

wenty miles outside of Chicago is Midway Drive in Willowbrook, Ill., where Sterigenics had a plant for 35 years.¹ With plants and warehouses nationwide, Sterigenics is one of many companies that sterilizes medical devices and lab equipment using ethylene oxide (EtO), an invisible, flammable gas that the EPA has classified as a "known" carcinogen since 2016.² Jana Conev has lived with her family less than one mile from the Sterigenics plant since 1987³ and operates a licensed day care facility out of her house. She has cancer. Her husband has cancer. And so do most of the residents on her street.

For years, companies have used EtO to create other chemicals "used in making a range of products, including antifreeze, textiles, plastics, detergents, and adhesives." It's also commonly used to sterilize medical equipment because it penetrates cardboard, paper, and plastic. But the toxin increases the risk of white blood cell cancers—including non-Hodgkin lymphoma, myeloma, and lymphocytic leukemia—as well as breast cancer in women. And according to OSHA, "chronic exposure [to EtO] has been associated with the occurrence of cancer, reproductive effects, mutagenic changes, neurotoxicity, and sensitization." Not only is EtO colorless and odorless,



but the facilities that use the toxin are hidden in plain sight—they are largely nondescript warehouses or buildings with very short or no smokestacks.

On Aug. 22, 2018, the EPA released a National Air Toxics Assessment (NATA), which flagged 109 census tracts across the United States where cancer risks were elevated because of exposure to airborne toxins—the largest component being EtO.⁸ Those tracts are spread across more than 60 cities in 28 states plus Puerto Rico, with the highest concentrations in Louisiana and Texas.⁹

The EPA considers the cancer risk "acceptable" when it is less than 100 extra cases of cancer per 1 million people

due to a toxin; the NATA report shows that 58 of those 109 tracts pose cancer risks higher than 100 in 1 million. An Agency for Toxic Substance and Disease Registry (ATSDR) report released at the same time showed that the extra cancer risk in Willowbrook was 6,400 cases for every 1 million people exposed to EtO emissions. 11

After the ATSDR report was released, Chicago attorney Antonio Romanucci began receiving calls from people in Willowbrook who were diagnosed with cancer but had no family history of it. "People are dying every day. I've never seen entire households of people on entire blocks stricken with cancer the way they are here," said Romanucci, who

is lead counsel in consolidated personal injury and wrongful death cases against Sterigenics in Illinois. "I don't know if there is one house on Midway Drive that doesn't have someone with cancer."

Residents of Willowbrook and other surrounding communities have filed 76 lawsuits in Cook County, Ill., against Sterigenics and its parent company, Sotera Health, LLC.12 The cases were removed to federal court and remanded. The plaintiffs are bringing personal injury and wrongful death claims that span a range of ailments-many fatalincluding breast cancer, non-Hodgkin lymphoma, and leukemia, as well as miscarriage and birth defects.13

"The ATSDR report drew a direct connection between this area having an unusually high rate of cancer and the emission of ethylene oxide. It's a chemical intended to kill living things, and it gets in the human body through inhalation. People who were exposed to a sufficient amount have extensive DNA damage," said Chicago attorney Pat Salvi II, who is colead counsel in the consolidated Sterigenics cases in Illinois.

A smaller group of cases has been filed against Medline Industries, Inc., and Vantage Specialty Chemicals, Inc., which have plants that have used EtO for years in Waukegan and Gurnee, Ill., respectively.14 Both locations are on the list of 109 census tracts in the NATA report,15 and both plants remain open.

"What angers our clients more than anything else is that this chemical, which is highly carcinogenic, is completely odorless and colorless. This is a chemical that is a silent killer," said Chicago attorney Daniel Kotin, who is representing clients who developed certain cancers when living and working within close proximity to the Medline and Vantage facilities and also is on the plaintiffs' executive committee representing clients against Sterigenics.

The Illinois attorney general sued

Sterigenics, and the Illinois EPA shut down the Willowbrook plant in February 2019 after air quality tests detected high levels of EtO. In July 2019, the company reached a consent agreement with the state that would allow it to resume operations if it reduced EtO emissions to no more than 85 pounds per yearin 2018, it released 2,840 pounds.¹⁶ In September, Sterigenics announced it would not reopen that plant.

