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,	)
Illinois,	)
Respondents.	)
	)

RESPONDENTS' DUDLEY B. BURRELL AND THE DUDLEY B. BURRELL TRUST ANSWER TO COMPLAINT

Respondents Dudley B. Burrell and The Dudley B. Burrell Trust (hereinafter, collectively "Respondent")[1], pro se, pursuant to 40 C.F.R. § 22.15, hereby tenders their ANSWER to Complaint, and in support states:

ANSWER

1. Respondent neither admits nor denies all the material allegations in paragraph 1 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

2. Respondent neither admits nor denies all the material allegations in paragraph 2 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

3. Respondent admits the material allegations in paragraph 3 of Complainant's Complaint, as it pertains to

[1] To the extent that one of the Respondents has a different response, said Respondent will be identified separately.

this Respondent. Respondent neither admits nor denies the remainder of the material allegations alleged in Complainant's rhetorical paragraph 3, as they lack knowledge regarding the remaining allegations.

4. Dudley B. Burrell Trust admits that it has leased residential apartments, by and through its agent, B & D Management Corporation ("B & D"). Dudley B. Burrell denies all the remaining material allegations in Complainant's rhetorical paragraph 4, as it pertains to him in his personal capacity.

Statutory and Regulatory Background

5. Respondent neither admits nor denies all the material allegations in paragraph 5 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of fact for the fact finder.

6. Respondent neither admits nor denies all the material allegations in paragraph 6 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

7. Respondent neither admits nor denies all the material allegations in paragraph 7 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier

of fact.

8. Respondent neither admits nor denies all the material allegations in paragraph 8 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

9. Respondent neither admits nor denies all the material allegations in paragraph 9 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

10. Respondent neither admits nor denies all the material allegations in paragraph 10 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

11. Respondent neither admits nor denies all the material allegations in paragraph 11 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

12. Respondent neither admits nor denies all the material allegations in paragraph 12 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier

of fact.

13. Respondent neither admits nor denies all the material allegations in paragraph 13 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

14. Respondent neither admits nor denies all the material allegations in paragraph 14 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

15. Respondent neither admits nor denies all the material allegations in paragraph 15 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

General Allegations

16. Respondent incorporates its Answers to rhetorical paragraphs 1 through 15 of this ANSWER as though set forth fully in this paragraph.

17. Respondent admits that The Dudley B. Burrell Trust leased 1393 E. Chestnut and 1975 E. Erzinger during the time alleged in rhetorical paragraph 17. Dudley B. Burrell denies all the material allegations in rhetorical paragraph 17. Respondent denies the remainder of the allegations in

rhetorical paragraph 17, as Respondent lacks knowledge of the same.

18. Respondent admits the material allegations in rhetorical paragraph 18.

19. Respondent neither admits nor denies all the material allegations in paragraph 19 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

20. Respondent admits the material allegations in paragraph 20 of Complainant's Complaint.

21. Respondent admits the material allegations in paragraph 21 of Complainant's Complaint.

22. Respondent neither admits nor denies all the material allegations in paragraph 22 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

23. Respondent neither admits nor denies all the material allegations in paragraph 23 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

24. Respondent neither admits nor denies all the material allegations in paragraph 24 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

25. Respondent neither admits nor denies all the material allegations in paragraph 25 of Complainant's Complaint, as Respondent lacks knowledge of the same.

26. Respondent admits the material allegations in rhetorical paragraph 26 of Complainant's Complaint.

27. Respondent neither admits nor denies all the material allegations in paragraph 27 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

28. Respondent neither admits nor denies the material allegations in rhetorical paragraph 28 of Complainant's Complaint, as Respondent lacks knowledge of the same.

29. Respondent neither admits nor denies the material allegations in rhetorical paragraph 29 of Complainant's Complaint, as Respondent lacks knowledge of the same.

30. Respondent The Dudley B. Burrell Trust, through its agent, B & D, admits that it entered into agreements to lease 1393 E. Chestnut and 1975 E. Erzinger. Dudley B. Burrell denies all the material allegations set forth in rhetorical paragraph 30 of Complainant's Complaint, as it pertains to him in his individual capacity.

