

Exhibit 9

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COUNTY OF RENSSELAER
STATE OF NEW YORK
SUPREME COURT

Index No. 00253835
Hon. Patrick J. McGrath

JAY BURDICK, CONNIE PLOUFFE, EDWARD PLOUFFE, FRANK SEYMOUR, EMILY MARPE, as parent and natural guardian of E.B., an 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,

v.

TONOGA INC., (d/b/a TACONIC),
Defendant.

VIDEO DEPOSITION OF ANDREW KAWCZAK
TAKEN AUGUST 21, 2018
AT HOLIDAY INN BERKSHIRES
40 MAIN STREET
NORTH ADAMS, MASSACHUSETTS

Reporter: Elizabeth P. Duffy

Job No. 2968966

1 throes of separating their company. And so when I
2 was initially hired for about a two-week period, I
3 was going to be managing one division and there was
4 another employee who was going to be sort of
5 managing the other division.

6 The company that wanted to buy one
7 division was called Rogers Corporation. They wanted
8 to buy the laminates that Taconic makes, which were
9 basically naked printed circuit boards, and I was
10 going to be the environmental manager for the rest
11 of the coating process.

12 Few weeks after I got there, the
13 business arrangement went south. They decided not
14 to split the business and I was, by default, manager
15 of the whole operation, and that's how I got
16 started.

17 Q. Okay. Now, when you became the
18 environmental manager then, for the whole
19 operation -- and that would be the whole operation
20 in Petersburg, New York?

21 A. That is correct.

22 Q. Was there an environmental manager that
23 preceded you?

24 A. If there was, I was not aware of it.
25 There were people handling environmental things.

1 There was a Joel Schroeder [phonetic] who also ended
2 up working for me. He later became a safety
3 manager. He was handling most environmental things.
4 I'm not sure he actually had the manager title, but
5 he was doing the best he could to manage things on
6 site.

7 (Exhibit 193, PowerPoint Presentation, marked
8 for identification)

9 (BY MR. SCHWARZ)

10 Q. I'm going to show you a document that
11 we've marked as Exhibit 193 that was produced to us
12 in discovery, which appears to be a PowerPoint
13 presentation. And I want to ask you first to take a
14 look at that and ask you if you recognize that
15 document?

16 A. It's been a long time. Looks like
17 something I would have crafted.

18 Q. Okay. On the first page of Exhibit
19 193, there's a reference to a state DEC consent
20 order status and requirements. Do you recall what
21 the nature of the state consent order was on August
22 30th, 2001, approximately a few months after you
23 were hired?

24 A. When I was hired, I was not aware of
25 this particular issue. But naturally once I landed

1 in this slot as environmental manager, I became well
2 aware of it.

3 Basically Taconic was sued by the
4 attorney general of New York State for a
5 non-compliance of environmental regulations. More
6 specifically, they were related to at the time --
7 not PFOA because that didn't exist at the time in
8 terms of knowledge -- it was for essentially not
9 having an environmental program in place, a written
10 program in place, not having permitting for a
11 thermal oxidizer or any equivalent ignition control
12 device on some other coating adhesive operations.

13 It was just a litany of elements that
14 came out as a result of a complete audit by the
15 State of New York to say: Hey, these are your
16 shortcomings and here's what you did wrong. And oh,
17 by the way, you need to do this, this, and this.
18 You know, to get your attention, we're going to fine
19 the firm, I'm going to say, six or \$700,000.

20 It was a fairly large sum. And that's what
21 that consent order essentially was.

22 Q. And as part of that consent order, were
23 there any provisions that actually required that
24 someone be hired to fill the position that you
25 filled?

1 A. As I recall, yes. Full-time manager,
2 environmental program and audits. It was a rather
3 extensive list of requirements, as I recall.

4 Q. At the time that you were hired, were
5 the systems for environmental audits and the other
6 provisions required under the consent order in place ,
7 or did you have to develop those systems?

8 A. I was responsible to get them
9 developed. In reality, another set of attorneys
10 working for Taconic provided resources that do most
11 of the heavy lifting for the generation of an
12 environmental management system.

13 Q. In 2001 when you became the
14 environmental manager for the Petersburg operation,
15 were you responsible for any of the other Taconic
16 facilities located in other countries or other parts
17 of this country?

18 A. Not that I'm aware of. I say that
19 because it was never quite clear to me if I was just
20 an advisor. But I would say mostly I was only
21 better than 99 percent of the time responsible for
22 Petersburg. Later on as other business developed
23 in the state of California, I was responsible for
24 that. But that came a little bit later on.

25 Q. And was the facility in California a

1 topic at hand, which was PFOA.

2 Q. Okay, and we'll get to that. Now, at
3 the time that you began your role as environmental
4 manager, did you have an environmental budget that
5 you were able to utilize to quantify and reduce
6 environmental risks at Petersburg?

7 A. I never had an actual budget I
8 controlled. Budgets were created elsewhere within
9 Taconic and I drawdown that account until someone
10 said, "There's not enough money." But I would not
11 have an actual budget that I generated, I didn't
12 have an actual budget I controlled.

13 Q. When it came to issues such as
14 environmental testing that you thought was necessary
15 to determine environmental risk or quantify
16 environmental risk, how did you go through the
17 process of getting such testing approved?

18 A. Well, because I did not have a
19 budget -- I was not unique to that with this
20 company. But I would basically layout a case, go to
21 my manager and he would -- in this case, mostly
22 Larry Carroll. Not exclusively Larry Carroll but --
23 because there were other managers in place at
24 different times. They would lobby with my messaging
25 to the CEO, whose name is Andy Russell, and he would

1 agree or disagree about the need for spending that
2 kind of money. So it was a convince me, kind of way
3 in which the budget would be released.

4 Q. So was there any amount of money that
5 you were allotted that you had the discussion to
6 spend for things like environmental testing without
7 getting approval from anyone?

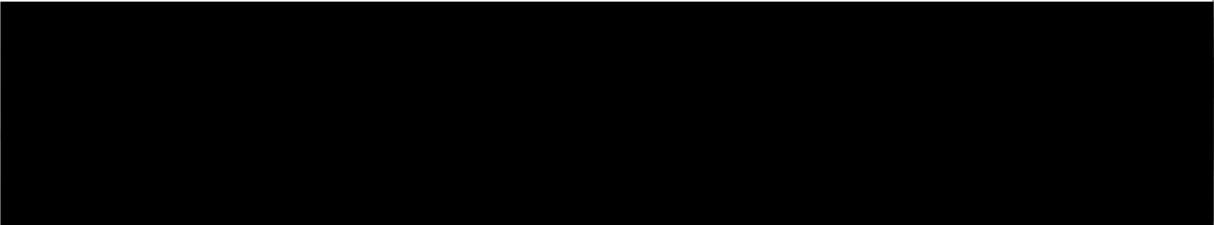
8 A. No.

9 Q. You mentioned that you had a manager or
10 managers and you mentioned Mr. Carroll, who is
11 present today to listen to your testimony. Were
12 there other managers that were in the role that Mr.
13 Carroll filled at some point, that you had to
14 convince about certain expenditures that you wish to
15 make?

16 A. Yes, there were two. One was Andy
17 Russell himself, which is the CEO. And they have
18 other titles also. And the other was Jim O'Keefe,
19 which was a president of Taconic at the time. So
20 initially for a few weeks it was with Andy Russell,
21 and a few months with Jim O'Keefe. And then by
22 default, because it made, you know, sense in terms
23 of hierarchy, Larry Carroll, CFO and other hats that
24 he wears, he became my manager.

25 Q. Was there any sort of executive

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Q. Was that something that had started already, that someone at Taconic had begun to accumulate information that was available in the scientific literature or in the media with regard to C8?

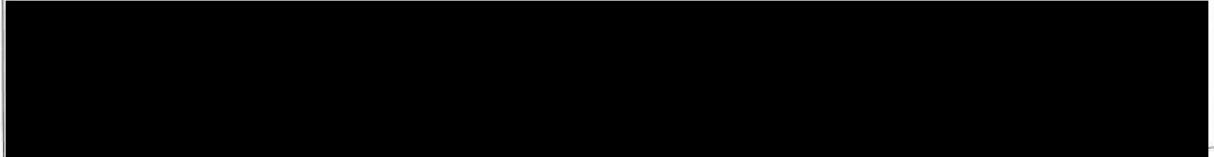
A. It's unclear to me. I say that because the research and development folks, which are primarily engineering, tended to be responsible for this rather than myself. But I don't have a real answer on this one.

