

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

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EPA REGION IV
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HEARING CLERK

Respondent

MOTION TO REOPEN HEARING PURSUANT TO 40 CFR & 22.28(A)

Comes the Respondent, Gene A. Wilson, requesting the Presiding Officer reopen the hearing to take further evidence to complete the second prong of Respondent's defense.

Respondent spent practically the entire time allotted at the hearing establishing the well was never put into operation; that no fluids were ever injected in the well; that the well was plugged (but not to EPA's specifications) and that possible sources of underground drinking water were safe.

With these factors proven in favor of Respondent, the second prong of Respondent's defense was not fully addressed and this new and continuing testimony about MIT tests and annual reporting must now be addressed if justice is to prevail.

Respondent did file a timely Motion that more time be given for a hearing, knowing that to cover fifteen (15) years of Respondents dealings with Complainant (EPA) in less than two (2) days allotted was extremely inadequate. The Motion was denied.

Respondent can well establish he always dealt with EPA in good faith and for the Hon. Zypha Pryor, attorney for EPA to arbitrary, and capriciously propose a money fine without reviewing Respondents files or listening to Respondents explanation of events to show Respondent had always acted in good faith was an abuse of her discretion.

The nature and purpose of the new evidence will be held strictly to the issue of Respondent's UIC Permit Number KY10376 issued on January 12, 1990 and the requirements of MIT test and annual reporting and to attempt to correct some points in the Initial Decision erroneously perceived.

Although briefly covered at hearing it was clear Respondent was not in the oil and gas business nor had he ever been; however, in the Findings Of Fact And Conclusions Of Law of the Initial Decision it states...“penalty assessed should be sufficiently high to deter non-compliance among other members of the Kentucky oil and gas community”.

A high penalty on Respondent only sends a message to land owners and farmers not to permit injection wells with EPA to let them know your around.

Further the Findings state Respondent is “doing business under the laws of Kentucky” which is an implication some of that business could be oil and gas.

Further the Findings state Respondent owned and/or operated the Gene Wilson #1 well located on a lease in Martha, Kentucky. Respondent thought it was clear the land was not leased but was owned in fee simple by Respondent consisting of 300 acres at the end of a graveled county road isolated from neighbors some ½ mile away. The well was

up a hollow behind the farm house in the woods and was plugged but not to EPA specifications.

EPA's lawyers made a major issue of the permit application not indicating the perforations at 941' to 951' had been plugged with concrete rather than being happy that it had been to prevent contamination of possible underground drinking water. The "bullhead squeeze" was work in progress subsequent to the information submitted to the Ashland Testing Laboratories Inc. for the permit application filed on May 15, 1989. The records shows Lauffer Well Service Inc. was paid on May 23, 1989.

This information was furnished to EPA in 1993 when its representative David Oldham witnessed the MIT test. Someone at EPA purged and/or misfiled all correspondences EPA and Respondent had with each other through the 90's. Respondent made two (2) trips to EPA's office at Atlanta attempting to locate the old files to no avail after Ms. Zylphia Pryor Esq. demanded a \$9,000+ penalty or a complaint would be filed against Respondent. It was interesting; however, to find some information on the Gene Wilson #1 well Permit KY10376 in Permits KY10344 and KY10503 previously owned by Respondent and assigned to Edna Oil in 1994. At the time Ms. Pryor notified Respondent of her arbitrarily levied penalty, she was unaware of Respondents two (2) other injection permits nor had she looked at the file of the UIC permit at hand.

The application filed in 1990 asked that the Gene Wilson #1 be permitted to inject fluids from other operators. This omission was overlooked by Respondent until he received his first notice in 1991 to do his first MIT test. Being preoccupied on Cam Creek mess, that the Presiding Officer was made aware of, Respondent delayed his request to modify the permit until 1992 and again in 1993 as reflected in two (2) letters to

EPA. This is only mentioned to advise the Hearing Officer those letters were not found in Respondents UIC Permit #KY10376 but elsewhere.

On the first page of Respondents UIC Permit Number KY10376 it states clearly “this permit shall be reviewed at least once every five years from the effective date”. For the years of 1991, 1992, 1993, 1994 and 1995 EPA reviewed Respondents Permit.

It was determined by EPA under the permit issued that Respondent should conduct MIT test every five (5) years and commence filing annual reports after the operator commenced operations as clearly stated in the permit.

The second five year term came, and in 1999 Ms. Carol Chin looked at her files and gave notice in 1999 for Respondent to conduct a MIT test. There was never any mention during those ten (10) years for Respondent to file an annual monitoring report on Form 7520-11 because EPA knew Respondent had never commenced operations.

Apparently in 2000 EPA concluded it should be receiving Form 7520-11 from operators annually even though operations of injecting never commenced and sent out a memo to that affect. The only problem is Respondent did not receive that notice until 2007, two (2) years after his well was fully plugged. Had notice been given to Respondent it would have been extremely simple to mark “0” on the annual form.

Respondent notified EPA in 2000 he wished to plug his injection well and should have in 1993 when his request to modify the permit was not approved. Respondent received plugging instructions from EPA on March 14, 2005 and the well was plugged on June 10, 2005. Why EPA delayed five (5) years to give plugging instructions is unknown to Respondent.

