

March 26, 2011

Derek S. Burrell
649 North Rosewood
Kankakee, IL 60901

US EPA Region 5
Office of the Regional Hearing Clerk
Attention: La Dawn Whitehead Mailcode: E-19
77 W. Jackson Blvd.
Chicago, IL 60604-3590

RECEIVED

APR - 1 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

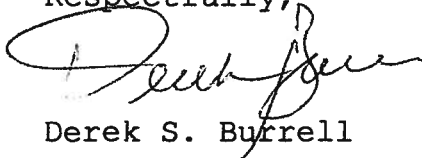
Re: TSCA-05-2006-0012

Hearing Clerk:

Enclosed please find an Original and two (2) copies of our Reply to Complainant's Response to Motion to Quash and Motion to Dismiss, along with supporting Affidavits of Derek Burrell #2 and Dudley Burrell #2 and Respondents' Motion to Strike for filing in the above-captioned matter.

Please provide me with a file-stamped copy of each which I may retain for my file. I enclose a self addressed stamped envelope for your convenience.

Respectfully,



Derek S. Burrell

Cc: Marcy Toney
Regional Judicial Officer
EPA,
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

Maria Gonzalez (C14-J)
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Joana Bezerra (DT-8J)
US EPA, Region 5
77 West Jackson, Blvd

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

RECEIVED
APR - 1 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

**MOTION TO STRIKE THE COMPLAINANT'S PURPORTED INTERNET
EVIDENCE OF RESPONDENTS' ADDRESS**

Respondents Dudley B. Burrell and the Dudley B. Burrell Trust (hereinafter, collectively "Respondents") by and through their Representative, pursuant to 40 C.F.R. § 22.16 and 40 C.F.R. § 22.22(a) hereby tender Motion to Strike Complainant's Purported Internet Evidence of Respondents' Address, and in support states:

1. Complainant essentially contends that Respondents advertised their address as 300 N. Indiana Avenue, Kankakee, Illinois, 60901 ("300 N. Indiana").

2. Complainant's evidence of Respondents' use of the 300 N. Indiana address is based, in part, upon copies of web pages from the internet. (See Complainant's Memorandum in Opposition To Respondents Motion to Quash and Motion to Dismiss, p.3, see also attachment 3).

3. Respondents did not authorize, pay for, or create the web pages referenced by Complainant.

4. Moreover, it can be inferred that most of the web pages were created prior to 2003, as the Complainant has pointed out--B & D Management Corporation was dissolved prior to 2003.

5. Respondents contend Complainant's Attachment 3, in part, contain multiple layers of hearsay, which can not be authenticated by the government. The objectionable attachments are appended here as Exhibit A.

6. Respondents do not know who created these web pages, what was the creator's purpose of the web pages, or where or why the web pages were created.

7. Likewise, Complainant does not know who created these web pages, what was the creator's purpose for the web pages, or where or why the web pages were created.

8. As such, these web pages are untrustworthy, unreliable and incapable of being authenticated by Respondents or the Complainant.

9. Respondents move to strike the internet web pages which purport to show Respondents' address as 300 N. Indiana after December 2003.

10. If the web pages purport to show Respondents address as 300 N. Indiana after December 2003, they are unreliable, untrustworthy and cannot be authenticated by the

Respondents and therefore such evidence must be inadmissible.

11. If the web pages purport to show Respondents address as 300 N. Indiana prior to December 2003, they are repetitious or of little probative value as Respondents admit to using this address up to and including December of 2003.

12. It cannot be determined when, where, how or why these web pages were created, therefore they are unreliable and untrustworthy.

13. Pursuant to 40 C.F.R. § 22.22 evidence that is repetitious, unreliable, or of little probative value shall not be admitted.

Wherefore, Respondents Dudley B. Burrell and the Dudley B. Burrell Trust pray that:

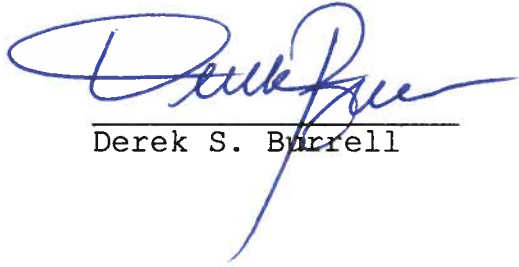
(a) Complainant's internet evidence is untrustworthy, unreliable, and such evidence cannot be authenticated;

(b) Complainant's internet evidence is repetitious or of little probative value;

(c) Respondents' Motion to Strike Complainant's purported internet evidence of Respondents' address be granted;

(d) Respondents requests all relief just and proper in the premises.

