

March 1, 2011

Derek S. Burrell  
649 North Rosewood  
Kankakee, IL 60901

US EPA Region 5  
Office of the Regional Hearing Clerk  
Attention: La Dawn Whitehead  
77 W. Jackson Blvd.  
Mailcode: E-19J  
Chicago, IL 60604-3590

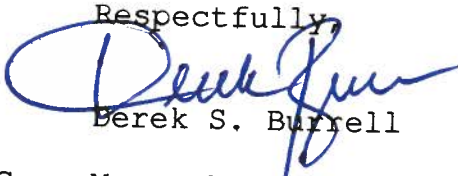
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Re: TSCA-05-2006-0012

Hearing Clerk:

Enclosed please find an Original and two (2) copies of my Appearance, Respondent's Motion to Quash and Motion to Dismiss, along with a Memorandum in Support of Motion to Dismiss, Motion to Quash, and Affidavits of Derek S. Burrell and Dudley B. Burrell in the above-referenced matter. Please provide me with a file-stamped copy of each which I may retain for my file. I enclose a self addressed stamped envelope for your convenience.

Respectfully,



Derek S. Burrell

Cc: Marcy Toney  
Regional Judicial Officer  
U.S. Environmental Protection Agency,  
Region 5  
77 West Jackson Boulevard  
Chicago, Il 60604

Maria Gonzalez (C14-J)  
Associate Regional Counsel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Il 60604-3590

Willie P. Burrell,  
Willie P. Burrell Declaration of Trust  
300 N. Indiana Ave  
Kankakee, Il 60901

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. TSCA-05-2006-0012  
)  
Willie P. Burrell ) Proceeding to Assess a Civil  
The Willie P. Burrell Trust, ) Penalty under section 16(a) of  
Dudley B. Burrell, and the ) The Toxic Substances Control  
Dudley B. Burrell Trust ) Act, 15 U.S.C. § 2615(a)  
Kankakee, Illinois, )  
)  
Respondents. )  
\_\_\_\_\_ )

**APPEARANCE OF REPRESENTATIVE**

Derek S. Burrell, hereby enters his Appearance for  
Dudley B. Burrell and the Dudley B. Burrell Trust and  
pursuant to 40 C.F.R. § 22.10, hereby states:

Please direct all service for, **Dudley B. Burrell and  
the Dudley B. Burrell Trust**, to the following address:

**Derek S. Burrell  
649 N. Rosewood  
Kankakee, IL 60901  
815-954-3296**

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**MAR 07 2011**

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USEPA  
REGION 5**

Respectfully submitted,

  
\_\_\_\_\_  
Derek S. Burrell

**3-1-11**

\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

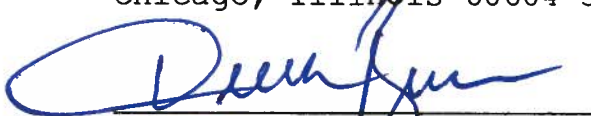
Derek S. Burrell hereby certifies that his Appearance in the above-captioned matter was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 1 day of March 2011 at:

United States Environmental Protection Agency  
Region 5  
Joana Bezerra (DT-8J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

US EPA Region 5  
Office of the Regional Hearing Clerk  
Attention: La Dawn Whitehead  
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Chicago, Illinois 60604-3590

Willie P. Burrell and  
The Willie P. Burrell Trust  
300 North Indiana Avenue  
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MOTION TO QUASH SERVICE OF PROCESS

Respondents Dudley B. Burrell and the Dudley B. Burrell Trust (hereinafter, "Respondent"), by and through their Representative, pursuant to 40 C.F.R. § 22.16, hereby tender their Motion To Quash Service of Process, and in support states:

1. At all relevant times, Burrell has been legally married to Willie P. Burrell ("wife").
2. On or about December of 2003, I became estranged from my wife.
3. Since approximately December 2003, I have conducted my rental business and resided at 649 N. Rosewood, Kankakee, Illinois, 60901.
4. Since December 2003, my wife has continued to conduct business at 300 N. Indiana Avenue, Kankakee, Illinois, 60901 and reside at 5495 Muriel Lane, St. Anne, Illinois, 60904.

