

Exhibit 7

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** TRANSCRIPT IS MARKED , **
STATE OF NEW YORK
SUPREME COURT COUNTY OF RENSSELAER

JAY BURDICK, CONNIE, PLOUFFE, EDWARD PLOUFFE,
FRANK SEYMOUR, EMILY MARPE, as parent and
natural guardian of E. B., and infant, and G.Y.,
an infant, JACQUELINE MONETTE, WILLIAM SHARPE,
EDWARD PERROTTI-SOUSIS, MARK DENUE, and MEGAN
DUNN, individually and on behalf of all
similarly situated,

Plaintiffs,

- Against -

Index No: 00253835
TONOGA, INC. (d/b/a TACONIC),
Defendants.

VIDEOTAPED DEPOSITION OF: MALCOLM GREEN

DATE: Friday, September 21, 2018
TIME: 10:04 a.m. - 3:55 p.m.
HELD: Bond, Schoeneck & King, PLLC
22 Corporate Woods Boulevard
Albany, New York 12211

Job No. 3013482

BEFORE: Tara M. Drake, RPR
Registered Professional Reporter and
Notary Public in and for the State
of New York
Corrine Gates, videographer

1 gentleman's name was Rich Carzekus or something
2 like that.

3 Q Thank you.

4 Now, Mr. Green, when did you first learn
5 that PTFE dispersions contained the chemical
6 APFO?

7 A I don't recall.

8 Q Do you recall whether it was in the time
9 period between '93 and '99?

10 A Yes. I believe it's listed as a trace
11 element on a dat- -- MSDS sheets.

12 Q Okay. Other than being listed as a
13 trace element, though, did you, during that time
14 period from '93 to '99, become familiar with
15 what its role was in PTFE dispersions and also
16 what its potential hazardous nature was?

17 MS. DUFFY: Object to form.

18 Q You can answer. She's just preserving
19 objection.

20 A Oh, okay. Restate the question, please.

21 Q Sure. It wasn't a very good question.
22 Let me -- let me break it down to two.

23 In the -- in the period of '93 to '99,
24 did you understand what the purpose of APFO was
25 in a PTFE solution?

1 and these were -- this design process -- or this
2 design exercise was for the first of, I think it
3 was, three coating towers that were added into
4 that building.

5 Q Okay. So the new building would be six;
6 is that correct?

7 A I don't remember the building -- I don't
8 know the building nomenclature.

9 Q But it is the building on Coon Brook
10 Road, on the north side of Coon Brook Road? Is
11 that where Building 6 is?

12 A It's -- so the building that has the
13 electrostatic precipitator Smog-Hog in it, it --
14 this building I'm referring to was the one that
15 was built behind that, where the first Fume
16 Eliminator was added.

17 Q Okay. And just -- we're going to get to
18 this later, but the device that you're referring
19 to as the electrostatic precipitator or the
20 Smog-Hog, that's a -- a device that's intended
21 to -- to remove particulate matter from
22 emissions?

23 A I guess, yes, that's a good -- good way
24 of clarifying it.

25 Q In other words, that -- that's a process

1 where it goes through charged grates and -- and
2 the charges on particular particles are
3 attracted to the opposite charges, and that
4 takes it out of the effluent? Is that the
5 concept behind electrostatic precipitators?