Q. Okay. Now, the manufacturing engineering people would certainly be more knowledgeable than you about the use of C8 and the manufacturing process, correct?

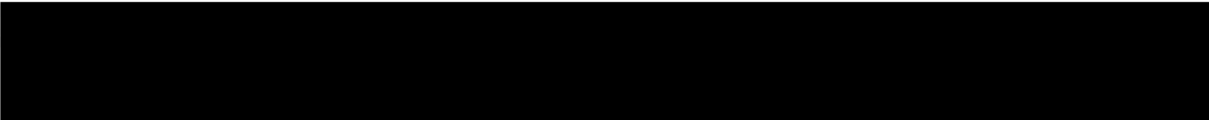
A. Correct.

Q. But from the environmental risks standpoint, were you tasked with developing information for Taconic about the environmental and health risks related to C8 at any point?

A. No.



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Q. So, newsletters of what sort?

A. Environmental newsletters.

Q. So at some point in the early 2000s then, did you learn that the C8 that was utilized in the Washington Works facility had escaped the facility and gotten into the drinking water of the nearby communities to Washington Works?

A. Not in 2002. I did not know about the drinking water issue until, frankly, later than 2002.

Q. Do you remember approximately how much later?

A. 2003, 2004.

Q. Okay. And at the time that you learned it was in the drinking water, did you also learn that it had accumulated in the blood of people that had consumed that water?

A. They hadn't done testing at that time of the surrounding employees or residential users. Later on when the federal lawsuit got settled, money came forth to do lots of testing on either side of the Ohio River, and that's when more of the data points came forward. But early on like this, it

1 February 11, 2003 that's previously been marked as
2 Exhibit 43. And again, it's the first -- in this
3 one, it's the first paragraph that I'm going to ask
4 you about.

5 A. I've read it.

6 Q. So do you have a recollection then, in
7 February of 2003, of learning what is explained in
8 this memo by Ms. Goodermote about developments
9 around what she calls the C8 issue?

10 A. Well, yeah. At that point in time
11 February 2003, yes.

12 Q. And one of the things she mentioned is
13 that employee education and communication is very
14 important; do you see that?

15 A. That's correct.

16 Q. Okay, so what was it that the employees
17 needed to be educated and what needed to be
18 communicated to them about the C8 issue at that time,
19 as you understood it?

20 A. Well, what we did was we started doing
21 some incidental water sampling in the groundwater.
22 And what we learned from Parkers in West Virginia,
23 the Washington Works, was that activated carbon
24 sequestered C8. And so basically I put on
25 educational seminars once we had things in place to

1 A. It did, but we were relying on our PhD
2 chemists to help figure out some of the mass balance
3 numbers. But yes, this triggered some form of
4 research to get us the data points.

5 Q. And as the environmental manager, what
6 were you told at that point with regard to what was
7 believed to be the percentage of C8 that came in
8 that was actually being released either to the
9 groundwater or into the air at the Taconic
10 Petersburg facility?

11 A. I don't recall.

12 Q. Do you recall ever seeing any tests
13 that were done to determine how much PFOA or APFO
14 was in the exhaust emissions from the ovens that
15 were utilized to do the coating?

16 A. Individual tests were run but I don't
17 think the numbers were used for mass balance. In
18 other words, we had an air permit from the State of
19 New York. And they're pretty generic, but we tried
20 to make sure that we met those standards.

21 Q. Okay. But you've mentioned that this
22 was not a regulated chemical, so you knew that the
23 permit didn't have a percentage --

24 A. That was my next point, is the permit
25 didn't even address this particular chemical.

1 Q. So what testing were you aware of that
2 was done either at the time that DuPont suggested
3 that this testing be done or at some point
4 afterwards, to determine how much APFO that was in
5 the PTFE dispersions was actually being exhausted
6 into the environment after the manufacturing
7 process?

8 A. It was somewhat derived. I say
9 somewhat derived because the analysis was like
10 reverse engineering. In other words, when the
11 engineering folks took the finished product, they
12 tried to estimate -- and it was traces of PFOA in
13 the finished product. They tried to estimate how
14 much would have been in the waste water, how much
15 would have gone on the stack. But I can't say there
16 was a single test that gave you the numbers you're
17 looking for.

18 Q. In other words, were you aware that
19 there were test methods available that you could
20 test air for the quantity of APFO that was in it,
21 that was exhausted out of the plant?

22 A. No. One of the problems was --

23 Q. I'm sorry, you were not aware that
24 there was such tests that were available?

25 A. That is true. I say that because one

1 of the problems with PFOA is there was only one
2 laboratory in the country at the time, down in State
3 College, Pennsylvania, that was able to do the
4 analysis to determine what was in the sample. Later
5 on, other companies jumped in, but much later on.

6 Q. Okay.

7 A. So until you had a proven test method
8 to look for this chemical, there were laboratories
9 that said they could find PFOA. We gave them the
10 contracts, they said: Well, we can't really find
11 PFOA, we misled you.

12 So it was very complicated at the time
13 to find out what laboratories could measure it and
14 repeatability was difficult for other companies. So
15 one company at State College, Pennsylvania was the
16 only place. And so the science of this commercially
17 was just evolving. I would love to answer your
18 question very easily but the science was evolving,
19 the testing was evolving, and that's what happened.

20 Q. Okay. But you would agree that Exagen
21 in State College, Pennsylvania did have the capacity
22 to do air testing for APFO?

23 A. And on occasion, we did send them data,
24 but I don't know if it was during this time window
25 or not.

1 Q. And the samples that you sent to
2 Exagen -- and we are going to go through those --
3 were all water samples, correct, and one soil
4 sample?

5 A. I was going to say primarily water.
6 There were some air samples -- yeah, I don't
7 remember. We had air samples inside the facility
8 but not necessarily outside of the facility.

9 Q. And that's what I wanted to ask you.
10 So at some point -- and we'll get to this also --
11 you hired a company called Adirondack and they did
12 some personal space sampling around the workers to
13 determine how much APFO they were exposed to,
14 correct?

15 A. That is correct.

16 Q. But that company never did any testing
17 of the exhaust that was going into the air and into
18 the community, of how much APFO --

19 A. That is correct.

20 Q. And in fact, in the documents that have
21 been produced to us, there isn't a single test that
22 has been produced to us that shows that Taconic ever
23 tested the air that was being exhausted out of the
24 stacks to determine how much APFO was in it. Are
25 you aware of any such tests that were ever done

1 during your time period?

2 MS. DUFFY: Object to form.

3 A. I don't remember any testing external
4 to plant. We did sampling of soils external to
5 plant, but not stack testing.

6 Q. Okay. And you would agree that Exagen
7 was capable of determining how much APFO was in
8 exhausted air out of the plant, if the appropriate
9 test was done?

10 A. We trusted them because DuPont trusted
11 them and they were pioneers in detecting it. So
12 because DuPont -- which is sort of the baseline for
13 this problem, we'll say -- trusted them, we trusted
14 them also.

15 Q. So when DuPont suggested that fence
16 line testing be done and you were aware that Exagen
17 was capable of detecting APFO in air testing that
18 would be done at the fence line of the facility, do
19 you have any recollection of discussions with
20 leadership as to whether such testing should be
21 done?

22 A. No.

23 Q. Did you ever propose to leadership,
24 either Mr. Carroll or Mr. McCarthy or Mr. Russell,
25 that air testing outside of the facility be done to

1 determine how much APFO is being exhausted into the
2 environment, based upon what DuPont was telling
3 Ms. Goodermote?

4 A. No.

5 Q. Was that someone else's job to
6 determine how much APFO was being exhausted into the
7 environment, other than yourself, that you're aware
8 of?

9 A. Until it became a regulated chemical,
10 it was not measured. You have nothing to measure it
11 against. You have nothing to measure it against.
12 Yes, techniques can be done, measurements can be
13 done. But if you don't have a baseline of -- a
14 legal baseline of what is good, what is bad, the
15 number is meaningless. It may be a number, but it's
16 meaningless.

17 Q. Well, according to this memo and the
18 prior one, DuPont and EPA were working together to
19 try to figure out how much of the C8 that was in
20 PTFE dispersions was being dispersed into the
21 environment; isn't that correct?

22 A. That's correct. And we were awaiting
23 the results, which took many, many years.

24 Q. Okay. But you didn't feel at Taconic
25 that you had any role in that process of trying to

1 figure out how much C8 or --

2 A. Well --

3 Q. Let me finish. How much C8 or APFO was
4 being exhausted into the community of Petersburg?

5 MS. DUFFY: Objection to the
6 extent it's been asked and answered.

7 A. I didn't address that because I did not
8 have an environmental budget that didn't have to be
9 sold. In other words, because it's a little unusual
10 for a company -- but again, this is a small company.
11 It's a little bit unusual that a manager doesn't
12 have a budget that can be utilized for unknown but
13 anticipated testing, et cetera.

