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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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 OF DISMISSAL and DEFAULT ORDER AND INITIAL DECISION

I. Background

This is a proceeding under section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules") codified at 40 C.F.R. Part 22. Complainant filed this action on June 22, 2006, alleging that each of the four respondents, Willie P. Burrell, the Willie P. Burrell Trust, Dudley B. Burrell and the Dudley B. Burrell Trust, as the lessors of certain apartment buildings located in Kankakee, Illinois, violated TSCA regulations known as the "Lead-Based Paint Disclosure Rule" (or "Disclosure Rule"). Complainant seeks a penalty of $89,430.

Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d) ("the Act"), requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The Administrator promulgated regulations at 40 C.F.R. Part 746, Subpart F, on March 6, 1996. Subpart F (also known as the "Disclosure Rule") imposes certain requirements on sellers and lessors of "target housing" including the requirement to disclose to purchasers or lessees the presence of any known lead-based paint and/or lead-based paint hazards, provide available records and reports, provide a lead hazard information pamphlet, and attach specific disclosure and warning language to leasing contracts before the lessee is obligated under a contract to purchase or lease "target housing." 40 C.F.R. § 745.113.

II. Procedural History

No answer or other pleading was filed in this matter until Complainant filed a motion for default order on December 17, 2010. Respondents then filed several motions and other pleadings in opposition to Complainant's motion. In an Order on Motions issued July 26, 2011, the

Presiding Officer denied Respondents' motions to dismiss for defective proof of service and granted Mr. Burrell's motion to quash service of process. In addition, the Presiding Officer held that Mrs. Burrell did not demonstrate good cause to deny the entry of the default order against her and the Willie P. Burrell Trust. The Presiding Officer ordered additional briefing on the effect of the invalid service of process on Mr. Burrell and the Dudley B. Burrell Trust and the appropriate penalty against remaining respondents should the Complaint against Mr. Burrell and the Trust be dismissed. The parties have filed supplemental briefs on those issues.

III. Resolution of Remaining Motions

Complainant states that it will no longer pursue Dudley B. Burrell or the Dudley B. Burrell Trust in this matter. Pursuant to 40 C.F.R. § 22.20(a), because of Complainant's failure to effect service of process as to these respondents and the operation of the five-year statute of limitations applicable to these claims, the motion to dismiss filed by Dudley B. Burrell and the Dudley B. Burrell Trust is hereby GRANTED.

For the reasons discussed below, Complainant's motion for default is GRANTED as to respondents Willie P. Burrell and the Willie P. Burrell Trust. These respondents[1] are found to be in default pursuant to Section 22.17(a) of the Consolidated Rules. They have failed to demonstrate good cause why a default order should not be assessed against them. Default by these respondents constitutes an admission of all facts alleged in the complaint concerning the pending proceeding and a waiver of their right to contest those factual allegations. 40 C.F.R. § 22.17(a).

Accordingly, based upon the Complaint and the documents of record, I make the following Findings of Fact and Conclusions of Law:

IV. Findings of Fact and Conclusions of Law

1. "Target housing" is defined by 40 C.F.R. § 745.103 as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or an 0-bedroom dwelling.

2. "Lessor" is defined by 40 C.F.R. § 745.103 as any entity that offers target housing for lease, rent or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.

3. "Lessee" is defined by 40 C.F.R. § 745.103 as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

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[1] Going forward in this opinion, the terms "respondent" and "respondents" shall refer only to Willie P. Burrell and/or the Willie P. Burrell Trust.

4. The Disclosure Rule, at 40 C.F.R. § 745.113(b), requires, among other things, that each contract to lease target housing must include: (1) a lead warning statement; (2) a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards of lack of knowledge of such presence; (3) a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; (4) a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2) and the Lead Hazard Information Pamphlet; and (5) signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

5. Failing to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to EPA administrative civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f) and 42 U.S.C. § 4852d(b)(5).

6. Between at least December 4, 2001, and April 1, 2003, Willie P. Burrell, either directly or through an agent, offered for lease residential units in apartment buildings located at 1393 E. Chestnut, 257 N. Chicago, 575 E. Oak, 1975 Erzinger and 993 N. Schuyler in Kankakee, Illinois (the Apartment Buildings).

7. Between December of 2001 and April of 2003, the Willie P. Burrell Trust, either directly or through its agent, offered for lease residential units in apartment buildings located at 1393 E. Chestnut, 257 N. Chicago, 575 E. Oak, 1975 Erzinger and 993 N. Schuyler in Kankakee, Illinois (the Apartment Buildings).

