



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

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MAR 14 2011

C-14J

**BY HAND DELIVERY**

REPLY TO THE ATTENTION OF:

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

Re: 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

Dear Ms. Toney:

Enclosed please find a file-stamped copy of Complainant's Response to Respondents Willie P. Burrell and the Willie P. Burrell Trust Motion Opposing Order of Default Judgment, Complainant's Response to Respondents Willie P. Burrell and the Willie P. Burrell Trust Motion to Dismiss for Defective Service of Process and Complainant's Memorandum in Support of Complainant's Response to Respondents Willie P. Burrell and the Willie P. Burrell Trust Motion Opposing Default Judgment and Motion to Dismiss. Complainant filed the original and one copy of this Motion with the Regional Hearing Clerk.

Respectfully Submitted,

  
Maria Gonzalez

Associate Regional Counsel

Enclosures

cc: Willie P. Burrell  
The Willie P. Burrell Trust  
Dudley B. Burrell  
The Dudley B. Burrell Trust  
Derek Burrell

***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***

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**CERTIFICATE OF SERVICE**

I hereby certify that today I filed the original and one copy of (1) Complainant's Response to Respondents Willie P. Burrell and The Willie P. Burrell Trust Motion Opposing Order of Default Judgment; (2) Complainant's Response to Respondents Willie P. Burrell and The Willie P. Burrell Trust Motion To Dismiss For Defective Service Of Process; (3) Complainant's Memorandum In Support of Complainant's Response to Respondents Willie P. Burrell and The Willie P. Burrell Trust Motion Opposing Default Judgment and Motion To Dismiss; and (4) this Certificate of Service in the office of the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604-3590

I then personally served a true and accurate copy of the filed documents to:

Marcy Toney  
Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, IL 60604-3590

I also mailed today a true and accurate copy by first class mail to each of the following:

1. Derek S. Burrell  
649 N. Rosewood  
Kankakee, Illinois 60901
2. Willie P. Burrell and  
The Willie P. Burrell Trust  
300 North Indiana Avenue  
Kankakee, IL 60901
3. Dudley B. Burrell and  
The Dudley B. Burrell Trust  
649 N. Rosewood  
Kankakee, IL 60901

and

Initialed: Donald E. Ayres

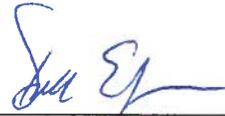


***In the Matter of: Willie P. Burrell, The Willie P. Burrell Trust,  
Dudley B. Burrell, and The Dudley B. Burrell Trust  
Docket No.: TSCA-05-2006-0012***

**CERTIFICATE OF SERVICE (cont.)**

4. Dudley B. Burrell and  
The Dudley B. Burrell Trust  
300 North Indiana Avenue  
Kankakee, IL 60901

dated: March 14, 2011



---

Donald E. Ayres,  
Paralegal Specialist, MM2-4  
Office of Regional Counsel  
U.S. EPA Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590  
(312) 353-6719

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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

COMPLAINANT'S RESPONSE TO RESPONDENTS WILLIE P. BURRELL AND  
THE WILLIE P. BURRELL TRUST MOTION TO DISMISS FOR DEFECTIVE  
SERVICE OF PROCESS.

Pursuant to Section 22.16 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (Consolidated Rules), 40 C.F.R. § 22.16, Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, by and through his attorney, hereby responds to the Motion to Dismiss for Defective Service of Process submitted on behalf of Respondents Willie P. Burrell and the Willie P. Burrell Trust.

Respondents Willie P. Burrell and the Willie P. Burrell Trust claim that the proof of service of the Complaint was defective. However, the return receipts were properly executed. They show the date of filing as well as the date of receipt and signature. As set forth in the attached Declaration of the Regional Hearing Clerk on File Stamp Dates on Certified Mail Receipts, the Regional Hearing Clerk wrote the date of the Regional Hearing Clerk file stamp that she saw on the front side of the card on the back side of the

cards, prior to scanning them; the signature dates indicating receipt of the Complaint were not altered; documents, including green cards, are stamped with the Regional Hearing Clerk file stamp on the date they are filed in the Regional Hearing Clerk's Office; the green cards addressed to the Willie P. Burrell Trust was stamped with the Regional Hearing Clerk's file stamp, showing a filing date of July 18, 2006; and the green card addressed to Willie P. Burrell was file stamped with the Regional Hearing Clerk's file stamp, showing a filing date of July 17, 2006. The insertion by the Regional Hearing Clerk of the date of filing on the signature side of the green card does not vitiate proof of service. A Memorandum in Support of Complainant's Response to Respondents Willie P. Burrell and the Willie P. Burrell Trust Motion Opposing Default Judgment and Motion to Dismiss is also enclosed.

