



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of: Ms. Dessie L. Brumfield, d/b/a Brumfield Properties, LLC Respondent Docket No. TSCA-05--2010-0014

ORDER ON SHOWING OF GOOD CAUSE AND ORDER SCHEDULING REBUTTAL PREHEARING EXCHANGE AND DISPOSITIVE MOTIONS

A Prehearing Order dated November 18, 2011 ordered each party to file prehearing exchange information by a certain date. Complainant timely filed its Prehearing Exchange, but Respondent did not. On January 26, 2012, an Order to Show Cause was issued ordering Respondent to file a document on or before February 10, 2012 explaining why she had good cause for failing to comply with the Prehearing Order and why she should not be held in default.

When no response to the Order to Show Cause was filed by February 10, a staff attorney from the undersigned's office found that an attorney, Thomas J. McClure, had filed a "Notice of Retainer" on December 19, 2011 with the Regional Hearing Clerk but had not served it on the Administrative Law Judge. The staff attorney informed Mr. McClure of the Order to Show Cause, and on March 5, 2012, Mr. McClure submitted on behalf of Respondent a Response to Order to Show Cause and Respondent's Prehearing Exchange.

In the Response to Order to Show Cause, Respondent's counsel asserts that he was "unclear if he should wait for formal acknowledgment of his being of record from the Court" before submitting Respondent's prehearing exchange. He asserts further that the delays were a good faith error of counsel and not of the Respondent, and that Respondent's counsel had a heavy court schedule in the past two weeks, suffered the death of a grandchild in December 2011, and is unfamiliar with practicing in a federal agency forum. He therefore requests that good cause be found for Respondent's failure to timely submit a Prehearing Exchange and that it be allowed to be filed at this time.

Although Respondent's counsel could have been more diligent in inquiring about procedures with which he was not familiar, in the circumstances of this case, and considering the assertions of Respondent's counsel, Respondent will not be held in default for failing to file a timely prehearing exchange. However, Respondent's counsel is advised to familiarize himself

with the Rules of Practice at 40 C.F.R. Part 22 and Practice Manual which are available on the website of the Office of Administrative Law Judges, [www.epa.gov/oalj](http://www.epa.gov/oalj). Respondent may not be granted leniency on any future untimely filings.

The due dates for Complainant's rebuttal prehearing exchange and for dispositive motions as set out in the Prehearing Order dated November 18, 2011 have expired, and therefore it is necessary to reschedule them, as set forth below.

Accordingly, **IT IS ORDERED THAT:**

1. Complainant shall file any rebuttal prehearing exchange on Liability **on or before March 20, 2012.**
2. If any party intends to file any dispositive motion regarding liability, such as a motion for accelerated decision or motion to dismiss under 40 C.F.R. § 22.20(a), it shall be filed **on or before April 20, 2012.**
3. The parties shall continue in good faith to attempt to negotiate a settlement of this case.



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M. Lisa Buschmann  
Administrative Law Judge

Dated: March 6, 2012  
Washington, DC

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In the ADR matter of *Ms. Dessie L. Brumfield, d/b/a Brumfield Properties, LLC*. Respondent.  
Docket No. TSCA-05-2010-0014

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CERTIFICATE OF SERVICE

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I hereby certify that the foregoing **Order on Showing of Good Cause and Order Scheduling Rebuttal Prehearing Exchange and Dispositive Motions**, dated March 6, 2012 was sent this day in the following manner to the addressees listed below.

  
\_\_\_\_\_  
Knolyn R. Jones  
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

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