

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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**REPLY BRIEF AND SWORN AFFIDAVIT WITH EXHIBIT
OF TELEPHONE BILL**

Comes now the Respondent, Gene A. Wilson, and hereby submits his Reply Brief as directed by the Honorable Susan B. Schub at the conclusion of the hearing in Ashland (Boyd County) Kentucky on September 27, 2007 and subsequent Order Scheduling Post Hearing Submissions.

REPLY BRIEF

At the outset of the hearing held at Ashland, Kentucky the hearing officer granted Complainant's (E.P.A.'s) Motion To Sequester The Witnesses at the very beginning of the hearing. Tr. Page 11 Volume I. This placed Respondent at a major disadvantage since it was planned for the secretary (Patty Carter) to be along side Respondent throughout the hearing furnishing exhibits as needed for an orderly sequence of events during the time Respondent had three (3) injection wells.

Respondent setting by himself trying to listen to the testimony, making objections, digging through the pile of exhibits for cross examination and taking notes was chaotic to say the least for Respondent, while Complainant's two (2) attorneys and entourage of personnel from E.P.A. leisurely worked together as a group to present their case.

The hearing was more than half over before Mrs. Carter could rejoin Respondent to present his defense in an orderly fashion by separating the piles of exhibits for submitting and reminding Respondent what factual testimony may have been omitted. The old cliché "you have a fool for a client when you represent yourself" is never truer, even at an Administrative Hearing.

Complainant stated in its opening remarks that E.P.A. wanted to make an example of Respondent. Tr. Pages 21 and 22 Volume I. This was surprising since Respondent was never in the oil and gas business but was merely attempting to place natural gas in his own tenant house and clean up his newly purchased farm where the previous owners had been discharging brine water and oil on the ground and allowing it to flow into Cam Creek that passed through the farm.

In Complainant's (E.P.A.'s) Proposed Findings Of Facts And Conclusions Of Law And Post Hearing Brief E.P.A. continually states Respondent and Mrs. Carter's testimony is not credible and at one point the E.P.A. lawyers said Respondent acted dumb and used statements just short of the word "lying". This is ill taken.

Respondent never took the time to introduce himself to the hearing officer or counsel for Complainant but went right into his testimony and presenting his exhibits when it was his turn to take the stand.

After reading Complainant's Proposed Findings Of Fact and Post Hearing Brief it

became imperative that a brief summary of Respondent's background be introduced that perhaps the hearing officer will consider Respondent would not lie under oath knowing perjury is a most serious offence.

Introduction: Respondent is from a military family with his father retiring from the U.S. Navy with over twenty-two (22) years of service. One of Respondent's brothers served four (4) years in the Navy and another also retired from the U.S. Navy serving on Admiral Hyman Rickovers Nuclear Powered Attack Submarines. Respondent resigned from the Navy after eleven (11) years with six (6) of those years with the Judge Advocate General's Corps.

Respondent was with the Metropolitan Police Washington, D.C. with duties including security for President John F. Kennedy.

Respondent was a secondary school teacher teaching geography and history before entering the University of Kentucky's College of Law in 1964.

Respondent was Prosecuting Attorney from 1970 to 1973 and although Respondent has held a Juris Doctor Degree for some forty (40) years, he gave up the general practice of law some twenty-five (25) years ago. Respondents leading the witnesses the first couple of days (E.P.A.'s lawyers complained of) at the hearing reflects being rusty but trying to cover all factual issues in the allotted short period of time.

Respondent is currently serving as President and Chairman of the Board of a small community bank at Louisa, Kentucky.

Except for time living away from home (military, etc.), Respondent has always lived on the farm and considered by many a farmer. Tr. Page 35 Volume 1
Complainant's Exhibit "1" Page 8.

Respondent was never in the oil and gas business but was merely trying to put natural gas in his own tenant house on his farm on Collier Creek and cleaning up oil spills and free flowing brine water on a newly purchased 406 acre farm on Cam Creek for its tobacco base.

Complainant has made serious charges against Respondent and his secretary Patty Carter in its Proposed Findings Of Fact stating their testimony “is not credible” or makes “claims” or “purported” phone calls, all inferring to be lies. These statements are made repeatedly throughout Complaints Brief. These comments are ill taken.

It would have been simple to have paid the Nine Thousand Dollars (\$9,000.00) fine at the outset but when you know you’ve done nothing wrong it becomes the principal. It is not Respondent’s character to settle a matter for expediency sake when Respondent did whatever Complainant asked of him.

Respondent will answer each numbered paragraph in Complainant’s Proposed Findings Of Facts that is incorrect or needs explanation and to make this Reply Brief as strong as can be written on paper, the infra shall be made under oath knowing fully the penalty of perjury.

The Respondent Gene A. Wilson, being first duly sworn states he is telling the truth to the best of his ability and memory concerning his three (3) injection wells permitted in his name in Lawrence County, Kentucky and matters related thereto says the following:

1. Explanation to numbered paragraph 1: It is hard to remember eighteen (18) years ago however, the dates reflect Respondent signed the application for an injection permit for Collier Creek on May 15, 1989; therefore, the extensive information furnished

Ashland Testing Laboratories to file the application was weeks before that date. The letter from Lauffer Well Service, Inc. is dated May 18, 1989 and paid on May 23, 1989 is subsequent to signing the application sent to Complainant. Respondent did not have all the Lauffer information for submitting with the application.

2. Correction to numbered paragraph 2: The well did not pose a threat to the environment or quality of water according to State Inspector Doug Hamilton and Geologist Monte Hay. Tr. Pages 115 and 120 Volume II and Tr. Page 228 Volume I. E.P.A.'s witness Mr. William Mann testified "¼ mile radius is what we look at", Tr. Page 119 Volume I, and here the well was ½ to 1 mile from a neighbor, Tr. Page 228 Volume I. If the well affected anyone it would only have been Respondent and his tenant since the water at the house was from a dug well (no city water). This is a case where the Complainant is only thinking it has to protect the Respondent from himself.