6 A As I understand it, yes.

7 Q And at the time you started, was that
8 the only air pollution control mechanism that
9 was being used at Taconic?

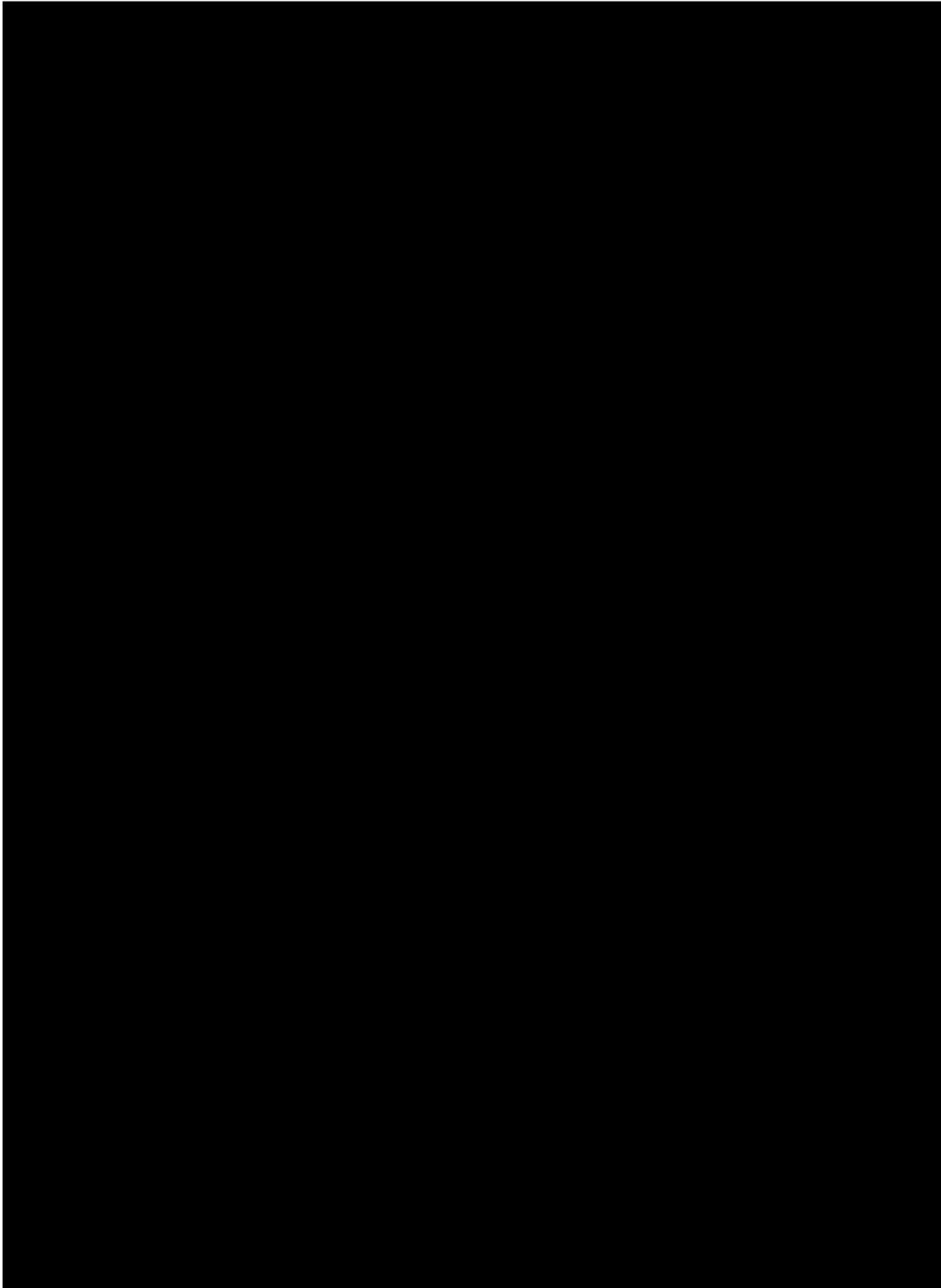
10 A I believe so, yes.

11 Q Okay. So the -- the -- there were ovens
12 in preexisting buildings that were there when
13 you got there that used this Smog-Hog or
14 electrostatic precipitator as its -- its
15 emissions control device, correct?

16 A Yes.

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Q Okay. And as you sit here today, what's your understanding of what that device was?

