

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

In the Matter of:

Ms. Dessie L. Brumfield
d/b/a Brumfield Properties, LLC,
Respondent,

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Docket No. TSCA-05-2010-00014

RESPONSE TO ORDER TO SHOW CAUSE

Respondent, Dessie L. Brumfield, by her counsel, Attorney Thomas J. McClure, hereby responds to the Court's January 26, 2012 Order To Show Cause on this case as follows.

Respondent is a layperson. Due to concerns of past injustices done to Respondent as a minority (African American and a single woman), and concerns that she could not trust anyone with her legal affairs (due to previous multiple legal issues between her and the City of Milwaukee where she could not find counsel to assist her because of intimidation and potential harassment expected if they would have to fight the City of Milwaukee), Respondent at first had tried to defend herself in this EPA lawsuit against her. This past fall after many months of not fully understanding the law and what was required she had come to realize it was an inordinately difficult task to defend herself **pro se** in this matter. On or about November 21, 2011 Respondent contacted Attorney Thomas J. McClure, a Milwaukee, Wisconsin area solo practitioner attorney to assist her. A formal agreement between Respondent and McClure was signed on November 30, 2011 for Attorney McClure to proceed as counsel in this matter.

On or about November 29, 2011 Attorney McClure contacted Complainant EPA counsel Jeffrey C. Trevino to advise of his representation of the Complainant and to request information with which to get up to speed for the representation. Attorney McClure advised he had been hired by Respondent and was a 25 year general civil litigator without EPA experience but believed he could adequately perform the representation and candidly discussed the case with Trevino. Before McClure could get a Notice of Retainer out he received a call from Indiana on December 3, 2011 that his first grandchild had been born with serious complications in Fort Wayne, Indiana and McClure was required to immediately leave Wisconsin for Indiana where he was required by the grandchild's condition and eventual death and burial to be out of state for 10 days. On December 15, 2011 Attorney McClure sent his Notice of Retainer to the EPA Chicago office he believed was the appropriate office to file his documents at but received no documents or notices from the court until the notice of the recent change in judges on this case. It was only when McClure was contacted by staff attorney Edward Kulschinsky of the Office of Administrative Law Judges in Washington, D.C. on or about February 16, 2012 that it was learned Attorney McClure's Notice of Retainer had not been properly processed so he was not properly of record or getting notices. Attorney Kulschinsky brought McClure up to date on the internal workings of the EPA notice and document processing system and e-mailed Attorney McClure the January 26, 2012 Order to Show Cause on February 16,

2012 and advised he should respond to same as soon as possible.

Although Attorney McClure had received the December 28, 2011 Complainant Prehearing Exchange documents by on or about January 1, 2012, Attorney McClure was unclear if he should wait for formal acknowledgment of his being of record from the Court before making a similar submission on behalf of the Respondent. Such acknowledgement has still not occurred to date. Attorney McClure believed once administrative judge staff counsel contacted him on or about February 16, 2012 it was then appropriate to proceed. There was no intention to delay these proceedings and the delays that occurred were merely the result of good faith error and the result of error of counsel and not of the Respondent who trusted that her counsel would take all necessary steps for her defense once hired.

Due to a heavy court schedule the past two weeks after communicating with staff attorney Kulschinsky Attorney McClure was delayed in submitting this document and Respondent's Prehearing Exchange. Attorney McClure apologizes for the confusion and delay in Respondent's responding to the Court's November 18, 2011 and January 26, 2012 directives but requests the delays in responding, due to changeover from lay respondent to counsel, the natural disruption of the effect of a death in one's family and counsel's unfamiliarity with practicing in a previously unknown forum such as this federal agency but proceeding in good faith, be excused for good cause and the Respondent's defense to be allowed to continue and the Respondent's Prehearing Exchange document be allowed to be filed at this time.

Yours very truly,

McCLURE LAW OFFICES



Thomas J. McClure

TJM:bms
Enclosures

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In the Matter of)

Ms. Dessie L. Brumfield,)
d/b/a Brumfield Properties, LLC,)

Respondent,)

Docket No. TSCA-05-2010-0014

RESPONDENT PREHEARING EXCHANGE

Respondent hereby files its Prehearing Exchange for this civil administrative action pursuant to the Court's Prehearing Order, dated November 18, 2011.

I. Prospective Fact Witnesses

A. Dessie L. Brumfield, 3936 North 18th Street, Milwaukee, WI 53206.

Ms. Brumfield will explain her noncompliance was inadvertent in all allegations.

II. Documents and Exhibits

A. All documents listed by Complainant may be used by Respondent in her defense.

III. Desired or Required Hearing Location

Due to her age Respondent requests a hearing in Milwaukee County where she resides.

Respondent requests 4 hours to explain why her noncompliance was inadvertent.

No translation service will be necessary.

IV. Responses To Specific Requests of the Court

Respondent's defense - Respondent was unaware of the effect of her omissions.

Documents in support - All documents listed by Complainant.

Penalties Position - The penalties requested are grossly excessive for her omissions.

Dated this 5th day of March, 2012 at Delafield, Wisconsin.

ATTORNEY THOMAS J. MCCLURE LLC
Attorneys for Respondent

By: Thomas J. McClure

Thomas J. McClure
State Bar No. 1016923

ATTORNEY THOMAS J. McCLURE LLC
15 Crossroads Court
Delafield, WI 53018-2035
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Docket No. TSCA-05-2010-00014

Certificate of Service

I hereby certify that today I filed by mail with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604-3590, the original document entitled RESPONDENT PREHEARING EXCHANGE for this civil administrative action and that I issued to the Court and Complainant by first class mail a copy of the document:

The Honorable M. Lisa Buschman, Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W., mail Code 1900L
Washington, D.C. 20460

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



Thomas J. McClure
Attorney for Respondent

March 5, 2012

Dated