



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

JAN 16 2009

Gene Wilson
P.O. Box 702
Louisa, KY 41230

Re: Freedom of Information Act Appeal 04-RIN-00024-07-A (APP-00015-07)

Dear Mr. Wilson:

I am responding to your November 20, 2006 Freedom of Information Act ("FOIA") appeal. You appealed the November 3, 2006 decision of Russell L. Wright, Jr. ("decision") of the U.S. Environmental Protection Agency ("EPA" or "Agency") to deny in part the request you submitted to EPA on October 5, 2006. Your request sought documents pertaining to the EPA's case file relating to an Agency enforcement action that was pending against you at the time. The decision stated that your request was denied in part because the documents were exempt from disclosure under Exemptions 5, and 7(a) of the FOIA, 5 U.S.C. §§ 552 (b)(5), (b)(7)(a). The decision included a numbered document list citing these exemptions that I will reference within this appeal decision.

I have carefully considered your request, EPA's decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is, granted in part and denied in part. Portions of documents 1, 2, 4c, 7, 8 and 9 have been released, while other portions have been withheld as indicated on the copies enclosed. Documents 3, 4a, 4b, 5, 6 and 10 will continue to be withheld in full.

Exemption 2

Exemption 2 of the FOIA, 5 U.S.C. § 552(b)(2) protects records that are "related solely to the internal personnel rules and practices of an agency." The withheld document 3 and portions of documents 1 and 2 are within the scope of the phrase "related solely to the internal personnel rules and practices of an agency" because they contain information that is predominantly internal, the disclosure of which would significantly risk circumvention of EPA regulations or statutes. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 2 of the FOIA.

Exemption 5

Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The documents and portions of documents that were withheld under Exemption 5 of the FOIA are exempt from disclosure because they are inter-agency or intra-agency memoranda or letters generated by EPA employees and because the documents contain information that is protected by the attorney work-product privilege, the attorney-client privilege, and the deliberative process privilege.

Attorney work-product privilege

Exemption 5 of the FOIA protects from disclosure a record, or portion of a record, that is subject to the attorney work-product privilege. The attorney work-product privilege protects documents prepared by, or at the direction of, an attorney in anticipation of litigation or during litigation. The withheld documents 4 and 10 were prepared by an attorney both in anticipation of litigation and during litigation. Release of this material would allow scrutiny of EPA's sensitive litigation preparations. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 5 of the FOIA.

Attorney-client privilege

Exemption 5 of the FOIA protects from disclosure a record, or portion of a record, that is subject to the attorney-client privilege. The attorney-client privilege protects confidential communications between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. The privilege applies to facts divulged by a client to the attorney, to opinions given by the attorney to the client based upon those facts, and to communications between attorneys which reflect client-supplied information. The withheld documents 5 and 6 are protected by the attorney-client privilege because they constitute communication between attorneys and their clients. Release of this withheld material would allow scrutiny of sensitive, confidential communication between the attorneys and their clients. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 5 of the FOIA.

Deliberative process privilege

Exemption 5 of the FOIA also protects from disclosure a record, or portion of a record, that is subject to the deliberative process privilege. The deliberative process privilege protects documents that are both predecisional and deliberative. The withheld documents and portions of documents 1, 2 and 3 are protected by the deliberative process privilege because they reflect the internal discussions, advice, analysis and recommendations that were being considered during EPA's decision-making process. Release of the withheld material would discourage open, frank discussions on matters of policy between subordinates and superiors and prematurely disclose proposed policies

before they are finally adopted. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 5 of the FOIA.

Exemption 7(A)

Exemption 7(A) of the FOIA, 5 U.S.C. § 552(b)(7)(A), protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." The withheld documents 3 and 5 were compiled for law enforcement purposes. The documents were compiled by EPA for the purpose of enforcing the Safe Drinking Water Act. Further, the production of these materials could reasonably be expected to interfere with ongoing enforcement proceedings, because it would hinder the government's ability to control or shape the investigation, and it would prematurely reveal the government's evidence or strategy. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 7(A) of the FOIA.

Exemption 7(C)

Exemption 7(C) of the FOIA, 5 U.S.C. § 552(b)(7)(C), exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy." The withheld portions of documents within documents 1, 2, 4c, 7, 8 and 9 include information compiled for law enforcement purposes. The documents were compiled by EPA for the purpose of enforcing the Safe Drinking Water Act. The documents contain information relating to the identities of law enforcement personnel. The production of this information could reasonably be expected to constitute an unwarranted invasion of the personal privacy of these individuals, because it would create the potential for harassment. Therefore, I have determined that the withheld material is exempt from disclosure under Exemption 7(C) of the FOIA.

Reasonably segregable information

I have determined that some of the withheld documents contain reasonably segregable information that may be released. A copy of that material is enclosed. I have further determined that there is no other reasonably segregable nonexempt information.

Conclusion

This letter constitutes EPA's final determination on your appeal. In accordance with 5 U.S.C. § 552(a)(4)(B), you have the right to seek judicial review of this

Mr. Gene Wilson
FOIA Appeal 4-RIN-00024-07-A (HQ-APP-00015-07)
Page 4

determination by instituting an action in the district court of the United States in the district in which you reside, or have your principal place of business, or in which the Agency records are situated, or in the District of Columbia.

Should you have any questions concerning this matter, please call Scott Albright, at (202) 564-2884.

Sincerely,

A handwritten signature in dark ink, appearing to read 'KME', written over a horizontal line.