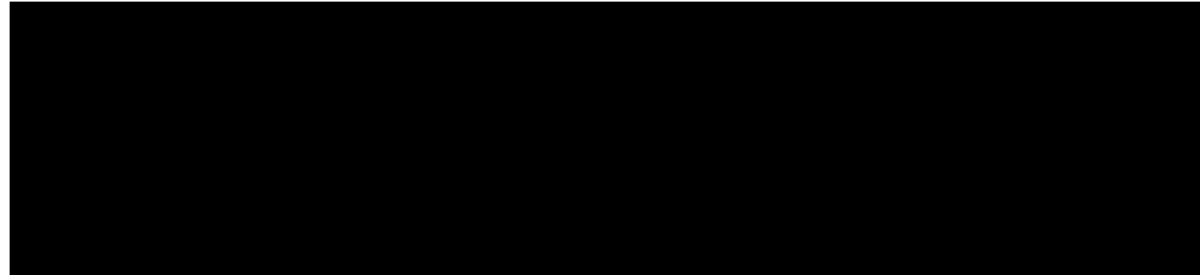
A Okay. So as I understand it -- again, going back over 20 years -- the device would take the rinse water and there was a series of steps. One involved a -- I forget. There's a floatation or a chemical -- chemical treating to try to remove some solids out of the wastewater stream or waste stream. And then there was an evaporation step to evaporate the water from the unit.

Q And during the evaporation step, where did the -- the water vapor and whatever else evaporated go?

A I believe it went to a stack. It just was a -- went to a stack.

Q So it didn't go through any particular pollution control device that you're aware of?

A Not that I'm aware of.



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Q In other words, any -- any remnants of the dispersion that was first applied had to be removed from the equipment so it doesn't mix in with the new dispersion that's going to be applied on the second or third or eighth coat or whatever?

A Correct.

Q And the process of doing all that cleaning and cleaning the pans that held the dispersion generated this wastewater that is being discussed here?

A Yes.

Q And so that wastewater would contain remnants of the PTFE dispersion that had been cleaned off the equipment?

A Yes.

Q And prior to this date, the time that you were going to implement this evaporator unit, you say, "Currently this waste [sic] water" -- or, "the water is going into our septic system, which undergoes periodic testing for contaminant [sic] level," correct?

A That's what it states.

1 Q Okay. So prior to the use of this
2 evaporator unit, which was about to come online
3 in January of 1996, the wastewater containing
4 the remnants of the PTFE dispersion was put into
5 the septic system in the ground, correct?

6 A The wastewater was -- was handled in
7 accordance with the SPDES permit.

8 Q I'm sorry. My question was: The
9 wastewater that had PTFE dispersion in it was
10 deposited in a septic system in the ground,
11 correct?

12 A So the wastewater was handled in
13 accordance with our SPDES permit.

14 Q Are you having trouble understanding my
15 question?

16 A No. I -- the sentence that was left out
17 of here was that -- I mean, this -- the document
18 states that "currently the water is going into
19 our septic system, which undergoes periodic
20 testing for contaminant [sic] level." Looking
21 back on it now, should have had a sentence in
22 there that states "in accordance with our SPDES
23 permit."

24 Q All right. Did the SPDES permit --
25 withdraw that question.

1 This is a yes-or-no question. Was the
2 PTFE dispersion remnants in the wastewater
3 deposited in a septic system in the ground, yes
4 or no?

5 A Well, I can read what it says here:

6 "Currently the water is going into
7 our septic system, which undergoes periodic
8 testing for contaminant [sic] level."

9 Q Okay. And the septic system was in the
10 ground?

11 A I would believe so.

12 Q All right. Do you have knowledge of
13 it -- of a septic system that's not in the
14 ground that was used somewhere at Taconic?

15 A No.

16 Q Okay. And this process, of disposing of
17 the wastewater with the remnants of the PTFE
18 dispersions into the septic system in the ground
19 at the facility, had been going on from the time
20 the manufacturing started in the '60s until this
21 period of time in 1996, when a change was being
22 made. Is that a fair statement?

23 MS. DUFFY: Objection. Lacks
24 foundation.

25 A So I can only reply to what I knew when

1 I was there or what I recall when I was there.

2 Q And what do you recall when you were
3 there?

4 A That much as this -- this -- this
5 document states -- you know, I can read it
6 again.

7 "Currently the water is going into
8 our septic system, which undergoes periodic
9 testing for contaminant [sic] level."

10 And, again, that was in accordance
11 with the SPDES permit.

12 Q Okay. But my question is: Did you have
13 any knowledge of Taconic disposing of the
14 wastewater that contained the -- the remnants of
15 the PTFE dispersion in any other way other than
16 it was currently being done, of putting it into
17 the septic system, before you got this evaporator
18 unit?

