know whether or not there's exposure.

11 Additionally, the Villages have proposed
12 that, along with this ambient air testing, that this
13 Court should determine whether or not an ambient air
14 level should be established. That was met with great
15 opposition from both the State and Sterigenics,
16 suggesting that what we're really asking for is some
17 national ambient air standard.

18 That's not what we're asking for. What we're
19 saying is that the standard is necessary to know
20 whether or not the residents are being exposed to
21 dangerous levels.

22 We would submit that the Matt Haller Act
23 contains two provisions that expressly contemplate this
24 type of standard being set. Specifically, in

1 Section 5/9.16(n), it provides, *The Agency shall*
2 *conduct air testing to determine the ambient air levels*
3 *of ethylene oxide throughout the State.* Then it goes
4 forward with ambient air plans that should be submitted
5 and so forth.

6 There is also a section in 5/9.16(e) that
7 says, *No person shall conduct ethylene oxide*
8 *sterilization operations unless the owner or operator*
9 *of the ethylene oxide sterilization source submits for*
10 *plan and -- review and approval by the Agency an*
11 *ambient air monitoring plan.*

12 Reading these two subparagraphs of
13 Section 5/9.16 together, the Villages submit that the
14 legislature intended to establish an ambient air
15 standard and intended to have ambient air monitoring
16 plans created by ethylene oxide sterilization sources
17 so as to regulate and take action against ethylene
18 oxide sources emitting in excess of the ambient air
19 standard.

20 The State and County suggestion that the
21 Villages' comments are requiring us to create a
22 national ambient air standard misapprehends the
23 Villages' comments. This case and this consent order
24 does not address a national air quality issue; just an

1 air quality issue for the villages and communities
2 impacted by Sterigenics' operations.

3 Because the IEPA seal order against
4 Sterigenics arose because of ethylene oxide emissions
5 causing elevated ambient air levels thereby endangering
6 public health, the Villages' comments suggesting that
7 an ambient air standard specific for Sterigenics be
8 established and suggesting a term be included in the
9 consent order regarding what happens in the event that
10 there is an ambient air concentration of ethylene oxide
11 detected and excised in excess of these levels relates
12 directly and immediately to the public health concern
13 at issue.

14 This is no small matter. Both the State and
15 Sterigenics emphasize the ample source and ambient
16 monitoring required by the statute and this consent
17 order, but, looking at these requirements more closely,
18 reveals their deficiencies and why an ambient air
19 standard is necessary to ensure public health.

20 The statute and consent order require stack
21 tests, but these are only annual tests and do nothing
22 to guarantee air quality during the rest of the year.
23 The ambient air monitors are merely there apparently as
24 a source of information, as neither the statute nor the

1 consent order require any action based on the levels of
2 ethylene oxide being measured, even if they're
3 extremely high.

4 This is supported by the fact that IEPA's
5 answer in the brief to the Villages' concern was
6 essentially a, trust us, if we see high levels of
7 ethylene oxide, we'll do something. That's
8 insufficient and, if anything, exemplifies why a formal
9 standard is needed.

10 The public was subjected to years of
11 dangerous ethylene oxide exposure because the only
12 mechanism to stop Sterigenics' facility was for the
13 IEPA to issue the seal order. Sterigenics should not
14 be allowed to operate with requiring a failsafe, i.e.,
15 an ambient air standard above which requires corrective
16 action.

17 The Villages submit that it is within the
18 equitable powers to require the State and County and
19 Sterigenics to include terms within the consent order
20 establishing the ambient air standard related to
21 Sterigenics, provide for independent ambient air
22 testing to occur in the villages, and, for a continuous
23 period of time, provide for cease and desist by
24 Sterigenics in the event ambient air standards are

1 violated similar to that provided in the consent order
2 for any failure of a stack test of Sterigenics.

3 The other point that the Villages would like
4 to raise is that in the State's and Sterigenics'
5 response they assert that there are -- the air modeling
6 of the IEPA using the lower stack -- right, so there
7 would be -- the proposed plans submitted are for an
8 87-foot stack, but the IEPA's proposed permit is for
9 either 87 feet or as permitted by the Village.

