

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)

Docket No. SDWA-04-2005-1016

Gene A. Wilson)

Respondent)

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HEARING CLERK

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COMPLAINANT'S MOTION AND REPLY TO RESPONDENT'S "MOTION TO MAKE ADDITION TO DOCUMENTS IN PREHEARING EXCHANGE LIST"

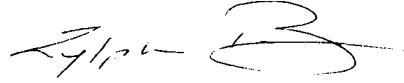
COMES NOW, Counsel for Complainant and files this "Reply to Respondent's Motion to Make Addition to Documents in Prehearing Exchange List." Complainant moves that Respondent be compelled to make available as exhibits to his Prehearing Exchange the specific documents he wishes to attach as Respondent's Exhibit 55.

Respondent has made a general request that the documents he reviewed pursuant to a Freedom of Information Act (FOIA) request be made a part of his Prehearing Exchange. It is not clear to whom he is directing this request, but it is Respondent's obligation to submit his prehearing exchange, including all documents he intends to present into evidence at the hearing, in accordance with 40 C.F.R. §22.19. It is Respondent who must have the files he wishes to use as exhibits copied by EPA Region 4's FOIA office, in accordance with its procedures, and he who must make the files available as exhibits to his Prehearing Exchange. See, generally, 40 CFR § 22.19 and 40 C.F.R. §22.22. Complainant does not believe it is appropriate for Respondent to expect Complainant to devote its own hearing preparation resources to searching for and copying documents which Respondent was given an opportunity to review and have copied during the FOIA process and which Respondent wants to submit as evidence at hearing. Respondent has not stated good cause for his request that Complainant fulfill Respondent's prehearing exchange obligations for him. Complainant is skeptical that the documents Respondent seeks to add have any relevance to the proceeding and would oppose any requirement that it interrupt its own hearing preparation to perform Respondent's obligations.

Accordingly, Complainant moves that Respondent be required to comply with the Rules governing these proceedings and make the documents he wishes to add to his Prehearing Exchange available as exhibits or, if they are not timely added, that Respondent's Affidavit, and

the handwritten list of permitting files be stricken from the record.

Respectfully submitted,



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