

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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MOTION REQUESTING ORAL ARGUMENT

Respondents Willie P. Burrell and The Willie P. Burrell Trust (hereinafter, referred to as, "Respondents"), by and through their Representative, pursuant to 40 C.F.R. § 22.16 and 40 C.F.R. § 22.30(d) tender their Motion Requesting Oral Argument in Support of Respondents' Motion Opposing Default Judgment, and in support states:

1. Respondents assert that they are entitled to relief from an entry of a default judgment.

2. Respondents assert they are entitled to relief from an entry of a default judgment, in part, because of the "gross negligence" and "disappearance" of their attorney.

3. Respondents contend that the above-referenced issue appears to be one of first impression for the Board.

4. Presently, there is a split of authority on this issue in the federal circuit courts.

5. The majority view, followed by the First, Second,

Third, Fourth, Fifth, Sixth, Ninth and Eleventh Circuits would allow relief from a default judgment when the party's attorney's conduct is so grossly negligent, it is inexcusable or where the attorney disappears, abandoning the client.

6. The minority view, followed only by the Seventh and Eighth Circuit Courts, presumably would not allow relief from judgment for an attorney's disappearance or grossly negligent conduct, under any circumstance.

7. Respondents contend that the rule expressed in Community Dental Services v. Tani, 282 F.3d 1164 (9th Cir. 2001) should be adopted by the adjudicator and applied to the facts of the case at bar.

8. Respondents request an opportunity to present oral argument on the issue of whether a party's attorney's "gross negligence" and/or "disappearance" entitles a party relief from a default judgment under the Consolidated Rules of Practice.

Wherefore, Respondents hereby tender their Motion for Oral Argument under the Consolidated Rules of Practice and request all relief just and proper in the premises.

Respectfully submitted,



Derek S. Burrell

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Date

CERTIFICATE OF SERVICE

Respondents Willie. P. Burrell and The Willie P. Burrell Trust hereby certify that its Motion for Oral Argument was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 3 day of March 2011 at:

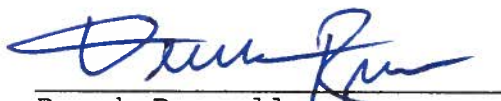
United States Environmental Protection Agency
Region 5
Joana Bezerra (DT-8J)
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Dudley B. Burrell and
The Dudley B. Burrell Trust
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Kankakee, Illinois 60901

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