Respectfully submitted,



Derek S. Burrell

3-26-11
Date

RECEIVED
APR - 1 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

CERTIFICATE OF SERVICE

Respondents Dudley B. Burrell and the Dudley B. Burrell Trust hereby certify that their Motion to Strike in the above-captioned matter was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 26 day of March 2011 at:

Marcy Toney
Regional Judicial Officer
EPA,
Region 5
77 West Jackson Boulevard
Chicago, Il 60604

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

Maria Gonzalez (C14-J)
Associate Regional Counsel
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, Il 60604-3590

RECEIVED
APR - 1 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

US EPA Region 5
Office of the Regional Hearing Clerk
Attention: La Dawn Whitehead
77 W. Jackson Blvd.
Mailcode: E-19J
Chicago, Illinois 60604-3590

US EPA, Region 5
Joana Bezerra (DT-8J)
77 West Jackson Boulevard
Chicago, Illinois 60604



Derek Burrell
649 N. Rosewood
Kankakee, Il 60901
815-933-6087
815-954-3296

EXHIBIT A

[Apartments](#) | [Search](#) | [Browse](#)

[login](#) | [create free account](#)

[apartment-rental8.com](#)

[Apartments for Rent](#) Search Thousands of Apts. for Free by Area, Price, Bedrooms, & More! [www.ApartmentGuide.com](#)

[Retirement Apartment](#) Browse Senior Living Facilities Near you! 1000's available [www.assistedlivingprovider.org](#)

[House For Rent](#) Find A House For Rent In Your Area By Size, Price & Location Today! [RentSavers.com/HouseForRent](#)

Ads by Google

[Apartments](#) > [B & D Management Corp](#)



See Official Local Apartment Prices & Pics...

Check Availability




B & D Management Corp, Dudley Burrell
300 N Indiana Ave, Kankakee, IL 60901

[Profile](#) [Photo & Coupon](#) [Map](#) [Customer Reviews](#) [Nearby Apartments](#)



Affordable Apartments
Southwood Realty Apartment Homes
<http://www.southwoodrealty.com>

Business Profile of B & D Management Corp

Business Name:	B & D Management Corp
Contact Person:	Dudley Burrell
Title:	Owner
Gender:	-
Address:	300 N Indiana Ave Kankakee, IL 60901
Office Phone:	8159336087
Office Fax:	-
Office Email:	-
Web Address:	-
Estimated Staff:	7
Industrial Classification:	651303 - Apartments

[Correct Listing](#) [Take Listing](#) [Remove Listing](#) [Add Listing](#)

B & D Management Corp is located at 300 N Indiana Ave Kankakee, IL. Dudley Burrell is the Owner contact person. Please tell them that you find them through apartment-rental8.com and ask them to update the profile and upload photos!

The Standard Industrial Classification(SIC) of B & D Management Corp is 651303 - Apartments. An apartment, or flat, is a self-contained housing unit that occupies only part of a building. Such a building may be called an apartment building, especially if it consists of many apartments for rent. Apartments may be owned by an owner/occupier or rented by tenants. We suggest you contact more Apartments nearby before making decisions.

The estimated number of employees at B & D Management Corp is 7. The phone number of B & D Management Corp is 8159336087. The fax number of B & D Management Corp is unavailable. The contact email of B & D Management Corp is unavailable. The web address of B & D Management Corp is unavailable. Please click the Correct Listing link to update the contact information(contact person, phone number, fax, email address and web address, etc).

- Take Listing:** If you are the owner, please [click here to take ownership and update.](#)
- Correct Listing:** If you are not the owner, but want to make correction, [click here to correct.](#)
- Remove Listing:** If you believe this listing should be removed, please [click here to remove.](#)
- Add Listing:** If your or someone else's business is not listed, [click here to add](#)

[Contact apartment-rental8.com](#)

Copyright © 2010

Kankakee IL Yellow Pages

 Search

[gbiz.org Home](#) | [Kankakee Illinois](#)

B & D Management Corp - [Apartments in Illinois](#) | Kankakee IL 60901-2419

B & D Management Corp

[Apartments for Rent](#)

Search Thousands of Apts. for Free by Area, Price, Bedrooms, & More!
www.ApartmentGuide.com

300 N Indiana Ave
Kankakee, IL 60901-2419
Telephone: 815-933-6087
Web Site:
Contact: Dudley Burrell - Male

Is this your business?
Make corrections or enhance your listing by emailing us at gbizsupport@gmail.com