E.P.A.'s enforcement officer Mr. Vaughn's inspection report on the well reported no leaks. Tr. Page 25 Volume II Complainant's Exhibit "18". Therefore the bull nose squeeze was working or the ground would have been wet from brine water discharge.

3. No necessary response needed to numbered paragraph 3.

4. Correction to numbered paragraph 4: Complainant states a "leak can develop in the well casing". In this case for a leak to occur in the well casing it not only must go through two (2) casings but also two (2) layers of cement and the bottom of the well was also filled with cement preventing fluids from rising up into the casing. Also the packer would prevent fluids from rising from the bottom.

5. No necessary response needed for numbered paragraph 5.

6. Response to numbered paragraph 6: If a well is properly installed (cemented

in, etc.) it is not “common” for leaks to develop says State Inspector Douglas Hamilton. Tr. Page 126 Volume I. The permit states if “cessation of injection” stops for two (2) years you may be required to plug. Complainant through its data base knew Respondent’s well was never put into service for the fifteen (15) years of its life. Respondent’s responsibility to plug or do an MIT every two (2) years was never an issue by the permit requirement and even if it was Respondent was in compliance by his written letters of notice to E.P.A., Tr. Page 227 Volume II Respondent’s Exhibit “7” Part II Page II-9 12 (b).

7. No necessary response needed to numbered paragraph 7.

8. Response to numbered paragraph 8: Through the Freedom of Information Act Respondent found it was common practice for Complainant to modify permits to take other operators brine water. Respondent’s Exhibit “60”. Respondent does not ever recall getting an answer from Complainant (E.P.A.) on his request to modify the permit. The permit issued was incorrect since there was no enhanced recovery on Collier Creek and the application distinctly requested for taking brine water from other leases. Tr. Page 35 Volume I Complainant’s Exhibit “1” pages 3 and 5.

9. No necessary response needed to numbered paragraph 9 on page 4 of Complainant’s Brief. At page 5 of Complainant’s Brief the first numbered paragraph at the top of the page is 8 (miss numbered) therefore Respondent’s next answer will be for miss numbered 8.

10. No necessary response needed to numbered paragraph 8 at page 5.

11. Response to numbered paragraph 9 at page 5: Complainant states it did a five (5) year review July 17, 1998. Why wasn’t this “review” sent to Respondent for proper

responses? The date on the review was hand written and not stamped like all other documents coming from E.P.A.. Also the review did not reflect that Respondent never posted a letter of credit and/or standby trust agreement as required before a permit is issued? Tr. Page 178 Volume III Complainant's Exhibit "3". Complainant advised Respondent the permit would not be issued unless Schedule A and B of the application was completed. Tr. Page 178 Volume III Complainant's Exhibit "3". Complainant tried "licking its calf over" by contacting Respondent's bank after the Complaint was filed trying to find a stand by trust agreement to no avail. There was none. Through the Freedom of Information Respondent found numerous denials of permits and/or E.P.A. request for update on letters of credits from operators holding injection permits. Respondent's Exhibit "60".

12. Response to numbered paragraph 10: Respondent never received a letter from Complainant dated October 1, 1998. A letter of this importance should have been sent by certified mail like all the other correspondences received from Complainant up until that time and thereafter. Respondent did find in his file where form 7520-10 was sent to Respondent in 1994 wanting to know the anticipated daily volume and pressure when injection began. At that time Respondent must have been communicating with Complainant thinking the permit was going to be modified to take other operators brine water and Complainant was asking what the estimated injection would be.

13. Response to numbered paragraph 11: This raises the questions of why the letter of January 5, 1999 was sent by certified mail and not the one dated October 1, 1998 referred to in numbered paragraph 10 supra? Respondents honest "opinion" is the five (5) year review or letter was never mailed to Respondent. It goes along with E.P.A.'s

track record. Complainant was always thorough by sending all correspondences by certified mail, return receipt requested.

14. Response to numbered paragraph 12: The events related to an MIT test for the year of 1999 is hereby reaffirmed as outlined in Respondent's Proposed Findings Of Fact. Ms. Chen was a pleasant lady but she also couldn't remember when the notice was sent to all operators of injection wells that Complainant was no longer notifying permittees when MIT's were due. Her testimony was "I don't know if it was a year or two years or three some time period like that". Tr. Page 166 Volume I.

15. No necessary response needed to numbered paragraph 13.

16. Response to numbered paragraph 14: Respondent reaffirms his Proposed Findings Of Fact related to the MIT test conducted in 1999. Respondent did not know at the time that Mr. Clark always conducted a pre-test before Complainant's inspectors appeared on the scene. Mr. Clark testified he did six (6) MIT tests for Respondent, four (4) on Cam Creek and two (2) on Collier Creek. Tr. Pages 11 and 39 Volume III. Complainant now charges Mr. Clark's testimony is "not credible". Anytime testimony supports Respondent's position he did nothing wrong, Complainant charges the testimony "is not credible". Complainant has now added Mr. Clark to its list of witnesses of not being truthful under oath.

17. Response to numbered paragraph 15: When Respondent sent his letter dated August 18, 2000, Tr. Page 143 Volume I Respondent's Exhibit "22", it was not known Mr. Clark always did a pre-test on MIT's before the E.P.A. inspector arrived. Mr. Clark relayed this information to Respondent after the Complaint was filed.

18. Response to numbered paragraph 16: After the hearing Respondent and his

secretary Mrs. Carter tried to rehash in their minds what occurred on the day Complainant's inspector did not show to conduct an MIT Test in 1999.

It is true Respondent forgot about making the call from the farm house to Mrs. Carter at the office in Louisa. The call would have been made by Respondent with the employees present to receive instructions on what to do next. It is not logical to think Respondent would merely be standing by for an employee to ask the tenant of Respondent's farm house for Respondent to use their telephone.

The area code of 859 on the notice to do an MIT test is in Respondent's hand writing; therefore, since Respondent was at the farm some thirty (30) miles from the office, it was not inked on the document on that particular day. Neither Respondent or Mrs. Carter can remember when the area code was actually written on the MIT notice of 1999.