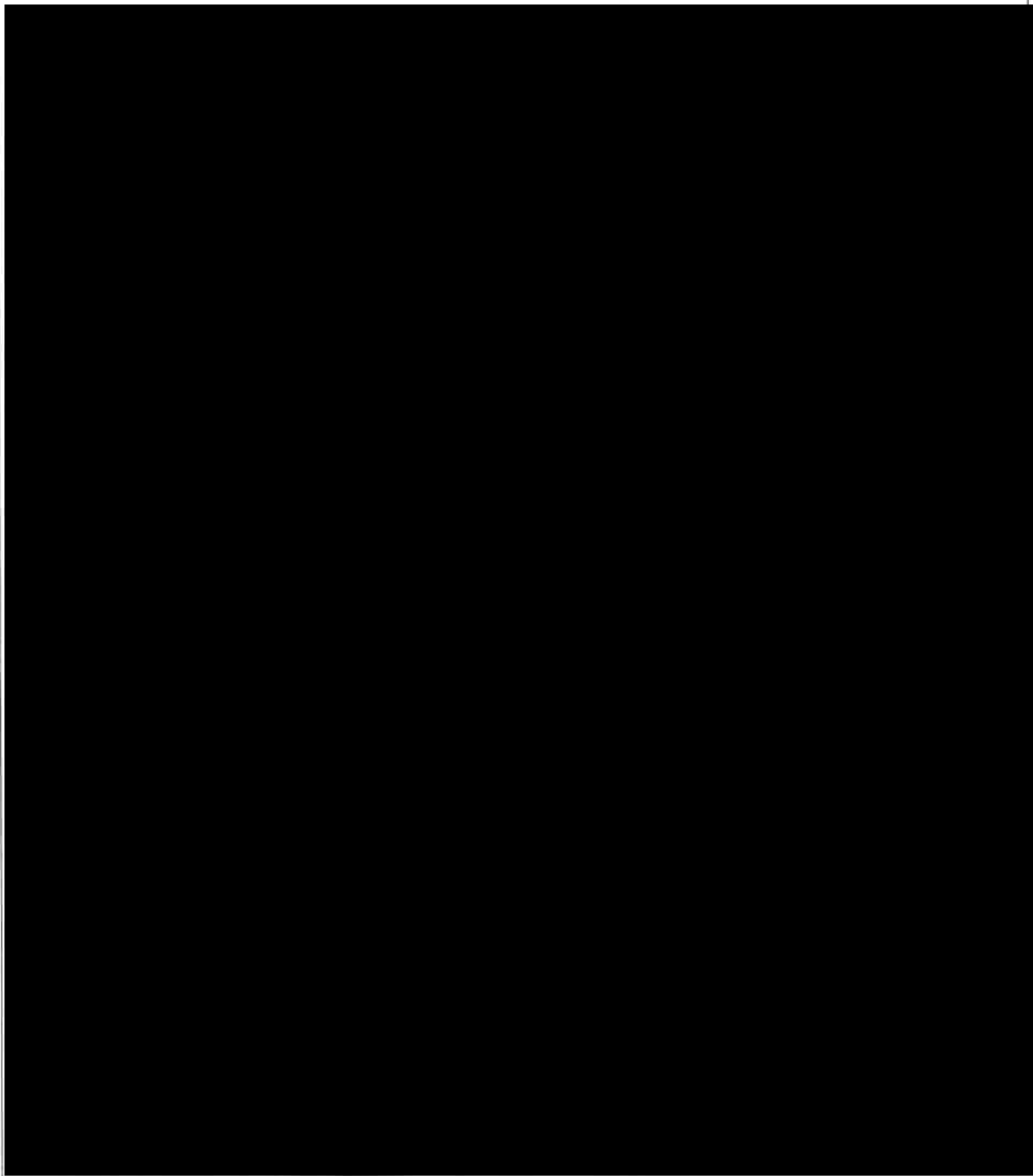
14 That was not the case in Taconic.
15 Money was very tightly controlled. They're
16 benevolent expenditures, but again, you had to sell
17 the idea to the CEO before you got the funding. I
18 knew I would not be able to get the funding from the
19 CEO to do ambient air testing outside the facility,
20 because it was not driven by a regulation. These
21 are recommendations at this point.

22 So unless it's driven by a regulation,
23 the CEO would say: Well, do I have to do that? And
24 the answer would come back: No, but it would be
25 nice to know, to anticipate problems or issues.

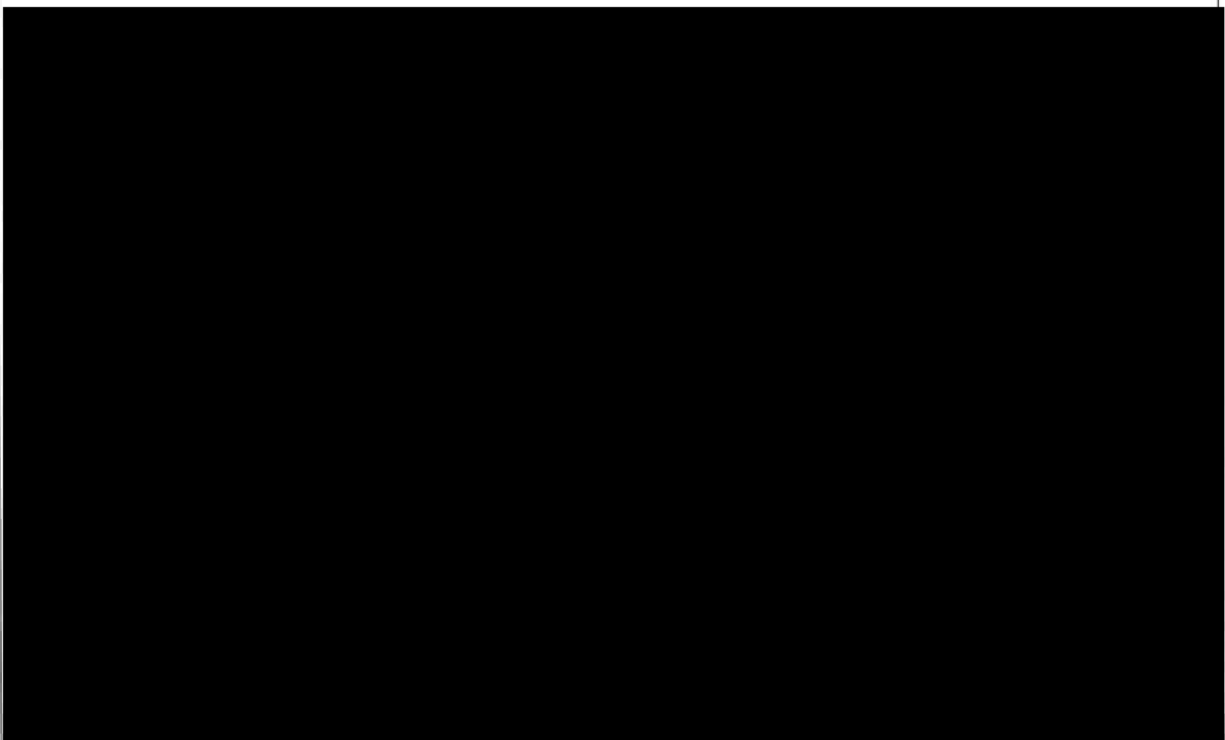
1 It was a very difficult sell to
2 convince the CEO to spend money he didn't have to
3 spend.

4 Q. Thank you.

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Q. And the fume eliminator was something that was in place at least for some of the ovens when you first started; is that correct?

A. All of the ovens. I mean, I can't think of one oven that doesn't have some connection with the fume eliminator.

Q. Was it your understanding that that was always the case, since this type of manufacturing had been going on at the Petersburg facility?

A. I don't know. I didn't have enough history. But when I was there, the emission control equipment was there.

Q. What was your understanding of the capacity for the fume eliminator technology that was

1 being used to capture APFO from the exhaust?

2 A. That was never a consideration because
3 it was not something that was measured.

4 Q. So the answer then would be that it was
5 unknown whether the fume eliminator captured APFO at
6 all or if it did, how much?

7 A. That is correct.

8 Q. And that was never anything that you
9 can recall being discussed as far as a test --
10 intention to do a test to see how much the fume
11 eliminator reduced the amount of emissions of APFO
12 into the environment?

