AGENDA ITEM # 3a
REQUEST FOR BOARD ACTION
Administration

AGENDA SECTION: Non-consent – ZPS

Consideration of a Resolution advocating for the closure of the Sterigenics Willowbrook Facility, Approval to Authorize the Village

SUBJECT: Attorney to File a Motion to Intervene in the Sterigenics motion, Approve performing air sampling and engaging experts to provide data interpretation services

MEETING DATE: February 19, 2019

FROM: Luke Stifflear, Chair Zoning and Public Safety
Kathleen A. Gargano, Village Manager

Recommended Motions

Adopt a Resolution Stating the Position of the Village of Hinsdale Board of Trustees Regarding Sterigenics, Willowbrook, Illinois, and authorize the Village Attorney to seek intervention in the pending litigation against Sterigenics brought by the Illinois Attorney General and the Du Page County State’s Attorney****; and

Approve a Proposal for Professional Industrial Hygiene and Risk Assessment Services Hazard Assessment and Ambient Air Sampling – Ethylene Oxide with GHD Services, Inc., Little Rock, Arkansas in an amount not to exceed $25,000****; and

Approve a professional services contract with Lucie Fraiser Toxicology Consulting LLC., Fayetteville, Arkansas to interpret the data provided by the GHD Services on a time and materials basis****

Background

On August 22, 2018 the United States Environmental Protection Agency (EPA) advised the Village of Willowbrook that the EPA released a report (on that day) from the Agency for Toxic Substances and Disease Registry (ATSDR, which is a subsidiary of the Centers for Disease Control (CDC) on a business, Sterigenics International Inc., located within Willowbrook’s corporate business park that emits a chemical, ethylene oxide (EtO).

On February 5, 2019, the EPA posted updated ambient air testing results from the testing that occurred in November and December, 2018. These results showed increasingly elevated levels of ethylene oxide in the immediate vicinity of Sterigenics and the Willowbrook Village Hall. Locations that are downwind of Sterigenics were observed to have higher levels of ethylene oxide than those located upwind. The EPA also stated that there may be additional background sources of ethylene oxide emissions in addition to that emitted by Sterigenics.

In response to the latest test results, the Villages of Willowbrook and Burr Ridge and the City of Darien have requested that the Illinois Attorney General and the Du Page State’s Attorney seek an emergency court order to immediately shut down Sterigenics until there is definitive proof that EtO presents no health hazards to the surrounding communities.
On February 9, 2019, Trustee Stifflear joined US Representative Dan Lipinski and Illinois House Minority Leader Jim Durkin in calling for the immediate closure of the Sterigenics Willowbrook facility.

Due to the proximity of the Village of Hinsdale proximity to the area, the Village Board joined Burr Ridge, Willowbrook and Darien in advocating for the closure of the facility.

**Discussion & Recommendation**

**Regarding the Resolution**

Staff recommends the Board approve a Resolution advocating for the closure of the Sterigenics Willowbrook facility. Given the most recent information made available by the EPA on February 5, 2019, the Village of Hinsdale will stand with other leaders in advocating for the closure of the Willowbrook Sterigenics facility.

**Regarding the Motion to Intervene**

On October 30, 2018, Lisa Madigan serving as then Attorney General and DuPage County State’s Attorney Robert Berlin filed a lawsuit against Sterigenics U.S. LLC (Sterigenics).

At a hearing on December 6, 2018 the 18th District Circuit Court considered petitions from Willowbrook and Darien to intervene in the lawsuit filed by the Illinois Attorney General and the Du Page County State’s Attorney. That hearing was continued to April 11, 2019 due to a request from Sterigenics to move the case to federal court.

At its meeting of January 28, 2019, the Burr Ridge Village Board directed the Village Attorney to file a petition seeking to join the lawsuit filed by the State of Illinois Attorney General and the Du Page County State’s Attorney. It has been requested that the Village of Burr Ridge wait to file its Motion to Intervene until the proper venue has been determined. The same can be expected for a motion that would be filed by the Village of Hinsdale.

The Village of Hinsdale has the ability to also file a Motion to Intervene in the Sterigenics lawsuit. In summary, the law allows third parties to join or “intervene” in a lawsuit which is pending between two other parties. To become a party to this litigation, the Village must file a motion asking the Court to grant the Village permission to intervene in the litigation and the Village must file its own Complaint.

The Village Complaint will allege that Sterigenics is a public nuisance by operating adjacent to and adversely impacting the health, safety and welfare of the residents, workers, students and other visitors within the Village of Hinsdale. The ultimate decision would be made by the Judge. By intervening in the case, if approved by the Judge, the Village of Hinsdale would become an active participant in the litigation and actively involved in any settlement negotiations.

