

FILED
8/28/2019 8:56 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019L009502

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

KATHLEEN KOCH,

Plaintiff,

v.

MEDLINE INDUSTRIES, INC. and
VANTAGE SPECIALTY CHEMICALS,
INC.

Defendants.

6356684

No. 2019L009502

PLAINTIFF DEMANDS TRIAL BY JURY

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Kathleen Koch, by her attorneys, Tomasik Kotin Kasserman, LLC and Edelson PC, brings this Complaint and Demand for Jury Trial against Defendants Medline Industries, Inc. (“Medline”), and Vantage Specialty Chemicals, Inc. (“Vantage”), together (“Defendants”), for the harm they caused to individuals living and working in the vicinity of these facilities as a result of the Defendants’ emissions of toxic ethylene oxide into the community. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters upon information and belief.

INTRODUCTION

1. Defendants Medline and Vantage are industrial users and polluters of ethylene oxide gas in Illinois. Medline is an industrial medical sterilizer and Vantage is a chemical producer.
2. While ethylene oxide has been classified as a human carcinogen since 1994, and its carcinogenic and mutagenic properties have been well documented in studies since at least the mid-1980s, Medline and Vantage disregarded ethylene oxide’s harmful properties and continue to release it into the surrounding communities—entirely unbeknownst to area residents and workers.

3. Self-reported emission estimates from the Medline and Vantage facilities indicate high levels of ethylene oxide release. The combined ethylene oxide emissions from both facilities have reached as high as 13,000 pounds per year. While some EtO emissions are from controlled sources, the majority of these emission estimates are “fugitive emissions” that have been escaping, and continue to escape, the facility.

4. The most recent air monitoring tests commissioned by the Lake County Health Department, the Village of Gurnee, and the City of Waukegan demonstrate the widespread nature of the ethylene oxide pollution. The tests show the presence of toxic ethylene oxide gas as far as 4.8 miles from the Medline facility and 4 miles from the Vantage facility, much further than previously suspected.

5. As a result, individuals living and working near the Medline and Vantage facilities face some of the highest long-term cancer risks in the United States. These individuals have been inhaling ethylene oxide on a routine and continuous basis for decades. Now they are suffering from a variety of cancers, miscarriages, birth defects, and other life-altering health effects from continuous exposure to ethylene oxide.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 because they conduct business transactions in Illinois, maintain facilities in Illinois, and have committed tortious acts in Illinois.

7. Venue is proper because Defendants maintain offices in Cook County, are each headquartered in Cook County, and conduct business in Cook County.

THE PARTIES

8. Plaintiff Kathleen Koch is a natural person and citizen of the State of Illinois.

9. Defendant, Vantage Specialty Chemicals, Inc. and its predecessors have operated and continue to operate a chemical production facility in Gurnee, Illinois since 1985. Vantage Specialty Chemicals, Inc. is a privately-held company headquartered at 4650 South Racine Avenue in Chicago, Cook County, Illinois. Defendant is authorized to transact business in this county and is doing business in this county.

10. Defendant, Medline Industries, Inc. has operated and continues to operate a sterilization facility at in Waukegan, Illinois since 1994. Medline Industries, Inc. is a privately-held company headquartered at 3 Lakes Drive, Northfield, Cook County, Illinois. Defendant is authorized to transact business in this county and is doing business in this county.

COMMON FACTUAL ALLEGATIONS

I. Brief Overview of the Ethylene Oxide Industry

11. Ethylene oxide, or EtO, is a flammable gas at room temperature that is produced in large volumes for industrial uses. There are two primary known industrial uses for ethylene oxide at these facilities: medical equipment sterilization and chemical production.

12. Commercial medical equipment sterilizers use the ethylene oxide sterilization process on over 20 billion health care products every year in the United States. The EtO sterilization process begins by placing medical equipment in a gas chamber. After air is pumped out of the room, ethylene oxide is introduced and allowed to diffuse into the products for several hours. Once the medical equipment is sterilized, the ethylene oxide is pumped out of the chamber and the remaining EtO is allowed to slowly dissipate.

