

**National Toxicology Program  
United States Department of Health and Human Services  
Public Health Service  
Tenth (10<sup>th</sup>) Report on Carcinogens (2002)**

by

**Kurtis B. Reeg  
Chair  
FDCC Toxic Tort and Environmental Law Section  
Partner-Leritz, Plunkert & Bruning, P.C.  
St. Louis, MO**

On December 11, 2002, the National Toxicology Program, under the auspices of the Public Health Service, United States Department of Health and Human Services, located at the National Institute of Environmental Health Sciences, issued its biennial report on human carcinogens. The report lists both "known human carcinogens" and "reasonably anticipated carcinogens." The Report lists four new substances as "known carcinogens," upgrades one substance from an "anticipated" to a "known" carcinogen, and adds twelve substances to the "reasonably anticipated" category. While the Report lists a total of 228 substances, it does not present risk assessment of cancer potential.

This 2002 Report adds these substances as "known human carcinogens:"

Steroidal Estrogens  
Broad Spectrum Ultraviolet Radiation  
Wood Dust  
Nickel Compounds.

Those substances upgraded from "reasonably anticipated" to "known" human carcinogens are:

Beryllium  
Beryllium Compounds.

It is well known that **steroidal estrogens** are commonly used in oral contraceptives and estrogen replacement therapy (ERT). Human epidemiology studies have shown a demonstrated association between ERT and the risk of endometrial cancer, with a less consistent increase in the risk of breast cancer. Oral contraceptives which contain estrogen may protect against ovarian cancer and endometrial cancers, but have been associated with an increased risk of breast cancer.

The Report gives us official warning of what we have all known or at least suspected: **broad spectrum ultraviolet radiation (UVR)** is produced by the sun and artificial sources, including sun lamps, tanning beds, medical procedures and industrial polymerization reactions, and there is a cause and effect relationship between this

radiation and skin cancer, lip cancer and melanoma of the eye. Thus, tan, bronze and beautiful is not as healthy as it would appear.

**Wood dust**, something considered by many to be innocuous, is created when tools and machines saw, cut, form and finish wood. The Report concludes that unprotected workers have a higher risk of cancers of the nasal cavities and the sinuses.

Industry utilizes **nickel compounds** in batteries, ceramics and pigments, as well as in batteries. Nickel and nickel compounds have been added to the Report based on studies demonstrating excessive death rates from nasal and lung cancers.

**Beryllium and beryllium compounds** are the source of exposure to approximately 800,000 U.S. workers per year, including beryllium miners, alloy makers and fabricators, missile technicians, nuclear reactor workers, electric and electronics equipment workers, ceramics workers, and jewelers. The Report concludes that such workers have an increased risk of lung cancer in proportion to the amount of exposure.

The internet offers a quick source of the entire Report, along with its Table of Contents which give individual substance profiles, and then detail the Known and Reasonably Anticipated Carcinogens.

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The full Report is available at <http://ntp-server.niehs.nih.gov> and hard copies may be ordered at <http://www.ehponline.org> or by writing to the Environmental Health Perspectives, Attn: Order Processing, 1001 Winstead Drive, Suite 355, Cary, NC 27513. or fax 919-678-8696.

**PRACTICE POINTERS:** The Substance Profiles for the newly listed known carcinogens are set forth below. Each provides the data sources for the carcinogenicity potential of each substance or material, their properties and common uses, production volume (to put in perspective the volume of potential exposure), the regulatory references related to each substance, and then the relevant references. This material serves as a good source of raw data and reference material if you have a case in which real or potential exposure to any of the listed sources may provide you a basis to argue sole or alternative cause of disease or injury.

This author suggests that practitioners should utilize the lists of known and reasonably anticipated carcinogens from the Report in two ways. First, you should attach to your Interrogatories on plaintiffs these 2 lists. For example:

**INTERROGATORY 10. STATE WHETHER YOU HAVE EVER (OR WITHIN THE LAST \_\_ YEARS [IF YOU HAVE REASON TO LIMIT THE TIME FRAME DUE TO KNOWN SOURCES OF EXPOSURE] BEEN EXPOSED TO ANY OF THE SUBSTANCES LISTED ON EXHIBITS A AND B TO THESE INTERROGATORIES. IF SO, PLEASE STATE THE FOLLOWING:**

- A. EACH SPECIFIC MATERIAL OR SUBSTANCE TO WHICH YOU HAVE BEEN EXPOSED;**
- B. THE EMPLOYER AND SPECIFIC LOCATION WHERE SUCH EXPOSURE TOOK PLACE;**
- C. WHEN EACH SUCH EXPOSURE TOOK PLACE;**
- D. THE LENGTH OF EACH SUCH EXPOSURE;**
- E. THE AMOUNT OF EACH SUCH EXPOSURE DURING EACH SUCH EXPOSURE;**
- F. WHETHER ANY TESTING TOOK PLACE OR TEST RESULTS EXIST REAGRNDING EACH SUCH MATERIAL OR SUBSTANCE, AND, IF SO, THE NAME OF THE PERSON OR ENTITY WHICH CONDUCTED SUCH TEST(S), THE RESULTS OF EACH SUCH TEST, THE NAME OF ANY DOCUMENT MEMORIALIZING SAID TEST(S), THE LOCATION OF SAID TEST RESULTS OR DOCUMENTS RELATED THERETO, AND ATTACH TO YOUR ANSWERS COPIES OF SUCH TEST RESULTS OR DOCUMENTS;**
- G. ETC. You get the idea.**

Second, you can use these lists of substances with your experts for your causation defenses. If you know the Plaintiff was exposed to these substances, or that her employer manufactures or uses any of them, and that there was a likelihood of exposure to the Plaintiff, even if she denies it, you can develop your sole or alternative cause defense. The Report itself provides you an authoritative, learned, governmental treatise which should be admissible in evidence without any other authentication. This author believes such a source can be and is persuasive to both judges and juries in the toxic tort arena. Moreover, in these days of proliferating asbestos, lead, mold and similar litigation, with both fears of and real cancers often at issue, this lengthy, legitimate list of carcinogenic potential should assist corporate America in its defense of these cases.