Kevin M. Miller
Assistant General Counsel
General Law Office

Enclosures

cc: HQ FOI Office
Kindra Callahan, Region 4 FOI Officer
Zylpha Pryor, Region 4 ORC

ADMINISTRATIVE ACTION DATA SHEET

(To Be Submitted to OEA When:

(1) a Complaint is Filed;

(2) When a CAFO(b) Filed, Along with a Case Conclusion Data Sheet

(3) a Non-Penalty Order is Issued; Along with a Case Conclusion Data Sheet)

1. Court Docket/Regional Hearing Clerk Docket No. SDWA-04-2005-1016

2. Case Name Gene A. Wilson

EPA Lead Attorney

Ex. 7c

Phone No.

Ex. 7c

EPA Program Contact

Ex. 7c

Phone No.

Ex. 7c

Facility Information

Information for One Facility (If More Facilities, Attach Additional Pages.)

(Use Location of Site of Violation; DO NOT use a P.O. Box #.)

9. Facility Name Gene A. Wilson #1; 15 - S - 80; 3000' FNL x 90' FWL

10. Street Address Martha Pool

County Lawrence

City

State KY

Zip Code

Primary 4-Digit SIC Code 1311

(b) Other 4-Digit SIC Codes

EPA FRS No.

Is This a Federal Facility? Yes X No

Is This Indian Land? Yes X No

If Yes, What Tribe?

Is This a Small Business? X Yes No

("A person, corporation, partnership, or other entity that employs 100 or fewer employees.")

Is The Facility Located in an EJ Area?

Yes X No

If Yes: Low Income

Minority Population

Both

Other

Note: Question Numbers Correspond with the Case Conclusion Data Sheet Guidance Booklet, Dated August 2004.
If You Have Any Questions, Please Contact

7. Respondents/PRPs List:

[illegible]

Continue on Attached Page, if Necessary

8. Statute(s) and Section(s) Violated (NOT Authorizing Section Nor CFR):

_____/_____; _____/_____; _____/_____

Authorizing Section for Administrative Actions: ____/_____

If CERCLA, Is the Site on the NPL? ____ Yes ____ No

12. CFR Violation Citation(s):

40 CFR Part 144 _____ Section 51(a) 40 CFR Part _____ Section _____

40 CFR Part _____ Section _____ 40 CFR Part _____ Section _____

Is this a MULTI-MEDIA action? ____ Yes ☒ No

If Yes, check all that apply:

CAA:

- ☐ Mobile Source (Title II)
- ☐ Stationary Source (Other Than Title II)
- ☐ Prevention of Accidental Releases (112(r))

CERCLA:

- ☐ Hazardous Site Response (CERCLA Superfund
Other Than 103 and/or RCRA 3013 or 7003)

CWA:

- ☐ NPDES (Other Than 311 and 404)
- ☐ Oil Pollution (311)
- ☐ Wetlands (404)

EPCRA or EPCRA/CERCLA

- ☐ Community Right-to-Know (313)
- ☐ Release Notification/Emergency Preparedness
(Non-313 and/or CERCLA 103)

FIFRA:

- ☐ Pesticides

MPRSA:

- ☐ Ocean Dumping

RCRA:

- ☐ Hazardous Waste Mgmt (Subtitle C)
- ☐ Solid Waste Mgmt (Subtitle D)

SDWA:

- ☐ Public Water Supply (1414 et seq.)
- ☐ UIC (1421 et seq.)

TSCA:

- ☐ Asbestos Hazardous Emergency Response
Act (201)
- ☐ Lead Exposure Reduction (409)
- ☐ PCBs (6(e))
- ☐ Toxic Substances (Other Than Lead or PCBs)

UST:

- ☐ Underground Storage Tanks (Subtitle I)

Was The Agency Activity Taken in Response to Environmental Justice Concerns? ____ Yes ☒ No

If Yes: ____ Minority ____ Low Income ____ Both

PRIORITY INFORMATION

MOA Priority (Check All That Apply):

CAA Air Toxics:

- ☐ NSR/PSD Non-Coal-Fired Power Plant
- ☐ NSR/PSD Coal-Fired Power Plant

Wet Weather:

- ☐ CAFO (AFLOT)
- ☐ CSO (CSO)
- ☐ SSO (SS)
- ☐ Stormwater - MS4
- ☐ Stormwater - Industrial Non-Construction
- ☐ Stormwater - Industrial Construction

Petroleum Refining:

- ☐ Petroleum Refining

Tribal:

- ☐ Tribal

Mineral Processing:

- ☐ Phosphoric Acid
- ☐ Non-Phosphoric Acid
- ☐ Mining

Regional Priority (Check All That Apply):

- ☐ Coastal & Inland Marinas
- ☐ Corrective Action Facilities
- ☐ Geographic Initiative
- ☐ Hazardous Waste Facilities
- ☐ Metal Galvanizers
- ☐ Mobile Bay Compliance Assurance Initiative
- ☐ Plastics & Synthetic Resin Manufacturers
- ☐ Textile Industry
- ☐ Wood Preserving Facilities

Date Complaint Filed: _____

Proposed Penalty Amount \$ Ex. 2
Ex. 5 pp
(Should be Amount Prior to Reductions Using a
Penalty Policy.)