13. Concerning chemical production, EtO undergoes a chemical reaction to create new chemical compounds. Ethylene glycol is one of the most common chemicals synthesized from ethylene oxide and is often used in a wide range of products such as polyester fibers (for use in

clothing, carpets, and upholstery), industrial coolants, antifreeze, and personal care products such as cosmetics, shampoos, body washes, and other skincare products.

14. Defendants Medline and Vantage both use ethylene oxide in their industrial processes. Medline and its predecessors have used, and Medline continues to use, EtO in industrial medical device sterilization since approximately 1994, and Vantage and its predecessors have used, and Vantage continues to use, EtO in chemical production since approximately 1985.

15. Through its industrial processes, both plants emit EtO into the air allowing it to disburse and be carried by wind throughout the area surrounding the facilities. Indeed, Lake County recently conducted EtO air monitoring tests, discussed below, demonstrating that EtO emissions have traveled as far as 4.8 miles from the Medline facility and 4 miles from the Vantage facility.

16. As such, local residents and workers in the area have unknowingly been exposed to carcinogenic ethylene oxide for decades all while Medline and Vantage knew, or should have known, EtO to be dangerous, toxic, carcinogenic, mutagenic, and the cause of various illnesses.

II. Health Effects of Ethylene Oxide Exposure

17. Ethylene oxide is dangerous, toxic, carcinogenic, and mutagenic. EtO is highly reactive, readily taken up by the lungs, efficiently absorbed into the blood stream, and easily distributed throughout the human body. Its deleterious properties have been widely known for decades.

18. In a 1977 article, the National Institute of Occupational Safety and Health (“NIOSH”) concluded that occupational exposure to ethylene oxide may increase the frequency of genetic mutations in humans. The NIOSH report also raised a concern about potential carcinogenicity of ethylene oxide.

19. In 1981, the NIOSH released a subsequent report which recommended that EtO be regarded in the workplace as a potential occupational carcinogen. The NIOSH based its recommendation on new evidence of EtO's carcinogenic, mutagenic, and reproductive hazards including studies demonstrating that EtO induced cancer in experimental animals. Specifically, the studies showed an increase in instances of leukemia in line with the increase of EtO concentrations, in addition to other adverse effects on reproductive health. An epidemiological investigation of Swedish workers exposed to EtO also revealed an increase number of leukemia and other cancers.

20. In 1985, the U.S. Department of Health and Human Services published the Fourth Annual Report on Carcinogens and classified EtO as reasonably anticipated to be a human carcinogen.

21. In the early 90s, the NIOSH published the largest and most informative epidemiological study of ethylene oxide. The study analyzed over 18,000 employees working with EtO at 14 different industrial facilities sterilizing medical equipment and food spices. The study found sufficient evidence to support a causal link between exposure to ethylene oxide and increased mortality from lymphatic and hematopoietic cancers. Follow-up studies have additionally demonstrated an association between EtO exposure and breast cancer.

22. As a result of these findings, the World Health Organization ("WHO") listed EtO as a Group 1 human carcinogen in 1994, the agency's highest risk classification, finding ethylene oxide to be carcinogenic to humans. In 2000, the U.S. Department of Health and Human Services revised its classification for EtO to "known to be a human carcinogen." In 2016, the EPA's Integrated Risk Information System reclassified EtO as carcinogenic to humans and increased the cancer potency of EtO by 30 times.

23. Exposure to ethylene oxide has been widely studied and its negative health effects are well documented. Presently, there is evidence linking ethylene oxide exposure to increased

risk of lymphohematopoietic cancer such as non-Hodgkin's lymphoma, myeloma, and lymphocytic leukemia; breast cancer; tumors in the lungs, uterus, and the brain; and reproductive and developmental impairments including increased rate of miscarriages and infertility.

