

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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In the Matter of: )  
)  
) Docket No. TSCA-05-2006-0012  
)  
) Willie P. Burrell, )  
) The Willie P. Burrell Trust, )  
) Dudley B. Burrell, and )  
) The Dudley B. Burrell Trust, )  
)  
) Respondents. )  
)  
\_\_\_\_\_ )

**ORDER**

On June 22, 2006, Complainant, who is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency Region 5, commenced an administrative proceeding against four respondents, Willie P. Burrell, the Willie P. Burrell Trust, Dudley B. Burrell and the Dudley B. Burrell Trust. The Complaint alleges that each Respondent, as the lessor of certain apartment buildings located in Kankakee, Illinois, violated regulations promulgated under the Toxic Substances Control Act (TSCA) and referred to as the "Lead-Based Paint Disclosure Rule" or "Disclosure Rule."<sup>1</sup> No answer, or any other pleading, was filed in this matter until over four years later on December 17, 2010, when Complainant filed a Motion for Default Order and supporting documents.

On January 14, 2011, Respondents Willie P. Burrell and the Willie P. Burrell Trust, appearing *pro se*, filed a motion seeking a 60-day extension of time to respond to Complainant's motion for default. They allege that they received their "first actual notice of the matters pending before this administrative body" on January 3, 2011, and that since that time they have fired their legal counsel "for failure to provide legal services and failure to communicate." They seek a 60-day extension in order to retain new counsel and respond to the Complaint on its merits. These respondents allege that they received Complainant's Motion for Default Order on January 3, 2011, and the executed return receipts indicate as such.<sup>2</sup>

Similarly, on January 18, 2011, Respondents Dudley B. Burrell and the Dudley B. Burrell Trust, appearing *pro se*, filed a motion seeking a 60-day extension to respond to Complainant's

<sup>1</sup> Section 1018 of TSCA (42 U.S.C. § 4852d) requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in "target housing" which is offered for sale or lease. U.S. EPA promulgated these regulations at 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property.

<sup>2</sup> Two Domestic Return Receipts (or "green cards"), one addressed to the Willie P. Burrell Trust and one addressed to Willie P. Burrell, were signed by Willie Pearl Burrell and dated January 3, 2011.

motion for default. They allege that they received their “first actual or constructive notice of the matters pending before this administrative agency” on January 11, 2011.<sup>3</sup> Their motion is made for the purpose of allowing them an opportunity to retain new and competent legal counsel and an opportunity to respond to the Complaint on the merits.

Complainant has not responded to Respondents’ motions.

### **Discussion**

This proceeding is governed by the Consolidated Rules of Practice, 40 C.F.R. Part 22. Specifically, 40 C.F.R. § 22.7(b) governs motions for extensions of time:

(b) Extensions of time: The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceedings, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. . . .

It is arguable that Respondents’ motions for extension were not timely as they were not filed within the time allowed for a response to Complainant’s motion (15 days) with the additional five days allowed for service by mail. See 40 C.F.R. §§ 22.16(b), 22.7(c). Nonetheless, it also appears from the record that the motions were not actually received by any respondent before January 3, 2011, as that is the date that one respondent signed the return receipts for service of the motion on all four respondents. All respondents filed their motions for extension fairly promptly after that date, and I will consider their motions as timely filed.

In addition, I conclude that Respondents have demonstrated good cause for an extension of time. Respondents Willie P. Burrell and the Willie P. Burrell Trust maintain that they had retained legal counsel to represent them in this matter, whom they have now fired for failure to provide legal services. Respondents Dudley B. Burrell and the Dudley B. Burrell Trust argue that they had no actual notice or constructive knowledge of this matter prior to January 11, 2011. All respondents state that they seek an extension in order to retain legal counsel and respond to the Complaint on the merits. I can see no prejudice to Complainant in granting their motion given that the Complaint was filed over four years ago with no action by Complainant.

### **Conclusion**

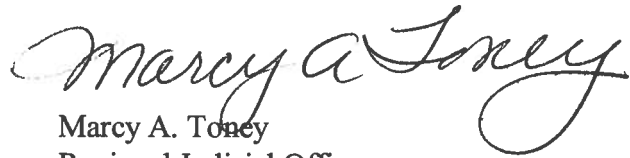
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<sup>3</sup> The record indicates that the two Domestic Return Receipts addressed to Dudley B. Burrell and the Dudley B. Burrell Trust were signed by Willie Pearl Burrell on January 3, 2011.

For the foregoing reasons, I hereby GRANT Respondents' motions for extension of time and allow them to **March 14, 2011**, to respond to Complainant's motion for default order.

SO ORDERED.

Dated: February 3, 2011



Handwritten signature of Marcy A. Toney in cursive script.

Marcy A. Toney  
Regional Judicial Officer

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In the Matter of Willie P. Burrell, the Willie P. Burrell Trust, Dudley B. Burrell and the Dudley B. Burrell Trust, Docket No. TSCA-05-2006-0012

CERTIFICATE OF SERVICE

I certify that the foregoing Order, dated February 3, 2011, was sent this day in the following manner:

Original hand delivered to:

Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copy hand delivered to  
Attorney for Complainant:

Maria Gonzalez  
U. S. Environmental Protection  
Agency, Region 5  
Office of Regional Counsel  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Copy by U.S. Mail First Class to:

Willie P. Burrell  
The Willie P. Burrell Trust  
300 North Indiana Avenue  
Kankakee, IL 60901

Dudley B. Burrell  
The Dudley B. Burrell Trust  
649 North Rosewood  
Kankakee, IL 60901

Dated: 2/3/11

By: 

Darlene Weatherspohn  
Administrative Program Assistant