IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

TOM MUTZ, *et al.*, Plaintiffs, vs. STERIGENICS U.S., LLC, Defendant.	CIVIL ACTION FILE NO. 20-A-3448
EMMA J. BONNER, Plaintiff, vs. STERIGENICS U.S., LLC Defendant.	CIVIL ACTION FILE NO. 21-A-2420
MARY ANN HARRELL, Plaintiff, vs. STERIGENICS U.S., LLC, Defendant.	CIVIL ACTION FILE NO. 21-A-4396

ORDER GRANTING STERIGENICS U.S., LLC's MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant Sterigenics U.S., LLC (Sterigenics) brings its Motion for Partial Summary Judgment on Plaintiff Tom Mutz's[1] (Plaintiff Mutz), Plaintiff Emma J. Bonner's (Plaintiff Bonner), and Plaintiff Mary Ann Harrell's (Plaintiff Harrell) (collectively Plaintiffs) nuisance claims. The Court heard oral argument on August 22, 2025. The Court has read and carefully considered Sterigenics' Motion and supporting brief and exhibits, Plaintiffs' Response in Opposition and exhibits, and the record. After considering these materials, the record, and argument and having reviewed the applicable and controlling law, the Court FINDS and ORDERS as follows:

1. Statement of the Case

1.1. Sterigenics Has a Long-Term Presence in Cobb County.

The Facility[2] was constructed in 1968 within a High Industrial (HI) zoning district. The zoning existed before any residential areas appeared, as shown by the 1968 United States Geographic Survey photograph and the 1972 Cobb County zoning map. The Facility uses ethylene oxide ("EtO") to sterilize medical equipment. EtO is classified by the United States Environmental Protection Agency ("EPA") and other authorities as a probable human carcinogen.

Undisputed evidence shows Sterigenics' operations were consistently properly zoned HI and always surrounded by other heavy industrial facilities, including Georgia Power's McDonough Atkinson power plant, water treatment plants, recycling centers, and a cement plant, among others. Cobb County's current zoning ordinance states: "The Heavy Industrial district is established to provide locations for heavy industrial uses such as ... heavy manufacturing, chemical manufacturing and storage, petroleum or petrochemical storage, and warehousing and storage, which are on properties delineated within an industrial

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[1] Plaintiffs Tom Mutz and Amanda Mutz are suing on behalf of themselves and their child A.M., who was born in July 2004 and diagnosed with Acute Lymphoblastic Lymphoma on July 26, 2007.

[2] Sterigenics and its predecessors have operated a medical equipment sterilization facility, global distribution center, and warehouses at 2971 Olympic Industrial Drive, Atlanta, Georgia 30339 (the "Facility") for more than 60 years.

category as defined and shown on the Cobb County Comprehensive Land Use Plan: A Policy Guide, adopted November 27, 1990." Additionally, in 1994, the Cobb County Board of Commissioners unanimously approved a Special Land Use Permit that explicitly authorized the Facility's operation as a sterilization plant, contingent upon its Air Quality Permit issued by the Georgia Environmental Protection Division ("Georgia EPD").

1.2. Plaintiffs

- Plaintiff Mutz was diagnosed with Acute Lymphoblastic Lymphoma on July 26, 2007. Plaintiff Mutz has lived full-time at a residence located within a 1-mile radius from the Facility for her entire life.
- Plaintiff Bonner was with diagnosed Chronic Lymphoid Leukemia in or about January 2011. Plaintiff Bonner has lived full-time at a residence located within a 1-mile radius from the Facility since 1977. From 1997 until 2021, Plaintiff Bonner worked at The Lovett School, located approximately three (3) miles from the Facility.
- Plaintiff Harrell was diagnosed with breast cancer in 2006. Plaintiff Harrell has lived full-time at a residence located within a 3-miles radius from the Facility for over 25 years.

Plaintiffs, Mutz, Bonner, and Harrell, assert that they were subjected to unintended and inadvertent exposure to EtO attributable to environmental emissions stemming from fugitive releases from the specified Facility. Additionally, Plaintiffs Mutz, Bonner, and Harrell contend that their respective cancers resulted from this exposure to EtO.

2. Legal Posture Of The Case

Sterigenics' Motion for Partial Summary Judgment requests that the Court determine whether its operations constitute a nuisance and establish that its operations do not meet the legal definition of nuisance as alleged by Plaintiffs. In these cases, the Court confines the nuisance period to 1967 through 2011.