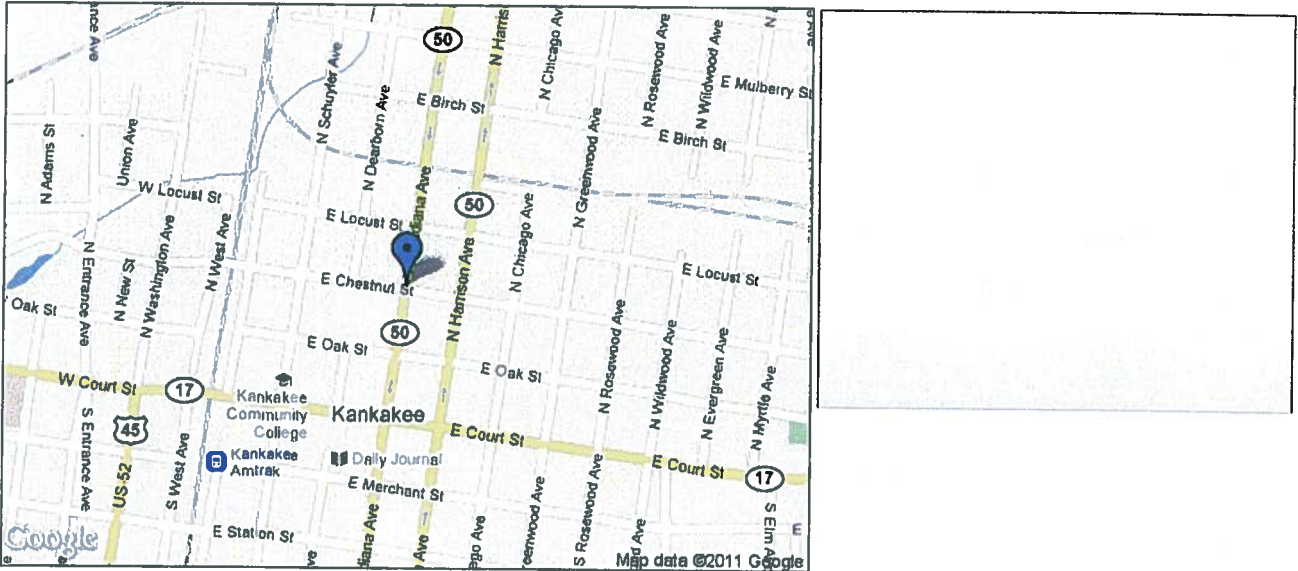
[Contract Management Cert.](#)
Master Contract Mgmt. & Prepare for Certification in Weeks-100% Online,
VillanovaU.com/ContractManagement

Ads by 

B & D Management Corp Business Information

B & D Management Corp is categorized under **Apartments** (SIC: 651303) and is located in Kankakee, IL. Kankakee is a city in Kankakee County.

The physical size of B & D Management Corp's business in Kankakee is in the following range: 2500 - 9999 SqFt. They also utilize about 0 - 1 PCs.



Physical Address:
300 N Indiana Ave
City: Kankakee
State: IL
Zip Code: 60901-2419
Carrier Route: C022
Telephone: 815-933-6087
Fax:
Web Site:
Alt Address: 300 N Indiana Ave

Alt City: Kankakee
Alt County: Kankakee
Alt State: IL
Alt Zip Code: 60901-2419
Alt Carrier Route: C022
Contact: Dudley Burrell - Male

Includes 1 years registered agency
chqinc.com

Ads by Google

Business Information (estimates only)

Employees: 7
Employee Range: 5 to 9
Number of Computers: 0 - 1 PCs
Credit Alpha Score: Contact Us
Credit Numeric Score: Contact Us
SIC Code: 651303
Business Description: Apartments
Square Footage: Between 2500 - 9999 SqFt
Business Area: Kankakee IL
Listing Id: IL56207



Looking for [Illinois Jobs?](#)

Copyright gbiz.org 2010 All Rights Reserved. [Support & Legal](#)

[Popular LA-Beau-Dietchweiler-and-Assoc University-Mall American-Beach-Wear Big-Joes-Smoke-Shop Verizon-Wireless Leapin-Lizards Dominos-Pizza J-and-S-Enterprize-Inc L-and-J-Bay-Area-Holdings LKQ-Auto-Parts-Of-Stockton Frischs-Big-Boy-Restaurant Resurrection-Cemetery Arne-Svendsen-Trucking California-Reconveyance-Co Bridal-World-Outlet](#)

this page was generated in 0.0018441677093506 secs

Home > Society > Section 8 Housing Descriptions & Ratings > Detail

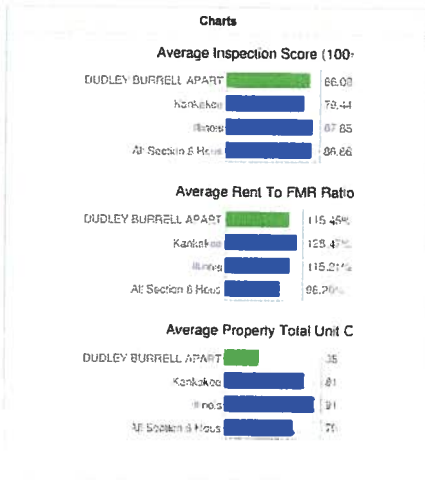
Examples: [St. Resorts, Cottages, Dog Beaches](#)

- Arts & Entertainment
- Business & Economy
- Education
- Health
- Reference
- Science
- Society
- Sports & Recreation
- Technology
- Related Apps

