

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

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Respondent

**RESPONDENT'S PROPOSED FINDINGS OF FACT WITH MISSING EXHIBITS
14, 30 AND PLEADING FILED 11-07-06 ATTACHED HEREWITH,
CONCLUSIONS OF LAW, POST HEARING BRIEF, MOTION AND PROPOSED
ORDER**

Comes now the Respondent, Gene A. Wilson, and hereby submits his Proposed Findings of Fact, Conclusions of Law, Post Hearing Brief, Motion pursuant to Consolidated Rules, 40 CRF & 22.20, and Proposed Order as directed by the Honorable Susan B. Schub at the conclusion of the hearing in Ashland (Boyd County) Kentucky on September 27, 2007 and readdressed by Order on November 15, 2007 by Judge Schub. All citations to the hearing transcript will refer to transcript pages using the abbreviation "Tr. Page" followed by the relevant page number or the relevant exhibit number used at the hearing.

PROPOSED FINDING OF FACT

1. On March 9, 1984, Respondent purchased the Corby Davis farm on Collier Creek, Lawrence County, Kentucky, Tr. Page 178 Respondent's Exhibit "39" Volume II of transcript and on May 13, 1987, Respondent purchased the Mulkey farm that joined the

Davis farm on Collier Creek. Tr. Page 179 Respondent's Exhibit "40" Volume II of transcript. These farms were purchased for the Government's allotted tobacco base. Tr. 188 Volume II of transcript.

2. Respondent attempted to open an old plugged well on the Collier Creek farm starting around December 28, 1988, when 627' of 7" casing was purchased. Tr. Page 181 Respondent's Exhibit "9" Volume II of transcript and 1024' of 4 1/2" casing purchased on January 27, 1989. Tr. Page 181 Respondent's Exhibit "10" Volume II of transcript. Halliburton Services circulated cement through the 7" casing on January 6, 1989 filling the void area of the outer wall of the 7" casing and the earth to the surface. On January 27, 1989, Halliburton circulated cement through the 4 1/2" casing to the surface filling the void area between the 4 1/2" casing and earth starting at 1,003' (total length of 4 1/2" casing) to the 7" casing and continuing pumping cement between the 4 1/2" casing and 7" casing to the surface. The Halliburton Exhibits are found in Volume II of the transcripts but not marked; however, in Volume I of the transcript the Halliburton exhibits are marked as Tr. Pages 214 and 225 Respondent's Exhibits "11" and "12" Volume I of transcript. In summary cement was pumped between the outer wall of the 7" casing and cement also pumped around the outer wall of the 4 1/2" casing from their total depth to the surface. The bottom of the hole was also filled with cement before circulation could commence. At this point the well is completely sealed.

3. On February 2, 1989, Respondent employed Young Wire Line Services to perform a Gamma Ray Perforation Depth Control service by perforating the 4 1/2" casing at 941' to 951' with eleven holes and on February 3, 1989, Halliburton Services returned and fracked the zone perforated. Tr. Page 35 Complainant's Exhibit "1" Volume I of

transcript.

4. The frack job penetrated the 3rd wear causing gas to blow salt water (brine) sixty feet (60') into the air and did not settle down until enough weight of brine water could maintain the gas pressure.

5. Subsequently brine water started seeping from the 4 ½" casing; therefore, Respondent on April 4, 1989, had Halliburton Services completely fill the 4 ½" casing with cement to the surface and at this point the old well was completely plugged. Tr. Page 225 Respondent's Exhibit "46" Volume I of transcript.

6. Respondent hating to give up on putting natural gas in his tenant house on Collier Creek, employed Lauffer Well Service, Inc., to drill out the cement in the 4 ½" casing but stopping short of reopening the 3rd wear at 941'. On April 5, 1989 drilling commenced and completed on April 7, 1989 drilling to a depth of 939.65'. After filling the 4 ½" casing with cement to the surface it had settled to a depth of 58'; therefore, drilling began at that depth leaving approximately 1 ½' of cement above the 941' perforation at completion of Lauffer's services. The well was completely sealed again at this point with Respondent settling with Mr. Lauffer of May 23, 1989, subsequent to signing the injection permit application on May 15, 1989. Tr. Page 225 Respondent's Exhibit "50" consisting of 3 pages Volume I of transcript.

7. Respondent was not in the oil and gas business and was referred to as a farmer by the general public. Tr. Page 35 Complainant's Exhibit "1" Page 8 Attachment U Volume I of transcript.

8. The last of March or early April 1989, Respondent was offered a 406 acre farm with a very large tobacco base on Cam Creek by a group of Canadians stating they

wanted to return home and for cash Respondent could purchase the property for \$40,000.00. Checking the title but not personally viewing the property, on April 25, 1989, a Deed of Conveyance was completed. Tr. Page 188 Respondent's Exhibit "41" Volume II of transcript.

9. Viewing the Cam Creek farm a few days later with Ed Jordan (his home place), Respondent found the property a complete mess with oil spills, leaking oil lines and brine flowing freely into the creek. Mr. Monte Hay, a local Geologist was contacted and he explained injection wells, where to file and who to contact for applications.

10. Ashland Testing Laboratories was contacted and upon seeing the mess on Cam Creek immediately applied for three (3) injections wells two (2) on Cam Creek and one (1) on Collier Creek. Initially, no one knew how many injection wells it would take to clean up the mess. Tr. Page 186 Volume II of transcript.

11. On May 26, 1989, Respondent wrote Complainant (E.P.A.) a letter requesting the application for a injection well sent in by Ashland Testing Laboratories for Respondent to be considered an emergency for immediate approval. Respondent's request was denied. Tr. Page 188 Respondent's Exhibit "61" Volume II of transcript.

12. Respondent immediately started cleaning up Cam Creek by bringing in dozers, Grove Crane, backhoe, excavator, ditch witch, etc., Tr. Pages 10 and 201 Volume III of transcript, and employing men knowledgeable in injection wells. The farm was purchased for its large tobacco base and during the cleanup a new tobacco barn was constructed.

13. On November 13, 1990, Respondent notified Mr. William Mann that injection well KY10344 on Cam Creek was ready for injecting brine and although

Respondent did not have E.P.A. Form 7520-10 it was hoped the letter would be considered proper notice. Tr. Page 116 Respondent's Exhibit "62-J" Volume III of transcript.

14. The total cleanup took approximately two (2) years at a cost of some \$250,000.00. Tr. Page 121 Volume III of transcript. Respondent always wondered why Complainant (E.P.A.) allowed the mess to occur since it was responsible since 1984 of enforcing the Clean Water Act.

15. On June 14, 1991, Complainant (E.P.A.) for the first time directed its attention to Collier Creek and directed Respondent to do an MIT test before July 3, 1991. Tr. Pages 102-109 Volume I of transcript. Respondent responded on June 21, 1991 by sending a certified letter to Mr. Ken Harris of E.P.A. stating there was no activity on the Collier Creek farm and gave him (E.P.A.) an update on the activities on the Cam Creek injection wells. Tr. Page 107 Respondent's Exhibit "14" Volume I of transcript could not be found in the exhibits; however, in Volume I during cross examination of Mr. William Mann at page 107 of the transcript it is stated Respondent was to give the Court Reporter a copy after lunch. Someone failed to make the Exhibit a part of the transcript; therefore, a copy is now attached herewith marked Respondent's Exhibit "14".

