

1/8/98

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Taylor-McIlhenny)	Docket No. OPA-09-95-01
Operating Co., Inc.,)	
)	
Respondent)	

ORDER TO SHOW CAUSE WHY THE
JUDGE SHOULD NOT APPOINT AN EXPERT WITNESS

Upon close review of the parties' submissions of evidence and briefs in this case, I have determined that testimony or written evidence by a financial expert witness is necessary in order for me to properly fulfill my duty to ensure that the facts are fully developed with reference to the Respondent's ability to pay a penalty. Neither party has presented a witness expert in financial matters, such as a certified public accountant, to analyze the evidence of Respondent's transactions and finances. The record in its current state is unclear. The record must be reopened and supplemented with such evidence in order for me to fairly adjudicate this issue.

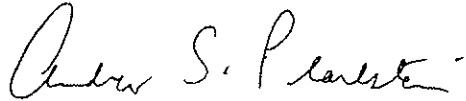
Pursuant to the authority granted the presiding officer in 40 CFR §22.04(c), the parties are directed to show cause why I should not appoint an expert witness to analyze the financial documents in evidence in this case and render an opinion on the Respondent's ability to pay the proposed penalty. This order will follow the general procedural guidelines of F.R.C.P. 706, which authorizes the court to appoint an expert witness on his own motion, upon entering an order to show cause. Under that rule, the judge may request the parties to submit nominations. I will vary that procedure somewhat by stating that this order, in effect, will allow each party an opportunity to present its own qualified financial expert as a witness in this proceeding. Most likely, if either or both parties produce such a witness, that would remove the necessity for me to appoint an expert. If both parties decline to do so, I will proceed to appoint one of my own choosing.

Specifically, the procedure will be as indicated in the following order.

Order

1. The parties must respond to this Order to Show Cause by February 5, 1998. The responses must indicate whether the party intends to produce its own qualified financial expert witness. If so, the party must identify such witness and state his or her qualifications.

2. After receipt of the responses, I will establish a procedure and a schedule that will depend on the responses and the sponsorship of any new witness(es). If neither party produces a witness, it is my present intention to appoint an expert witness following the general guidelines of F.R.C.P. 706. Since the parties have waived an oral hearing in this proceeding, the additional expert witness(es) will most likely be required to submit testimony in written form. The parties may then be permitted to move to cross-examine such witness(es), presumably through interrogatories.



Andrew S. Pearlstein
Administrative Law Judge

Dated: January 8, 1998
Washington, D.C.

IN THE MATTER OF TAYLOR-McILHENNY OPERATING CO. INC., Respondent
Docket No. OPA-09-95-01

CERTIFICATE OF SERVICE

I certify that the foregoing **Order To Show Cause Why The Judge Should Not Appoint An Expert Witness**, dated January 8, 1998, was sent in the following manner to the addressees listed below.

Original by Pouch Mail to:

Danielle E. Carr
Regional Hearing Clerk
EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

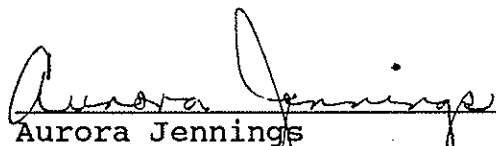
Copy by Regular Mail to:

Counsel for Complainant:

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Aurora Jennings
Legal Assistant
Office of Administrative
Law Judges

Dated: January 8, 1997
Washington, DC