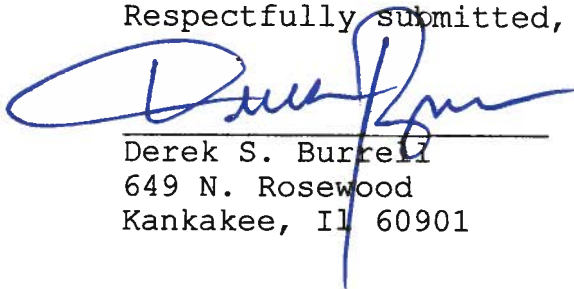
5. On or about January 1, 2004, Dudley Burrell specifically told wife not to accept service for him and to return all of his mail to sender.

6. Dudley Burrell nor the Dudley B. Burrell Trust received notice, actual, constructive or otherwise, of the government's complaint, filed on June 22, 2006.

7. Dudley Burrell remains estranged from his wife.

Wherefore, the purported service on Respondents must be quashed, as a matter of law.

Respectfully submitted,



Derek S. Burrell  
649 N. Rosewood  
Kankakee, IL 60901

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**CERTIFICATE OF SERVICE**

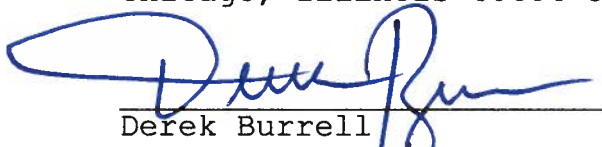
Respondents Dudley B. Burrell and the Dudley B. Burrell Trust hereby certify that their Motion to Quash in the above-captioned matter was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 1 day of March 2011 at:

United States Environmental Protection Agency  
Region 5  
Joana Bezerra (DT-8J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

US EPA Region 5  
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Willie P. Burrell and  
The Willie P. Burrell Trust  
300 North Indiana Avenue  
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Kankakee, Illinois, )  
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Respondents. )  
\_\_\_\_\_ )

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MOTION TO DISMISS FOR DEFECTIVE PROOF OF SERVICE

Respondents Dudley B. Burrell and the Dudley B. Burrell Trust, by and through their Representative, pursuant to 40 C.F.R. § 22.16 and 22.20(a), hereby tender their Motion To Dismiss, and in support states:

1. Provision 40 C.F.R. § 22.20(a), provides, in pertinent part, that:

The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

2. Proof of Service was defective, a ground which shows no right to relief on the part of the complainant.

3. Here, Willie Burrell purportedly signed the certified mail receipt ("green cards") for all Respondents on July 10, 2006.



4. Irregularities with the green cards make proof of service on Respondents defective.

5. It cannot be determined when the green cards were actually filed, proof of service in the case at bar is defective and, therefore all of the allegations against these Respondents must be dismissed, with prejudice, as a matter of law.

Wherefore, Respondents Dudley B. Burrell and the Dudley B. Burrell Trust hereby tender their Motion to Dismiss and hereby requests all relief just and proper in the premises.

Respectfully submitted,

  
Derek S. Burrell

3-1-11  
Date

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**CERTIFICATE OF SERVICE**

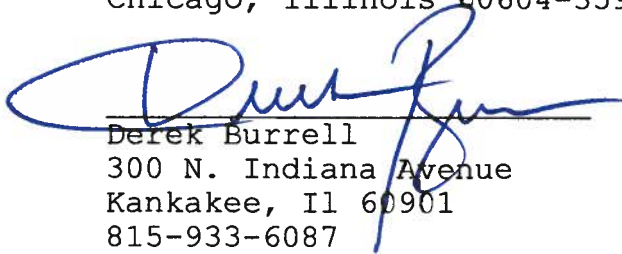
Respondents Dudley B. Burrell and the Dudley B. Burrell Trust hereby certify that their Motion to Dismiss in the above-captioned matter was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 1 day of March 2011 at:

United States Environmental Protection Agency  
Region 5  
Joana Bezerra (DT-8J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