31. Respondent admits that the leases for 1393 E. Chestnut and 1975 Erzinger were for a period in excess of 100 days. Respondent neither admits nor denies the remainder of the material allegations set forth in rhetorical paragraph 31 of Complainant's Complaint, as Respondent lacks knowledge of the same.

32. Respondent admits the material allegations set forth in rhetorical paragraph 32 as to 1393 E. Chestnut and

1975 E. Erzinger. Respondent lacks knowledge as to the remainder of the allegations alleged in rhetorical paragraph 32 as to 257 N. Chicago, 993 N. Schuyler and 575 E. Oak.

33. Respondent denies the material allegations set forth in rhetorical paragraph 33 of Complainant's Complaint.

34. Respondent neither admits nor denies the material allegations in rhetorical paragraph 34 of Complainant's Complaint, as Respondent lacks knowledge of the same.

35. Respondent neither admits nor denies the material allegations in rhetorical paragraph 35 of Complainant's Complaint, as Respondent lacks knowledge of the same.

36. Respondent admits that its agent, B & D, offered leases and entered into said leases with tenants for 1393 E. Chestnut and 1975 E. Erzinger. Dudley B. Burrell denies that he entered or offered any leases in his individual capacity.

37. Respondent admits that The Dudley B. Burrell Trust, by its agent, B & D, offered and leased the properties at 1393 E. Chestnut and 1975 Erzinger. Dudley B. Burrell denies he offered or leased 1393 E. Chestnut and 1975 Erzinger in his individual capacity. Respondent lacks knowledge as to the remainder of the allegations in rhetorical paragraph 37 as to 257 N. Chicago, 993 N. Schuyler and 575 E. Oak.

38. Respondent neither admits nor denies all the material allegations in paragraph 38 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

Further, said allegation is a question of law for the trier of fact.

39. Respondent neither admits nor denies all the material allegations in paragraph 39 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

40. Respondent neither admits nor denies all the material allegations in paragraph 40 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

41. Respondent denies all the material allegations in paragraph 41 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. The letter referenced in Complainant's rhetorical paragraph 41 was sent to Respondent Willie P. Burrell Trust's counsel, Mr. Lee. Respondent did not become aware of the March 25, 2005 letter until receiving constructive notice of Claimant's Motion for a Default Judgment and Proposed Order thereon. Respondent neither admits nor denies the remaining material allegations as Respondent lacks knowledge of the same.

42. Respondent denies all the material allegations set forth in Complainant's rhetorical paragraph 42.

43. Respondent admits that they have not yet claimed an inability to pay, because Respondent was unaware of the EPA's March 25, 2005 letter. A Respondent's ability to pay

may not be presumed, when put at issue by a Respondent. *See* In the Matter of New Waterbury, Ltd., 5 E.A.D.529, 541. (EAB 1994). Respondent claims it has an inability to pay. Respondent neither admits nor denies any of the remaining allegations in rhetorical paragraph 43 of Complainant's Complaint as Respondent lacks knowledge of the same.

44. Respondent neither admits nor denies all the material allegations in paragraph 44 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

Count I

45. Respondent incorporates its Answers to rhetorical paragraphs 1 through 44 of this ANSWER as though set forth fully in this paragraph.

46. Respondent neither admits nor denies all the material allegations in paragraph 46 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, said allegation is a question of law and fact for the fact finder.

47. Respondent denies the material allegations in rhetorical paragraph 47 of Complainant's Complaint.

48. Respondent denies the material allegations in rhetorical paragraph 48 of Complainant's Complaint.

49. Respondent denies the material allegations in

rhetorical paragraph 49 of Complainant's Complaint.

50. Respondent denies the material allegations in rhetorical paragraph 50 of Complainant's Complaint.

51. Respondent denies the material allegations in rhetorical paragraph 51 of Complainant's Complaint.

52. Respondent denies the material allegations in rhetorical paragraph 52 of Complainant's Complaint.

53. Respondent neither admits nor denies the material allegations in rhetorical paragraph 53 of Complainant's Complaint, as Respondents lack such knowledge. Further, said allegations are mixed questions of law and fact for the trier of fact.