2.1. Summary Judgment Standard

Summary judgment shall be awarded to the moving party when, viewing all facts and inferences in a light most favorable to the non-moving party, it is demonstrated that the evidence does not create a triable issue of fact.[3] The moving party can satisfy this burden by pointing to affidavits, depositions, or documents, which demonstrate that no genuine issue of material fact exists.[4] Once the moving party discharges its burden, the burden then shifts to the non-moving party who must rebut the movant's showing by producing relevant and admissible evidence beyond the pleadings.[5] A "shadowy semblance of an issue" is not enough to defeat a motion for summary judgment.[6] Instead, a party opposing a motion for summary judgment must submit probative evidence creating a genuine question about an actual fact in issue.[7]

Succinctly put, summary judgment is not a time for fact-finding; that task is reserved for trial. Rather, on summary judgment, the court must accept as fact all allegations the non-moving party makes, provided they are sufficiently supported by evidence of record. So, when competing narratives emerge on key events, courts are not at liberty to pick which side they think is more credible. Indeed, if "the only issue is one of credibility," the issue is factual, and a court cannot grant summary judgment. *City of Atlanta v. Block, Inc. of Delaware*, 2025 WL 1691937 (June 17, 2025) (internal citations omitted). The judge's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. *Mountain Bound, Inc. v. Alliant Food Service, Inc.*, 242 Ga.App. 557, 560 (2000). And if a reasonable jury could make more than one inference from the facts, and one of those permissible inferences creates a genuine issue of material fact, a court cannot grant summary judgment; it must hold a trial to get to the bottom of the matter. *Id.*

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3 *Lau's Corp. Inc. v. Haskins*, 261 Ga. 491, 491 (1991).

4 *Id.*

5 *Id.*

6 *Holland v. Sanfax Corp.*, 106 Ga. App. 1, 5 (1962).

7 *Upshaw v. Roberts Timber Co.*, 266 Ga. App. 135, 137 (2004).

3. Legal Issues to be Decided:

1) Whether Plaintiffs have established valid nuisance claims under Georgia law.
2) Whether Plaintiffs allege a harm to their property interest.[8]
3) Even if a reviewing court were to find that Plaintiffs' property interest was harmed, whether a pre-existing, long-standing, legally operated and properly zoned facility that is situated among other similar facilities can be a nuisance at law.
4) Even if a reviewing court determines that a legally operated and properly zoned facility constitutes a nuisance, the issue remains whether Plaintiffs "came to the nuisance."
5) Even if Sterigenics EtO emissions are a nuisance, whether Plaintiffs proved the emissions caused their harms.

4. Principles of Law - The Nuance of Nuisance.

In Georgia, nuisance —a property tort— is defined as anything that causes hurt, inconvenience, or damage to another, even if the act itself is lawful. O.C.G.A. § 41-1-1. Nuisances can be public (affecting the community) or private (affecting an individual). To be considered a nuisance, the interference with a person's property interest must be substantial and unreasonable, not merely fanciful or affecting someone of "fastidious taste".[9]

Nuisance defies "any exact or comprehensive definition[,]" but it does have some core requirements. *Landings* at 329. "[N]uisance law is grounded in the fundamental premise that everyone has the right to use his or her property as he or she sees fit, provided that in so

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[8] Without such harm, a nuisance claim cannot stand. *Landings Ass'n, Inc. v. Williams*, 309 Ga. App. 321, 329 (2011) (*reversed on other grounds*).

[9] There are three classes of: (1) nuisances per se, such as the obstruction of a stream; (2) nuisances dependent on circumstances, such as the conduct of a lawful business in certain surroundings, *Simpson v. DuPont Powder Co.*, 143 Ga. 465 (1915); and (3) continuing nuisances which are complements of the other two, as distinguished from a permanent nuisance. *City Council v. Lombard*, 101 Ga. 724 (1897).

doing the owner or occupier does not unreasonably invade the corresponding right of others to use their own property." *City of Albany v. Stanford*, 347 Ga. App. 95, 101 (2018).