DUDLEY BURRELL APARTMENTS in KANKAKEE, Illinois - Section 8 Housing

Share More Like Add Listing Edit Listing Reviews

Details	
Property Name	DUDLEY BURRELL APARTMENTS
Inspection Score (100=best)	86.08
Inspection Date	2/3/2009
Program Type	
Program Type Group Name	Other S8 Rehab
Program Type Name	Sec 8 SR
Property Category Name	Subsidized, No HUD Financing
Rent To FMR Ratio	115.45%
Rent To FMR Description	Between 101% & 120% FMR
Property Id	800005858
Property Total Unit Count	35
Studio	0
Studio FMR	\$0
1 Bedroom	6
1 Bedroom FMR	\$566
2 Bedroom	5
2 Bedroom FMR	\$747
3 Bedroom	4
3 Bedroom FMR	\$969
4 Bedroom	0
4 Bedroom FMR	\$0
5+ Bedroom	0



Management

Management Agent Organization	BURRELL PROPERTY MANAGEMENT LLC
Management Agent Company Type	Profit Motivated
Management Agent Main Phone	(815) 933-6087
Management Agent Main Fax Number	(815) 933-5114
Management Agent Email	burrell300@abcglobal.net
Management Agent Address	300 NORTH INDIANA AVENUE
Management Agent City	KANKAKEE
Management Agent State	IL
Management Agent Zip Code	60901
Management Agent Zip+4 Code	2401

Owner

Owner Organization Name	DUDLEY & WILLIE P. BURRELL
Owner Company Type	Other
Owner Main Phone Number Text	(815) 933-6087
Owner Main Fax Number Text	(815) 933-5114
Owner Email Text	burrell300@abcglobal.net
Owner Address Line1	300 N INDIANA AVE
Owner City Name	KANKAKEE
Owner State Code	IL
Owner Zip Code	60901
Owner Zip4 Code	0

Often Compared to:

- [LAMPLIGHTER VILLAGE - CANTON, Massachusetts](#)
- [GRANDVIEW TOWER - EVANSVILLE, Indiana](#)
- [Augusta Properties - AUGUSTA, Georgia](#)
- [Capitol Avenue School - Atlanta, Georgia](#)
- [Dudley House - PASADENA, California](#)

Housing Location

DUDLEY BURRELL APARTMENTS

- [Renaissance Center Apartments](#)
- [AUSTIN APARTMENTS](#)
- [River Woods](#)
- [Kankakee Commons](#)

Address 238 N GREENWOOD
 City KANKAKEE
 State Illinois
 Zip Code 60901
 Zip+4 Code 4036

[History](#)
[Popular Questions for DUDLEY BURRELL APARTMENTS](#)
[Popular Comparisons for DUDLEY BURRELL APARTMENTS](#)

User Reviews | [Write a Review](#)
 There are no reviews yet. Be the first to write a review.

Source: [U.S. Department of Housing and Urban Development](#)

[Ads by Google](#)
 [Section 8 Homes](#)
 [Senior Housing](#)
 [Housing Assistance](#)
 [Low income Housing](#)
 [SECTION8 Apartments](#)

Section 8 Housing List Helping you locate section 8 rental properties.

Type your search here... 

section 8 housing in Kankakee Illinois

0

Posted in [Section 8 Housing in Illinois](#)

Apartments for Rent www.ApartmentGuide.com
 Free Apartment Listings Online! Search by Area, Price, Type, etc.

Senior Housing Locator www.aplaceformom.com
 Free assistance finding Senior Housing in your local area.

Apt W/ All Utilities Paid www.MyNewPlace.com
 Search 6M Listings W/ Photos Filter by Amenities & More!

Section 8 Housing www.webcrawler.com
 Search multiple engines at once for section 8 housing

Ads by Google

Below you will find the most recent rentals for **section 8 housing in Kankakee Illinois**. While the majority of these properties are apartments some are also section 8 houses for rent. Once you have your section 8 voucher feel free to contact any of the prospective landlords in Kankakee using the contact information provided below.

Section 8 Housing List for Kankakee Illinois (IL)

Contact	Property	Type	Number of bedrooms				
			1	2	3	4	5+
Louis D.&E.JeanBurrell Phone: 815-932-3984	AUSTIN APARTMENTS 994 N. Indiana Ave. KANKAKEE, IL 60901-2147 Phone: 815-932-3984	Family			x		
Preservation Housing Management, LLC Phone: 815-939-7220 lfelgar@preservationhousing.com	CRESTVIEW VILLAGE APARTMENTS 208 North Crestlane Drive KANKAKEE, IL 60901-2833 Phone: (815)939-7220	Family	x	x	x		
DUDLEY & WILLIE P.BURRELL Phone: 815-933-6087	DUDLEY BURRELL APARTMENTS 238 N GREENWOOD KANKAKEE, IL 60901-4036 Phone: 815-933-6087	Family	x	x	x		
Mr. Gerald Kilbride	EASTCOURT VILLAGE		x	x			

