

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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EPA REGION IV

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

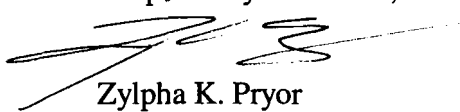
Docket No. SDWA 2806 AUG 25 PM 1:06
04-2005-1016
HEARING CLERK

RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Counsel for Complainant and timely files this response to Respondent's Motion for Summary Judgment. For the reasons set forth below, Complainant asserts that this motion should be denied or that a ruling on it should be postponed.

The motion is premature in view of the facts that no prehearing exchange has taken place and Complainant has had no opportunity to submit evidence of the violations. The parties engaged in a prehearing telephone conference on July 27, 2006, during which the Regional Judicial Officer (RJO) indicated that she would schedule a date for submission of prehearing exchange reports. Counsel for Complainant indicated during that conference that she will be unavailable from September 25, 2006, through October 16, 2006, and requested that the scheduling order take this into account. The RJO has not set a prehearing exchange date and thus Complainant has not submitted any evidence supportive of its allegations as set forth in the Complaint. A summary judgment, at this time, would be based only upon the evidence submitted by Respondent, with no opportunity afforded for Complainant's presentation of its case. Justice dictates that Complainant be allowed to submit its prehearing exchange report following fair notice from the Regional Judicial Officer.

Accordingly, Counsel for Complainant respectfully requests that this motion either be denied or that a decision on it be postponed until such time that Complainant has submitted its prehearing exchange report and a response to Respondent's motion based upon all of the evidence.

Respectfully submitted,

Zylpha K. Pryor
Counsel for Complainant

In the Matter of Gene A. Wilson
Docket No. SDWA-04-2005-1016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date indicated below, the original and one copy of Complainant's 'Response to Respondents Motion for Summary Judgment' was delivered by interoffice mail to the Regional Hearing Clerk and copies were sent to the following persons in the manner noted.

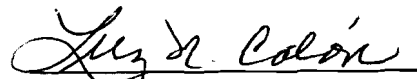
Susan B. Schub, Esq.
Regional Judicial Officer
U.S. EPA
61 Forsyth Street
Atlanta, GA 30303

Interoffice Mail

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

Certified Mail - Return Receipt

August 25, 2006



Luz Colon, Secretary
OLS - OEA
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