The Village Attorney has prepared the attached Motion to Intervene for the Board’s consideration.
Regarding Air Monitoring and Evaluation
Staff recommends the Village engage the professional services of the air sampling firm used by Willowbrook and Burr Ridge, GHD Services, Inc., Little Rock, Arkansas. The air sampling will include areas adjacent to Hinsdale Central and is being done cooperatively with District 86 and will determine the impact that the Sterigenics facility has on the Hinsdale community. Staff also recommends engaging the services of the toxicologist utilized by the Village of Willowbrook, Lucie Fraiser Toxicology Consulting LLC., Fayetteville, Arkansas to interpret the data provided by the GHD Services.

Budget Impact
Motion to Intervene - Minimal costs as the Village is not leading the litigation.
Air sampling and Monitoring - $25,000 plus time and materials for the toxicologist.

Village Board and/or Committee Action
None

Documents Attached
1. Resolution
2. Village of Hinsdale Petition to Intervene
3. Intervening Petitioner Village of Hinsdale’s Complaint Against Defendant Sterigenics U.S., LLC
4. Proposal from GHD, Services, Inc.
5. CV Leslie Fraiser Toxicology Consulting, LLC
VILLAGE OF HINSDALE

RESOLUTION NO. _________

A RESOLUTION STATING THE POSITION OF THE VILLAGE OF HINSDALE
BOARD OF TRUSTEES REGARDING STERIGENICS, WILLOWBROOK, ILLINOIS

WHEREAS, ethylene oxide is a known carcinogen and its discharge or emission
into the atmosphere constitutes a threat to public health and safety; and

WHEREAS, based on recent data and assessments of the operation of the
Sterigenics plant in Willowbrook (“Sterigenics”), and the ongoing discharges of ethylene
oxide from that Sterigenics facility, there is cause for further and more careful analysis
of the operations of and discharges from this facility; and

WHEREAS according to a recent report by the U.S. Department of Health and
Human Services’ Agency for Toxic Substances and Disease Registry, Sterigenics is
emitting elevated levels cancer-causing chemical called ethylene oxide at its
Willowbrook, Illinois facilities; and

WHEREAS, data from the U.S. Environmental Protection Agency’s 2014
National Air Toxins Assessment map shows that residents are exposed to elevated
levels of ethylene oxide in the Village of Hinsdale and area municipalities; and

WHEREAS, the U.S. Environmental Protection Agency and the Illinois
Environmental Protection Agency are charged with the enforcement of our federal and
state environmental laws and standards to ensure that pollutants or discharges from
Illinois businesses do not put the health and welfare of Illinois residents and workers in
jeopardy; and

WHEREAS, the previous approvals of the operations of the Sterigenics plant in
Willowbrook by the United States and Illinois Environmental Protection Agencies are not
based upon adequate, current, complete and reliable information and analysis regarding
the ongoing discharges of ethylene oxide by the Sterigenics plant in Willowbrook; and

WHEREAS, the current permit issued to Sterigenics by the U.S. Environmental
Protection Agency includes the authority of the Agency to declare the Sterigenics facility
a threat to public health and welfare and seek a court order to shut down the Sterigenics
operations; and

WHEREAS, the current permit issued to Sterigenics by the Illinois Environmental
Protection Agency includes the authority of the Agency to declare the Sterigenics facility
a threat to public health and welfare and seek a court order to shut down the Sterigenics
operations; and
WHEREAS, the immediate protection of the health and safety of the residents of the Village of Hinsdale and surrounding communities must be made a priority by the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency; and

WHEREAS, the air quality in the Village of Hinsdale and surrounding communities must be safe and be assured by the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency; and

WHEREAS, thorough, accurate and comprehensive air quality monitoring, testing and analysis must be undertaken immediately by the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency in all of those areas potentially impacted in Cook and DuPage Counties; and

WHEREAS, the Illinois Environmental Protection Agency, by and through the Illinois Attorney General has now initiated legal action in Illinois in Case No. 2018 CH 001329 filed on October 30, 2018 alleging violations of the Illinois Environmental Act and alleging that Sterigenics actions constitute a public nuisance as a threat and injury to the public health.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Hinsdale, DuPage and Cook Counties and State of Illinois, as follows:

SECTION 1: Each of the recitals in the Whereas paragraphs set forth above are incorporated into Section 1 of this Resolution.

SECTION 2: The Board of Trustees hereby requests the immediate action and intervention of the United States and Illinois Environmental Protection Agencies to act under their permitting authority to further monitor, test and analyze the air quality at and around the Sterigenics facility in Willowbrook and in adjacent communities and to shut down, or initiate those actions necessary to cause the shut down, of all operations of Sterigenics resulting in any discharge or emissions of ethylene oxide until it is definitively established through reliable testing results that no residents or workers are at any risk due to exposure to ethylene oxide discharges or emissions from the Sterigenics facility in Willowbrook.