16. After two (2) years of extensive labor cleaning up Cam Creek, Respondent directed his attention to his farm on Collier Creek and injection permit KYI0376 issued on January 12, 1990.

17. The two (2) injection wells were easily taking care of the brine problem on Cam Creek without pressure; therefore, the only use for the injection well on Collier Creek was to dispose of other operators brine in the Martha Oil Field. This would save

other operators a trucking cost traveling some 60 miles to the nearest disposal sight. Tr. Page 230 Volume I of transcript.

18. Respondent's injection permit issued for Collier Creek authorized the injection of fluids only brought to the surface from Respondent's operations in the Martha Oil Field for enhanced oil recovery. This provision only allowed Respondent to haul his own brine water from Cam Creek and dispose of it on Collier Creek for enhanced recovery. There were no oil wells on Collier Creek for enhanced recovery. Tr. Page 51 Complainant's Exhibit "6" Section B 1 of permit, Volume I of transcript.

19. Realizing Complainant's (E.P.A.) mistake in restricting the permit for brine disposal on Collier Creek, Respondent wrote Complainant (E.P.A.) on November 11, 1992, requesting a modification of the permit. This letter was lost or misplaced by Complainant (E.P.A.), Tr. Page 113 Respondent's Exhibit "2" Volume I of transcript. On August 11, 1993, Respondent's secretary at Complainant's (E.P.A.) request resent the November 11, 1992, letter requesting modification of the permit with the secretary's cover letter. Tr. Page 114 Respondent's Exhibit "3" Volume I of transcript. Apparently the second letter was also lost since permission was never authorized by Complainant (E.P.A.) for Respondent to take other operators brine water.

20. Since the MIT test was not done on Collier Creek as directed by Complainant (E.P.A.) in 1991 as indicated in numbered paragraph 15 supra, the usual notice was given by Complainant (E.P.A.) for an MIT test which was completed on October 15, 1993. Tr. Page 210 Respondent's Exhibit "18" Volume II of transcript.

21. In 1994 Respondent sold his Cam Creek farm to Ed Jordan and requested Complainant (E.P.A.) to forward necessary papers to transfer injection permits KY10344

and KY10503 to Mr. Jordan. Tr. Page 116 Respondent's Exhibit "62-D" Volume III of transcript. Apparently Complainant (E.P.A.) lost or misplaced this request since on November 8, 1994, another request was mailed to Complainant (E.P.A.) to transfer the permits. Tr. Page 116 Respondent's Exhibit "62-F" Volume III of transcript.

22. Complainant (E.P.A.) always gave notice when an MIT test was required and although the two (2) Cam Creek injection wells were transferred to Mr. Jordan, a year later Complainant (E.P.A.) gave Respondent notice to do an MIT test on Cam Creek. Notice was again given to Complainant (E.P.A.) of the transfer by sending the two (2) letters referred to in numbered paragraph 20 supra. Tr. Page 218 Respondent's Exhibits "48" and "49" in Volume II of the transcript. It is obvious Complainant (E.P.A.) had a file of the transfer since Respondent was notified by E.P.A. in December 1994, the two (2) letters of financial responsibility documents had been released. Tr. Page 218 Respondent's Exhibit "47" Volume II of transcript.

23. After disposing of the Cam Creek farm Respondent had no brine water to dispose of and the issued permit KYI0376 did not allow Respondent to take other operators brine.

24. In January 1999, Complainant (E.P.A.) gave its standard notice to perform an MIT test; however, being in the dead of winter Respondent's secretary called Ms. Carol Chen as directed in the Notice and she rescheduled the test for Monday, April 26, 1999. Tr. Page 163 Complainant's Exhibit "30" Volume I of transcript. Respondent contacted James Clark who had conducted the four (4) MIT tests for Respondent on Cam Creek and the 1993 MIT test on Collier Creek to conduct the test as scheduled by Complainant (E.P.A.).

On the day of the scheduled MIT test Respondent went to the farm (40 miles from Respondent's residence) to see how the test was going and discovered the Complainant's (E.P.A.'s) inspector had not shown up. Respondent went to the tenant house on the farm and called his secretary to find out what was going on. Respondent left the area but directed James Clark and Cecil Lewis to stay at the well site hoping the inspector was merely running late. He never did show up for the test. Tr. Pages 13 and 14 Volume III of transcript and Tr. Page 91 Volume III of transcript.

Respondent's secretary notified Ms. Carol Chen of the no show and was advised by Ms. Chen that she would reschedule at a later date. Tr. Page 146 Volume II of transcript and Tr. Page 244 Volume III of transcript.

25. In August 2000, Complainant (E.P.A.) wrote Respondent requesting information on the Collier Creek farm injection well (at this point Complainant (E.P.A.) must have lost all files referred to supra) with Respondent responding on August 18, 2000, stating among other things: the injection well was never put into operation; at no time had brine water been placed in the well nor was there any plans in the future; that we planned on plugging the well and to advise if additional information was required. Tr. Page 141 Respondent's Exhibit "21" Volume I of transcript and Tr. Page 143 Respondent's Exhibit "22" Volume I of transcript.

26. On February 14, 2005, Respondent received a letter from Complainant (E.P.A.) stating he was in violation of the Safe Drinking Water Act (SDWA) 42 U.S.C. & 300 et seq. and the UIC program and Respondent should be prepared to provide all relevant information with documentation pertaining to the violation.

Respondent was shocked to receive such notice since he had been in regular

contact with Complainant (E.P.A.) over the past ten (10) years concerning all three (3) injection wells.

After three (3) attempts by Respondent to talk with Complainant (E.P.A.), a lawyer (later learned to be Ms. Zylpha Pryor) called Respondent stating it was a conference call and a Mr. Vaughn was present. Ms. Pryor informed Respondent he was being assessed a fine of some \$9,000.00+ and if Respondent did not like the decision Respondent could come to Atlanta with his attorney for a hearing. Tr. Pages 5 and 61 Respondent's Exhibits "24" and "25" Volume III of transcript.

27. Respondent did not have in his possession all the correspondences he had had over the years with Complainant (E.P.A.) and felt he had done nothing wrong; therefore, on March 4, 2005, Respondent wrote a letter to Mr. Randy Vaughn requesting a copy of his entire file for his permit KYI0376 on Collier Creek. Copies of the files were not sent; therefore, Respondent started a Freedom Of Information Act proceeding. Tr. Page 62 Respondent's Exhibit "26" Volume III of transcript. Respondent wrote Complainant again notifying E.P.A. Respondent wished to plug the well on Collier Creek and (first notice to E.P.A. Respondent wanted to plug the well was in 2000) for a plugging plan and date which was received on March 14, 2005. Tr. Pages 64 Respondent's Exhibit "27" Volume III of transcript and Tr. Page 66 Volume III of transcript talks about Respondent's Exhibit "30" but apparently failed to get in the transcript; therefore, Respondent's Exhibit "30" is attached herewith as marked.

28. Respondent did not feel it was necessary to furnish his income over the past three (3) years and advised Complainant (E.P.A.) of his feeling with Complainant (E.P.A.) responding it was going to file a Complaint against him. Tr. Pages 66 and 70

Respondent's Exhibits "29" and "32" Volume III of transcript.

29. On June 10, 2005, the injection well on Collier Creek was plugged with State Inspector, Doug Hamilton observing the procedure (E.P.A. inspector was unavailable). Tr. Page 71 Respondent's Exhibit "34" Volume III of transcript.