10 Sterigenics asserts it has submitted air
11 dispersion modeling to the IEPA using a lower stack by
12 showing ethylene oxide emissions would be safe. The
13 Villages requested all air dispersion modeling
14 submitted to the IEPA in a FOIA and did not receive a
15 lower stack pipe modeling document.

16 Additional comments recently received from
17 engineer John Helm have raised additional questions as
18 to the air dispersion modeling submitted by
19 Sterigenics. The State and the County assert that the
20 Villages' comments related to the IEPA permit are not
21 properly before this Court and should be considered in
22 context with the IEPA permit process.

23 The Villages submit that, because there are
24 significant and material terms contained in the consent

1 order directly derivative of the IEPA permit, this
2 Court should consider continuing this proceeding for
3 entry of proposed consent order until after the IEPA
4 permit is issued, which is, by our understanding,
5 September 22, 2019. At that time, all the parties will
6 be fully informed and aware of the content of the
7 permit; and, to the extent that this Court is charged
8 with protection of public health, the Villages submit
9 that it is appropriate that this Court have the benefit
10 of understanding whether there are any omissions
11 contained in the IEPA permit that the Villages believe
12 are sufficient to protect public health.

13 As such, your Honor, we suggest that this
14 matter be continued for a date certain so that the
15 parties can adequately determine whether or not the
16 IEPA permit has fully complied with the intent of the
17 consent order to protect public health.

18 Thank you.

19 THE COURT: Thank you.

20 Mr. Kelly?

21 MR. KELLY: Thank you, your Honor.

22 It is important to remember what Sterigenics
23 does. Sterigenics saves lives, your Honor. Ethylene
24 oxide is the only way to sterilize a wide variety of

1 medical implements, surgical kits, et cetera; and I
2 submit to your Honor that everyone in this courtroom
3 either has or knows somebody who has benefited from
4 safe medical care provided by equipment sterilized with
5 ethylene oxide. That's what we do, and we lose that in
6 the comments that we hear frequently. But this is the
7 industry that we are in. We are saving lives.

8 The FDA has explicitly required that numerous
9 medical implements can only be sterilized with ethylene
10 oxide. It is also often lost that we have always
11 complied with our permits and all applicable federal
12 and state regulations and statutes regarding ethylene
13 oxide. And I think I have to mention that, your Honor,
14 because we so often lose the thread of background to my
15 client's operations.

16 Now, counsel had a number of issues that he
17 raised, but, I think, some of them were critical with
18 respect to the role of the Court here, your Honor. And
19 I know counsel for the State will address this, but
20 counsel alternately said that it isn't the role of this
21 Court to effectuate the intent of the Act, and then
22 counsel went far afield from what the Act, which was,
23 as counsel points out, just passed a few months ago,
24 actually requires.

1 In fact, counsel went so far as to urge this
2 Court to address what counsel described as deficiencies
3 in the statute on ambient air testing and stack testing
4 and asked this Court to set ambient air standards.

5 Your Honor, it is well beyond, with all due
6 respect, the purview and authority of this Court to do
7 anything of that nature.

8 Your Honor, counsel also talks about the
9 stack height and the -- on the construction permit that
10 is under consideration by IEPA and counsel says, well,
11 let's just wait until that happens.

12 Your Honor, every single time we come before
13 your Honor there is going to be an argument as to why
14 we should wait, but the people who need those medical
15 implements, they cannot wait.

16 My client has had its plant shut down for
17 over seven months -- or nearly, excuse me, seven
18 months -- because of the actions that have been taken.
19 The litigation with the State has been extremely
20 hard-fought, as your Honor has seen. And as your Honor
21 explicitly recognized in our last hearing, the State
22 has more than adequately represented the interests of
23 all of the people of Illinois.

24 But we cannot wait any longer. We are

1 entitled to entry of this consent order today. Your
2 Honor, the operations of that plant will not start
3 immediately because there are all sorts of requirements
4 that need to be met. IEPA, believe me, is doing its
5 job.

6 With respect to --

7 THE COURT: Let's be quiet.

8 MR. KELLY: With respect to this matter, your
9 Honor, I guarantee you that this issue is at the very
10 top of the list for IEPA and we have been subject to as
11 much scrutiny as is humanly possible and we have come
12 to this resolution, your Honor, which will result in a
13 resumption of operations at a level that is a fraction
14 of what has always been permitted, a fraction of what
15 even the most aggressive modeling has shown to be
16 potentially indicative of an elevated cancer risk if
17 that exposure went on for decades.

