

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

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HEARING CLERK

**MOTION TO COMPEL DISCLOSURE OR CONTINUANCE OF HEARING IN
THE ALTERNATIVE**

Comes the Respondent by Supplemental Motion and states the following:

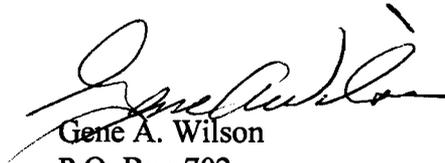
(1) On October 20, 2006, Respondent viewed his file in Atlanta with Mr. Leonard Dangerfield, F.O.I.A. Specialist present marking documents to be copied. The file was absent Respondent's attempts for ten (10) years to have the permit modified and notices the well had not been completed or put in service and various other defenses Respondent is relying on.

(2) On November 6, 2006, Respondent received notice that E.P.A. did a further exhaustive search but could find no additional records and gave a list of documents Respondent could not see stating various reasons. Respondent was given thirty (30) days from November 3, 2006, to appeal the decision to Washington, D.C. See attached letter and list of documents to be withheld marked Respondent's Exhibit "1" and "2".

Wherefore Respondent prays that the hearing officer view the documents withheld and direct E.P.A. to furnish the information desired or in the alternative grant a

continuance allowing Respondent time to appeal E.P.A. decision not to disclose possible favorable documents.

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 Motion To Require Complainant To File First 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: 11/7/06


Gene A. Wilson
P.O. Box 702
Louisa, KY 41230
(606) 638-9601

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 08 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



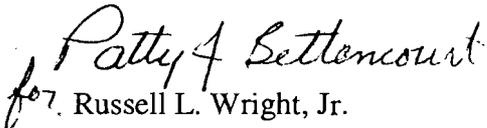
against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. It also protects "inter-agency or intra-agency" 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,


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

Enclosures

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

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**