30. On May 18, 2006, (almost a year after plugging) Respondent received the Complaint filed against him. Respondent wrote Complainant's lawyer Ms. Zylpha Pryor on July 24, 2006, stating among other things objecting that she refused to believe Respondent did not inject brine in the Collier Creek well. Tr. Page 75 Respondent's Exhibit "36" Volume III of transcript.

31. Complainant's (E.P.A.'s) lawyer Ms. Zylpha Pryor admitted to Respondent she had not looked at his complete file before filing the Complaint; therefore, Tr. Pages 67-70 Volume III of transcript, Respondent, through the Freedom of Information Act traveled to Atlanta, Georgia (some 8 hours drive) to view his file on August 24, 2006. The file was void of almost all correspondences and what was available, Complainant (E.P.A.) did not want Respondent to view, so an appeal was timely filed in Washington, D.C. (which was later lost by E.P.A.) and Respondent made Motion To Compel Disclosure or Continue The Hearing giving the Appeal time to run its course. The Motion was overruled. See Respondent's Pleading For Motion To Compel Disclosure or Continuance of Hearing in the Alternative and the two (2) attached Exhibits to the Motion and Tr. Page 76 Respondent's Exhibit "37" Volume III of transcript. Attached herewith is the Motion and Exhibits for convenience of the Hearing Officer.

32. To show Respondent has always acted in good faith in his dealings with Complainant (E.P.A.) and in hopes of finding misfiled documents, on March 9, 2007,

Respondent requested the viewing of the two (2) injection well files Respondent had on Cam Creek. On April 16, 2007, Respondent again traveled to Atlanta to view his files, but this time, for the injection wells on Cam Creek.

It is obvious Complainant (E.P.A.) lawyers had not looked in the files for the injection wells on Cam Creek, since many correspondences found there pertained to the Collier Creek farm injection well. Tr. Page 94 Respondent's Exhibit "53" Volume III of transcript.

33. On September 25, 2007 the Administrative Hearing began with Complainant's (E.P.A.'s) attorney Ms. Zylpha K. Pryor stating in her opening remarks, among other things, that "E.P.A. could have closed the book on this case after Respondent plugged the well, but in the Kentucky oil patch, the agency's enforcement activities are no secret and neither is noncompliance by one of its more prominent individuals". Tr. Pages 21-22 Volume I of transcript. (Respondent does not consider himself a prominent citizen nor did anyone in the community think Respondent was in non compliance with the permitted injection wells.)

34. Respondent in his opening remarks stated he was not in the oil and gas business; owned cattle and horses and only purchased the Collier Creek and Cam Creek farms for their tobacco bases. Tr. Page 23, Volume I of transcript.

Respondent further stated the farm purchased on Cam Creek was a mess with brine water flowing freely into the creek; didn't know what to do and made his first contact with Complainant (E.P.A.) for advise. Tr. Pages 23-24 Volume I of transcript.

35. Complainant's (E.P.A.'s) first witness Mr. William R. Mann stated on direct examination that the first time he had seen Respondent's application for an injection

permit was "about a year and a half ago" Tr. Page 34 Volume I of transcript, and "the permit was assigned number KYI0376" Tr. Page 36 Volume I of transcript.

36. In cross-examination Complainant's (E.P.A.'s) witness was shown many of Respondent's exhibits that were to be introduced later and was asked had he seen them when he looked at Respondent's file 1 ½ years ago and he answered "no". Tr. Page 108 Volume I of transcript.

37. Complainant's (E.P.A.'s) witness further testified he did not know why documents (being shown) were not in the file and at that point Respondent specifically asked Mr. Mann "Would this give you notice that I was trying to be responsible with my injection permits as to what I was doing with these three (3) injection wells?" His answer was "yes it would". Tr. Pages 108-109 Volume I of transcript.

38. Due to all the missing documents and letters in the files at Atlanta, Complainant's (E.P.A.'s) attorneys used some of Respondent's exhibits filed in pleadings. Tr. Pages 111-115 Volume I of transcript, with Complainant's (E.P.A.'s) witness confirming they were not in the file. Mr. Mann further testified that based on the letters (not in the file at Atlanta) that Respondent gave notice he was not injecting. Tr. Page 117 Volume I of transcript.

39. Complainant's (E.P.A.'s) witness further testified "one quarter mile radius is what we look at" referring to the permitted well on Collier Creek. Tr. Page 119 Volume I of transcript. (This well was one-half to one mile from neighbors, Tr. Page 228 Volume I of transcript.)

40. Mr. Mann would not say Respondent had violated his permit, Tr. Page 120 Volume I of transcript, and that the permit made no provision if you never started

injecting in the first place. Tr. Page 121-122, Volume I of transcript. Complainant's (E.P.A.'s) witness further testified filling the 4 ½" casing with cement (as Respondent did) above the perforated holes at 941' would seal off the wear formation. Tr. Page 135 Volume I of transcript.

41. Complainant's (E.P.A.'s) witness testified that in the past, E.P.A. sent out notices for operators to do their MIT test. Tr. Page 144 Volume I of transcript. The witness was being evasive on that point and Complainant's (E.P.A.'s) lawyers were trying to stop the cross-examination on when E.P.A. stopped giving notices to operators for MIT tests by interjecting that their next witness would be more appropriate for such inquiries. Tr. Page 148 Volume I of transcript. The hearing officer Ms. Schub stepped in and asked the witness "When did you say it was?" and he responded "three (3) years or five (5) years ago". Tr. Page 148 Volume I of transcript.

42. Complainant's (E.P.A.'s) next witness Ms. Carol Chen asked by E.P.A.'s lawyer Ms. Pryor "How do you keep track of the testing and plugging, mechanical integrity demonstrations and plugging of wells?" Ms. Chen responded she would run lists off a data base to recheck whether wells were done by their dates and that she also mapped a schedule on her calendar for MIT's. Tr. Pages 156-157 Volume I of transcript.

43. Respondent asked Ms. Chen during cross-examination when she stopped giving notices for operators to do their MIT tests and she responded ... "I don't know if it was a year or two years or three, some time period like that". Tr. Page 166 Volume I of transcript.

44. Complainant's (E.P.A.'s) witness testified that their inspector David Hayes "became disorganized" and the "company" terminated his employment on December 13,

1999. Tr. Page 188 Volume I of transcript. (This is the same inspector that did not show up for Respondent's MIT scheduled for April 26, 1999.)

45. Complainant's (E.P.A.'s) witness Ms. Chen testified on cross-examination that the operators did not give the dates when they wanted to do their MIT tests but was "created" by her and if the operator wanted to "shift that" date they could work it out with the inspector. Tr. Page 206 Volume I of transcript.

46. Mr. Monte Hay a registered geologist testified (out of order) for Respondent and started with advising the Court the Complainant's (E.P.A.'s) demonstrative exhibit was incorrect. The diagram did not show cement to the surface between the 4 ½" and 7" casing giving two (2) protective layers. "For a leak to occur, it would have two (2) layers of steel casing and two (2) layers of cement in order to penetrate any of the USDW." Tr. Pages 214 & 216 Volume I of transcript.