19 A I can't speak to what took place before
20 I was at Taconic.

21 Q Well, you can speak to it if you knew
22 about it, but you're saying that you didn't --
23 you didn't have any knowledge of there being any
24 other process other than the septic system up to
25 the time that the -- the evaporator unit was

1 placed?

2 A Again, I don't -- I don't know what
3 existed there before I started there.

4 Q Okay. And when you say that "undergoes
5 periodic testing for contaminant [sic] level,"
6 what contaminants were you referring to there?

7 A I don't recall.

8 Q What is a "contaminant" in your lexicon?

9 A I don't know. I mean, sawdust can be a
10 contaminant. I mean, it's a -- a compound or
11 material.

12 Q A compound or material that -- that
13 shouldn't otherwise be there?

14 A Not necessarily. I mean, it's just
15 something that -- that may be there. Again,
16 even in this situation, the -- there was a --
17 obviously a permit that allowed us -- that
18 allowed a -- a -- a -- allowed the handling of
19 the wastewater stream.

20 Q Okay. I'm just wondering what --
21 what -- what contaminants do you believe were
22 being periodically tested for at that point?

23 A I don't remember.

24 Q Do you believe APFO was one of those
25 contaminants?

1 A Likely not.

2 Q Okay. Did you have an understanding of
3 whether APFO was -- was a chemical that was
4 soluble in water?

5 A I don't recall.

6 Q At the bottom of this note, you -- you
7 sent by fax to Mr. Carroll, the last sentence --
8 or, the last two sentences, excuse me, says
9 that:

10 "Future uses of the unit may be to
11 condense excess water obtained in our Fume
12 Eliminator, the replacement machine for the
13 electrostatic precipitator, 'smog hog'."

14 Do you see that?

15 A I see that.

16 Q Okay. So the Fume Eliminator you
17 mentioned previously was the replacement
18 technology for the Smog-Hog or the electrostatic
19 precipitator device, correct?

20 A Eventually, yes. For a while, both
21 machines existed. I don't -- I don't recall
22 exactly when the Smog-Hog was taken off line.

23 Q What do you understand to be the -- the
24 type of pollution control device that the Fume
25 Eliminator was?

1 A So, essentially, it had two main --
2 again, I'm going back on my recollection of --
3 of the equipment. Two mains -- two main methods
4 of scrubbing or cleaning the -- the air stream.

5 One, I believe, the air went -- would
6 initially pass through a bubbler tray or a water
7 tray or water mist or some sort of water
8 process. The air stream then went into a large,
9 basically, drum filter and would pass through
10 this drum filter media material.

11 There was a pressure drop indicator --
12 some sort of pressure sensor that would measure
13 the pressure drop across that filter and then
14 index the filter media. That filter media would
15 be replaced every so often.

16 Then the airflow stream went into a
17 second vertical standpipe of filter media that
18 was replaced on a much longer time period. The
19 thought being that the initial filter media
20 catches, you know, most of what's there and is
21 replaced more frequently. The second stand
22 pipes would be replaced -- I don't know if was
23 every 6 months to 18 months or something like
24 that.

25 Q And what were the -- the media that were

1 used in the filtration in those two different
2 zones?

3 A I don't remember exactly. I mean, I
4 recall it looked like fiberglass filtration, but
5 I don't remember exactly what the -- what the
6 makeup was. I'd have to look at it.

7 Q So the -- is it a fair statement that
8 the -- the purpose of -- of this device was as a
9 scrubber to remove particulate matter?

10 A Sure.

11 Q And the two different filtration systems
12 were to -- designed to remove different --
13 different sizes of particulate matter?

14 A I'm not sure that's exactly correct.
15 One was more of a prefilter and the second one
16 was just a secondary catch filter.

17 Q Now, the -- the liquid portion of this
18 process, the bubbler that you mentioned, that
19 liquid was contained in the unit; it was a
20 closed system for that, correct?

21 A That's my understanding.

22 Q And that liquid had to be changed out on
23 a periodic basis?

24 A I believe so, yes.

25 Q Was it your understanding that the Fume

1 Eliminator would remove any APFO that was in the
2 -- the dispersion?

3 A I don't recall.

4 Q Now, on the second page of Exhibit 287
5 is a memo that you wrote a few weeks prior to
6 the -- 13 days prior to your contact with Mr.
7 Carroll, correct?