24. Most recently, the Illinois Department of Public Health ("IDPH") conducted an assessment of cancer rates in the population surrounding the Sterigenics facility in Willowbrook, Illinois that has been using and emitting EtO in its industrial sterilization process since 1984. The findings reaffirm the decades of studies on EtO exposure. The IDPH found elevated cases of:

- Hodgkin's lymphoma;
- Pediatric lymphoma;
- Breast cancer;
- Prostate cancer;
- Pancreatic cancer;
- Ovarian cancer; and
- Bladder cancer.

III. Medline and Vantage Emit Harmful Ethylene Oxide

a. The U.S. EPA Estimates High Risks of Cancer in Lake County

25. On August 22, 2018, the U.S. Environmental Protection Agency ("U.S. EPA") released the 2014 National Air Toxics Assessment ("NATA"). The NATA is a screening tool that estimates cancer risks based on emission data in 76,727 census tracts across the United States.

26. The 2014 NATA revealed 109 census tracts in the United States with cancer risk scores greater than what the U.S. EPA considers "acceptable" limits: 100 cases for every 1 million people exposed to toxic air pollution during their lifetime. Of the 109 census tracts, the 2014 NATA identified four tracts in northern Illinois as having potential cancer risks of 100 in 1 million or greater from exposure to air toxics:

- Tract 17097862605/8626.05 (1.1 miles² near Waukegan, Park City): **157 per million**;
- Tract 17097862800/8628.00 (1.2 mi² near Waukegan, North Chicago): **131 per million**;
- Tract 17097861504/8615.04 (2.8 mi² near Gurnee, Park City): **123 per million**; and
- Tract 17097862604/8626.04 (1 mi² near Waukegan, Park City): **100 per million**.

27. The U.S. EPA released a statement that it believes that “largest sources of ethylene oxide emissions in Lake County are Medline, a commercial sterilizer located in Waukegan, and Vantage, a chemical production facility in Gurnee.”

28. The U.S. EPA estimates the lifetime risk of developing cancer due to air toxics in one of these four Lake County tracts near the Medline and Vantage facilities to be up to five times higher than average the national cancer risk across the U.S. population. Fewer than one percent of the census tracts in the United States have an estimated cancer risk due to air toxics of greater than or equal to 100 in one million.

b. The U.S. EPA’s Cancer Risks are Understated

29. While the 2014 NATA reveals shockingly high risks of cancer across a large area near the Medline and Vantage facilities, these risks are understated.

30. The U.S. EPA warns that the NATA is *only* a screening tool that local municipalities can use in order to further investigate the emission sources and potential public health risks. It notes several NATA shortcomings such as the lack of direct measurements of pollutants and data gaps.

31. The lifetime risk of developing cancer in the aforementioned census tracts is likely significantly higher than what the U.S. EPA estimated in the 2014 NATA. That is because Vantage’s 2014 EtO emissions were actually *omitted* from the 2014 NATA. According to the U.S.

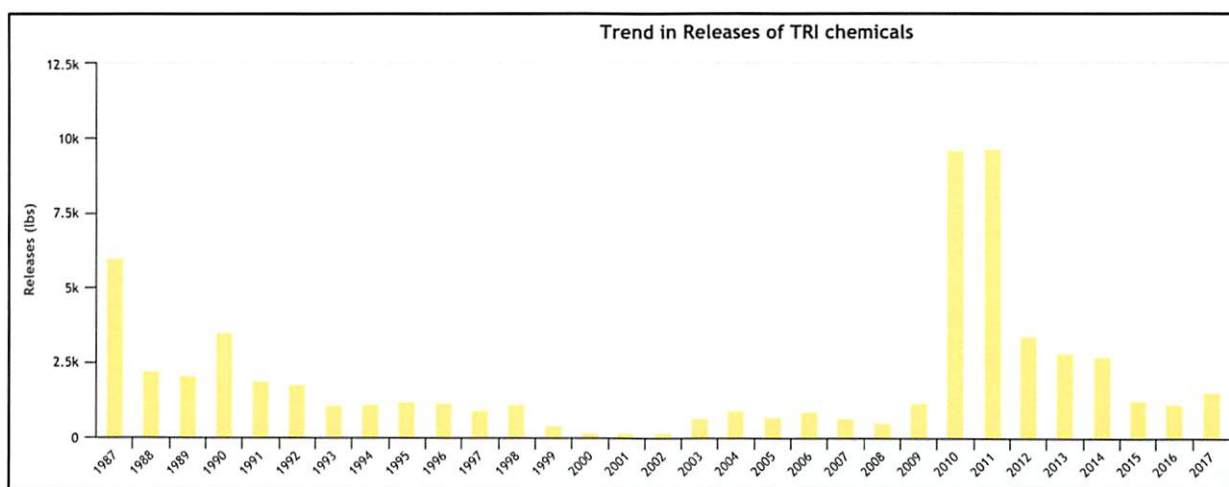
EPA, this was due to a clerical “error” in the National Emissions Inventory which caused Vantage’s 2014 EtO emissions to be calculated as zero.¹

