

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Mr. Gene A. Wilson
101 Madison Street
P. O. Box 702
Louisa, KY 41230

Docket No. SDWA-04-2005-1016

Respondent

HEARING CLERK

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EPA REGION IV

RESPONDENT'S JOINT REPLIES TO:

(1) COMPLAINANT'S REPLY TO RESPONDENT'S PRE-HEARING EXCHANGE WITNESSES LIST AND MOTION TO STRIKE WITNESSES;

(2) COMPLAINANT'S REPLY TO SECOND SUPPLEMENT TO RESPONDENT'S PRE-HEARING EXCHANGE; AND

(3) COMPLAINANT'S MOTION AND REPLY TO RESPONDENT'S "MOTION TO MAKE ADDITION TO DOCUMENTS IN PRE-HEARING EXCHANGE LIST"

AND MOTION TO ENLARGE DAYS ALLOTTED FOR HEARING OR IN THE ALTERNATIVE TO DISMISS

AND AFFIDAVIT OF RESPONDENT

Respondent's Reply to Complainant's first numbered pleading states as follows:

Apparently E.P.A.'s lawyers have withdrawn their objections to Mr. Randy Poston, Environmental and Public Protection Cabinet, Department For Environmental Protection, Division of Water, as Respondent's 13th witness unless they are counting on the Hon. Susan B. Schub not amending her Order of June 28, 2007. Mr. Poston is equal to an E.P.A. Enforcement Officer for the Division of Water and if our Federal

Government wants the truth known and not conceal the facts, he must be at the hearing.

E.P.A.'s lawyers now plead the "only contact" Mr. Dangerfield had in this case has been in the context of responding to F.O.I.A. request; however, in their Pre-Hearing Exchange Statement Mr. Dangerfield is to be used as a fact witness concerning Respondent's ability to pay the proposed penalty partly born out by the E.P.A. lawyers saying by documents submitted showing the ownership of 700 acres in Kentucky and also a retired attorney (at page 8).

The E.P.A. lawyers know (or should have known if they are reading Respondents pleadings and exhibits) that Respondent appealed to Washington, D.C. for release of withheld documents; however, the Appeal was lost by E.P.A. so Respondent had to resend copies of the appeal to show it was timely filed. (Respondent is still waiting on Washington's response).

It is the opinion of Respondent that the hearing officer should have the authority to determine if documents withheld should be released for inspection since Respondent may need them for complete relief for justice to prevail.

Nowhere in the pleadings did Respondent make any assertion that by E.P.A. adding another attorney-at-law to the case against him as evidence of prejudicial treatment and selective prosecution as plead in their Motion. Actually it pleases Respondent that the E.P.A. lawyer who filed this action now feels she needs reinforcements.

Again the E.P.A. lawyers are attempting to remove one of Respondent's defenses by asking the hearing officer to prohibit Respondent from introducing evidence or argument regarding selective prosecution at the hearing. Respondent is not on a "fishing

expedition” as alleged and if anyone turns the hearing into a “circus” as alleged it will be the E.P.A. lawyers attempting to prove Respondent injected brine (which is not true) and that Respondent was not treated differently (which he was on all facets of the permit from the day of issuance to plugging).

Complainant’s (E.P.A.) Supplement To The Pre-Hearing Exchange filed August 3, 2007, is welcomed. It is further proof of Respondent being treated differently. The stack of documents show that when an operator notified E.P.A. they wished to plug their injection well, E.P.A. immediately responded. Respondent gave notice in 2000 he wished to plug the proposed injection well on Collier Creek and did not get a response or approval for five (5) years. See Respondent’s Exhibit “22” and “30”.

It might be noted for the record that E.P.A.’s lawyers Exhibit “15” for Complainant is also included again in its Exhibit “31”.

E.P.A. calls Respondent a violator alleging he injected fluids into his proposed injection well. It is suggested the E.P.A. lawyers read Respondent’s permit. The required reports were not to start until the well was put into production, which never occurred and the record reflects this fact. See Part 1 Page I-4 Section C 2 of the Issued Injection Permit marked Respondent’s Exhibit “7”.

