

Classified by the EPA as a “known” carcinogen, ethylene oxide is used to sterilize medical devices and equipment. A 2018 report now receiving widespread attention sheds light on the link between this colorless, odorless toxin and cancer clusters across the U.S.—ushering in the first wave of litigation.

By || **ALYSSA E. LAMBERT**

# POISON



**T**wenty miles outside of Chicago is Midway Drive in Willowbrook, Ill., where Sterigenics had a plant for 35 years.<sup>1</sup> 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.<sup>2</sup> Jana Conev has lived with her family less than one mile from the Sterigenics plant since 1987<sup>3</sup> 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.”<sup>4</sup> It’s also commonly used to sterilize medical equipment because it penetrates cardboard, paper, and plastic.<sup>5</sup> 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.<sup>6</sup> And according to OSHA, “chronic exposure [to EtO] has been associated with the occurrence of cancer, reproductive effects, mutagenic changes, neurotoxicity, and sensitization.”<sup>7</sup> Not only is EtO colorless and odorless,

# SOON IN THE AIR



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.<sup>8</sup> Those tracts are spread across more than 60 cities in 28 states plus Puerto Rico, with the highest concentrations in Louisiana and Texas.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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 fatal—including breast cancer, non-Hodgkin lymphoma, and leukemia, as well as miscarriage and birth defects.<sup>13</sup>

“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.<sup>14</sup> Both locations are on the list of 109 census tracts in the NATA report,<sup>15</sup> 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 year—in 2018, it released 2,840 pounds.<sup>16</sup> In September, Sterigenics announced it would not reopen that plant.

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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 tracts—two in the Smyrna, Ga., area and one in Covington, Ga., 35 miles east of Atlanta.<sup>17</sup>

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 practice<sup>18</sup> 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).<sup>19</sup> They also cosponsored H.R. 1152, which would require the EPA to revise EtO standards under the Clean Air Act.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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