8. The Apartment Buildings were constructed before 1978.

9. The Apartment Buildings and each residential dwelling unit within these buildings are "target housing" as defined in 40 C.F.R. § 745.103.

10. On the dates indicated, Willie P. Burrell or the Willie P. Burrell Trust, either directly or through an agent, entered into six written lease agreements with individuals for the lease of units in the Apartment Buildings:

1.	1393 E. Chestnut	12/4/2001
2.	257 N. Chicago Apt. 1	09/20/2002
3.	257 N. Chicago Apt. 5	04/01/2003
4.	575 E. Oak Apt. 5	02/07/2003
5.	1975 Erzinger	02/22/2003
6.	993 N. Schuyler Apt. 2	11/22/2002

11. Each of these six leases covered a term of occupancy greater than 100 days.

12. Willie P. Burrell and the Willie P. Burrell Trust are "lessors," as defined by 40 C.F.R. §

745.103, since they offered the target housing referenced in paragraph 10 for lease.

13. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment thereto, a Lead Warning Statement before the lessee was obligated under the contract, with regard to each of the properties referenced in paragraph 10.

14. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment thereto, a Lead Warning Statement before the lessee was obligated under the contract, with regard to the each of the properties referenced in paragraph 10.

15. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

16. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

17. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records were available before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

18. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records were available before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

19. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

20. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the

lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

21. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying to the accuracy of their statements and the date of such signatures before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

22. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying to the accuracy of their statements and the date of such signatures before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

23. Respondent Willie P. Burrell violated 40 C.F.R. § 745.113(b)(1), (b)(2), (b)(3), (b)(4), and (b)(6) as alleged in Counts 1 – 89 of the Complaint.

24. Respondent Willie P. Burrell Trust violated 40 C.F.R. § 745.113(b)(1), (b)(2), (b)(3), (b)(4), and (b)(6) as alleged in Counts 1 – 89 of the Complaint.

25. Respondents Willie P. Burrell and Willie P. Burrell Trust have failed to demonstrate good cause to deny the entry of the default order against them.

V. <u>Penalty Criteria</u>

The Consolidated Rules of Practice provide in pertinent part that, upon default:

> The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.

40 C.F.R. § 22.17(c).

In addition, as to penalty determination, the Consolidated Rules provide that:

> If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based upon the evidence in the record and in accordance with any civil penalty criteria in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act.

As indicated above, Respondents have been found to have violated the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("the Act"), 42 U.S.C. §§ 4851-56. Section 1018 of the Act provides that a violation of any of its requirements "shall be a prohibited act under section

409 of the Toxic Substances Control Act (TSCA) [15 U.S.C. § 2689] . . . [and] the penalty for each violation under section 16 of that Act [15 U.S.C. § 2615] shall not be more than $10,000."[2] 42 U.S.C. § 4852(b)(5). The applicable statutory criteria for the assessment of a penalty are, therefore, delineated in TSCA.

Section 16 of TSCA provides that "in determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of such prior violations, the degree of culpability, and such other matters as justice may require." 15 U.S.C. § 2615(a)(2)(B).

In February 2000, EPA's Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Toxics and Pesticides Enforcement Division, issued a Section 1018 – Disclosure Rule Enforcement Response Policy ("ERP").[3] The ERP sets forth a two stage process for calculating a proposed civil penalty for a violation of the Act's Disclosure Rule by a responsible party. The first step is the determination of a "gravity-based penalty," referring to the overall seriousness of the violation, taking into account the "nature" of the violation, the "circumstances" of the violation, and the "extent" of harm that may result from a given violation. ERP at 9. These factors are incorporated into a penalty matrix that specifies the appropriate gravity-based penalty. Once the gravity-based penalty has been determined, upward or downward adjustments may be made to that penalty in consideration of the violator's ability to pay/continue in business, history of prior violations, degree of culpability, voluntary disclosure, and "such other factors as justice may require." ERP at 9.

The ERP further provides that the requirements of the Disclosure Rule are most apparently characterized as "hazard assessment" in nature, *i.e.,* designed to provide potential purchasers and lessees of target housing with information that will permit them to weigh and assess the risks presented by the actual or possible presence of lead-based paint or lead-based hazards in the target housing they might purchase or lease. ERP at 9. The "nature" of the violation has a direct effect on the measure used to determine which "circumstances" and "extent" categories are selected on the gravity-based penalty matrix. The ERP sets out six levels of

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[2] Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. note, each federal agency must issue regulations adjusting for inflation the statutory civil penalties that can be imposed under the laws administered by that agency, and thereafter periodically review and adjust the penalty provisions at least once every four years. EPA's adjusted penalty provisions appear at 40 C.F.R. Part 19. For violations of the Act occurring after January 30, 1997 and through March 15, 2004, the adjusted statutory maximum is $11,000. 40 C.F.R. § 19.4.

