

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
) Docket No. SDWA-04-1016
Gene A. Wilson)
)
Respondent.)
_____)

HEARING CLERK

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ORDER ON RESPONDENT'S MOTION TO REQUIRE
COMPLAINANT TO FILE FIRST

PLEASE TAKE NOTICE, on October 16, 2006, Complainant filed a *Motion to Require Complainant to File First* ("Motion") in the above-captioned matter seeking an Order requiring that Complainant file prehearing exchange first, and allowing at least twenty (20) days thereafter for Respondent to file his prehearing exchange. Pursuant to the undersigned's Order of September 29, 2006, the parties are required to simultaneously file their Initial Prehearing Exchange on November 13, 2006 followed by their Rebuttal on November 27, 2006. The basis for Respondent's Motion is to allow Respondent to have a "quasi discovery of what Complainant has against him with at least twenty(20) days to submit his position on all charges." Complainant, in its October 25, 2006, Response takes the position that a) the allegations against Respondent are sufficiently set forth in the Complaint; b) there are insufficient grounds set forth for granting the Motion and c) Respondent will have sufficient opportunity to rebut any and all Complainant's evidence against him in his Rebuttal Prehearing Exchange.


As set forth at Section 22.19(e)(5) of the Consolidated Rules, 40 CFR § 22.19(e)(5), the regulations governing exchange of prehearing information shall neither limit a party's right to request admissions or stipulations, nor to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552.

Although Complainant had not entered into stipulations sought by Respondent, Respondent has had, and continues to have, opportunity to view the Agency records in the above-captioned case. To this end, Mr. Wilson initially indicated intent to view records in August 2006. More recently, by letter dated October 5, 2006, from Mr. Wilson to Mr. Lynn Dangerfield, US Environmental Protection Agency, it appears that Mr. Wilson intends to inspect his entire file on October 19 and 20, 2006. This opportunity, along with the opportunity to rebut the information contained in Complainant's Initial Prehearing Exchange, are sufficient. At this time I find no basis to revise the Order to file prehearing information simultaneously. However, providing additional time so that the parties have twenty (20) days to simultaneously file Rebuttal Prehearing Exchange is appropriate in light of Respondent's position.

IT IS ORDERED:

1. The date set forth in the undersigned's Order of September 29, 2006, to simultaneously file and exchange Initial Prehearing Information remains **November 13, 2006.**
2. Rebuttal Prehearing Exchange is to be simultaneously filed on **December 4, 2006.**
3. All other terms and conditions contained in the undersigned's Order of September 29, 2006, remain in full force and effect.

Date: 10/31/06


Susan B. Schub
Regional Judicial Officer

Order on Respondent's Motion to Require Complainant to File First, in the Matter of Gene A. Wilson, Docket No. SDWA-04-2005-1016, on the parties listed below in the manner indicated:

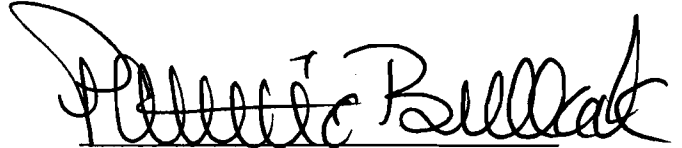
Gene A. Wilson
P.O. Box 702
Louisa, KY 41230

(Overnight Mail)

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

(via Intra-Office Mail)

Date: 10-31-06



Patricia A. Bullock
Regional Hearing Clerk
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