19. Response to numbered paragraph 17: Respondent asked his secretary Mrs. Carter who she contacted in 1999 to report the Complainant's inspector did not show. Mrs. Carter advised she called the telephone number listed for the inspector David Hayes and with no answer she called Ms. Chen as she testified under oath at the hearing.

20. Response to numbered paragraph 18: Mrs. Carter knew for certain no equipment owned by Respondent was kept on the Collier Creek farm since it was rented to the Newell family since the 80's and they still currently live there.

When the farm on Cam Creek was sold to Mr. Jordan in 1994 he acquired the equipment related to injection wells and to this day he is active in injecting other operators brine water and has created a nice little business.

Respondent never owned a service rig; therefore, it is certain it cam from Mr.

Jordan's farm on Cam Creek along with equipment to pressure up the well. The dozer probably came from the farm where Respondent lives on Mill Creek since we never left equipment on Collier Creek where the well was located. Also the truck and tag along to haul the dozer is generally stored on Respondent's farm where he lives.

21. Explanation to numbered paragraph 19: Mrs. Carter did not relate to Respondent of Mr. Clark's practice of pre-testing an MIT before Complainant's inspector arrived. It is logical Mr. Clark pre-tested to be sure the well would pass the test and when the inspector arrived Respondent's equipment was removed and replaced by the inspectors as he testified. Tr. Pages 11 and 12 Volume III.

Mrs. Carter is Respondent's secretary, not someone knowledgeable of Complainant's requirements for MIT's and merely over heard conversations Respondent has with other employees. Conversations among employees doesn't always reach the employer. It is obvious Mrs. Carter is wanting to help Respondent, however she would not knowingly make a false statement under oath or otherwise as Complainant is suggesting.

Respondent never changed his testimony about his knowledge of Mr. Clark's pre-test but relayed what he was advised of later. Also after the Complaint was filed Respondent went back and re-read the permit and its somewhat ambiguous but after the initial MIT an operator could do the MIT test unobserved by an inspector and submit the results within ninety (90) days.

The equipment to pressure test was apparently borrowed by Mr. Clark from Mr. Jordan or Mr. Hay for the pressure test and the dozer and other equipment was Respondent's. We normally do not keep payroll records beyond five (5) years.

22. Correction to numbered paragraph 20: Complainant's comment that "E.P.A.'s witness did not show, is James Clark" is confusing. Mr. Clark was present to testify for Respondent.

It is true Respondent was asking some leading questions but only trying to refresh Respondent's and Mr. Clark's memory what occurred eight (8) years ago. Respondent had not really talked to Mr. Clark in years and we both were trying to refresh events occurring during the 1999 MIT test.

Mr. Clark testified on cross-examination the Complainant's inspector always tested the wells for fifteen (15) minutes even though the forms given to Mr. Clark to sign by the inspector called for thirty (30) minutes. Tr. Page 43 Volume III.

Complainant takes issue with Mr. Clark's testimony as to when the road was re-opened to the well for the 1999 MIT. January and February are bad weather months in Kentucky but you can still make a road and back blade but you don't get on it until it dries.

For Complainant to even suggest Mr. Clark is confusing the year 1999 with 1993 is ridiculous. Mr. Clark would be weak minded if he couldn't keep two (2) events six (6) years apart separated. So would the Respondent, Mrs. Carter, Mr. Clark, Mr. Jordan and Mr. Hay.

23. Correction to numbered paragraph 21: Respondent's employees did conduct an MIT test in 1999 but was not reported to Complaint, expecting to do a E.P.A. witnessed test later.

Complainant cannot dismiss the fact it had assumed the responsibility up until two (2) years ago, Tr. Pages 205, 206 and 214 Volume III, to always notify operators to

conduct MIT's. Just for argument sake, since Complainant alleges there was no record since 1993 of an MIT test and notice from Complainant for an MIT in 1999 was not conducted, for argument sake, why did Complainant ignore the years 2000, 2001, 2002, 2003, 2004, 2005 for a notice for Respondent to conduct an MIT? The record is clear Complainant was giving notices for MIT's. Tr. Page 156 Volume I Complainant's Exhibit "31" and Tr. Page 212 Volume III.

24. Correction to numbered paragraphs 22 and 23 would be redundant; therefore, Respondent refers to his Proposed Findings of Fact except Complainant has misquoted the permit application by stating "our own wells in the community" when the accurate quote should be "injected in this well is the brine produced on the surrounding leases", Tr. Page 35 Volume I Complainant's Exhibit "1" page 3, and "produced brine will be hauled in from surrounding leases by trucks...", Tr. Page 35 Volume I Complainant's Exhibit "1" page 5. The permit should have been issued for "salt water disposal" not enhanced recovery. Respondent's Exhibit "60".

25. No necessary response needed to numbered paragraph 24, 25 and 26 but refer to Respondent's Proposed Findings of Fact.

26. Response to numbered paragraph 27: It is true Respondent thought of plugging the well in 1993 since it was not needed to dispose of brine water from Cam Creek and because Respondent couldn't get Complainant to modify the permit to allowing brine from other operators wells. Even Mr. Jordan had the permits Respondent assigned him modified as others in the area. Respondent's Exhibit "60".

27. Response to numbered paragraphs 28, 29 and 30: Had Complainant not lost correspondences from Respondent file on Permit KYI0376 or merely looked in

Respondent's Permits KYI0344 and KYI0503 it would have found numerous notices concerning the Collier Creek well over the several years of not placing the well in service.

Since the two (2) injection wells on Cam Creek were easily holding the brine water, there was no need for the isolated injection well on Collier Creek and especially after the sale in 1994 of that farm.

With the attempts over the years to have the well modified to create a business disposing of other operators brine water there was no economic benefit to keep the well.

Reference to Respondent's Proposed Findings of Fact for a full answer to mitigate a penalty.

28. Correction to numbered paragraphs 31, 32, 33, 34 and 35: Respondent's witness, Mr. Monte Hay, testified he performed a bullhead squeeze to shut off the brine water coming from perforated holes at a depth of 941 to 951 and then Lauffer Well Services drilled the cement out to a depth of 939.65. All this information is well documented by testimony and exhibits; however, Complainant's attorneys continue to make comments Respondent and his witnesses are not being truthful.