Phone: 815-937-4200

2200 East Court Street

Kankakee, IL 60901

Phone: 815-937-4200

Thresholds
Phone: 773-572-5272

HARBOR STREET APARTMENTS
800 W HARBOR ST

Disabled

desposito@thresholds.org

KANKAKEE, IL 60901-2945

Phone: (773) 880-6260

New Frontier Management Corp.
Phone: (815) 937-0360

KANKAKEE KOMMONS
155 W. Mertens Avenue

x x

KANKAKEE, IL 60901-2370

Phone: (815) 937-0360

DUDLEY & WILLIE P.BURRELL
Phone: (815) 933-6087

RENAISSANCE CENTER APARTMENTS
300 N. Indiana Avenue

Family

x x

burrell300@sbcglobal.net

KANKAKEE, IL 60901-2482

Phone: 815 933-6087

NHPMN Management, LP
Phone: 815-939-1500

RIVER WOODS
300 E RIVER ST

Elderly

x x

KANKAKEE, IL 60901-5160

Phone: (815) 939-1500

Housing Rent

Find Section 8 Housing For Rents at Great Prices.

Section 8 Senior Housing

Find Affordable Senior Housing Options and Get Free Info Today!

Ads by Google

Write a comment

Name (required)

Mail (will not be published) (required)

Website

Submit



CAPTCHA Code

. Pages

- o [About](#)
- o [Section 8 Housing List](#)

Have You Checked Your Credit Score This Month?

TransUnion

840
750
650 ← You are here (640)
550
450
340
310

Experian

840
750
650 ← You are here (636)
550
450
340
310

Equifax

840
750
650
550 ← You are here (618)
450
340
310

Click Here To Get Score!

FreeScore.com

• Category

- o [Alabama AL](#) (116)
- o [Alaska AK](#) (25)
- o [Arizona AZ](#) (39)
- o [Arkansas AR](#) (140)
- o [California CA](#) (368)
- o [Colorado CO](#) (84)
- o [Connecticut CT](#) (95)
- o [Delaware DE](#) (17)
- o [District of Columbia DC](#) (1)
- o [Florida FL](#) (143)
- o [Georgia GA](#) (124)
- o [Hawaii HI](#) (32)
- o [Idaho ID](#) (52)
- o [Illinois IL](#) (261)
- o [Indiana IN](#) (147)
- o [Iowa IA](#) (109)
- o [Kansas KS](#) (119)
- o [Kentucky KY](#) (166)
- o [Louisiana LA](#) (91)
- o [Maine ME](#) (119)
- o [Maryland MD](#) (115)
- o [Massachusetts MA](#) (186)
- o [Michigan MI](#) (237)
- o [Minnesota MN](#) (282)

- o [Mississippi MS](#) (130)
- o [Missouri MO](#) (157)
- o [Montana MT](#) (46)
- o [Nebraska NE](#) (100)
- o [Nevada NV](#) (11)
- o [New Hampshire NH](#) (87)
- o [New Jersey NJ](#) (243)
- o [New Mexico NM](#) (32)
- o [New York NY](#) (349)
- o [North Carolina NC](#) (225)
- o [North Dakota ND](#) (69)
- o [Ohio OH](#) (303)
- o [Oklahoma OK](#) (99)
- o [Oregon OR](#) (85)
- o [Pennsylvania PA](#) (331)
- o [Puerto Rico PR](#) (66)
- o [Rhode Island RI](#) (35)
- o [South Carolina SC](#) (119)
- o [South Dakota SD](#) (74)
- o [Tennessee TN](#) (147)
- o [Texas TX](#) (234)
- o [Utah UT](#) (29)
- o [Vermont VT](#) (76)
- o [Virginia VA](#) (122)
- o [Washington WA](#) (118)
- o [West Virginia WV](#) (112)
- o [Wisconsin WI](#) (255)
- o [Wyoming WY](#) (23)

© All Rights Reserved. [Section 8 Housing List](#)

Powered by [WordPress](#) | Designed by [WebDesignLessons.com](#)



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

RECEIVED
APR - 1 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

**REPLY TO COMPLAINANT'S RESPONSE TO MOTION TO QUASH SERVICE
AND MOTION TO DISMISS**

Respondents Dudley B. Burrell and the Dudley B. Burrell Trust (hereinafter, collectively "Respondents"), by and through their Representative, pursuant to 40 C.F.R. § 22.16, hereby tender their Reply to Complainant's Response to Motion To Quash Service of Process and Motion to Dismiss.

Undisputed Facts

Dudley Burrell ("Burrell") was estranged from his wife, from December 2003 to the present and he is still legally married. From December 2003 to the present Burrell has resided at 649 N. Rosewood, Kankakee, Illinois 60901 ("home"). From December 2003 to the present, Burrell has used 649 N. Rosewood, Kankakee, Illinois as his business address ("business"). Burrell had been locked out of the

business of B & D Management since December of 2003,¹ as well as wife's new company, Burrell Property Management, L.L.C. Burrell has also been estranged from two of his sons and his daughter-in-law (they assisted in operating B & D and now Burrell Property Management, L.L.C.). As a result, on or about December 2003, Burrell told his estranged wife that she was not authorized to accept service on behalf of Dudley Burrell or The Dudley B. Burrell Trust.