SECTION 3: The Board of Trustees hereby requests and calls upon the Office of the Attorney General of the State of Illinois and the Offices of the DuPage County and Cook County State’s Attorneys to undertake such enforcement actions as they are authorized to bring to ensure the protection of the residents of the Village of Hinsdale and area Cook and DuPage County residents impacted by any discharges or emissions of ethylene oxide from the Sterigenics facility in Willowbrook.
SECTION 4: The Board of Trustees hereby resolves to take such actions to support and collaborate with the above agencies to best promote and ensure the safety of the area air quality, atmosphere and environment to protect area residents and workers from the adverse health impacts of any discharges or emissions of ethylene oxide from the Sterigenics facility in Willowbrook.

SECTION 5: That written copies of this Resolution be transmitted to the United States and Illinois Environmental Protection Agencies, to the Office of the Attorney General of the State of Illinois and the Offices of the DuPage County and Cook County State’s Attorneys for continued or further action as requested.

SECTION 6: This Resolution shall be in full force and effect from and after its passage and approval.

ADOPTEO this ______ day of ______________________, 2019, pursuant to a roll call vote as follows:

AYES:  

NAYS:  

ABSENT:  

APPROVED by me this ______ day of ______________________, 2019, and attested to by the Village Clerk this same day.

______________________________
Thomas K. Cauley, Jr., Village President

ATTEST:

______________________________
Christine M. Bruton, Village Clerk
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois, and
ex rel. ROBERT BERLIN, State's Attorney
for DuPage County, Illinois,
Plaintiffs,

v.

STERIGENICS U.S., LLC
a Delaware limited liability company,
Defendant.

(VILLAGE OF HINSDALE, an Illinois
Municipal Corporation,
Intervening Petitioner).

No. 2018 CH 001329

VILLAGE OF HINSDALE PETITION TO INTERVENE

Petitioner Village of Hinsdale ("Village" or "Hinsdale"), by and through its attorneys,
Klein, Thorpe and Jenkins, Ltd., pursuant to 735 ILCS 5/2-408 hereby moves this Court for
Leave to Intervene in the present action, and in support thereof, states as follows:

1. On or about October 30, 2018, Plaintiff, People of the State of Illinois, ex rel. Lisa
Madigan, Attorney General of the State of Illinois, and ex rel. Robert Berlin, State's Attorney for
the County of DuPage, Illinois, filed their two-count Complaint for Injunctive and Civil Penalties
("Complaint") against Defendant, Sterigenics, U.S., LLC, a Delaware limited liability company
("Sterigenics").

2. Intervener Hinsdale is a non-home rule municipal corporation with its principal
address at 19 E. Chicago Avenue, Hinsdale, Illinois.
3. Defendant Sterigenics, operates an ethylene oxide gas ("EtO") commercial sterilization enterprise. Defendant operates out of two separate buildings located at 7775 South Quincy Street, Willowbrook, DuPage County, Illinois ("Building 1") and 830 Midway Street, Willowbrook, DuPage County, Illinois ("Building 2").

4. The Sterigenics operations are in the immediate vicinity of Hinsdale and essential public facilities in the Village. For example, Hinsdale Central High School is approximately four (4) miles away from the Sterigenics buildings. There are several hundred Hinsdale residents who live within close proximity of the Sterigenics buildings. In addition, residents of Hinsdale regularly travel to next-door neighbor Village of Willowbrook to work, to shop, and to dine.

5. Sterigenics’ business is regulated by the State of Illinois Environmental Protection Agency ("Illinois EPA") pursuant to a modified "Operating Permit" issued under the Clean Air Act Permit Program ("CAAPP"), Permit No. 95120085.

6. The Operating Permit issued by the Illinois EPA to Sterigenics’ business provided the amount of EtO allowed to be utilized per year as well as the amount of EtO allowed to be emitted per year.

7. From 1985 to 2016, the United State Environmental Protection Agency ("US EPA") characterized EtO as "probably carcinogenic to humans," however, in December 2016, the US EPA's Integrated Risk Information System ("IRIS") program released its "Evaluation of Inhalation Carcinogenicity of Ethylene Oxide" wherein it changed EtO's weight of evidence descriptor from "probably carcinogenic to humans" to "carcinogenic to humans" and increased EtO's lifetime inhalation cancer unit risk rate about 50 fold.

8. In or about May 2018, the US EPA collected ambient air samples at 26 locations near Sterigenics' business locations. The results of these air samples showing ambient EtO
concentrations was modeled by the US EPA utilizing other data related to EtO emissions reported by the Illinois EPA from Sterigenics' business.

9. In or about June 2018, this data was turned over by the US EPA to the United States Department of Health & Human Services Agency for Toxic Substances and Disease Registry ("ATSDR"). The US EPA requested ATSDR to review the EtO data related to Sterigenics' business to determine if the EtO "concentrations represent long term conditions, would they pose a public health problem for people living and working in Willowbrook?"

10. In a letter dated July 26, 2018, the ATSDR answered the US EPA's question in the affirmative, stating, in relevant part, that IT is ATSDR's conclusion that the data U.S. EPA provided suggests that residents and workers are exposed to elevated airborne EtO from facility emissions." The ATSDR further concluded that an elevated cancer risk exists for residents and off-site workers in the community surrounding the Sterigenics facility.

