

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
JAN 6 - 2 2009
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In the Matter of:)

Trust No. 98-123, Genghiskhan)
Xiong, Hu Xiong, Chuhu Xiong,)
and Maivtshiab Xiong,)

Docket No. TSCA-05-2008-0010

Judge Barbara A. Gunning

Respondents)
_____)

NOTICE OF FILING

To: See attached Certificate of Service.

Please take notice that on January 6, 2009, the undersigned caused to be filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 5, the Complainant's Response to Respondents' Attorney's Motion to Withdraw. Copies of the Response are attached hereto and hereby served upon you.

Dated: January 6, 2009

By: _____

Luis Oviedo
One of the Attorneys for U.S. EPA

Luis A. Oviedo
Associate Regional Counsel
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 5
77 W. Jackson Blvd., C-14J
Chicago, Illinois 60604
312-353-9538

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing **Notice of Filing and Response**, dated January 6, 2009, to be delivered, postage prepaid, to each of the following persons and addresses, in the following manner:

Via FAX and Regular U.S. Mail

Mr. Dennis J. Kellogg
Sheats & Kellogg
105 West Madison St., Suite 1300
Chicago, IL 60602

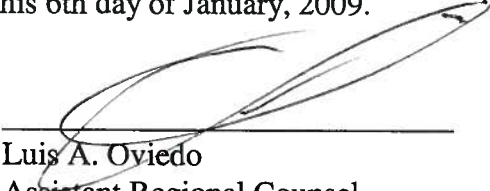
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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.

Via U.S. Pouch Mail and Fax

Judge Barbara A. Gunning
Office of Administrative Law Judges
United States Environmental Protection Agency
Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dated this 6th day of January, 2009.



Luis A. Oviedo
Assistant Regional Counsel
U.S. EPA Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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In the Matter of:)	
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Trust No. 98-123, Genghiskhan)	Docket No. TSCA-05-2008-0010
Xiong, Hu Xiong, Chuhu Xiong,)	
and Maivtshiab Xiong,)	
)	
)	Judge Barbara A. Gunning
)	
Respondents)	
_____)	

**COMPLAINANTS' RESPONSE TO
RESPONDENTS' ATTORNEY'S MOTION TO WITHDRAW**

NOW COMES Complainant, US EPA, by and through its counsel, Luis Oviedo, and in response to Respondents' Attorney's Motion to Withdraw as attorney of record, states as follows:

1. Counsel Dennis Kellogg has represented the Respondents in this case since at least March 21, 2007, with full knowledge that his clients might have an alleged limited English proficiency. CX-21, letter dated March 21, 2007. Nevertheless, Respondents and their counsel have been able to conduct in settlement discussions in this case despite any purported language barrier. Furthermore, Respondents are sufficiently proficient in the English language to conduct a real estate business in the United States. Notably, Mr. Kellogg's second attempt to cease his representation comes on the eve of the January 20, 2009 deadline for the submission of Respondents' prehearing exchange.

2. Significantly, Mr. Kellogg has previously temporarily ceased his representation of Respondents, only to result in the delay and protraction of the resolution of this case. CX-21,

letter dated November 8, 2007. Respondents have also previously invoked Alternative Dispute Resolution, with the sole effect of further delay in the resolution of this matter. CX-21, letter dated July 7, 2008.

3. A dispute amongst the various Respondents does not provide any legal or equitable basis for the withdrawal of counsel.


4. Respondents have not properly asserted any inability to pay, and refuse to complete the required inability to pay form that has been provided to them by Complainant numerous times.

5. Complainant has complied with the deadline for submission of its' prehearing exchange, and has expended significant resources and time in moving this case forward. Justice, professional responsibility and judicial economy in this case are all best served by the fulfillment of Mr. Kellogg's obligation to zealously and completely represent his clients.

WHEREFORFE, Complainant objects to Respondents' Motion.

Respectfully submitted,

By:



Luis Oviedo
Assistant Regional Counsel
U.S. EPA Region 5
Counsel for Complainant

SHEATS & KELLOGG
ATTORNEYS AND COUNSELORS AT LAW
SUITE 1300
105 WEST MADISON STREET
CHICAGO, ILLINOIS 60602

DENNIS J. KELLOGG

WRITER'S DIRECT LINE
(312) 782-6463
FAX (312) 855-1177

March 21, 2007

Luis A. Oviedo
U.S. EPA – Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

**Re: Trust No. 98-123, Genghiskhan Xiong, Hu Xiong, & Maivtshiab
Xiong
5680-82 North Ridge Avenue, Chicago, Illinois 60660
Notice of Intent to File Civil Administrative Action**

Dear Sir or Madam,

I have been retained as the attorney for the above listed individuals. In reviewing the certified letter mailed to the Xionsg, I wanted to provide additional information and also ask for information.

