

# **EXHIBIT D**

# Memorandum



**Date:** 12/20/99  
**To:** A. Russell and J. Henry  
**From:** Joel Shorter  
**RE:** DEC Meeting

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The following summary is of my meeting with Rick Leone and Pete Empie of the DEC on Dec. 16<sup>th</sup>. Matt Traister of O'Brien & Gere was present to assist with technical and permitting issues. The underlying goal of our meeting was to approach the DEC to ask for an extension to our Consent Order requiring plant emission testing and submittal of results to the DEC by Feb. 04, 2000. Based on information from test results and advice from Matt Traister, testing would put us out of compliance. A decision to install a thermal oxidizer, requiring an extension to the Order, was brought to the DEC in hopes of minimizing lawyer involvement, thus making this a technical issue only. In turn, Taconic would buy time to make appropriate business decisions and submit required permits whether it be Title V or lower. A Consent Order modification would be needed to proceed.

The meeting was an exchange of sorts between Pete Empie and Matt Traister about areas of non-compliance. It was my intention, and Matt's, to keep the DEC focused on the current issue of moving ahead and telling us how to reach compliance with the thermal oxidizer. Rick Leone and Empie expressed dissatisfaction with events in the past concerning reporting of our emission levels. Two documents were mentioned. The first was Malcolm Green's statement that Taconic does not emit VOC's and a Source Owner letter sent by the DEC to all companies that emit or might emit VOC's. The letter asked each company to determine their proposed permit requirements based on their "potential to emit" and to submit the appropriate application for a permit. Leone mentioned the cases of hospitals in New York fined \$60,000 for not properly reporting their status on this alone. It was at this point that we drilled home the fact that there has been a great deal of miscommunication between parties involved. In the time I have been involved, I have tried to piece together everything that has happened in the past. I have reviewed both letters (attached) and Malcolm clearly mentions only that PTFE ovens emitting no VOC's. The Source Owner letter on the other hand is deemed by Malcolm as not applicable because "The plant wide emissions do not come close to the level of a major source."

Exchanges between Laura Burzesi, Malcolm, and the DEC seems to me to be in a vague nature without hard accusations on the part of the DEC. An example was an exchange between Laura and Marcia Ellis of the DEC. Ellis asked Laura if Subpart VVV, a VOC reporting requirement to the EPA, applied to Taconic. Laura responded that we have low VOC emissions and no it did not apply. Ellis said she thought this was odd considering our competitors classified themselves as high emitters of VOC's. The calculations by Malcolm and Laura were based on SARA 313 Right to Know reporting requirements. Malcolm said he verified the thresholds where additional reporting and control measures are required at 209,251 pounds per year and based on his calculations we were at the time emitting 23,351 lbs. Malcolm verified these emissions with Dennis Carroll of the DEC. The problem is this only applies to SARA 313 reporting requirements.

Rick Leone said to clearly bring back the message that this is a serious issue. Leone said we would be in violation of Part 201. 201 requires a new source review, certificate to construct a new source, and operating permit. Part 228 deals with threshold limits requiring pollution control devices and requirements for capping out of Title V. Failure to comply with the Source Owner letter requirements mentioned earlier and Part 231 were mentioned also, which also relates to total emission limits. All applicable if we were found out of compliance.

The whole matter has been very difficult for me to this point. I do not know the past exchanges that took place except through memo's and have tried to narrow the complex regulations that apply to us based on emission levels. Discussions with Mike Greco, the DEC, plant personnel, consultants, and executives has been challenging. Rick Leone explained that he issued a Notice Of Required Facility Air Emissions Compliance Testing to ascertain compliance or non-compliance at Taconic. Pete Empie said he has felt Taconic has the potential to be a Title V facility. I asked him how he came to this conclusion. He based this on information from past discussions and the type of products in use at the adhesive coater. During the site visit a couple weeks ago, Empie requested a 280A adhesive MSDS and said calculations could be easily calculated based on a given line speed. At the time we were running 10 ft/min. During his visit he suggested we do internal tests and modify the Consent Order before we ran tests. Leone and Empie expressed that fines could be significant. Empie said it was better to step up now to address the issue within the confines of a revised Consent Order rather than face the penalties if they find us out of compliance through their own means.

The DEC said they would accept a revised Consent Order listing specific steps to compliance including permits with or without inclusion of a thermal oxidizer depending on our business decisions. The specifics of the Consent Order would be provided to Ann Lapinski by Mike Greco. Matt Traister told the DEC he could guide Taconic through the process of permitting and timelines for installation of a thermal oxidizer. Any fines that the DEC would impose would be included in the revision. I would have to believe this is becoming all legal in scope. I would ask that I proceed with directive straight from the top to avoid problems and to keep the cost of phone conversations with lawyers and consultants to a minimum. The meeting was not combative, but addressed the avenues Taconic can take at this point. I believe that most people involved feel we should not confront the DEC at this point, but rather move ahead. I believe Mike Greco should be able to tell us what types of penalties the DEC might impose if we revise the Consent Order. Please contact me with any questions.