A nuisance claim requires an invasion of a plaintiff's interest in land. Although nuisance is defined broadly in our Code as anything that causes hurt, inconvenience, or damage to another, O.C.G.A. § 41-1-1, "that hurt or damage must arise from acts which affect the land itself." *Blondell v. Courtney Station 300 LLC*, 362 Ga. App. 1 (2021) *citing Fielder v. Rice Constr. Co.*, 239 Ga. App. 362 (1999) and Restatement (Second) of Torts § 821D (1979). *See also*, Charles R. Adams III, Ga. Law of Torts 14:3 "an actionable private nuisance must involve an invasion of an interest in the use and enjoyment of the plaintiff's land."

In sum, stablishing a nuisance claim requires the claimant to prove the following legal elements:

1. **Property Interest:** The claimant must have a property interest in the land affected by the nuisance.
2. **Existence of the Nuisance:** A condition, activity, or behavior that causes harm.
3. **Violation of a Right:** The act must violate a right of a claimant, such as the right to a peaceful use of the property.
4. **Causation:** The alleged nuisance directly caused the claimant's injury.
5. **Suffering of Injury:** The claimant experienced hurt, inconvenience, or damage as a result of the nuisance, which can be permanent or ongoing.

4.1. Plaintiffs' Claims Sound in Private Nuisance.

Nuisances are classified as public or private. Here, Plaintiffs rely on the private nuisance theory for their damages claims. Since Plaintiffs do not assert public nuisance claims, the Court will not analyze that category extensively. Generally, a public nuisance involves interference with rights held by the community, such as clean air, safe roads, or public health. O.C.G.A. § 41-1-2. An individual can recover for public nuisance only by showing special damage uniquely affecting them. O.C.G.A. § 41-1-3.

On the other hand, Georgia courts continue to recognize that a private nuisance involves an invasion that specifically harms how a person uses and enjoys their land, particularly when the property is in close proximity to the source of the alleged nuisance. "Although sounding in tort, a private nuisance claim is generally viewed as a remedy for the interference with an owner's or occupier's interest in real property." *City of Albany v. Stanford,* 347 Ga. App. 95, 101 (2018). Pursuing personal injury claims without a valid property claim does not align with established legal principles. Plaintiffs have not alleged or shown that the Facility's operations affected their use or enjoyment of any possessory property interests.

4.2. Plaintiffs Contend the Nuisance is Continuing.

Nuisance involves continuity of harm or a harm existing on a regular basis over a period of time, *Bartenfeld v. Chick-fil-A, Inc.*, 346 Ga. App. 759 (2018), or regularly repeated, *Ridley v. Turner*, 335 Ga. App. 108 (2015), or recurring over a considerable period of time, *Petree v. Department of Transportation*, 340 Ga. App. 694 (2017).

A nuisance is continuous if the act causes ongoing damage and can and should be removed by the person responsible for it. In such cases, each continuation of the nuisance is considered a new nuisance, allowing for a new action and triggering a new statute of limitations. *Oglethorpe Power Corp. v. Forrister*, 303 Ga. App. 271 (2010).

Plaintiffs contend that Sterigenics' "continuous emission (even to this day) of a highly toxic carcinogen" has "unreasonably interfer[ed] with [Plaintiffs'] right to breathe unpolluted air," *citing* Ga. Comp. R & Regs. 391-3-1-.02(2)(a)(1).[10] The next issue for the Court is whether the alleged private, continuous nuisance is *per se* or *per accidens*.

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[10] August 7, 2019 Consent Order (Notice, Ex. Q); 2/22/23 Hays Depo. (Notice, Ex. R) at 147:16-21 (confirming the Consent Order was voluntary), 188:4-8 (confirming control of backvents in early 2016); Notice, Ex. P at 35:15-20 (confirming that Sterigenics' installation of the negative pressure system was voluntary), 49:7-10 (confirming Sterigenics' control of the Facility's backvents was voluntarily). The EPA subsequently passed a regulation requiring sterilization Facility to control of backvent and fugitive emissions in April 2024. 89 Fed. Reg. 24090. But the EPA has delayed compliance with those requirements.

4.2.1. A Continuous Nuisance May Be Defined as Either *Per Se* or *Per Accidens.*

Nuisances are distinguished as nuisances *per se*, which are inherently nuisances, and nuisances *per accidens,* which arise from circumstances or effects. A nuisance *per se* is an activity that is inherently harmful and illegal because it always poses a constant and extreme danger to public health, safety, or morals. Examples include operating a house of prostitution or engaging in other clearly illegal activities.