[3] The ERP is Attachment 26 to Complainant's Memorandum in Support of Motion for Default Order. In December 2007, the Office of Enforcement and Compliance Assurance issued a revised ERP that was "immediately applicable" and "should be used to inform the appropriate enforcement response and to guide the calculation of any proposed penalties in administrative enforcement actions concerning violations of the Disclosure Rule." The penalty in this matter was originally calculated sometime before the filing of the Complaint on June 22, 2006, and thus was based on the 2000 ERP. That penalty has been more recently reviewed by Agency personnel who concluded that the penalty amount would be same whether the 2000 or 2007 policy was applied. *See* Declaration of Joana Bezerra, Attachment 25 to Complainant's Memorandum in Support of Motion for Default Order, ¶ 49 ("Att. 25").

"circumstances" reflecting the probability of impairing a purchase's or lessee's ability to assess the information required to be disclosed. Those violations which have a "high" probability of causing such impairment are classified as "Level 1 or 2 violations;" violations having a medium probability of impairment are "Level 3 or 4 violations;" and violations having a low probability of impairment are "Level 5 or 6 violations." ERP at 10.

The "extent" of the violation considers the degree, range or scope of the violation, focusing on the overall intent of the rule, which is to prevent childhood lead poisoning. The extent of a violation is considered "major" if there is potential for "serious" damage to human health or for major damage to the environment; "significant" if the potential is for "significant" damage to human health or the environment; and "minor" if the potential is for a "lesser" amount of damage to human health or the environment. ERP at 10. Under the ERP, the "extent" factor is based upon two measurable facts: (1) the age of any children who live in target housing; and (2) whether a pregnant woman lives in the target housing. ERP at 11, B-4.

As to the second stage of the process, the ERP sets forth specific circumstances under which the Agency will adjust the gravity based penalty downward or upward in consideration of the violator's ability to pay/continue in business, history of prior violations, degree of culpability, and "other factors as justice may require." ERP at 14-18.

VI. Complainant's Penalty Proposal

In the Complaint, EPA seeks a total penalty of $89,430, and submits the Declaration of Joana Bezerra, an Environmental Engineer with the Pesticides and Toxics Compliance Section, Land and Chemicals Division in Region 5, in support of that proposed penalty. Att. 25. In accordance with the ERP, Ms. Bezerra assigned "circumstance levels" and "extent categories" to each of the five violation types that occurred with respect to each of the six leases at issue. Ms. Bezerra's application of the facts of each violation to the penalty matrices in the ERP produced the following penalties:

Count 1: Failure to Include Lead Warning Statement (40 C.F.R. § 745.113(b)(1))
(Level 2 Circumstance)

$8,800 for 257 N. Chicago Apt. 1 (child under 6)
$8,800 for 1393 East Chestnut (child under 6)
$8,800 for 257 N. Chicago Apt. 5 (child under 6)
$5,500 for 993 N. Schuyler (child 6-18)
$1,320 for 575 East Oak
$1,320 for 1975 Erzinger
$34,540

Count 2: Failure to include Statement Disclosing Presence or Lack of Knowledge of Lead-Based Paint (40 C.F.R. § 746.113(b)(2)) (Level 3 Circumstance)

$6,600 for 257 N. Chicago Apt. 1 (child under 6)
$6,600 for 1393 East Chestnut (child under 6)
$6,600 for 257 N. Chicago Apt. 5 (child under 6)
$4,400 for 993 N. Schuyler (child 6-18)
$660 for 575 East Oak
$660 for 1975 Erzinger
$25,520

Count 3: Failure to Include a List of Records or Reports (40 C.F.R. § 746.113(b)(3)) (Level 5 Circumstance)

$2,200 for 257 N. Chicago Apt. 1 (child under 6)
$2,200 for 1393 East Chestnut (child under 6)
$2,200 for 257 N. Chicago Apt. 5 (child under 6)
$1,430 for 993 N. Schuyler (child 6-18)
$220 for 575 East Oak
$220 for 1975 Erzinger
$8,470

Count 4: Failure to Include Lessee's Affirmation of Receipt (40 C.F.R. § 745.114(b)(4)) (Level 4 Circumstance)