Complainant (E.P.A.) states Respondent must also prove he was treated differently and was selected for prosecution in bad faith, etc. The records speaks for Respondent plus two (2) of Respondent’s witnesses namely State Inspector, Doug Hamilton and licensed geologist Monte Hay will confirm Respondent’s position.

E.P.A. speaks of constitutional rights--what are Respondent’s rights with E.P.A. who only notified him twice for an MIT test. The first MIT was in 1993 and the second

one in 1999 when the E.P.A. inspector did not show up to observe the procedure.

The facts are clear. E.P.A. accuses Respondent of possibly polluting the water on his 300 acre farm by injecting brine in an old dry gas well permitted for disposing brine from Respondent's other farm. It never happened.

The first pleading filed by E.P.A. in this matter was stating the issued permit was on leased land by Respondent which was proved erroneous by making Respondent's deeds as Exhibits "39" and "40".

So what are Respondent's constitution rights when he owns the property in fee that has a old dry well that was plugged and abandoned years ago by a previous owner?

The Government issued an erroneous injection permit and refused to correct its mistake for ten (10) years causing the property owner (Respondent) to finally give up the idea and give notice he desired to forget the project. Then five (5) years later the Government gives permission to seal the old well.

During this time, the Government without notice (as the permit required to show credentials) sneaks on the property (that was posted) and walks over the land until its inspector found the proposed location and leaves a hand written note that he had been there. This notice left by Mr. Randy Vaughn was unknown to Respondent until this proceeding since the "official inspection" apparently deteriorated from weather since it was never found. **In our neck of the woods this is called littering by leaving paper on the ground.**

Should a fee owner have some rights? Like being believed that he has never placed fluids on his own property. Especially since the Government has no witnesses to the contrary to prompt this action.

The Complainant's lawyer Ms. Zylpha Pryor called Respondent approximately a year before this action was filed stating she could bring criminal action against Respondent but would settle for a civil penalty of some Nine Thousand Dollars (\$9,000.00). Respondent advised her he had done nothing wrong to justify a fine. Respondent was advised an enforcement action could be filed against him if payment was not forthcoming. In the meantime E.P.A. saw its mistake and gave Respondent permission to plug the well which was done on June 10, 2005. True to her word, Ms. Zylpha Pryor filed this action almost a year after the Kentucky State Inspector, Mr. Doug Hamilton observed the plugging. E.P.A. couldn't be there, due to prior commitments.

This has been a time consuming ordeal; however, Respondent believes the right outcome will prevail.

Respondent served two (2) years as a Metropolitan Policeman in Washington, D.C. which included duties of guarding the President of the U.S. John F. Kennedy. Respondent served eleven (11) years in the U.S. Navy rising to the rank of Lt. Commander before resigning his commission and then held the elected position of prosecuting attorney four (4) years for Lawrence County, Kentucky. Now at almost seventy (70) years old Respondent's Government through its Governmental Agency of E.P.A. is accusing him of possibly polluting the water on his farm. It's a sad day in Respondent's life when his word is no longer believed.

Respondent's Reply to Complainant's second and third numbered pleading states as follows:

It is becoming clear E.P.A.'s lawyers are apparently not reading the pleadings and exhibits filed by Respondent. It is stated in Respondent's Second Supplement to his Pre-

Hearing Exchange that Mr. Lynn Dangerfield did not forward all the documents tagged for copying by Respondent and was actually sent documents not requested. Permit file KYI0586 Respondent had marked on Mr. William Mann's hand written listing in Respondent's Exhibit "54" was a "good file". Mr. Dangerfield sent this file without its request (why would Respondent pay for a copy of a good file). However, Permits KYI0737 issued in 2000 did not require MIT or annual reporting for seven (7) years; KYI0412 required no MIT test or annual reporting, Complainant gave other operators reminders when reports were due, etc. etc.

When Respondent returned to the E.P.A.'s office in Atlanta on the second day to continue reviewing the files on the list prepared by Mr. William Mann, Mr. Dangerfield could not be located at the appointed time. He eventually showed up but his demeanor had changed. He tried to rush Respondent through the files stating he had to be somewhere else; he did not have time to copy the tagged files the previous day; Respondent was told by Mr. Dangerfield that he should not be making Discovery (legal term) etc. Mr. Dangerfield had to have talked with someone that morning about Respondent's research.