The Environmental Protection Agency ("EPA," "Complainant," or "government") inspected the Respondents' offices at 300 N. Indiana Avenue, Kankakee, Illinois, 60901, prior to Burrell's estrangement from his wife. Wife signed all the Green Cards, after the parties became estranged and were no longer living together as husband and wife.

Burrell received constructive notice of this suit on January 3, 2011. Burrell received actual notice of this suit on January 11, 2011.

ARGUMENT

I. Personal Service was Improper, Dudley Burrell was Never Served with the Complaint.

Complainant argues that Respondents' address at the time of the inspection was 300 N. Indiana Avenue, Kankakee, Illinois, 60901 (hereinafter, "300 N. Indiana"). We agree. However, that it is of no consequence. It is undisputed that

¹ Burrell was unaware B & D Management, Inc. had involuntarily dissolved in 2003.

the individual Respondents became estranged in December of 2003, well after the date of the inspection (May 28, 2003) and well before the date of the purported service (July 17 and 18, 2006).

Secondly, it is of no consequence that Willie Burrell purportedly signed all the Green Cards on July 10, 2006. She did so, when the parties were estranged and no longer living together as husband and wife. Additionally, Willie Burrell was specifically instructed not to accept or sign for anything for Dudley Burrell or The Dudley B. Burrell Trust, prior to the purported service.

Third, the internet web pages cited by Complainant were not authorized by, paid for, nor created by Burrell. (Dudley Burrell Affidavit #2, ¶ 1, attached hereto as Exhibit A). Burrell is seventy-one (71) years old. (Dudley Burrell Affidavit #2, ¶ 2). Burrell is not computer literate and does not use computers. (Dudley Burrell Affidavit #2, ¶ 3). Burrell has never advertised on the internet. (Dudley Burrell Affidavit #2, ¶ 4). Burrell has had nothing whatsoever to do with the content of the internet web pages cited by the government. (Dudley Burrell Affidavit #2, ¶ 5). Moreover, there is no way to determine: who created these sites; who maintains them; or, why they include Burrell?²

² We shall move to strike all references regarding Burrell's address

(Dudley Burrell Affidavit #2, ¶ 6).

Fourth, the return address on the envelope used to mail Respondents' Request for Settlement Conference and Motion for Extension of Time was merely a clerical error made by the parties' counsel. (Dudley Burrell Affidavit #2, ¶ 7) (See Derek S. Burrell Affidavit #2, Exhibit B, attached hereto).

Next, the government contends that Willie P. Burrell's tax returns are an indicia of Dudley Burrell's use of the 300 N. Indiana address. To the contrary, the tax returns are but one more indicia that this was not Burrell's address. As emphasized herein, the parties were and are still estranged. Burrell has never signed any of the tax returns for the tax years, 2007-2009, submitted in Respondents Willie P. Burrell and The Willie P. Burrell Trust's pleadings. (Dudley Burrell Affidavit #2, ¶ 8).

The authorities relied upon by Complainant are easily distinguishable from the case at bar. Complainant completely side-steps the issue of the instant parties' estrangement. In C.W. Smith, CWA-04-2001-1501, service was effectuated through defendant's lessee--the parties were not estranged.

from multiple levels of hearsay sources which the government can not authenticate.

The Complainant infers that party who claimed he was not authorized to receive notice of the action in C.W. Smith, was central to the court's decision. In C.W. Smith, notice from the person who actually received notice was not relevant,³ since most importantly, the court held that the defendant received actual notice of the suit prior to his deadline to file an answer. Here, Defendant never received actual notice from his estranged wife, son, or daughter-in-law. Defendant did not receive actual notice until almost five (5) years after the commencement of the suit. (Dudley Burrell Affidavit #2, ¶ 9).

Finally, the government contends that Burrell, having never been divorced, distinguishes Williams v. Capital Transit Co. from the case at bar. The government's arrow misses the mark. The service that was quashed in Williams was because it was patent that the likelihood of the husband's receipt, through such service of process, of actual knowledge of the action and his duty to defend was remote. In Williams, it was not the ministerial act of finally obtaining a divorce that made knowledge of the action remote, but the "estrangement" of the parties.⁴ It

³ Despite Claimant's inferences the court did not reach the issue of "whether informing a party that they are not authorized to receive service of another's behalf is valid," they did not reach the issue as Defendant had actual service of the suit.

⁴ Miriam-Webster defines "estrangement" as: to arouse especially mutual enmity or indifference where there had formerly been love, affection, or friendliness.

was that enmity or indifference that made the likelihood of husband's receipt of notice of the suit, remote. Indeed, the parties in Hiram Walker, 89 N.E. 2d 748 and Scobbie, 86 N.E.2d 160, were still married, at the time of the purported service.

Complainant could not reasonably expect that service of Respondents at the 300 N. Indiana Avenue address achieved actual service. Burrell has not used the 300 N. Indiana address since becoming estranged from his wife almost 3 years before the purported service. (Dudley Burrell Affidavit #2, ¶ 10). Burrell has not filed tax returns using the 300 N. Indiana address. (Dudley Burrell Affidavit #2, ¶ 11). Burrell's driver's license, state identification, social security checks, and firearms license all reflect Respondents' address at 649 N. Rosewood, Kankakee, Illinois, 60901. (Dudley Burrell Affidavit #2, ¶ 12, attached hereto as Exhibit C).

