

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

Gene A. Wilson )

) Docket No. SDWA-04-2005-1016

Respondent. )  
\_\_\_\_\_ )

**ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND  
ORDER ESTABLISHING FURTHER PROCEEDINGS**

On August 8, 2006, Respondent Gene A. Wilson, filed *Facts and Exhibits for Stipulation and Motion for Summary Judgment* ("Motion") in the above-captioned case. Thereafter, on August 25, 2006, Complainant filed *Response to Respondent's Motion for Summary Judgment*, taking the position that the Motion is premature because prehearing exchange has not yet taken place and Complainant has had no opportunity to submit evidence of violations.

Pursuant to Section 22.20(a) of the Consolidated Rules, 40 CFR § 22.20, "... The Presiding Officer upon motion of respondent may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant."

During the July 27, 2006, prehearing telephone conference the undersigned indicated she would be scheduling the prehearing exchange of information taking Counsel for Complainant's absence from late September until October 16, 2006, into consideration. Respondent's Motion was filed prior to any schedule set for prehearing exchange and is, as Complainant contends, premature. Therefore, I am holding in abeyance a ruling on the Motion pending completion of prehearing exchange in accordance with the schedule set forth below.

Respondent also requested that if Summary Judgment was not granted, Nicholas N. Owens, National Ombudsman of the US Small Business Administration, be given time to study all issues. For that purpose Respondent, by copy of a letter to Mr. Owens dated August 31, 2006, had requested that the Regional Hearing Clerk serve Mr. Owens with all pleadings and orders filed in this matter. Pursuant to Section 22.10 of the Consolidated Rules, 40 CFR § 22.10, "any party may appear in person or by counsel or other representative....Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States." **However, in order to be served with documents filed in this matter, the National Ombudsman's office must first file a Notice of Appearance on behalf of Respondent.** Until the filing of such Notice of Appearance, it is up to Respondent to provide Mr. Owens with copies of any pleadings and orders he deems

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appropriate. Although Counsel for Complainant is not ordered to furnish Mr. Owens with pleadings filed on behalf of Complainant, nothing in this Order prevents her from doing so.

Lastly, if Summary Judgment was not granted, Respondent also requested time to travel to Atlanta for viewing and copying pertinent documents in his file. During the July 27, 2006, conference call, Respondent anticipated traveling to Atlanta on or about August 24, 2006, to view the enforcement file. Counsel for Complainant assured Respondent and this Presiding Officer that there would be no opposition to his viewing the file. However if Respondent has not already done so, the schedule set forth below allows sufficient time for Respondent to travel to Atlanta for viewing and copying documents in the file.

**IT IS ORDERED:**

The following prehearing information exchange shall take place between the parties:

1. Each party shall submit:
  - (A) a statement as to its views as to the appropriate place of hearing and estimate of time needed to present its direct case. See Sections 22.21(d) of the Rules;
  - (B) the names of the expert and/or other witnesses intended to be called at hearing, with a brief narrative summary of their expected testimony; and
  - (C) copies of all documents and exhibits intended to be introduced into evidence. Included among the documents produced shall be a curriculum vita or resume for each identified expert witness. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (e.g., Complainant's Ex. 1)
2. Complainant shall submit a statement explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Clean Water Act § 309(g), 33 U.S.C. § 1319(g).
3. Respondent shall submit a statement explaining why the proposed penalty should be reduced or eliminated.

The prehearing exchange called for in paragraphs 1 – 3 above shall be filed simultaneously, as follows:

**November 13, 2006** – Initial Prehearing Exchanges due  
**November 27, 2006** – Rebuttal Prehearing Exchanges due

4. On or before **November 30, 2006**, the parties shall notify the undersigned of their intention to file any Motions, including Motions for Summary Determination. Respondent may elect to file a new Motion, or re-file the existing Motion as it is or with a supplement. The Presiding Officer will then set a schedule for filing of Motions, and further proceedings.

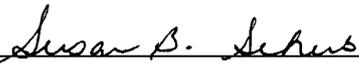
Section 22.19 of the Consolidated Rules of Practice ("CROP") provides that documents and witnesses' identities which have not been exchanged shall not be introduced into evidence at the hearing.

Prehearing exchange information required by this Order is to be sent to the Presiding Officer at the following address:

Susan B. Schub  
Regional Judicial Officer  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303

A copy should be sent to the Regional Hearing Clerk, Patricia Bullock, at the same address.

Date: 9/29/06

  
\_\_\_\_\_  
SUSAN B. SCHUB  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Order on Respondent's Motion for Summary Judgment and Order Establishing Further Proceedings, in the Matter of Gene A. Wilson, Docket No. SDWA-04-2005-1016, on the parties listed below in the manner indicated:

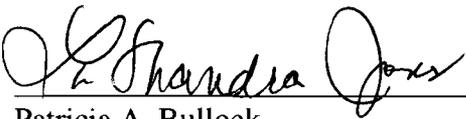
Mr. Gene A. Wilson  
101 Madison Street  
P. O. Box 702  
Louisa, Kentucky 41230

(Certified Mail – Return  
Receipt Requested)

Zylpha Pryor, Esq.  
Environmental Accountability Division  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

(via Intra-Office Mail)

Date: 9/29/06

  
Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
404/562-9511

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

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Postage \$		9/29/06 Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees \$		
Sent To <b>Mr. Gene A. Wilson</b>		
Street, Apt. No. or PO Box No. <b>101 Madison Street P.O. Box 702</b>		
City, State, ZIP+4 <sup>®</sup> <b>Louisa, KY 41230</b>		
PS Form 3800, January 2001		See Reverse for Instructions

<b>SENDER: COMPLETE THIS SECTION</b>	<b>COMPLETE THIS SECTION ON DELIVERY</b>
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> <p>1. Article Addressed to:</p> <p style="margin-left: 40px;">Mr. Gene A. Wilson          101 Madison Street          P.O. Box 702          Louisa, KY 41230</p> <p>2. Article Number          (Transfer from service label)</p>	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> C. Date of Delivery</p> <p><b>Delivered LOUIS</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No          If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7001 2510 0006 1131 7232</p>	