11. The Hinsdale Village Board has adopted a motion directing the Village Attorney to seek leave to intervene into this case against Sterigenics so as to protect the health, safety and welfare of the Village of Hinsdale's residents and off-site workers as well as the rights and interests of the Village itself.

12. The Village has a significant interest in the outcome of this case because the Village, its residents, and off-site workers have been directly affected by the unfiltered release of EtO. The Village's interests are different from the current Plaintiffs. However, the Village will be bound by any order or judgment entered in this case. Therefore, representation by the current Plaintiffs is inadequate as to the Village.

13. The Village's claims for nuisance and trespass, seek injunctive relief against Sterigenics. These claims have common questions of law and fact to the Complaint filed in this
case. Attached as Exhibit A is the Village's proposed initial pleading it intends to file asserting its nuisance and trespass claims against Sterigenics.

14. The Village has brought this petition in a timely manner. Allowing the Village to intervene will not cause undue delay or prejudice.

15. The Village asks that this Court grant its petition pursuant to 735 ILCS 5/2-408(a)(2). In the alternative, the Village asks that this Court should exercise its discretion and grant the Village's petition pursuant to 735 ILCS 5/2-408(b)(2).

Respectfully submitted,

VILLAGE OF HINSDALE, Plaintiff

By: ____________________________
Lance C. Malina, Its Attorney

Dennis G. Walsh (dgwalsh@ktjlaw.com)
Lance C. Malina (lemalina@ktjlaw.com)
DuPage #44500
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
Ph: 312-984-6400/Fax: 312-984-6444
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,
ex rei. LISA MADIGAN, Attorney General
of the State of Illinois, and
ex ret. ROBERT BERLIN, State's Attorney
for DuPage County, Illinois,
Plaintiffs,

v.

STERIGENICS U.S., LLC
a Delaware limited liability company,

Defendant.

(VILLAGE OF HINSDALE, an Illinois
Municipal Corporation,

Intervening Petitioner).

INTERVENING PETITIONER VILLAGE OF HINSDALE'S
COMPLAINT AGAINST DEFENDANT STERIGENICS U.S., LLC

NOW COMES the Intervening Petitioner, Village of Hinsdale, by and through its
attorneys, Klein, Thorpe and Jenkins, Ltd., and for its Complaint against Defendant, Sterigenics
U.S., LLC, alleges as follows:

1. Intervener, the Village of Hinsdale ("Village" or "Hinsdale") is a non-home rule
municipal corporation with its principal address at 19 E. Chicago Avenue, Hinsdale, Illinois.
Hinsdale immediately borders the Village of Willowbrook to the northeast.

2. Defendant, Sterigenics, operates an ethylene oxide gas ("EtO") commercial
sterilization enterprise. Defendant operates out of two separate buildings located at 7775 South
Quincy Street, Willowbrook, DuPage County, Illinois ("Building 1") and 830 Midway Street,
Willowbrook, DuPage County, Illinois ("Building 2") (collectively the "Buildings"). Defendant
has operated the EtO commercial sterilization enterprise in Willowbrook since at least 2006. The Sterigenics operations are located within two and a half miles of the Village of Hinsdale borders. To illustrate this proximity, attached hereto as Exhibit 1 is the Hinsdale zoning map; Exhibit 2 is the Willowbrook zoning map. The location of the Buildings in relation to the Village is shown in Exhibit 3, a map indicating the location of the Buildings.

3. As part of its business operations, the Defendant discharges and emits EtO into the atmosphere.

4. Defendant’s facilities are in the immediate vicinity of the Village, its residents, workers, shoppers, children, families and schools. For example, Hinsdale Central High School is approximately four (4) miles away from Sterigenics buildings. See Exhibit 1, zoning map of the Village of Hinsdale. In addition, Hinsdale residents move and circulate in and about the Village of Willowbrook, around and about the Sterigenics buildings for work, shopping, etc.

5. Sterigenics’ business is subject to the Illinois Environmental Protection Act (415 ILCS 5/1 et seq. and accompanying regulations (35 Illinois Administrative Code Sections 201 – 291, 301-580, 6-1-691, 702-886, and related applicable pollution laws. Sterigenics is subject to regulation by the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to a modified "Operating Permit" issued under the Clean Air Act Permit Program ("CAAPP"), Permit No. 95120085.

6. The Illinois EPA Operating Permit issued to Sterigenics’ business operations set forth limits on those amounts of EtO allowed to be utilized per year in addition to the amount of EtO allowed to be emitted annually.

7. From 1985 to 2016, the United State Environmental Protection Agency ("US EPA") described EtO as "probably carcinogenic to humans." In December 2016, the US EPA's
Integrated Risk Information System ("IRIS") program revised that conclusion and released its "Evaluation of Inhalation Carcinogenicity of Ethylene Oxide", changing EtO's weight of evidence descriptor from "probably carcinogenic to humans" to "carcinogenic to humans" and increased EtO's lifetime inhalation cancer unit risk rate about 50 fold.