Moreover, it is undisputed that Burrell was and still is estranged from his spouse, and that Burrell never received actual or constructive knowledge of the suit until some 5 years after the commencement of this action. Based on the undisputed facts, the service of process as to these Respondents must be quashed, as a matter of law.

II. Proof of Service Was Invalid

The government contends that the Green Cards were not altered. We disagree. If the Green Cards were filed on July 17 and 18, 2006, as the government contends and the Regional Hearing Clerk wrote on and/or whited-out the Green Cards, after her employment began in April of 2009, then the Green Cards were altered.⁵ It can also be inferred, then, that the white-out portions of the Green Cards occurred after April of 2009.

Respondents cannot determine if the dates under the white-out represent the true date of filing the proof of service. Moreover, if the Green Cards were already date stamped on the back, then there would be no need to add such dates, some three (3) or more years later to the front of the Green Cards. Despite Complainant's protestations to the contrary, there is still a cloud over the proof of service.⁶ At a minimum, defective proof of service should serve as a bar to the government obtaining a default judgment.

III. The Statute of Limitation

The government contends that the statute of limitations is tolled with the commencement of a suit in Illinois. They

⁵Merriam-Webster defines alter as: to make different in some particular, as size, style, course, or the like.

⁶ Respondents note that both the Green Cards, specifically for these Respondents were whited-out.

cite Appleton, 635 F.2d 603 and Bemis, 2009 U.S. District Lexis 58145, for support. Appleton and Bemis are inapplicable as they distinguish tolling between class action members and those who opt-out. Here, the EPA filed a complaint in a court which lacked personal jurisdiction over the Respondents, a defect which is qualitatively different from filing in a court which has personal jurisdiction over the defendant, but lacks subject matter jurisdiction. The Illinois Supreme Court has not extended the remedy of tolling to encompass such a defect. A timely claim which is dismissed without prejudice for failure to prosecute does not toll the statute of limitations. Dupree v. Jefferson, 215 U.S. App. D.C. 43, 666 F.2d 606, 610-11 (D.C. Cir. 1981); Stein v. Reynolds Securities, Inc., 667 F.2d 33, 34 (11th Cir. 1982). It is generally accepted that a dismissal without prejudice leaves the situation the same as if the suit had never been brought, and that in the absence of a statute to the contrary a party cannot deduct from the period of the statute of limitations the time during which the action so dismissed was pending. Bomer v. Ribicoff, 304 F.2d 427 (6th Cir. 1962); 5 Moore's Federal Practice para. 41.05[2]. Likewise, the filing of a complaint which is later dismissed without prejudice for failure to perfect service does not toll the statute of limitations:

While the limitations period is "tolled" for some purposes upon the filing of a complaint, this

(c) that the allegations contained in Complainant's Complaint are now barred by the five (5) year statute of limitation;

(d) that this case be dismissed, with prejudice, as a matter of law; and,

(e) that this Court provide any and all relief just and proper in the premises.

Respectfully submitted,


Derek S. Burrell

3-26-11
Date

RECEIVED
APR - 1 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

CERTIFICATE OF SERVICE

Respondents Dudley B. Burrell and the Dudley B. Burrell Trust hereby certify that their Reply to Complainant's Response to Motion To Quash Service of Process and Motion to Dismiss in the above-captioned matter was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 26 day of March 2011 at:

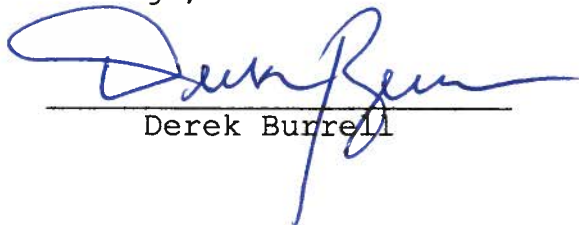
Marcy Toney
Regional Judicial Officer
EPA,
Region 5
77 West Jackson Boulevard
Chicago, Il 60604

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

Maria Gonzalez (C14-J)
Associate Regional Counsel
Regional Judicial Officer
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, Il 60604-3590

US EPA Region 5
Office of the Regional Hearing Clerk
Attention: La Dawn Whitehead
77 W. Jackson Blvd.
Mailcode: E-19J
Chicago, Illinois 60604-3590

US EPA, Region 5
Joana Bezerra (DT-8J)
77 West Jackson Boulevard
Chicago, Illinois 60604



Derek Burrell

RECEIVED
APR - 1 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

EXHIBIT A

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

RECEIVED
APR - 1 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

AFFIDAVIT OF DUDLEY BURRELL, #2

I, the undersigned, am over the age of 18 and I am of sound mind.

