



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

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 8854

Genghiskhan Xiong
Hu Xiong
Chuhu Xiong
Maivtshiab Xiong
4631 North Kenmore, Apt. 1
Chicago, Illinois 60640

TSCA-05-2008-0010

Dear Sirs:

Enclosed is a Complaint, which specifies the U.S. Environmental Protection Agency's determination of violations of Section 1018 of the Residential Lead Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.* The allegations in the Complaint state the reasons for EPA's determination. I recommend that you carefully read and analyze the Complaint and the enclosed Consolidated 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.

Accompanying this Complaint is a Notice of Opportunity for a Hearing. Should you wish to contest the Complaint, you must file a written request for a hearing with the Regional Hearing Clerk within thirty (30) days after service of this Complaint. You must file the request for a hearing with the Regional Hearing Clerk (E-13J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You must also send a copy of your request to Luis Oviedo, Office of Regional Counsel (C-14J), at the above address. If you have any questions about this matter, you may phone Mr. Oviedo at (312) 353-9538.

Failure to respond to this Complaint by specific answer within 30 days of its receipt by you 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.

Regardless of whether you choose to request a hearing within the prescribed time limit following the filing of this Complaint, EPA extends to you yet another opportunity to request an informal settlement conference. The settlement conference discussions may include the mitigation of the proposed penalty in accordance with EPA guidance on pollution prevention and supplemental environmental projects. A request for an informal settlement conference with EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
)
Trust No. 98-123, Genghiskhan Xiong,)
Hu Xiong, Chuhu Xiong and)
Maivtshiab Xiong)
Chicago, Illinois)
Respondents.)

Docket No. TSCA-05-2008-0010

Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic
Substance Control Act, 15 U.S.C.
§ 2615(a)

2008 MAY -2 PM 4: 22

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V

COMPLAINT

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondents are Trust No. 98-123, Genghiskhan Xiong, Hu Xiong, Chuhu Xiong and Maivtshiab Xiong of Chicago, Illinois (cumulatively referred to hereafter as "Respondents"). Trust No. 98-123 is administered by Bridgeview Bancorp, Inc., also known as Bridgeview Bank Uptown.

Statutory and Regulatory Background

4. 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 for residential rentals and sales. 42 U.S.C. § 4852d (Section 1018) requires the Administrator and the Secretary of the United States Department of Housing and Urban Development (HUD) to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

5. On March 6, 1996, U.S. EPA and HUD promulgated regulations at 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, respectively, "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 40 C.F.R. Part 745, Subpart F and 24 C.F.R. Part 35, Subpart A, by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

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

7. 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.

8. 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 nonprofit organizations.

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 individual 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 “agent” as any party who enters into a contract with a seller or 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.

12. 40 C.F.R. § 745.100 requires, among other things, that a lessor or seller of target housing complete the specified disclosure activities before a lessee or purchaser is obligated under any contract to lease or purchase target housing.

13. 40 C.F.R. § 745.113(b) requires that each lease for target housing include as an attachment or within the lease itself 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 paint 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 lessors, agents, and lessees certifying the accuracy of their statements.

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

15. Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of

1992, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(f), authorize the Administrator of U.S. EPA to assess a civil penalty under Section 16(a) of TSCA of up to \$10,000 for each violation of Section 409 of TSCA. U.S. EPA increased the maximum penalty to \$11,000 for each violation occurring after July 28, 1997. 40 C.F.R. § 745.118(f) and 40 C.F.R. Part 19.

General Allegations

16. Complainant incorporates paragraphs 1 through 15 of this Complaint as if set forth in this paragraph.

17. During the period including August 23, 2000 through July 1, 2005, Genghiskhan Xiong and Maivtshiab Xiong, owned the property at 5680-82 North Ridge Avenue in Chicago, Illinois (Residential Rental Property) either directly or through Trust No. 98-123. As of the time of the filing of this Complaint, Genghiskhan Xiong and Maivtshiab Xiong continue to hold beneficial interest in Trust No. 98-123.