US EPA Region 5  
Office of the Regional Hearing Clerk  
Attention: La Dawn Whitehead  
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Willie P. Burrell  
Willie P. Burrell Trust  
300 N. Indiana Avenue  
Kankakee, Il 60901

Maria Gonzalez  
US EPA - Region 5  
Associate Regional Counsel  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

  
Derek Burrell  
300 N. Indiana Avenue  
Kankakee, Il 60901  
815-933-6087  
815-954-3296

**RECEIVED**  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. TSCA-05-2006-0012  
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Willie P. Burrell ) Proceeding to Assess a Civil  
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Dudley B. Burrell, and the ) The Toxic Substances Control  
Dudley B. Burrell Trust ) Act, 15 U.S.C. § 2515(a)  
Kankakee, Illinois, )  
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Respondents. )  
\_\_\_\_\_ )

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**MEMORANDUM IN SUPPORT OF MOTION TO QUASH SERVICE OF PROCESS  
AND MOTION TO DISMISS**

Respondents Dudley B. Burrell and the Dudley B. Burrell Trust (hereinafter collectively, "Burrell," "Respondent," or "Respondents"), by and through their Representative, pursuant to 40 C.F.R. § 22.16 and § 22.20(a), hereby tender their Memorandum in Support of their Motion To Quash Service of Process and Motion to Dismiss, and in support state:

**I. FACTUAL BACKGROUND**

Dudley B. Burrell is the owner of the Dudley B. Burrell Declaration of Trust (Dudley Burrell Affidavit, ¶ 1). Burrell is engaged in the business of leasing residential apartment units. (Dudley Burrell Affidavit, ¶ 2). At all relevant times, Burrell has been legally married to Willie P. Burrell ("wife"). (Dudley Burrell Affidavit, ¶ 3). From 1965 to 2003 Burrell was engaged in the business of

apartment rentals with his wife, under various corporate entities, including but not limited to New World Development Corporation and B & D Management, Inc. ("B & D") (Dudley Burrell Affidavit, ¶ 5).

From 1979 to 2003, my personal residence has been 5495 Muriel Lane, St. Anne, Illinois, 60904. (Dudley Burrell Affidavit, ¶ 6). From 1979 to 2003, my business address was 300 N. Indiana Avenue, Kankakee, Illinois, 60901. (Dudley Burrell Affidavit, ¶ 7).

On or about December of 2003, I became estranged from my wife. (Dudley Burrell Affidavit, ¶ 8). Since approximately December 2003, I have conducted my rental business and resided at 649 N. Rosewood, Kankakee, Illinois. (Dudley Burrell Affidavit, ¶ 9). Since December 2003, my wife has continued to conduct business at 300 N. Indiana Avenue, Kankakee, Il 60901 and reside at 5495 Muriel Lane, St. Anne, Illinois, 60904. (Dudley Burrell Affidavit, ¶ 10, 21).

Burrell has been locked out of the business of B & D since December of 2003. (Dudley Burrell Affidavit, ¶ 18). Burrell has also been estranged from two of his sons and his daughter-in-law . (Dudley Burrell Affidavit, ¶ 19).

As a result, on January 1, 2004, Dudley Burrell specifically told wife not to accept service for him and to return all of his mail to sender. (Dudley Burrell Affidavit,

action, Willie Pearl Burrell v. Dudley B. Burrell, Cause No: 09-D-110, in the Circuit Court of Iroquois County, Illinois, Twenty-First Judicial Circuit, which was filed on November 17, 2009. (Dudley Burrell Affidavit, ¶ 11). Dudley Burrell remains estranged from his wife. (Dudley Burrell Affidavit, ¶ 33).

## ARGUMENT

### II. Standard of Review on Motions to Dismiss

Provision 40 C.F.R. § 22.20(a), provides, in pertinent part, that:

The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

It has been held that a Motion to Dismiss under 40 C.F.R. § 22.20(a) is analogous to a Motion for Dismissal under the Federal Rules of Civil Procedure. In re: Asbestos Specialist, Inc., 4 E.A.D. 819, 827 (EAB 1993). As a result, the EAB and OALJ have looked to Rule 12(b)(6) of the Federal Rules of Civil Procedure and respective federal court decisions for guidance. In re: Commercial Cartage Co., 5 E.A.D. at 827 f.n. 20.