Is This An Amended Complaint: Yes X No

AND/OR Proposed Cost
Recovery Amount \$ 0

Self Disclosure Information

Did Company Self-Disclose Violations? Yes X No

Does Company Have Less Than 100 Employees? X Yes No

(Note: If Yes, Treat As If Violations Were Disclosed Under EPA's Small Business Policy)

Date Violations Disclosed: / /

Has the Inspection Information Been Entered into ICIS? Yes X No

If Yes, What is the ICIS Compliance Monitoring Activity Name (Exactly): _____

What Type of Inspection was Conducted (Statute/Section)? _____

Date of Inspection: 9/14/04

Violation Types

CAA

- ☐ Asbestos Demolition/Renovation Work Practices Requirements
- ☐ Asbestos Requirement Violation
- ☐ Asbestos-In-Schools Violation
- ☐ Discharge, Emission, or Activity Without Required Permit
- ☐ Violation of Permit Requirement
- ☐ National Emission Standard for Hazardous Air Pollutant
- ☐ New Source Review
- ☐ Prevention of Significant Deterioration
- ☐ Risk Management Plan
- ☐ Stratospheric Ozone Protection Violation
- ☐ Tampering w/Emissions Control Device
- ☐ Violation of Reporting Requirements
- ☐ Violation of Requirement to Monitor/Maintain Records
- ☐ Other/Miscellaneous

FIFRA

- ☐ Container Requirements
- ☐ Exports Violation
- ☐ Imports Violation
- ☐ Failure to Notify
- ☐ Failure to Report Information As Required
- ☐ General Facility Requirements
- ☐ Good Laboratory Practices
- ☐ Packaging Requirements
- ☐ Labeling/Marking Requirements
- ☐ Microbial Violations
- ☐ Violation of Previously Issued AO
- ☐ Violation of Information Letter Response
- ☐ Violation of Storage Facility Requirements
- ☐ Violations of Reporting Requirements
- ☐ Violation of Requirement to Monitor/Maintain Records
- ☐ Other/Miscellaneous
- ☐ Worker Protection Standards

NPDES

- ☐ Animal Feedlots
- ☐ Discharge, Emission, or Activity Without a Required Permit
- ☐ Sanitary Sewer Overflows
- ☐ Stormwater Overflows
- ☐ Violation of a Permit Requirement
- ☐ Violation of Requirement to Monitor/Maintain Records

RCRA

- ☐ Battery Management Act Violation
- ☐ Benzene Waste
- ☐ Bevill Enforcement Case
- ☐ Closure & Post-Closure Requirements
- ☐ Container Requirements
- ☐ Discharge, Emission, or Activity Without Required Permit
- ☐ Disposal Facility Requirements - Not Otherwise Specified
- ☐ Exports Violation
- ☐ Imports Violation
- ☐ Failure to Notify
- ☐ Failure to Report Information as Required
- ☐ General Facility Requirements
- ☐ Groundwater Monitoring Requirements
- ☐ Labeling/Marking Requirements
- ☐ Land Ban
- ☐ Monitoring Requirements
- ☐ K061 Initiative
- ☐ Misidentified Waste
- ☐ Permit Evader
- ☐ Treatment Facility Requirement
- ☐ Violation of a Previously Issued AO
- ☐ Violation of a Permit Requirement
- ☐ Violation of Requirement to Monitor/Maintain Records

UIC

- ☐ Casing & Cementing
- ☐ Injection Between Outermost Casing
- ☐ Injection Beyond Authorized Pressure
- ☒ Mechanical Integrity
- ☐ No Approved Plugging & Abandonment Plan
- ☐ Non-Compliance with Plugging & Abandonment Plan
- ☐ Unauthorized Injection
- ☐ Unauthorized Operation of Class IV Well
- ☒ Violation of Reporting Requirements
- ☐ Violation of Requirement to Monitor/Maintain Records
- ☐ Other/Miscellaneous

UST

- ☐ Leak Detection and Repair (LDAR)
- ☐ Requirements Other Than LDAR

PWS

- ☐ Failure to Submit DMR
- ☐ Maximum Contaminant Level
- ☐ Monitoring/Reporting
- ☐ Notification to Public
- ☐ Sampling & Analyzing
- ☐ Total Coliform Rule
- ☐ Violation of a Permit Requirement
- ☐ Other/Miscellaneous

OPA

- ☐ Failure to Have an Adequate SPCC Plan
- ☐ Spill

EPCRA & EPCRA/CERCLA

- ☐ CERCLA Reportable Quantity Discharge Violation
- ☐ Toxics Release Inventory (Section 313)
- ☐ Violation of Requirement to Monitor/Maintain Records
- ☐ Violation of Reporting Requirements

Wetlands

☐ Discharge Without or In Violation of a
404 Permit

☐ Other/Miscellaneous

TSCA

☐ Accreditation

☐ Asbestos Demolition/Renovation
Work Practices Requirements

☐ Asbestos Requirement Violation

☐ Asbestos-In-School Violation

☐ Closure & Post-Closure Requirements

☐ Container Requirements

☐ Discharge, Emission, or Activity
Without Required Permit

☐ Disposal Facility Requirements - Not
Otherwise Specified

☐ Imports Violation

☐ Exports Violation

☐ Failure to Notify

☐ Failure to Report Information As
Required

☐ Labeling/Marking Requirements

☐ Violation of PCB Rules

☐ Lead Paint Rule

☐ Pre-Manufacturing Notice Requirements

☐ Violation of Information Letter Request

☐ Violation of a Permit Requirement

☐ Violation of Reporting Requirements

☐ Violation of Requirement to Monitor/
Maintain Records

☐ Violation of Storage Facility
Requirements

☐ Other/Miscellaneous

☐ Worker Protection Standards

ADMINISTRATIVE ACTION DATA SHEET

(To Be Submitted to OEA When:

- (1) a Complaint is Filed;
- (2) When a CAFO(b) Filed, Along with a Case Conclusion Data Sheet
- (3) a Non-Penalty Order is Issued; Along with a Case Conclusion Data Sheet)

1. Court Docket/Regional Hearing Clerk Docket No. SDWA-04-2005-1016

2. Case Name Gene A. Wilson

EPA Lead Attorney EX. 7C Phone No. EX. 7C

EPA Program Contact EX. 7C Phone No. EX. 7C

Facility Information

Information for One Facility (If More Facilities, Attach Additional Pages.)