18. During the period including August 23, 2000 through July 1, 2005, Respondents Hu Xiong and Chuhu Xiong acted as management agents for Respondents Genghiskhan Xiong and Maivtshiab Xiong by holding themselves out as having the legal capacity to enter into binding lease agreements with tenants at the Residential Rental Property and signing lease agreements for the same. Respondents Hu Xiong and Chuhu Xiong acted directly as lessors, or in their capacity as agents of Respondents Genghiskhan Xiong and Maivtshiab Xiong.

19. The Residential Rental Property was constructed prior to 1978.

20. The Residential Rental Property and each rental unit within such property is "target housing" as defined in 40 C.F.R. § 745.103.

21. Between March 1, 2004 and July 1, 2005, Respondents offered several units for lease and entered into no less than five written rental agreements ("Rental Contracts") with individuals

for the lease of units located at the Residential Rental Property.

22. Respondent Genghiskhan Xiong signed the lease agreement for the units referenced under Lease #1 and 2, below. Hu Xiong signed the lease agreement for the units referenced under Lease #4 and 5, below. Chuhu Xiong signed the lease agreement for the unit referenced under Lease #3, below.

23. The units that were the subject of the Rental Contracts and lease dates are identified as:

Lease No.	Address	Unit	Date of Lease
1	5680 North Ridge Avenue	2 nd Floor	03/01/2004
2	“	3 rd Floor	01/01/2005
3	5682 North Ridge Avenue	2 nd Floor	03/31/2004
4	“	2	05/01/2005
5	“	3N	07/01/2005

24. Each of the Rental Contracts covered a term of occupancy greater than 100 days.

25. All of the Respondents are “lessors,” as defined by 40 C.F.R. § 745.103.

26. Respondents Hu Xiong and Chuhu Xiong are “agents” as defined by 40 C.F.R. § 745.103.

27. Each individual who signed a lease to pay rent in exchange for occupancy of a unit at the Residential Rental Properties, became a “lessee,” as defined in 40 C.F.R. § 745.103, since he or she entered into an agreement to lease target housing.

28. On or about February 4, 2005, Respondents received written notices from the Chicago Department of Public Health (CDPH), Childhood Lead Poisoning Prevention Program regarding lead hazards found at the Residential Rental Property. Each of the notices issued to the Respondents provided them with actual notice about the condition of the Residential Rental Property and the presence of lead-based paint and/or lead-based paint hazards.

29. On January 31, 2007, Respondents’ legal counsel received a pre-filing notice letter

from U.S. EPA. The letter advised Respondents that U.S. EPA intended to file a civil administrative complaint against Respondents for violations of Section 1018, and that the complaint would seek a civil penalty of \$42,916. At that time, U.S. EPA also asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint, and to submit specific financial documents bearing on any assertion of Respondents' inability to pay the proposed penalty.

30. Despite repeated inquiries made by the U.S. EPA, as of April 4, 2007, Respondents have failed to provide facts or submit any documents to substantiate any inability to pay defense, or to assert such a defense. Complainant has considered all of the information provided by Respondents in assessing the alleged violations and proposing a penalty.

31. Respondents have the ability to pay the proposed penalty of \$42,916.

Counts 1 through 5

32. Complainant incorporates paragraphs 1 through 31 of this Complaint as if set forth in this paragraph.

33. 40 C.F.R. § 745.100 requires, among other things, that the lessor of target housing complete the required disclosure activities before a lessee is obligated under any contract to lease target housing. 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 the presence of any known lead-based paint 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. Additionally, 40 C.F.R. § 745.100 and 40 C.F.R. § 745.113(b)(2) require that, before a lessee is obligated under a contract to lease target housing, a lessor must disclose any additional information available concerning known lead-based paint and/or lead-based paint

hazards.

34. Count 1: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the March 1, 2004 contract for the unit referenced under Lease #1, above.

