

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

In re:

Gene A. Wilson

Docket No. SDWA-04-205-1016

SDWA Appeal No. 08-09

ENVIR. APPEALS BOARD

2009 OCT 26 PM 12:00

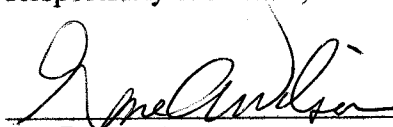
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**JOINT MOTION TO DISMISS**

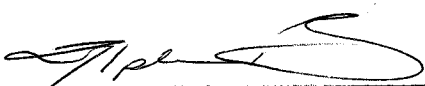
COMES NOW the Complainant, the United States Environmental Protection Agency (EPA), Region 4, and the Respondent, Mr. Gene A. Wilson, and hereby moves that the Environmental Appeals Board issue an order dismissing this appeal with prejudice. The parties have reached a settlement of the matter below, which is memorialized in a Consent Agreement and Final Order, a copy of which is enclosed herewith. The parties have also agreed that each of them will be responsible for their own costs incurred in connection with this appeal.

Respectfully submitted,

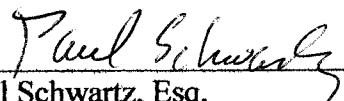
Date: 9/29/09

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


Date: 10/21/09

  
Zylpha Pryor, Esq.  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303

Date: 10/21/09

  
Paul Schwartz, Esq.  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303

Date: 10/22/09

  
Gary A. Jones, Esq.  
Senior Counsel for Strategic Litigation  
Office of Civil Enforcement  
U.S. EPA  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Of Counsel:

Mindy Nigoff, Esq., OGC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing, Joint Motion to Dismiss, In the Matter of Gene A. Wilson, Docket No. SDWA Appeal No. 08-09, on the parties listed below in the manner indicated:

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

(Via First Class Mail)

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

(Via Hand Delivery)

Susan B. Schub, Regional Judicial Officer  
EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA Pouch Mail)

Patricia A. Bullock, Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA Pouch Mail)

Zylpha Pryor, Esq.  
Paul Schwartz, Esq.  
EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA Pouch Mail)

Date: 10/26/09



Gary Jones, Esq.  
Senior Counsel for Strategic Litigation  
Office of Civil Enforcement (2241-A)  
U.S. EPA  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

OCT 21 2009

CERTIFIED MAIL 7005 2570 0001 8631 2081  
RETURN RECEIPT REQUESTED

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

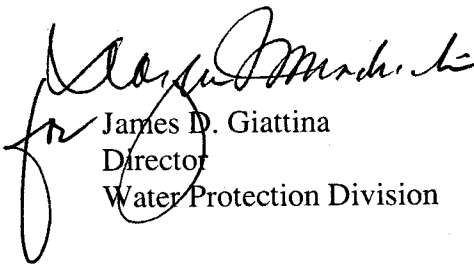
Re: Consent Agreement and Final Order (CA/FO)  
Docket No. SDWA-04-2005-1016

Dear Mr. Wilson:

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) in this matter that has been filed with the Regional Hearing Clerk and served on the parties as required by 40 C.F.R. §22.6. This CA/FO was effective upon the date signed by the Regional Judicial Officer.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns please contact Mr. Randy Vaughn, Underground Injection Control Enforcement Officer, at (404) 562-9793.

Sincerely,

  
for James D. Giattina  
Director  
Water Protection Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

Mr. Gene A. Wilson

Consent Agreement

And

Final Order

Docket No. SDWA-04-2005-1016

Respondent

\*\*\*\*\*

**CONSENT AGREEMENT**

1. Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice or Part 22), specifically Subpart I, published at 64 Fed. Reg. 40138 (July 23, 1999) and the delegated authority of the Administrator of the U.S. Environmental Protection Agency (EPA or Complainant) under Part C of the Safe Drinking Water Act (SDWA or the Act), 42 U.S.C. 1421, et seq., the EPA, as Complainant, hereby enters into the following Consent Agreement and Final Order (CA/FO) with Gene A. Wilson (Respondent).

2. Section 1450 of the SDWA authorizes the Administrator to prescribe such regulations as are necessary or appropriate to carry out her functions under the SDWA. These regulations are found at 40 CFR Parts 124, 144, 146, 147 and 148, and set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the SDWA, 42 U.S.C. 300h, et seq.

3. Injection well owners and operators are required to comply with the UIC program requirements. The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. See 40 CFR 147.901(a).

**FINDINGS OF FACT**

The parties hereby stipulate and find as follows:

4. Respondent is an individual and a "person" as that term is defined in Section

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1401 (12) of the SDWA, 42 U.S.C. Section 300f(12) and 40 CFR 144.3.

5. Respondent owned the following injection well (subject well):

<u>EPA ID No.</u>	<u>EPA Permit No.</u>	<u>Lease &amp; Well No.</u>	<u>Status</u>
KYS1270250	KY10376	Gene A. Wilson #1	Plugged

6. The subject well, located in Lawrence County, Kentucky, constituted a "facility" as that term is defined in 40 CFR 144.3, and was authorized under a UIC permit issued on January 12, 1990.

