



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
Trust No. 98-123, Genghiskhan ) DOCKET NO. TSCA-05-2008-0010  
Xiong, Hu Xiong, Chuhu Xiong, )  
And Maivtshiab Xiong, )  
)  
RESPONDENTS )

**ORDER GRANTING RESPONDENTS' ATTORNEY'S MOTION TO WITHDRAW**

Respondents' counsel, Attorney Dennis J. Kellogg, filed a Motion to Withdraw his appearance as counsel for Respondents on December 19, 2008.<sup>1</sup> In support of this motion, Attorney Kellogg states that Respondents have been unresponsive to his attempts to communicate and have been unable or unwilling to assist in the preparation of the prehearing exchange.

The file reflects that on July 1, 2008 the undersigned entered a Prehearing Order directing the parties to file their prehearing exchange. The July 1, 2008 Prehearing Order was suspended July 28, 2008, in order to allow the parties to participate in the Alternative Dispute Resolution ("ADR") process offered by this office. Following the termination of ADR, the prehearing procedures were reinstated in the Prehearing Order entered October 20, 2008. Pursuant to that Order, Complainant has filed its prehearing exchange. Respondents' prehearing exchange is due January 20, 2009.

In its Response filed on January 6, 2009, Complainant objects

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<sup>1</sup> The Answer filed by Attorney Dennis J. Kellogg, on behalf of Genghiskhan Xiong, Hu Xiong, Chuhu Xiong, and Maivtshiab Xiong, admits that Genghiskhan Xiong, Hu Xiong, and Maivtshiab Xiong are the Respondents in this matter and that Trust No. 98-123 is administered by Bridgeview Bancorp, Inc. a/k/a Bridgeview Bank Uptown. The record before me contains no Answer on behalf of Trust No. 98-123. The Answer filed states that Chuhu Xiong is the same person as Hu Xiong. Answer at ¶ 3. The term "Respondents" henceforth only refers to Genghiskhan Xiong, Chuhu Xiong, Hu Xiong, and Maivtshiab Xiong.

to the withdrawal of appearance by Attorney Dennis J. Kellogg. Complainant contends that Respondents' Attorney's Motion to Withdraw will only delay the resolution of this matter and that "[j]ustice, professional responsibility and judicial economy are all best served by the fulfillment of Attorney Kellogg's obligation to zealously and completely represent his clients." Complainant does not cite any authority in support of its position opposing the Motion to Withdraw.

While the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32, grant the Administrative Law Judge ("ALJ") authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in the proceedings, the Rules of Practice do not specifically address the withdrawal of counsel. 40 C.F.R. § 22.4(c). The Rules of Practice do provide that counsel must conform to the standards of conduct and ethics required of practitioners before the courts of the United States. 40 C.F.R. § 22.10.

For good cause shown and in view of the pending Prehearing Order, Respondents' Attorney's Motion to Withdraw is Granted subject to counsel certifying that he has provided Respondents with adequate notice of the pending Prehearing Order.<sup>2</sup> Respondents are advised that the granting of this motion does not disturb the requirement for meeting the January 20, 2009 deadline for filing their prehearing exchange. See *Matter of Turner Copter Services, Inc.*, FIFRA Appeal No. 85-4, 2 E.A.D. 96 (CJO, Nov. 5, 1985). Inasmuch as the deadline for the filing of Respondents' Prehearing Exchange is not altered, Complainant is not prejudiced by counsel's withdrawal.

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Barbara A. Gunning  
Administrative Law Judge

Dated: January 13, 2009

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<sup>2</sup>Attorney Kellogg has certified that he mailed a copy of Respondents' Attorney's Motion to Withdraw to Respondents.