

**MASS & TOXIC TORT UPDATE****EPA Declares Formaldehyde a Human Carcinogen**

Earlier this month, the U.S. Environmental Protection Agency (EPA) released its draft human health assessment for formaldehyde (*Toxicological Review of Formaldehyde Inhalation Assessment: In Support of Summary Information on the Integrated Risk Information System [IRIS]*) for peer review by independent agencies and public comment. The draft assessment, which focuses on evaluating the potential toxicity of exposures to formaldehyde by inhalation, concludes that “**formaldehyde is carcinogenic to humans**” by inhalation exposure. In its review, the EPA announced that “Human epidemiological evidence is sufficient to conclude a causal association between formaldehyde exposure and nasopharyngeal cancer, nasal and paranasal cancer, all leukemias, myeloid leukemia and lymphohema topoietic cancers as a group.”

**FORMALDEHYDE IS EVERYWHERE**

Formaldehyde has been produced commercially since the early 1900s and, in recent years, has been ranked in the top 25 highest volume chemicals produced in the U.S. It is popularly known for its use in the embalming process, but it is a ubiquitous chemical that is used in numerous industries. Formaldehyde can be found in building materials such as particleboard, plywood and fiberboard; glues and adhesives; permanent-press fabrics; paper product coatings; and certain insulation materials. It also is used as an antimicrobial agent in many cosmetic products including soaps, shampoos, hair preparations, deodorants, lotions, make-up, mouthwashes and nail products. In addition, formaldehyde is commonly used as an industrial fungicide, germicide and disinfectant.

**CAUSE FOR CONCERN**

The EPA’s draft is consistent with the International Agency for Research on Cancer’s (IARC) position, which classified formaldehyde as a Group 1 human carcinogen. In 2004, IARC determined that there was **sufficient evidence** in humans for the carcinogenicity of formaldehyde as it relates to nasopharyngeal cancer. Prior to 2004, IARC concluded only that formaldehyde was **probably carcinogenic to humans**, based on the smaller number of studies available at that time. In 2004, the organization looked at a number of studies regarding possible associations between exposure to formaldehyde and cancer at a number of sites, including the oral cavity, oro- and hypopharynx, pancreas, larynx, lung and brain. IARC considered the overall balance of epidemiological evidence and found that it did not support a causal role in relation to any cancer other than nasopharyngeal cancer. In November 2009, IARC updated its position on the causal connection between formaldehyde and leukemia and concluded that there is **sufficient evidence** that formaldehyde causes leukemia in humans.



## LEGISLATION AND LITIGATION

In 1987, the EPA classified formaldehyde as a probable human carcinogen under conditions of unusually high or prolonged exposure. The current draft assessment finds that formaldehyde could be up to five times more likely to cause cancer in humans than the EPA previously calculated. The EPA's preliminary conclusions find that formaldehyde can cause up to one occurrence of cancer for every 1,000 people who breathe it at exposure levels the Centers for Disease Control and Prevention (CDC) considers "typical." The EPA's draft further finds that formaldehyde exposure could increase the frequency of asthma attacks among children and result in harm to children's lung function and their immune systems.

Last week, in related legislation, The Formaldehyde Standards for Composite Wood Products Act (H.R. 4805) (the "Act") was passed in the House, amending the Toxic Substances Control Act, to set stricter formaldehyde emissions limits for plywood and other composite wood products. The Senate approved the Act (S.1660) earlier in June. The Act sets a formaldehyde emission standard of roughly 0.09 parts per million (ppm) on all composite wood products sold in the U.S., beginning on January 1, 2013. To ensure compliance with the new 0.09 ppm standard, composite wood manufacturers will be required to submit their products for third-party testing and certification in time to meet the January 2013 deadline. The bill also directs that the EPA establish one national standard for formaldehyde in domestic and imported composite wood products. The legislation gives the EPA until January 1, 2013 to issue regulations implementing the bill's emissions standards and until July 1, 2013 to revise import regulations to ensure that imported products comply with those standards.

This legislation was prompted, in part, by concerns raised over formaldehyde emissions from trailers supplied by the Federal Emergency Management Agency (FEMA) to New Orleans residents following hurricanes Katrina and Rita in 2005, many of which had formaldehyde levels higher than U.S. residents typically experience, according to FEMA and the CDC. Lawsuits resulting from alleged toxic formaldehyde emissions in FEMA trailers have been consolidated in MDL No. 07-1873, *In Re: FEMA Trailer Formaldehyde Products Liability Litigation* in the United States District Court for the Eastern District of Louisiana.

## HOW CAN YOU BEST PREPARE?

With respect to formaldehyde or any other "toxin of the moment," education and prevention are essential to minimizing the risk of becoming embroiled in "bet-the-company" litigation.



---

### FOR MORE INFORMATION

Please contact:

Timothy J. Coughlin	216.566.5523	<a href="mailto:Timothy.Coughlin@ThompsonHine.com">Timothy.Coughlin@ThompsonHine.com</a>
Elizabeth B. Davis	404.407.3609	<a href="mailto:Elizabeth.Davis@ThompsonHine.com">Elizabeth.Davis@ThompsonHine.com</a>
Fern P. O'Brian	202.263.4185	<a href="mailto:Fern.OBrian@ThompsonHine.com">Fern.OBrian@ThompsonHine.com</a>
Elizabeth B. Wright	216.566.5716	<a href="mailto:Elizabeth.Wright@ThompsonHine.com">Elizabeth.Wright@ThompsonHine.com</a>

or any other member of our **Product Liability Litigation** practice group for more information.

If you do not wish to receive future communications by email, please send an email with "unsubscribe" in the subject line to [Stacy.Weiner@ThompsonHine.com](mailto:Stacy.Weiner@ThompsonHine.com).

This advisory may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.

© 2010 THOMPSON HINE LLP. ALL RIGHTS RESERVED.