Respondent's Motion should be denied, and a ruling in favor of the Complainant should be granted.

Respectfully Submitted,

  
Maria E. Gonzalez  
Associate Regional Counsel  
United States Environmental  
Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604  
(312) 886-6630

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

COMPLAINANT'S RESPONSE TO RESPONDENTS WILLIE P. BURRELL AND  
THE WILLIE P. BURRELL TRUST MOTION OPPOSING ORDER OF DEFAULT  
JUDGMENT

Pursuant to Section 22.16 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (Consolidated Rules), 40 C.F.R. § 22.16, Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, by and through his attorney, hereby responds to the Motion Opposing Order of Default Judgment submitted by Respondents Willie P. Burrell and the Willie P. Burrell Trust.

Respondents claim that they can show good cause why a default judgment should not be entered, as well as meritorious defenses, and request that an answer they say was filed on January 14, 2010, be deemed filed timely under the totality of the circumstances.

When the Presiding Officer finds that default has occurred, he or she shall issue a default order against the defaulting party as to any or all parts of the proceeding unless

the record shows good cause why a default order should not be issued. 40 C.F.R. § 22.17(c).

Respondents have not shown good cause why a default order should not be issued. Respondents received the Complaint in this matter on June 10, 2006. (*See* green cards in Attachment 1.) As of October 8, 2010, no Answer had been filed. (*See* Attachment 2 to Complainant's Motion for Default Order.)

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 proceedings of the Act. 40 C.F.R. § 22.17(c). The relief requested in Complainant's Motion for Default Order is consistent with the record.

A Memorandum in Support of Complainant's Response to Respondents Willie P. Burrell and the Willie P. Burrell Trust Motion Opposing Default Judgment and Motion to Dismiss is also enclosed.

Respondent's motion should be denied, and a Default Order should be granted.

Respectfully Submitted,



Maria E. Gonzalez  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604  
(312) 886-6630

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

MEMORANDUM IN SUPPORT OF COMPLAINANT'S RESPONSE TO  
RESPONDENTS WILLIE P. BURRELL AND THE WILLIE P. BURRELL TRUST  
MOTION OPPOSING DEFAULT JUDGEMENT AND MOTION TO DISMISS

Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, by and through his attorney, herewith submits this memorandum, together with the attached March 11, 2011 Declaration of the Regional Hearing Clerk on File Stamp Dates on Certified Mail Receipts, in opposition to Respondents' Motion Opposing Default Judgment and Motion to Dismiss.

Respondents base their opposition to the granting of a default order in this matter on the ineffective assistance of their prior counsel, arguing that it was gross negligence and that an attorney's gross negligence or disappearance justifies setting aside a default order. Respondents claim not to have been informed by their prior attorney that a complaint had been filed; but Willie P. Burrell signed for the Complaint (*See Green Cards in Attachment 1*). Respondents question the proof of service in their Motion to Dismiss, on the basis that the current Regional Hearing Clerk wrote in her office's file stamp date from the front side of the certified mail receipts (green cards) in the signature

side (back side) of the green cards. Respondents also attempt to respond to the Complaint and argue for mitigation of the penalty.

When the Presiding Officer finds that default has occurred, he or she shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. 40 C.F.R. § 22.17(c). As discussed below, Respondents have not shown good cause why a default order should not be issued.

I. Respondents should not get another opportunity to litigate on the basis of their former attorney's ineffective assistance.