First and foremost, the Xionsg under no circumstance knowingly violated 42 U.S.C. § 4852d, Section 1018. Accordingly in Smith v. Coldwell Banker Real Estate Services, the Connecticut District Court found that “ ‘Knowingly’ as commonly used and interpreted means that defendant was aware of his or her conduct and that defendant did not perform it merely through ignorance, mistake or accident.” 122 F.Supp2d 267, 273 (D.Conn. 2000). The Xionsg are aware of the requirement to disclose lead-based paint information to their tenants and have taken the necessary steps to inform their tenants.

Second, while enacted October 28, 1992, section 4852d did not become effective until four years later. According to Sweet v. Sheahan, the Second Circuit court found that Section 4852d did not become effective until December 6, 1996. 235 F3d 80, 94 (2nd Cir. 2000). The court found duty of disclosure does not begin until that date and prior dated alleged violations were without merit.

The Xionsg provide the disclosures required by Section 4852d. First, in accordance with 4852d(a)(1)(A), the Xionsg provide each lessee with a lead hazard information pamphlet, “Protect Your Family From Lead in Your Home” endorsed by the EPA and “Lead Safe Work Plan: Lead Poisoning Prevention Program” endorsed by the


Chicago Department of Public Health. Second, in accordance with 4852d(a)(1)(B), the Xions stipulate the requisite lead based paint disclosure language in the actual lease. The language provided is in accordance with 4852d(a)(3). Third, in accordance with 4852d(a)(1)(C), the Xions permit each lessee a 10-day period to conduct a risk assessment or inspection of the unit.

There is additional information that we request if available. First, what are the specifics of the cited claimed violations? Second, what evidence is there of the Xions knowingly violating 4852d? Third, what dates are being alleged of the claimed violations? Fourth, what, if any, other compliance is required of the Xions?

The Xions have been deeply upset by the allegations set forth in the EPA's letter. The Xions have done everything within their power and knowledge to ensure the safety and education of their tenants insofar as lead based paint safety is concerned. Also, the Xions have complied with the City of Chicago's requirements through lead-based abatement and educational matters. Accordingly, we would be willing to meet with the EPA in a short date to discuss possible resolution of this matter. To show our willingness to be reasonable, we could discuss a nominal financial resolution to buy peace. Please, do not hesitate to contact me as soon as possible so we can expedite resolution of this matter.

If there are any questions or concerns, please do not hesitate to contact me.

Sincerely,



Dennis J Kellogg

DJK/gpv

Enclosures

cc: Genghiskhan Xiong

SHEATS & KELLOGG
ATTORNEYS AND COUNSELORS AT LAW
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DENNIS J. KELLOGG

WRITER'S DIRECT LINE
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FAX (312) 855-1177

November 8, 2007

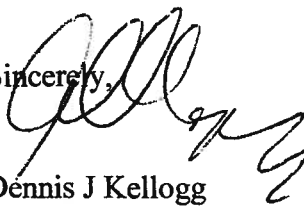
Luis A. Oviedo
Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

RE: *In Re: Ghengiskhan Xiong and Maivtshiab Xiong*

Mr. Oviedo,

I am no longer the attorney representing Mr. Xiong in this matter. Please forward all communications directly to him.

Sincerely,



Dennis J Kellogg

DJK/gpv

SHEATS & KELLOGG
ATTORNEYS AND COUNSELORS AT LAW
SUITE 1300
105 WEST MADISON STREET
CHICAGO, ILLINOIS 60602

DENNIS J. KELLOGG

WRITER'S DIRECT LINE
(312) 782-6463
FAX (312) 855-1177

July 7, 2008

Luis Oviedo, Esq.
Associate Regional Counsel
U.S. EPA
77 West Jackson Boulevard, C-14J
Chicago, IL 60604

RE: Alternative Dispute Resolution
Genghiskhan Xiong, Hu Xiong, and Maivtshiab Xiong
Docket No. TSCA-05-2008-0010

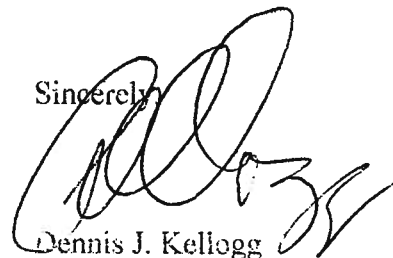
Dear Mr. Oviedo,

I have just reviewed the pretrial order from the ALJ Barbara A. Gunning dated July 1, 2008. That order states that you did not respond to the ADR inquiry, and consequently have been deemed to have declined participation in ADR. I strongly believe that this case is an excellent candidate for ADR.