8. The 2014 National Air Toxics Assessment completed by the EPA found that parts of Hinsdale were at an increased risk of cancer due to EtO in the air. See Exhibit 4, NATA map found at https://gispub.epa.gov/NATA.

9. In or about May 2018, the US EPA collected ambient air samples at 26 locations near Sterigenics' business locations. The results of these air samples showing ambient EtO concentrations was modeled by the US EPA utilizing other data related to EtO emissions reported by the Illinois EPA from Sterigenics' business.

10. In or about June 2018, this data was turned over by the US EPA to the United States Department of Health & Human Services Agency for Toxic Substances and Disease Registry ("ATSDR"). The US EPA requested ATSDR to review the EtO data related to Sterigenics' business to determine if the EtO "concentrations represent long term conditions, would they pose a public health problem for people living and working in Willowbrook?" The answer to this question also affects many area residents, including the Village of Hinsdale as an adjoining community.

11. In a letter dated July 26, 2018, the ATSDR answered the US EPA's question in the affirmative, stating, in relevant part, that "[i]t is ATSDR's conclusion that the data U.S. EPA provided suggests that residents and workers are exposed to elevated airborne EtO from facility emissions." The ATSDR further concluded that an elevated cancer risk exists for residents and off-site workers in the community surrounding the Sterigenics facility.
12. The Village has received and continues to receive numerous and ongoing complaints from Village residents regarding the release of EtO into the atmosphere in the Village by Sterigenics. Numerous residents and others within the Village have raised their complaints and worries to the Village about the increased risks of cancer to residents and their families arising from the EtO emissions from Sterigenics.

13. From 2006 until on or about July 27, 2018, Sterigenics has knowingly emitted dangerous levels of EtO and has failed to prevent unhealthy and dangerous discharges of EtO into the Village of Hinsdale environment and air. Sterigenics has failed at these times to install the proper air pollution control equipment to adequately prevent EtO from entering the atmosphere. The residents and workers in the Village of Hinsdale, have thereby been involuntarily exposed to EtO due to the undisclosed nature of the Sterigenics emissions.

Count I
Public Nuisance

14. The Village realleges and incorporates by reference herein paragraphs 1 through 13 as though fully set forth herein.

15. Village residents, employees at businesses within the Village, and visitors to the Village have had, and continue to have, the right to breathe clean air that does not contain high levels of the known cancer causing carcinogen EtO.

16. Sterigenics' decades of continuous, dangerous release of EtO concentrations into the air constitutes a substantial and unreasonable interference with the right of Hinsdale and its residents to breathe clean air. Specifically, Sterigenics' emission of EtO into the atmosphere has caused Village residents, employees at businesses within the Village, and visitors to the Village to unknowingly breathe air with dangerous levels of EtO on a routine and constant basis, continuously exposing them to a known carcinogen.
17. Sterigenics' use and release of EtO into the environment has been the sole cause of the elevated levels of EtO in those areas of Hinsdale in the vicinity of the Sterigenics properties.

18. Sterigenics' use and emission of EtO has caused and continues to cause a significant threat to the public health, safety and welfare of those living and working within the Village.

19. For the reasons set forth above, Sterigenics has created and maintained a public nuisance at common law.

20. The Village is without an adequate remedy at law. The Village will be irreparably injured, unless and until this court grants equitable relief in the form of preliminary injunctive relief, and after trial, permanent injunctive relief.

WHEREFORE, the Village of Hinsdale, respectfully prays that this Court enter judgment in its favor and against Defendant, Sterigenics U.S., LLC as follows:

A. Find that Sterigenics has created and maintained a common law public nuisance by way of its use and emission of EtO from Sterigenics' business;

B. Enjoin Sterigenics from its use and emission of EtO and thereby enjoin Sterigenics from maintaining a common law public nuisance at Sterigenics' business;

C. Ordering Sterigenics to immediately undertake the necessary actions that will result in a final and permanent abatement of the common law public nuisance at Sterigenics' business; and

D. Grant such further relief as this Court deems necessary and just.

COUNT II
TRESPASS
21. The Village realleges and incorporates by reference herein paragraphs 1 through 20 as though fully set forth herein.

22. Sterigenics' aforesaid actions and neglect in their operation of an EtO facility and release of EtO into the atmosphere has caused and is causing the migration of EtO in the ambient air onto or near Village property.

23. As a result of the actions and neglect of Sterigenics causing EtO releases onto or near Village property, the Village and its residents have been deprived of the exclusive possession and full use of their property due to the presence of the hazardous carcinogen EtO in the air on and around their properties.

24. For the reasons set forth above, Sterigenics' actions in releasing EtO into the atmosphere so that it can enter Village property constitutes the tort of continuing trespass.