18 Your Honor, we have cooperated, we have tried
19 to avoid litigation, but if we cannot get this consent
20 order entered today, what we would need to do is to
21 resume litigation and immediately move to the emergency
22 proceedings to which we are entitled to lift that seal
23 order.

24 And, your Honor, with all due respect, the

1 requirements of Section 34(b) of the Act regarding the
2 institution of the seal order, is that an emergency
3 condition exists. As the documents we've attached to
4 our reply show, there was no emergency.

5 And it requires that there was an imminent
6 and substantial endangerment of the public health or
7 welfare or the environment. Respectfully, your Honor,
8 the State cannot and will not ever meet that standard
9 based on actual science, based on actual science, not
10 based on the unfortunate, anti-scientific
11 misrepresentations that have been made and have caused
12 the concern here that we understand but that is
13 thoroughly unjustified.

14 Your Honor, so we request that, after all of
15 these delays, there be no more delays, that the consent
16 order that has been arduously negotiated, vetted, as to
17 which no actual deficiencies have been found under the
18 Act, that it be entered today so that we can move
19 forward, so that the people of Willowbrook and the
20 neighboring villages can move forward, and that
21 Sterigenics can resume its lifesaving operations which
22 benefit every single person in the state of Illinois.

23 Thank you.

24 THE COURT: Thank you.

1 Counsel?

2 MR. WELLS: Thank you, your Honor.

3 So Mr. Acker's comments, as we said at the
4 outset of our brief, we understand the places they're
5 coming from and we appreciate the deeply felt concerns
6 that the Villages have articulated.

7 And in his characterization of our brief, I
8 think one of the important things to remember, your
9 Honor, is that what the Court's role is and what our
10 role is in the context of litigation is not the same as
11 what the legislature's role is.

12 Some of the concepts that were raised in the
13 Villages' brief may be good ideas to be considered in a
14 legislative context, but as we read the law that was
15 recently enacted by the legislature, the proposals are
16 not reflected in that legislation.

17 And while Mr. Acker referenced that this is a
18 court of equity, the Court is bound to follow the laws
19 as passed by the legislature and the Court is not able
20 to use its equity powers to go beyond what the
21 legislature laid out in the recently enacted statute.

22 So while the State's position in its brief
23 and its position here today is that those concepts are
24 really appropriate topics to be raised with the

1 legislature, they are not grounds for modifying they're
2 proposing, the same order which we believe fully
3 implements and, in fact, goes beyond the recently
4 passed law by the legislature.

5 Mr. Acker referenced Section 9.16(b) and he
6 quoted a portion of the statute of that provision
7 referencing 100 percent capture of all ethylene oxide
8 emissions. He did not go on to read the additional
9 part of that provision which says, *and reduces ethylene*
10 *oxide emissions to the atmosphere from each exhaust*
11 *point at the ethylene oxide sterilization source by at*
12 *least 99.9 percent or to 0.2 parts per million.*

13 I don't want there to be any misimpression as
14 to what that additional provision means. It means that
15 there's 100 percent total capture of the emissions
16 within the facility and then a reduction of what goes
17 out, what's actually emitted into the atmosphere, by
18 99.9 percent.

19 That is a significant step up from what the
20 prior federal standard has been and that is one of the
21 reasons that this new statute is -- imposes some of the
22 strictest requirements in the nation on ethylene oxide
23 emissions.

24 With respect to the concerns raised about

1 outdoor storage, your Honor, we addressed that concern
2 in detail in our brief. This is an example of
3 something that, again, there are additional regulatory
4 considerations related to storage. We cited some
5 specific standards that apply to storage of chemicals
6 like ethylene oxide. That is a topic, frankly, that is
7 complex and that is more appropriately reserved for the
8 legislature.

9 With respect to ambient air monitoring, there
10 will be four different types of testing that this
11 facility will be subject to. They will be subject to
12 what's called a permanent total enclosure test under
13 Method 204 from the Federal EPA. This will require
14 testing done in conjunction with the Illinois EPA to
15 ensure that there is, in fact, 100 percent capture of
16 the ethylene oxide within the Sterigenics Willowbrook 1
17 facility and, if it ever comes to it, the Willowbrook 2
18 facility as well.