47. Mr. Monte Hay further testified the perforated holes at 941' to 951' were in the wrong place and he did a bull head squeeze on the well by feeling the holes and the 4 ½" casing with cement. Tr. Pages 217, 218 & 219 Respondent's Exhibit "46" Volume I of transcript. Respondent's witness Mr. Hay further testified that Lauffer Well Services, Inc. drilled out the cement from the 4 ½" casing to a depth of 939.65' leaving the perforated holes beginning at 941' sealed to prevent brine water from entering the well. Tr. Pages 220, 221, 225 and 226 Respondents Exhibit "50" Volume I of transcript.

48. Mr. Hay further testified as follows:

A. Complainant's (E.P.A.'s) inspector David Hayes who did not appear to observe Respondents MIT test on April 26, 1999 had a reputation in the "industry" of not showing up for inspections. Tr. Page 227 Volume I of transcript.

B. Respondents closest neighbor probably was half a mile to a mile away from the well. Tr. Page 228 Volume I of transcript. (Outside the range of concern testified by E.P.A. witness Mr. William Mann of ¼ mile.)

C. Knowing what was done to the well (casing, cement) in no way would it have affected the environment of that area. Tr. Page 228 Volume I of transcript.

D. In no way would the well affect the quality of water on Respondent's farm. Tr. Pages 228 and 229 Volume I of transcript.

E. There was no way you could inject fluids in the well and no injection of brine ever occurred. Tr. Pages 229 and 230 Volume I of transcript.

49. Randy Vaughn was Complainant's (E.P.A.'s) third (3rd) and final witness who testified he had been an underground enforcement officer for nine (9) years, Tr. Page 17 Volume II of transcript, starting in July 1998, Tr. Page 59 Volume II of transcript, and that he visited Respondents injection well location on September 4, 2004. Mr. Vaughn testified it was really grown up with vegetation and that he filled out an inspection report and "stuffed it in the end of one of the exposed pipes". Tr. Page 53 Respondent's Exhibit "23" Volume III of transcript and Tr. Page 24 Complainant's Exhibit "18" Volume II of transcript. He further testified there was no flow lines connected to it, no activity, no traffic whatsoever, and no indication the well was leaking. Tr. Pages 26 and 27 Volume II of transcript.

50. Randy Vaughn testified he was not aware of any other violations outside this case but thought Respondent was not showing good faith in complying with the permit. Tr. Page 55 Volume II of transcript. At this point of his testimony on direct, Mr. Vaughn had not seen all the letters and documents missing from Respondent's file. He only saw

one letter written in 2000. Tr. Page 51 & 52 Volume II of transcript.

51. Randy Vaughn testified he thought Respondent's actions were serious; however, he did not visit the well location for six (6) years after learning of the alleged violation. Tr. Page 65 Volume II of transcript. He further testified that the review of Respondent's file on October 1, 1998, should have been furnished the Respondent. (It was not.) Tr. Page 69 Respondent's Exhibit "20" and Tr. Page 52 Volume III of transcript.

52. Randy Vaughn continued to testify under cross-examination about not seeing letters written to E.P.A. by Respondent over the years giving Notice the injection well was not being placed in service, etc. Tr. Pages 73-78 Volume II of transcript.

53. Mr. Vaughn was asked on cross-examination when did E.P.A. stop giving notices to operators to conduct an MIT test and his response was "I'm not certain of that time" Tr. 85 Volume II of transcript, which confirms notices were being given by E.P.A. when an MIT test was due. Mr. Vaughn testified that out of nine (9) years of being an enforcement officer, this case was his first one in the Martha Oil Field he was involved with. Tr. Page 89 Volume II of transcript.

54. Respondent's second witness was Mr. Clarence Hamilton, who is with the Division of Oil and Gas Conservation for the State of Kentucky. He stated he had been with the department since 1995 and holds a position of Supervisor For Most Of The Counties In Eastern Kentucky. Tr. Pages 111-112 Volume II of transcript.

55. Mr. Hamilton testified the well was isolated, Tr. Page 114 Volume II of transcript, and did not have an environmental impact on the community, Tr. Page 115 Volume II of transcript, the well was totally sealed and no contamination could go into

the water surface, Tr. Page 117 Volume II of transcript. Mr. Hamilton further testified he never had any issues with Respondent complying with regulations of the State or the Federal Government, Tr. Page 119 Volume II of transcript, and if information was needed Respondent was “very forth coming with it”. Tr. Page 120 Volume II of transcript.

56. Commonwealth of Kentucky supervisor Doug Hamilton was asked on direct examination if the well posed a threat to the environment or the water quality in that community and his answer was “not in my opinion; no”. Tr. Page 120 Volume II of transcript. He was asked on cross-examination by E.P.A.’s lawyer Ms. Zylpha Pryor if a well passing through underground sources of drinking water pose a potential threat to underground sources of drinking water and Mr. Hamilton responded stating “not if it’s properly completed. If that were the case, then every well we’ve got in the State of Kentucky would be in violation”. Tr. Page 126 Volume II of transcript.

57. Respondent’s witness Ms. Patty Carter testified Respondent was not in the oil and gas business, Tr. Pages 140-141 Volume II of transcript, and Respondent purchased a farm on Cam Creek where it was discovered brine water was flowing into the creek, Tr. Page 141 Volume II of transcript; and that injection wells were put into service to dispose of the brine water which was a full time job, Tr. Page 142 Volume II of transcript.

58. Ms. Patty Carter further testified by oral testimony and Affidavit as follows:

A. Respondent never ignored any inquiries received from E.P.A. and usually responded to it right then. Tr. Pages 143, 144 Volume II of transcript.

B. That she communicated with E.P.A. for a scheduled MIT test for April 26, 1999; however, the E.P.A. inspector David Hayes did not show up and Ms. Carol Chen of E.P.A. was to reschedule but didn’t. Tr. Pages 144, 145 and 146 Volume II of transcript.

C. The injection well on Collier Creek was never put into service, Tr. Page 146 Volume II of transcript, and that Ed Jordan was contracted several times to plug the well, Tr. Page 148 Volume II of transcript.

D. Ms. Carter testified that we notified Complainant (E.P.A.) by letter or telephone over this time period "we hadn't put the well in service, there was no injections there". Tr. Page 149 Volume II of transcript.

E. Ms. Carter under cross-examination testified an MIT test was done in 1999 but didn't know if it would count since the E.P.A. inspector was not there, Tr. Page 157 Volume II of transcript, and that Ms. Carol Chen told her she would reschedule, Tr. Pages 159 and 163 Volume II of transcript.

F. See Patty Carter's sworn Affidavit. Tr. Page 91 Respondent's Exhibit "52" Volume III of transcript.

59. Mr. Randy Poston a retired inspector with the Natural Resources Environmental Protection Cabinet, Department of Environmental Protection, Division of Water made an Affidavit that was read into the record on behalf of Respondent. Mr. Poston's sworn testimony was that his area of enforcement was the Martha Oil Field and that Respondent had two (2) injection wells on his Cam Creek farm and one (1) on Collier Creek, Lawrence County, Kentucky; that the two (2) injection wells on Cam Creek operated properly and the one (1) on Collier Creek was never put into service. Tr. Pages 174, 175 and 176 Volume II of transcript and Tr. Page 177 Respondent's Exhibit "B" Volume II of transcript.

60. Respondent, Gene Wilson, testified to the following:

A. That he purchased the Corby Davis farm in 1984, Tr. 178 Respondent's

Exhibit "39" Volume II of transcript, and attempted to put gas in the tenant house by opening an old plugged well that had a showing of gas in 1988-1989. Tr. Page 179 Volume II of transcript.