WHEREFORE, the Village of Hinsdale, respectfully prays that this Court enter judgment in its favor and against Defendant, Sterigenics U.S., LLC as follows:

A. Find that Sterigenics has committed a common law trespass by way of its use and emission of EtO from Sterigenics' business;

B. Enjoin Sterigenics from its use and emission of EtO and thereby enjoin Sterigenics from maintaining a common law trespass onto Village Property;

C. Grant such further relief as this Court deems necessary and just.

Respectfully submitted,

VILLAGE OF HINSDALE, Plaintiff

By: _______________________
Lance C. Malina, Its Attorney

Dennis G. Walsh (dgwalsh@ktjlaw.com)
Lance C. Malina (lemalina@ktjlaw.com)
Exhibit 3: Building 1 and Building 2 and Village of Hinsdale
Exhibit 3: Building 1 and Building 2 and Village of Hinsdale (with distance in miles from downtown)
February 14, 2019

Kathleen Gargano
Village Administrator
Village of Hinsdale
19 Chicago Avenue
Hinsdale, IL 60521

Dear Ms. Gargano:

Re: Proposal for Professional Industrial Hygiene and Risk Assessment Services
    Hazard Assessment and Ambient Air Sampling – Ethylene Oxide
    Village of Hinsdale, Illinois

1. Introduction

GHD Services Inc. d/b/a GHD Environmental and Consulting Inc. (GHD) is pleased to submit this Proposed Scope of Work and Cost Estimate (Proposal) to provide outdoor air quality services for public and private sector properties located within the Village of Hinsdale, Illinois. The assessment of air quality in outdoor air shall be performed to evaluate the potential risk of exposure to ethylene oxide (EtO) aerosols. Specifically, GHD health professionals will collect ambient air samples for EtO from outdoor locations for comparison to the applicable community / worker health guidelines established for EtO. These services are requested on behalf of city officials for The Village of Hinsdale and shall be provided to protect the health and safety of residents, workers, and consumers in the area.

On July, 26, 2018 the Agency for Toxic Substances and Disease Registry (ATSDR) – Region 5, a division of the federal Department of Health and Human Services submitted a letter to the Director for Region 5 office for the Environmental Protection Agency (EPA) – Region 5 summarizing the health risk for residents potentially exposed to EtO. In this letter, the ATSDR references health assessment determinations (including air sampling data comparisons) related to EO emissions from the Sterigenics Corporation (Sterigenics) manufacturing facilities located in Willowbrook, Illinois. It is GHD’s understanding that Sterigenics uses EtO as part of the sterilization processes for medical equipment and other devices. EtO is listed in the air permit for the Sterigenics – Willowbrook facility and is linked to adverse acute / chronic health effects in humans.

GHD envisions the additional assessment services shall consist of two main tasks, as follows:

- Task 1 – Quantify EtO concentrations from selected locations in outside ambient air within the Village of Hinsdale to assess potential impacts for recognized receptors. Characterize outdoor concentrations of EtO and otherwise provide guidance on the risk for receptors within the Village of Hinsdale.

- Task 2 – Identify additional sources of EtO emissions within the immediate areas around the Sterigenics facility.
2. Scope of Work

GHD will rely on an experienced team of health professionals to meet the expectations for this project. The GHD team includes professionals from industry and regulatory agencies having a broad range of applicable industrial hygiene, risk assessment, chemical engineering, and toxicology experience. The on-site portion of the project will be conducted by GHD Certified Industrial Hygienists (CIH) with support from additional GHD resources.

It is GHD's understanding that a total of five locations within the Village of Hinsdale will be identified for assessment based on the potential of exposures to EIO. GHD proposes to collect air samples at the Hinsdale Central High School and four additional locations (to be determined based on available information for the areas). GHD shall collect outdoor air samples at each location over a one day sampling period (total of five samples).

2.1 Area Airborne Sampling

To determine the representative inhalation exposures for nearby receptors, GHD will collect area air samples for EIO at the selected locations. The area air samples shall be collected at breathing zone height (approximately 5 to 6 feet) in an effort to simulate representative inhalation exposures for the affected receptors in each area. Area air samples shall be collected using evacuated SUMMA canisters with 24-hour metered flow regulators. All air samples for shall be collected according to the Environmental Protection Agency (EPA) Method TO-15 including the analysis for EIO. All samples shall be shipped under appropriate Chain of Custody (COC) procedures to SGS Galson Laboratory for analysis. Galson is accredited by the American Industrial Hygiene Association (AIHA) for the analysis of air samples. The laboratory results for the air samples will be relied on to identify any areas where airborne EIO concentrations are present in greater concentrations compared to background.

2.2 Field Documentation

Appropriate field documentation will be collected including a daily activity log, sampling field forms, site observations, and other pertinent documentation. All sampling data and supporting documentation collected during this assessment shall be stored in a comprehensive on-Site electronic database. GHD shall use custom database application (i.e. mobile data collection and data management tools for field data collection, archiving and reporting) that upload field data directly to a secure GHD server.

