

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF )

) Docket No. SDWA-04-2005-1016

Gene A. Wilson )

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Respondent )

**COMPLAINANT'S RESPONSE TO RESPONDENT'S APRIL 26, 2007 MOTION**

Comes now Complainant, and files this Response to Respondent's Motion dated April 26, 2007. Respondent's moves that the Regional Judicial Officer (RJO) act upon three of his requests, one of which is not properly before this forum.

First, Respondent requests that a substantial portion of the \$1,120.00 he paid for the processing of his most recent Freedom of Information Act (FOIA) request be refunded. This matter is not properly raised in this forum, being outside of the scope of its jurisdiction. However, if this matter were properly before the RJO, Complainant would argue that Respondent's claim is premature and lacks merit.

Respondent's claim is premature because Mr. Leonard Dangerfield with the FOIA office informed Respondent on the day that he came to Region 4 to review the files that the review had taken less time than projected and that he would be receiving a refund. The refund is currently being processed. Respondent complains that Complainant's counsel did not view the files as she had stated she would. However, after Mr. William Mann and Mr. Dangerfield had reviewed the files and discussed them with Complainant's counsel, it was agreed that counsel's review was unwarranted and would only serve to increase the amount Respondent would have to pay. Accordingly, Counsel for Complainant did not review the files, resulting in a reduction in the amount projected as the cost of Respondent's request.

Further, Respondent argues that, in accordance with his FOIA request, Mr. Mann should only have reviewed files from 1990 forward, based on the assumption that this would have reduced Respondent's costs. Actually, the cost to Respondent would have been greater had Mr. Mann separated the files into pre- and post-1990 categories first. The database containing these files is not set up by dates, but by counties, and there are few files which predate 1990. Therefore it saved time for Mr. Mann to simply pull the appropriate counties and search through the files, rather than taking the added step of checking for dates and separating the files.

Briefly, EPA processed Respondent's request in a manner that was most efficient and would result in lowering the projected costs. The projected costs were in fact reduced, and Respondent will be receiving a refund as soon as its processing is complete.

Second, Respondent requests that Kentucky Division of Water Inspector Randy Poston be added to Respondent's list of necessary witnesses for a just conclusion of this matter. Respondent's list of witnesses is already quite lengthy and includes witnesses who will present a great deal of potentially duplicative testimony with little or no relevance to issues in the case. It does not appear that Mr. Poston's testimony would add anything new to Respondent's case or

differ from the testimony of any of Respondent's other witnesses. In any event, if Respondent wishes to make an addition to his pre-hearing exchange list of witnesses, it is his responsibility to submit a supplement to his pre-hearing exchange and summarize the anticipated testimony of the witnesses in accordance with the requirements of 40 CFR § 22.19. Complainant reserves the right to object to the presentation of testimony from Mr. Poston if the testimony is unduly repetitious, or if Respondent fails to demonstrate how such testimony will be relevant to the issues in this case.

Third, Respondent requests that 31 permitting files be made a part of this Administrative action, as evidence for Respondent. Complainant believes that Respondent is unnecessarily complicating this matter by bringing in issues which are not germane to a determination of whether or not he is liable for not having tested his well for mechanical integrity. It is unclear what he seeks to prove or disprove by the addition of 31 permitting files not at issue in this case. In any event, if Respondent wishes to add these files to the list of exhibits in his pre-hearing exchange, it is his responsibility to submit a supplement to his pre-hearing exchange in accordance with the requirements of 40 CFR § 22.19. Complainant reserves the right to object to the introduction of any proposed exhibits which are not relevant to issues in this case.



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Zylpha Pryor  
Attorney for Complainant

Of Counsel: Paul Schwartz

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the date indicated below, the original and one copy of Complainant's Response to Respondent's April 26, 2007 Motion 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

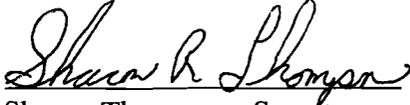
Gene A. Wilson  
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Certified Mail - Return Receipt

Nicholas N. Owens  
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U.S. Small Business Administration  
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First Class Mail

May 16, 2007

 5/16/07  
Sharon Thompson, Secretary  
OLS - OEA  
U.S. EPA  
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Atlanta, GA 30303