B. Respondent properly sealed the well by running 7" casing and 4 ½" casing in the hole and cementing both to the surface. Tr. Page 180 Respondent's Exhibits "8", "9" and "10" Volume II of transcript.

C. That a Gamma Ray test was run and with advise from a geologist (not familiar with the wear formation) the 4 ½" casing was perforated at 941' to 951' and fracked. Tr. Pages 180, 182 and 183 Volume II of transcript. Brine water spewed sixty feet (60') over the mast of the service rig and the well was plugged solid on April 4, 1989. Tr. 225 Respondent's Exhibit "46" Volume I of transcript.

D. Not wanting to abandon the idea of gas for the tenant house, Respondent had the cement drilled out to a depth of 939.65' leaving sealed the perforated area of 941' to 951' completely sealed. Tr. Page 225 Respondent's Exhibit "50" Volume I of transcript.

E. Respondent purchased a farm on Cam Creek in April 1989, Tr. Page 188 Respondent's Exhibit "41" Volume II of transcript, for its large tobacco base but coming with it was a complete mess from an improperly operated oil and gas filed. Respondent immediately began the process of cleaning up the property by permitting two (2) injection wells on Cam Creek and one (1) on Collier Creek. Tr. Page 101 Respondent's Exhibit "61" Volume I of transcript, and Tr. Page 188 Volume II of transcript. Respondent wrote Complainant (E.P.A.) for help but was denied an emergency permit. Tr. Page 101 Respondent's Exhibit "61" Volume I of transcript and Tr. Page 188 Volume II of transcript.

F. Respondent stayed busy cleaning up the oil spillage and developing the injection wells on Cam Creek to dispose of the brine to prevent its free flowing into the creek, taking about two (2) years at a cost in excess of \$250,000.00. Tr. Page 121 Volume III of transcript.

G. Respondent felt he had a good relationship with Complainant (E.P.A.) with regular telephone calls and letters from and to E.P.A. Tr. Page 201 Volume II of transcript.

H. While still cleaning up Cam Creek Complainant (E.P.A.) wrote Respondent giving the standard notice to do an MIT test on Collier Creek for July 31, 1991 with Respondent responding advising Complainant (E.P.A.) Respondent was still busy on Cam Creek; however, injection well KY10344 went into service November 29, 1990 and injection well KY10503 now has the tubing and packer set for MIT test which will probably be scheduled during the month of July. Tr. Page 107 Volume I of transcript talks about Respondent's Exhibit "14" but apparently failed to get in the transcript; therefore, Respondent's Exhibit "14" attached herewith as marked and Tr. Page 200 and 201 Volume II of transcript (this document or letter was not found in E.P.A. files in Atlanta).

I. Respondent after working seven (7) days a week for almost two (2) years had Cam Creek cleaned up and the two (2) injection wells were working perfectly (no pressure to inject). Tr. Page 202 Volume III of transcript.

J. Respondent directed his attention to the permitted well on Collier Creek and what to do with it since the two (2) on Cam Creek were more than adequate to dispose of the brine water. Since disposing brine was a major problem in the Martha Oil Field

Respondent decided to start a business of transporting and injecting other operators fluids; however, the permit was restricted to only fluids brought to the surface in connection with permittee's own operations for enhanced recovery. Tr. Page 206 and 207 Respondent's Exhibit "7" Volume II of transcript.

K. So on November 11, 1992, Respondent wrote Complainant (E.P.A.) a letter to modify the permit, Tr. Page 207 Respondent's Exhibit "2" Volume I of transcript and Tr. Page 113 Volume I of transcript. This letter was lost by Complainant (E.P.A.) so on August 11, 1993, Respondent's secretary sent another letter to Complainant (E.P.A.) to modify the permit, Tr. Page 208 and 209 Respondent's Exhibit "2" Volume I of transcript; however, apparently this letter was also lost since no response was forthcoming from Complainant (E.P.A.).

L. In 1993 Respondent received the usual notice from Complainant (E.P.A.) to conduct the MIT test which was conducted October 15, 1993. Tr. Page 210 Respondent's Exhibit "17" Volume II of transcript.

M. Respondent sold the Cam Creek farm , Tr. Page 16 Respondent's Exhibits "62-D", "62-F" and "62-N" Volume III of transcript, in 1994 and assigned the two (2) injection wells to Edna Oil Company (Ed Jordan) with Respondent receiving notice from Complainant (E.P.A.) in December 1994, releasing the two (2) letters of credit. Tr. Pages 215 and 218, Respondent's Exhibit "47" Volume II of transcript. Almost a year later Complainant (E.P.A.) gave the usual notice for Respondent to do an MIT test Tr. Page 212 Respondent's Exhibit "62-G" Volume III of transcript; however, it was for Cam Creek and for one of the injection wells that had already been sold and transferred to Edna Oil Company. Respondent advised Complainant (E.P.A.) of their mistake. Tr.

Page 218 Respondent's Exhibit "48" Volume II of transcript.

N. On January 7, 1999, Respondent received the usual notice to conduct the MIT test and this one to be done on January 21, 1999. Being in mid winter Respondent's secretary called Complainant (E.P.A.), Tr. Page 90 Volume III of transcript, and it was rescheduled for April 26, 1999, Tr. Page 49 Respondent's Exhibit "51" Volume III of transcript, Complainant's (E.P.A.'s) representative did not show up to observe the test and it was to be rescheduled by Ms. Carol Chen which did not take place. Respondent learned later Complainant's (E.P.A.'s) inspector Mr. David Hayes had a reputation of not appearing for tests and he was terminated December 13, 1999. Tr. Page 188 Volume I of transcript.

O. Respondent received a letter from Complainant (E.P.A.) on August 7, 2000, Tr. Page 141 Respondent's Exhibit "21" Volume I of transcript, requesting an update on Respondent's injection well which Respondent was to provide annual monitoring reports, etc. (first indication E.P.A. had obviously lost Respondent's file). Respondent advised Complainant (E.P.A.) on August 18, 2000, again among other things "no fluid analysis had been conducted since the well was never put into service etc. and that Respondent wanted to plug the well. Tr. Page 143 Respondent's Exhibit "22" Volume I of transcript. Complainant's (E.P.A.'s) approval letter to plug the well came five (5) years later on March 17, 2005. Tr. Page 66 Volume III of transcript talks about Respondent's Exhibit "30" but apparently failed to get in the transcript; therefore, Respondent's Exhibit "30" is attached herewith as marked.

P. On June 10, 2005 the injection well was plugged on Collier Creek with notices given to Complainant (E.P.A.), Tr. Pages 71 and 72 Respondent's Exhibits "15" and "34"

Volume III of transcript and then almost a year later on May 16, 2006, Complainant (E.P.A.) filed its Complaint against Respondent. Tr. Page 75 Volume III of transcript.

Q. Respondent made two (2) trips to Atlanta attempting to splice together his missing files not seen by Complainant's (E.P.A.'s) lawyers; however, the hearing officer excluded most of this Freedom of Information inquiry over Respondent's objections. Tr. Pages 75-82 Volume III of transcript.

R. After the Complaint was filed Respondent discovered Complainant (E.P.A.) had conducted one of its five (5) year reviews of Respondent's file on July 17, 1998, Tr. Page 52 Respondent's Exhibit "20" Volume III of transcript, and Randy Vaughn (E.P.A.) had gone to the well for an on sight inspection on September 14, 2004 and stuck his report in a pipe at the well. Mr. Randy Vaughn's testimony Tr. Pages 66 and 67 Volume II of transcript and Tr. Page 53 Respondent's Exhibit "23" Volume III of transcript. These reports were never sent to Respondent but Mr. Vaughn testified he thought they should have been. Tr. Page 69 Volume II of transcript.