19 In addition to the permanent total enclosure
20 testing, there will also be stack testing, monitoring
21 what's actually coming out of the stack, pursuant to a
22 revised protocol that actually goes beyond what the
23 federal testing protocol is to make sure that the
24 testing is actually reflective of operations at the

1 facility.

2 There will also be a continuous emissions
3 monitoring system, so that even on days when there's
4 not testing occurring, there is a constant monitoring
5 of what's actually going out through the stack.

6 In addition to that, there will be, under the
7 proposed consent order, an initial period of ambient
8 air testing.

9 And then, under the new statute, there will
10 be quarterly testing that Sterigenics is required to
11 undertake subject to the review and approval of the
12 Illinois EPA.

13 So there will be multiple levels of testing
14 to ensure that this facility is operating in compliance
15 with the new law, the proposed consent order, and the
16 requirements in the event that there is a permit that
17 is issued in compliance with their permit.

18 The request from the Villages to set an
19 ambient air standard, as we pointed out to your Honor,
20 that is an extremely complex process that is best --
21 the decision to undertake that process is best reserved
22 for the legislature or, frankly, federal rule makers.

23 There are only six of these types of
24 standards nationwide that have to do with chemicals

1 that are not ethylene oxide. We're not aware -- there
2 is no federal standard, federal ambient air standard,
3 as we pointed out, and the Villages have not identified
4 what this standard should be or how the Court would go
5 about crafting one.

6 So while we -- as a matter of this
7 litigation, we don't believe it would appropriate to,
8 through a consent order, enact such a standard. We
9 certainly think that this is a topic that the
10 legislature is more than capable of considering and
11 assessing.

12 There were some questions raised about the
13 stack height and modeling and the permit process. All
14 of the concerns that have been raised related to
15 modeling, including the most recent concerns that were
16 shared yesterday evening, frankly -- or yesterday
17 morning, I believe, we received the email -- have been
18 shared with Illinois EPA and they will be taken into
19 consideration in the course of the permit review
20 process.

21 So at the same time, I think one of the
22 challenges here is, if the consent order is not
23 entered, then we face a situation in which we may
24 resort again back into litigation, and litigation

1 presents the risk that the seal order would be
2 potentially nullified and the certification
3 requirements in the new statute would no longer apply
4 to Sterigenics. Through the consent order, we are able
5 to ensure that the certification requirements in the
6 new statute will forever apply to Sterigenics.

7 So, for that reason, we think the consent
8 order is a critical enforcement tool for us to have and
9 we do not welcome a return to a situation in which the
10 protections that are required at this facility are put
11 at risk.

12 Now, with respect to the permit process, that
13 is related to, but somewhat separate, from this
14 litigation. The permit is certainly a precondition for
15 Sterigenics being able to resume operations; and if
16 there are problems with the permit application, if
17 there are problems with the modeling, then the Illinois
18 EPA can appropriately address it through the permit
19 review process.

20 But, from our perspective, if they fail to
21 get the permit, then the consent order would ensure
22 that they wouldn't be able to reopen. Of course, if
23 they obtain the permit, there's several additional
24 steps that are required, including ambient air

1 monitoring plans, including stack testing plans that
2 must be submitted to the Illinois EPA and the State for
3 review, and only after all that occurs is there then
4 the possibility that the facility may reopen.

5 So, your Honor, I sincerely appreciate the
6 Villages' comments, and I absolutely understand. I met
7 with several of the leaders of the villages. I
8 understand the passion and the concern and their desire
9 to protect the people in their communities.

10 I think one of the things that we have all
11 encountered is a certain level of frustration that our
12 role is to enforce the law and it's the law that's
13 written by the legislature.

14 We believe that we have absolutely enforced
15 the law as enacted by the State of Illinois. We
16 understand that the law, frankly, doesn't go as far as
17 many in this room might like it to go, but that is our
18 role and that is our obligation.

19 We believe that the consent order enforces
20 the law, your Honor, and, for that reason, we think it
21 should be entered.

22 THE COURT: Thank you.

23 Mr. Berlin?

24 MR. BERLIN: Your Honor, if I could make a few

1 comments.

