

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

Taylor-McIlhenny
Operating Co., Inc.,

Docket No. OPA-09-95-01

Respondent

**ORDER CANCELLING HEARING
and
ADDRESSING FURTHER PROCEEDINGS**

Complainant in this proceeding alleges that the Respondent did not develop and implement a Spill Prevention Control and Countermeasure ("SPCC") Plan for its facility consisting of oil wells and storage tanks near Yorba Linda, California, in violation of the Clean Water Act ("CWA") §311(b) and (j), 33 USC §1321(b,j), and the CWA regulations requiring such a SPCC, 40 CFR §112.3. The Complaint (as amended) seeks assessment of a civil penalty against Respondent in the amount of \$85,700.¹

The parties have agreed to a stipulation to submit their direct and rebuttal testimony and evidence in written form, and to waive cross-examination of the written testimony, in lieu of the hearing that was scheduled to begin on December 3, 1996 in Santa Ana, California. With that stipulation, Complainant has also filed a motion dated November 22, 1996 to file a Second Amended Complaint in this proceeding. The proposed Second Amended Complaint states the same allegations, but adds two additional Respondents -- the individuals Donald B. McIlhenny and Michael W. Taylor. Respondent alleges that those two individuals are officers, directors and shareholders of the corporation Taylor-McIlhenny Operating Company, Inc., and have personally directed all of that Respondent's activities at issue in this matter.

Complainant's motion to file a Second Amended Complaint must be resolved before the procedure for filing written submissions in lieu of the hearing is allowed. The hearing scheduled for December 3, 1996 is however cancelled in any event. Depending on the determination of the motion to amend the Complaint and

the course of subsequent proceedings, either written submissions may be allowed in the future, or the hearing may be rescheduled.

The parties' proposed schedule for filing written submissions, in which the initial filings were due December 3, 1996, cannot be followed in light of the Complainant's motion to file a Second Amended Complaint. Complainant has not stated any reason why it waited until virtually the eve of the scheduled hearing to file the motion to amend the Complaint. At the very least, the proposed new Respondents, Messrs. McIlhenny and Taylor, are entitled to respond and oppose the motion to add them as parties to this proceeding under the EPA Rules of Practice, 40 CFR §§22.14(d) and 22.16. In addition, time must be provided for them to file their Answers to the Second Amended Complaint, if the motion is granted.

Contrary to the assertions in Complainant's memorandum in support of its motion, the individual Respondents will be prejudiced if the motion is granted. They could then be held personally liable, along with the corporation, for any civil penalty that is ultimately assessed. The motion will also cause delay for the reasons stated above. However, that does not mean that the respondents will necessarily be so unduly prejudiced, or this proceeding so unduly delayed, such that the motion should be denied. The standard for granting leave to amend pleadings is generally a liberal one, in consideration of the policy in favor of deciding controversies on the merits, among the true parties in interest. My decision on the motion will be reserved until the two proposed individual Respondents have had a chance to respond.

The schedule and procedure for filing written submissions or for a hearing will be determined after my ruling on the motion to amend the Complaint. If that motion is granted, for example, the new parties would also have to agree to litigate this matter through written filings rather than a normal hearing, if that is still the procedure favored by the Complainant and original Respondent. One or both of the individual Respondents may wish to retain counsel. If the motion is granted, new factual issues may well arise concerning the degree of Mr. McIlhenny's and Mr. Taylor's responsibility for any violations that are found. If the motion is granted, the entire complexion of this proceeding would be changed.

Order

1. The hearing in this matter scheduled to begin on December 3, 1996 in Santa Ana, California is cancelled.

2. The proposed new individual Respondents, Donald B. McIlhenny and Michael W. Taylor, will have until December 20, 1996 to file responses to Complainant's motion to file a Second Amended Complaint.

3. Further proceedings will be scheduled after resolution of that motion.

Andrew S. Pearlstein
Administrative Law Judge

Dated: November 26, 1996
Washington, D.C.

In the Matter of Taylor-McIlhenny Operating Company, Inc.

Docket No. OPA-09-95-01

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Cancelling Hearing and Addressing Further Proceedings**, dated November 26, 1996, was sent by regular mail to the addressees listed below:

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Maria A. Whiting
Legal Assistant

Dated: November 26, 1996

¹ The proposed Second Amended Complaint proposes a civil penalty of \$86,915, but this discrepancy is not addressed by Complainant in its motion.