The 7<sup>th</sup> Circuit squarely addressed the question of whether a former attorney's gross negligence in representing his clients' interests entitled them to another opportunity to litigate, holding that "[m]alpractice, gross or otherwise, may be good reason to recover from the lawyer but does not justify prolonging litigation against the original adversary." *U.S. v. 7108 Grand Avenue, Chicago, Illinois*, 15 F.3d 632, 633 (7th Cir. 1994), *cert. denied*, 512 U.S. 1212 (1994). In *7108 Grand Avenue*, the Defendants were challenging a default judgment in a forfeiture proceeding. The Seventh Circuit saw no reason that labeling the attorney's negligence as "gross" would make a difference to the underlying principle that "the errors and misconduct of an agent redound to the detriment of the principal (and ultimately, through malpractice litigation, of the agent himself) rather than of the adversary in the litigation." *Id.* at 634. The Seventh Circuit has continued to hold clients in civil proceedings accountable for their attorney's gross negligence, noting that "[s]ince clients must be held accountable for their attorney's actions, it does not matter where the actions fall between 'mere negligence' and 'gross misconduct.'" *Bakery Machinery & Fabrication, Inc. v. Traditional Baking, Inc.*, 570 F.3d 845, 848-49 (7th

Cir. 2009). In *Bakery Machinery*, it followed the Supreme Court's reasoning: "Petitioner voluntarily chose this attorney as his representative in the action and he cannot now avoid the consequences of the acts or omission of this freely selected agent." *Id.* at 849 (citing *Link v. Wabash Railroad Co.*, 370 U.S. 626, 633-634 (1962)).

The Seventh Circuit is not alone in holding clients accountable for their attorneys in civil proceedings. The Tenth Circuit refused to reverse a summary judgment in an immigration case on the basis of ineffective assistance, pointing out that the Supreme Court has repeatedly held civil litigants accountable for the acts and omission of their chosen counsel. *Nelson v. Boeing Co.*, 446 F.3d 1118, 1121 (10th Cir. 2006) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 397 (1993)). The 8<sup>th</sup> Circuit has also opined that there is no constitutional or statutory right to effective assistance of counsel in a civil case, and that the remedy for any ineffective assistance of counsel is a suit against the attorney for malpractice, not a new trial. *See Glick v. Henderson*, 855 F.2d 536, 541 (8th Cir. 1988).

Respondents' reliance on the opinions of other circuits is misplaced, as the violations occurred in Illinois, which is in the Seventh Circuit, and civil appeals would fall within that Circuit. Respondents try to read the Environmental Appeal Board's (EAB's) recognition that an attorney's illness may, in some circumstances, serve as a basis for excusing a party from timely compliance with procedural requirements (in footnote 15 of its opinion declining to set aside a default order in *B&L Plating, Inc.*) as an implicit rejection of the 7<sup>th</sup> Circuit's position on ineffective assistance. The EAB did not say that attorney gross negligence is good cause to set aside a default judgment. Indeed, the EAB not only declined to set aside the default order because the appeal was untimely,

but went on to say that even if it treated the appeal as timely, the EAB would still uphold the ALJ's ruling not to set aside the default order because the Respondent failed to provide any explanation that would excuse the conduct that gave rise to the default in the first instance, namely, the failure to comply with the ALJ's Prehearing Order. *See In re B&L Plating, Inc.*, 11 E.A.D. 183, 192 (EAB 2003).

Allowing a defense of attorney gross negligence for a failure to file an Answer on time would undercut the requirement to file an Answer.

## II. Proof of Service was Valid

While Respondent Willie P. Burrell does not deny signing the green cards for the Complaint, Respondents somehow still question the proof of service. Their current counsel attests that it is the customary practice of the government to date stamp the green cards on the same side as the purported signature. As set forth in the attached Declaration of the Regional Hearing Clerk on File Stamp Dates on Certified Mail Receipts, she wrote the date of the Regional Hearing Clerk file stamp that she saw on the front side of the card on the back side of the cards, prior to scanning them; the signature dates indicating receipt of the Complaint were not altered; documents, including green cards, are stamped with the Regional Hearing Clerk file stamp on the date they are filed in the Regional Hearing Clerk's Office; the green cards addressed to the Willie P. Burrell Trust was stamped with the Regional Hearing Clerk's file stamp, showing a filing date of July 18, 2006; and the green card addressed to Willie P. Burrell was file stamped with the Regional Hearing Clerk's file stamp, showing a filing date of July 17, 2006. While it is the current hearing clerk's practice to insert the filing date on the signature side of the cards, for scanning, there is no policy dictating which side of the card to file stamp.