(Use Location of Site of Violation; DO NOT use a P.O. Box #.)

9. Facility Name Gene A. Wilson #1; 15 - S - 80; 3000' FNL x 90' FWL

10. Street Address Martha Pool County Lawrence

City _____ State KY Zip Code _____

Primary 4-Digit SIC Code 1311 (b) Other 4-Digit SIC Codes _____

EPA FRS No. _____

Is This a Federal Facility? _____ Yes _____ X _____ No

Is This Indian Land? _____ Yes _____ X _____ No
If Yes, What Tribe? _____

Is This a Small Business? _____ X _____ Yes _____ No

("A person, corporation, partnership, or other entity that employs 100 or fewer employees.")

Is The Facility Located in an EJ Area? _____ Yes _____ X _____ No

If Yes: _____ Low Income _____ Minority Population _____ Both _____ Other

Note: Question Numbers Correspond with the Case Conclusion Data Sheet Guidance Booklet, Dated August 2004.
If You Have Any Questions, Please Contact

EX. 7C

8 Statute(s) and Section(s) Violated (NOT Authorizing Section Nor CFR):

_____/_____; ____/____; ____/____

Authorizing Section for Administrative Actions: ____/____

If CERCLA, Is the Site on the NPL? ____ Yes ____ No

12. CFR Violation Citation(s):

40 CFR Part 144 Section 51(a) 40 CFR Part _____ Section _____

40 CFR Part _____ Section _____ 40 CFR Part _____ Section _____

Is this a MULTI-MEDIA action? ____ Yes ☒ No

If Yes, check all that apply:

CAA:

- ☐ Mobile Source (Title II)
- ☐ Stationary Source (Other Than Title II)
- ☐ Prevention of Accidental Releases (112(r))

CERCLA:

- ☐ Hazardous Site Response (CERCLA Superfund
Other Than 103 and/or RCRA 3013 or 7003)

CWA:

- ☐ NPDES (Other Than 311 and 404)
- ☐ Oil Pollution (311)
- ☐ Wetlands (404)

EPCRA or EPCRA/CERCLA

- ☐ Community Right-to-Know (313)
- ☐ Release Notification/Emergency Preparedness
(Non-313 and/or CERCLA 103)

FIFRA:

- ☐ Pesticides

MPRSA:

- ☐ Ocean Dumping

RCRA:

- ☐ Hazardous Waste Mgmt (Subtitle C)
- ☐ Solid Waste Mgmt (Subtitle D)

SDWA:

- ☐ Public Water Supply (1414 et seq.)
- ☐ UIC (1421 et seq.)

TSCA:

- ☐ Asbestos Hazardous Emergency Response
Act (201)
- ☐ Lead Exposure Reduction (409)
- ☐ PCBs (6(e))
- ☐ Toxic Substances (Other Than Lead or PCBs)

UST:

- ☐ Underground Storage Tanks (Subtitle I)

Was The Agency Activity Taken in Response to Environmental Justice Concerns? ____ Yes ☒ No

If Yes: ____ Minority ____ Low Income ____ Both

Date Complaint Filed: _____

Proposed Penalty Amount \$ _____
(Should be Amount Prior to Reductions Using a
Penalty Policy.)

- Ex. 2
- Ex. 5 >

Is This An Amended Complaint: ☐ Yes ☒ No

AND/OR Proposed Cost

Recovery Amount \$ 0 _____

Self Disclosure Information

Did Company Self-Disclose Violations? ☐ Yes ☒ No

Does Company Have Less Than 100 Employees? ☒ Yes ☐ No

(Note: If Yes, Treat As If Violations Were Disclosed Under EPA's Small Business Policy)

Date Violations Disclosed: _____/_____/_____

Has the Inspection Information Been Entered into ICIS? ☐ Yes ☒ No

If Yes, What is the ICIS Compliance Monitoring Activity Name (Exactly): _____

What Type of Inspection was Conducted (Statute/Section)? _____

Date of Inspection: 9/14/04 _____

NPDES

- ☐ Animal Feedlots
- ☐ Discharge, Emission, or Activity Without a Required Permit
- ☐ Sanitary Sewer Overflows
- ☐ Stormwater Overflows
- ☐ Violation of a Permit Requirement
- ☐ Violation of Requirement to Monitor/Maintain Records

RCRA

- ☐ Battery Management Act Violation
- ☐ Benzene Waste
- ☐ Bevill Enforcement Case
- ☐ Closure & Post-Closure Requirements
- ☐ Container Requirements
- ☐ Discharge, Emission, or Activity Without Required Permit
- ☐ Disposal Facility Requirements - Not Otherwise Specified
- ☐ Exports Violation
- ☐ Imports Violation
- ☐ Failure to Notify
- ☐ Failure to Report Information as Required
- ☐ General Facility Requirements
- ☐ Groundwater Monitoring Requirements
- ☐ Labeling/Marking Requirements
- ☐ Land Ban
- ☐ Monitoring Requirements
- ☐ K061 Initiative
- ☐ Misidentified Waste
- ☐ Permit Evader
- ☐ Treatment Facility Requirement
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- ☐ Violation of a Permit Requirement
- ☐ Violation of Requirement to Monitor/Maintain Records

