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Via Federal Express and Email

John Gorman, Chief
Pesticides and Toxic Substances Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue, Building 10
Edison, New Jersey 08837-3679

Re: EPA Request to Provide Information

Dear Mr. Gorman,

This submission is made on behalf of Tonoga, Inc. dba Taconic (the "Company") with respect to EPA's Request to Provide Information dated April 4, 2016. As explained more fully in this transmittal letter, the Company does not believe its operations were historically or are currently subject to Section 8(e) reporting requirements of the Toxic Substances Control Act ("TSCA"), but would like to cooperate by voluntarily responding to EPA's request for information.

As you know, the Company's Petersburgh facility is located in a rural area not serviced by a public sewer system. From at least 1989 through 2003, New York State Department of Environmental Conservation ("NYSDEC") issued a succession of State Pollution Discharge Elimination System ("SPDES") permit renewals, specifically authorizing the discharge of process waste water through a permitted outfall. The permit and renewals are enclosed in this response. By 1999, the Company was transporting the process water off site to a treatment facility.

In 2001, the Company learned there were discussions between industry associations and EPA concerning PFOA. At the time, the PTFE purchased by the Company contained

approximately 1% PFOA.[1] Absent guidance from EPA, the Company decided in 2004 as a precaution to test groundwater for the presence of PFOA. The Company thought it best to send the analytical results to NYSDEC and the New York State Department of Health ("NYSDOH") (with a copy to the Rensselaer County Department of Health ("RCDOH")) along with a request for a meeting and guidance. There was neither a written nor oral response from the agencies in 2005 or for the ensuing ten years. We recently confirmed that NYSDEC and NYSDOH possess in their files the data the Company supplied in 2005 as well as the Company's request for guidance.[2]

In the absence of any response or guidance from the State agencies, the Company decided to install carbon filtration on facility wells and to provide bottled water to employees and Company-owned residences. A well modification application citing the presence of PFOA in groundwater was submitted to RCDOH on September 30, 2005. RCDOH approved the application on January 4, 2006.[3]

For the past ten years NYSDEC has been familiar with every aspect of the facility operations. From 2005 through the present, NYSDEC has conducted at least 12 detailed air and RCRA inspections at the facility (EPA conducted a multi-media inspection on December 1, 2005 and RCDOH conducted at least 6 water inspections). PFOA was never raised as an issue. The well filtration system was obvious as was the bottled water supplied to the facility and residences.

After PFOA was listed as a hazardous substance by NYSDEC on January 27, 2016, the Company approached NYSDEC to discuss the PFOA analysis that had previously been submitted. NYSDEC seemed unaware of the analysis (ultimately NYSDEC and NYSDOH located the analysis and unanswered request for guidance in their files). The Company offered again to provide its sampling information and did so. The Company also suggested that the involved agencies meet at the facility.

Present at the meeting on February 10, 2016, were Taconic, representatives from NYSDEC, NYSDOH, RCDOH and the Office of the Rensselaer County Executive. The Company provided binders containing previous sampling results. There was a discussion concerning the best way to remediate the site and what interim remedial measures would be provided.

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[1] Beginning in 2006, the Company began purchasing PTFE containing the lowest available concentration of PFOA. Since 2013, the Company no longer used PTFE containing PFOA.
[2] The 2005 cover letters to the agencies are enclosed as documents numbered TAC EPA 04774 and TAC EPA 04775.
[3] The September 30, 2005 application, December 27, 2005 follow up correspondence from Taconic to RCDOH, January 4, 2006 RCDOH approval, and February 21, 2006 CHA certification of installation are enclosed as documents numbered TAC EPA 04776 through TAC EPA 04796.

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During the past three months, the Company, in consultation with NYSDEC, NYSDOH and the RCDOH, installed carbon filtration systems on more than 30 drinking water wells, provided bottled water to residents and worked to further address water supply issues in the Town, including agreeing to design and install a treatment system for the municipal water supply. The Company also cooperated with a request for information issued by NYSDEC.[4]

When I spoke with your colleague, the issue of TSCA notification was raised. There was no basis or rationale at the time to contact EPA:

- The Company purchased PTFE which contained one percent or less of PFOA and has never "manufactured, processed or distributed PFOA in commerce" within the meaning of TSCA (and as of 2013 there was no longer PFOA in the PTFE it purchased);

- EPA had no regulatory limit for PFOA at the time the material was found in the groundwater nor was it characterized as a hazardous substance or hazardous waste; and

- The enforcement of RCRA and the CWA was delegated to NYSDEC in 1984.

TSCA Section 8(e) was not applicable based upon the circumstances that existed. More to the point, the Company decided to alert every governmental entity that had oversight. Thus, the Company chose to notify NYSDOH (which had established a default limit for all unspecified organic contaminants) and its companion agency, the NYSDEC, and the RCDOH, which was involved in local water quality. This was in all respects a rational response by the Company.

We believe State and local regulatory personnel if asked, would confirm that the Company has endeavored in all respects to act responsibly and sought to cooperate with regulators throughout its period of operation.

In an effort to ensure that all regulatory authorities possess the same information, we are providing the entire submission previously provided to NYSDEC on April 15, 2016. Documents responsive to EPA's requests are numbered in lower right corner as "TAC EPA" and these numbers are referenced in our written responses. Documents that were previously provided to NYSDEC also contain a NYSDEC document number located below the TAC EPA number. Where applicable, we provide a cross-reference to the NYSDEC number in our written responses.

[4] Many of the documents responsive to NYSDEC's request are also relevant to this request, and cross referenced where appropriate. The entire response to NYSDEC is enclosed as documents numbered TAC EPA 00001 through TAC EPA 04603.

If you believe it worthwhile, we would be available to further discuss any questions you may have.

Very truly yours,

Scott N. Fein by mhl

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