The green cards had been stamped with the Regional Hearing Clerk file stamp, and the current Regional Hearing Clerk wrote in the file stamp date from the front of the card on the back of the card, for scanning. The green cards contain the signature and date of signing by Willie P. Burrell as well as the file stamp date of the Regional Hearing Clerk. (See green cards in attachment 1).

A properly executed return receipt constitutes proof of service of the Complaint. *In the Matter of Bobby Rowe Energy, Inc.*, Docket No. CWA-06-2009-1761, RJO LEXIS (RJO, July 6, 2010); *In the Matter of K Industries, Inc.* Docket No. RCRA-06-2003-0915, 2005 EPA RJO LEXIS 109 (RJO, March 2, 2005). The insertion of the filing date on the back side of the green card by the Regional Hearing Clerk does not vitiate the proof of service, but in fact supports it. In addition, there is no claim here that actual service was not completed. All indications are that service was completed as set forth on the green cards.

III. Respondents' attempt to answer the Complaint through their response to the Motion for Default Judgment.

Respondents appear to be trying to argue the merits of the case and assert affirmative defenses in responding to the Motion for Default Judgment. A party may be found in default upon a failure to file a timely answer to the complaint, and the Respondents in this case did not file a timely Answer. *See* 40 C.F.R. § 22.17(a).

Respondents Willie Burrell and the Willie Burrell Trust allege a claim of selective enforcement that they say was not inserted in an Answer (Complainant's Counsel has not received such Answer), and which has not been substantiated aside from the bare assertion in Respondent Willie Burrell's affidavit. The EAB has observed the difficult burden of proof the law imposes on proponents of such defenses:

Respondent faces a daunting burden in establishing that the Agency engaged in illegal selective enforcement, for courts have traditionally accorded governments a wide berth of prosecutorial discretion in deciding whether, and against whom, to undertake enforcement actions. This deference to prosecutorial discretion is founded upon sound policy considerations....As a consequence, the judicial decisions establish that an affirmative defense of selective enforcement or prosecution requires proof that (1) the government “singled out” a violator while other similarly situated violators were left untouched, and (2) the selection was in bad faith based on such impermissible considerations as race, religion, or the desire to prevent the exercise of constitutional rights.

*In re B&R Oil Company*, 8 E.A.D. 39, 51 (EAB 1998) (citing *U.S. v. Smithfield Foods, Inc.*, 969 F. Supp. 975, 985 (E.D. Va. 1997)); *U.S. v. Anderson*, 923 F.2d 450, 454 (6th Cir. 1988); *Schiel v. Commissioner*, 855 F.2d 364, 367 (6th Cir. 1988). See also *In Re Environmental Protection Services, Inc.*, 13 E.A.D. 506, 588. (EAB 2008). In *Martex Farm v. EPA*, an allegation that EPA “left untouched the rest of the Puerto Rico’s agricultural community” was not enough to support such a claim. *Martex Farms v. EPA*, 559 F.3d 29, 32 (1st Cir. 2009). Respondent Willie P. Burrell’s assertions in her affidavit do not meet the burden of proof for a selective enforcement claim.

Complainant objects to Respondents’ attempt to file an Answer<sup>1</sup> pending a ruling on its Motion for Default, and without copying Complainant, as well as the attempts to add affirmative defenses. Respondents’ Motion Opposing Motion for Default Judgment claims that they filed an Answer on January 14, 2010, requesting that the Answer be deemed filed timely. As set forth in the October 8, 2010, Declaration of the Regional Hearing Clerk that was attached to the Motion for Default Judgment, no Answer had been filed as of October 8, 2010.

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<sup>1</sup> According to footnote 4 of Respondents’ memorandum, Respondents filed an answer on January 14, 2011. Complainant isn’t aware of any motion for leave to file an answer so long after its due date.

Willie Burrell's affidavit also attempts to respond to the Complaint in this motion by arguing that the apartments were "lead free", attaching 2005 sampling results, and averring that Respondents came into compliance in 2003. The sampling results attached did not include sufficient information or context to ascertain whether the testing was complete and/or was conducted subsequent to lead abatement. In 2005, EPA advised Respondents that the "lead safe" certificates did not demonstrate that the apartment were free of lead and requested documentation that the apartments were lead free. (*See* Attachment 2.)