35. Count 2: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the January 1, 2005 contract for the unit referenced under Lease #2, above.

36. Count 3: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the March 31, 2004 contract for the unit referenced under Lease #3, above.

37. Count 4: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, a statement disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the May 1, 2005 contract for the unit referenced under Lease #4, above.

38. Count 5: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, a statement

disclosing either the presence of any known lead-based paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in the July 1, 2005 contract for the unit referenced under Lease #5, above.

39. 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 paint and/or lead-based paint hazards in the target housing, or a lack of knowledge of such presence in each contract for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113(b)(2), 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA.

Counts 6 through 10

40. Paragraphs 1 through 39, above, are realleged and incorporated here by reference.

41. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 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 paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist.

42. Count 6: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the March 1, 2004 contract for the unit referenced under Lease #1, above.

43. Count 7: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, a list of any records or

reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the January 1, 2005 contract for the unit referenced under Lease #2, above.

44. Count 8: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the March 31, 2004 contract for the unit referenced under Lease #3, above.

45. Count 9: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the May 1, 2005 contract for the unit referenced under Lease #4, above.

46. Count 10: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, a list of any records or reports available to the lessor regarding lead-based paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist in the July 1, 2005 contract for the unit referenced under Lease #5, above.

47. 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 paint and/or lead-based paint hazards in the target housing, or a statement that no such records exist, for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113(b)(3), 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA.

Counts 11 through 15

48. Paragraphs 1 through 47, above, are realleged and incorporated here by reference.

49. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 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 (b)(3), and the Lead Hazard Information Pamphlet required under 15 U.S.C. § 2696.

50. Count 11: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the May 1, 2004 contract for the unit referenced under Lease #1, above.

51. Count 12: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the January 1, 2005 contract for the unit referenced under Lease #2, above.

52. Count 13: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the March 31, 2004 contract for the unit referenced under Lease #3, above.

53. Count 14: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the May 1, 2005 contract for the unit referenced under Lease #4, above.

54. Count 15: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet required under 15 U.S.C. § 2696 in the July 1, 2005 contract for the unit referenced under Lease #5, above.

55. Respondents' failure 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 (b)(3), and the Lead Hazard Information Pamphlet under 15 U.S.C. § 2689 for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113(b)(4), 42 U.S.C. § 4852d(b)(5), and of Section 409 of TSCA.

Counts 16 through 20

56. Paragraphs 1 through 55, above, are realleged and incorporated here by reference.

57. 40 C.F.R. § 745.100 requires, among other things, that the lessor complete the specified disclosure activities before a lessee is obligated under any contract to lease target housing. 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 lessors, agents, and lessees certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature.

58. Count 16: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 2nd Floor, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the March 1, 2004 contract for the unit referenced under Lease #1, above.

59. Count 17: Respondents failed to include, either within the contract or as an attachment to the contract for 5680 North Ridge Avenue, 3rd Floor, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the January 1, 2005 for the unit referenced under Lease #2, above.

60. Count 18: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2nd Floor, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the March 31, 2004 contract for the unit referenced under Lease #3, above.

61. Count 19: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 2, Chicago, Illinois, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements along with the dates of such signature in the May 1, 2005 contract for the unit referenced under Lease #4, above.

62. Count 20: Respondents failed to include, either within the contract or as an attachment to the contract for 5682 North Ridge Avenue, 3N, Chicago, Illinois, the signatures of the lessors, agents and lessees certifying to the accuracy of their statements along with the dates of such signature in the July 1, 2005 contract for the unit referenced under Lease #5, above.

63. Respondents' failure to include, either within each contract or as an attachment to each contract, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements or the dates of such signature for each leasing transaction referenced above, constitutes five violations of 40 C.F.R. § 745.113(b)(6), 15 U.S.C. § 2689, 42 U.S.C. § 4852d(b)(5).