32. Without the Vantage emissions in its calculations, the cancer risks identified in the 2014 NATA for people living and working in the area were and continue to be dramatically underestimated.

33. Most importantly, the 2014 NATA is *only* a model created on an assumed exposure of a facility’s reported 2014 emissions. But the emission from Vantage and Medline have historically been higher than their reported emissions in 2014.

34. The U.S. EPA maintains a Toxics Release Inventory (“TRI”) which includes annual self-reported emissions data from industrial facilities using EtO and other toxic chemicals which pose a threat to human health and the environment.

35. A review of TRI data from the U.S. EPA shows EtO emissions from the Vantage facility over the past three plus decades, with a prominent increase of emissions beginning in 2010. See Figure 1.



(Figure 1.)

¹ <https://www.epa.gov/il/ethylene-oxide-emissions-lake-county-illinois#vantage>

36. While Vantage reported 2,723 pounds of EtO emissions in 2014, that figure is overshadowed by its nearly 20,000 pounds emissions of EtO during a two-year period in 2010 and 2011. Similarly, Vantage reports emitting EtO in smaller, albeit significant quantities throughout the years:

- | | |
|----------------------|----------------------|
| ▪ 2010: 9,649 pounds | ▪ 2014: 2,723 pounds |
| ▪ 2011: 9,709 pounds | ▪ 2015: 1,277 pounds |
| ▪ 2012: 3,425 pounds | ▪ 2016: 1,127 pounds |
| ▪ 2013: 2,832 pounds | ▪ 2017: 1,547 pounds |

37. It is important to note that majority of Vantage's reported total emissions, as shown above, include fugitive sources such as leaking valves and other equipment. These emissions are only an estimate due to their elusive nature. To illustrate, Vantage's fugitive emissions constituted above 80% of its total emissions in 2010 and 2011. In 2010, Vantage reported 9,649 pounds of total EtO emissions with 8,073 pounds of fugitive emissions and in 2011 Vantage reported 9,709 pounds of total EtO emissions with 7,984 pounds of fugitive emissions. Vantage's fugitive EtO emissions, nonetheless, constitute a significant portion of its total emissions:

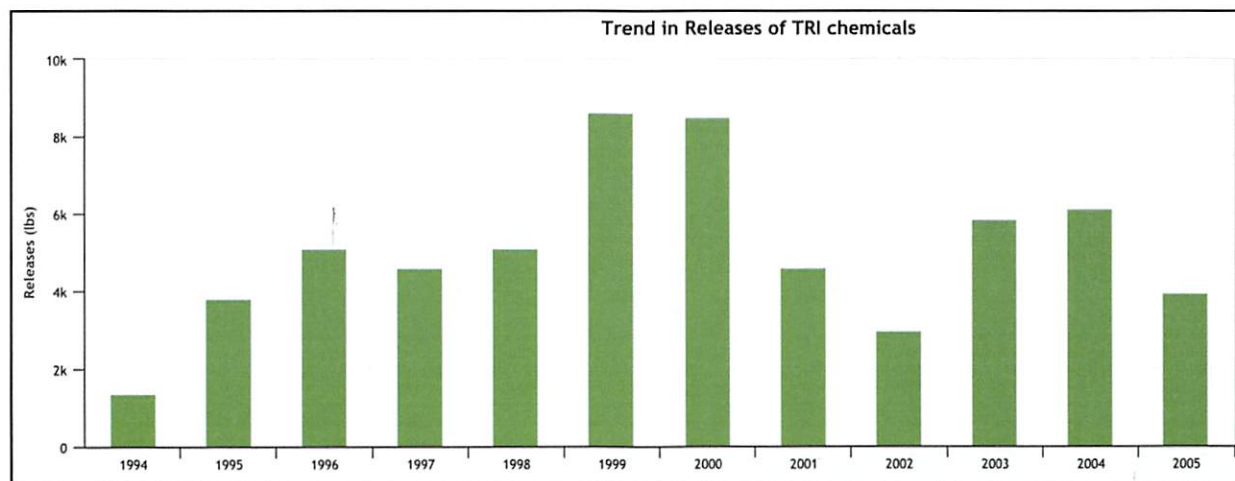
- | | |
|----------------------|----------------------|
| • 2010: 8,073 pounds | • 2014: 2,003 pounds |
| • 2011: 7,984 pounds | • 2015: 551 pounds |
| • 2012: 2,704 pounds | • 2016: 414 pounds |
| • 2013: 2,110 pounds | • 2017: 810 pounds |

38. Although Vantage reported reductions in emissions after 2012, the facility's self-reported regulatory data is difficult to independently verify. For example, Vantage reported to another office at the U.S. EPA that during 2014 it released 6,412 pounds of EtO—not **2,723 pounds as has been recently reported to the U.S. EPA.**

39. Unfortunately, none of these emissions were used in calculating the cancer risks in the 2014 NATA, as mentioned above.

40. Similarly, a review of TRI data demonstrates that Medline emitted 3,526 pounds of EtO in 2014—the emission number the EPA used in calculating cancer risks in the 2014 NATA.

But Medline's predecessors consistently released over 4,000 pounds of EtO between 1996 and 2001, including approximately 17,000 pounds between 1999 and 2001. *See Figure 2.*



(Figure 2.)

41. The TRI data does not display any emissions from Medline's Waukegan facility after 2005. Nonetheless, according to self-reported emissions data submitted to the Illinois EPA, Medline continued to release large amounts of EtO into the surrounding community for years, including:

- | | |
|----------------------|----------------------|
| ▪ 2006: 5,484 pounds | ▪ 2012: 3,512 pounds |
| ▪ 2007: 4,980 pounds | ▪ 2013: 3,069 pounds |
| ▪ 2008: 3,297 pounds | ▪ 2014: 3,526 pounds |
| ▪ 2009: 3,784 pounds | ▪ 2015: 3,115 pounds |
| ▪ 2010: 3,750 pounds | ▪ 2016: 2,993 pounds |
| ▪ 2011: 3,437 pounds | ▪ 2017: 2,863 pounds |

42. Medline's reported emissions are only controlled emissions and do not include any estimates for fugitive emissions.

43. While Vantage and Medline have been knowingly and continuously releasing EtO for decades, people living and working in the surrounding community were unaware that the Defendants routinely and continuously exposed them to a dangerous, toxic, carcinogenic, and mutagenic gas.

c. Lake County Begins Air Monitoring

44. On August 21, 2018, the U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (“ATSDR”) released a report of health risks related to the chemical release of EtO by Sterigenics, a commercial sterilizer 40 miles southwest in Willowbrook, Illinois. The ATSDR concluded that an elevated cancer risk existed for residents and off-site workers in the Willowbrook community surrounding the Sterigenics facility due to EtO.

45. In the following months, Lake County officials, health departments, state and national elected representatives, and concerned residents repeatedly pleaded with the U.S. EPA and Illinois Environmental Protection Agency (“IEPA”) to conduct ambient air monitoring surrounding the Medline and Vantage facilities. Despite these requests, the U.S. EPA and IEPA refused to conduct ambient air monitoring anywhere in Lake County, much less near the Medline and Vantage facilities.

