

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
STATE SUPERFUND PROGRAM  
ECL §27-1301 et seq.**

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In the Matter of a Remedial Program for

**ORDER ON CONSENT AND  
ADMINISTRATIVE SETTLEMENT**

Index No. CO 4-20160519-01

DEC Site Name: Taconic  
DEC Site No.: 442047  
Site Address: 136 Coonbrook Road  
Petersburgh, NY 12138  
Rensselaer County

Hereinafter referred to as "Site"

by: Tonoga, Inc.

Hereinafter referred to as "Respondent"

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1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.

2. The Site has been listed on the Registry of Inactive Hazardous Waste Disposal Sites in New York State (Registry) as a "Class 2" site indicating the determination of the Department and the New York State Department of Health ("NYSDOH") that contaminants disposed at the Site constitute a significant threat to public health and/or the environment. Respondent was notified of the listing by letter dated May 19, 2016.

A. On January 27, 2016, the Department added PFOA to the 6 NYCRR 597.3 list of hazardous substances by emergency regulation. Prior to this emergency rulemaking, PFOA was not regulated as a hazardous substance by New York State.

B. In February 2016, perfluorooctanoic acid (“PFOA”) was detected in the drinking water of the public water system for the Town of Petersburg (“Town”).

C. Rensselaer County Health Department (“RCHD”) and Taconic developed a map identifying certain areas in the vicinity of the Site requiring sampling to determine whether Point of Entry Treatment (“POET”) systems are required as outlined on Exhibit B (“Initial Well Investigation Area”).

D. Respondent retained an engineering firm to design a granular activated carbon (“GAC”) treatment system to remove PFOA from the municipal water supply. Respondent submitted an engineering design report to NYSDOH on June 17, 2016, and thereafter submitted responses to NYSDOH’s comments on August 12, 2016 and August 17, 2016. On August 17, 2016 NYSDOH granted Respondent the authority to procure the treatment system (“Treatment System”), provided that Respondent submits to NYSDOH a final design package containing detailed fabrication plans and specifications which must be approved by NYSDOH prior to construction. A final design package was submitted to NYSDOH on October 31, 2016.

3. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of a hazardous substance or a hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of a hazardous substance or a hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

4. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

**NOW**, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

**I. Real Property**

The Site subject to this Order has been assigned number 442047, consists of approximately 23.540 acres, and is as follows:

Subject Property Description (Exhibit “A” is a map showing the location of the Site)

Tax Map/Parcel No.: Section 97 Block 1 Lot 64 Sublot 2

98 & 136 Coonbrook Road  
Petersburgh, NY 12138  
Owner: Tonoga, Inc. d/b/a Taconic

Tax Map/Parcel No.: Section 97 Block 1 Lot 62  
123-127 Coonbrook Road  
Petersburgh, NY 12138  
Owner: Tonoga, Inc. d/b/a Taconic

## **II. Initial Work Plans and Submittals**

### **A. Remedial Investigation/Feasibility Study**

1. Within thirty (30) days after the effective date of this Order, Respondent shall submit to the Department a proposed work plan for a Remedial Investigation/Feasibility Study (“RI/FS”) for the Site.

2. The Department will make a good faith effort to provide comment to Respondent within thirty (30) days of the proposed work plan being submitted to the Department. The Department shall review the work plan in accordance with 6 NYCRR 375-1.6(d), and the rights and obligations set forth therein are applicable to this Order. Upon the Department’s approval of the Work Plan or Respondent’s acceptance of a Department-modified work plan, Respondent shall implement the Work Plan in accordance with the provisions of Paragraphs III.A and III.B of Appendix A.