Proposed Civil Penalty

Complainant proposes that the Administrator assess a civil penalty against Respondents for the violations alleged in this Complaint as follows:

COUNT 1

42 U.S.C. § 4852d
 40 C.F.R. § 745.113(b)(2).....\$4,400

COUNT 2

42 U.S.C. § 4852d
 40 C.F.R. § 745.113(b)(2).....\$774

COUNT 3

42 U.S.C. § 4852d
 40 C.F.R. § 745.113(b)(2).....\$5,158

COUNT 4

42 U.S.C. § 4852d
 40 C.F.R. § 745.113(b)(2).....\$5,158

COUNT 5

42 U.S.C. § 4852d
 40 C.F.R. § 745.113(b)(2).....\$5,158

COUNT 6

42 U.S.C. § 4852d
 40 C.F.R. § 745.113(b)(3).....\$1,430

COUNT 7

42 U.S.C. § 4852d
 40 C.F.R. § 745.113(b)(3).....\$258

COUNT 8

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(3).....\$1,676

COUNT 9

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(3).....\$1,676

COUNT 10

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(3).....\$1,676

COUNT 11

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$2,750

COUNT 12

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$516

COUNT 13

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$3,224

COUNT 14

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$3,224

COUNT 15

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(4).....\$3,224

COUNT 16

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$550

COUNT 17

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$129

COUNT 18

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$645

COUNT 19

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$645

COUNT 20

42 U.S.C. § 4852d
40 C.F.R. § 745.113(b)(6).....\$645

Proposed Gravity-Based Civil Penalty..... \$42,916

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 through the application of U.S. EPA’s “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 a 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 civil administrative penalty, and any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in subject housing.

Rules Governing this Proceeding

The “*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits*” (Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this 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

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 Luis Oviedo to receive any answer and subsequent legal documents that Respondents serve in this proceeding. You may telephone Mr. Oviedo at (312) 353-9538. His address is:

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

Penalty Payment

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

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondents must include the case name and docket number on the check and in the letter transmitting the check. Respondents simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk, Mr. Oviedo, and to:

Estrella Calvo, PTCS (LC-8J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Answer and 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). If Respondents contest any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that they are entitled to judgment as a matter of law, Respondents may request a hearing before an Administrative Law Judge. To request a hearing, Respondents must file a written Answer **within 30 days of receiving this Complaint** and must include in that written Answer a request for hearing. Any hearing will be conducted according to the Consolidated Rules.

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.

To file an answer, Respondents must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above. Respondents' written answer 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 constitutes grounds of defense;
- b. the facts that the 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 request 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 Luis Oviedo, at the address above or you may telephone him at (312) 353-9538.

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 Act 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. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Consent Order.

By:


Margaret M. Guerriero, Director
Land and Chemicals Division

Dated

5/2/08

TSCA-05-2008-0010

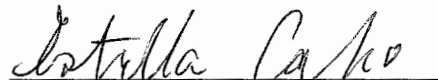
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CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Complaint involving **Genghiskhan Xiong, Hu Xiong, Chuhu Xiong, Maivtshiab Xiong, and Trust No. 98-123**, Chicago, Illinois, was filed on May 2, 2008, with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true and correct copy was sent by FedEx Express and Certified Mail, along with a copy each of the “Consolidated Rules of Practice, 40 C.F.R. Part 22,” and “Section 1018 Disclosure Rule Enforcement Response Policy” to:

Genghiskhan Xiong
Hu Xiong
Chuhu Xiong and
Maivtshiab Xiong
4631 North Kenmore, Apt. 1
Chicago, Illinois 60640
FedEx Tracking Number 827671765596
Certified Mail Receipt No. 70010320000589318854


Bridgeview Bank Group
Chicago-Uptown
Trustee under Trust No. 98-123
4753 North Broadway
Chicago, Illinois 60640
FedEx Tracking Number 827436012508



Estrella Calvo/LC-8J
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

TSCA-05-2008-0010

Docket No. _____


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