8 A Yes.

9 Q And I should have asked you this
10 before, but do you recall Mr. Carroll and what
11 his role was at DEC?

12 A I -- I vaguely remember the name having
13 gone through some of these documents, but he was
14 our contact person there. I don't know what
15 his -- you know, what level he was at.

16 Q Was he your contact person for all --
17 all purposes at DEC or for air --

18 A I don't recall.

19 Q -- issues?

20 Okay. So going back, then, to the
21 second page, which I started you on and asked
22 you questions about the first again. I
23 apologize. This appears to be a memo that you
24 wrote to Mr. Quintus, correct?

25 A Yes.

1 A I can only read -- I recall from what's
2 -- what's written on the memo here.

3 Q It was?

4 A Okay.

5 Q Yes?

6 A It says this is due to excess -- well,
7 inferring from this memo that, yes, it would go
8 into that, into underground tank.

9 Q And from that tank, it would then go
10 into the evaporator?

11 A That would be my guess, yes.

12 Q Okay. So what you're saying in this
13 memo is the volume of the -- the ditch
14 wastewater and the volume of the water that was
15 -- the -- the -- contained water in the Fume
16 Eliminator was too great for the evaporator?

17 A Well, in addition to this, what she
18 refers to as the groundwater seeping into the
19 underground storage tank.

20 Q Okay. So let's get to that. So the --
21 the volume of liquid for the ditch water was
22 being increased because groundwater was seeping
23 into the underground tank, according to this
24 memo?

25 A That's what it states.

1 in -- at Taconic, Building 4 had four coating
2 towers: 7, 8, 9 and 10. 11 and 12, I believe,
3 were under construction. Building 5 did not
4 exist when I first started. And that was
5 added -- Phil Steinhauser added that, and then
6 CA, CB, and CC were the first three newer towers
7 that we put in rel- -- and they relate to the
8 design document that I put out regarding the
9 heat input requirements.

10 Q Great. Thank you. That's very helpful.

11 (Exhibit 296 is marked for
12 identification.)

13 BY MR. SCHWARZ:

14 Q All right. This will be Exhibit 296.
15 And this is a memo dated June 26th, 1998, and it
16 is from, again, Ms. Burzesi to you -- to Mr.
17 Russell, copied to you and a number of others,
18 and appears to reflect the Fume Eliminator
19 testing. Why don't you take a look at that.

