UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Taotao USA, Inc.,	)	**Docket No. CAA-HQ-2015-8065**
Taotao Group Co., Ltd., and	)	
Jinyun County Xiangyuan Industry	)	
Co., Ltd.	)	
	)	
Respondents.	)	

ORDER ON RESPONDENTS' MOTION FOR LEAVE TO REOPEN THE RECORD

The hearing in this matter was conducted October 17-19, 2017, in Washington, D.C. At the end of the hearing, the evidentiary record closed.

On November 1, 2017, Respondents filed a Motion for Leave to Reopen the Record ("Motion"). Respondents "seek to introduce evidence showing that EPA's Gasoline Engine Compliance Center is not approving Taotao USA, Inc.'s COC applications, or unnecessarily withholding approvals, on grounds that have no legal/regulatory support." Mot. at 2. Respondents contend this is "newly discovered evidence" and that delayed approvals of their pending COC applications "are significantly impacting Respondents' ability to pay" the proposed penalty in this case. Mot. at 2-3. They complain that the Agency approvals are being withheld

> under the guise that the COC applications show that idle speed can be adjusted but does not list idle ***speed*** as an adjustable parameter. Yet, idle ***speed*** adjustment screws are not emission related parts nor are they adjustable parameters listed in the guidance provided to Taotao USA, in 2010 as part of the Administrative Settlement Agreement.

Mot. at 3. According to Respondents, the Agency "will not be prejudiced by the introduction of the new evidence because it is the agency itself that is causing the change in Respondents' ability to pay." Mot. at 3.

The Agency responded to the Motion on November 16, 2017. *See* Complainant's Response to Respondents' Motion for Leave to Reopen the Record ("Response"). The Agency accurately observes that Respondents "have not identified the evidence they intend to submit or explained why the facts or evidence were not offered earlier in this proceeding," nor have they "explained what probative value the 'newly discovered' evidence would have . . . ." Response at 2, 4. The Agency also notes the issue is not new, citing Respondents' deposition of Agency

witnesses Amelie Isin and Cleophas Jackson, as well as cross-examination of Mr. Jackson during the hearing, in which the witnesses were questioned about current COC applications pending before the Agency's Office of Transportation and Air Quality ("OTAQ"). Response at 3-4 (citing RX 38 at 138-39, 253-54; RX 39 at 17-29, 39-40; Hearing Tr. at 364-65). Additionally, the Agency argues it will be prejudiced and the proceeding unduly delayed if this Tribunal must take up additional complex questions such as the appropriateness of OTAQ's actions regarding the COC applications or "the impact of those actions on Respondents' *future* ability to pay a penalty." Response at 5 (emphasis added). Moreover, the Agency notes, these issues are outside the scope of this proceeding, would require a separate parallel proceeding, and would necessitate additional fact-finding and expert analysis of Respondents' finances and business structure. Response at 5.

Respondents did not file a reply brief to the Agency's Response, and the time for them to do so has expired.

Respondents' motion to "reopen the record" is in fact a motion to reopen the hearing. Under the rules governing this proceeding, "[a] motion to reopen a hearing to take further evidence . . . shall state the specific grounds upon which relief is sought." 40 C.F.R. § 22.28(a)(1). "Where the movant seeks to introduce new evidence, the motion shall: State briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing." *Id.* A motion to reopen the hearing is committed to the sound discretion of this Tribunal. *Carbon Injection Systems LLC*, EPA Docket No. RCRA-05-2011-0009, 2015 EPA ALJ LEXIS 3, at *11 (ALJ, March 17, 2015). Three factors guide this Tribunal in exercising its discretion: "1) the probative value of the evidence proffered; 2) the reason why the evidence was not offered earlier in the proceeding; and 3) the likelihood of undue prejudice to the opposing party." *Id.* at *13.

In this case, Respondents have not shown the probative value of the evidence they would like to introduce; they have not even provided the evidence for such consideration. Nor have Respondents explained why this evidence was not offered earlier in the proceeding. Prior to and during the hearing, it was clear from their questioning of Agency witnesses that Respondents had some concern about COC applications then under review by OTAQ.[1] In light thereof, they could have sought to introduce such evidence of their concern at hearing, but chose not to. Moreover, allowing the admission of this purported evidence now would unduly prejudice the Agency, which would have to marshal resources to rebut any argument or conclusion that Respondents might claim the evidence supports. This also would likely entail additional discovery and testimony that would unduly delay the resolution of this proceeding. Additionally, the proposed evidence is irrelevant because the COC applications referred to in the Motion are not the COC applications at issue in this case. In fact, Respondents appear to use their Motion as a guise for seeking review by this Tribunal of issues that are entirely separate from this administrative enforcement matter and which must be raised in a separate proceeding. *See* 40 C.F.R. §§ 1068.601, 1068.615 (describing how to request a hearing in response to adverse decisions other than the assessment of administrative penalties, including disagreement with determinations made as part of the certification process). Finally, whatever effect a delay in approval of

[1] That is not to say that any such concerns are relevant to this proceeding.

Respondents' current COC applications might have on their financial condition in the future is entirely speculative.

For the foregoing reasons, the hearing will not be reopened to entertain Respondents' additional evidence. Their Motion is **DENIED**.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Dated: December 7, 2017
Washington, D.C.

In the Matter of *Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.,* Respondents. Docket No. CAA-HQ-2015-8065

CERTIFICATE OF SERVICE

I certify the foregoing **Order on Respondents' Motion for Leave to Reopen the Record**, dated December 7, 2017, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.

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Dated: December 7, 2017
Washington, D.C.