COUNT 2

54. Respondent incorporates its Answers to rhetorical paragraphs 1 through 53 of this Answer as though set forth fully in this paragraph.

55. Respondent neither admits nor denies all the material allegations in paragraph 55 of Complainant's Complaint, as said allegation is a question of law for the trier of fact.

56. Respondent denies the material allegations in rhetorical paragraph 56 of Complainant's Complaint.

57. Respondent denies the material allegations in rhetorical paragraph 57 of Complainant's Complaint.

58. Respondent denies the material allegations in

rhetorical paragraph 58 of Complainant's Complaint.

59. Respondent denies the material allegations in rhetorical paragraph 59 of Complainant's Complaint.

60. Respondent denies the material allegations in rhetorical paragraph 60 of Complainant's Complaint.

61. Respondent denies the material allegations in rhetorical paragraph 61 of Complainant's Complaint.

62. Respondent denies the material allegations in rhetorical paragraph 62 of Complainant's Complaint. Further, said allegation is a mixed question of law and/or fact for the trier of fact.

COUNT 3

63. Respondent incorporates its Answers to rhetorical paragraphs 1 through 62 of this Answer as though set forth fully in this paragraph.

64. Respondent neither admits nor denies all the material allegations in paragraph 64 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, said allegation is a question of law for the finder of fact.

65. Respondent denies the material allegations in rhetorical paragraph 65 of Complainant's Complaint.

66. Respondent denies the material allegations in rhetorical paragraph 66 of Complainant's Complaint.

67. Respondent denies the material allegations in

rhetorical paragraph 67 of Complainant's Complaint.

68. Respondent denies the material allegations in rhetorical paragraph 68 of Complainant's Complaint.

69. Respondent denies the material allegations in rhetorical paragraph 69 of Complainant's Complaint.

70. Respondent denies the material allegations in rhetorical paragraph 70 of Complainant's Complaint.

71. Respondent neither admits nor denies the material allegations in rhetorical paragraph 71 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, said allegations are mixed questions of law and fact for the fact finder.

Count 4

72. Respondent incorporates its Answers to rhetorical paragraphs 1 through 71 of this Answer as though set forth fully in this paragraph.

73. Respondent neither admits nor denies all the material allegations in paragraph 73 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, said allegation is a question of law for the finder of fact.

74. Respondent denies the material allegations in rhetorical paragraph 74 of Complainant's Complaint.

75. Respondent denies the material allegations in rhetorical paragraph 75 of Complainant's Complaint.

76. Respondent denies the material allegations in rhetorical paragraph 76 of Complainant's Complaint.

77. Respondent denies the material allegations in rhetorical paragraph 77 of Complainant's Complaint.

78. Respondent denies the material allegations in rhetorical paragraph 78 of Complainant's Complaint.

79. Respondent denies the material allegations in rhetorical paragraph 79 of Complainant's Complaint.

80. Respondent neither admits nor denies all the material allegations in paragraph 80 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, said allegation is a question of law for the finder of fact.

Count 5

81. Respondent incorporates its Answers to rhetorical paragraphs 1 through 80 of this Answer as though set forth fully in this paragraph.

82. Respondent neither admits nor denies all the material allegations in paragraph 82 of Complainant's Complaint, as Respondent lacks such knowledge of the same. Further, said allegation is a question of law for the trier of fact.

83. Respondent denies all the material allegations in paragraph 83 of Complainant's Complaint. Further said allegation is a question of law for the finder of fact.

84. Respondent denies all the material allegations in paragraph 84 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, said allegation is a question of law for the fact finder.

85. Respondent denies all the material allegations in paragraph 85 of Complainant's Complaint, as said allegation is a question of law for the finder of fact.

86. Respondent denies all the material allegations in paragraph 86 of Complainant's Complaint, as said allegation is a question of law for the finder of fact.