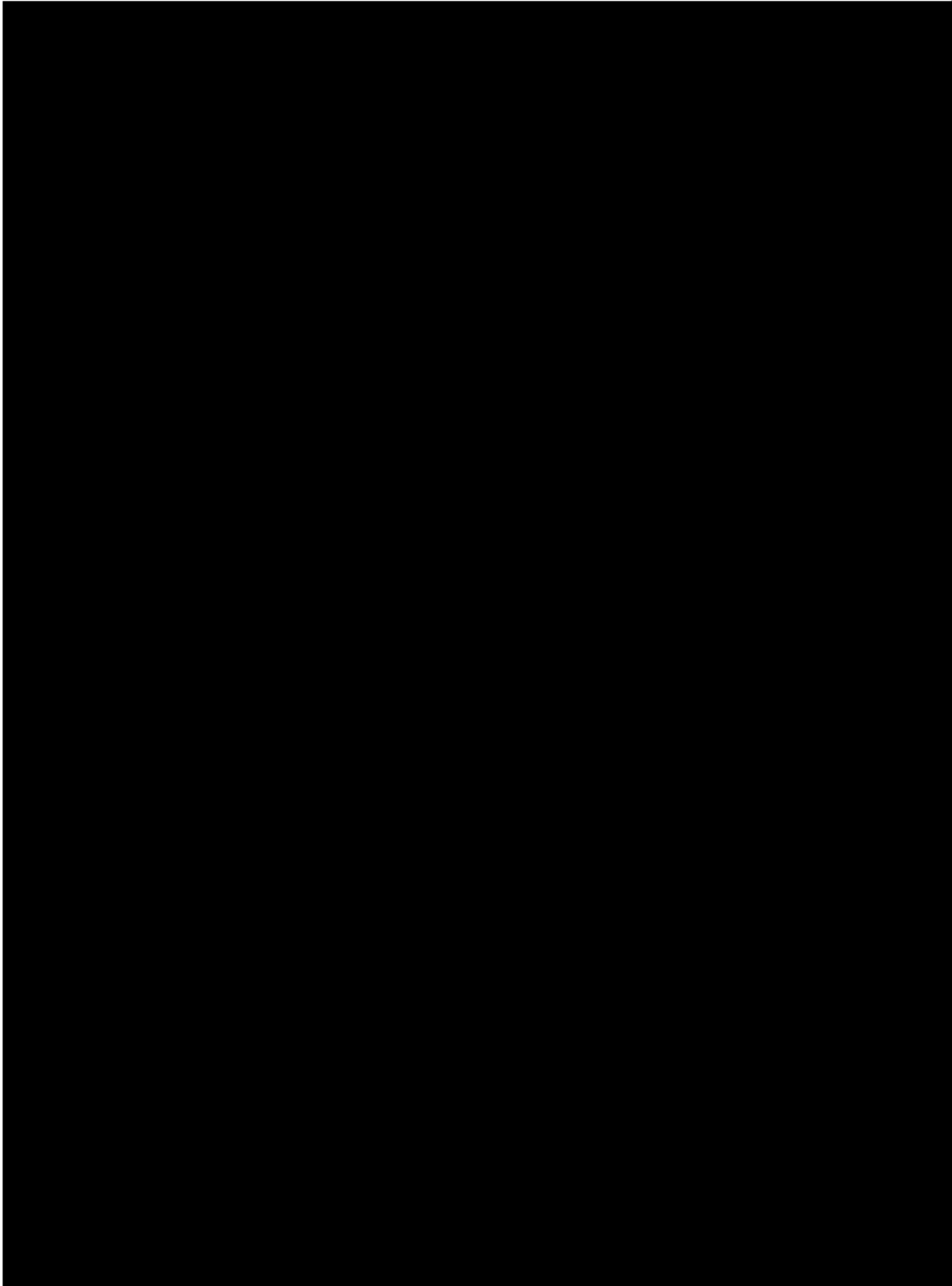
20 A Okay.

21 Q So do you have any recollection of
22 testing being done on the Fume Eliminator
23 wastewater for various constituents?