Wetlands

☐ Discharge Without or In Violation of a
404 Permit

☐ Other/Miscellaneous

TSCA

☐ Accreditation

☐ Asbestos Demolition/Renovation
Work Practices Requirements

☐ Asbestos Requirement Violation

☐ Asbestos-In-School Violation

☐ Closure & Post-Closure Requirements

☐ Container Requirements

☐ Discharge, Emission, or Activity
Without Required Permit

☐ Disposal Facility Requirements - Not
Otherwise Specified

☐ Imports Violation

☐ Exports Violation

☐ Failure to Notify

☐ Failure to Report Information As
Required

☐ Labeling/Marking Requirements

☐ Violation of PCB Rules

☐ Lead Paint Rule

☐ Pre-Manufacturing Notice Requirements

☐ Violation of Information Letter Request

☐ Violation of a Permit Requirement

☐ Violation of Reporting Requirements

☐ Violation of Requirement to Monitor/
Maintain Records

☐ Violation of Storage Facility
Requirements

☐ Other/Miscellaneous

☐ Worker Protection Standards

CASE CONCLUSION DATA SHEET

(To be Submitted to OEA When:

- (1) Judicial Consent Decrees/Orders are Entered by Court
(2) Administrative Penalty Settlements are Filed, Along with an Administrative Action Data Sheet
(3) Administrative Non-Penalty Orders are Issued, Along with an Administrative Action Data Sheet

Note: Form will be returned if this section is incomplete:

Name of Person Completing Form: _____ Date: 6/8/05

Signature of Program Office Supervisor or Designee: _____ Date: 3/12/06

A. Case and Facility Background

1. Court Docket/Regional Hearing Clerk Docket No. SDWA-04-2005-1016

2. Case Name Gene A. Wilson

- 3. Settlement Action Type:**

- ☐ (a) Consent Decree or Court Order Resolving a Civil Judicial Action
☒ (b) Administrative Penalty Order (with/without Injunctive Relief)
☐ (c) Superfund Administrative Cost Recovery Agreement
☐ (d) Federal Facility Compliance Agreement (NOT including RCRA Matters)
☐ (e) Field Citations
☐ (f) Administrative Compliance Orders

☐ (g) Notice of Determination (Self-Disclosure Cases)

- 4(a) EPA Lead Attorney _____ Phone No. _____

- 4(b) EPA Program Contact Ex. FC Phone No.

5. Was An Environmental Management System Requested? Yes X No

- 6. Action Dates (Complete EITHER Administrative or Judicial):**

Administrative:

Issued/Filed _____ Final Order _____

Judicial:

Settlement Lodged	Settlement Entered
--------------------------	---------------------------

Estimated Termination Date: 9/30/05

- 8. Statute(s) and Section(s) Violated (NOT Authorizing Section Nor CFR):**

_____ / _____ ; _____ / _____ ; _____ / _____ ; _____ / _____

Authorizing Section for Administrative Actions: 1423(c) SDWA /

9. Facility Name Gene A. Wilson #1 State KY

How Many Facilities Are Associated With This Action? 1

Are Any of These Facilities Located Outside Region IV? Yes X No

ALTERNATIVE DISPUTE RESOLUTION

15. Was Alternative Dispute Resolution (ADR) Used in This Case?

☐ Yes ☒ No (Skip to Next Page.)

of Parties in Your Case? _____ # Of Parties Taking Part in Mediation? _____

Which ADR Process or Processes Were Used? (Can Check More Than One)

- ☐ Facilitation
☐ Facilitated Negotiation
☐ Mediation for One Part of Case
☐ Mediation for Entire Case
☐ For Cost/Allocation/Penalties
☐ For Injunctive Relief
☐ Other _____

Who was Your Mediator? _____

How Did You Obtain Your Mediator? _____

Was This Mediator Effective?

☐ Yes. How So? _____

☐ No. Why Not? _____

Was ADR Useful in Fostering Clearer and More Effective Communication Between
The Parties? ☐ Yes ☐ No

Did ADR Help Resolve the Conflict it was Selected For? ☐ Yes ☐ No

If Not, Why Not? _____

Did ADR Help Resolve Conflicts That Were Apart From the Conflict it was Selected For?

☐ Yes. Why? _____

☐ No

Were you Satisfied with the ADR Process You Went Through in Your Case?

☐ Yes Why? _____

☐ No Why Not? _____

Would You Consider Using ADR Again? ☐ Yes ☐ No

If Yes, What Would You Anticipate Using it For? _____

If No, Why Not? _____

How Could the Usefulness of ADR Have Been Improved in Your Case? _____

How Could EPA's Use of ADR be Improved in General? _____

How Could EPA Better Assist You in Obtaining and Effectively Using ADR Services? _____

B. Penalty Information (If there is no penalty, enter 0 and proceed to Page 6.)

11. For Multi-Media Actions, Federal Amounts by Statute:

Statute	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____

12(a). Total Assessed Penalty \$ _____

12(b). (If Shared) Federal Share \$ _____

13. (If Shared) State or Local Share \$ _____

C. Cost Recovery

14. Amount of Cost Recovery Awarded:

\$ _____ EPA Share

\$ _____ State and/or Local Government Share

\$ _____ Other

Was this an overfile action? ____ Yes X No

(Overfiling occurs when (1) a state/local delegated or approved program has taken no action or an inadequate action to address a violation at a facility; AND (2) EPA takes an enforcement action against the same facility for the same violation; AND (3) the state has not joined with EPA in the EPA action nor asked EPA to bring the action.)