S. Respondent testified he believed he was in complete compliance with his three (3) injection wells. Six (6) MIT tests were conducted, four (4) on Cam Creek and two (2) on Collier Creek with one (1) in 1999 not being observed by inspector David Hayes, since he didn't show up. The annual monitoring reports on Cam Creek were always filed on time, Tr. Page 116 Respondent's Exhibits "62-O", "62-P" "62-Q" and "62-R" Volume III of transcript, and notices were always given that no injecting was occurring on Collier Creek.

T. Respondent's permit restricted to only taking fluids from his own operations on Cam Creek which was sold in 1994 (Part I Page I-2 Section B1); that the permit required

observation and recording of fluids injected to BEGIN on the date on which the well commences operation (Part I Page I-4 Section C2) and after a CESSATION of injection for two (2) years the permittee shall plug and abandon the well (Part II Page II-11 F3) Tr. Page 226 Respondent's Exhibit "7" Volume II of transcript. (Respondent didn't start operations; (except for sealing the well) therefore, cessation of injecting was never a consideration for Respondent.)

61. Mr. James Clark testified for Respondent and stated the following:

A. That he had worked for Respondent helping clean up the oil mess on the Cam Creek farm caused by the previous owner. Tr. Pages 7-10 Volume III of transcript.

B. That he did four (4) MIT tests on Cam Creek and two (2) on Collier Creek and that he never had one fail. Tr. Pages 10-11 Volume III of transcript.

C. The second MIT test on Collier Creek, the inspector did not show up. Tr. Pages 13 and 24 Volume III of transcript.

D. That prior to 1990 Respondent and Mr. Clark had no knowledge about the oil and gas business and employed a Mr. Cecil Lewis to help. Tr. Page 38 Volume III of transcript.

E. That Respondent was not told of the second MIT test on Collier Creek until this Complaint was filed against him and during the conversation while asking Mr. Clark to testify. Tr. Page 40 Volume III of transcript.

F. That no injection took place on Collier Creek. Tr. Page 46 Volume III of transcript.

62. Mr. Ed Jordan testified for Respondent and testified to the following:

A. That after perforating and fracking the well on Collier Creek, gas pressure

“brought the brine water 60 feet out of the top of the ground, blew it over the top of the mast” and “Halliburton came in and squeezed it off with cement”. Tr. Page 197 Volume III of transcript.

B. That the 4 ½” casing was filled “back to the surface with cement”. Tr. Page 199 Volume III of transcript.

C. That Respondent was not in the oil and gas business and he helped clean up Cam Creek from oil spills, etc. Tr. Page 200 Volume III of transcript.

D. That he purchased the Cam Creek farm in 1994 and it was a seven (7) day a week job working with the wells and injection system. Tr. Page 202 Volume III of transcript.

E. That Respondent never injected brine water on Collier Creek. Tr. Pages 204-205 Volume III of transcript.

F. That Complainant (E.P.A.) ALWAYS gave notice to do the MIT tests until approximately two (2) years ago and then Complainant (E.P.A.) advised by letter he would have to keep up with it (when tests were due). Tr. Pages 205 and 206 Volume III of transcript.

G. Mr. Ed Jordan was asked again on cross-examination by the Complainant (E.P.A.) lawyer Q. “and you said that E.P.A. used to remind you to do your MIT’s? A. Yes. Q. How often did they remind you to do your MIT’s? A. Every five years.”. Tr. Page 212 Volume III of transcript.

CONCLUSIONS OF LAW

63. Complainant (E.P.A.) always took the position that Respondent injected brine water in the well on Collier Creek; however, not one of its witnesses testified as such.

Respondent and all his witnesses testified (including two (2) state inspectors) that no injection took place and the well was properly sealed with concrete and steel casing and posed no threat to the environment or drinking water.

With the alleged issue of Respondent being accused of injecting brine water on Collier Creek being clearly resolved, (that it did not occur), we look to the Complaint to see what Respondent is actually charged with.

THE ALLEGED VIOLATION ACCORDING TO E.P.A. WAS NOT CONDUCTING MIT TESTS AND NOT FILING ANNUAL MONITORING REPORTS.

Up until two (2) years ago Complainant (E.P.A.) always gave notice when an operator needed to do his MIT test and Respondent always complied and continually notified Complainant (E.P.A.) the well was not in service for annual monitoring reports.

Complainant's (E.P.A.'s) witness Randy Vaughn testified to assess penalty Complainant (E.P.A.) looks to the (1) seriousness of the violation, (2) economic benefit to the violator, (3) history of such violation, (4) good faith effort to comply, and (5) economic impact on the violator.

64. By not being able to dispose of other operators brine for a fee there was no economic benefit to Respondent. Respondent was not in the oil and gas business; therefore, Complainant (E.P.A.) could not find a history of violations and it was obvious based on the missing files lost or misplaced by Complainant (E.P.A.) and later reconstructed by Respondent that Respondent was acting in good faith in complying with Complainant's requirements.

Pursuant to the Consolidated Rules 40 CFR & 22.20 the presiding officer, upon Motion of the Respondent may at anytime dismiss a proceeding without further hearing

on the basis of failure to establish a prime facie case which show no right to relief on the part of the Complainant (E.P.A.). Also the Doctrine of Latches or Equitable Estoppel is a bar to Complainant's (E.P.A.'s) action, in this enforcement procedure. Complainant (E.P.A.) performed one (1) five (5) year review in fifteen (15) years and then waited seven (7) years before notifying Respondent he was an alleged violator. Over an eight (8) year period from 1992 to 2000 Respondent regularly asked Complainant (E.P.A.) to correct the injection permit to allow disposal of other operators brine water to no avail, which prompted the decision to give up the idea. Complainant (E.P.A.) after notice, waited five (5) years before giving permission to plug the well and then waited almost one (1) year before bringing this action after the well was fully plugged with cement.

Silence and the delaying conduct of Complainant (E.P.A.) in enforcement of its regulations is a complete bar to this action. Wisdom's Adm'r v. Sims, 284 Ky. 258, 144 S.W.d. 232; Croyle v. Croyle, 184 Md. 126, 40 A.2d 374.

POST-HEARING BRIEF

This matter is before the Presiding Officer for assessment of a penalty (if any) for Respondent's alleged violations of Section 1423(c) of the SDWA and in accordance with 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".

The Complainant (E.P.A.) pleads in its Complaint that the Regional Administrator assess a penalty and issue a Compliance Order against Respondent for allegedly violating Part C of the SDWA.

Since the injection well was plugged over two (2) years ago the question of a

Compliance Order is moot. The only issue is if a fine should be levied against Respondent.

Complainant (E.P.A.) attorney in opening statements at the hearing said E.P.A. could have closed the book on this case after Respondent plugged the well but in essence it wanted to set an example thinking Respondent an influential citizen in the Martha area. The truth is E.P.A.'s lawyer Ms. Zylpha Pryor and Respondent had personality issues. She came on strong saying she could bring criminal charges, but Respondent could pay \$9,000.00 + fine or come to Atlanta with a lawyer for a hearing. Respondent contended he did nothing wrong and for her to look in the files. Respondent at the time, did not know the file was void of almost all correspondences between E.P.A. and Respondent.