$4,400 for 257 N. Chicago Apt. 1 (child under 6)
$4,400 for 1393 East Chestnut (child under 6)
$4,400 for 257 N. Chicago Apt. 5 (child under 6)
$2,750 for 993 N. Schuyler (child 6-18)
$440 for 575 East Oak
$440 for 1975 Erzinger
$16,830

Count 5: Failure to Include Certifying Signatures (40 C.F.R. § 745.113(b)(6)) (Level 6 Circumstance)

$1,100 for 257 N. Chicago Apt. 1 (child under 6)
$1,100 for 1393 East Chestnut (child under 6)
$1,100 for 257 N. Chicago Apt. 5 (child under 6)
$550 for 993 N. Schuyler (child 6-18)
$110 for 575 East Oak
$110 for 1975 Erzinger
$4,070

The total gravity-based penalty for the violations alleged in the Complaint is $89,430.

The Agency next considered the so-called "adjustment factors" set forth in the statute and the ERP to arrive at a proposed penalty amount. Ms. Bezerra considered Respondents' history of prior violations of the Disclosure Rule, and finding none, made no adjustment for that factor. Att. 25 ¶ 51. Similarly, no adjustment was made for culpability, attitude, or risk of exposure. ERP at 15-16, Att. 25 ¶¶ 52-54. Furthermore, no adjustments were made for Supplemental Environmental Projects, the Audit Policy, voluntary disclosure or the size of the business, owning or leasing only one target housing unit, or the economic benefit of noncompliance, as these factors were found to be not applicable to Respondents. ERP at 16-18, Att. 25 ¶¶ 55-57. Finally, the Agency considered Respondents' ability to pay but concluded that no adjustment was warranted because Respondents had not claimed an inability to pay and had not submitted any documentation to support such a claim. ERP at 14, Att. 25 ¶ 50.

Respondents' first claim of inability to pay in this proceeding came when they belatedly filed their answer on January 14, 2011, but they submitted no documentation to substantiate their claim. In their memorandum opposing Complainant's default motion,[4] they reiterated their claim of inability to pay and submitted certain financial information consisting of copies of federal and state income tax returns for the years 2007, 2008, and 2009 (all but one of which were unsigned by the taxpayer). Respondents also completed a Form 4506-T "Request for Transcript" and an Individual Ability to Pay Claim Financial Data Request Form upon request by the Agency. EPA uses the Form 4506-T to obtain verification from the Internal Revenue Service that the tax information submitted by a party matches the information provided to the IRS and has not been amended.[5] The IRS was, however, "unable to provide the requested information" to EPA.[6] On May 11, 2011, EPA followed up with letter to Derek Burrell, Respondents' representative, seeking additional information regarding Respondents' finances, including a complete list of properties owned, their current market value and amount owed.[7] EPA's financial analyst states that, without the information requested in this letter, she is unable to make an accurate determination of Respondents' ability to pay.[8] In addition, EPA has sought, but not received, copies of any tax returns filed by the Willie P. Burrell Trust.[9] In response to the Presiding Officer's Order on Motions of July 26, 2011, Respondents provided some additional information to bolster their inability to pay claim, including a new Form 4501-T, a corrected Individual Inability to Pay Form, and other evidence of indebtedness.[10]

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[4] Filed March 7, 2011.

[5] Declaration of Cynthia Mack-Smeltzer, ¶ 16, Attachment 2 to Memorandum in Support of Complainant's Supplement, filed August 16, 2011.

[6] Attachment 5 to Memorandum in Support of Complainant's Supplement.

[7] Attachment 6 to Memorandum in Support of Complainant's Supplement.

[8] Declaration of Cynthia Mack-Smetzer, ¶ 30.

[9] Declaration of Cynthia Mack-Smeltzer, ¶ 13.

[10] Respondent's Joint Supplemental Memorandum Pursuant to July 26, 2011 Order on Motions, Attachments A, B, and C.