13 A. No, there was never any discussions.

14 Q. We will come to some documents where
15 the water, the liquid and the fume eliminator was
16 tested for APFO; is that correct?

17 A. That is correct. It was very high, the
18 numbers. But as I will mention to you in a moment,
19 those numbers are interesting but we don't really
20 know what's the quantity of input. That's certainly
21 the output in terms of collection output. But
22 whether it was half a million gallons, 20 gallons,
23 that would be difficult to derive.

24 Q. All right, the next document I'm going
25 to show you is one that's -- and anytime you need a

1 break, let us know.

2 A. Sure.

3 Q. You good for now?

4 A. Right now.

5 Q. Okay.

6 (Exhibit 195, 3/3/03 E-mail, marked for
7 identification)

8 (BY MR. SCHWARZ)

9 Q. I'm going to show you a document that's
10 marked as Exhibit 195. And this is an e-mail from
11 March 3, 2003. And again, involving the same issue,
12 discussions about C8 with DuPont. And take a moment
13 to look at that.

14 A. Okay.

15 Q. And this appears to be a continuation
16 of that discussion of whether DuPont could actually
17 do the testing for Taconic or not, correct?

18 A. That is correct.

19 Q. And that testing would be of the air
20 and water for C8, correct?

21 A. Correct.

22 Q. And this seems to indicate that DuPont
23 had agreed to provide you with information about how
24 to do it and what labs could do it, correct?

25 A. Right.

1 Q. And what do you recall, if anything,
2 about that process? In other words, once you got
3 that information, did you take that to the
4 leadership of Taconic and present any kind of
5 proposals for doing that kind of test that DuPont
6 had indicated could be done and provided you with
7 the locations where it could be done?

8 MS. DUFFY: Object to form.

9 A. Well, yes. But again, that's because
10 it was a funding issue. In order to do testing or
11 sampling or whatever, you had to have funding. So
12 what I would do is meet with the senior staff here
13 and -- whether it was Jim O'Keefe or Andy Russell
14 directly, sometimes it was never quite clear -- let
15 them know that this is a current in-house
16 requirement and I need funding to do it.

17 Q. And that funding was never provided?

18 A. Well, funding was provided to do
19 testing.

20 Q. Okay, just the water testing?

21 A. Well, I don't know if we're in the same
22 point in time when we're doing air testing. I don't
23 have the timeline in front of me here.

24 But ultimately there was in-house
25 inside the building air testing. And the water

1 testing, when it was done, it was both in-house
2 inside the enclosure and out in the well system and
3 later on in the pond system to get data points.

4 Q. Right.

5 A. So it's one of those things that
6 sort of evolved and I'm not sure on the exact
7 timing.

8 Q. Okay. And we've got some documents
9 that will be helpful on that. But again, no exhaust
10 air, stack air testing for APFO was ever --

11 A. No. That part was not funded. That
12 part was not funded.

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Q. Okay. I want to show you a document that is dated about a week after that document. And this one is marked as Exhibit 198, and it's an e-mail from you to Mr. O'Keefe. And it appears to reflect one of the types of discussions that you've described with regard to trying to get funding for testing?

A. Yes, this is typical.

Q. And it indicates that you met with Mr. Russell to propose air testing for the employees for PFOA or C8, and that he did not feel the cost to perform the test -- he felt those were too high?

A. That is correct.

Q. And I believe you just testified that this was not an uncommon response when you proposed such testing to Mr. Russell?

A. Yes. Unless it was a requirement, curiosity for environmental reasons was not something that would get funded.

Q. What about curiosity concerning the health risks of a chemical for the public, was that

1 something that was not considered important to Mr.
2 Russell?

3 A. It might have been if it was regulated.
4 He might be convinced that if it was regulated, that
5 it might be important to do as you suggested. But
6 unless it was regulated or nearly regulated, he was
7 not going to move on that.

8 Q. Okay. So would it be a fair statement
9 to say that unless someone required, or a government
10 agency required, something to be done, that Mr.
11 Russell was not interested in spending money to
12 determine the health risks to the community posed by
13 his manufacturing operation?

14 MS. DUFFY: Objection to the
15 extent it mischaracterizes his testimony.

16 Q. You can answer.

17 A. That would be true, partly driven by
18 knowledge of risk. If it wasn't regulated, I
19 believe he would say: Why should I do it? And he
20 would not fund it.

21 Q. Okay. We have to switch the tapes and
22 it might be a good time to take a break; is that
23 okay with you?

24 A. Perfect.

25 Q. Okay.

1 proposals from various environmental consultants
2 such as this, to see how much it would cost to do
3 such testing?

4 A. That is correct.

5 Q. And do you recall presenting any of
6 these proposals to Mr. Russell or Mr. O'Keefe or Mr.
7 Carroll, if he was there at that time, to seek
8 approval to hire a consulting company to do
9 professional testing to determine what the PFOA risk
10 was at Taconic?

11 A. It would have to have been done through
12 either Mr. O'Keefe or Mr. Russell.

13 Q. And what do you recall the results of
14 that proposal being?

15 A. I don't -- we did go forward with a
16 firm, I don't remember if it was this firm or not
17 though.

18 Q. Okay. When you talk about going
19 forward with a firm, there was a company that was
20 called Adirondack that was hired to do certain
21 in-house testing; is that correct?

22 A. That's correct.

23 Q. But you never went forward with a firm
24 to do stack testing; is that correct?

25 A. That is correct.

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Q. And about this time do you have a recollection of agreeing that there would be some sort of informational meeting for the employees, to present to them information that you had about PFOA and its potential health hazards?

A. That is correct, I do remember that.

Q. Okay. And at the time that that was discussed, was there any discussion about sharing those same concerns with the community of Petersburg?

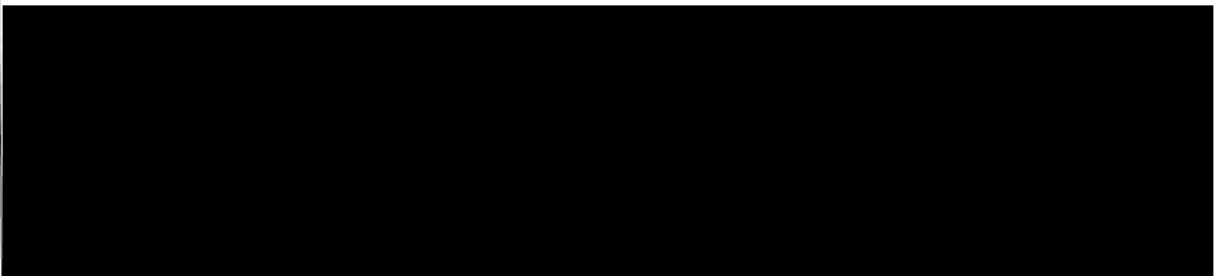
A. Absolutely not.

Q. And did you -- you said that there was a sense that there had to be a requirement before actions were taken, an agency type requirement regulation. Was there some regulation that you were aware of that required you to provide information to the employees about PFOA?

MR. DUFFY: Objection to the extent it mischaracterizes testimony.

A. This was driven by health and safety, more so than environmental. I know it's difficult to put a butter knife through it. But because you

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Q. I want to show you Exhibit 227. And this is dated July of 2003. And this memo appears to reflect -- this is an e-mail from someone by the name of Cameron Steuer, if I'm pronouncing that correctly, who worked for this Adirondack Environmental Company. Does that refresh your recollection?

A. I don't remember this person. I remember the company coming to us, I just don't remember this person.

Q. All right. And Adirondack was the company that was hired to do the air testing for the employees, correct?

A. That is correct.

Q. And this memo is a -- this is an e-mail, excuse me, from this gentleman from Adirondack and is an indication concerning the validity of those tests?

A. Right.

Q. And what do you recall about that topic?

1 A. What I recall was that it was
2 nonconclusive, the results. That's what I recall.

3 Q. Okay. According to the Exhibit 227, he
4 seems to indicate that they couldn't verify their
5 testing methods to say whether or not they could
6 accurately measure PFOA at the levels that they
7 would likely be present; is that correct?

8 A. That is correct.

9 Q. And you had mentioned previously that
10 the only company you knew that could do that was the
11 company Exagen, in State College, Pennsylvania,
12 correct?

13 A. That is correct.

14 Q. And so what Adirondack was saying is
15 that the tests that were done were not reliable?

16 A. Essentially.

17 Q. Was it decided at that point to repeat
18 those tests, to send those results to Exagen or the
19 samples to Exagen, so you could get reliable testing
20 of what the exposure levels to the employees were?

