

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARING CLERK

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IN THE MATTER OF:)
) Docket No. SDWA-04-2005-1016
Gene A. Wilson)
)
)
Respondent.)

)

REPORT OF PREHEARING CONFERENCE

A prehearing telephone conference was held in the above-captioned matter on September 11, 2007. Participating in the call were:

For Complainant: Zylpha Pryor, Esq.
 Paul Schwarz, Esq.

For Respondent: Gene A. Wilson

Presiding Officer: Susan B. Schub

The following matters were discussed during the call:

HEARING AGENDA

The parties are to be available to commence the hearing at 9:00 a.m., on September 25, 2007. The hearing will be conducted each day from 9:00 a.m. until 5:00 p.m., but will conclude no later than 3:00 p.m., on Friday, September 28, 2007.

PRELIMINARY MATTERS:

- Opening the Hearing – Presiding Officer
- Appearances – Counsel and Representatives of the Parties

OPENING REMARKS:

- Complainant's Opening
- Respondent's Opening

COMPLAINANT'S DIRECT CASE ON LIABILITY AND REMEDY:

- Taking of oral testimony of witnesses and submission of exhibits to meet its burden of proving the elements of its case on liability as well as the appropriateness of the penalty.
- Cross Examination by Respondent
- Limited Rebuttal Evidence

RESPONDENT'S RESPONSE AND EVIDENCE WITH RESPECT TO LIABILITY AND REMEDY:¹

- Taking of oral testimony and submission of exhibits in response to Complainant's case on liability and remedy and to meet its burden as to Defenses
- Cross Examination by Complainant
- Limited Rebuttal Evidence

CLOSING REMARKS:

- Complainant's Closing
- Respondent's Closing

CONCLUDING MATTERS:

- Procedural Questions – Counsel and Representatives of the Parties
- Closing the Hearing – Presiding Officer

In addition to the hearing agenda the following matters were addressed as well:

BURDEN OF PROOF: The respective burdens of proof are set forth above. The burden will be "Preponderance of the Evidence."

STANDARD FOR ADMISSION OF EVIDENCE: All evidence will be admitted **"which is not irrelevant, immaterial, unduly repetitious, unreliable or of little probative value."**

¹ Respondent shall be granted permission to call one of his witnesses out of order if that witness is otherwise unavailable, so that the witness appears at the end of the afternoon of testimony on Tuesday, September 25, 2007. Complainant did not oppose Respondent doing so, as long as the length of testimony does not extensively interrupt presentation of Complainant's case.

MARKING AND NUMBER OF EXHIBITS: Only documents made part of the prehearing exchange (including additions and supplements thereto) may be introduced as evidence at the hearing. In addition to their own copies, each party shall bring four additional copies to provide to a) the undersigned, b) Court Reporter, c) the opposing party and d) for reference and use by the witness testifying.² Each exhibit shall be marked numerically as either Complainant's Exhibit or Respondent's Exhibit. It is acceptable if certain documents pre-marked are either not offered or not admitted into evidence so that certain numbers are skipped or out of sequence.

STIPULATIONS: The parties stipulated to a) the authenticity of the documents and b) that there is no issue with respect to Respondent's ability to pay the proposed penalty.

WITNESSES:

For Complainant: William Mann; Carol Chen and Randy Vaughn (also being introduced as an expert witness). Complainant indicated that Mr. Vaughn's testimony may be up to three hours.

For Respondent: Patty Maynard Carter, Gene Wilson, James Clark, Monty Hay (also introduced as an expert witness), Edward Jordan, Clarence ("Doug") Hamilton and Randy Poston. Subpoenas were requested and then issued subsequent to the conference for Messrs. Poston and Hamilton, who are being substituted for Messrs. Oldham and Hayes for whom subpoenas had been issued. Respondent is responsible for service of subpoenas. Respondent indicated that his own testimony may take up to three hours.

(The parties were encouraged, to the extent possible, to limit testimony of Messrs. Wilson and Vaughn to two hours, in order to allow sufficient time for presentation of their cases.)

OBJECTIONS AND OFFERS OF PROOF: Although this was not specifically discussed during the conference call, the parties are referred to section 22.23 of the Consolidated Rule, 40 CFR § 22.23, for information on objections and offers of proof.

TRANSCRIPT: As set forth at section 22.25 of the Consolidated Rules, 40 CFR § 22.25, the Court Reporter will provide the Regional Hearing Clerk with transcripts. The Hearing Clerk will serve each party a copy of the transcript. However, Respondent is responsible for payment of the cost of reproduction.

Dated: Sept. 17, 2007

Susan B. Schub
Susan B. Schub
Regional Judicial Officer/Presiding Officer

² During the call the undersigned directed that there be four copies total; However, for a more orderly proceeding it is suggested that a separate document be available for reference by the witnesses.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Report of Prehearing Conference, in the Matter of Gene A. Wilson, Docket No., SDWA-04-2005-1016, on the parties listed below in the manner indicated:

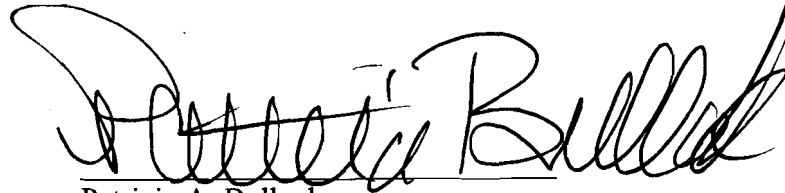
Mr. Gene A. Wilson
101 Madison Street
P.O. Box 702
Louisa, Kentucky 41230

(Certified Mail – Return
Receipt Requested)

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

(via Intra-Office Mail)

Date: 9-17-07



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 4
61 Forsyth Street, S.W.
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