Respondent cannot find any records indicating he re-perforated the casing after sealing off the 3rd weir. There are three (3) weir formations that produce oil and gas and all drillers in the area tell you not to go below the second weir because the 3rd is mostly brine water.

With Complainant not modifying Respondent's permit there was no need to complete the well for injecting brine water.

The original purpose for the well on Collier Creek was to put gas in the rental house on the farm. With the 3rd weir sealed off, had Respondent re-perforated the 1st and

2nd weir where the gas is located isn't it logical a gas line would have been run to the house? That's why Respondent doesn't think he re-perforated at a higher level.

Respondent reiterates the settlement and payment for drilling out the cement pumped in the 4 ½" casing by Lauffer Well Services was eight or nine (8 or 9) days after the application was signed and submitted to Complainant.

Rather than being commended by Complainant for Respondent's quick action to seal off the brine water flowing to the surface prior to having a permit approved, he is being condemned for not immediately reporting his subsequent activities to Complainant.

It is the position of Respondent that had Complainant allowed him to use the well for injecting oil and gas producers brine water by modifying the permit, the tubing and packer would have had to be pulled, perforate the pipe, replace the tubing, and reset the packer. At that point another MIT test would need to be performed before injection could commence. There was no need to do this without a corrected permit.

29. Correction to numbered paragraph 36: Complainant's own witness Mr. William Mann testified had he seen all Respondent's correspondences to E.P.A. he would have considered Respondent was acting in good faith. Tr. Page 109 Volume I.

Anytime Complainant gave notice to do an MIT test Respondent immediately took action to comply. Tr. Page 34 Volume II Complainant's Exhibits "12" and Tr. Page 37 Volume II Complainant's Exhibit "16" were not giving notices for an MIT test as alleged by Complainant and Tr. Page 154 Volume I Complainant's Exhibit "14" was for the 1999 MIT test.

30. Statement on Complainant's Proposed Findings of Fact is mislabeled. It is an argument for Complainant's position in this matter belittling Respondent and all his

witnesses except for the two (2) State Inspectors and Mr. Ed Jordan.

The issue of water quality and protecting the environment has long been abandoned by Complainant's lawyers and it is now getting Respondent at all costs for his letters to Ms. Zylpha Pryor dated March 31, 2005, Tr. Page 70 Volume III Respondent's Exhibit "32" and July 24, 2006 Tr. Page 75 Volume III Respondent's Exhibit "36" It is regrettable Complainant's lawyers can use this forum to belittle someone who tried to do the right thing in cleaning up Cam Creek and attempting to provide a place for oil and gas producers to dispose of their brine water.

31. Response to numbered paragraph 37: It is not a question of an "inactive well" but a well that never commenced operations to trigger annual reporting. See Tr. Page 227 Volume II Respondent's Exhibit "7" permit Part I Page I-4 Section C2 and Part II Page II-11 F(3).

32. Correction to numbered paragraph 38: The initial MIT was scheduled for 1991 but was waived by E.P.A. due to Respondent's activities on Cam Creek placing injection wells KYI0344 and KYI0503 in service. Respondent regularly advised E.P.A. there was no activities on Collier Creek by letter in lieu of annual monitoring forms.

CORRECTIONS TO COMPLAINANT'S PROPOSED CONCLUSIONS OF LAW

33. No response necessary to numbered paragraph 39.

34. Response to numbered paragraph 40: Complainant's list of four (4) factors to reach a value for determining a monetary penalty;

A. Seriousness of the violation: The well was in an isolated location on Respondent's farm some ½ to 1 mile to a neighbors property. No brine water was ever

injected into the well; the well was properly sealed off with cement and casing and was not a threat to the environment, health or quality of drinking water according to the State of Kentucky Inspector Doug Hamilton and geologist Monte Hay.

B. Economic benefit: Respondent pumped thousands of dollars in the well attempting to deliver natural gas to Respondent's farm house to no avail and tried to get E.P.A. to modify the injection well to accept other operators brine water also to no avail, therefore it is clear the well provided no economical benefit to Respondent.

C. History of violations: There was none.

D. Any good faith efforts to comply: Complainant's witness Mr. William Mann testified had he seen Respondent's exhibits that was lost by E.P.A. from Respondent's file that he would consider Respondent was acting in good faith. Tr. Page 109 Volume I.

E. Economic impact of the penalty: Respondent hopes Complainant will consider the cost expended cleaning up Cam Creek and sealing the well on Collier Creek enough financial penalty in this matter, not to mention time allotted in this proceeding.

35. Response to numbered paragraph 41: In fifteen (15) years Respondent received seven (7) notices from E.P.A. to do MIT tests; four (4) on Cam Creek three (3) on Collier Creek; the first notice for an MIT on Collier Creek was waived by E.P.A.; the first observed MIT by E.P.A. inspector was in 1993 and the MIT completed in 1999 was not observed by E.P.A. inspector. No other notices for an MIT test on the Collier Creek farm was ever received from E.P.A. although six (6) years lapsed before plugging in 2005. Again E.P.A. lawyers say our explanation is not credible.

36. Response to numbered paragraph 42: Complainant's legal counsel refused to accept the fact Respondent never injected brine water in the Collier Creek well (see

Complainant's pleading) but after hearing six (6) witnesses testify at the hearing that the well was never put into service; in this numbered paragraph Complainant's lawyers for the first time pleads "the Respondent's well was inactive for the entire life of the well". It only took E.P.A. lawyers two and one-half (2 ½) years to accept this fact. However the true secret to this acceptance is Complainant thinks--Oh! Respondent should then be doing an MIT every two (2) years. Respondents position is (by wording of the permit) you had to commence operations by injecting--cease for two (2) years or plug if you couldn't prove you were going to start up again. Tr. Page 51 Volume I Complainant's Exhibit "6" Part I Page I-4 Section C (2) and Part II Page II-11 Section F (3).