In Georgia, a legally permissible act that causes harm, inconvenience, or damage may be classified as a nuisance *per accidens*. For example, a lawful business would not be a nuisance *per se* but could be *per accidens* if the business creates harmful conditions due to location or operations. Failure to abate the nuisance despite knowledge of harm can also establish liability. The determination of whether a condition constitutes a nuisance *per accidens* depends on the particular circumstances and factual context of each individual case. The Court finds the alleged nuisance in this case is not a nuisance *per se,* but rather a nuisance *per accidens*.

5. Analysis

5.1. Plaintiffs Do Not Seek Damages for Injury to Property; Rather, They Seek Compensation for Personal Injuries.

During oral argument, the Court questioned whether Plaintiffs allege an infringement upon their right to use and enjoy their land, which the Court characterized as a property damage claims. Plaintiffs' counsel confirmed that no such claims are asserted. (*See* Summary Judgment Argument).[11] The Court instructed Plaintiffs' counsel that all property damage claims must be joined in the current proceedings; otherwise, such claims will be

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[11] The Court expresses concern about Plaintiffs' strategic decision, as characterized by counsel, to exclude property damage claims and potentially introduce these claims at a later stage in the proceedings. This approach could necessitate further discovery and result in additional delays in cases that have already undergone substantial extensions.

considered waived. *Id.* Plaintiffs' counsel agreed with this procedural requirement and stated that no property damage claims had been filed in the case at that time. *Id.* Plaintiffs' nuisance claims are insufficient under these circumstances. Partial summary judgment is warranted because Plaintiffs' complaints do not allege an invasion of a property interest. Sterigenics' motion is GRANTED. The Court will continue its analysis to establish a comprehensive record for potential appellate review.

5.2. As a Properly Zoned Facility that Complies with All Applicable Regulations, Its Operations Cannot be a Continuing Nuisance.

A central issue is whether a facility that complies with zoning laws[12] can be a nuisance. The Court of Appeals ruled that an activity allowed by a property's zoning "could become a nuisance only if conducted in an illegal manner." *Kempton v. Southern Flavor Real Estate, LP*, 362 Ga. App. 137, 138 (2021) (quoting *Effingham Cnty.*, 265 Ga. App. at 755).[13] Thus, a plaintiff must present evidence that a zoning-authorized activity was conducted in an illegal manner, and that the activity caused the harm alleged in the case. Without such evidence, summary judgment on a nuisance claim is warranted. *Kempton*, 362 Ga. App. at 138.

However, a recently decided federal opinion from the Middle District of Georgia came to a different conclusion. In *Fowler v. Georgia Renewable Power LLC*, that court denied summary judgment on nuisance claims despite the defendant's legal operation of a power

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[12] For this Order, "zoning regulations" is defined broadly. It includes rules that govern land use and construction by dividing a municipality into districts with specific permitted and prohibited uses.

[13] In *Kempton*, a commercial greenhouse located on property adjacent to a landowner's property was deemed a legal operation. Although the greenhouse was situated approximately 1,000 feet from the landowner's home, and the landowner claimed that the light from the greenhouse negatively affected his quality of life, the operation did not constitute a nuisance. It was undisputed that the greenhouse owner had obtained all the necessary licenses and permits required to operate legally. The greenhouse was specifically allowed to be built in that location, which was zoned for agricultural operations. Furthermore, the owner had not engaged in any activities that would be considered unusual for a greenhouse. *Id., see also* Ga. Code Ann. § 41-1-1.

plant in an industrial zone. (2025 WL 824136, (M.D. Georgia, March 15, 2025)). While the *Fowler* opinion is not binding on this Court, its analysis is instructive.[14]

The *Fowler* defendant operated a biomass power generation plant in Madison County, Georgia. The *Fowler* plaintiffs were owners or occupiers of real property near the plant. Those plaintiffs contended that the plant caused excessive noise, vibrations, light, odor, smoke, and soot which adversely impacted their properties. *Id.* They asserted claims for nuisance and negligence.[15] *Id.*

The District Court recognized that a claim for nuisance is not always the proper vehicle to address inconveniences or harms caused by industry. "Disgruntled neighbors who may believe that the operation should not be permitted to continue under any circumstance cannot be allowed to accomplish through the nuisance door what they could not accomplish through the political/zoning door. If the type of activity is permitted on that site, the wisdom of that type activity being conducted there cannot be second-guessed through a nuisance lawsuit." *Id.* at 6.