As set forth in 40 C.F.R. § 22.17(a), default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations.

IV. Respondent has not shown that the penalty calculated in the Complaint is not Appropriate

Under 40 C.F.R. § 22.17(c), 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).

Respondents have not shown relief requested to be inconsistent with the record. As discussed in the Motion for Default, the proposed penalty was calculated using the applicable penalty policy, and considers the ages of the tenants based on the information in the leases attached to the Motion for Default Order.<sup>2</sup> Respondents try to remove themselves from the actions of their attorney, blaming him for their lack of cooperation and indicating a current willingness to settle; but he was their agent and the record does

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<sup>2</sup> As discussed in Complainant's Memorandum in Support of the Motion for Default Order and Attachment 25 thereto, Complainant's penalty considered that there were no children under 18 years of age known to be residing in the property for the transaction at 575 East Oak.

not reflect a history of cooperation. Respondents also expect EPA to rely only on their assertions as to when and if they returned to compliance, without further documentation. In addition, Respondents have attached tax returns, for the first time making an ability to pay claim in response to the Complainant. Respondents only included the heavily redacted version of the tax returns in Complainant's copy of their pleading. Once Complainant realized that they had also filed an unredacted copy, Complainant obtained a copy and arranged for a financial analyst to review it. The financial analyst requires additional information to assess Respondents' claim of inability to pay the proposed penalty. (See Attachment 3.) Respondents aver that this is their first violation and that they did not willfully violate the disclosure rule, but the penalty was not increased for culpability or for history of prior violations. Finally, Respondents try to apply a case interpreting a different statute and enforcement response policy to argue for a four percent rule. (See generally *In re: Chempace Corporation*, 9 E.A.D. 119 (EAB 2000).) In a matter involving violations of the Toxic Substances Control Act lead disclosure rule, the TSCA and the Section 1018 -- Disclosure Rule Enforcement Response and Penalty Policy apply. (See *In re John Vidiksis*, TSCA Appeal No. 07-02, slip. op. at 20 (EAB, April 22, 2009))

V. There is no need for oral argument

There is no need for oral argument. The Regional Judicial Officer is not deciding a split among the circuits in the context of Motion for Default for failure to answer a Complaint alleging violations that occurred in the Seventh Circuit.

CONCLUSION

For the reasons set forth above and in Complainant's Motion for Default and accompanying documentation, Complainant moves this Court for a Default Order that includes the following: 1) finding all of the facts in the Complaint admitted; and 2) assessing a civil penalty in the amount of \$89,430 as pled in the Complaint and based on the admitted facts.

Respectfully Submitted,

  
\_\_\_\_\_  
Maria E. Gonzalez  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Blvd.  
Chicago, Illinois 60604  
(312) 886-6630

## ATTACHMENTS

1. March 11, 2011 Declaration of Ladawn Whitehead on File Stamp Dates on Certified Mail Receipts
2. December 28, 2005 Correspondence from U.S. EPA seeking documentation that apartments were lead free
3. March 11, 2011 Correspondence from Complainant seeking additional financial information needed by financial analyst

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 Penalty under
The Willie P. Burrell Trust,	)	Section 16(a) of the Toxic Substances
Dudley B. Burrell, and	)	Control Act, 15 U.S.C. § 2615(a)
The Dudley B. Burrell Trust	)	
Kankakee, Illinois,	)	
Respondents.	)	
_____	)	

**DECLARATION OF LADAWN WHITEHEAD ON FILE STAMP DATES ON  
CERTIFIED MAIL RECEIPTS**

I, LADAWN WHITEHEAD, declare and state as follows:

1. I currently am employed as the Regional Hearing Clerk (RHC) with Region 5 of the U.S. Environmental Protection Agency (EPA). I have been employed with EPA since September of 1988 and have held the position of RHC since April, 2009.
2. The general responsibilities of an RHC are set forth in 40 C.F.R. Part 22. As an RHC, I am responsible for maintaining the official files for all pleadings, including complaints and any documents filed subsequent to a complaint, in administrative cases initiated by EPA Region 5 for violations of, *inter alia*, the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.* As part of my duties, I receive, date-stamp and file pleadings served on the Region in TSCA administrative cases. Additionally, I am designated and required to create and maintain a docket or index of the administrative record. 40 C.F.R. § 24.03.
3. I also scan documents to save them as a PDF file for entry into the Regional Hearing Clerk Database. The Regional Hearing Clerk's Database (RHC Database) was established on January 1, 2007, as an electronic version of the principal pleadings for the

Agency's administrative cases that is maintained by the Washington, D.C. office. As the RHC Database developed and improved, it evolved into an electronic copy of the full administrative case docket, containing all of the pleadings filed in the case (except for the most voluminous attachments, confidential business information and privacy information). Since April 2009, I have been responsible for adding new documents to this Database that are filed in Region 5.

4. Documents, including certified mail receipts (green cards), are stamped with the Regional Hearing Clerk file stamp on the date they are filed in the Regional Hearing Clerk's office.

5. Because it is part of the administrative case record, green cards received by the RHC are scanned into the RHC Database.

6. The Regional Hearing Clerk's Office does not have a policy governing which side to file stamp a document.

7. Because the relevance of the green card to the case record is the signature side of the card, which shows the date of delivery and the name of the person who signed for the mailing package, it is my custom to stamp the filing date on the signature side of the card so that all of this information is available in a single image.

8. Other people, including previous RHCs, have sometimes stamped the filing date of the green card on the front side of the card where the mailing address of the Agency is written.

9. When I find that the filing date has been stamped on the front of the green card as I prepare to scan the green card into the RHC Database, my custom is to copy that filing date onto the signature side of the card.

10. I do not alter the dates of signature.

11. The green cards addressed to Dudley Burrell, the Dudley Burrell Trust, and the Willie P. Burrell Trust of the complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust* (TSCA-05-2006-0012) were stamped with the Regional Hearing Clerk's file stamp before I became RHC, and show a filing date of July 18, 2006.

12. The green card addressed to Willie P. Burrell of the complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust* (TSCA-05-2006-0012) was file stamped with the Regional Hearing Clerk's file stamp before I became RHC, and shows a filing date of July 17, 2006.

13. I wrote in the date of that Regional Hearing Clerk file stamp that I saw on the front side of the card on the back side of the cards, prior to scanning them.

14. On the green cards for Willie P. Burrell and the Willie P. Burrell Trust, I had initially written an incorrect filing date that did not match the filing date stamped on the front of the green card.

15. I used white out when I corrected the date I had entered on the back side of these the green cards so that each showed the true filing date stamped on the front side.

16. The filing dates I wrote on the back side on the green cards for Dudley B. Burrell and the Dudley B. Burrell Trust did not need correction.

17. I did not alter the original filing date stamped on the front of any green cards for the complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust*.

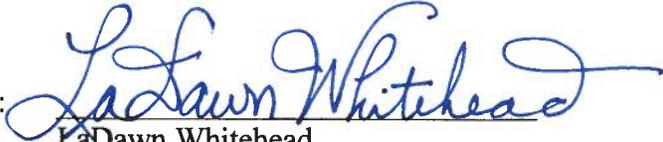
18. I made no other changes to the green cards.

19. I am attaching copies of both sides of the green cards showing service of the Complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust.*

I declare under penalty of perjury that the foregoing is accurate and correct.

Executed on: March 11, 2011

By:



LaDawn Whitehead

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
**Willie P. Burrell**  
**300 N. Indiana Avenue**  
**Kankakee, IL 60901**

2. Article Number (Transfer from service label) **7001 0320 0006 1562 2535**

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

A. Received by (Please Print Clearly) **Willie P. Burrell**  
 B. Date of Delivery **7/17/06**  
 C. Signature **X Willie P. Burrell**  
 Addressee

