



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 22 2006

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 1562 2535

Willie Burrell
300 North Indiana Avenue
Kankakee, IL 60901

Dear Mrs. Burrell:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

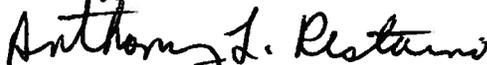
I recommend that you carefully read and analyze the Complaint and the enclosed Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day that the violation continues constitutes a new violation for which additional penalties may be imposed.

As provided in the complaint, if you would like to request a hearing to contest the facts alleged in the Complaint or the amount of the penalty, you must do so in your answer to the complaint. If you choose to request a hearing, you must file your answer with the Regional Hearing Clerk (E-13J), U.S. EPA - Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 days following service of this Complaint. A copy of your Answer and Request for Hearing should be sent to Maria Gonzalez, Associate Regional Counsel (C-14J), at the above address. If you have any questions about this matter you may phone Ms. Gonzalez at (312) 886-6630.

Failure to respond to this Complaint and Notice of Opportunity for Hearing by specific answer within 30 days of your receipt of this Complaint constitutes your admission of the allegations in the Complaint. Failure to respond to this Complaint may result in the issuance of a Default Order imposing the proposed penalties.

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. If you wish to request an informal conference for the purpose of settlement, please write to Joana Bezerra, (DT-8J), at the above address, or you may phone her at (312) 886-6004.

Sincerely,



Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 2041

Dudley B. Burrell
300 North Indiana Avenue
Kankakee, IL 60901

Dear Mr. Burrell:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seq.

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Sincerely,

Anthony Restaino
Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 2027

The Dudley B. Burrell Trust
300 North Indiana Avenue
Kankakee, IL 60901

Dear Trustee:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seq.

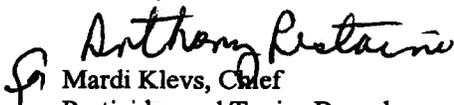
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Sincerely,


Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 2010

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

Dear Trustee:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seq.

I recommend that you carefully read and analyze the Complaint and the enclosed Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day that the violation continues constitutes a new violation for which additional penalties may be imposed.

As provided in the complaint, if you would like to request a hearing to contest the facts alleged in the Complaint or the amount of the penalty, you must do so in your answer to the complaint. If you choose to request a hearing, you must file your answer with the Regional Hearing Clerk (E-13J), U.S. EPA - Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 days following service of this Complaint. A copy of your Answer and Request for Hearing should be sent to Maria Gonzalez, Associate Regional Counsel (C-14J), at the above address. If you have any questions about this matter you may phone Ms. Gonzalez at (312) 886-6630.

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Sincerely,

for 
Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures

**cc: Edward Lee
Mr. Edward Lee, Esq.
507 South Harrison Avenue
Kankakee, IL 60901**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
6 JUN 22 12:55
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
Willie P. Burrell)
The Willie P. Burrell Trust)
Dudley B. Burrell, and)
The Dudley B. Burrell Trust)
300 N. Indiana Avenue)
Kankakee, IL 60901)
)
Respondents.)
_____)

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING
UNDER SECTION 16 (a) OF
THE TOXIC SUBSTANCES CONTROL ACT**

DOCKET NO. TSCA-05-2006-0012

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 United States Code § 2615(a).
2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency, (U.S.EPA), Region 5.
3. Respondents are Willie P. Burrell, Dudley B. Burrell, the Willie P. Burrell Trust, and the Dudley B. Burrell trust.
4. Respondents lease residential units in apartment buildings from an office located at 300 North Indiana Avenue, Kankakee, Illinois.

Statutory and Regulatory Background

5. In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. 4851, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements that must be made as part of residential rentals and sales. 42 U.S.C. § 4852d (Section 1018) requires the Administrator to

promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

6. On March 6, 1996, U.S. EPA promulgated regulations at 40 C. F. R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with Subpart F by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

7. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which impose certain requirements on the sale or lease of target housing.

8. 40 C. F. R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

9. 40 C. F. R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. 40 C. F. R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

11. 40 C. F. R. § 745.103 defines “owner” as any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and non-profit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgager.

12. 40 C. F. R. § 745.103 defines “agent” as any party who enters into a contract with a seller or a lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

13. 40 C. F. R. § 745.100 requires, among other things, that the seller or lessor complete the disclosure activities specified in paragraph 14 below, before a lessee is obligated under any contract to lease target housing.

