FILED
3rd JUDICIAL DISTRICT COURT
Dona Ana County
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DAVID S. BORUNDA
CLERK OF THE COURT
Ashley Barreras

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT COURT

THE STATE OF NEW MEXICO, ex rel. HECTOR BALDERAS, ATTORNEY GENERAL,	§	
Plaintiff,	§	No.: D-307-CV-2020-02629
v.	§	Hon. Marci Beyer
STERIGENICS U.S., LLC, SOTERA HEALTH HOLDINGS, LLC, SOTERA HEALTH LLC, and SOTERA HEALTH COMPANY,	§	
Defendants.	§	

~~[PROPOSED]~~ ORDER GRANTING PRELIMINARY INJUNCTION

This matter came before the Court on the emergency motion of Plaintiff State of New Mexico *ex rel.* Hector Balderas, Attorney General ("Plaintiff") for preliminary injunction, initially filed December 22, 2020 and subsequently refiled on April 14, 2021 following remand from federal court (the "Motion"). The Court, having reviewed and considered the Motion and having heard argument on the Motion during a hearing held on May 26, 2021, hereby **FINDS**:

1. This Court has jurisdiction over this matter;

2. The Motion seeks a preliminary injunction under Rule 1-066 NMRA prohibiting the Defendants from the continued uncontrolled emission of ethylene oxide ("EtO") from the facility located at 2400 Airport Road, Santa Teresa, NM 88008 (the "Santa Teresa Plant");

3. Defendants Sotera Health Holdings LLC, Sotera Health LLC, and Sotera Health Company (the "Sotera Defendants") have moved for dismissal for lack of personal jurisdiction.

The personal jurisdiction motion remains pending. Until the Court resolves the personal jurisdiction motion, this Order shall apply only to Defendant Sterigenics U.S., LLC ("Sterigenics"), which concedes jurisdiction.

4. Since 1989, Sterigenics (or its predecessors) has used and continues to use substantial quantities of EtO, a toxic, carcinogenic air pollutant, in its industrial sterilization and fumigation processes at the Santa Teresa Plant, which is then released from the Plant into the surrounding atmosphere through both controlled and uncontrolled means;

5. Evidence in the record demonstrates that uncontrolled EtO emissions from the Santa Teresa Plant continue to occur;

6. Evidence in the record further demonstrates that the uncontrolled emissions of EtO from the Santa Teresa Plant have resulted in significantly elevated levels of EtO in the atmosphere posing an imminent and substantial endangerment to the public health and welfare of residents in Santa Teresa and nearby communities, including a significant risk of cancer, and has resulted in substantial deterioration of air quality;

7. Accordingly, the Court finds that irreparable injury, loss or damage may result to the State and its residents, which the State is empowered to protect, if the uncontrolled EtO emissions from the Santa Teresa Plant are allowed to continue;

8. A preliminary injunction should be issued to protect public health;

9. Based on the evidence adduced in Plaintiff's Complaint, offered in support of the Motion, and presented at the preliminary injunction hearing on May 26, 2021, the Court finds that Plaintiff is likely to succeed on its claims, including its claim for relief under the doctrine of public nuisance;

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10. Any harm to Sterigenics from issuance of the requested preliminary injunction is substantially outweighed by the substantial and irreparable harm occasioned by the continued uncontrolled emission of EtO from the Santa Teresa Plant, which is endangering the health and well-being of the State's residents;

11. The entry of this order will not harm any public interest;

12. There is no just reason to delay entry of this order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Effective immediately, Sterigenics is hereby prohibited from causing, making, facilitating, or otherwise allowing any uncontrolled emission or release of EtO from the Santa Teresa Plant. For avoidance of doubt, uncontrolled emissions or releases of EtO subject to this order include, but are not limited to:

i. Leaving facility doors, shipping bays, or other means of egress open when not in use;

ii. Leaving sterilization chamber doors, aeration room doors, and other interior doors open when not in use; and

iii. Allowing any EtO to escape through pipes, equipment, vents, stacks, or other point sources prior to filtration or processing through fully functioning emission controls.

B. Within ten (10) days of this order, Sterigenics shall meet and confer with Plaintiff to discuss an appropriate protocol to monitor Sterigenics' compliance with section A, above, including continuous monitoring of any uncontrolled emissions or releases of EtO from the Santa Teresa Plant, ~~wherein all costs of such monitoring shall be borne by Sterigenics.~~ MCB The parties shall jointly propose a monitoring protocol within thirty (30) days of this order, and if they cannot agree, they shall request a hearing so the Court can determine the protocols and how the costs of the protocols will be paid. MCB

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C. A security for payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully enjoined or restrained, pursuant to Rule 1-066(C), is waived as to Plaintiff.

DISTRICT COURT JUDGE BEYER

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