21 A. I don't recall. But again, it would
22 have been through, in this case, Tim Kosto or Tom
23 McCarthy because they were adamant, they knew more
24 about chemistry and the physical side of where the
25 chemistry could be found.

1 obtained the water samples that were sent with this
2 document -- water and soil, I should say?

3 A. Well, the chain of custody, which is a
4 few pages in, sort of --

5 Q. It's the one that says Taconicsend03413
6 at the bottom; is that accurate?

7 A. I'm looking at 03411.

8 Q. Okay. It carries over to 4.

9 A. Okay, well, maybe what I should do is
10 catch up with you. Where would you like me to look?

11 Q. Well, let's look at 03412 first.

12 A. 03412. Here's 11, here's 12, okay.
13 Yes I'm looking at, it's my handwriting.

14 Q. Okay. And this specified matrix all
15 indicates G-water, which stands for ground water,
16 correct?

17 A. Correct.

18 Q. And you were looking for PFOA or APFO
19 in the ground water at that point?

20 A. That is correct.

21 Q. And I just want to get a clarification
22 as to what the 46 CB, 85 CB and 66 CB represent?

23 A. Ah, you're challenging me.

24 Q. I will represent to you that in the
25 O'Brien and Gere 2018 report, there's a reference to

1 these being addresses on Coonbrook Road.

2 A. Yeah, that is what I was going to
3 suggest, is the CB is Coonbrook and I think those
4 are house addresses, as I recall.

5 Q. Now, are those house addresses that are
6 properties that were owned by Tonoga Industries?

7 A. Yes. I felt it's the only place that
8 I had authority to sample the ground water.

9 Q. And if we look then at the following
10 page, which I think actually looks identical to the
11 previous page, there are some other client sample
12 identifications, and I just want to ask you about
13 those if we could. There is an MW1 through MW4.
14 You mentioned previously that there were shallow
15 monitoring wells that were drilled, looking to
16 monitor other constiuence of the ground water, other
17 than PFOA, at or about the time that you started.
18 Were those samples taken from those monitoring
19 wells?

20 A. Yes, they were.

21 Q. And then FE5, would that be a reference
22 to the fume eliminator for building 5?

23 A. That is correct.

24 Q. And the RES SW1, would that be from the
25 reservoir?

1 A. Definitely the reservoir. I don't
2 remember if it was the upper reservoir or the lower
3 reservoir, but.

4 Q. And I may have a document that will be
5 helpful on that. And then you took a soil sample as
6 well from wet soils; do you remember where that was
7 from?

8 A. I don't. I will say this: At one
9 point we took soil samples near the wetland area
10 near well number 3, but I don't know if it's this
11 particular example.

12 Q. Okay. And then I want to show you a
13 document that I have not yet marked but I'm going to
14 mark now as Exhibit 231, and then ask you if you
15 recognize that document?

16 (Exhibit 231, Annotations by Mr. Kawczak,
17 marked for identification)

18 A. Yes, it's a document that I created,
19 annotated years ago.

20 Q. And are the annotations from Exhibit
21 231 the data from Exhibit 160?

22 A. That, I don't know. I'd have to check.
23 231, 160, I'm guessing probably, but I don't know
24 that for sure.

25 Q. Okay. Well, take a look and just

1 should sample.

2 Q. Okay. Which consultant would you be
3 referring to when you say --

4 A. That, I don't remember.

5 Q. Were you looking in that soil sample to
6 see the effects of potential air releases of APFO
7 from Taconic that might have settled down into the
8 soil in that location?

9 A. That was my thinking.

10 Q. Okay. And --

11 A. Basically the location, we wanted to be
12 philosophically down gradient of the two fume
13 eliminators, and we were guessing that -- because we
14 didn't have air monitoring devices, we were guessing
15 that the down wind location might be in that
16 direction.

17 Q. Okay. And that sample did turn up to
18 have APFO in the soil sample, correct?

19 A. Yes. Some number, yes. Yep.

20 Q. And similarly the surface water sample
21 that you took from the reservoir, that's in the
22 bottom right-hand corner of the diagram, correct?

23 A. Yes, it is, the way it's annotated,
24 correct.

25 Q. And was that also -- did you believe

1 A. Unlikely, unlikely.

2 Q. Okay. Now, I want to next mark Exhibit
3 232. I'll ask you if you recognize this series of
4 documents.

5 (Exhibit 232, Documents by Mr. Kawczak, marked
6 for identification)

7 A. This document I created years ago to
8 try and more visually capture emissions at certain
9 locations.

10 Q. Okay. And there's a series of pages
11 here. Some of them are annotated differently than
12 others, I think. Appear to be the same basic
13 computer generated diagram with some annotations on
14 them.

15 A. Right.

16 Q. And these appear to describe not only
17 the Taconic production wells, which were designated
18 as well number 1, well number 2 and well number 3,
19 but also various buildings and residences in the
20 area, correct?

21 A. Yes, those residences that were owned
22 by Tonoga.

23 Q. Now, there are -- if we go down to the
24 bottom left-hand portion of the first page of
25 Exhibit 232, there's a description of Bob V's and

1 and the depths of their wells and the gallons per
2 minute that were produced?

3 A. I felt eventually once this PFOA was
4 regulated, driven home by the State of New York or
5 Rensselaer County Department of Health or both of
6 them, there would be a need ultimately to have this
7 diagram to better understand the chemical issue
8 that's out there.

9 Q. Well, you found PFOA in the parts per
10 billion in the two homes that you did tests,
11 correct?

12 A. Correct.

13 Q. In two of the homes you did tests, I
14 should say. Did you feel that the other homes were
15 less likely to have PFOA in their drinking water for
16 some reason?

17 A. No.

18 Q. Did you ever discuss with Andy Russell
19 or any of the other management, whether it would be
20 prudent to test those other homes so that those
21 people would know whether there's PFOA in their
22 drinking water?

23 A. That discussion never took place.
24 Again, Andy was always of the opinion that unless
25 it's a requirement, we're not going to volunteer and

1 do it.

2 Q. What did you tell Suzanne Seymour and
3 Lori Goodermote about the PFOA that was found in
4 their drinking water?

5 A. Because they're a company housing, we
6 provided them five gallon jugs of water on a daily
7 or weekly basis to consume.

8 Q. No, my question was what did you tell
9 them about the contamination that was discovered in
10 their wells?

11 MS. DUFFY: Object to form.

12 A. Well, Sue Seymour was an employee of
13 Taconic and she was aware of the same kind of data
14 that I communicated to the employees because she was
15 an employee of Taconic. So she was well aware of
16 what PFOA is. And once she became aware of her
17 numbers, presumably she drank the water that was
18 offered for consumption at her home.

19 Q. Okay, so that's my question. Did you
20 take the Exagen reports that showed the levels of
21 PFOA in the drinking water for the Seymour home and
22 the Goodermote home and give that information to
23 them so that they knew what the amount of PFOA in
24 their well water was?

25 A. No. What we gave them was: We are

1 shouldn't say never, but nearly never a single
2 topic. It was production issues and I would freely
3 share with her, on a one-to-one basis or in an
4 audience, what these numbers were.

5 Q. Okay. How many times were the wells
6 tested for the residences?

7 A. Twice.

8 Q. Okay. And was that all in that same
9 period of time of the 2004, 2005 time period?

10 A. They were about a year part.

11 Q. Did you at any time inform any of these
12 other residents that PFOA had been found in the
13 drinking water for the two residences that you did
14 test?