In ruling upon a respondent's Motion to Dismiss, a Presiding Officer is required to resolve all ambiguities and draw all reasonable inferences in favor of the complainant

and to presume that all "well-pled" facts in the complaint are true. Id. at 117.

If a complainant fails to allege all facts necessary to support its claims or can prove no set of facts in support of such claims, then the complaint may be dismissed. In re: DMB N.C. 2., 2003 EPA ALJ 48, at 7. If a decision to dismiss addresses all issues and claims in the proceeding, then it will constitute an Initial Decision and the complaint will be dismissed with prejudice. Id.

**III. Substitute Service of Process was Improper, Therefore, the Government's Complaint Should be Dismissed as a Matter of Law**

**A. Substantive Law**

Respondents Dudley Burrell and the Dudley B. Burrell Trust contend there is a lack of personal jurisdiction over them. Service of the complaint is governed by the Consolidated Rules of Practice ("CROP"), 40 C.F.R. § 22.5(b)(1). The rule provides as follows:

1) *Service of complaint.* (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

First, Willie P. Burrell was not authorized to accept

service on behalf of these Respondents. (Dudley Burrell Affidavit, ¶ 21).

Secondly, Willie P. Burrell, individually and as an officer, director, or shareholder of any entity, never provided Respondents, here, with actual nor constructive notice of the complaint. (Dudley Burrell Affidavit, ¶ 25-29).

Third, while the Federal Rules of Civil Procedure are not applicable to these proceedings, See Midwest Bank & Trust Co., Inc., RCRA (3008) Appeal No. 90-4, 3 E.A.D. 696, 699 & n. 7 (CJO October 23, 1991), for sake of comparison, cases analyzing the Federal Rule of Civil Procedure 4(e) provides guidance. Rule 4(e) states:

(e) SERVICE UPON INDIVIDUALS WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State; or

(2) by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to

receive service of process.

The U.S. Supreme Court has spoken to the issue of what constitutes "notice" in the context of due process. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

The government contends that Respondents were served, through his wife. (Complainant's Memo in Support of Default Motion, page 6, ¶ 6). The complaint was not served at Respondents' "dwelling place or his usual place of abode." The government seeks to circumvent this requirement by arguing they served Respondent at his "last known address."

Next, the government cites C. W. Smith, EPA Docket No. CWA-04-2001-1501, 2002 EPA ALJ LEXIS (ALJ Order on Motions, February 6, 2002) for the proposition that actual service is not required. However, none of the cases cited by the government involved substitute service on an estranged spouse.

Here, service must be strictly construed. Karlsson v. Rabinowitz, 318 F.2d 666 (4<sup>th</sup> Cir. 1963), citing Rovinski v. Rowe, 131 F.2d 687 (6<sup>th</sup> Cir. 1942) (service must be liberally



construed, except when the defendant receives no actual knowledge of the complaint). Respondents, here, received no notice, actual or otherwise, of the government's complaint until January 3, 2011. (Dudley Burrell Affidavit, ¶ 25-29).

Here, the case closest to that at bar is Williams v. Capital Transit Co., 215 F.2d 487 (D.C. Cir. 1954). In Williams, the defendant received no notice of the action until three years after default judgment had been entered against him, making inapplicable the liberal construction of the rule approved in Rovinski. Id. at 490. Here, Respondents received no actual notice of the action until almost five years after a motion for default judgment had been sought against them. (Dudley Burrell Affidavit, ¶ 25-29).

Furthermore, the facts of the Williams case show that the defaulting defendant had become estranged and had separated from his wife for about three years prior to the purported service of process which was made upon his estranged wife at her residence. Here, Respondent had become estranged and had separated and estranged from his wife about three years prior to the service of process which was made upon his estranged wife at her business office. (Dudley Burrell Affidavit, ¶ 25-29).