7. Respondent properly plugged and abandoned the subject well on June 10, 2005.

8. EPA filed a Complaint against Respondent on May 15, 2006, alleging Respondent to be in violation of the SDWA, the UIC regulations and his permit for failing to demonstrate the mechanical integrity of and submit annual monitoring reports for the subject well.

9. Respondent filed an Answer on June 15, 2006, denying the allegations and requesting a hearing.

10. The Regional Judicial Officer (RJO) held a hearing on this matter in September 2007, and issued an Initial Decision on August 21, 2008.

11. Respondent appealed the Initial Decision to the Environmental Appeals Board (EAB) in January 2009 and both parties submitted briefs to the EAB. The EAB issued an Order directing EPA to submit a supplemental brief. EPA then contacted Respondent and the parties resolved to settle this matter for no penalty without further litigation.

12. The EAB held a conference call with the parties on September 1, 2009 and instructed the parties regarding the proper procedure for terminating the litigation. Specifically, EPA was directed to file with the Regional Judicial Officer a settlement agreement signed by both parties. After the settlement agreement is signed and issued by the RJO, a copy is to be sent to the EAB accompanied by a Motion to Dismiss the Appeal.

13. This Consent Agreement and Final Order (CA/FO) constitutes the settlement agreement referred to in paragraph 12 above.

14. Complainant and Respondent have conferred for the purpose of settlement. EPA and Respondent waive any right to a hearing on this CA/FO and waive any right to further appeal this matter, and consent to the issuance of the final order without further adjudication. This CA/FO will conclude this matter before the RJO.

### **PENALTY**

Based upon the foregoing Findings of Fact, the parties hereby agree and consent to entry of the following Order:

15. Respondent shall pay a civil penalty of zero dollars (\$0).
16. The well was never completed for injecting brine water and was never placed in service. The well was plugged on June 10, 2005
17. The names, addresses and telephone numbers of the individuals authorized to receive service relating to the proceeding are listed below.

For Respondent:

Mr. Gene A. Wilson  
P. O. Box 702  
Louisa, Kentucky 41230  
606-638-9601

For EPA:

Ms. Zylpha Pryor, Attorney  
Mr. Paul Schwartz, Attorney  
U.S. EPA Region 4 / OEA  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303  
404-562-9535 / 404-562-9576

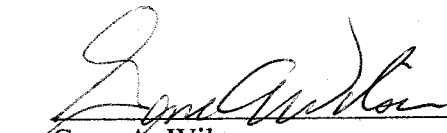
### **GENERAL PROVISIONS**

18. The provisions of this CA/FO shall be binding upon Respondent, and his agents, servants, employees, and successors or assigns.
19. Each party shall bear its/their own costs and attorneys fees (if any) in connection with this matter and the appeal thereof.
20. This CA/FO shall become effective upon the date that it is signed by the Regional Judicial Officer.
21. The undersigned Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind the Party he or she represents to this Agreement.

22. The Parties agree that, following issuance of this CA/FO by the RJO, a copy will be provided to the EAB as an attachment to a Joint Motion to Dismiss the Appeal.

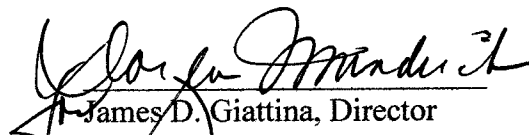
RESPONDENT

Date: 9/29/09

  
Gene A. Wilson

COMPLAINANT

Date: 10/9/09

  
James D. Giattina, Director  
Water Protection Division  
EPA, Region 4



**FINAL ORDER**

Pursuant to the Consolidated Rules of Practice and the delegated authority of the Administrator under the SDWA, the above and foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to comply immediately with the terms of the Consent Agreement, which are fully incorporated into this Final Order.

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 10/21/09

Susan B. Schub  
**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 Consent Agreement and Final Order, in the Matter of Gene A. Wilson, Docket No. SDWA-04-2005-1016, on the parties listed below in the manner indicated:

Randy Vaughn, UIC Enforcement Officer  
EPA, Region 4

(Via EPA internal Mail)

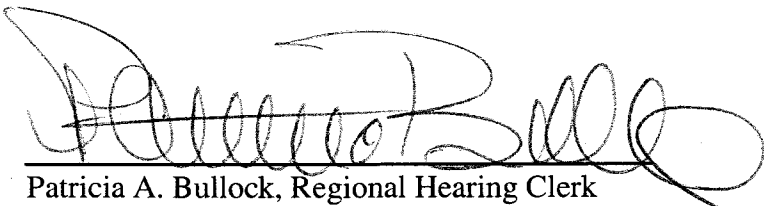
Ms. Zylpha Pryor, Associate Regional Counsel  
EPA, Region 4

(Via EPA internal Mail)

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

(Via Certified Mail - Return Receipt Requested)

Dated: 10-21-09



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511