15 A. No.

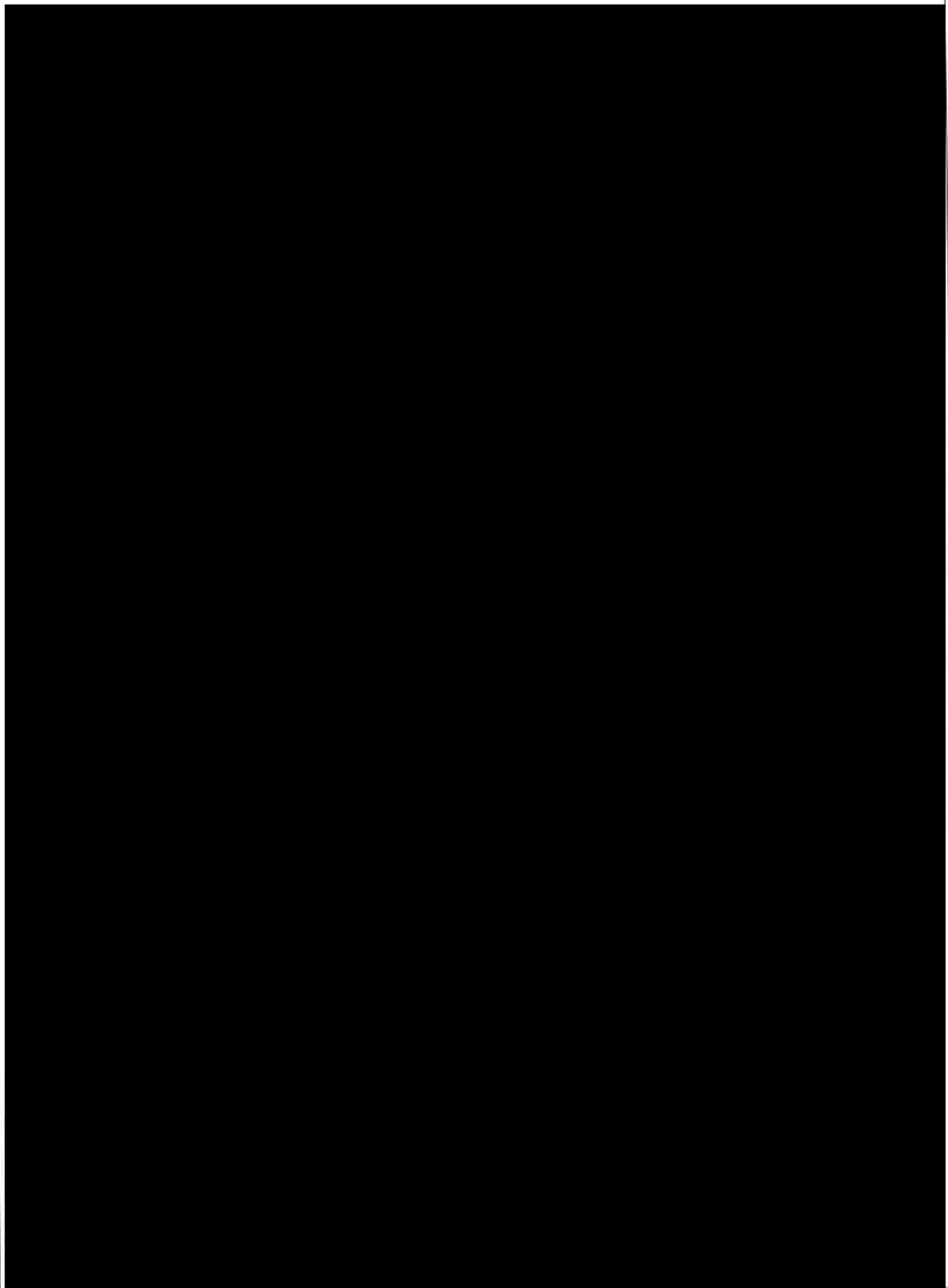
16 Q. What about the other Coonbrook home
17 that came up with a positive finding for PFOA, which
18 I think was 85 Coonbrook Road, was that resident
19 told about the contamination?

20 A. I don't recall who was in there at the
21 time.

22 Q. Did you provide bottled water to
23 that -- whoever the resident of that particular
24 residence was?

25 A. We offered it, I don't remember if they

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1 Taconic and ask you first, do you recognize this as
2 a memo that was provided to the employees at
3 Taconic?

4 A. That is correct.

5 Q. And did you have any role in drafting
6 this?

7 A. It looks like my writing.

8 Q. Okay. And this discusses some of the
9 knowns and unknowns about PFOA and also what was
10 found with regard to the ground water on the site,
11 correct?

12 A. Correct.

13 Q. And the second to last paragraph says,
14 quote, "As such, we and the nation do not know the
15 hazards of PFOA. However, when there are unknowns,
16 it is extremely important to protect oneself." Did
17 I read that correctly?

18 A. You read it correctly.

19 Q. And was that the message that you
20 wanted to try to communicate to the employees that
21 because there were unknowns about health concerns,
22 it was prudent to avoid exposure and to limit
23 exposures?

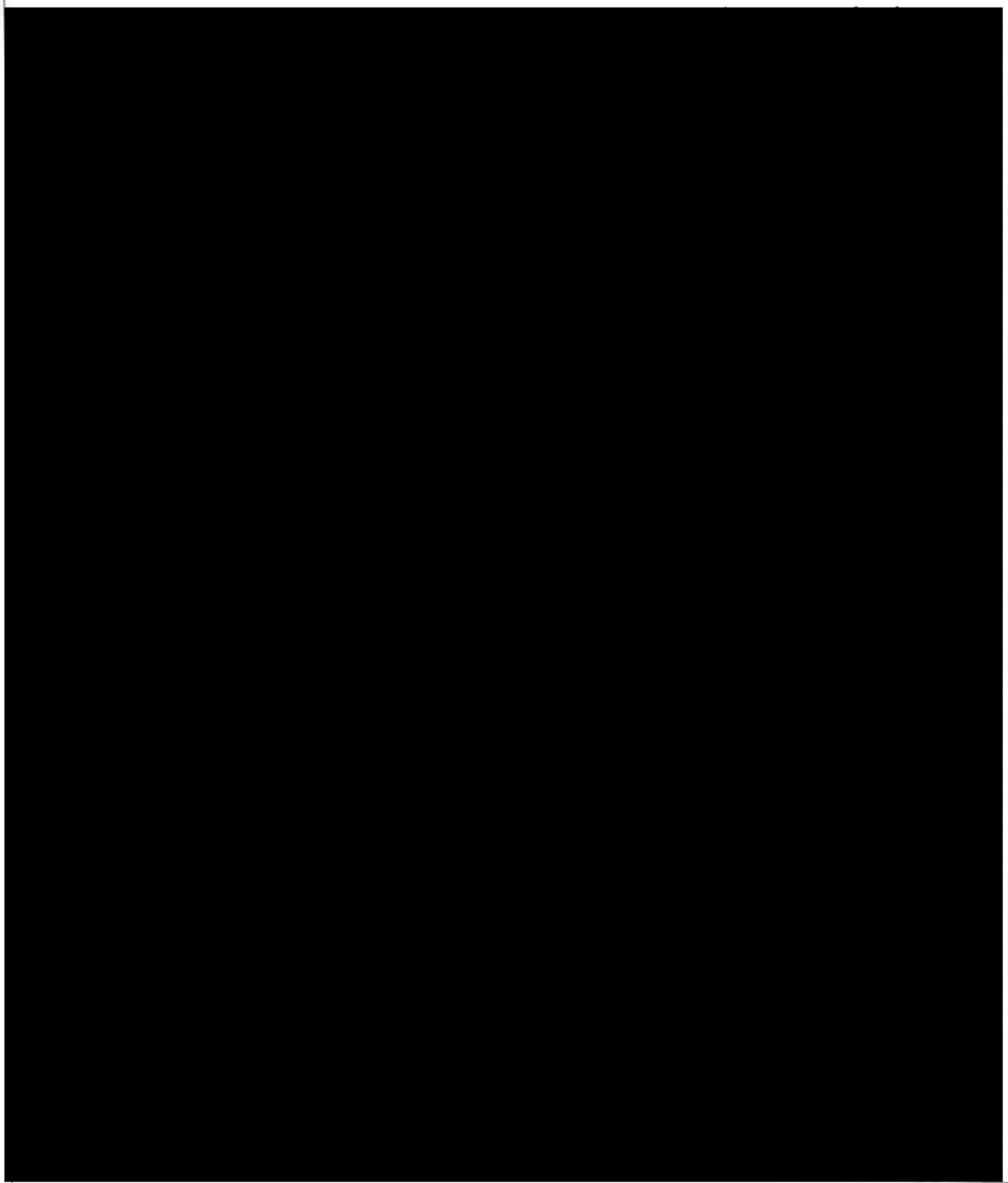
24 A. That is correct.

25 Q. And would that same principle apply not

1 only to the employees, but also to the residents of
2 Petersburg?

3 A. It should.

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1 A. That is correct.

2 Q. And then it says, quote, "After
3 reviewing the historic three years ago plus or minus
4 sampling sites associated with Taconic it was felt
5 that until EPA establishes a real set point
6 regulation, that any additional testing would not be
7 useful." Do you see that?

8 A. I do see it. I mean, that's pretty
9 much what I have said right along.

10 Q. Well, what did you remember about the
11 decision? Well, let me go back a step. So you knew
12 at that point that water tested from the two homes
13 that were tested actually -- three homes that were
14 tested, actually exceeded that .4 parts per billion?