What Respondent suspected when he left the E.P.A.'s office at noon (which Respondent had hoped to spend the entire day but no more time would be allotted for Respondent to view the files) that the tagged documents would not be forthcoming. As suspected, the most damaging documents for E.P.A.'s case did not arrive; however, there was not a list of exempted documents attached.

Mr. Lynn Dangerfield's actions prompted Respondent to make all the files presented to Respondent for viewing as Exhibit "55" for Respondent. Respondent's

Exhibit "60" are some of the requested files that could have been in Exhibit "55".

The files requested for Exhibit "55" for Respondent is already in E.P.A possession and merely need to be brought to the hearing in Ashland, Kentucky. E.P.A.'s attorney's state in their pleading they will oppose any requirement to furnish the files requested. If Respondent was representing E.P.A. he too would not want damaging evidence seen by the Hearing Officer.

MOTION

Comes Respondent, Gene A. Wilson, by Motion and prays for the following:

1. It is the opinion of the Respondent that this case cannot be completed in a four (4) day hearing, beginning September 25th and concluding September 28th, 2007. The Complainant has 31 Exhibits and Respondent currently has 62 Exhibits with many subparts that will need extensive explanation.

The Complainant has three (3) witnesses and Respondent expects to do extensive cross-examination that covers a period of fifteen (15) years on Complainant's practices of enforcement, notifications and policies.

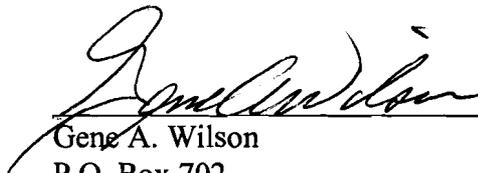
The Respondent has currently listed fifteen (15) potential witnesses and the testimony will be exhaustive to say the least.

2. In the alternative, Respondent asks the hearing officer to reconsider the Motions For Summary Judgment filed herein by Respondent and for any other relief he is entitled and is not aware of through the Federal Regulations not furnished until Complainant's last pleading on August 17, 2007.

WHEREFORE Respondent prays that more time be allotted for the hearing or in the alternative grant Respondent's Motion For A Directed Verdict previously filed herein.

AFFIDAVIT

Comes the Affiant, Gene A. Wilson, being first duly sworn states that at no time did he inject brine from any source on his farm on Collier Creek, Lawrence County, Kentucky nor did he re-perforate the casing after sealing off the first perforation with concrete. It was the opinion of the Affiant that since the well was never placed into service no official reporting was necessary except the numerous calls and letter over the years advising E.P.A. the permitted well was not in service.


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

STATE OF KENTUCKY

COUNTY OF LAWRENCE

I, Patty Carter, Notary Public in and for the State and County aforesaid, do hereby certify that the foregoing Affidavit was produced to me and acknowledged, subscribed and sworn to before me by **GENE A. WILSON**, to be his free act and deed for the purposes therein contained.

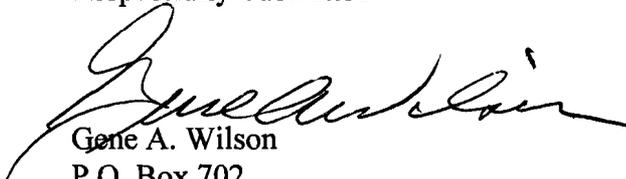
Given under my hand this 24th, day of August, 2007.

My Commission Expires:

4-12-10


Notary Public

Respectfully Submitted


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date noted below, the foregoing Reply's, Motion and Affidavit was mailed as follows: the original to the Regional Hearing Clerk and one (1) copy each to Hon. Susan B. Schub, Regional Judicial Officer, Hon. Zylpha Pryor and Mr. Nicholas N. Owens, National Ombudsman in the manner specified on the date below:

Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

(Via Express Mail - Return Receipt Requested)

Hon. Susan B. Schub
Regional Judicial Officer
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

(Via Express Mail - Return Receipt Requested)

Ms. Zylpha Pryor
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Mr. Nicholas N. Owens
National Ombudsman
U.S. Small Business Administration
409 3rd Street, SW
MC 2120
Washington, DC 20416-0005

Dated: August 24, 2007


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