According to 40 C.F.R. § 22.7(b), the Presiding Officer may grant an extension of time for filing any document upon timely motion of a party to the proceeding, for good cause shown. If you unintentionally did not respond to the ADR inquiry, I encourage you to take the appropriate steps so that we may participate in ADR. If you intentionally did not respond, I strongly encourage you to reconsider your decision as ADR could potentially save us both an enormous amount of time and energy. If you ultimately decide not to participate in ADR, I encourage you to contact me so that we may discuss the matter.

I have read the email you sent earlier today. I will contact our clients and ensure they understand that time is of the essence in producing their tax returns and information on the potential alternative Supplemental Environmental Project in Wisconsin. We appreciate your patience in this regard.

Sincerely,


Dennis J. Kellogg

DIK/tcj



INDIVIDUAL ABILITY TO PAY CLAIM

Financial Data Request Form

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental cleanup or penalties. If you need more space for your answers, please attach additional sheets of paper. Note that further documentation may be requested of any of your responses. Any other information you wish to provide supporting your case is welcome, particularly if you feel your situation is not adequately described through the information requested here.

Certification

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the U.S. Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature:

Date:

Name:

Spouse's Name:

Names of Additional Household Members:

Street Address:

City:

State:

Zip:

County:

Household Living Expenses

List household living expenses typical of last year, indicating if any are likely to change significantly in the current year. If you own an operating business, exclude any business expenses; instead, attach any available financial statements for your business.

Expense	Amount	Period			
		W	M	Q	Y
Rent					
Home maintenance					
Transportation (inc. auto maint.)					
Home heating oil, gas, etc.					
Electricity					
Water & sewer					
Telephone					
Food					
Clothing, personal care					
Medical					
Mortgage payments (principal and interest only)					
Car payments					
Credit card interest					
Educational loan payments					
Other debt payments					
Home insurance					
Life insurance					
Auto insurance					
Medical insurance					
Property taxes					
Federal income taxes (net of any refunds)					
State & local income taxes (net of any refunds)					
FICA					
Other taxes					
Childcare					
Tuition					
Legal or professional fees					
Other (attach description)					

Net Worth

Provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; if you wish note such items with an "E". If you are the sole proprietor of a business, please list business assets and liabilities to the extent that the information sought is not already provided in your tax returns, in addition to personal assets and liabilities. Mark these entries with a "B" to identify them as business assets and liabilities.

	<u>Assets</u>	<u>Liabilities</u>	<u>Comments</u>
<u>Bank Accounts</u>	<u>Balance</u>		
Checking, NOW, Savings, Money Market, CDs etc.			
<u>Financial Investments (stocks, bonds, etc.)</u>	<u>Market Value</u>		
<u>Retirement Funds and Accounts</u>	<u>Market Value</u>		
IRA, 401(k), Keogh, vested interest in company retirement fund, etc.			
<u>Life Insurance Policies (with cash value)</u>	<u>Cash Value</u>		
Whole life, universal life, etc.			
<u>Vehicles Used for Commuting</u>	<u>Market Value</u>	<u>Loan Balance</u>	
Cars, trucks, motorcycles, etc.: list up to 5 vehicles used for commutin, purposes.			
<u>Vehicles (other than for commuting)</u>	<u>Market Value</u>	<u>Loan Balance</u>	
Cars, trucks, motorcycles, recreational vehicles, motor homes, boats, airplanes.			
<u>Primary Residence</u>	<u>Market Value</u>	<u>Mortgage Balance</u>	
<u>Real estate other than primary residence)</u>	<u>Market Value</u>	<u>Mortgage Balance</u>	
Lands, buildings, land with buildings.			

Personal Property

Market Value

Debt Balance

Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc.; list only items with a value greater than \$500.

Credit Cards and Lines of Credit

Balance Due

Other Debts and/or Assets

Market Value

Debt Balance

Any other assets and any debts on those assets, plus any other debts owed to individuals, fixed obligations, taxes owed, overdue alimony or child support, etc.

Additional Information

For any question that you check Off as applicable, provide additional information below or on separate pages..

Reason to believe financial situation will change during the next year?

Currently selling or purchasing any real estate?

Property held by other person/entity on applicant's behalf?

Party in pending lawsuit (other than this enforcement action)?

Any belongings repossessed in last three years`?

Is applicant a Trustee, Executor, or Administrator?

Participant or beneficiary of estate or profit-sharing plan?

Declared bankruptcy in last seven years?

Receive any type of federal aid or public assistance?