2 Thank you.

3 THE COURT: Sure.

4 MR. BERLIN: First of all, Judge, I do want to
5 thank the Villages for their valuable input and the
6 comments that they made.

7 We have incorporated some of those comments
8 which were listed on page 10 of their brief,
9 specifically, the one that requires judicial approval
10 before emergency temporary operations may occur and,
11 secondly, requiring notice be given to the villages as
12 to documents, plans, and reports given to the IEPA,
13 which will be posted on the IEPA's website, all plans,
14 reports, and test results, and we have incorporated in
15 those and we believe it makes the consent order even
16 stronger.

17 We addressed two issues that your Honor
18 raised on the last court date, number one being the
19 emergency temporary operations provision and, secondly,
20 the applicability of the Subsection G certifications.

21 We believe this consent order incorporates
22 the new law that was passed by the General Assembly,
23 Public Act 101-0022, which went into effect
24 June 21, 2019, and provides even further protection

1 than that law.

2 And, your Honor, if your Honor enters the
3 consent order today, all parties should be put on
4 notice that the Illinois Attorney General's Office and
5 the DuPage County State's Attorney's Office will
6 vigorously enforce every provision in that consent
7 order.

8 THE COURT: Thank you.

9 Okay. Some of the comments that I just
10 heard, that everybody heard here, touched on this, but
11 I want the people, everybody here, to know what the
12 Court's role is in this matter.

13 Interestingly, we have represented -- there's
14 the executive branch, the legislative branch, the
15 judicial branch. This is the judicial branch. In this
16 audience, we have people from the legislative branch.
17 We also have representatives of the executive branch.
18 They enforce the law. The legislature makes the law.
19 The executive people -- the IEPA, the Illinois EPA, the
20 State's Attorney -- they enforce the law.

21 This Court's job is to apply the law to
22 whatever the matter is before the Court. It's neither
23 the Court nor the judges that make the law; the
24 legislature makes the law.

1 As I noted at the last court hearing, when I
2 allowed the Villages to intervene into this case, to
3 hear their comments, I thought that was important. The
4 Illinois EPA, as well as State's Attorney's Office,
5 also thought it was important.

6 On June 21, 2019, as Mr. Berlin indicated,
7 Public Act 101-0022 was adopted by the Illinois
8 legislature. The short title of that Act is referred
9 to as the Matt Haller Act. The Act amended the
10 Illinois Environmental Protection Act by adding
11 Section 9.16. The title of that section is called the
12 Control of Ethylene Oxide Sterilization Sources.

13 And at that July 24, 2019, hearing, I also
14 noted, this Court noted, that Section G of that statute
15 is specific to any facility that has been subject to a
16 seal order under Section 34 of the Environmental
17 Protection Act. The only such facility is the
18 Sterigenics facility in Willowbrook.

19 Along with the rest of the requirements of
20 that statute, Section G holds that if a facility that
21 is subject to a seal order meets the specific
22 requirements set forth in Section G, the law states
23 that that facility then can operate in the State of
24 Illinois.

1 At the last hearing, counsel for Sterigenics,
2 upon direct questioning from this Court, stated that he
3 understood and that Sterigenics understood that it must
4 comply with this new statute, specifically
5 Subsection G, before it could operate the Willowbrook
6 facility.

7 Now, when this law was passed in June,
8 statements were made by the legislators and other
9 public officials to the effect of: Families in the
10 affected areas can breathe easy. Illinois now has the
11 strictest safeguards in the nation. The hard work of
12 the General Assembly in developing this bipartisan
13 legislation is appreciated. Protecting Illinois
14 residents from the threat of ethylene oxide was a
15 bipartisan effort. This legislation ensures proper
16 protections are in place when it comes to this
17 dangerous chemical. The situation which unfolded in
18 Willowbrook at the Sterigenics facility should not have
19 happened. This law will make sure it will never happen
20 again. The new law creates the strongest ethylene
21 oxide sterilization regulations in the nation.

22 This Court believes that that new law that's
23 passed echoes those comments by the legislature, and
24 I'm sure that the legislature, in passing that

1 bipartisan legislation, had a lot of information at
2 their hands when they did it and it was a thoughtful
3 process.

