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# TRANSCRIPT OF PROCEEDINGS

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

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:  
In the Matter of: :  
:  
MAYLINE COMPANY (THE) : Docket No.  
:  
Respondent : RCRA V-W-26-93  
:  
----- X

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Pages 1 thru 6

MILLER REPORTING COMPANY, INC.

507 C Street, N.E.  
Washington, D.C. 20002  
(202) 546-6666

Washington, D.C.  
May 4, 1995

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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 In the Matter of: :  
 :  
 MAYLINE COMPANY (THE), :  
 :  
 Respondent : Docket No.  
 : RCRA V-W-26-93  
 ----- x

Thursday, May 4, 1995

Environmental Protection Agency  
401 M Street SW  
Washington, D.C.

Telephone conference in the above-  
entitled matter convened, pursuant to notice,  
at 10:00 a.m.

BEFORE:

JON M. LOTIS, Chief Administrative Law Judge

APPEARANCES:

For Complainant:

TERENCE P. BRANIGAN, ESQ.  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60611-3608  
FAX: (312) 886-7160

For Respondent:

PIERRE C. TALBERT, ESQ.  
Foley & Lardner  
330 N. Wabash Avenue, Suite 3300  
Chicago, Illinois, 60611-3608

## P R O C E E D I N G S

1  
2 JUDGE LOTIS: We'll be on the record  
3 now.

4 The reporter is here. The purpose of  
5 today's session is for me to rule on the pending  
6 motion before me that has been filed by the  
7 Respondent in the case, Mayline. The motion was  
8 styled "Motion for Protective Order Request in  
9 Assignment of Settlement Judge."

10 The specific request is--and I'll quote  
11 from the last page of the pleading of the  
12 Respondent, the last paragraph of that  
13 pleading-- "Respondent, The Mayline Company moves  
14 the Presiding Judge for entry of a protective order  
15 prohibiting the use as evidence of information  
16 previously obtained through improper discovery and  
17 prohibiting further site inspections during the  
18 pendency of this case. In addition, Mayline  
19 requests the assignment of a settlement judge to  
20 assist the parties in reaching settlement."

21 I reviewed the pleadings of the  
22 Respondent and of the Complainant, and all the

1 materials that have been filed relating to this,  
2 and it's my belief that cases cited by the  
3 Complainant support its position that the motion  
4 for protective order should be denied.

5 EPA's authority under RCRA Section  
6 3007(a) to conduct inspections is not limited by  
7 the fact that an administrative proceeding is  
8 taking place.

9 The EPA through its "other discovery"  
10 provision of its rules cannot limit the statutory  
11 authority delegated to it by Congress under RCRA to  
12 investigate.

13 Also, the real issue here to me--I don't  
14 like to cross bridges until I come to them--is what  
15 use, if any, would be made of information acquired  
16 through these investigations that may have occurred  
17 subsequent to the prehearing exchanges. I think  
18 that's a matter that I would consider at such time,  
19 if at all, the EPA--or I should say, the  
20 Complainant--attempts to introduce this in  
21 evidence. And I would be guided by Section  
22 22.19(b) of the agencies rules.

1           And I'll quote a portion of that section,  
2 subsection, "Documents that have not been  
3 exchanged, and witnesses whose names have not been  
4 exchanged, shall not be introduced into evidence or  
5 allowed to testify without permission of the  
6 presiding officer. The presiding officer shall  
7 allow the parties reasonable opportunity to review  
8 new evidence."

9           This means to me at such time that EPA  
10 attempts to introduce or elicit additional  
11 information obtained as a result of these  
12 investigations, they would have to do that with  
13 leave of the judge to have that material introduced  
14 at that point. I would consider any objections in  
15 terms of timing, relevancy, or prejudice, and deal  
16 with it in accordance with the agency's rules that  
17 I've cited.

18           Also, separate and independent from the  
19 request, that request was the request for the  
20 appointment of a neutral, and I'm going to grant  
21 that request, and I will be issuing an order today,  
22 which will initiate a dispute resolution process,

1 and I will appoint Judge Thomas Hoya as the neutral  
2 in the case. He will be directed by the terms of  
3 this order to file a report with me on or before  
4 June 16th with a copy to the parties recommending  
5 the termination or continuation of settlement  
6 discussions.

7           There will be some additional information  
8 about this process contained in that order, but the  
9 important thing for the parties to know at this  
10 time is merely that I will place a relatively short  
11 fuse on the settlement discussions, and if process  
12 is being made, then they would be allowed to  
13 continue; and if not, they would be terminated.

14           There being no further matters to  
15 consider this morning, this session is adjourned.

16           Thank you very much, gentleman.

17           (Whereupon, at 10:05 a.m., the hearing  
18 was adjourned.)

19

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21

22

## **C E R T I F I C A T E**

I, **MICKEY BASSFORD**, the Official Court Reporter for Miller Reporting Company, Inc., hereby certify that I recorded the foregoing proceedings; that the proceedings have been reduced to typewriting by me, or under my direction and that the foregoing transcript is a correct and accurate record of the proceedings to the best of my knowledge, ability and belief.

  
\_\_\_\_\_  
**MICKEY BASSFORD**