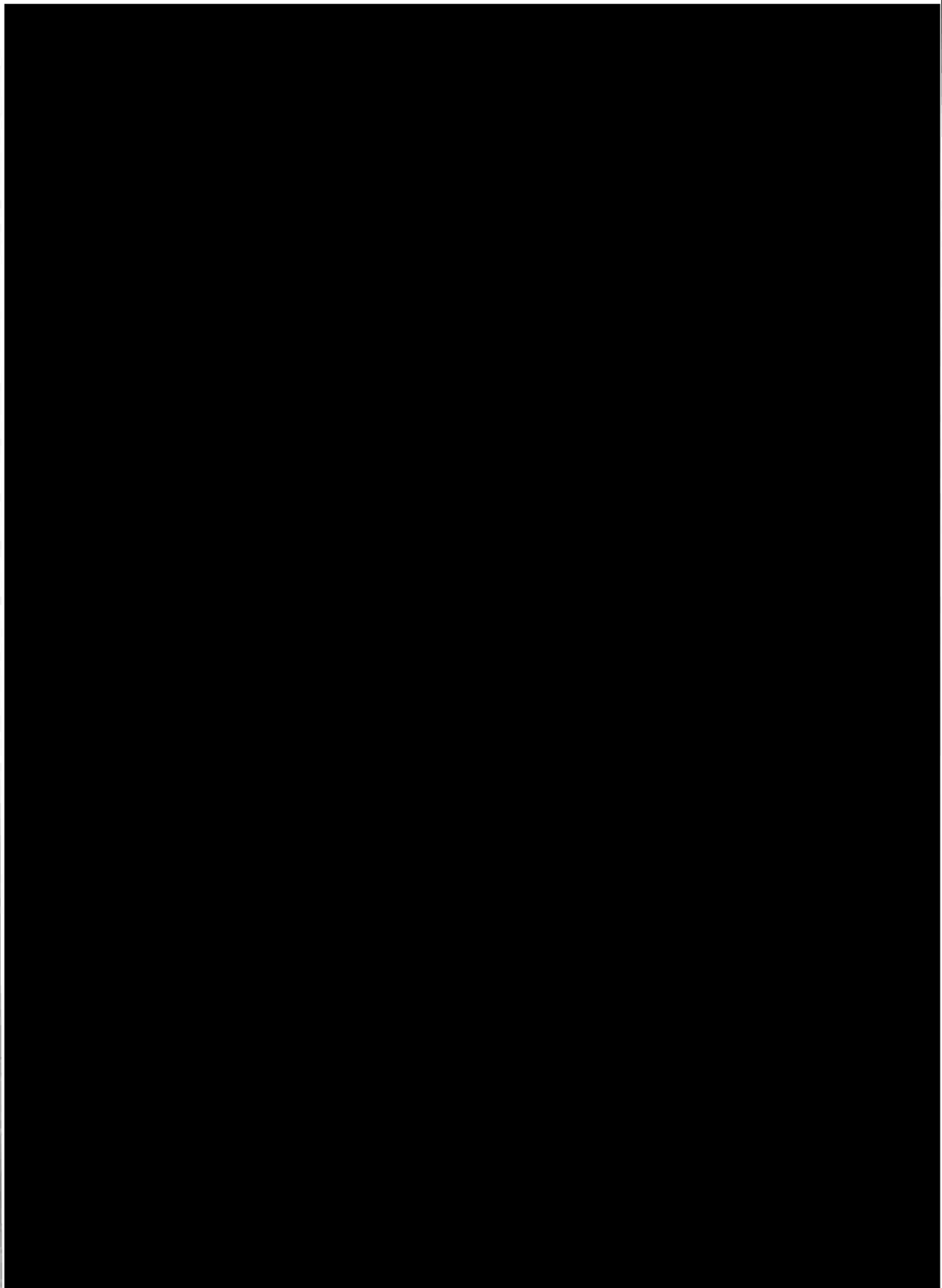
24 A Not per se.

25 Q There's a reference here to running

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1 Q Okay. So if you look at the Exhibit 315
2 results, which are the last page, I think --

3 A Okay.

4 Q -- they have readings for hydrogen
5 fluoride, ammonia, and ammonium
6 perfluorooctanoate, and the -- the unit that
7 they appear to test to is in pounds per hour.

8 A I see that. There's also a column for
9 THC.

10 Q And what do you believe that --

11 A I think that's total hydrocarbons, but
12 I'm guessing at that.

13 Q Okay. But that's also in pounds per
14 hour?

15 A They're all pounds per hour, yes.

16 Q Right.

17 So if ammonium perfluorooctanoate was
18 only a small quantity of the PTFE dispersion,
19 would you expect that measuring it in pounds per
20 hour would be an effective way to determine the
21 concentrations that were existing?

22 A I don't know.

23 Q Did anybody question that with regard to
24 the test method of having a -- it seems like the
25 -- the -- the less than would indicate that that

1 would be the -- the detection limit.

2 Is that how you interpret it?

3 A That's the way I would interpret it; so
4 the less than .0002 for both the ammonia and
5 ammonium perfluorooctanoate would indicate that
6 the -- the -- the testing did not detect any or
7 couldn't -- that's the level -- the lowest level
8 it would detect it.

9 Q Right.

10 And so the -- the question is whether
11 that provided any level of comfort or certainty
12 as to how much ammonium perfluorooctanoate was
13 being released into the air, if that was the
14 detection limit.

15 Was there any discussion about that?

16 A I don't recall what discussion took
17 place after this.

18 Q Do you remember DEC ever discussing
19 again the -- the results of your testing with
20 you, after you sent it to them in December of
21 1997?

22 A Not that I recall, no.

23 Q And you remained at Taconic for another
24 two years, right?

25 A Roughly, yes.