2.3 Schedules and Deliverables

GHD will work with the Village of Hinsdale to set up a mutually agreeable schedule for the additional assessment activities. GHD understands that air sampling is scheduled for completion during the first quarter of 2019. To ensure that this deadline is met, GHD will make the necessary personnel and resources available for this project.

At the completion of the sampling activities, GHD will provide a written report to the Village of Hinsdale within twenty business days after receiving the laboratory results. The report will include the following:

- An executive summary
- A comparison of sampling results reported at outdoors locations
- A site plan presenting monitoring and sampling locations
- Conclusions and recommendations
3. **Estimated Cost**

This proposal describes the estimated cost for providing the services described above. Costs for any additional services or labor will be billed on a time and materials basis and will require prior approval by the Village of Hinsdale. We estimate the cost to provide these services will be approximately $14,000. This figure includes the estimated costs for labor, expenses, travel, laboratory fees, and equipment usage and represents our good-faith attempt to approximate the cost to achieve the goals of this project and the deliverables noted above. For your consideration, GHD has divided the estimated costs accordingly.

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<th>Table 3.1 Cost Estimate</th>
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<td><strong>Description</strong></td>
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<tr>
<td>Labor (travel, project coordination, on-site activities)</td>
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<td>Labor (data review, reporting, conclusions)</td>
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<td>Sample Analysis (equipment use and laboratory fees)</td>
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<td>Expenses (travel, shipping, transportation)</td>
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4. **Closing**

We appreciate the opportunity to submit this Proposal to the Village of Hinsdale and look forward to working with you. Please do not hesitate to contact us if you require further information or clarification regarding the Scope of Work and Cost Estimate presented herein.

Sincerely,

GHD Services Inc.

[Signature]

Benjamin Chandler, M.S., CIH, CSP

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cc: Dyron Hamlin, GHD
Dr. Lucy Fraiser is a board-certified toxicologist with over 28 years of experience in the areas of exposure and risk assessment, health effects and toxicology evaluations, development of quantitative toxicity criteria, development of risk-based air quality guidelines and soil cleanup criteria, and risk communication. While Dr. Fraiser works with all environmental media, she specializes in air quality health evaluations, including assessment of whether criteria pollutant emissions cause or contribute to a condition of air pollution and determination of the likelihood that air toxics will adversely impact health or welfare.

Dr. Fraiser has worked in both the public and private sectors over the last 28 years. She has conducted and managed multi-pathway exposure and human health risk assessments for a wide variety of environmental pollutants and sources. Dr. Fraiser has, on many occasions, examined the scientific foundation on which exposure assumptions and toxicity criteria are based on behalf of private and public-sector clients and trade organizations. Her leading work on these issues has resulted in corrections to regulatory guidance and risk-based criteria on several occasions. She has conducted hundreds of exposure assessments for chemicals used in pharmaceutical laboratories and industrial processes, chemicals applied to control pests and unwanted vegetation, and chemicals released as unwanted by-products of chemical and product manufacturing, combustion of fossil and waste-derived fuels, generation of electricity, petroleum refining, smelting, rock crushing, and activities at military installations.

**Regulatory Experience**

Dr. Fraiser provided comments to EPA on behalf of several commercial clients and a trade organization questioning the extent to which health studies supported the need for a tighter ozone NAAQS during the 2015 review. She also provided comments on the Second External Review Draft of the Integrated Science Assessment For Oxides Of Nitrogen (NOx)—Health Criteria in 2014 and the Boiler MACT Health-Based Emissions Limitations on behalf of a trade organizations. In the past, she has developed technical comments on EPA Risk Assessment Protocols for Hazardous Waste Combustion Facilities on behalf of the Louisiana Chemical Association and the Cement Kiln Recycling Coalition and completed formal technical comments on behalf of a power generation client on a risk-based program intended to significantly reduce levels of toxic air contaminants in Kentucky.
As a Senior Toxicologist with the Texas Natural Resource Conservation Commission (TNRCC), the predecessor agency to the Texas Commission on Environmental Quality (TCEQ), Dr. Fraiser conducted and managed risk assessments for incinerators and industrial boilers seeking permits to burn hazardous waste, provided support to the US Environmental Protection Agency (EPA) as they formulated national policies related to combustion risk assessment, provided critical input into the development of protective concentrations levels (PCLs) under the Texas Risk Reduction Program (TRRP), served as an external peer reviewer for risk assessment guidance documents developed by EPA Region 6 and adopted as national guidance and represented the Agency on EPA workgroups and in contested case hearings.

**Litigation Experience**

Dr. Fraiser has been qualified as an expert, deposed, and has provided expert testimony in contested case hearings, criminal case hearings, Federal Civil suits, and toxic tort litigation on numerous occasions. She has testified before the Texas State Legislature, in public meetings, and before numerous state regulatory agencies on behalf of commercial clients. Dr. Fraiser also conducted a televised press conference on behalf of a state and a national trade organization regarding mercury emissions from power plants.