14. 40 C. F. R. § 745.113(b) of the Disclosure Rule requires that each contract to lease target housing must include as an attachment or within the contract a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

15. Under 42 U.S.C. § 4852d(b)(5) and 40 C. F. R. § 745.118(e), failing to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to EPA administrative civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C. F. R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5)

General Allegations

16. Paragraphs 1 through 15 are re-alleged and incorporated here by reference.

17. Between at least December 4, 2001 and April 1, 2003, Respondents leased residential units in apartment buildings located at 1393 E. Chestnut, 257 N. Chicago, 575 E. Oak, 1975 Erzinger, and 993 N. Schuyle in Kankakee, Illinois. (the Apartment Buildings).

18. The Apartment Buildings were constructed before 1978.

19. The Apartment Buildings and each residential dwelling unit within these buildings are “target housing” as defined in 40 C. F. R. § 745.103.

20. At all times relevant to the Complaint, the Dudley Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 1393 E. Chestnut in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-33-323-020.

21. At all times relevant to the Complaint, the Dudley Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 1975 Erzinger in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-17-04-128-017.

22. At all times relevant to the Complaint, the Willie P. Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 257 N. Chicago, in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-32-421-012.

23. At all times relevant to the Complaint, the Willie P. Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 993 N. Shuyler, in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-32-203-008.

24. Publicly available documents identify the Willie P. Burrell Trust as the taxpayer for the apartment building located at 575 E. Oak, in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-32-421-015.

25. Dudley B. Burrell is the trustee of the Dudley Burrell Trust.

26. Willie P. Burrell is the trustee of the Willie P. Burrell Trust.

27. Publicly available documents indicate that Willie P. Burrell has been the creditor in eviction proceedings for all of the apartments.

28. On May 28, 2003, a representative of the U.S. EPA conducted an inspection at Respondents' office at 300 N. Indiana Avenue in Kankakee, Illinois to monitor compliance with Section 1018 and its implementing regulations found at 40 C. F. R. Part 745, Subpart F.

29. During the May 28, 2003 inspection, Willie P. Burrell indicated that she and her husband owned and managed 149 properties with 200 residential units.

30. On the following dates, Respondents, either directly or through Respondents' authorized agent, entered into the following six written lease agreements (contracts) with individuals for the lease of units in the Apartment Buildings:

	Address	Apt Number	Date of Lease
1	1393 E. Chestnut	N/A	12-04-01
2	257 N. Chicago	#1	09-20-02
3	257 N. Chicago	#5	04-01-03
4	575 E. Oak	#5	02-07-03
5	1975 Erzinger	S/F	02-22-03
6	993 N. Schuyler	#2	11-22-02

31. Each of the six contracts referenced in paragraphs 30, above, covered a term of occupancy greater than 100-days.
32. Each of the six contracts referenced in paragraph 30, above, included letterhead referencing B& D Management Corporation, 300 N. Indiana Avenue, Kankakee, Illinois 60901.
33. According to public records, B&D Management Corporation is an Illinois Corporation involuntarily dissolved on October 1, 2001, whose President was Willie P. Burrell.
34. Between December of 2001 and April of 2003, Willie P. Burrell or her agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.
35. Between December of 2001 and April of 2003, the Willie P. Burrell trust or its agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.
36. Between December of 2001 and April of 2003, Dudley B. Burrell or his agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.
37. Between December of 2001 and April of 2003, the Dudley B. Burrell trust or its agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.
38. Respondents are "lessors," as defined by 40 C. F. R. § 745.103, since they offered the target housing referenced in paragraph 30 for lease.
39. Each individual who signed a lease to pay rent in exchange for occupancy of a unit in the Apartment Buildings, referenced in paragraph 30, became a "lessee" as defined in 40 C. F. R. § 745.103, since he or she entered into an agreement to lease target housing.
40. Based on publicly available information, the total fair market value of the Apartment Buildings exceeds \$300,000.
41. By letter dated March 25, 2005, U.S. EPA advised Respondents that U.S. EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes the U.S. EPA to assess a civil administrative penalty. The complaint would seek a civil penalty. U.S. EPA asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint. If

Respondents believed there were financial factors which bore on Respondents' ability to pay a penalty, U.S. EPA asked Respondents to submit specific financial documents.

42. Willie P. Burrell responded, by letter dated September 16, 2005, but did not claim an inability to pay a penalty and did not provide facts or other information concerning any of the Respondents' ability to pay a penalty.