Respondent lived some forty (40) miles from the Martha Community, was not in the oil and gas business and purchased and owned two (2) farms for the Government allotted tobacco bases. Respondent also lived on a farm and owned cattle. For Complainant (E.P.A.) to want to punish Respondent for E.P.A.'s failure to give Respondent notice to conduct an MIT test and trying to do the right thing in cleaning up Cam Creek is beyond his comprehension.

Respondent complied with every directive received from Complainant (E.P.A.) and it took two (2) trips to Atlanta researching the files through the Freedom of Information Act to find documents and correspondences to confirm Respondent's position of always acting in good faith with Complainant (E.P.A.).

Complainant's (E.P.A.'s) lawyers always took the position Respondent injected brine in the Collier Creek well; however, two (2) state inspectors and five (5) other witnesses under oath testified no injections ever took place. Complainant (E.P.A.) had no

witness to the contrary.

Two (2) expert witnesses testified the injection well was properly installed and in no way could it affect the environment or drinking water.

Up until approximately two (2) years ago (after Respondent plugged the well) Complainant (E.P.A.) always gave notice when MIT tests were due and if Complainant (E.P.A.) thought Respondent should have started doing one (1) every two (2) years it merely needed to give notice.

Respondent complied with all provisions of his permit as outlined supra, and had he not why didn't Complainant (E.P.A.) complain over the fifteen (15) years of its existence. The truth is Respondent did comply but Complainant (E.P.A.) lost Respondent's files and the new E.P.A. enforcement team that took over years later were not privy to it.

Operators in the field that had injection wells always relied on Complainant (E.P.A.) to give notice when MIT's were due as shown by Complainant's Exhibit "31" and to file this Complaint for its own failure is beyond belief. The record is abundantly clear Complainant (E.P.A.) assumed the duty to notify operators when their MIT tests were due. This continued up until two (2) years ago which is about when Respondent plugged his injection well. Shouldn't Complainant (E.P.A.) be more upset with its own agency for not giving Respondent notice? It did for the first ten (10) years of the permit and its not clear why Complainant (E.P.A.) stopped prematurely.

MOTION

Comes the Respondent, Gene A. Wilson, pursuant to Consolidated Rules 40 CFR Section 22.20 states as follows:

The record is clear Complainant (E.P.A.) always notified operators with injection permits when their MIT tests were due and therefore, should not now complain if a report is not filed due to lack of notice from E.P.A. If you take Complainant's (E.P.A.'s) position not filing an MIT test is a serious violation as stated in the Complaint (forget E.P.A. assumed the duty to notify) why was there a twelve (12) year delay in filing an enforcement action?

Complainant's (E.P.A.'s) own witness stated on cross examination that if he had known of the missing files shown to him at the hearing he would have considered Respondent had been acting in good faith on compliance issues.

Complainant's (E.P.A.'s) second witness testified she gave operators notice when an MIT test was due and if they wanted to change that date, they had to work it out with the contractor.

Complainant's (E.P.A.'s) third and final witness testified E.P.A. should have given Respondent a copy of the five (5) year review conducted in 1998 and his on sight inspection in 2004 that was stuffed in a pipe at the well sight.

Respondent considered plugging the injection well on Collier Creek since the two (2) on Cam Creek were more than adequate; however, seeing a potential business of hauling and injecting other operators brine water, Respondent tried for approximately eight (8) years of having E.P.A. correct the issued permit on Collier Creek (the application called for injecting brine water produced on the surrounding leases) to no avail. In 1999-2000 Respondent gave up the idea and notified E.P.A. he was going to plug the well. In 2005 Plugging and Abandonment Plan Approval, Gene Wilson #1 was received by Respondent.

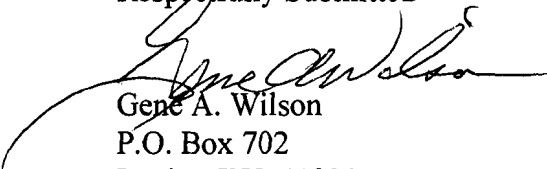
Respondent's witnesses testified the well was properly sealed and was not a threat to the environment or drinking water; and by not approving the injection well to receive other operators brine water there was definitely no economic benefit to Respondent; Respondent had no history of any violations and E.P.A.'s own witness agreed Respondent was acting in good faith based on the missing files shown to him at the hearing.

After spending over a quarter of a million dollars on the issue at hand (not counting time involved) how much more does E.P.A. think Respondent should be punished? There has to be a point of reason.

Wherefore Respondent having recreated E.P.A.'s files on injection permit KYI0376 to the best of his ability, except for waiting on the appeal in Washington, D.C. there is nothing further Respondent has to offer; therefore, it is prayed this action be dismissed and for any and all other proper relief Respondent is entitled.

Dated: 1/2/08

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

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

Comes the Respondent by Supplemental Motion and states the following:

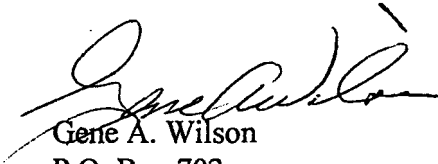
(1) On October 20, 2006, Respondent viewed his file in Atlanta with Mr. Leonard Dangerfield, F.O.I.A. Specialist present marking documents to be copied. The file was absent Respondent's attempts for ten (10) years to have the permit modified and notices the well had not been completed or put in service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

RECEIVED NOV 06 2006



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.

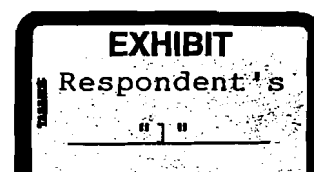
Please find enclosed responsive documents that you tagged during your file review on October 20, 2006. Prior to your review of the files, Leonard Dangerfield, FOIA Specialist, advised you that a portion of the records had been removed from the files, because of their exempt status under the FOIA.

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



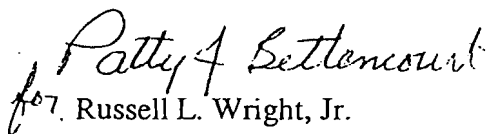
against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. It also protects "inter-agency or intra-agency"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

EXHIBIT
Respondent's
"2"

Wilson Enterprises

P.O. Box 702 • Louisa, Kentucky 41230 • (606) 686-2969

June 21, 1991

Mr. Ken Harris
United States Environmental
Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365

RE: Mechanical Integrity Test for
injection well KY1270250
before July 31, 1991

Dear Mr. Harris:

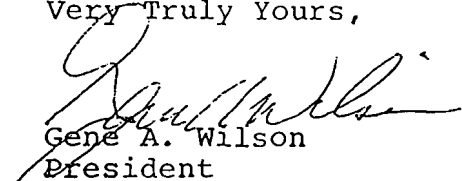
Pursuant to our telephone conversation concerning the above referenced matter please be advised the well is not being used for injection of brine and will not be in service until 1992.

Current programs has the well scheduled for completion for the MIT during the month of September, 1991, and to move the service rig and equipment before that time would create an unbearable financial hardship on the company. Therefore, a ninety (90) day extension on the deadline will be appreciated.

For your files Injection well KYI0344 went into service November 29, 1990; Injection well KYI0503 now has the tubing and packer set for the MIT test which will probably be scheduled for testing during the month of July. It is also not being used at this time.