The Williams court noted that "[i]t is patent that the likelihood of the husband's receipt, through such service of process, of actual knowledge of the action and his duty to

defend is rather remote." Here, the likelihood of Respondents receiving actual notice of the government's complaint was just as remote. In fact, Respondents never received any notice, constructive or otherwise, until five years after the commencement of the suit. (Dudley Burrell Affidavit, ¶ 25-29).

This case is similar to the other decisions holding that service at the residence of an estranged and absent spouse is not sufficient to confer jurisdiction over the other spouse. See e.g., Hiram Walker Distrib. Co. v. Giacone, 339 Ill.App. 279, 89 N.E. 2d 748 (Ill.App.1950); Scobbie v. Burch, 337 Ill.App. 656, 86 N.E.2d 160 (Ill.App. 1949).

Since Respondents never received notice, actual or otherwise, of the government's complaint and since Respondent was separated and estranged from his wife prior to the time of the alleged service, the service of the government's complaint must be quashed, as a matter of law.

**IV. Proof of Service Was Defective Therefore, the Government's Complaint Should be Dismissed as a Matter of Law**

Proof of service of the complaint is governed by 40 C.F.R. § 22.5(C)(iii), which provides, in relevant part:

Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional

Hearing Clerk immediately upon completion of service.

In this case, the record reveals that the government filed its complaint against the Respondents on June 22, 2006. Willie Burrell purportedly signed the certified mail receipt ("green cards") for all Respondents on July 10, 2006.

Irregularities with the green cards make proof of service on Respondents defective. First, it is the customary practice of the EPA to date stamp the green cards on the same side as the purported signature. (Derek Burrell Affidavit, ¶ 5-6). This was not done in this case. Secondly, an EPA employee, Region 5, Regional Hearing Clerk ("RHC"), LaDawn Whitehead, indicated that she altered the green cards by writing the date received on the front of the green cards. (Derek Burrell Affidavit, ¶ 10). Ms. Whitehead indicated that she made the alterations, not contemporaneous with the time that the green cards were purportedly originally stamped, but at a much later time after her employment with the EPA. (Derek Burrell Affidavit, ¶ 10-12). The date the green cards were written on had to be after April 2009 as this was the date Ms. Whitehead began her duties as a RHC. (Derek Burrell Affidavit, ¶ 13). Moreover, at least one of the green cards that had a written date had been altered with whiteout and written over. (Derek Burrell

Affidavit, ¶ 11). The handwritten dates purport to match those that are stamped on the non-signature side of the green cards. (Derek Burrell Affidavit, ¶ 14).

As a result, a cloud exists over the true date the green cards were actually filed by the government with the RHC. The burden of proof as to the timeliness of the proof of service rests with the government. Since it cannot be determined when the green cards were actually filed, proof of service in the case at bar is defective. Therefore, all of the allegations against these Respondents must be dismissed, with prejudice, as a matter of law.

**V. The Government's Complaint Is Barred By The Applicable Five Year Statute of Limitation.**

The government alleged violations of the TSCA against Respondents. The alleged violations for 1393 E. Chestnut and 1975 Erzinger occurred on December 4, 2001 and February 22, 2003, respectively. Since the service of the government's complaint and/or proof of service was defective, any allegations against Dudley B. Burrell or the Dudley B. Burrell Trust for the 1393 E. Chestnut and 1975 Erzinger properties are now barred by the five (5) year statute of limitation. See Newell Recycling Company v. U.S. E.P.A., 231 F.3d 204 (5<sup>th</sup> Cir. 2000); 3M Company v. EPA, 17 F.3d. 1453 (U.S. Dist. Ct. 1994). Thus, the government's complaint must be dismissed, as a matter of law.

Wherefore, Respondents Dudley Burrell and the Dudley B. Burrell Trust hereby tender their Memorandum in Support of their Motion To Quash and Motion to Dismiss and hereby request all relief just and proper in the premises.