The District Court found the defendant's operations could be a nuisance. But key factual differences set that case apart from the current dispute. In *Fowler*, the parties did not provide zoning information or clarify zoning requirements. Here, Sterigenics submitted substantial evidence on Cobb County's zoning regulations and its compliance with federal and state regulations. Additionally, the *Fowler* facility was built after nearby homes existed. And it was the only industrial site on the zoning map, unlike the situation here.

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[14] Neither party cited nor argued this jurisprudence to the Court.

[15] The Madison Plant, much like Sterigenics' Facility, was subject to an Air Quality Permit that limits the permitted particulate matter emissions from the plant. The Madison Plant received violation notices from the Georgia Department of Natural Resources, Environmental Protection Division, for allegedly violating the Air Quality Permit. The Madison Plant did not operate in violation of a noise ordinance and had taken actions since 2019 to reduce noise and light emitted from it. *Id.* at 4.

The present case involves a long-term industrial setting that Plaintiffs "came to". (*See* discussion of "Coming to the Nuisance" *infra* at 3.4) The Court finds that *Fowler* is readily distinguishable based on the undisputed evidence in this case.

5.3. Without Proof of Violations or Illegal Activity by Sterigenics, Plaintiffs' Claims Cannot Stand.

Plaintiffs' allegations that the Facility "repeatedly violated its permits," "breached Georgia's Air Quality regulations," and "violated state and federal law," are not supported by the evidence presented. The legality of Sterigenics' activities is not contested, and emissions are a normal and necessary part of its operations.[16]

Plaintiffs contend that Sterigenics should have implemented controls for backvent emissions, fugitive emissions, and aeration room emissions earlier than it did. However, regulations from the EPA and the Georgia EPD did not mandate control of backvent or fugitive emissions until 2024.[17] As such, for all times relevant to these Plaintiffs, Sterigenics complied with federal, state and local regulations.

In fact, Sterigenics submitted documentation demonstrating compliance with, and early implementation of, pollution control measures that surpassed established regulatory requirements. Sterigenics has provided documentation demonstrating that it voluntarily began controlling these emission sources prior to the regulatory requirements in 2016 and 2019, respectively.[18] Likewise, the EPA and the Georgia EPD rules did not require

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[16] There is evidence is that the Facility's emissions have been authorized by the EPA's NESHAP Subpart O standards, the Georgia EPD environmental regulations, and the Air Quality Permits issued by the Georgia EPD for the Facility. As Plaintiffs' own expert testified, "[t]here's nothing illegal" about the operations of the Plant." Nelson Dep. at 52:16-20.

[17] Consol. Br. in Supp. of Defs.' Alt. Mot. for Part. Sum. Judg. on Pl.'s Private Nuisance Claims at 7–40 CFR § 63.360 (2021); Ga. Comp. R. & Regs. r. 391-3-1.02(9)(a), (b)(2); *see also* 4/21/23 Hays Depo. (Notice, Ex. P) at 7.

[18] August 7, 2019 Consent Order (Notice, Ex. Q); 2/22/23 Hays Depo. (Notice, Ex. R) at 147:16-21 (confirming the Consent Order was voluntary), 188:4-8 (confirming control of backvents in early 2016); Notice, Ex. P at 35:15-20 (confirming that Sterigenics' installation of the negative pressure system was voluntary), 49:7-10 (confirming Sterigenics' control of the Facility's backvents was voluntarily). The EPA subsequently passed a regulation requiring sterilization Facility to control of backvent and fugitive

Sterigenics (or any other sterilization company) to control aeration room emissions any earlier than it did in 1999.[19] Sterigenics' failure to control those emission sources sooner did not violate antipollution standards established by regulators.

When deciding whether to issue air quality permits, the Georgia EPD reviews compliance with this provision and all relevant state and federal air regulations. The permits issued are conditioned on compliance with all provisions of the Georgia Air Quality Act, and the Georgia EPD would "never issue a permit if we did not think the facility could comply with all applicable state and federal air regulations." (Hays 4/21/23 dep. 38:21-39:22). There is no evidence that the Georgia EPD has found the Facility to be in violation of the general statutory provision upon which Plaintiffs rely. Instead, the Georgia EPD continued issuing permits for the Facility's operation for the alleged nuisance period.