C. Supplemental Environmental Project (SEP) Information

15. Is Environmental Justice Addressed by SEP? ____ Yes ☒ No

16. SEP Description N/A

17. Categories of SEPs (Check all appropriate categories. If no, proceed to #25)

____ (a) Public Health

____ (b) Pollution Prevention (Complete Question #19)

____ (1) Equipment/Technology Modifications

____ (2) Process/Procedure Modifications

____ (3) Product Reformulation/Redesign

____ (4) Raw Material Substitution

____ (5) Improved Housekeeping/O&M/Training/Inventory Control

____ (6) In-Process Recycling

____ (7) Energy Efficiency/Conservation

____ (c) Pollution Reduction (Complete Question #19)

____ (d) Environmental Restoration and Protection

____ (e) Assessments and Audits

____ (f) Environmental Compliance Promotion

____ (g) Emergency Planning and Preparedness

____ (h) Other Program Specific SEP (Specify) _____

18. Cost of SEP. Cost Calculated by the PROJECT Model is Preferred. \$ _____

19. Quantitative Environmental Pollutants and/or Chemicals and/or Waste Streams, Amount of Reductions/Eliminations (e.g. Emissions/Discharges)

Pollutants/Chemical Waste
Stream

Annual Amount

Units**

Potentially Impacted Media***

CHECK ONE:

☐ Reduced

☐ Eliminated

☐ Treated

**Acceptable Units:

Pounds Per Year

People

Acres

Linear Feet (Small Stream)

Linear Feet (Medium Stream)

Linear Feet (Large Stream)

Gallons Per Year

Pounds

***Acceptable Impacted Medias:

Air

Land

Water (Navigable/Surface)

Water (Wetlands)

Water (Wastewater to POTW)

Water (Underground Source of Drinking Water)

Water (Ground)

Animals/Plants/Humans

Buildings/Houses/Schools

FOR SELF-DISCLOSURE CASES ONLY
(COMPLETE ONLY IF FACILITY SELF-DISCLOSED VIOLATIONS)

F. Self-Disclosure Information

Did Company Self-Disclose Violations? ☐ Yes ☒ No

Date of Disclosure: _____

Was the Disclosure Resolved Under: ☐ Audit Policy ☐ Small Business Policy

If Resolved Under Small Business Policy, Provide SIC Code: _____

Was Disclosure Referred by Another Region or HQ? ☐ Yes ☐ No

If Yes, What Office? _____

Was Disclosure Part of Compliance Incentive Program? ☐ Yes ☐ No

If Yes, Choose All That Apply

- | | |
|--|--|
| <input type="checkbox"/> Bakers CFC Partnership Program | <input type="checkbox"/> Prisons Program |
| <input type="checkbox"/> CMOM POTW Program | <input type="checkbox"/> Storage Tank Emission Reduction Program |
| <input type="checkbox"/> Colleges & Universities Program | <input type="checkbox"/> Stormwater/Commercial Development Program |
| <input type="checkbox"/> Grain Processing Program | <input type="checkbox"/> Telecommunications Incentive Program |
| <input type="checkbox"/> Industrial Organic Chemical Program | <input type="checkbox"/> Wood Treaters Program |
| <input type="checkbox"/> Lead Disclosure Program | |
| <input type="checkbox"/> National Iron & Steel Incentive Program | |
| <input type="checkbox"/> Oil & Gas Program | |

Number of Facilities Associated With This Disclosure? _____

Any Outstanding Issues? ☐ Yes ☐ No (If yes, please describe): _____

Penalty Information:

Penalty Calculation Before Mitigation: \$ _____

% or Amount of Gravity-Based Penalty Waived: _____% OR \$ _____

Gravity-Based Penalty Assessed: \$ _____

Economic Benefit Assessed: \$ _____

Rationale for Not Applying Disclosure Policy:

- | | |
|--|---|
| <input type="checkbox"/> No Violation Occurred | <input type="checkbox"/> Not a Systematic Discovery |
| <input type="checkbox"/> Discovery Not Voluntary | <input type="checkbox"/> Disclosure Not Prompt |
| <input type="checkbox"/> Entity Had Repeat Violations | <input type="checkbox"/> Agreement or Order Violated |
| <input type="checkbox"/> Violation(s) Not Corrected Expeditiously | <input type="checkbox"/> Discovery & Disclosure Not Independent |
| <input type="checkbox"/> Cooperation Insufficient | <input type="checkbox"/> Actual Serious Harm or Imminent & Substantial Endangerment |
| <input type="checkbox"/> Federal Facility That Would Not Be Liable for a Penalty | |

E. Injunctive Relief/Compliance Actions (Non-SEP Related)

Note: Penalty orders without injunctive relief and Superfund administrative cost recovery agreements SHOULD SKIP THIS SECTION.

20.

Ex. 2

ALL STATUTES

FACILITY/SITE MANAGEMENT AND INFORMATION PRACTICES (FMIP)

(Actions That Do Not Result in Pollutant Reductions/Eliminations)

Cost: \$ 300. (REQUIRED! Form will be returned if this field is blank!)

- ☒ Testing/Sampling
- ☐ Auditing
- ☐ Labeling/Manifesting (Non-RCRA)
- ☐ Recordkeeping
- ☒ Reporting
- ☐ Information Letter Response
- ☐ Financial Responsibility Requirements
- ☐ Environmental Management Review
- ☐ RI/FS or RD (CERCLA)
- ☐ Site Assessment/Characterization (CERCLA)
- ☐ Provide Site Access (CERCLA)
- ☐ Monitoring
- ☐ UST Release Detection
- ☐ Stormwater Site Inspections
- ☐ Asbestos Inspections
- ☐ Training
- ☐ Planning
- ☐ Permit Application
- ☐ Work Practices
- ☐ Notification (TSCA Section 6)
- ☐ Leak Detection (CAA)
- ☐ Spill Notification
- ☐ Develop/Implement CMOM Program (CWA)

Has EPA Taken Previous Formal Enforcement Action Regarding These Violations? (Does Not Include NOV's)

☐ Yes ☒ No

If Yes, Docket Numbers of Previous Actions: _____

NPDES

For instructions and methodologies for calculating information for Direct Environmental Benefits and Preventative Actions, refer to Chapter 5 of the Case Conclusion Data Sheet Guidance, Dated August 2004.