1. The internet web pages cited by Complainant were not authorized by, paid for, nor created by Burrell.

2. Burrell is seventy-one (71) years old.

3. Burrell is not computer literate and does not use computers.

4. Burrell has never advertised on the internet.

5. Burrell has had nothing whatsoever to do with the content of the internet web pages cited by the government.

6. There is no way to determine who created these sites; who maintains them; or why they include Burrell?

7. The return address on the envelope used to mail Respondents' Request for Settlement Conference and Motion for Extension of Time was merely a clerical error made by my counsel.

8. Burrell has never signed any of the tax returns for the tax years, 2007-2009, submitted in Respondents Willie P. Burrell and The Willie P. Burrell Trust's pleadings.

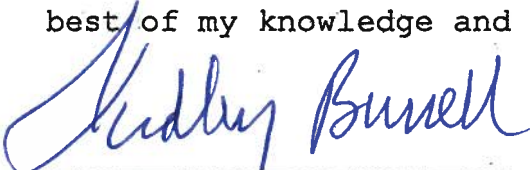
9. I did not receive actual notice until almost five (5) years after the commencement of the suit.

10. Burrell has not used the 300 N. Indiana address since becoming estranged from his wife almost 3 years before the purported service.

11. Burrell has not filed tax returns using the 300 N. Indiana address.

12. Burrell's driver's license, state identification, social security checks, and firearms license all reflect Respondents' address at 649 N. Rosewood, Kankakee, Illinois, 60901.

I affirm the foregoing are true and correct, to the best of my knowledge and belief, under penalty of perjury.



Dudley Burrell

3/25/11
Date

RECEIVED

APR - 1 2011

**REGIONAL HEARING CLERK
USEPA
REGION 5**

EXHIBIT B

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.)
_____)

RECEIVED
APR - 1 2011

DEREK S. BURRELL AFFIDAVIT #2

REGIONAL HEARING CLERK
USEPA
REGION 5

I, the undersigned, am over the age of 18 and I am of sound mind.

1. On January 11, 2011, I became employed, on an as-needed basis, by Dudley Burrell and the Dudley Burrell Trust located at 649 N. Rosewood, Kankakee, Illinois, 60901.

2. On January 1, 2011, I became employed, on a full-time basis with Burrell Property Management, L.L.C., which is owned and operated by Willie P. Burrell at 300 N. Indiana Avenue, Kankakee, Illinois, 60901.

3. I am also serving as the Representative for all of the Respondents (hereinafter, also the "parties") in the above-captioned matter.

4. The individual Respondents are currently involved in a divorce action, Willie Pearl Burrell v. Dudley B. Burrell, Cause No: 09-D-110, in the Circuit Court of Iroquois County, Illinois, Twenty-First Judicial Circuit, which was filed on November 17, 2009.

5. The individual Respondents have been estranged since December 2003.

6. Prior to my formal appearance, I prepared an Answer, Request for Settlement Conference, and Motion for Extension of Time for all the parties.

7. It was also a part of my duties to prepare and address the envelopes to mail the parties' respective documents to the Regional Hearing Clerk of the Environmental Protection Agency, et. al.

8. It was I who used the 300 N. Indiana address for Dudley B. Burrell and The Dudley B. Burrell Trust's Request for Settlement Conference and Motion for Extension of Time, however the address on the Answer, Settlement conference and Motion of Extension of Time reflect Dudley B. Burrell and The Dudley B. Burrell Trust's address at 649 N. Rosewood.

9. At the time, as counsel for both parties, I was working from the 300 N. Indiana address. However, it was not my intent to use the 300 N. Indiana address on the envelope containing documents for Dudley B. Burrell or his respective trust.

10. The individual Respondents have been unable to cooperate with each other, even with respect to the instant litigation.

11. As a result, I now perform all work for Willie P. Burrell and The Willie P. Burrell Trust, at 300 N. Indiana Avenue, Kankakee, Illinois, 60901.


12. Likewise, I now perform all work for Dudley B. Burrell and The Dudley B. Burrell Trust, at 649 N. Indiana Avenue, Kankakee, Illinois, 60901.

13. It has been my intent to use the 649 N. Rosewood, Kankakee, Illinois, 60901, as Respondents' address on all correspondence and pleadings. I have attempted to use the 649 N. Rosewood address whenever it applies to Dudley B. Burrell and The Dudley B. Burrell Trust.

14. It has been my intent to use the 300 N. Indiana Avenue, Kankakee, Illinois, 60901, as Respondents Willie P. Burrell and The Willie P. Burrell Trust's address on all correspondence and pleadings.

15. As counsel for both parties, and under the circumstances, the address used on the envelope for Dudley B. Burrell and the Dudley B. Burrell Trust's Request for Settlement Conference and Motion for Extension of Time was a mere clerical error.

I affirm the foregoing are true and correct, to the best of my knowledge and belief under penalty of perjury.


Derek S. Burrell

RECEIVED
APR - 1 2011
3-26-11
Date
**REGIONAL HEARING CLERK
USEPA
REGION 5**