87. Respondent denies all the material allegations in paragraph 87 of Complainant's Complaint, as said allegation is a question of law for the finder of fact.

88. Respondent denies all the material allegations in paragraph 88 of Complainant's Complaint.

89. Respondent neither admits nor denies all the material allegations in paragraph 89 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, said allegation is a question of law for the trier of fact.

Defenses

90. Respondent incorporates its Answers to rhetorical paragraphs 1 through 89 of this Answer as though set forth fully in this paragraph.

91. Dudley B. Burrell is not subject to the personal

jurisdiction of this fact finder.

92. Dudley B. Burrell Trust is not subject to the personal jurisdiction of this fact finder.

93. Service of Process is defective and must be quashed as to, both Respondents, Dudley B. Burrell and The Dudley B. Burrell Trust.

94. Respondent would have an inability to pay or continue in business, should any civil penalty be imposed.

95. The applicable statute of limitation has expired as to both Respondents, Dudley B. Burrell and The Dudley B. Burrell Trust.

96. Respondent "substantially" complied with all statutes and regulations alleged to have been violated by the Respondent.

97. Respondent relied, in part, upon inspections by the Kankakee County Health Department ("KCHD") lead inspectors, licensed by the State of Illinois. The KCHD certified the units to be a "Lead Safe Home". Moreover, Respondent relied upon the tests and certificates performed and issued by the KCHD.

98. Respondent is entitled to reduce the proposed penalty by mitigating factors as outlined by Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy.

99. Complainant's Complaint was defective for failure to comply with:

(a) 40 CFR 22.5(b)(1)(i);

(b) 40 CFR 22.5(b)(1)(ii)(c)(iii); and,

(c) 40 CFR 22.5(c)(2).

Therefore, Complainant's Complaint should be dismissed.

100. Each and every unit alleged in Complainant's Complaint was lead-free during all relevant times.

101. The statute of repose bars Complainant's claims.

102. Claimant failed to comply with 40 C.F.R. § 22.5(b)(1)(iii). Therefore service of process is defective.

Proposed Civil Penalty

103. Respondent incorporates its Answers to rhetorical paragraphs 1 through 102 of this Answer as though set forth fully in this paragraph.

104. The proposed civil penalty is excessive and inappropriate when the nature, circumstances, extent, and gravity of the violations are taken into account.

Request for Hearing

105. Respondent incorporates its Answers to rhetorical paragraphs 1 through 104 of this Answer as though set forth fully in this paragraph.

106. Respondent requests a hearing to determine all of the allegations raised in Complainant's Complaint and all of the Respondent's Answers and Defenses. Respondent disputes material facts in the Complaint as well as the proposed penalty.

Conclusion

Wherefore, Respondent hereby files their Answer to Complainant's Complaint requesting all the material relief sought by Complainant be denied, and any and all other relief as may be just and proper in the premises.

Respectfully Submitted,

Dudley B. Burrell
649 N. Rosewood
Kankakee, Illinois 60901
(815) 790-1994

Dudley B. Burrell, for The
Dudley B. Burrell Trust
649 N. Rosewood
Kankakee, Illinois 60901
(815) 790-1994

CERTIFICATE OF SERVICE

Respondents Dudley B. Burrell and The Dudley B. Burrell Trust hereby certify that its ANSWER in the above-captioned matter was served upon the Complainant and other Respondents, by U.S. Mail, postage pre-paid, this 14 day of January 2011 at:

United States Environmental Protection Agency
Region 5
Joana Bezerra (DT-8J)
77 West Jackson Boulevard
Chicago, Illinois 60604

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

Willie P. Burrell and
The Willie P. Burrell Trust
300 North Indiana Avenue
Kankakee, Illinois 60901
(815)933-6087 (Office)
(815)933-5114 (Fax)

Maria Gonzalez
US EPA - Region 5
Associate Regional Counsel
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dudley B. Burrell

Dudley B. Burrell, and
Dudley B. Burrell for The
Dudley B. Burrell Trust