Plaintiffs have not provided evidence that the Facility emitted EtO in violation of EPA or Georgia EPD regulations. The evidence shows the Facility's emissions have been authorized by the EPA's NESHAP Subpart O standards, the Georgia EPD environmental regulations, and the Air Quality Permits issued for the Facility.

Moving the analysis further down the line to the local zoning and ordinances, Plaintiffs do not present any evidence to support their claims that the Facility's operations violated any Cobb County ordinances during the period of interest. The Facility is located in an area where this kind of conduct is to be expected. The evidence confirms that the Facility

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emissions in April 2024. 89 Fed. Reg. 24090. But the EPA has delayed compliance with those requirements.

See 59 Fed. Reg. 62,593 (Dec. 6, 1994) (NESHAP identifying emissions controls requirements for aeration rooms) and 59 Fed. Reg. 62,593 (Dec. 6, 1994) (extending deadline for compliance to Dec. 6, 2000).

See 4/21/23 Hays Depo. (Notice, Ex. P) at 34:1-36:17.

[19] See 59 Fed. Reg. 62,593 (Dec. 6, 1994) (NESHAP identifying emissions controls requirements for aeration rooms) and 59 Fed. Reg. 62,593 (Dec. 6, 1994) (extending deadline for compliance to Dec. 6, 2000).

operates in compliance with applicable laws and is properly situated in a permissible zone for its operation.[20]

While acknowledging the guidance of the *Fowler* decision, the Court will not adopt its ruling. Rather the Court will follow binding precedent from the Georgia Court of Appeals in *Kempton* and find that, because Sterigenics is in a properly zoned area and in compliance with Federal, State, and local regulations, there are no issues of material fact which preclude partial summary judgment.

5.4. Even if the Facility's Operations Were to be Found a Nuisance *Per Accidens* Under Georgia Law, Plaintiffs Came to the Nuisance.[21]

The doctrine of "coming to the nuisance" serves as a potential defense in nuisance litigation, asserting that the complainant relocated to the area with knowledge of the existing nuisance, such as noise or odors. However, "coming to the nuisance" is not a complete defense. *Georgia-Pacific Consumer Products, LP v. Ratner*, 345 Ga. App. 434, 435 (2018).

Although "coming to the nuisance" is not a complete barrier to Plaintiffs' claims under common law, it is relevant when evaluating the reasonableness of the alleged harm. Here, Plaintiffs moved to an area adjacent to a pre-existing HI zoning corridor. This case distinguishable from *Fowler v. Georgia Renewable Power LLC*, 2025 WL 824136 (M.D. Georgia, March 15, 2025), discussed in greater detail above, where the defendant's facility was the only commercial enterprise in a residential and agricultural zone and was constructed *after* the residential areas were established.

In response to Sterigenics' evidence of proper facility operation, Plaintiffs emphasize their alleged harm but do not present evidence showing that such harm resulted from

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[20] The Facility is located within a HI zoning district that allows its operations and emissions, and the Facility has a Special Land Use Permit under that zoning from the County Board of Commissioners to operate as a sterilization facility pursuant to its Georgia EPD Air Quality Permit.

[21] While Sterigenics did not make this argument the Court, in an abundance of caution, believes it bears mentioning in this case.

unreasonable, negligent, or improper conduct by Sterigenics. Instead, the harm Plaintiffs allege may be due to their decision to move into an area next to a High Industrial (HI) zoning corridor with pre-existing industrial businesses, including the Facility.

The following section examines causation, a fundamental element of a nuisance claim.

5.5. Even if Plaintiffs Have Established Harm to a Property Interest, *and* that Sterigenics' Operations are a Nuisance *Per Accidens* Despite Compliance with Zoning and Environmental Regulations *and* that Plaintiffs Did Not Come to the Nuisance, Plaintiffs Have Failed to Establish Causation.[22]

When considering the issue of proximate cause, "[t]he inquiry is not whether the defendants' conduct constituted a cause in fact of the injury, but rather whether the causal connection between that conduct and the injury is too remote for the law to countenance a recovery." *Blondell* at 19. After the materials in all the boxes of documents and hours of testimony have been considered, Plaintiffs' nuisance claims boil down to this: Sterigenics knowingly and negligently failed to implement emission control technologies and other necessary precautions, resulting in the release of hazardous levels of EtO over several decades. Plaintiffs assert this conduct endangered the health of nearby residents and significantly impaired their quality of life and right to clean air. Consequently, they argue, Sterigenics contravened Georgia regulations,[23]violated Georgia law, and its alleged prolonged emission of EtO constitutes a nuisance.