43. None of the Respondents have claimed an inability to pay the proposed, approximate civil penalty or have provided facts or other information concerning their ability to pay the proposed, approximate civil penalty.

44. The Chief of the Pesticides and Toxics Branch has determined that Respondents have violated the Federal regulations regarding the disclosure of lead-based paint and/or lead based paint hazards, 40 C. F. R. Part 745, as described below, and thereby violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 1

45. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth fully in this paragraph.

46. 40 C. F. R. § 745.113(b)(1) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a Lead Warning Statement before a lessee is obligated under the contract to lease target housing.

47. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

48. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 257 N. Chicago #1, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

49. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 257 N. Chicago #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

50. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 575 E. Oak #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

51. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 1975 Erzinger, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

52. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 993 N. Schuyler #2, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

53. Respondents' failure to include, either within each contract or as an attachment to each contract, a Lead Warning Statement before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes six violations of 40 C.F.R. § 113(b)(1), of U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 2

54. Complainant incorporates paragraphs 1 through 53 of this Complaint as though set forth fully in this paragraph.

55. 40 C. F. R. § 745.113(b)(2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before a lessee is obligated under the contract to lease target housing.

56. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

57. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 257 N. Chicago, #1, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

58. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-

based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 257 N. Chicago #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

59. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 575 E. Oak #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

60. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 1975 Erzinger, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

61. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 993 N. Schuyler #2, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

62. Respondents' failure to include, either within each contract or as an attachment to each contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes 6 violations of 40 C. F. R. § 745.113(b)(2), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 3

63. Complainant incorporates paragraphs 1 through 62 of this Complaint as though set forth fully in this paragraph.

64. 40 C. F. R. § 745.113(b)(3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or

a statement that no such records exist before a lessee is obligated under the contract to lease target housing.

65. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

66. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 257 N. Chicago #1, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

67. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 257 N. Chicago #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

68. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 575 E. Oak #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

69. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 1975 Erzinger, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

70. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the

lessee at 993 N. Schuyler #2, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

71. Respondents' failure to include, either within each contract or as an attachment to each contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes 6 violations of 40 C. F. R. § 745.113(b)(3), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 4

72. Complainant incorporates paragraphs 1 through 71 of this Complaint as though set forth fully in this paragraph

73. 40 C. F. R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the contract to lease target housing.

74. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

75. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 257 N. Chicago #1 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

76. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 257 N. Chicago #5 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

77. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 575 E. Oak #5 was obligated under the contract for the leasing transaction referenced in paragraph 30 above.

78. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 1975 Erzinger was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

79. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 993 N. Schuyler #2 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

80. Respondents' failure to include, either within each contract or as an attachment to each contract, a statement by the lessees affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes 6 violations of 40 C.F.R § 745.113(b)(4), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 5

81. Complainant incorporates paragraphs 1 through 80 of this Complaint as though set forth fully in this paragraph

82. 40 C. F. R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the date of signatures before a lessee is obligated under the contract to lease target housing.

83. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their

statements or the date of such signatures before the lessee at 1393 E. Chestnut was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

84. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 257 N. Chicago #1 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

85. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 257 N. Chicago #5 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

86. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 575 E. Oak #5 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

87. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 1975 Erzinger was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

88. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 993 N. Schuyler #2 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

89. Respondents' failure to include, either within each contract or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the date of such signature before the lessees were obligated under each contract for each leasing transaction referenced in paragraph 30, above, constitutes six violations of 40 C. F. R. § 745.113(b)(6), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Proposed Civil Penalty

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C. F. R. Part 745 Subpart F, authorize the Administrator of

U.S. EPA to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of TSCA Section 409. U.S. EPA increased the maximum penalty amount to \$11,000 for each violation occurring after July 28, 1997 under the Civil Monetary Penalty Inflation Adjustment Act and Rule, 40 C. F. R. Part 19 (62 Fed. Reg. 35039 (1997)). In determining the amount of any civil penalty, Section 16 of TSCA requires U.S. EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

The U.S. EPA calculates penalties by applying its Section 1018 - Disclosure Rule Enforcement Response Policy dated February 2000 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of the lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether or not to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondents have taken steps to discover the presence of and/or have taken steps to abate lead-based paint and its hazards in subject housing.

As stated in paragraph 41, above, by letter dated March 25, 2005, the U.S. EPA advised Respondents that U.S. EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes the assessment of a civil administrative penalty. The U.S. EPA asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint, and if Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty, the U.S. EPA asked Respondents to submit specific financial documents. Respondents did not claim an inability to pay a penalty and have provided no facts or information which would indicate that the penalty should be adjusted for financial or other factors related to the alleged violation.

