

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)

Docket No. SDWA-04-2005-1016)

Gene A. Wilson)

Respondent)

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HEARING CLERK

**RESPONSE TO RESPONDENT'S SUPPLEMENTAL MOTION TO
REQUIRE COMPLAINANT TO FILE FIRST**

COMES NOW, Counsel for Complainant and timely files this response to Respondent's 'Supplemental Motion to Require Complainant to File First.' Complainant asserts that this motion should be denied for the following reasons.

When Respondent came to EPA's Region 4 office on October 20th to view his file, everything that EPA has was made available to him with the exception of those documents that are exempt from disclosure by virtue of an exemption. He requested copies of certain documents which were tagged to be sent to him after they were duplicated. On November 3, 2006, the Freedom of Information Act (FOIA) Office sent Mr. Wilson a letter by express mail which transmitted the documents he had requested, a list of those documents, and a list of the documents which were withheld. A copy of the letter has been attached hereto. Therefore, Mr. Wilson should have copies of the documents he requested in time to prepare and submit his prehearing exchange statement. Finally, Respondent will have the opportunity to rebut any and all of Complainant's evidence against him in his rebuttal prehearing exchange.

Respondent has offered no compelling reason why Complainant's prehearing exchange documents should be filed first. Accordingly, Counsel for Complainant respectfully requests that this motion be denied.

Respectfully submitted,



Zylpha K. Pryor
Counsel for Complainant

In the Matter of Gene A. Wilson
Docket No. SDWA-04-2005-1016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date indicated below, the original and one copy of Complainant's 'Response to Respondents Supplemental Motion to Require Complainant to File First' were delivered by interoffice mail to the Regional Hearing Clerk and copies were sent to the following persons in the manner noted.

Susan B. Schub, Esq.
Regional Judicial Officer
U.S. EPA
61 Forsyth Street
Atlanta, GA 30303

Interoffice Mail

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

Certified Mail - Return Receipt

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

First Class Mail

November 6, 2006


Sharon Thompson, Secretary
OLS - OEA
U.S. EPA
61 Forsyth Street
Atlanta, GA 30303



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

INDV 03 2006

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

RE: Freedom of Information Act Request 4-RIN-00024-07

Dear Mr. Wilson:

This is in response to your Freedom of Information Act (FOIA) request of October 5, 2006, regarding a file review of the Underground Injection Control (UIC) files pertaining to Gene A. Wilson.

Please find enclosed responsive documents that you tagged during your file review on October 20, 2006. Prior to your review of the files, Leonard Dangerfield, FOIA Specialist, advised you that a portion of the records had been removed from the files, because of their exempt status under the FOIA.

At the conclusion of your records review, you asked if the files were complete and whether another search could be conducted. You were advised that another search for responsive documents would be conducted and you would be advised of those findings.

Based on the records identified in your request, we find that after conducting an exhaustive search of the record collections for Region 4, we have no other records responsive to your request. The fees for processing your request are waived as de minimis.

We have reviewed all the requested records with an eye toward disclosure and deemed a portion of the records inappropriate for discretionary release. We are unable to provide you with documents or portions of documents which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. §§ 552(b)(5) and (b)(7)(A).

Exemption 5 protects "inter-agency or intra-agency" memoranda or letters which would not be available by law to a party in litigation with the agency. The most commonly invoked privilege incorporated with Exemption 5 is the deliberative process privilege, the general purpose of which is to "prevent injury to the quality of the agency decisions." Specifically, three policy purposes consistently have been held to constitute the basis for this privilege: (1) to encourage open, frank discussions on matters of policies between subordinates and superiors; (2) to protect

against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. It also protects "inter-agency or intra-agency" communication which have been determined to be subject to the attorney-work product privilege and the attorney-client privilege.

Exemption 7(A) protects records or information compiled for law enforcement purposes where disclosure "could reasonably be expected to interfere with enforcement proceedings."