15 A. Correct.

16 Q. And you didn't know how many other
17 homes in the area might have water that exceeded
18 that level, correct?

19 A. That is correct.

20 Q. So why was it that it was determined
21 that it would not be useful to find out how many
22 people were drinking water in excess of this .4
23 parts per billion health advisory level?

24 A. Primarily because health standards have
25 not really been established at that point in time

1 and it was not a regulatory requirement. And I --
2 just suggesting that there was something in the
3 water, that you are in risk of getting something.
4 There was so much speculation that -- and cost, but
5 mostly speculation, that it did not make sense to go
6 beyond the company's property lines.

7 Q. Now, we looked at a document a moment
8 ago that said when there are unknowns, it's
9 important to protect oneself.

10 A. It is important.

11 Q. And what chance did the people that
12 were unknowingly drinking water in excessiveness
13 health emergency level standard have to protect
14 themselves if they weren't told about it?

15 MS. DUFFY: Objection. Assumes
16 facts not in evidence.

17 A. We, as an organization, felt that by
18 telling DEC and Rensselaer County Department of
19 Health and the state health department through our
20 transmission of ground water data, they, the
21 organizations, would take the actions necessary
22 since it's third charter.

23 Q. Are you saying that at some point after
24 the initial contact with DEC and Rensselaer County,
25 that you advised them that there were people whose

1 snippets -- these new snippets that would come out
2 in which I would forward to my manager. In some
3 cases, I forwarded copies to my environmental
4 attorney, Scott Fein and company, Whiteman Osterman
5 & Hanna, to keep him apprised even though he was
6 essentially into semi-retirement. I sent him this
7 data so that he could be aware of some sensitive
8 issues.

9 But with the environmental attorneys
10 being informed periodically, who were still on the
11 Taconic payroll, I felt that if there were red flags
12 to be pushed forward, they would either come from
13 the environmental attorneys, which Taconic hired, or
14 the regulatory entities of DEC, state and county
15 health departments. There was other agencies that I
16 really felt needed to direct us as to what to do.

17 Q. Did you provide any of this
18 information, the health information that you were
19 accumulating, to any of the agencies?

20 A. In this format, no, no. No, I never
21 sent ancillary e-mails outside to agencies, we only
22 dealt with formal submissions to agencies.

23 Q. Did Taconic, to your knowledge, ever
24 seek a consultation with any medical experts about
25 the potential health effects of PFOA?

1 A. I don't remember any medical
2 discussions. If they took place, they were beyond
3 my ears.

4 Q. Okay. And finally, I want to show you
5 a document that was previously marked as Exhibit
6 139.

7 A. Thank you.

8 Q. And the first page of this has Andy K.
9 on it and 6/26/2012 and it's entitled, "PFOA White
10 Paper." It appears to have been written on April of
11 2011 based upon the first line.

12 A. Okay.

13 Q. Does this look like a document that you
14 produced at some point?

15 MS. DUFFY: I'll just put an
16 objection that this appears to be multiple
17 documents --

18 MR. SCHWARZ: Right.

19 MS. DUFFY: -- stapled together as
20 we had produced it to plaintiff's counsel.

21 (BY MR. SCHWARZ)

22 Q. So I'm going to ask you about the first
23 page first. Does this appear to be a PFOA white
24 paper that you created?

25 A. Probably. I have to read it a little

1 more closely, but probably. If it wasn't me, it was
2 Janice Fallon.

3 Q. Okay. And in the bottom paragraph
4 about the current issue, it says that EPA is
5 proposing to monitor or regulate PFOA in drinking
6 water as a pollutant, possibly as low as .02 parts
7 per billion which would be 20 parts per trillion,
8 right?

9 A. It would be 20 parts per trillion,
10 correct.

11 Q. And it says if that happens, Taconic
12 may need to sample more, test more and better
13 monitor what is happening on the activated charcoal
14 canisters.

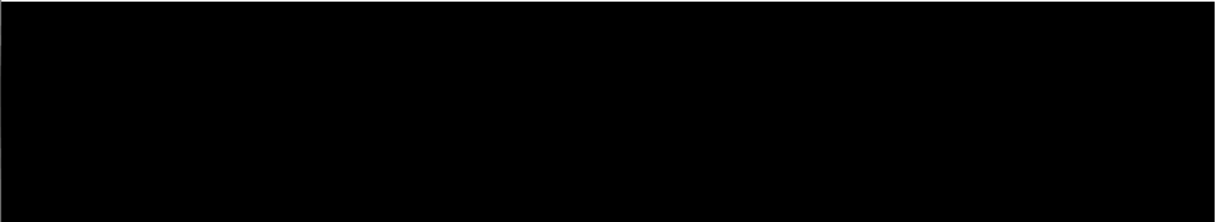
15 A. That is correct.

16 Q. And you mentioned that in the time that
17 you worked at Taconic, you don't remember any action
18 being taken to monitor the activated charcoal
19 canisters to see if they were actually working,
20 correct?

21 A. That is correct. It's mostly driven by
22 cost.

23 Q. And then it says other health concerns
24 due to the information may also develop. And it
25 says proposed sampling would begin in 2013. Do you

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Q. Okay. And ultimately testing was done of the facility -- of the Taconic facility for C8 or PFOA levels, right?

A. Yeah. I don't know if it was during this time frame but yes, testing was conducted.

Q. And the testing that was done at Taconic in or around 2003 or later, was not required by any government, correct?

A. That is correct.

Q. And so the testing was ultimately approved by the higher up management of Taconic, even though there was no regulation demanding that test, right?

MR. SCHWARZ: Object to the form.

A. They did testing but it was primarily because DuPont was having serious problems at their locations. And the two chemists, Tom McCarthy and Tim Kosto, wanted to get a little bit more of a handle. Because again, they attended the SPI meetings also.

So I wouldn't say Taconic did it out of being benevolent, they just did it because other

1 organizations were saying we've got a problem. So
2 Taconic I think wanted to get a handle on it but it
3 wasn't like they initiated thought.

4 Q. Right. And I was just asking whether
5 the testing that was done was required by any
6 government.

7 A. Okay.

8 Q. And your testimony is that it was not,
9 correct?

10 A. Yes.

11 Q. All right, so if we jump ahead to 93403
12 we see a heading of April 27 through May 3, 2003; do
13 you see that?

14 A. I do see it.

15 Q. And then it reads the next line, "Via
16 Andy Kawczak" and there are a series of bullets,
17 correct?

18 A. Right.

19 Q. The third bullet, "Reviewed PFOA
20 narrative with Andy R., Jim O., Tom M. for employee
21 info regarding EHS issues," correct?

22 A. I do see it.

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1 take home copies or otherwise share copies outside
2 of Taconic; is that fair?

3 A. I'm sure, you know, five percent of
4 employees did as a matter of curiosity because they
5 didn't have time to read it when they were
6 leaving -- going home. But certainly most of the
7 people who received it, read it and left it behind.

8 (Exhibit 263, 10/9/03 E-mail from Mr. Kawczak,
9 marked for identification)

10 (BY MS. DUFFY)

11 Q. I'm going to hand you what's been
12 marked as Exhibit 263. Do you recognize this
13 document?

14 A. Well, I didn't printout the recipients,
15 but yes. I'm not surprised. This is how I
16 disseminate the information.

17 Q. And just so that the record is clear
18 about what this document is, it's an e-mail from you
19 to a number of individuals at Taconic dated October
20 9, 2003, right?

21 A. Yes. These are not necessarily blue
22 collar employees, although a few are, mostly are
23 some level of -- they are employees but they're
24 more -- I'll call gray collar employees rather than
25 blue collar, yes.

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Q. Why did you make that signature?