If you have any further questions concerning this matter feel free to call anytime.

Very Truly Yours,


Gene A. Wilson
President

GAW:pm

RESPONDENT'S
EXHIBIT

"14"

SENDER: Complete items 1 and 2 when additional services are desired and complete items 3 and 4. Put your address in the RETURN TO Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

<p>1 <input type="checkbox"/> Show to whom delivered, date, and addressee's address. 2 <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
<p>3. Article Addressed to: U 06 Mr. Ken Harris U. S. E. P. A. Region IV 345 Courtland Street, N.E. Atlanta, GA 30365</p>	<p>4. Article Number P 032 227 081</p> <p>Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p> <p>Always obtain signature of addressee or agent and DATE DELIVERED.</p>
<p>5. Signature - Addressee X</p>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p> <p>C7</p>
<p>6. Signature - Agent x Charles Davis</p>	
<p>7. Date of Delivery 6-24-91</p>	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

JUN 14 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REF: 4WM-GP

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

Re: Notice to Demonstrate Mechanical Integrity of Injection Well

Dear Mr. Wilson:

On June 25, 1984, the U. S. Environmental Protection Agency (EPA) began implementation of the Underground Injection Control (UIC) Program in Kentucky. This program has been promulgated in response to the Safe Drinking Water Act (SDWA), 42 U.S.C. §300h-1, et seq. and is intended to protect underground sources of drinking water (USDWs) from contamination by injection activities.

EPA records show that you are the owner or operator of an enhanced recovery injection well. The Regional Administrator of EPA, by written notice, may require the owner or operator of such well to comply with a schedule for demonstrating the mechanical integrity of each well, pursuant to 40 C.F.R. §144.28(g)(2)(iv)(B). Therefore, you are hereby required to demonstrate the mechanical integrity of the following well by the date specified:

<u>EPA ID No.</u>	<u>Well</u>	<u>Deadline</u>
KYS1270250	Gene A. Wilson #1	July 31, 1991

The demonstration of mechanical integrity is made by passing a Mechanical Integrity Test (MIT). An MIT consists of a pressure test of the well (internal integrity) and a review of cementing records or well logging to verify the presence of adequate cement to prevent fluid movement into or between USDWs (external integrity).

Your well must pass both the internal and external portions of the test to be in compliance with this directive. Repairs or workovers necessary to pass must be completed prior to the deadline(s) stipulated above.

MITs are to be conducted by you using your equipment at your expense. In Kentucky, McCoy and McCoy Environmental Consultants, Inc., is EPA's authorized representative to witness MITs. Within fifteen (15) days of the receipt of this letter, you are required to contact Mr. David Oldham of that firm (P. O. Box 11279, Lexington, Kentucky 40574, (606) 299-7775). He will assist you in the selection of the specific wells to be tested and arrange specific dates and times to conduct the testing. You may obtain additional information from McCoy and McCoy on test pressures, duration, allowable bleed-off and records that must be available to complete testing. There is no expense to you for their services.

Failure to demonstrate mechanical integrity at any well by the deadline specified herein constitutes a violation of the UIC regulations and Section 1423 of the SDWA, 42 U.S.C. §300h-2. This Section authorizes EPA to bring legal action in the United States District Court and authorizes a civil penalty of up to \$25,000.00 per day of each violation, or if the violation is willful, imprisonment of not more than three (3) years or a fine in accordance with Title 18 of the United States Code, or both.

If you have any questions, please contact Mr. Oldham at the address or phone number given above.

Sincerely yours,

E. Stallings Howell

for W. Ray Cunningham, Director
Water Management Division

cc: David Oldham
McCoy and McCoy, Inc.

~~80~~

" 404 347 3379"



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

RECEIVED MAR 17 2005

REF: 4WM-GW/DW-15

MAR 14 2005

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

SUBJ: Plugging and Abandonment Plan Approval, Gene Wilson #1

Dear Mr. Wilson:

By letter dated March 4, 2005, you notified the U.S. Environmental Protection Agency (EPA) that you intended to plug and abandon (P&A) the Gene Wilson #1 located in Lawrence County, Kentucky. On January 12, 1990, EPA issued UIC Permit KYI0376 which authorized you to convert, operate, and plug and abandon the subject injection well. A copy of that permit is enclosed for your use. Part I, Page 6 of permit KYI0376 contains the approved plugging and abandonment plan for the well.


You are required to inform EPA of the proposed date on which you will plug the well at least 15 days prior to plugging in order for an EPA representative to witness the plugging. Please contact Ms. Carol Chen at (404) 562-9415 to arrange for an EPA representative to witness the P&A operations on the well.

Within 60 days of plugging the well, you must submit a report which consists of either:

1. A statement that the well was plugged in accordance with an EPA approved plan, or
2. Where actual plugging differed from an EPA approved P&A plan, an updated version of the plan specifying the differences.

If you have any questions concerning this matter, please contact William Mann at (404) 562-9452.

Sincerely,


Natalie Ellington, Chief
Ground Water & UIC Section
Ground Water/Drinking Water Branch
Water Management Division

Enclosure

RESPONDENT'S
EXHIBIT

**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

ORDER

Came the Respondent, Gene A. Wilson, by Motion establishing clearly through pleadings and exhibits and oral testimony at the hearing that Respondent did not inject brine in the well on Collier Creek and there was no threat to the environment or quality of water in the area.

Further, it is also clear through oral testimony the well was properly sealed and did not pose a threat to the environment or drinking water; there was no economic benefit to Respondent since he was barred from injecting other operators fluids after expending several thousands of dollars preparing the Collier Creek well for injecting; that there was no history of violations, and the record is very clear Respondent acted in good faith in complying with State and Federal Regulations.

Further Respondent expended thousands of dollars to clean up oil spills on Cam Creek created by the former property owners and expended a considerable sum of money

traveling to Atlanta on two (2) occasions establishing the lost or misplaced file in E.P.A.'s records.

Further E.P.A.'s own expert witness testified the permit made no provision for an injection well that never went into service, only what to do after fluid is injected; THEREFORE BE AND IT IS HEREBY RESOLVED that the hearing officer has determined the Complainant (E.P.A.) has not established a prima facie case against Respondent and pursuant to Consolidated Rules 40 CFR Section 22.20 this case is hereby dismissed with prejudice.

Entered this the _____, day of _____, 2008.

JUDGE SUSAN B. SCHUB

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Order 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
P. O. Box 702
101 Madison Street
Louisiana, Kentucky 41230

(Certified Mail--Return Receipt Requested)

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

(via Intra-Office Mail)

Hon. Paul Schwartz, Esq.
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

(via Intra-Office Mail)

Date: _____

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date noted below, the foregoing Respondent's Proposed Findings of Fact With Missing Exhibits 14, 30 and Pleading Filed 11-07-06 Attached Herewith, Conclusions of Law, Post Hearing Brief, Motion and Proposed Order 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)

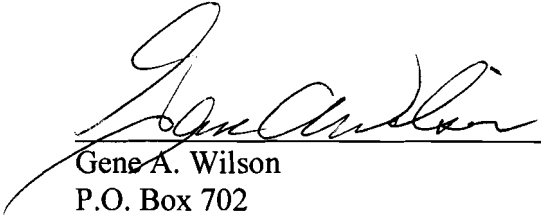
Hon. Susan B. Schub
Regional Judicial Officer
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

(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: 1/2/08


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