

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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EPA REGION 5

2011 APR -8 AM 10:02

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 REGARDING FILING OF ANSWERS

This matter is currently pending before the Regional Judicial Officer/Presiding Officer on several pre-answer motions, including: (1) Complainant's Motion for Default Order; (2) the Motion to Quash Service of Process, Motion to Dismiss and Motion to Strike filed by Respondents Dudley B. Burrell and the Dudley B. Burrell Trust; and (3) the Motion to Dismiss and Motion Opposing Default Judgment filed by Respondents Willie B. Burrell and the Willie B. Burrell Trust.

On January 14, 2011, all Respondents filed an Answer.¹ Given that the Complaint in this matter was filed on June 22, 2006, these Answers were clearly filed out of time, however, none of the Respondents specifically sought leave from the Presiding Officer to file an Answer out of time. For that reason, I directed the Regional Hearing Clerk to date stamp the answers as "received" on January 14, 2011, but not to place the Answers in the official docket for this matter.

Although the Consolidated Rules of Practice (40 C.F.R. Part 22) which govern this proceeding do not specifically address this issue, proper practice requires that where a party seeks to file a document with the Regional Hearing Clerk after the deadline for such filing has passed, that party should seek leave, or "permission," from the Presiding Officer to file the document out of time and provide a justification for the late filing. In this case, Respondents have vigorously challenged Complainant's Motion for Default Order and have offered some justification for their failure to file their Answers in a timely fashion. Complainant states that it objects to Respondents' attempts to file its Answers pending a ruling on its Motion for Default²

Without prejudging the merits of the arguments Respondents have made in opposing

¹ Specifically, Respondents Willie B. Burrell and Willie B. Burrell Trust filed a joint Answer and Respondents Dudley B. Burrell and Dudley B. Burrell Trust filed a separate joint Answer.

² See 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 at 6.

Complainant's Motion for Default, I will allow their Answers to be filed with the Regional Hearing Clerk and consider them to be "proposed"³ Answers, pending the outcome of the rulings on the dispositive motions that are pending in this matter.

I hereby direct the Regional Hearing Clerk to file the Respondents' Answers in the official agency file for this matter and to enter them in the case docket.

IT IS SO ORDERED.

Dated: April 8, 2011



Marcy A. Toney
Regional Judicial Officer

³ See *In re Pyramid Chemical Company*, 11 E.A.D. 657, 682 (EAB 2004).

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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 April 8, 2011, was sent this day in the following manner:

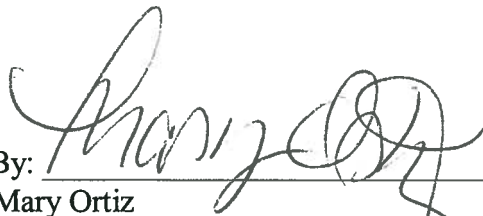
Original hand delivered to: Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

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: APRIL 8, 2011

By: 
Mary Ortiz
Administrative Program Assistant