### **B. Interim Remedial Measures**

The following Interim Remedial Measures shall be commenced and carried out by Respondent in accordance with the schedules set forth below:

#### **1. Town of Petersburgh (“Town”) Public Water Treatment System**

a. Respondent designed, and shall install the Treatment System to remove PFOA from water produced by the Town. The Treatment System shall be that which was approved by NYSDOH pursuant to 10 NYCRR 5-1.22, and is described in paragraph 2.D above. Respondent shall pay, on a timely basis, all costs incurred to design and install the Treatment System, to conduct an assessment of the installed system, and to make any required modifications. Respondent shall also pay all necessary costs to (i) sample, monitor and maintain the Treatment System pursuant to the requirements of the Protocol Work Plan defined in subparagraph d, below, (ii) all additional incremental operation and maintenance costs of the Town Public Water System caused by the installation, operation, and maintenance of the Treatment System, and (iii) any necessary additional modifications or assessments of the Treatment System.

b. Respondent shall take delivery of the GAC tanks and other necessary equipment by November 30, 2016. Failure to meet this date shall be subject to the "Force Majeure" provisions of 6 NYCRR 375-1.5(b)(4). Within 30 days of delivery of the GAC tanks, Respondent shall install the Treatment System. Respondent shall work and cooperate with the Town and RCHD regarding all elements of design, installation, operation, and maintenance of the Treatment System.

c. Respondent has submitted to NYSDOH and RCHD for review and approval, an appropriate startup plan ("Startup Plan") for the Treatment System which sets forth how Respondent will confirm that the Treatment System has removed PFOA from the drinking water distribution system. The Startup Plan shall address the issues identified in the "NYSDEC/NYSDOH/RCHD Outline for Start Up Plan" dated October 7, 2016 and sent by electronic mail to Respondent on that date. In the event Respondent and RCHD and/or the Town agree, RCHD and/or the Town may carry out some or all of Respondent's startup obligations, and Respondent shall reimburse RCHD and/or the Town, as appropriate, for such costs.

d. Further, within thirty (30) days after the effective date of this Order, Respondent shall submit to NYSDOH and RCHD, for review and approval, a sampling, monitoring, and carbon replacement protocol ("Protocol Work Plan") for the Treatment System, which may be incorporated into an Interim Site Management Plan. The Protocol Work Plan shall provide for sampling at the water treatment plant at three locations - prior to the carbon filter system, in between the lead and lag filters, and after the lag filter. Sampling shall occur on a monthly basis for the first six months following the effective date of this Order. Thereafter, sampling shall occur as provided under the Protocol Work Plan. All sampling data shall be made available to the public in a timely manner.

e. Following installation, Respondent shall submit to NYSDOH documentation and certifications, as determined and directed by NYSDOH, sufficient to enable NYSDOH to issue a Completed Works Approval.

f. Following authorization by both NYSDOH and RCHD to operate the Treatment System, Respondent shall, in cooperation with the Town, commence operation of the Treatment System, including implementation of the approved Protocol Work Plan.

## 2. Temporary Provisions of Alternate Water

Respondent shall provide residents of the Town, who use municipal water or water from private drinking water wells, bottled water free of charge at one or more convenient locations, within the limits of the Town and approved by the Town Supervisor. Bottled water shall be provided for those who use municipal water until the

Treatment System for the municipal water supply is installed and cleared for use by NYSDOH. Bottled water shall be provided for residences or businesses within the Town using private drinking water wells until that residence's or business' well has been sampled, a Point of Entry Treatment System ("POET") has been requested, and, in the event a POET system is requested, it has been installed by Respondent, RCHD or the Department and cleared for use by RCHD, NYSDOH or the Department. No costs associated with the provision or distribution of bottled water, including the costs of Town personnel, shall be borne by the Town. Pursuant to the program, residents of the Town may receive up to, but not in excess of, five gallons of bottled water per day/per household. To the extent certain Town residents or businesses require more than five gallons of bottled water per day/per household, Respondent agrees to provide additional water after a request and a reasonable justification has been submitted to and approved by the Town Clerk. Respondent shall provide bottled water delivery services to aged and infirm Town residents after a request and reasonable justification has been submitted to and approved by the Town Clerk.

