

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

IN THE MATTER OF)
Gene A. Wilson)
Respondent)

Docket No. SDWA-04-2005-1016

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ENVIRONMENTAL DIVISION

**COMPLAINANT'S MOTION TO STRIKE RESPONDENT'S AFFIDAVIT WITH
EXHIBIT OF TELEPHONE BILL**

COMES NOW the Complainant, the United States Environmental Protection Agency (EPA), Region 4, and hereby moves to strike Respondent's "Affidavit with Exhibit of Telephone Bill" which was submitted with Respondent's Reply Brief. In accordance with 40 CFR § 22.22(a), these documents were not timely submitted and should therefore not be allowed as evidence in this case.

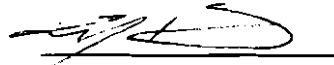
With regard to the Affidavit, Patty Carter both testified and submitted an affidavit already, and should not be allowed to submit any more testimony. The telephone bill could have been obtained prior to the hearing and should therefore be disallowed as evidence. It should be noted, however, that the telephone bill is entirely consistent with the evidence offered by Complainant during the hearing.

Complainant's witness, Carol Chen, stated that the MIT test for the Gene Wilson #1 well was canceled in early January, and that it would have been canceled by the operator. Tr. 161 (V.1). The phone bill offered by Respondent shows a call made on January 7, 1999, and another call made on January 8, 1999. Each of the calls was one minute long, which would have been long enough to leave a voice mail message and perhaps long enough to cancel an MIT. Carol Chen issued a January 13, 1999, technical direction document cancelling the January 21, 1999,

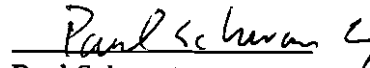
MIT. Complainant's Exhibit 31. So the phone bill only serves to verify that EPA had contact with Respondent regarding cancellation of the MIT scheduled for January 21, 1999.

Nonetheless, it and the second Affidavit of Patty Carter should be stricken from the record as not being offered in a timely manner as required by 40 CFR § 22.22(a).

Respectfully submitted,



Zylpha Pryor
Associate Regional Counsel



Paul Schwartz
Associate Regional Counsel

U.S. Environmental Protection Agency
Atlanta, Georgia

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date indicated below, the original and one copy of "Complainant's Motion To Strike Respondent's Affidavit with Exhibit of Telephone Bill" was 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

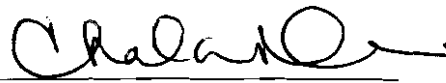
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January 31, 2008



Chalon Davis, Secretary
OEA - U.S. EPA
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