

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' WILLIE P. BURRELL AND THE WILLIE P. BURRELL
TRUST ANSWER TO COMPLAINT

Respondents Willie P. Burrell and The Willie P. 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.

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this Respondent. Respondent lacks any knowledge regarding the remaining Respondents.

4. The Willie P. Burrell Trust admits that it leases residential units, by and through its agent, B & D Management Corporation ("B & D") from an office located at 300 N. Indiana Avenue, Kankakee, Illinois. Willie P. Burrell denies all the material allegations in paragraph 4 of Complainant's Complaint, as it refers to her in her individual 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 mixed question of law and/or fact for the finder 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. The Willie P. Burrell Trust, by and through its agent, B & D, leased 575 E. Oak, 257 N. Chicago, and 993 N. Schuyler. Willie P. Burrell denies the material allegations as to her, in her individual capacity. Respondent neither admits nor denies all of the remaining 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 neither admits nor denies the material allegations in paragraph 20 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

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 admits that The Willie P. Burrell Trust owned and leased 993 N. Schuyler, 257 N. Chicago, and 575 E. Oak. Respondent lacks knowledge as to the remainder of the material allegations set forth in rhetorical paragraph 23. Further, rhetorical paragraph 23 also alleges questions of law which are questions for the trier of fact.

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.

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 admits that on or about May 28, 2003, an Environmental Protection Agency ("EPA") representative conducted an inspection at the office of B & D. Respondent lacks knowledge as to the remainder of the material allegations set forth in rhetorical paragraph 28 of Complainant's Complaint.

29. Respondent denies the material allegations in rhetorical paragraph 29 of Complainant's Complaint.

30. The Willie P. Burrell Trust, through its agent, B & D, admits that it entered into agreements to lease 257 N. Chicago, 993 N. Schuyler, and 575 E. Oak. Willie P. Burrell, in her individual capacity, denies all the material allegations set forth in rhetorical paragraph 30 of Complainant's Complaint.

31. Respondent admits that the leases for 257 N. Chicago, 993 N. Schuyler, and 575 E. Oak were for a period greater than 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 in rhetorical paragraph 32 of Complainant's Complaint.

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

34. Willie P. Burrell denies that she offered such leases in her individual capacity. Willie P. Burrell admits that The Willie P. Burrell Trust, by its agent B & D, offered leases for 257 N. Chicago, 993 N. Schuyler, and 575 E. Oak, between December of 2001 and April 2003.

35. The Willie P. Burrell Trust admits that it, by its agent B & D, offered leases for 257 N. Chicago, 993 N. Schuyler, and 575 E. Oak, between December of 2001 and April 2003. Willie P. Burrell, in her individual capacity, denies the material allegations in rhetorical paragraph 35 of Complainant's Complaint. Respondent lacks knowledge of the remaining material allegations in rhetorical paragraph 35 of Complainant's Complaint.

36. Respondent neither admits nor denies the material allegations in paragraph 36 of Complainant's Complaint, as Respondent lacks knowledge of said allegation.

37. Respondent neither admits nor denies all the material allegations in paragraph 37 of Complainant's

Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a question of law for the trier of fact.

38. Respondent neither admits nor denies the material allegations in paragraph 38 of Complainant's Complaint, as Respondent lacks knowledge of said allegation. Further, said allegation is a mixed question of law and fact for the finder of fact.

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

41. Respondent neither admits nor denies the 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 The Willie P. Burrell Trust's counsel, Mr. Lee. Respondent did not become aware of the March 25, 2005 letter until receiving "actual notice" of Claimant's Motion for a

Default Judgment and Proposed Order received by Respondent on January 3, 2011. 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 in part, is a question of law for the trier of fact.

Count 1

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 the material

allegations in paragraph 46 of Complainant's Complaint, as Respondent lacks knowledge of the same. Further, the allegation contained therein is a mixed question of law and/or fact for the fact finder.

47. Respondent denies the material allegations in rhetorical paragraph 47 of Complainant's Complaint, as Respondent lacks knowledge of the same.

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 Respondent lacks such knowledge. Further, said allegations are mixed questions of law and fact for the fact finder.

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 Respondent lacks knowledge of the same and further, 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, as Respondent lacks knowledge of the same; and further, said allegation is a mixed question of law and/or fact for the fact finder.

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 trier 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 trier 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 trier

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 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.

84. Respondent denies all the material allegations in paragraph 84 of Complainant's Complaint.

85. Respondent denies all the material allegations in paragraph 85 of Complainant's Complaint.

86. Respondent denies all the material allegations in paragraph 86 of Complainant's Complaint.

87. Respondent denies all the material allegations in paragraph 87 of Complainant's Complaint.

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 mixed question of law and fact for the fact finder.

Defenses

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

91. Willie P. Burrell is not subject to the personal jurisdiction of this fact finder.

92. Willie P. 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, Willie P. Burrell and The Willie P. Burrell Trust.

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

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

96. 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.

97. The applicable statute of limitation has expired as

to both Respondents, Willie P. Burrell and The Willie P. Burrell Trust.

98. 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.

99. Respondent is entitled to a reduction in the proposed penalty by mitigating factors as outlined by Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy.

100. Each of the units alleged in Complainant's Complaint were lead-free at all relevant times herein.

101. Claimant's claims are barred by the statute of repose.

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.

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

Respectfully Submitted,

Willie P. Burrell

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Kankakee, IL 60901
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CERTIFICATE OF SERVICE

Respondents Willie. P. Burrell and The Willie P. Burrell Trust hereby certify that its Answer 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

Dudley B. Burrell and
The Dudley B. Burrell Trust
649 North Rosewood
Kankakee, Illinois 60901

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

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