### 3. Sampling and Installation of Point of Entry Treatment Systems

a. RCHD has previously sampled private drinking water wells in the Town for PFOA using the modified test method 537, and identified wells containing such contamination. With the consent of property owners, Respondent will sample any as yet un-sampled, private water wells in the Town within Exhibit B, the Initial Well Investigation Area. Such wells shall be sampled for PFOA using the modified test method 537. Respondent shall provide the Department with laboratory analytical results for all samples.

b. Respondent shall address wells within the Exhibit "B" Initial Well Investigation Area as follows: Respondent shall design and install POET systems, as approved by the Department, NYSDOH or RCHD on (i) wells for properties identified, by tax map number, in Exhibit C, provided that the residences or businesses consent to installation, and (ii) wells for properties identified in the future, within or outside of the Initial Well Investigation Area, for which Respondent commits in writing to install POET systems, provided that the residences or businesses request installation. Respondent shall provide the Department with laboratory analytical results for samples taken after each POET system installation to enable the Department, NYSDOH or RCHD to determine whether the POET system is cleared for use as provided for in the attached Exhibit D.

c. Respondent shall operate, maintain, sample and monitor any POET it installs and those POETs identified in the attached Exhibit C in accordance with the Point of Entry Treatment Systems Sampling, Operations and Maintenance Plan attached as Exhibit D. All POETs for which the last sampling event occurred more than 4 months prior to the effective date of this Order will be sampled as soon as possible.

d. For those POET systems, if any, Respondent commits to install in the future based on additional sampling, provided the residence or business requests installation, Respondent shall design and install such POET systems, as approved by the Department, NYSDOH or RCHD; shall provide the Department with laboratory analytical results for samples taken after each POET system installation to enable the Department, NYSDOH or RCHD to determine whether the POET system is cleared for use as provided for in Exhibit D; and shall operate, maintain, sample and monitor the POET systems in accordance with Exhibit D.

e. In the event Respondent and RCHD agree, RCHD may carry out some or all of Respondent's future sampling obligations, and Respondent shall reimburse RCHD for such costs. In the event design, installation, clearance for use, operation, or maintenance of POETs agreed to be addressed by Respondent pursuant to this Paragraph is undertaken by others, Respondent shall reimburse such costs.

f. Respondent shall monitor, on an annual basis, wells within the Initial Well Investigation Area on which it has not installed POETs. Following the Department's approval of the final Remedial Investigation Report, Respondent may submit a proposal, including technical support, to discontinue annual monitoring of such wells.

### **III. Payment of State, County, and Town Costs**

A. Invoices for payment pursuant to this paragraph shall be sent to Respondent at the address designated below:

Tonoga, Inc. d/b/a Taconic  
Attention: CFO  
136 Coonbrook Road  
Petersburgh, NY 12138

B. Respondent shall pay certain past and future "State Costs" in accordance with the provisions of 6 NYCRR 375-1.5(b)(3) as modified by this paragraph and paragraph V.E. Past "State Costs" to be paid pursuant to this Order are the State costs incurred prior to the effective date of this Order associated with sampling by the State or Rensselaer County of the Town public water system, soils, and ponds, and private water wells in the Initial Well Investigation Area, surface water sampling in the Little Hoosic River, the State's personnel costs associated with the foregoing activities, and the cost of negotiating this Order. Future "State Costs" to be paid pursuant to this Order are the costs associated with overseeing, administering, or enforcing this Order, and the work performed and deliverables submitted by Respondents as required under this Order. In addition to the bases for contesting invoiced costs set forth in the provisions of 6 NYCRR 375-1.5 (b)(3)(v), Respondents may also contest an invoice pursuant to

the dispute resolution provisions in Appendix A, under the additional basis that the costs sought are not covered under this Order pursuant to this paragraph.

C. 1. Rensselaer County and the Town of Petersburg have indicated that they have incurred unreimbursed costs related to the ground water contamination alleged by the Department to be associated with the Site. Within forty-five (45) Days of the effective date of this Order, Respondent shall meet with the County and Town and negotiate for reimbursement to the County or Town of some or all of its past and future unreimbursed costs allegedly associated with the presence of PFOA in the Town Public Water System and private wells located within the Town.

2. The Department reserves any right it has, subject to the provisions of applicable law and paragraph V.E. below, to seek cost recovery for any unreimbursed costs in the event the County, Town and Respondent do not reach an agreement regarding Town costs. Respondent reserves its rights and defenses to contest any such action by the Department.