37. Response to numbered paragraph 43: In this paragraph Complainant is saying "if the permit section applicable to "inactive wells" did not apply to Mr. Wilson" (for two (2) year intervals on MIT's) then Respondent should still have done an MIT ever five (5) years. Respondent asserts that if E.P.A. wanted an MIT every two (2) years, all it had to do was notify Respondent to modify his reporting period.

38. Response to numbered paragraph 44: Complainant is again discussing the annual monitoring reports in this paragraph. Complainant lost most of Respondent's file however it is believed Respondent kept Complainant informed he was not using the well because in 1994 Respondent was sent form 7520-10 asking what pressure and injection volumes were anticipated. See Tr. Page 88 Volume I Respondent's Exhibit "A".

39. Response to numbered paragraph 45: Respondent never had possession of E.P.A.'s Form 7520-10 for annual reporting therefore, letters were sent in like a lot of other operators. Respondent's Exhibit "60". Also see Tr. Page 116 Volume III Respondent's Exhibit "62-J".

Respondent never received E.P.A.'s clarifying guidance report sent to operators (Tr. Page 63 Volume I Complainant's Exhibit "29") by mass mailing based on operators names in the data base. Since Respondent never heard from Ms. Chen after the 1999 episode or do an MIT in 2004 it is assumed our file was misplaced again.

40. Response to numbered paragraphs 46, 47, 48, 49, 50, 51 and 52 are all related to the size of the money penalty.

It should be pointed out to Complainant that Respondent only failed to report the results of his 1999 MIT test completed by Mr. Clark without an E.P.A. inspector present; erroneously thinking Ms. Chen was going to re-schedule. Ms. Chen's data base should have reflected the error as she testified about how she did follow-ups. Tr. Page 156 Volume I.

RESPONSE TO COMPLAINANT'S POST-HEARING BRIEF

In Complainant's Introduction Part I: Complainant asserts "Mr. Wilson utterly and completely failed to comply with the conditions of his permit from the time of its issuance in 1990 until he finally plugged the well in June of 2005". The facts are completely different from this exaggerated and mistaken claim.

Respondent had three (3) injection wells, all permitted about the same time. The two (2) on Cam Creek operated with perfection by Respondent until sold with oil and gas producers in the community copying the system and permitting their own injection wells and/or modifying to take other operators brine. Respondent's Exhibit "60".

The permitted injection well on Collier Creek was another story. There was no oil production in that area for enhanced recovery as was the purpose of a Class II injection

well. The intent was to take a possible over flow on brine water from Cam Creek and from other leases in the area. The permit issued restricted brine water from permittee operations only. Respondent could never get this corrected. Tr. Page 51 Volume I Complainant's Exhibit "6" Part I Page I-2 Section B (1).

Respondent's first notice (as required from E.P.A.) to do an MIT on Collier Creek was in 1991 which was waived by E.P.A. since it knew Respondent had his hands full on Cam Creek. At the hearing E.P.A.'s lawyers admitted they were not aware of the E.P.A. notice and waiver of a MIT for Collier Creek.

In 1993 the first MIT test was conducted with E.P.A.'s inspector present. This inspection alone refutes Complainant's argument Respondent didn't comply for the full fifteen (15) years).

In 1994 E.P.A. sent form 7520-10 to Respondent asking what the anticipated volume of injection and pressure would be on the well when operations did start, indicates Respondent was communicating with E.P.A.. Also working with E.P.A. on the sale of the injection wells on Cam Creek. See Tr. Page 116 Volume III Respondent's Exhibits "62-D" and "62-F". So for the first five (5) years we have established clearly Respondent and Complainant were communicating regularly with each other on a friendly bases.

Respondent, seeing a need to inject brine water for oil and gas producers without injection wells as a viable business continued to attempt having the permit corrected but with no luck. In 1999 E.P.A. (as required) gave notice for an MIT test. This was in the dead of winter and it was re-scheduled for April. Ms. Chen wrote "cancel" on her data base along with five (5) other operators. Complainant's Exhibit "15". E.P.A. lawyers

didn't believe Mrs. Carter called Ms. Chen, (called it a purported call) if that was the case, how did Ms. Chen get notice to cancel? Along with this thought, Ms. Chen testified what she did when MIT's were not done "what I would do is run lists off the data base to recheck, you know whether wells were done by their dates, plus I had a schedule where I mapped out on calendars all the MIT's". Tr. Page 156 Volume I. With the MIT not being reported in 1999, where was the follow-up Ms. Chen is testifying to? If Mrs. Carter didn't call E.P.A. as she testified why does Ms. Chen's report show "cancel"? Who did call and cancel? Mrs. Carter did as she testified. See Complainant's Exhibit "15".

Respondent no longer had employees in the Martha area and had to put together the old crew to perform the test. The E.P.A. inspector did not show, however, unbeknown at the time to Respondent, James Clark did a MIT test while waiting. E.P.A. employee Ms. Chen, was to reschedule but didn't follow up.

Respondent gave up on the idea of disposing of oil and gas operators brine and in 2000 gave notice to E.P.A. Respondent wanted to plug the well. Tr. Page 156 Volume I Complainant's Exhibit "31" shows that when this type notice is given from an operator, E.P.A. followed up with a letter explaining the duties to a permittee how to comply with the plugging regulation. Tr. Page 67 Volume III Respondent's Exhibit "31".

Respondent's approval letter to plug came five (5) years later and the well was plugged.

With this summary, it is clear Respondent was attempting to comply with his injection permits?

If you continue with Complainant's argument of non compliance, why didn't E.P.A. give notice to Respondent for an MIT test due on or before April 27, 2004 as indicated in Complainant's Post Hearing Brief? The data base used by Ms. Chen would

have clearly shown one was due from Respondent and she had the duty of notification up until two (2) years ago. Tr. Page 166 Volume I and Tr. Page 212 Volume III.

The next part of Complainant's Post Hearing Brief Section II is titled Mr. Wilson's excuses.

A. "E.P.A. Did Not Remind Me Enough".

Complainant (in Respondents opinion) is being sarcastic since E.P.A. only had to notify Respondent one time to take any form of action on any matter.

E.P.A. took on the duty and responsibility to notify operators when to do MIT's. See Tr. Page 67 Volume III Respondent's Exhibit "31".