46. Finally, on May 20, 2019, local community officials approved an intergovernmental agreement between the Village of Gurnee, City of Waukegan, and Lake County to conduct air monitoring.

47. The air monitoring began on June 3, 2019 by placing cannisters at four sites near Medline, four sites near Vantage, and two remote locations in Lake County. The Lake County Health Department released partial test results on June 21, 2019 that revealed the presence of EtO in almost every sample. The test results also showed the presence of EtO as far as 4.5 miles from the Medline facility and 4 miles from the Vantage facility. The air monitoring cannisters surrounding Medline and Vantage facilities registered elevated levels of EtO with the highest twenty-four hour reading at ten micrograms of ethylene oxide per cubic meter of air (10 ug/m³).

48. For reference, the U.S. EPA associates a concentration of ethylene oxide of 0.02 ug/m³ with a 100-in-a-million cancer risk for a lifetime of continuous exposure. The highest recorded EtO concentration surrounding the Medline and Vantage facilities corresponds with a cancer risk as high as 500 times the EPA's 100-in-a-million cancer risk.

49. The full extent of Medline's and Vantage's EtO emissions throughout Lake County was unknown to those living and working in the area until Lake County released the air monitoring test results. Indeed, the local air monitoring tests revealed a more accurate picture of EtO concentrations and the distance EtO has traveled than the U.S. EPA's NATA report. And the air monitoring tests revealed areas in Lake County with high EtO concentrations that were previously not indicated by the 2014 NATA report.

50. Nonetheless, the full health impact on those who live and work near the Medline and Vantage facilities is still not entirely known. The Lake County Health Department has requested that the Illinois Department of Public Health ("IDPH") conduct a cancer incidence assessment in Lake County, but no public report has been issued.

FACTS SPECIFIC TO PLAINTIFF KOCH

51. Plaintiff Kathleen Koch has been a resident of Gurnee for 14 years. Her home is located less than a mile from the Vantage facility and 3.6 miles from the Medline facility.

52. Kathleen consistently inhaled air in and around her home, and in the Lake County area.

53. As a result, Kathleen was diagnosed with triple negative breast cancer in October 2014.

54. At the time of her diagnosis, Kathleen did not have notice that her medical condition was wrongfully caused or that it was caused by the Defendants' emissions of ethylene oxide.

COUNT I
Negligence
(On Behalf of Plaintiff and Against Defendant Medline)

55. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

56. At all times relevant, Defendant Medline owed a duty to exercise reasonable care in the operation of its facility, including the emission of EtO.

57. Notwithstanding its duty, Defendant Medline breached its duty in one or more of the following ways:

- a. Emitting dangerous volumes of EtO into the air from its facility;
- b. Disregarding safe methods to adequately control EtO emissions from the its facility;
- c. Failing to warn or advise those who live or work in the community, that they were being exposed to EtO;
- d. Failing to adequately record test results of high levels of EtO;
- e. Ignoring test results of high levels of EtO;
- f. Underreporting EtO levels; an
- g. Subjecting those who live and work nearby its facility to an elevated cancer risk.

58. As a proximate result of one of the aforesaid negligent acts or omissions, Plaintiff Kathleen Koch suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Medline Industries, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT II
Willful and Wanton Conduct
(On Behalf of Plaintiff and Against Defendant Medline)

59. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

60. At all times relevant, Defendant Medline owed a duty to refrain from willful and wanton conduct and/or conduct which exhibited an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiff and those living and working in the area surrounding its facility.

61. Notwithstanding its duty, Defendant Medline breached its duty in one or more of the following ways:

- a. Emitting dangerous volumes of EtO into the air from its facility;
- b. Disregarding safe methods to adequately control EtO emissions from the its facility;
- c. Failing to warn or advise those who live or work in the community, that they were being exposed to EtO;
- d. Failing to adequately record test results of high levels of EtO;
- e. Ignoring test results of high levels of EtO;
- f. Underreporting EtO levels; and
- g. Subjecting those who live and work nearby its facility to an elevated cancer risk.