Under the FOIA, you have the right to appeal my partial denial and no records to EPA, Office of Environmental Information, Records, Privacy, and FOIA Branch (2822T), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. The appeal must be made in writing, and it must be received at this address no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30-day limit. The appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number 04-RIN-00024-07). For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Should you have questions regarding the withheld information or appeal procedure, please contact Ms. Priscilla Johnson, Office of Environmental Accountability at (404) 562-9614. Should you have questions regarding this response, please contact Leonard Dangerfield, FOIA Specialist, at (404) 562-9316.

Sincerely,

Patty A. Bettencourt
for Russell L. Wright, Jr.
Assistant Regional Administrator
Office of Policy and Management

Enclosures

1. Index of Releaseable Documents
2. Index of Exempt Documents

INDEX OF DOCUMENTS RELEASED

4-RIN-00024-07

1. Two copies of Underground Injection Control Data Management System, MIT History Report, dated November 9, 2005
2. Class II Well Inspection Form, RE: Gene A. Wilson, dated September 14, 2004
3. SBM letter to Ms. Walker Smith, Office of Regulatory Enforcement, EPA, RE: Gene Wilson, dated July 27, 2006
4. Letter from Gene A. Wilson, to Ms. Alfreda F. Freeman, RE: Gene A. Wilson Well, dated February 21, 2005
5. EPA, Region 4 Public Notice, undated
6. EPA, Region 4 letter to Mr. Gene A. Wilson, RE: Notice to Demonstrated Mechanical Integrity of Injection Well, dated January 5, 1999
7. Underground Injection Control Data Management System, RE: Gene A. Wilson, undated
8. Record copy of EPA, Region 4 letter to Gene A. Wilson, RE: Gene A. Wilson
9. 5 Year Review Checklist, RE: Gene A. Wilson
10. Permit Operator Checklist, dated September 27, 1989
11. Part II, Page II-13 of Permit Application, H. Financial Responsibility
12. EPA, Region 4 letter to Mr. Gene A. Wilson, RE: Draft UIC Permit, dated October 20, 1989
13. UIC Permit Application Attachments A -U
14. Diagram of Injection Well

DOCUMENTS TO BE WITHHELD

4-RIN-00024-07

Documents withheld pursuant to FOIA Exemptions 5, 5U.S.C. § 552 (b)(5) and (b)7(A)

1. Two (2) versions of Administrative Action Data Sheet, RE: Gene A. Wilson, undated - **7(A), Interference with Enforcement Proceeding**
2. Case Conclusion Data Sheet, RE: Gene A. Wilson, dated March 22, 2006 - **7(A), Interference with Enforcement Proceeding**
3. Two (2) UIC Administrative Settlement Policy, Individual Violations Settlement Calculation Worksheet - **(b)(5) Predecisional/Deliberative Process, 7(A), Interference with Enforcement Proceeding**
4. Three (3) handwritten note by staff attorney - **(b)(5) Attorney Work Product**
5. Email from Alfreda Freeman, Water Enforcement Branch to Zylpha Pryor, Associate Regional Counsel and other parties, RE: Gene A. Wilson, November 9, 2005 - **(b)(5) Attorney-Client, 7(A), Interference with Enforcement Proceeding**
6. Email from Carol Chen, UIC Section to Randy Vaughn, Water Enforcement Branch, RE: Gene Wilson, November 9, 2005 - **(b)(5) Attorney-Client Privilege**
7. Email from Bill Mann, UIC Section to Randy Vaughn, Water Enforcement Branch, RE: Gene Wilson, dated March 10, 2005 - **(b)(5) Predecisional/Deliberative Process, 7(A) Interference with Enforcement Proceeding**
8. Memorandum from Randy Vaughn to File, RE: Gene A. Wilson, dated July 27, 2005 - **(b)(5) Predecisional/Deliberative Process, 7(A) Interference with Enforcement Proceeding**
9. Memorandum from Randy Vaughn to File, RE: Gene A. Wilson, dated January 13, 2006 - **(b)(5) Predecisional/Deliberative Process, 7(A) Interference with Enforcement Proceeding**
10. Typewritten note by staff attorney - **(b)(5) Attorney Work Product**