Based upon an evaluation of the facts alleged in this complaint, the statutory factors enumerated above, and the Response Policy, Complainant proposes that the Administrator assess the following civil penalties against Respondent for the violations alleged in this complaint:

Count 1

42 U.S.C. § 4852d
40 C. F. R. § 745.113(b)(1)..... \$34,540

Count 2

42 U.S.C. § 4852d
40 C. F. R. §745.113(b)(2).....\$25,520

Count 3

42 U.S.C. § 4852d
40 C. F. R. § 745.113 (b)(3).....\$8,470

Count 4

42 U.S.C. § 4852d
40 C. F. R. § 745.113(b)(4).....\$16,830

Count 5

42 U.S.C. § 4852d
40 C. F. R. § 745.113(b)(6).....\$4,070

Proposed Gravity-Based Civil Penalty..... \$89,430

In considering the effect of the proposed \$ 89,430 penalty on Respondent, Complainant has considered the Respondents' ability to pay the penalty amount. This consideration is based upon publicly available information. However, should Respondents make available to Complainant probative financial information concerning the Respondents' financial condition, Complainant will consider this probative financial information in determining whether the proposed penalty amount should be adjusted based upon the Respondents' ability to pay the currently proposed penalty.

Rules Governing This Proceeding

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination

or Suspension of Permits” (Consolidated Rules) at 40 C. F. R. Part 22 govern this civil administrative penalty proceeding. Enclosed with the complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondents must file with the Regional Hearing Clerk the original and one copy of each document Respondents intend to include as part of the record in this proceeding. The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Respondents must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Maria Gonzalez to receive any answer and subsequent legal documents that Respondents serve in this proceeding. You may telephone Ms. Gonzalez at (312) 886-6630. Her address is:

Maria Gonzalez (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

Respondents may resolve this proceeding at any time by paying the proposed penalty by certified or cashier’s check payable to “Treasurer, United States of America” and by delivering the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

Respondents must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Maria Gonzalez and to:

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

Opportunity to Request a Hearing

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondents have the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondents must specifically make the request in her answer, as described below.

Answer

Respondents must file a written answer to this complaint if Respondents contest any material fact of the complaint; contend that the proposed penalty is inappropriate; or contend that they are entitled to judgment as a matter of law. To file an answer, Respondents must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above, and must serve copies of the written answer on the other parties. If Respondents choose to file a written answer to the complaint, they must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or Federal legal holiday, the time period extends to the next business day.

Respondents' written answers must clearly and directly admit, deny, or explain each of the factual allegations in the complaint or must state clearly that Respondents have no knowledge of a particular factual allegation. Where Respondents state that they have no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation. Respondents' answer must also state:

- A. the circumstances or arguments which Respondents allege constitute grounds of defense;
- B. the facts that Respondents dispute;
- C. the basis for opposing the proposed penalty; and
- D. whether Respondents request a hearing.

If Respondents do not file a written answer within 30 calendar days after receiving this complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of

the Consolidated Rules. Default by Respondents constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondents must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondents requests a hearing, Respondents may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondents may contact Ms. Gonzalez at the address provided above. Her telephone number is (312) 886-6630.

Respondents' request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondents may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. The U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondents' continuing obligation to comply with the TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

The U.S. EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order.

By: Anthony L. Restaini
for Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

6/22/06
Dated

U.S. EPA REGION 5
JUN 22 2 55 PM '06

TSCA-05-2006-0012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Complaint and Opportunity for Hearing in resolution of the civil administrative action involving Willie Burrell, The Willie Burrell Trust, Dudley B. Burrell and the Dudley B. Burrell Trust, Kankakee, Illinois, was filed on June 22, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, a copy of the original to the Respondent:

CERTIFIED MAIL NO. 7001 0320 0005 8933 2027

The Dudley B. Burrell Trust
300 North Indiana Avenue
Kankakee, IL 60901

CERTIFIED MAIL NO. 7001 0320 0005 8933 2041

Dudley B. Burrell
300 North Indiana Avenue
Kankakee, IL 60901

CERTIFIED MAIL NO. 7001 0320 0005 8933 2010

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

CERTIFIED MAIL NO. 7001 0320 0006 1562 2535

Willie Burrell
300 North Indiana Avenue
Kankakee, IL 60901



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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REGION 5