#### **IV. Communications**

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Dolores A. Tuohy, Esq.  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233  
[dolores.tuohy@dec.ny.gov](mailto:dolores.tuohy@dec.ny.gov)

William Daigle (1 hard copy (unbound for work plans) & 1 electronic copy)  
Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233  
[william.daigle@dec.ny.gov](mailto:william.daigle@dec.ny.gov)

Krista Anders (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, NY 12237  
[krista.anders@health.ny.gov](mailto:krista.anders@health.ny.gov)

2. Communication from the Department to Respondent shall be sent to:

Lori J. Mason, Esq.  
Corporate Counsel  
Taconic  
136 Coonbrook Road  
Petersburgh, NY 12138  
lorim@4taconic.com

Robert Stout, Esq.  
Whiteman Osterman & Hanna LLP  
One Commerce Plaza  
Albany, NY 12260  
[rstout@woh.com](mailto:rstout@woh.com)

Tonoga, Inc. d/b/a Taconic  
Attn: Environmental Manager  
136 Coonbrook Road  
Petersburgh, NY 12138  
karent@4taconic.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph I.

**V. Miscellaneous**

A. Appendix A - "Standard Clauses for All New York State Superfund Administrative Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

B. In the event of a conflict between the terms of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this Order shall control. If there is a conflict between Exhibit D (including any and all attachments thereto and amendments thereof) and other terms of this Order, the terms of the Order shall control.

C. The Department reserves the right to request that Respondent implement or fund any additional measures the Department believes necessary to protect public health or the environment. Respondent's approval of any such request must be in writing.

D. With the exception of obligations related to the sampling of drinking water wells and design, installation, operation, and maintenance of POETS, nothing contained in this Order limits Respondent's obligations pursuant to this Order to the Exhibit "B" Initial Well Investigation Area.

E. The only costs for which Respondent must reimburse the Department pursuant to this Order are those described in Paragraph III.B above. Other than as set forth in this paragraph, the Department reserves the right to seek to recover any costs not reimbursed pursuant to this Order. Respondent reserves the right to defend against any such claim by the Department. However, the Department waives its rights to seek reimbursement from Respondent for the cost of the Department's sampling of any private drinking water well for which a residence or business did not request or declined a POET system offered pursuant to Paragraph II.B.3.b or Paragraph II.B.3.d of this Order if the well was sampled by Respondent within the prior year. This exception to the Department's reservation of the right to seek recovery of costs is not applicable if the RI for the Site identifies the need for expanded testing of drinking water wells.

F. Respondent reserves the right to defend against any such claim by the Department.

G. In the event Respondent fails to undertake work which the Department requests or directs it to undertake, the Department intends to undertake such work itself and seek to recover such costs from Respondent outside the terms of this Order. Respondent reserves the right to defend against any such claim by the Department.

H. The effective date of this Order is the 10th day after it is signed by the Commissioner or the Commissioner's designee.

I. This Order shall not inure to the benefit of any third party. The existence of this Order or Respondent's compliance with it, shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party.

J. In the event this Order terminates pursuant to the provisions of Subparagraph XIV.A.1 of Appendix A, in addition to the provisions described in Subparagraph XIV.B that survive termination, the provisions of Paragraph II.B (Interim Remedial Measures) shall survive termination of this Order for as long as the ROD or the Department requires the continuation of Paragraph II.B.1 or II.B.3 as a remedial measures.

K. The Department reserves any right it has, subject to the provisions of applicable law, to seek additional information from Respondent regarding the Site and other areas of known or suspected contamination.

L. Respondent's periodic progress reports required by Paragraph XIII of Appendix A shall be submitted on the 15th day of the month.

DATED:

*November 10, 2016*

BASIL SEGGOS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:



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Robert W. Schick, P.E., Director  
Division of Environmental Remediation

**CONSENT BY RESPONDENT**

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

Lori J. Mason  
Signature

Corporate Counsel  
Title

11-10-16  
Date

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF Rensselaer    )

On the 10<sup>th</sup> day of November, in the year 2016, before me, the undersigned, personally appeared Lori J. Mason, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Signature and Office of individual  
taking acknowledgment

TARA FISHER  
Notary Public, State of New York  
No. 01F18015202  
Qualified in Rensselaer County  
Commission Expires October 26 2018