> **EtO** is colorless and odorless, and the facilities that use the toxin are hidden in plain sight—nondescript warehouses or buildings with very short or no smokestacks.

The buzz about the use of EtO and the cancer clusters has started spreading to other areas of the country. In July 2019, an investigative report published jointly by WebMD and Georgia Health News brought the issue to light for residents of the metro Atlanta area, which has three of the flagged 109 census tractstwo in the Smyrna, Ga., area and one in Covington, Ga., 35 miles east of Atlanta.¹⁷

Attorney Michael Geoffroy lives 1.2 miles from the operational BD Bard plant that has been in Covington since 1967. "I found out that the air I breathe, that my three children breathe and play in every day is contaminated with a known carcinogen," Geoffroy said. He noted that a nearby offsite warehouse is also a source of EtO emissions, further compounding the residents' exposure.

Although Geoffroy runs a small firm that typically handles auto and other personal injury cases, Geoffroy has partnered with a firm with a toxic tort practice18 and is working with clients from Covington on bringing claims against BD Bard. No lawsuits have been filed yet. "I knew it was a fight I had to be involved in. This is something that affects me personally," he said.

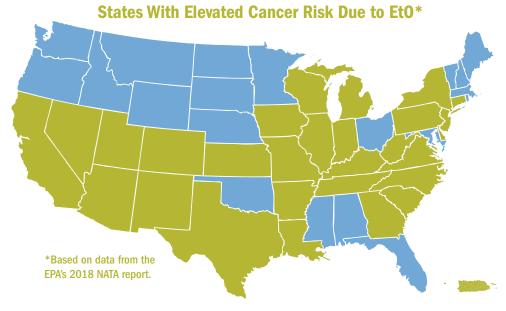
State and federal legislators also are getting involved. In November, Reps. Jody Hice (R-Ga.) and Brad Schneider (D-Ill.) created a bipartisan congressional task force on EtO made up of members who represent half a dozen communities in three states (Georgia, Illinois, and Pennsylvania).19 They also cosponsored H.R. 1152, which would require the EPA to revise EtO standards under the Clean Air Act.20

In December, the EPA announced an advance notice of proposed rulemaking seeking input about potential control measures for reducing EtO emissions from commercial sterilization facilities.²¹ In response, 11 state attorneys general sent a letter to the EPA in February arguing that the current National Emission Standards for Hazardous Air Pollutants (NESHAP) fail to protect people from EtO's harmful effects.²² They called on the agency to work with the FDA to find alternatives to EtO sterilization. More than 100 commercial sterilization facilities in 36 states are subject to the standards, which currently allow them to emit tens of thousands of pounds of EtO annually.²³ The agency is supposed to release new proposed rules on commercial EtO operations this month.

But the attorneys are concerned about the EPA's role and its previous

AAJ RESOURCES

- Ethylene Oxide Litigation Group (newly formed in February 2020)
- Coming Soon! Ethylene Oxide Litigation Packet



inaction. "EtO is being emitted at facilities everywhere, and the EPA did nothing to stop it. This is an industrywide and nationwide problem," Romanucci said.

"This is really a classic 'profits over people' situation," Salvi said. "When it came down to choosing their businesses or the people in their community, they chose the former every time."

Alyssa E. Lambert is the managing editor for Trial.

NOTES

- 1. Eric Horng, Sterigenics' Willowbrook Facility Will Permanently Close, Company Announces, ABC7 (Sept. 30, 2019), https:// abc7chicago.com/5579321/.
- 2. Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide, U.S. Envtl. Prot. Agency (Dec. 2016), https://cfpub.epa.gov/ncea/ iris/iris_documents/documents/ toxreviews/1025tr.pdf; Frequent Questions: Basic Information About Ethylene Oxide, U.S. Envtl. Prot. Agency, https://tinyurl. com/qvwkf3v. The EPA changed EtO's classification from a "probable" carcinogen to a "known" carcinogen in 2016, finding it was "30 times more likely to cause certain cancers than scientists had once known." The International Agency for Research on Cancer has classified ethylene oxide as "carcinogenic to humans." See http://www. inchem.org/documents/iarc/vol60/ m60-02.html.
- 3. Patrick Fazio, 32 New Lawsuits Filed