After proving at the hearing Respondent did not inject brine in the well and there

were no environmental issues of possible polluting underground drinking water, Respondent started addressing the issue of MIT test and annual reporting of no injecting.

Ms. Chin was vague on her requirements of notification when MIT's were due but was sure 1 to 3 years ago she notified operators they had to start maintaining their own records of due dates. Respondent had already plugged his well before Ms. Chin's notice went to all the operators.

No one would know before hand that at the hearing Ms. Chin would deny conversations with Mrs. Carter on rescheduling a MIT test. Mrs. Carter's attempt to file Affidavits and telephone bills subsequent to the hearing to prove a conversation did occur should not have been denied since MIT tests are a critical issue in his case.

There are 31 UIC permits in this area of Kentucky and every operator will testify EPA always gave notice when MIT's were due. From preventing the evidence from being cumulative the Presiding Officer could stop that form of testimony when she had heard enough that it was a true factual event.

Respondent should have been given the opportunity to address the new policy of EPA requiring annual monitoring reports even if no injection occurred along with the decision EPA may have been changing MIT's from five (5) year intervals to two (2) even if no cessation of injecting. In any event Ms. Chin did not give either notice.

By reopening the hearing, Respondent will establish he fully complied with his permit during the first ten (10) years of its existence and that he received no notice from the new enforcement officer of EPA policy changes. Had more time been allotted at the hearing, this could have been accomplished. It should be noticed at this point that Kentucky oil and gas inspectors felt Respondent was unjustly being picked on and

voluntarily testified on his behalf.

Wherefore Respondent prays this case be reopened to continue testimony establishing the following:

(A) Establish sufficient evidence Respondent was not in the oil and gas business to dispel the belief by EPA to punish Respondent will send a message to oil and gas producers. Respondent's purpose of owning the farm land was for its tobacco bases.

(B) Place into evidence with appropriate testimony the entire files in Respondent's permits KY10376 and KY10344 assigned to Edna Oil, since they will shed light on the Gene Wilson #1 permit that was void of all correspondences.

(C) That EPA became aware in 1993 the well was plugged below 939 feet and its MIT test that year tested the integrity of two (2) casings and cement job to the surface. Respondent was not going to reopen the well below 939' unless his permit was modified first.

(D) That prior to the new policy of EPA in 2000 (that was not furnished to Respondent) annual monitoring reports were not required until "*on the date on which the well commenced operation*" (emphasis added) that is why the first ten (10) years the permit was in existence no annual monitoring reports were requested by EPA.

(E) The clear and unambiguous language of the permit clearly stated that after cessation of operations for two (2) years the owner or operator shall plug and abandon the well. Respondent never started injecting with EPA's full knowledge; therefore, the two (2) year MIT or plugging was never triggered within the four (4) corners of Respondents permit. This must be established and proven by reopening the hearing.

(F) Submit clear and convincing evidence EPA gave notice to conduct MIT's

well.

(G) Furnish information the "Bullhead Squeeze" was work in progress after giving information to Ashland Testing Laboratories Inc. to submit applications for the UIC permit.

(H) Allow documents found through FOIA and Respondents telephone records establishing Respondent has always acted in good faith and always obeyed the authority of EPA. By being denied this lawful right prevents Respondent from establishing he was being held at a much higher standard than other UIC permit holders and prevented Respondent of the additional defense of selective prosecution.

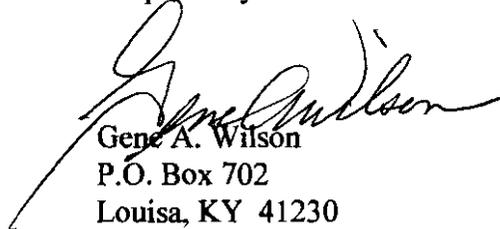
(I) Establish that EPA did not notify Respondent of the new policy in 2000 that annual monitoring reports were to be filed even though the permit required only after operations commenced. If this information had been received by Respondent there would not have been a violation on annual notices to EPA.

(J) Establish EPA always gave notices to operators for MIT tests. Even if we forget about all the controversy between Ms. Chin and Mrs. Carter why didn't Ms. Chin look at her records and notice she didn't follow up for the years of 2000, 2001, 2002, 2003, 2004 nor 2005 when the well was plugged on Respondents own initiative. Had this notice been received, there would not have been an MIT violation.

There are 31 UIC permit holders (not 3000 as state in the Initial Decision) in eastern Kentucky that can confirm Respondent's position. Had Respondent been made

aware of EPA's policy changes and then ignored its directives, information received is a penalty is around \$500.00.

Respectfully Submitted



Gene A. Wilson
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Louisa, KY 41230

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date noted below, the foregoing Motion 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)

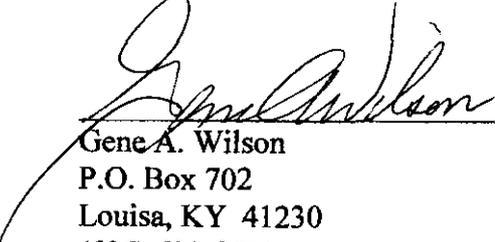
Hon. Susan B. Schub
Regional Judicial Officer
U.S. EPA, Region 4
Atlanta Federal Center
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(Via Express Mail - Return Receipt Requested)

Ms. Zylpha Pryor
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Dated: September 4, 2008


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