4 So my job here does not include in weighing
5 in on the politics of a particular issue that appears
6 before me, but I will note that within a month after
7 the passage of the strongest ethylene oxide
8 sterilization regulations in the nation were passed by
9 a bipartisan legislation and after Sterigenics agreed
10 that it would comply with this law, this Court is now
11 faced with requests that it enter an order prohibiting
12 the reopening of the Willowbrook facility.

13 The Court appreciates the comments that were
14 provided by the municipalities, and back in July, on
15 July 24th, when I granted the Villages intervention, I
16 did that for a number of reasons. I thought it was
17 important, but, also, I noted that the EPA and the
18 State's Attorney also agreed to it. However, much, if
19 not all, of what is requested by the Villages is not
20 authorized by the law.

21 Now, Mr. Acker, who's representing the
22 Villages jointly, made a very good point. This is a
23 court of equity. This is a chancery court. People
24 joke with me and other chancery judges, well, you're in

1 a court of equity, you can do whatever you want. But
2 this is serious business. I can't do whatever I want,
3 and the people here wouldn't want me to do whatever I
4 want on any case. My job is to follow the law.

5 Specifically, one thing needs to be noted
6 here. Both the EPA and the State's Attorney in their
7 briefs have said there's no uncertainty about the fact
8 that for years Sterigenics has operated in compliance
9 with federal standards that allowed its two Willowbrook
10 facilities to emit up to 36,400 pounds of ethylene
11 oxide per year. The Illinois Attorney General's Office
12 and the DuPage County State's Attorney brought this
13 lawsuit because those standards failed to adequately
14 protect public health.

15 So this can't be lost here. It was not that
16 Sterigenics was violating any federal standards, any
17 state standards, any law. The State shut down the
18 Willowbrook facility because it believed that the
19 standards were not strong enough to adequately protect
20 the public.

21 Going further, the Illinois EPA and the
22 DuPage County State's Attorney's Office stated that
23 they welcomed the Villages' suggestions that seek to
24 facilitate transparency and information sharing in the

1 implementation of the proposed consent order.

2 Plaintiff, or the EPA and the State's
3 Attorney's Office, recognizes the critical importance
4 of the issues addressed in the proposed consent order
5 to the Villages' residents and it is committed to
6 keeping the Villages informed of developments during
7 the implementation process.

8 Most importantly, as noted, it is the
9 Illinois Attorney General's Office and the DuPage
10 County State's Attorney's Office that are responsible
11 for enforcing the laws that are passed by the
12 legislature.

13 The Villages asked this Court to exercise its
14 discretion and deny the entry of the consent order.
15 They want this Court to do that because the Villages
16 state that the consent order does not provide the
17 Villages or their residents and workers with adequate
18 protections or safeguards from continued and future
19 exposure to ethylene oxide from Sterigenics' operations
20 and it does not afford the Villages with adequate
21 information or notice regarding whether Sterigenics
22 presents presently and/or in the future complies with
23 ethylene oxide requirements under Illinois law and
24 regulations.

1 I have to go back to what the Court's role is
2 in this case. In general, in Illinois, the decision to
3 approve a settlement is left to the sound discretion of
4 the trial court. In approving a compromise, a Court
5 should not judge the legal and factual questions by the
6 same criteria applied in a trial on the merits nor
7 should a Court turn a settlement approval into a trial.
8 To do so would defeat the purposes of a compromise,
9 such as avoiding the determination of sharply contested
10 issues and dispensing with expensive and wasteful
11 litigation. The basic consideration in determining
12 whether a proposed settlement should be approved is
13 whether it is fair, adequate, and reasonable.

14 There's a Federal District case called the
15 United States versus Lexington that dealt with an
16 environmental case and a consent order, consent decree,
17 and that case went through the analysis of what is
18 fair, what is adequate, what is reasonable.

19 What is fair in evaluating a consent order
20 that this Court is asked to evaluate is whether there
21 are good faith efforts of the negotiators, the opinions
22 of counsel, and the possible risks involved in
23 litigation if the settlement is not approved.