- Against Sterigenics, NBC5 Chicago (Aug. 20, 2019), https://www.nbcchicago.com/ news/local/32-new-lawsuitsfiled-against-sterigenics/127376/.
- 4. Hazardous Air Pollutants: Ethylene Oxide, U.S. Envtl. Prot. Agency, https://www.epa.gov/hazardous-airpollutants-ethylene-oxide.
- **5.** Ethylene Oxide—Updates, U.S. Envtl. Prot. Agency, https://www.epa.gov/hazardousair-pollutants-ethylene-oxide/ ethylene-oxide-updates.
- 6. Id.
- 7. Ethylene Oxide, Occupational Safety & Health Admin., https://www.osha.gov/ SLTC/ethyleneoxide/index.html.
- 8. The 2018 release was actually its 2014 report. Since 1996, the report comes out every three or four years. National Air Toxics Assessment, U.S. Envtl. Prot. Agency, https://www.epa.gov/ national-air-toxics-assessment.
- 10. Letter From Attorneys General of Illinois, Maryland, Rhode Island, Massachusetts, Iowa, New Jersey, New York, Delaware, Minnesota, Vermont, and Michigan to Andrew Wheeler, Administrator, Envtl. Prot. Agency, Comments on National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations, 84 Fed. Reg. 67,889 (Dec. 12, 2019), (Feb. 10, 2020), https://tinyurl.com/t9k22ww Thereinafter Letter From Attorneys General]; see also NATA Frequent Questions-Risk Questions-Q2-What Does EPA Believe Constitutes An Acceptable Level of Risk?, U.S. Envtl. Prot. Agency,

- https://www.epa.gov/nationalair-toxics-assessment/nata-frequentquestions#risk2.
- 11. U.S. Dept. of Health & Human Servs., Agency for Toxic Substances & Disease Registry, Evaluation of Potential Health Impacts From Ethylene Oxide Emissions, Sterigenics International, Inc., Willowbrook, Illinois, at 10 (Aug. 21, 2018), https://www. atsdr.cdc.gov/HAC/pha/sterigenic/ Sterigenics_International_Inc-508.pdf.
- 12. First Amended Master Compl., Kamuda v. Sterigenics U.S., LLC, No. 18L10475 (Ill. Cir. Ct. Cook Ctv. filed Jan. 31, 2020).
- 13. The cases against Sterigenics are in the initial phases of discovery with the first trial date scheduled for April 2021.
- 14. Compl., Bennett v. Medline Indus., Inc., No. 2019L009504 (Ill. Cir. Ct. Cook Cty. filed Aug. 28, 2019).
- 15. National Air Toxics Assessment, supra note 8.
- **16.** See the proposed consent order at https:// tinyurl.com/uz8du4n.
- 17. Brenda Goodman & Andy Miller, Neighborhoods Unaware of Airborne Cancer-Causing Toxin, Ga. Health News (July 19, 2019), http://www.georgiahealthnews. com/2019/07/neighborhoodsunaware-airborne-toxin/.
- 18. The firm is Dalimonte Rueb Stoller.
- 19. Press Release, Reps. Hice, Schneider Launch Bipartisan Congressional Task Force on Ethylene Oxide (Nov. 20, 2019), https:// hice.house.gov/news/documentsingle. aspx?DocumentID=5192.
- 20. H.R. 1152, 116th Congress (2019), https:// www.congress.gov/bill/116th-congress/ house-bill/1152.
- 21. Press Release, EPA Seeks Input on Strategies to Reduce Ethylene Oxide Emissions From Commercial Sterilizer Operations (Dec. 5, 2019), https://tinyurl.com/uxeee4z; Advance Notice of Proposed Rulemaking, National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations, 84 Fed. Reg. 67889 (Dec. 12, 2019), https://tinyurl.com/w83vdat.
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- 23. Press Release, Attorney General Raoul Urges the EPA to Strengthen National Emission Standards for Ethylene Oxide (Feb. 11, 2020), https://illinoisattornevgeneral.gov/ pressroom/2020_02/20200211b.html; Letter From Attorneys General, supra note 10.