Complainant refers to its Exhibits "12", "14" and "16" as reminders for Respondent to do an MIT. Tr. Page 34 Volume II Complainant's Exhibit "12" is not a notice to do an MIT but the E.P.A. document that has the date handwritten on its face, without use of a date stamp as all E.P.A. documents had, except only this one is over fifteen (15) years of correspondences. Tr. Page 154 Volume I Complainant's Exhibit "14" is the E.P.A. Notice to do the MIT test in January 1999 which was continued due to weather conditions and rescheduled for April 26, 1999. This MIT test was conducted but not observed by E.P.A. inspector David Hayes since he didn't show up. It is noted on E.P.A. scheduling list that five (5) other operators also canceled. Tr. Page 67 Volume III Respondent's Exhibit "31".

Tr. Page 37 Volume III Complainant's Exhibit "16" was not a notice for an MIT test but a letter with a "date stamp" of August 02, 2000 asking for an update on the well and Respondent replied on August 18, 2000. Respondent was never "reminded" twice to do anything E.P.A. requested.

B. “I never Used The Well”.

Complainant calls it an excuse when Respondent reports he never put the well into service.

Its not an excuse but a fact. The permit tells the permittee what to do “BEGINNING ON THE DATE ON WHICH THE WELL COMMENCES OPERATION” Tr. Page 227 Volume II Respondent’s Exhibit “7” Permit Part I Page I-4 Section C (2) and what to do if you stop injecting, Part II Page II-11 F (3) so it is an open issue if an operator did neither. When Respondent wrote letters to E.P.A. stating there was no injecting taking place over the years; that would have been the time for E.P.A. to send “official form notices” to Respondent and not wait fifteen (15) years to complain. The permit requirement was if or when you stopped injecting, the permittee may be required to plug or do an MIT every two (2) years. Had E.P.A. decided it wanted more MIT’s a notice to do one would have been complied with by Respondent. The record is very clear that Respondent always responded to any communications received from E.P.A.

C. “The Well Did Not Threaten The Environment”.

Complainant calls it an excuse when it was clear the well did not threaten the environment or the health of people around the well.

The Respondent would not destroy the water quality on his farm and to think otherwise is not using common sense. For one thing what would happen to the value of the land? Respondent has owned the property some twenty-five (25) years and still owns the farm today.

When the well was fracked and brine water shot sixty (60) feet in the air,

Respondent immediately squeezed the formation off with cement and when the well was partially reopened Respondent intentionally left cement in the well to keep the 3rd weir formation plugged. It would be obvious if a well is leaking on the surface. E.P.A.'s inspector Mr. Vaughn reported the well was not leaking and another (Mr. William Mann) stated E.P.A. looks to an area ¼ mile around a well. The neighbors lived some ½ to 1 mile away.

State Inspector Douglas Hamilton was a supervisor over other State Inspectors covering most of Eastern Kentucky and he testified the well did not effect the environment or the quality of drinking water because it was properly constructed with double casing cemented in place. Also the geologist Monte Hay testified the USDW was properly protected.

How many more people did Respondent need to testify assuring E.P.A. Respondent's drinking water was safe and protected? Respondent believes it was well established the well did not effect the environment.

D. "E.P.A. Did Not Show Up To Witness An MIT".

Complainant thinks Respondent made up the story about the E.P.A. inspector not showing up to witness the MIT test in 1999 saying we mistakenly thought 1999 was 1993. How silly.

Respondent's secretary Patty Carter did not appreciate E.P.A. lawyers trying to make out she was not being truthful while testifying about her calling Ms. Chen to reschedule the MIT Test so she spent many hours after the hearing and finally found the telephone bill of the calls and will be attached to her new Affidavit attached to this Response to Complainant's Brief.

It is clear from all the testimony, both E.P.A.'s and Respondent's witnesses that E.P.A. always notified operators when to do an MIT up until two (2) years ago. See Complainant's Exhibit "31" and Ed Jordan's testimony Tr. Page 212 Volume III.

E. "E.P.A. Was Unfair To Me".

Respondent doesn't know if you call it unfair or just disappointed the way this matter has developed.

A. Respondent was disappointed Complainant didn't think Respondent had an emergency situation on Cam Creek created by the previous owner of the property with brine water and oil flowing into the creek and refused Respondent's request to expedite his permit application.

Complainant's lawyers at the hearing were surprised E.P.A. asked Respondent to do an MIT on Collier Creek in 1991 but waived the request until 1993 to give Respondent time to clean up Cam Creek.

B. Respondent was disappointed E.P.A. did not modify his permit to take other operators brine water although it was a common practice. Even Mr. Jordan later had one of the permits modified Respondent assigned him in 1994.

C. Respondent was disappointed E. P. A. lost most of his file on the Collier Creek well and had to make two (2) trips to Atlanta to splice the files together for E.P.A. by taking correspondences from the Cam Creek injection well folders that applied to all three (3) permits.

D. Respondent was disappointed the E.P.A. lawyers did not bother to look at all the files pertaining to Respondent before filing this Complaint.

E. Respondent is disappointed E.P.A. was not responsive or delayed in

corresponding with Respondent involving matters that would have prevented this Complaint from ever being filed.

F. Respondent is disappointed E.P.A. is trying to make an example of him when in truth it is because Ms. Zylpha Pryor did not appreciate the letters sent to her on March 31, 2005 and July 24, 2006. See Tr. Page 70 Volume III Respondent's Exhibit "32" and Tr. Page 75 Volume III Respondent's Exhibit "36". Respondent will never believe otherwise.

G. Respondent is disappointed the E.P.A. lawyers make comments in their pleadings that Respondent "played dumb" and that the testimony by Respondent and his witnesses were not credible and repeated "not credible" or "claims" throughout their pleadings. Respondent nor any of his witness lied and it is extremely difficult to read these charges and not get angry.