24 Further, good faith is further evidenced

1 considering all oral and written comments made with
2 regard to the proposed decree. In evaluating
3 reasonableness, courts state one of the most important
4 considerations when evaluating whether a proposed
5 consent decree or consent order is reasonable is
6 whether the consent order brings the parties in
7 compliance with applicable laws. And, finally, public
8 policy generally supports a presumption in favor of a
9 voluntary settlement of litigation. Indeed, the
10 presumption is particularly strong where a consent
11 decree or a consent order has been negotiated by an
12 administrative agency, like the EPA, which enjoys
13 substantial expertise in the environmental field.

14 With respect to the Villages' request that
15 this Court deny the entry of the consent order because,
16 one, it does not provide the Village or their residents
17 and workers with adequate protections or safeguards
18 from continued and future exposure to ethylene oxide
19 from Sterigenics' operations, the Court disagrees with
20 that, and, specifically, the new legislation that was
21 just passed in June specifically addresses that issue.

22 And this goes back to, well, you're a court
23 of equity, don't follow the law, do what you believe is
24 right. What I believe is really not important. What I

1 need to do is follow the law.

2 With respect to that second issue as to why
3 this Court should deny the consent order, it's because
4 the Village says -- the Villages say that this consent
5 order does not afford the Villages with adequate
6 information or notice regarding whether Sterigenics
7 presently or in the future complies with ethylene oxide
8 requirements under Illinois law and regulations.

9 Now, again, it is up to the Illinois EPA and
10 the State's Attorney's Office and it's their job to
11 make sure Sterigenics, number one, complies with the
12 law, and, number two, complies with any order of this
13 Court, and, if they don't, then they are shut down.

14 Further, with respect to sufficient
15 information and the Villages feeling like they don't
16 have sufficient information, as Mr. Berlin pointed out
17 and as the EPA pointed out, they're making all of this
18 information on their website and there is a stipulation
19 between the parties that addresses the issue of notice
20 to the villages in the event of any emergency
21 situations.

22 The alternative relief requested by the
23 Villages proposed eight different bullet point
24 comments. Again, as pointed out by Mr. Berlin, two of

1 those eight comments, Items 4 and 6, are addressed and
2 resolved in the stipulation between the parties;
3 specifically, the parties agree that prior to and in
4 order for Sterigenics to use ethylene oxide for
5 sterilization or fumigation purposes at the site,
6 Sterigenics must first obtain the certification set
7 forth in Section 9.16(g)(1) and (2) of the Illinois
8 Environmental Protection Act; and, two, plaintiff --
9 this is the EPA in its sole discretion -- will not
10 authorize emergency temporary operations under
11 Section 3(d)(7) of the proposed consent order without
12 prior approval of the Court, upon a motion and with
13 notice to counsel for the Village of Willowbrook, the
14 City of Darien, the Village of Hinsdale, and the
15 Village of Burr Ridge.

16 The other six bullet point items that are
17 addressed by the Villages are well addressed and
18 responded to by the EPA and the DuPage County State's
19 Attorney in their brief.

20 Some of the requests by the Villages, as
21 stated by Mr. Acker, would require this Court to act as
22 a legislature and would require this Court to get
23 involved in the permitting process. That's not the
24 role of this Court; and if I were to do so, it would

1 actually become chaos, the litigation would continue,
2 and we'd be further along.

3 So for all of the reasons I've just stated,
4 the Court is going to approve and sign the consent
5 order, and that will be signed today.

6 And that's it. So I need a proposed consent
7 order that I'm going to sign.

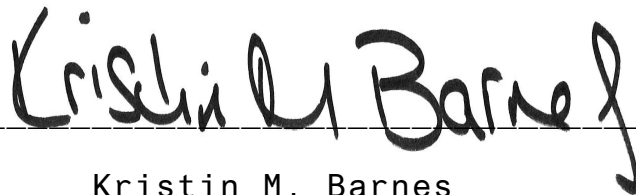
8 (Which were all the proceedings had at
9 the hearing of the above-entitled
10 cause, this date.)

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IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

I, Kristin M. Barnes, certify the foregoing
to be a true and accurate transcript of the
computer-based digitally recorded proceedings of the
above-entitled cause to the best of my ability to hear
and understand, based upon the quality of the audio
recording, pursuant to Local Rule 1.03(c).



Kristin M. Barnes
Eighteenth Judicial Circuit of Illinois
DuPage County
CSR License No. 084-004026