Actions With DIRECT Environmental Benefits and/or DIRECT Response/Corrective Action:

Cost: \$ N/A (REQUIRED! Form will be returned if this field is blank!)

NPDES Sections 301 (Discharge Without a Permit):

☐ Source Reduction

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____		<u>Lbs Per Year</u>	<u>Navigable/Surface Water</u>
2. _____		<u>Lbs Per Year</u>	<u>Navigable/Surface Water</u>

NPDES Sections 301/307 (Toxic and Pretreatment Effluent Standards):

☐ Industrial/Municipal Process Change

☐ Emissions/Discharge Change

☐ Implement BMPs

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____		<u>Lbs Per Year</u>	<u>Wastewater to POTW</u>
2. _____		<u>Lbs Per Year</u>	<u>Wastewater to POTW</u>

NPDES Sections 301/402 (Wet Weather/Other Permit Violations):

☐ Industrial/Municipal Process Change

☐ Emissions/Discharge Change

☐ Implement BMPs

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u> CHECK ONE:	<u>Potentially Impacted Media</u>
1. _____		<input type="checkbox"/> Lbs Per Year <input type="checkbox"/> Miles of Stream Impacted <input type="checkbox"/> Pounds _____	<u>Navigable/Surface Water</u>
2. _____		<input type="checkbox"/> Lbs Per Year <input type="checkbox"/> Miles of Stream Impacted <input type="checkbox"/> Pounds _____	<u>Navigable/Surface Water</u>

If additional pollutants (and corresponding information) should be listed, attach info to end of this form.

NPDES Direct Environmental Benefits Continued:**NPDES Section 405 (Sewage Sludge Disposal):**

___ Disposal Change

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Gallons</u>	<u>Wastewater to POTW</u>
2. _____	_____	<u>Gallons</u>	<u>Wastewater to POTW</u>

NPDES Section 504 (Emergency Powers):

___ Industrial/Municipal Process Change

___ Emissions/Discharge Change

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Gallons</u>	<u>Wastewater to POTW</u>
2. _____	_____	<u>Gallons</u>	<u>Wastewater to POTW</u>

If additional pollutants (and corresponding information) should be listed, attach info to end of this form.

PREVENTATIVE Actions to Reduce Likelihood of Future Releases:**CWA Sections 301/402 (NPDES Wet Weather/Other Permit Violations):**

___ Storage Change

Cost: \$ N/A (REQUIRED! Form will be returned if this field is blank!)

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Units</u>	<u>Potentially Impacted Media</u>
		CHECK ONE:	
		<input type="checkbox"/> Lbs Per Year	
		<input type="checkbox"/> Miles of Stream Impacted	
1. _____	_____	<input type="checkbox"/> Pounds _____	<u>Navigable/Surface Water</u>
		<input type="checkbox"/> Lbs Per Year	
		<input type="checkbox"/> Miles of Stream Impacted	
2. _____	_____	<input type="checkbox"/> Pounds _____	<u>Navigable/Surface Water</u>

If additional pollutants and corresponding info should be listed, attach information to end of this form.

SDWA PWS

For instructions and methodologies for calculating information for Direct Environmental Benefits and Preventative Actions, refer to Section 5.8 of the Case Conclusion Data Sheet Guidance, Dated August 2004.

Actions With **DIRECT** Environmental Benefits and/or **DIRECT** Response/Corrective Action:

Cost: \$ N/A (REQUIRED! Form will be returned if this field is blank!)

SDWA Section 1412 (National Drinking Water Compliance Schedule)

SDWA Sections 1412/1414 (National Drinking Water Regulations)

SDWA Section 1414(c) (PWS - Notice to Persons Served)

SDWA Section 1414(g) (PWS - Violations of 1414(g) AO)

SDWA Section 1414(g)(3)(D) (PWS - Administrative Penalty Case Collection Action)

SDWA Section 1415 (National Drinking Water Compliance Schedule - Variances)

SDWA Section 1416 (National Drinking Water Compliance Schedule - Exemptions)

SDWA Section 1417 (Lead Pipe, Solder & Flux)

☐ Implement BMPs

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Unit</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Cubic Yards</u>	<u>Soil</u> _____
2. _____	_____	<u>Cubic Yards</u>	<u>Soil</u> _____

SDWA 1431 (Emergency Powers)

☐ Implement BMPs

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Unit</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>People</u>	<u>Drinking Water</u> _____
2. _____	_____	<u>People</u>	<u>Drinking Water</u> _____

SDWA 1463 (Lead in Water Coolers)

☐ Implement BMPs

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Unit</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>People</u>	<u>Drinking Water</u> _____
2. _____	_____	<u>People</u>	<u>Drinking Water</u> _____

If additional pollutants and corresponding information should be listed, attach info to end of this form.

SDWA PWS Continued

PREVENTATIVE Actions to Reduce Likelihood of Future Releases:

Cost: \$ N/A (REQUIRED! Form will be returned if this field is blank!)