H. Respondent is disappointed when he visited the E.P.A. office in Atlanta and saw our government in action.

Security was lax and not enforced consistently, award plaques for the first few years were neatly placed on the wall; however the last few years were stacked and leaning against the wall; an office off from the waiting room had stacks of files all over the floor, desks, etc.; on the first trip to Atlanta Mr. Dangerfield and Respondent went in a room placed a sign on the door "in use"; personnel would still open the door and look in; on the second trip we occupied a table in the library, however two (2) women employees were laughing and talking extremely loud, making concentration difficult.

I. Respondent was disappointed that on the second day of the second trip to Atlanta it was obvious Mr. Dangerfield talked to someone about Respondent's

researching the files and informed Respondent he could not “make discovery” from the files and Mr. Dangerfield could not take time for Respondent to continue his research that afternoon.

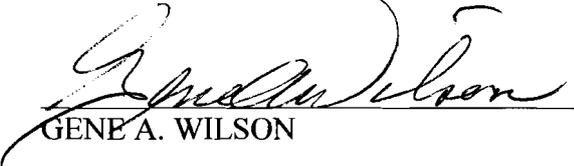
J. Respondent was disappointed to find the files in Atlanta a mess. Nothing was clipped in the files but loosely placed in a manila folder. The worst mess was to find one permit lost in another operators files (permit KYI0412). Tr. Page 93 Volume III Respondent’s Exhibit “55”.

Later back in Kentucky Respondent was advised permit KYI0412 was an active injection well but didn’t think it was being regulated by E.P.A.

K. Respondent is disappointed he has been selected to be made an example of with his injection well on his farm on Collier Creek now plugged going on three (3) years and was never in the oil and gas business.

L. Respondent is disappointed E.P.A. lost his timely filed appeal to Washington, D.C. in an attempt to view documents E.P.A. lawyers didn’t want Respondent to see.

M. Yes, Respondent is disappointed that he has had to expend many hours showing he acted in good faith and at seventy (70) years of age time is very precious.


GENE A. WILSON

STATE OF KENTUCKY

COUNTY OF LAWRENCE

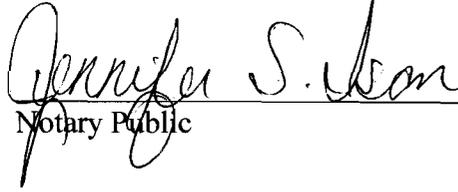
I, Jennifer S. Isan, Notary Public in and for the State and County

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 23rd, day of January, 2008.

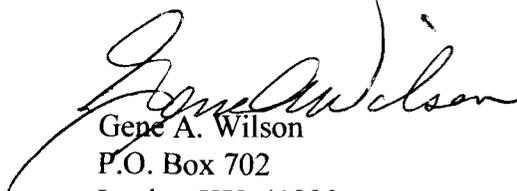
My Commission Expires:

May 20, 2009



Notary Public

Respectfully Submitted


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

**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

AFFIDAVIT

Comes the Affiant, Patty Carter, after first being duly sworn states as follows:

1. That in my prior Affidavit dated February 20, 2007, numbered paragraph nine (9) I stated that Mr. Wilson's employees called me from the oil field and advised me that the inspector had not shown up for the MIT test that was scheduled for April 26, 1999, and in my testimony at the hearing held September 25 to 27, 2007, my testimony states "you were calling me from the farm house there on the farm" and "Gene called me from the farm house".

Mr. Wilson had ask Mr. James Clark and Mr. Cecil Lewis to perform the MIT Test on April 26, 1999. Mr. Clark and Mr. Lewis and Mr. Ed Jordan worked a few days prior to the test date getting all the equipment needed to perform the test moved to the well location on Collier Creek. Mr. Jordan built a road up to the well and had to use a dozer to help get the service rig to the site. On the date the MIT Test was to be conducted

Mr. Wilson went to the site and Mr. Clark and Mr. Lewis were waiting the arrival of the inspector who was to observe the test. After waiting for some period of time Mr. Clark, Mr. Lewis and Mr. Wilson went to the tenant house to call me because the well was up the hollow and there was no use in everyone waiting at the well site if the inspector was not coming. I actually talked with Mr. Wilson on the phone but could hear Mr. Clark and Mr. Lewis in the background talking, therefore, I feel I was talking with all three (3) of them not just the one (1) on the phone. (In that area of Lawrence County most cell phones do not work therefore, you either talk on land line phones or face to face.) After trying to find out what had happened to Mr. Hayes with no luck I called back to the farm house and advised Mrs. Newell to tell them that I could not contact Mr. Hayes because there was no answer. (I did not have the Newell's phone number until the guys called me because it was an unlisted number.) Mr. Wilson returned back to the office some thirty plus (30+) miles, but instructed Mr. Clark and Mr. Lewis to wait and see if the inspector showed up (since we didn't know if he was in route or just not coming).

2. That in my testimony I testified that we hauled in equipment that was maintained on the Cam Creek Farm. Mr. Schwartz's is correct we did sell the farm in 1994 before the MIT Test that was scheduled for April 26, 1999. I was mistaken as to where the equipment was being stored at that time.

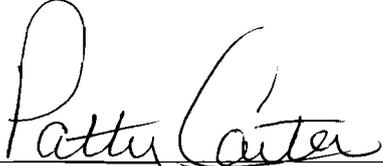
I do know for certain that we have stored the equipment on different farms when we are working on that property only, then it is returned to Mr. Wilson's home farm. That the equipment has never been stored on the Collier Creek farm except for short periods of time such as when Mr. Wilson was trying to re-open the well or when we were converting it into an injection well. And on April 26, 1999, when the MIT Test was to be

performed that the equipment was not on the Collier Creek farm and had to be hauled in to prepare for the test because no one had been working at that location for some time.