A. Well, you just don't know if angry villagers are going to throw rocks at you.

Q. Did anybody throw rocks at you?

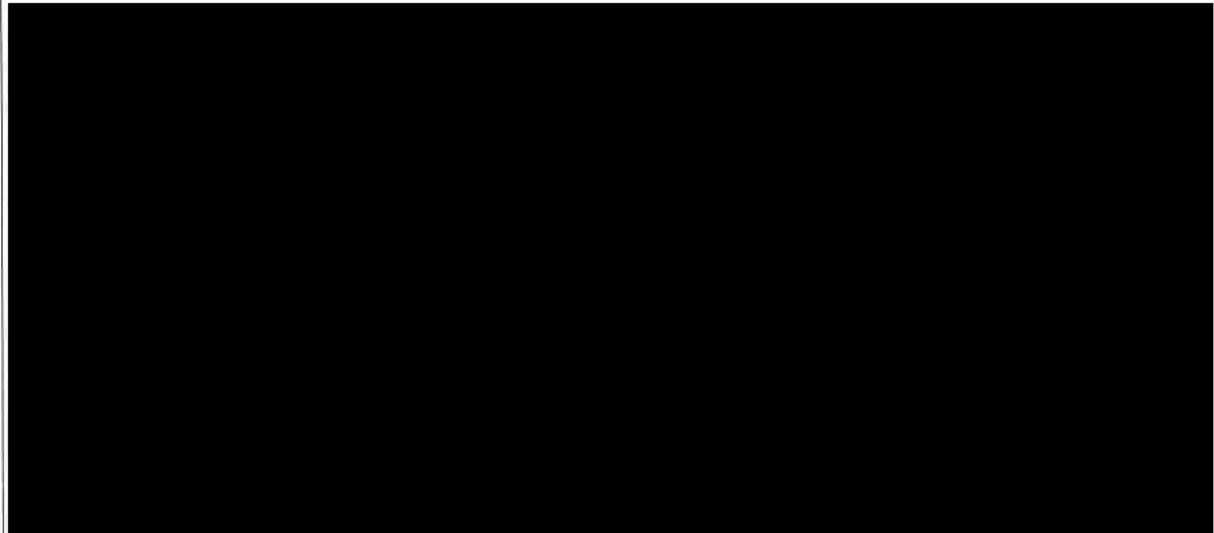
A. No, they were quite pleasant actually.

Q. Was anybody upset by the information that you communicated in these meetings?

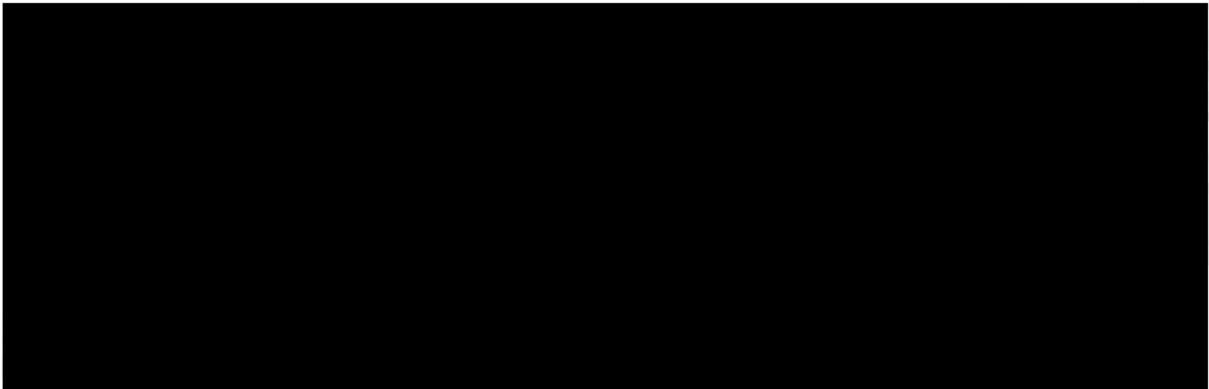
A. No, to them it was just information. They didn't digest it in a good way or a bad way. It was just information. They just shrugged their shoulders and went back to work.

Q. And at some point during your tenure at Taconic, there was a decision to move to low PFOA dispersion, do you remember that?

A. A decision to what?



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Q. If you look at the next page of this document, we have your notes, which I believe you talked about earlier in a different exhibit format. And I believe, but please correct me if I'm wrong, that these were notes that you made to prepare PowerPoint presentations for the Taconic employees; is that right?

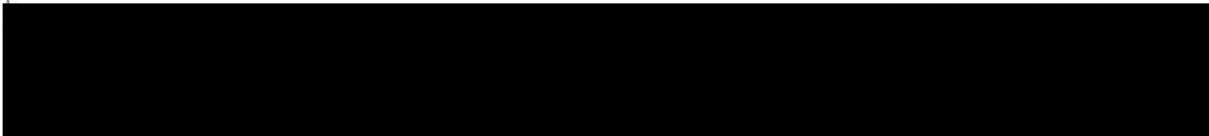
A. The last part you said I used them to prepare a view graph presentation?

Q. PowerPoint.

A. PowerPoint, yes. A PowerPoint presentation was crafted as a result of this handwritten note.

Q. And what was that PowerPoint presentation for? In that, was it for all employees of Taconic?

A. I don't remember.



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Q. But at this point it hadn't moved into the hazardous waste chemical?

A. No, but it's just good common sense. Any sort of chemical. I mean, some people have problems with, you know, blueberries. I mean -- I'm really not sure on how far we need to hedge or define possible health. I just don't know.

Q. And you wanted to ensure that the employees knew that there were possible health issues?

A. Yes, yes. And I encouraged them to do their own research.

Q. And did you intend for this presentation to be confidential to Taconic in any way?

A. Oh, no, not at all. Not at all. But it wasn't, you know, disseminated like a telephone book throughout the universe. It was just produced specifically for new hire training. But I didn't expect anybody to necessarily lift it and deliver it like a phone book to people around the community.

(Exhibit 268, 2005 Document, marked for identification)

1 they were -- honestly, when they talked to me, they
2 said: Well, until the regulatory bodies can sort
3 this out, we don't know what to tell you. So their
4 position was: Until this gets sorted out, we don't
5 know what to tell you.

6 Q. Were you surprised you didn't get a
7 response?

8 A. I thought I'd get some response.

9 Q. You were surprised that you didn't get
10 a response then?

11 A. Mildly surprised. But, again, you're
12 dealing with bureaucratic organizations and this is
13 what happens.

14 Q. So even though you didn't receive a
15 response to these letters in 2005, Taconic did
16 implement the various safety protocols and other
17 protocols recommended by various consultants and
18 other companies that Taconic had engaged on the PFOA
19 issue, right?

20 A. For the employees.

21 Q. Yes. And in sending these letters to
22 the Rensselaer County Department of Health, New York
23 State Department of Health and New York State DEC,
24 did you understand that you were communicating to
25 the larger community about what results had been

1 Q. And so the next sentence reads, "If
2 that happens, Taconic may need to sample more, test
3 more and better monitor what is happening on the
4 activated carbon canisters." Do you see that?

5 A. Correct.

6 Q. But because the EPA never did propose
7 to monitor or regulate PFOAs in the drinking water
8 pollutant, these steps were not taken; is that
9 right?

10 MR. SCHWARZ: Object to the form
11 of the question.

12 A. That was not the only reason why it was
13 not taken. It was not taken because I didn't have
14 funding to do it for incidental education. As I
15 mentioned earlier, it was very difficult at Taconic
16 to have a budget, use a budget for unknown but
17 anticipated usages. So therefore, everything had to
18 be brought before Andy Russell, ultimately to bless
19 or not bless it. And until there were absolute
20 requirements to do it, it was very difficult to get
21 money released to do it, so.

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Q. In any discussions with any of the representatives of those agencies, did you ever understand them to have a basic knowledge of PFOA or its potential hazards?

A. The discussions which I had with the agencies were similar to what I stated earlier, in that they too were waiting for direction.

Q. So in other words, did you talk to anybody at the Department of Health in New York or the DEC that was knowledgeable about PFOA, as knowledgeable, for instance, as DuPont or --

A. No.

Q. Okay. And did anyone at any of those agencies tell you that, in some authoritative way, that PFOA was not hazardous to human health?

A. What they said was that it's unregulated but they didn't give the kind of answer that you just gave. They just said it was unregulated so therefore they don't know what the risks are and what to recommend to us.



1 safer?

2 A. Safer. We don't know what the real
3 number is, but safer, yes.

4 Q. Okay. And you never tested your own
5 GAC systems to determine whether they were still
6 working as designed after you installed them; is
7 that your testimony?

8 A. That is correct.

9 Q. And finally, counsel for Taconic
10 reviewed with you a number of steps that Taconic
11 took to protect its employees from the potential
12 hazards of PFOA without being required by regulation
13 to do so. And do you recall all of those things
14 that she asked you about that you did without
15 reference to regulation to protect --

16 A. I recall that.

17 Q. -- the employees? But you've testified
18 earlier today that Taconic took no similar steps to
19 protect the families of Petersburg from the
20 potential hazard of PFOA because there were no
21 regulations?

22 MS. DUFFY: Object to form.

23 A. I mean, basically that's true.

24 Q. So Taconic took steps to protect its
25 own employees from the potential hazards without