Dr. Fraiser provided critical expert testimony in a high-profile toxic tort case involving a flaring event at a multi-national petrochemical company that resulted in a jury verdict for the defense. She also provided critical testimony in a citizen suit against a Texas energy company in which a judge from the Western District of Texas ruled from the bench that there were no violations of the Clean Air Act and later ordered the Plaintiff to pay $6.4 million in defense attorneys’ fees. Dr. Fraiser also provided critical expert testimony in a citizen suit against a Texas petrochemical company involving excess air emission and maintenance, startup, and shutdown events. The federal cases involved alleged violations of opacity standards, National Ambient Air Quality Standards (NAAQS), and in the case of the petrochemical plant, screening levels for compounds considered to be hazardous air pollutants.

She has provided testimony on potential risks associated with permitting of rock crushers (silica, limestone, particulates [PM$_{102.5}$]), a concrete batch plant (silica, PM$_{102.5}$), hazardous waste combustion units (polycyclic aromatic hydrocarbons, polychlorinated biphenyls (PCBs), dioxins, and other semi-volatile organic compounds), and a
copper smelter (PM$_{10/2.5}$, NO$_2$, sulfur dioxide [SO$_2$], sulfuric acid [H$_2$SO$_4$], arsenic, lead, and cadmium). Dr. Fraiser has developed opinions regarding health and welfare effects in court cases involving accidental releases of hydrogen sulfide (H$_2$S) and other reduced sulfur compounds that cause odors, and potential H$_2$S/SO$_2$ health effects from a Sulfur Recovery Unit. She also provided testimony on the potential for health effects associated with relatively short-term exposure to benzene concentrations in drinking water above the Maximum Contaminant Level (MCL), and potential risks associated with lead and total petroleum hydrocarbon (TPH) levels detected in street sweepings.

**Air Quality Health Effects Evaluations**

Dr. Fraiser was the health risk assessment advisor for a study completed on behalf of the Electric Power Research Institute (EPRI) that evaluated the potential health risk from emissions of coal fired power plants throughout the U.S. using EPA’s TRIM (Total Risk Integrated Methodology) model. She served as project manager responsible for multi-pathway risk assessment updates for a specialty chemical company to support permitting activity that reflected the installation of new SO$_2$ abatement equipment, served as the risk assessment team lead for a vapor intrusion evaluation using crawl-space soil vapor and ambient air samples collected beneath and near a house in the vicinity of a crude oil release, and performed a health risk assessment using indoor and ambient air samples from a manufacturing facility.

Dr. Fraiser has conducted or served as task leader on more than two dozen human health risk assessments conducted in support of applications for hazardous waste combustion units at chemical plants, waste management facilities, army depots, and cement kilns.

**Risk-Based Corrective Action and Risk Assessment**

Dr. Fraiser has conducted and/or served as task leader for over 75 human health risk assessments and/or risk-based corrective action (RBCA) evaluations in support of Resource Conservation Recovery Act (RCRA) closures or under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for both commercial companies and government clients.

Dr. Fraiser has substantial experience performing human health and ecological risk evaluations under the Texas Risk Reduction Rule and
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the Texas Risk Reduction Program (TRRP), as well as other state
RBCA programs. She has completed and received Texas
Commission on Environmental Quality (TCEQ) approval for several
Affected Property Assessment Reports and has provided support on
the successful completion of several Response Action Completion
Reports.

Dr. Fraiser completed a multi-media human health risk assessment
for high school at which placement of fill material to build up the area
for sports fields resulted in PCB contamination. She also completed
a toxicity assessment and fish cooking loss study for dioxins and
PCBs for a contaminated river segment in the northeast.

Toxicological Evaluations and Risk-Based Regulatory
Criteria Development

Dr. Fraiser has developed numerous health-based criteria for
compounds lacking published values using toxicity studies, structure
activity relationships, and her knowledge of pharmacokinetics. She
has developed risk-based regulatory criteria including emergency
response planning guidelines (ERPGs), inhalation reference
concentrations (RfCs), water quality criteria, and acceptable ambient
air levels, including Effects Screening Levels (ESLs), for several
compounds. Based on her understanding of the human health
underpinnings of federal regulations and state corrective action and
air quality guidelines, Dr. Fraiser has assisted many clients wishing to
challenge health-based criteria during public comment periods and in
identifying adjustments to existing criteria.

Publications, Presentations and Training Courses

Fraiser L. Trends in Setting National Ambient Air Quality Standards.
Earth Day Legal Symposium. Dallas, TX. April 21, 2017

Fraiser L. In Chemical Litigation, Toxicology Fundamentals Matter.

Fraiser L. EPA May Go Beyond Law and Science in Setting NAAQS.

Fraiser L., and Karen Olson. Ozone NAAQS — Where is it Headed?
Texas Association of Business, Austin TX. July 24, 2014.

Fraiser L. Ozone NAAQS — Where is it Headed? Houston Regional
Monitoring Association, Houston, TX. July 9, 2014.
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