3. In 1989 when Mr. Wilson sold his dredging operation we moved our office to a part of building he owns in Louisa where the law office is located. We had two (2) new telephone lines run to this office which were in the name of Gene Wilson Enterprises. One line being for telephone calls and the other for a fax machine. The number 606-638-0202 was assigned to the line for telephone calls which is reflected in Complainant's Exhibit "31" and the number 606-638-1041 was assigned to the line for the fax machine. After some time we disconnected the 606-638-0202 line and I moved into a part of the building where the law office actually is located. We kept the fax machine and fax line number in the old office space due to the fact that the law office also used that number as their fax number but the bill remained in the Gene Wilson Enterprises name. A few more years went by and we had the fax number line and fax machine moved to the law office part of the building to be used as a fax line and a third phone line for the law office for when the other two law office lines were busy. After searching my files I found the phone bills for the law office lines showing where a call was placed to the E.P.A. number in Atlanta, Georgia on January 7, 1999 and one on January 8, 1999, (see attached phone bill) just as I stated in my Affidavit dated February 20, 2007, numbered paragraph eight (8). As shown on the attached bill each of these calls are for a duration of one (1) minute which gave me time to leave a message for a return call. Therefore, Ms. Chen had to have called me back for her to know to cancel that date and place the notation of "cancel" on her data base.

Apparently the call placed on April 26, 1999 to Ms. Chen was placed on the fax

line number and I can not find that bill at this time. I feel this because from the 3rd week in January, 1999 to the 3rd week in August, 1999, I was the only secretary working in the office and I was taking care of Mr. Wilson's personal properties and the law office work. I always tried to place long distance calls pertaining to Mr. Wilson's personal properties on the fax line phone number because this bill was being paid from his personal account and not the law office account.


PATTY CARTER

STATE OF KENTUCKY

COUNTY OF LAWRENCE

I, Jennifer S. Ison, 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 PATTY CARTER, to be her free act and deed for the purposes therein contained.

Given under my hand this 23rd, day of January, 2008.

My Commission Expires:

May 20, 2009


Notary Public



GENE A WILSON

Account Number: 606 638-9601 137 3172

Bill Period Date: Jan 25, 1999

For U.S. Billing Billing Questions, Call 1 888 474-8724

Detailed Statement of Regulated Charges

Itemized Calls

606 638-9601

Service Provider - LONG DIST BILLING

Direct Dialed Calls

Amount

Date	Place Called	Number Called	Rate*	Time	Min	Amount
1. 12/22	BLANCHESTR OH	937 783-2237	AD	01:39PM	1	.25
2. 12/30	JOHNSON CY TN	423 928-7241	AD	10:51AM	11	2.75
3. 12/31	SCHAEFESTN PA	717 949-6563	AD	10:33AM	2	.50
4. 12/31	LOUISVILLE KY	502 895-2000	BD	10:47AM	5	1.25
5. 01/04	ADAIRVILLE KY	502 539-0981	BD	02:15PM	1	.25
6. 01/04	ADAIRVILLE KY	502 539-0981	BD	02:16PM	1	.25
7. 01/05	SCHAEFESTN PA	717 949-6563	AD	02:58PM	10	2.50
8. 01/06	CANALWHSTR OH	614 834-1750	AD	02:56PM	4	1.00
9. 01/07	DIR ASSIST KY	502 555-1212	BD	12:02PM	1	1.10
10. 01/08	FRANKFORT KY	502 564-4580	BD	11:16AM	1	.25
11. 01/12	BARBOURSVL WV	304 736-7727	AD	08:49AM	2	.50
12. 01/12	ABINGDON VA	540 628-5503	AD	11:18AM	3	.75
13. 01/12	IRVING TX	972 790-0911	AD	11:43AM	1	.25
14. 01/12	SAN FRAN CA	415 921-1306	AD	01:23PM	14	3.50
15. 01/12	CLEVELAND OH	216 844-7868	AD	01:37PM	13	3.25
16. 01/12	AKRON OH	330 379-9643	AD	01:56PM	1	.25
17. 01/13	COLUMBIA SC	803 750-9722	AD	01:51PM	16	4.00
Total Direct Dialed Calls						22.60
Total Charges for 606 638-9601						22.60

The above total does not include the following taxes:

Federal Tax	\$0.68
State/Local Tax	\$0.19
School Tax	\$0.09

606 638-9602

Service Provider - LONG DIST BILLING

Direct Dialed Calls

Date	Place Called	Number Called	Rate*	Time	Min	Amount
18. 12/23	COLUMBIA SC	803 750-9722	AD	11:13AM	13	3.25
19. 12/29	TEMPE AZ	602 303-5900	AD	02:09PM	4	1.00
20. 12/31	LEBANON PA	717 273-1651	AD	09:42AM	3	.75
21. 12/31	SCHAEFESTN PA	717 949-6563	AD	10:07AM	2	.50
22. 12/31	LEBANON PA	717 273-1651	AD	12:12PM	3	.75
23. 01/04	WORTHINGTN OH	614 438-2338	AD	09:53AM	1	.25
24. 01/04	LAWRENCEBG KY	502 839-0981	BD	02:24PM	32	8.00
25. 01/06	HUNTINGTON WV	304 523-1885	AD	10:18AM	1	.25
26. 01/07	SCHAEFESTN PA	717 949-6563	AD	10:33AM	2	.50
27. 01/07	LOUISVILLE KY	502 426-8540	BD	12:04PM	2	.50
28. 01/07	ATLANTA GA	404 562-9415	AD	01:52PM	1	.25
29. 01/08	ATLANTA GA	404 562-9415	AD	11:09AM	1	.25
30. 01/08	FRANKFORT KY	502 564-3658	BD	11:17AM	4	1.00
31. 01/13	KIRKLAND WA	425 823-4841	AD	02:07PM	9	2.25
Total Direct Dialed Calls						19.50
Total Charges for 606 638-9602						19.50

* Taxes and Rates Applied - See Back of First Page

AV A000592

(continued)▶

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date noted below, the foregoing Reply Brief and Sworn 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)

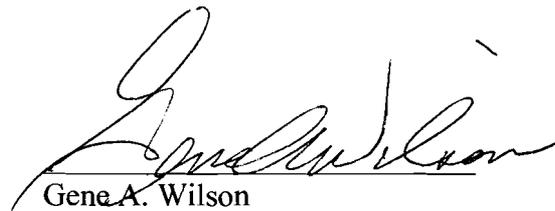
Hon. Susan B. Schub
Regional Judicial Officer
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

(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: January 23, 2008



Gene A. Wilson
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