The law is clear: causation is a crucial element in a nuisance claim. *Lore v. Suwanee Creek Homeowners Ass'n, Inc.*, 305 Ga. App. 165 (2010) (en banc). And expert testimony may

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[22] "While normally questions of proximate cause are issues for the finder of fact, in plain and indisputable cases, proximate cause may be decided as a matter of law." *Dowdell v. Wilhelm*, 305 Ga. App. 102, 105 (2010).

[23] Plaintiffs assert that Sterigenics' claim of permit compliance cannot provide a defense. See Ga. Comp. R. & Regs. 391-3-1-.02(2)(a)(1) ("Complying with any of the other paragraphs of these rules and regulations or any subparagraphs thereof, shall in no way exempt a person from this provision.")

be needed to establish that element. *Toyo Tire North America Manufacturing, Inc. v. Davis*, 299 Ga. 155 (2016). The proximate cause "burden is **not met** where a plaintiff shows merely that his injury was an **eventual consequence** of the predicate act or that he would not have been injured but for the predicate act." *Najarian Cap., LLC v. Clark*, 357 Ga. App. 685 (2020) (emphasis added).[24] The Court finds that even considering the evidence in a light most favorable to Plaintiffs, without admissible expert testimony, Plaintiffs' claims cannot survive a motion for summary judgment. (*See* the Court's Motion for Summary Judgment analysis filed simultaneously herewith.)

CONCLUSION

Although Plaintiffs have the right to use and enjoy their land, not every problem that occurs on or near the property qualifies as a nuisance. According to the Restatement (Second) of Torts § 822, comment c, negligent conduct may sometimes lead to a private nuisance claim, but only if it actually invades the use and enjoyment of the land. There is no evidence that the Facility's operations interfered with Plaintiffs' property use or enjoyment, violated regulations, or were illegal.

Plaintiffs have not asserted property damage claims, which is required for their nuisance claims. Additionally, their negligence allegations regarding equipment leaks and delayed emissions controls are not supported by the evidence. Plaintiffs have not shown that the alleged acts or omissions were unlawful under the relevant permits during the nuisance period. As such, Plaintiffs have not established causation.

The present case closely parallels *Kempton*, where the court found no nuisance liability from a permitted use.[25] Relying on the precedent established in *Kempton*, the Court

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[24] "Bare conclusions and contentions unsupported by an evidentiary basis in fact are insufficient to oppose a motion for summary judgment." *Gwinnett Cmty. Bank v. Arlington Capital, LLC*, 326 Ga. App. 710, 715-16 (2014) (*quoting Mimick Motor Co. v. Moore*, 248 Ga. App. 297, 299 (2001)). It is well settled that it is the plaintiff's burden to establish proximate cause. *Atlanta Obstetrics & Gynecology Grp., P.A. v. Coleman*, 260 Ga. 569 (1990).

[25] The Court in *Kempton* discussed numerous cases whose holdings found conduct of business, although legal, to be a nuisance because the business's operations were nevertheless inconsistent with the

must assess whether any issue of fact, when the evidence is interpreted favorably to the nonmovant, constitutes a genuine issue for jury determination.

ORDER

Cancer and its effects are devastating, but the Court must weigh the evidence presented without passion or prejudice. The record contains no evidence that the alleged conduct or inaction by Sterigenics caused the injuries claimed by Plaintiffs, particularly those related to nuisance. Plaintiffs have not demonstrated a legally sufficient nuisance claims. The Court GRANTS Sterigenics' Motion for Partial Summary Judgment on Plaintiffs' Nuisance Claims.

SO ORDERED this, the 17TH of October 2025.

Jane P. Manning, Judge
State Court Of Cobb County

area in which they were located. See *Kempton*, 362 Ga. App. at 138-139 (majority opinion). In contrast, the *Kempton* court also discussed numerous cases where it found that lawful conduct was not a nuisance, because the businesses were consistent with their zoned areas. By distinguishing the cases this way, a simple rule seems to emerge— lawful conduct carried out in a lawful manner in a location where such conduct is expected to occur is not a nuisance. *Id.*