As the Environmental Appeals Board has noted, "the law pertaining to the burdens of proof and other matters pertaining to [the ability to pay] penalty factor is well settled." *In re Donald Cutler,* 11 E.A.D. 622, 631 (EAB 2004). In regard to meeting its burdens on penalty, EPA can make a prima facie case of appropriateness of the relief sought by demonstrating that it considered each of the statutory penalty factors and that the recommended penalty is supported by analyses of those factors. *Cutler*, 11 E.A.D. at 631-32. "If ability to pay is contested, a complainant must establish a prima facie case that a proposed penalty is nonetheless 'appropriate' by presenting . . . 'some evidence to show that it considered the respondent's ability to pay a penalty.'" *Cutler*, 11 E.A.D. at 632, quoting *In re New Waterbury, Ltd.*, 5 E.A.D. 529, 542 (EAB 1994). Complainant need not present any specific evidence to show that respondent can pay, "but can simply rely on some *general* financial information regarding the respondent's financial status which can support the *inference* that the penalty assessment need not be reduced." *New Waterbury,* 5 E.A.D. at 543. "Once the respondent has presented specific evidence to show that despite its . . . apparent insolvency it cannot pay any penalty, the Region as part of its burden of proof in demonstrating the 'appropriateness' of the penalty must respond either with the introduction of additional evidence to rebut the respondent's claim or through cross examination it must discredit the respondent's contentions." *Id.*

In this case, Complainant presented some general financial information to support the inference that the gravity-based penalty assessment need not be reduced, including a statement of Ms. Burrell's annual income and bank account information. While Respondents have attempted to rebut such evidence with some specific information, they have failed to provide the additional information necessary to successfully rebut Complainant's prima facie case. Of particular note, the Agency was unable to verify the information contained in Respondent's tax returns. In addition, while Respondents' did, quite belatedly, provide some of the additional information EPA requested, they still have not produced a complete list of properties owned by Mrs. Burrell and the Trust, their market value and amounts owed on those properties, information that is essential in making a fair evaluation of Respondents' ability to pay the penalty EPA has proposed.

Finally, with regard to penalty, Respondents argue that, assuming they have an ability to pay a penalty, that penalty should not exceed $63,580, because neither Mrs. Burrell nor the Trust owned the properties on Chestnut or Erzinger and never offered or executed the leases for those properties. Rather, they argue, it was Mr. Burrell who offered these properties for lease, but he has now been dismissed from this action. By virtue of their default, however, Mrs. Burrell and the Trust are deemed to have admitted all the facts alleged in the Complaint and have waived their right to contest the factual allegations contained therein. 40 C.F.R. § 22.17(a). Complainant clearly alleged that Respondents, as lessors, offered the target housing at issue for lease and violated the relevant provisions of the Disclosure Rule. See Complaint ¶¶ 38, 53, 62, 71, 80 and 89. Those allegations can no longer be contested in this matter.

Accordingly, I conclude that the $89,430 penalty EPA has proposed is consistent with the evidence in the record and in accord with the penalty criteria set forth in TSCA and the Section 1018 Disclosure Rule Enforcement Response and Penalty Policy.

DEFAULT ORDER

It is hereby ORDERED as follows:

1. Respondents Willie P. Burrell and the Willie P. Burrell Trust are assessed a civil penalty in the amount of $89,430.

2. Respondents Willie P. Burrell and the Willie P. Burrell Trust shall, within thirty calendar days after this Default Order has become final, forward a cashier's or certified check payable to "Treasurer, United States of America," and shall deliver the check to:

U.S. EPA Region 5
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, Respondents shall mail a copy of the check to:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard (E-19J)
Chicago, IL 60604

and to:

Julie Morris (LC-8J)
Pesticides and Toxics Compliance Section
Land and Chemicals Division
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

A transmittal letter identifying the case name and docket number should accompany both the remittance and copies of the check.

3. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c). This Initial Decision shall become a final order unless: (1) an appeal to the Environmental Appeals Board is taken from it by any party to the proceedings within thirty (30) days from the date of service provided in the certificate of service accompanying this order; (2) a party moves

to set aside the Default Order; or (3) the Environmental Appeals Board elects, *sua sponte*, to review the Initial Decision within forty-five (45) days after its service upon the parties.

IT IS SO ORDERED.

Dated: November 23, 2011

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 November 23, 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:

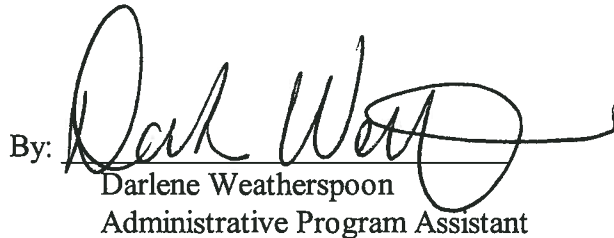
Maria Gonzalez
U. S. Environmental Protection
Agency, Region 5
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, IL 60604-3590

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: 11/23/11

By:

Darlene Weatherspoon
Administrative Program Assistant