62. As a proximate result of one of the aforesaid willful and wanton acts or omissions, Plaintiff, Kathleen Koch, suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Medline Industries, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT III
Public Nuisance
(On Behalf of Plaintiff and Against Defendant Medline)

63. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

64. Since 1994, Defendant Medline knew EtO to be hazardous and harmful to humans.

65. The general public has a common right to breathe clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

66. Defendant Medline's use and emission of EtO from its facility substantially and unreasonably infringes upon and/or transgresses this public right.

67. Defendant Medline knew that the levels of EtO gas emitted from its facility would have a toxic, poisonous, and deleterious effect upon the health, safety, and well-being of people living and working in the community.

68. Defendant Medline should have known that the levels of EtO gas emitting from its facility would have a toxic, poisonous, and deleterious effect upon the health, safety, and well-being of persons breathing it.

69. Defendant's operation, maintenance, and use of its sterilizing facility caused those who live and work in the area surrounding its facility to breathe air containing high levels of EtO on a routine and constant basis, causing a substantially elevated risk of cancer.

70. As a proximate result of the Defendant's operation, maintenance, and use of its sterilizing facility, Plaintiff's and the general public's common right to breathe clean air without dangerous levels of carcinogens such as EtO was eliminated and/or severely diminished.

71. As a proximate result of Defendant's operation, maintenance, and use of its sterilizing facility, EtO continuously invaded and caused to be contaminated the areas immediately surrounding and on Plaintiff's residence.

72. As a proximate result of Defendant's use and emission of EtO, Plaintiff was exposed to and inhaled great amounts of EtO.

73. As a proximate result of Defendant's use and emission of EtO, Plaintiff sustained and will continue to sustain severe and permanent damage to her health due to the emission of EtO.

74. As a proximate result of Plaintiff's inhalation of EtO from the Medline facility, Plaintiff Kathleen Koch suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Medline Industries, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT IV
Ultrahazardous Activity/Strict Liability
(On Behalf of Plaintiff and Against Defendant Medline)

75. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

76. Medline's use and emission of EtO from its Waukegan facility constitutes an ultra-hazardous activity.

77. Medline's use and emission of EtO created a high degree of risk to those who live and work and the surrounding area. Further, the likelihood of cancer caused by its use and emission of EtO is as much as five times the level of acceptable risk.

78. Medline's use and emission of EtO is especially inappropriate given the densely populated residential and commercial area in which its facility is located.

79. The activities conducted by Medline are exceedingly dangerous and offer little to no value to the surrounding community.

80. Because the activities of Medline are ultrahazardous, it is strictly liable for any injuries proximately resulting therefrom.

81. As a direct and proximate result of Medline's ultrahazardous activities, Plaintiff was exposed to and inhaled great amounts of EtO.

82. As a proximate result of Plaintiff's inhalation of EtO from the Medline facility, suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Medline Industries, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT V
Negligence
(On Behalf of Plaintiff and Against Defendant Vantage)

83. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

84. At all times relevant, Defendant Vantage owed a duty to exercise reasonable care in the use of its Gurnee facility, including the emission of EtO.

85. Notwithstanding its duty, Defendant Vantage breached its duty in one or more of the following ways:

- a. Emitting dangerous volumes of EtO into the air from its facility;
- b. Disregarding safe methods to adequately control EtO emissions from the its facility;
- c. Failing to warn or advise those who live or work in the community, that they were being exposed to EtO;

- d. Failing to adequately record test results of high levels of EtO;
- e. Ignoring test results of high levels of EtO;
- f. Underreporting EtO levels; and
- g. Subjecting those who live and work nearby its facility to an elevated cancer risk.

86. As a proximate result of one of the aforesaid negligent acts or omissions, Plaintiff Kathleen Koch suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Vantage Specialty Chemicals, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT VI
Willful and Wanton Conduct
(On Behalf of Plaintiff and Against Defendant Vantage)

87. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

88. At all times relevant, Defendant Vantage owed a duty to refrain from willful and wanton conduct and/or conduct which exhibited an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiff and those living and working in the area surrounding its facility.