Respectfully submitted,



Derek S. Burrell  
649 N. Rosewood  
Kankakee, IL 60901  
815-954-3296

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**CERTIFICATE OF SERVICE**

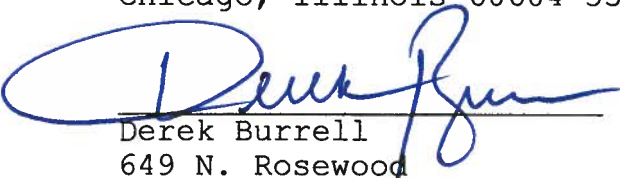
Respondents Dudley B. Burrell and the Dudley B. Burrell Trust hereby certify that its Memorandum in Support of Their Motion to Quash and Motion to Dismiss, in the above-captioned matter was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 1 day of March 2011 at:

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Kankakee, Illinois, )  
)  
Respondents. )

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AFFIDAVIT OF DEREK S. BURRELL

I, the undersigned, am over the age of 18 and I am of sound mind.

1. On January 11, 2011, I became employed, on an as-needed basis, by Dudley Burrell and the Dudley Burrell Trust.

2. I will be the Representative for all of the Respondents in the above-captioned matter.

3. On or about January 14, 2011, I went to the Environmental Protection Agency ("EPA"), Region 5, in Chicago, Illinois, to inspect the Region's file on the above-named Respondents.

4. At that time, I met with LaDawn Whitehead who is employed as Regional Hearing Clerk for the EPA, Region 5.

5. Ms. Whitehead explained the customary practice of the Regional Hearing Clerk with respect to filing "proof of service" under the Consolidated Rules of Practice.

6. According to Ms. Whitehead, when a green card comes

to the Regional Hearing Office, the date it is received is mechanically stamped on the same side as the signature.

8. After a green card is date stamped it is stapled to a piece of paper and filed in the record of the case.

9. Upon examination, none of the four green cards were date stamped on the signature side of the green cards.

10. Ms. Whitehead indicated that she personally wrote the date on the signature side of the green cards, sometime after she became employed with the EPA.

11. Ms. Whitehead also indicated that she had used whiteout on some of the green cards, but I can not recall how many of the cards had white-out.

12. Ms. Whitehead could recall that she made the additions to the green cards, but she could not specify when she made the additions.

13. The date the green cards were written on had to be after April 2009 as this was the date Ms. Whitehead began her duties as a RHC. (See Declaration of LaDawn Whitehead, Government's Complaint, Attachment 2).

14. The handwritten dates purport to match those that are stamped on the non-signature side of the green cards.

I affirm the foregoing are true and correct, to the best of my knowledge, under penalty of perjury.

  
Derek S. Burrell

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3-1-11  
Date  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. TSCA-05-2006-0012  
)  
Willie P. Burrell ) Proceeding to Assess a Civil  
The Willie P. Burrell Trust, ) Penalty under section 16(a)  
Dudley B. Burrell, and The ) The Toxic Substances Control  
Dudley B. Burrell Trust ) Act, 15 U.S.C. § 2615(a)  
Kankakee, Illinois, )  
)  
Respondents. )  
\_\_\_\_\_ )

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**AFFIDAVIT OF DUDLEY B. BURRELL**

I, the undersigned, am over the age of 18 and I am of sound mind.

1. Dudley B. Burrell is the owner of The Dudley B. Burrell Declaration of Trust (hereinafter, referred to collectively as "Burrell").

2. Burrell is engaged in the business of leasing residential apartment units.

3. At all relevant times, Burrell has been legally married to Willie P. Burrell ("wife").

4. Burrell and wife were married in August of 1961.

5. From 1965 to 2003 Burrell was engaged in the business of apartment rentals with his wife under various corporate entities, including but not limited to New World Development Corporation and B & D Management, Inc. ("B & D").

6. From 1979 to 2003, my personal residence has been

5495 Muriel Lane, St. Anne, Illinois, 60904.

7. From 1979 to 2003, my business address was 300 N. Indiana Avenue, Kankakee, Illinois, 60901.

8. On or about December of 2003, I became estranged from my wife.

9. Since approximately December 2003, I have conducted my rental business and resided at 649 N. Rosewood, Kankakee, Illinois.

10. Since December 2003, my wife has continued to conduct business at 300 N. Indiana Avenue, Kankakee, Illinois, 60901 and reside at 5495 Muriel Lane, St. Anne, Illinois, 60904.