SDWA Section 1412 (National Drinking Water Compliance Schedule)

SDWA Sections 1412/1414 (National Drinking Water Regulations)

SDWA Section 1414(c) (PWS - Notice to Persons Served)

SDWA Section 1414(g) (PWS - Violations of 1414(g) AO)

SDWA Section 1414(g)(3)(D) (PWS - Administrative Penalty Case Collection Action)

SDWA Section 1415 (National Drinking Water Compliance Schedule - Variances)

SDWA Section 1416 (National Drinking Water Compliance Schedule - Exemptions)

SDWA Section 1417 (Lead Pipe, Solder & Flux)

 Notification

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Unit</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>People</u>	<u>Drinking Water</u>
2. _____	_____	<u>People</u>	<u>Drinking Water</u>

If additional pollutants and corresponding information should be listed, attach info to end of this form.

SDWA UIC

For instructions and methodologies for calculating information for Direct Environmental Benefits and Preventative Actions, refer to Section 5.9 of the Case Conclusion Data Sheet Guidance, Dated August 2004.

PREVENTATIVE Actions to Reduce Likelihood of Future Releases:

Cost: \$ 300. (REQUIRED! Form will be returned if this field is blank!)

SDWA 1422/1423 (UIC Regulations Classes I - V):

- ☐ Obtain Permit for UIC
- ☐ Plug and Abandon
- ☒ Demonstrate Mechanical Integrity

<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Unit</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Wells</u>	<u>Water (Underground Source)</u>
2. _____	_____	<u>Wells</u>	<u>Water (Underground Source)</u>

SDWA 1423(c)(7) (Administrative Penalty Case Collection Action):

- ☒ Demonstrate Mechanical Integrity

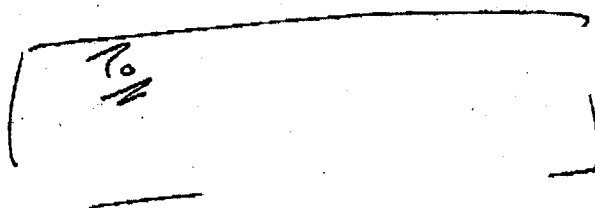
<u>Pollutant/Chemical/Waste Stream</u>	<u>Annual Amount</u>	<u>Unit</u>	<u>Potentially Impacted Media</u>
1. _____	_____	<u>Wells</u>	<u>Water (Underground Source)</u>
2. _____	_____	<u>Wells</u>	<u>Water (Underground Source)</u>

If additional pollutants and corresponding information should be listed, attach info to end of this form.

Note: Question Numbers Correspond with the Case Conclusion Data Sheet Guidance Booklet, Dated August 2004.

If You Have Any Questions, Please Contact

Ex. 7c
7



Ex. 7c

fax

tel

Ex. 7c

22 pages, including cover

from

Ex. 7c

Gene Wilson SBREFA comment

(FYI= check www.epa.gov/compliance/civil/sbrefa/sbrefareq.html
for more background info)

14/USEPA/US
03/10/2005 08:08 AM

To
cc
bcc
Subject Gene Wilson permit file

EX. 7C
R4/USEPA/US@EPA
R4/USEPA/US@EPA

EX. 7C
I have the Gene Wilson permit file at my desk (KY10376). Mr. Wilson send letters to and me requesting plugging instructions for the injection well. I responded by sending him a copy of the permit with the approved P&A plan that was in the permit. The plan is the basis pull tubing and packer and fill the well bore with cement. Mr. Wilson stated that he plans on plugging the well by July 1, 2005.

EX. 7C
Also, said that Mr. Wilson claims that he never got a copy of the "final" permit. A review of the permit file includes a certified transmittal letter, with the signed green card, indicating that the final permit was received by him in January, 1990.

I don't need the permit file any more, so you are welcome to get it back or I can put it back in the file room.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MEMORANDUM

DATE: July 27, 2005

ex. 7c

FROM: , Enforcement Officer
Water Programs Enforcement Branch, Gulf Enforcement Section

TO: File

SUBJ: Gene A. Wilson #1 Injection Well, EPA ID# KYS1270250, EPA Permit # KYI0376
Administrative Complaint, Docket No. SDWA-04-2005-1016

On September 14, 2004, EPA inspected the Gene A. Wilson #1 injection well located on the property of Mr. Gene A. Wilson in Lawrence County, KY. Based on the condition of the well and a review of the well records file, the well was determined to be temporarily abandoned. The records file for the well shows that the well was last tested for mechanical integrity on October 15, 1993.

On February 9, 2005, a Notice of Violation and Opportunity to Show Cause letter was mailed to Mr. Wilson notifying him of the non-compliant status of the well and giving him the opportunity for a show-cause conference.

ex. 7c On February 17, 2005, at 9:00 AM EST, a show-cause conference call was held with Mr. Wilson and , Region 4 Associate Regional Counsel, and myself, to discuss the non-compliant status of the well. The conference further verified the alleged violations and Mr. Wilson was informed that the well must be brought into compliance and that a penalty would be assessed for the violations. Mr. Wilson strongly denied that the well was abandoned and strongly objected to a penalty being assessed. informed Mr. Wilson of the inability-to-pay process but he declined to agree to provide the needed financial information. A second conference call was scheduled for March 4, 2005, at 10:00 AM EST. In a letter dated February 21, 2005, Mr. Wilson provided a summary based on his perspective of the first conference call.

On March 4, 2005 at 10:00 AM EST, a second conference call was held with the same parties. Mr. Wilson stated his intention to have the well plugged but still objected strongly to a penalty. He expressed his desire to have an administrative hearing. informed him that an administrative complaint would have to be issued to start the process. In a letter dated March 31, 2005, Mr. Wilson again provided a summary based on his perspective of the second conference call.

ex. 7c