89. Notwithstanding its duty, Defendant Vantage breached its duty in one or more of the following ways:

- a. Emitting dangerous volumes of EtO into the air from its facility;
- b. Disregarding safe methods to adequately control EtO emissions from the its facility;
- c. Failing to warn or advise those who live or work in the community, that they were being exposed to EtO;
- d. Failing to adequately record test results of high levels of EtO;

- e. Ignoring test results of high levels of EtO;
- f. Underreporting EtO levels; and
- g. Subjecting those who live and work nearby its facility to an elevated cancer risk.

90. As a proximate result of one of the aforesaid willful and wanton acts or omissions, Plaintiff, Kathleen Koch, suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Vantage Specialty Chemicals, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

COUNT VII
Public Nuisance
(On Behalf of Plaintiff and Against Defendant Vantage)

91. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

92. On and after 1985, Defendant Vantage knew EtO to be hazardous and harmful to humans.

93. The general public has a common right to breathe clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject

to reasonable limitation and regulation as the General Assembly may provide by law.

94. Defendant Vantage's use and emission of EtO from its facility substantially and unreasonably infringes upon and/or transgresses this public right.

95. Defendant Vantage knew that the levels of EtO gas emitted from its facility would have a toxic, poisonous, and deleterious effect upon the health, safety, and well-being of people living and working in the community.

96. Defendant Vantage should have known that the levels of EtO gas emitting from its facility would have a toxic, poisonous, and deleterious effect upon the health, safety, and well-being of persons breathing it.

97. The Defendant's operation, maintenance, and use of its facility caused those who live and work in the area surrounding its facility to breathe air containing high levels of EtO on a routine and constant basis, causing a substantially elevated risk of cancer.

98. As a proximate result of the Defendant's operation, maintenance, and use of its facility, Plaintiff's and the general public's common right to breathe clean air without dangerous levels of carcinogens such as EtO was eliminated and/or severely diminished.

99. As a proximate result of Defendant's operation, maintenance, and use of its facility, EtO continuously invaded and caused to be contaminated the areas immediately surrounding and on Plaintiff's residence.

100. As a proximate result of Defendant's use and emission of EtO, Plaintiff was exposed to and inhaled great amounts of EtO.

101. As a proximate result of Defendant's use and emission of EtO, Plaintiff sustained and will continue to sustain severe and permanent damage to health due to the emission of EtO.

102. As a proximate result of Plaintiff's inhalation of EtO from the Vantage facility, Plaintiff suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Vantage Specialty Chemicals, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois

COUNT VIII
Ultrahazardous Activity/Strict Liability
(On Behalf of Plaintiff and Against Defendant Vantage)

103. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

104. Vantage's use and emission of EtO from its Gurnee facility constitutes an ultra-hazardous activity.

105. Vantage's use and emission of EtO created a high degree of risk to those who live and work and the surrounding area. Further, the likelihood of cancer caused by its use and emission of EtO is as much as five times the level of acceptable risk.

106. Vantage's use and emission of EtO is especially inappropriate given the densely populated residential and commercial area in which its facility is located.

107. The activities conducted by Vantage are exceedingly dangerous and offer little to no value to the surrounding community.

108. Because the activities of Vantage are ultrahazardous, it is strictly liable for any injuries proximately resulting therefrom.

109. As a direct and proximate result of Vantage's ultrahazardous activities, Plaintiff was exposed to and inhaled great amounts of EtO.

110. As a proximate result of Plaintiff's inhalation of EtO from the Vantage facility, suffered injuries of a personal and pecuniary nature.

WHEREFORE Plaintiff Kathleen Koch demands judgment against Defendant Vantage Specialty Chemicals, Inc. in an amount in excess of the minimum amount required for jurisdiction in the Law Division of the Circuit Court of Cook County, Illinois.

Respectfully submitted,

KATHLEEN KOCH,

By: 
One of Plaintiff's Attorneys

Daniel Kotin
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