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

**TSCA-05-2006-0012**

PS Form 3811, March 2001 Domestic Return Receipt 102895-01-M-1424

UNITED STATES POSTAL SERVICE

First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box

**Sonja Brooks-Woodard, RHC/E-13J**  
**U.S. EPA - Region 5**  
**77 West Jackson Blvd.**  
**Chicago, IL 60604-3590**

6 JUL 17 9  
 REGIONAL MAIL

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**

**Sonja Brooks-Woodard B-13J**

**TSCA-05-2006-0012**

Postage	\$ 2.55
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 6.80</b>

Sent To  
**Willie P. Burrell**  
**300 N. Indiana Avenue**  
**Kankakee, IL 60901**

CHICAGO IL LOOP STA  
 2006 JUL 17 11:30 AM

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4, if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Received by: <i>Please Print Clearly</i> <i>Willie P. Burrell</i></p> <p>B. Date of Delivery <i>July 18, 2006</i></p> <p>C. Signature <i>Willie P. Burrell</i></p> <p><input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p><i>The Willie P. Burrell Trust</i>  <i>300 North Indiana Ave</i>  <i>Kankakee IL 60901</i></p> <p><i>July 18, 2006 stamped</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below: <input type="checkbox"/> No</p> <p><b>TSCA-05-2006-0012</b></p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number          (Transfer from service label)</p> <p><b>7001 0320 0005 8933 2010</b></p>	<p>PS Form 3811, March 2001 Domestic Return Receipt 102895-01-M-1424</p>

UNITED STATES POSTAL SERVICE

First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

*Sonja Brooks-Woodard*  
*U.S. EPA Regional Office*  
*Chicago IL 60604-3590*

RECEIVED REGIONAL

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

**TSCA-05-2006-0012**

*Sonja Brooks-Woodard* **EEJ3J**

Postage	\$ 2.55
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 6.80</b>

Sent to: *The Willie P. Burrell Trust*  
 Street, Apt. No., or PO Box No.: *300 North Indiana Ave*  
 City, State, ZIP+4: *Kankakee, IL 60901*

7001 0320 0005 8933 2010

U.S. Postal Service

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dudley B. Burrell  
300 North Indiana Avenue  
Kankakee, IL 60901

July 18, 2006 stamped

2. Article Number  
(Transfer from service label) 7001 0320 0005 8933 2041

PS Form 3811, March 2001 Domestic Return Receipt 10288-01-M-1484

A. Received by (Please Print Clearly) Willie for Ari Burrell

C. Signature *Willie for Ari Burrell*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

TSCA-05-2006-0012 ✓

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

UNITED STATES POSTAL SERVICE

First-Class Mail  
Postage & Fees Paid  
US\$5  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Sonja Brooks-Woodard E13J  
07.18.06  
US EPA Region 5  
77 W. Jackson  
Chicago IL 60604-3590

U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only. No Insurance Coverage Provided)

7001 0320 0005 8933 2041

Sonja Brooks-Woodard E13J

Postage	\$2.55
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$6.80</b>

Sent To  
Dudley B. Burrell  
300 North Indiana Avenue  
Kankakee, IL 60901

CHICAGO IL LOOP STA 9007

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Received by (Please Print Clearly) <b>Willie Burrell</b>	B. <input checked="" type="checkbox"/> Restricted Delivery
1. Article Addressed to: <b>The Dudley B. Burrell Trust</b> <b>300 N. Indiana Ave</b> <b>Kankakee, Illinois</b> <b>60901</b> <b>July 18, 2006 stamped</b>	C. Signature <b>Willie Burrell</b>	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, March 2001	<b>TSCA-05-2006-0012</b>	
Domestic Return Receipt	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
7001 0320 0005 8933 2027	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	

UNITED STATES POSTAL SERVICE

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

REGD  
 6  
 JUL 18 11:40 AM  
 CHICAGO, IL 60604-3590  
 REGION 5

US ENVIRONMENTAL PROTECTION AGENCY  
REGION V

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only. No Insurance Coverage Provided)

7001 0320 0005 8933 2027

**Sonja Brooks-Woodard E13J**

Postage	\$ 2.55
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 6.80</b>

Sent To  
**The Dudley B. Burrell Trust**  
 Street, Apt. No. or PO Box No. **300 N. Indiana Avenue**  
 City, State, ZIP+4 **Kankakee, IL 60901**

CHICAGO, ILL. 60607  
 JUL 18 2006  
 SOIL LOOP ST.