11. Burrell and wife are currently involved in a divorce action, Willie Pearl Burrell v. Dudley B. Burrell, Cause No: 09-D-110, in the Circuit Court of Iroquois County, Illinois, Twenty-First Judicial Circuit, which was filed on November 17, 2009.

12. On or about December of 2003, wife has had total business control over all of the properties in her name, as well as any properties which are designated in the Willie P. Burrell Declaration of Trust, specifically 257 N. Chicago, #1 and # 5; 993 N. Schuyler, and 257 N. Chicago.

13. Since December of 2003, Dudley B. Burrell has had total business control over all of the properties in his name, as well as any properties which are designated in The

Dudley B. Burrell Declaration of Trust, specifically, 1975 E. Erzinger and 1395 E. Chestnut.

14. B & D was a closely held company owned and operated by Burrell and wife.

15. At all relevant times alleged in complainant's complaint, B & D, was the company responsible for leasing apartment units owned by Burrell, wife, and their respective trusts.

16. From 1965 to 2003, Dudley B. Burrell would actually purchase, rehabilitate, and construct apartment buildings. Wife ran all of the office and administrative functions of the business.

17. At all relevant times alleged in the government's complaint, Dudley Burrell, wife, and their respective trusts, employed less than five (5) employees, three (3) of which have been two sons and a daughter-in-law.

18. Burrell has been locked out of the business of B & D Management since December of 2003, as well as wife's new company, Burrell Property Management, L.L.C.

19. Burrell has also been estranged from two of his sons and his daughter-in-law (they assisted in operating B & D and now Burrell Property Management, L.L.C.).

20. On or about January 1, 2004 to the present, Dudley Burrell has specifically told wife not to accept service for him and to return his mail to sender.

21. Burrell has operated his business from one address, 649 N. Rosewood, Kankakee, Illinois, 60901, from December 2003 to the present.

22. From January 1, 2004 to the present, all documents for the units at 1975 E. Erzinger and 1395 E. Chestnut have been retained at my home and business address at 649 N. Rosewood, Kankakee, Illinois, 60901.

23. At all times, the documents for the units at 257 N. Chicago, #1, 257 N. Chicago, #5, 993 N. Schuyler, and 575 E. Oak have been retained, to my knowledge, at 300 North Indiana Avenue, Kankakee, Illinois, 60901.

24. Because of the estrangement of Dudley Burrell from his family, Burrell nor the Dudley B. Burrell Trust received notice, actual, constructive or otherwise, of the government's complaint, filed on June 22, 2006.

25. Burrell received constructive notice of the above-captioned matter, on January 3, 2011.

26. Respondent received actual notice of Complainant's Memorandum In Support of and Motion for Default Order which was filed on January 3, 2010, on January 11, 2011.

27. Dudley Burrell received constructive notice on January 3, 2011, from one of his sons, Derek Burrell, who became employed with Burrell Property Management, L.L.C. on January 1, 2011.

28. Prior to January 3, 2011, Respondent had no

knowledge of this matter.

29. On the date of the purported service, Respondents' home and business address was 649 Rosewood, Kankakee, Il. 60901.

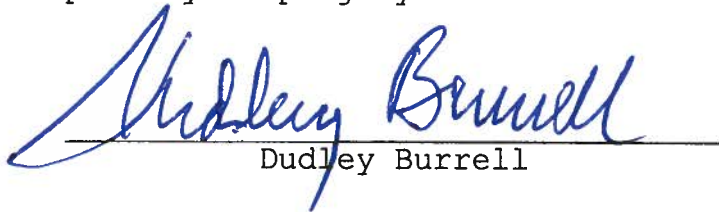
30. On the date of the purported service, Respondents' Illinois driver's license indicated that Respondents home and business address was 649 N. Rosewood, Kankakee, Illinois, 60901.

31. Respondents, here, never signed the "return receipt" green card indicating that the Respondents were properly served with the government's complaint.

32. The green card return receipts have the purported signature of my estranged wife, Willie P. Burrell.

33. I remain estranged from my wife.

I affirm that the foregoing are true and correct, under penalty of perjury.

  
Dudley Burrell

3/1/11  
Date

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