



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 AGENCY'S MOTION FOR ADDITIONAL DISCOVERY

On August 25, 2017, the Agency filed a Motion for Additional Discovery Through Requests for Production of Documents and Interrogatories ("Motion").

Respondents filed a response in opposition ("Response") to the Motion on September 14, 2017, 20 days after the Motion was served. This filing was untimely: "A party's response to any written motion must be filed within 15 days after service of such motion Any party who fails to respond within the designated period waives any objection to the granting of the motion."

A party may move for additional discovery following the prehearing exchange. 40 C.F.R. § 22.19(e)(1). "The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought The Presiding Officer may order such other discovery only if it:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the nonmoving party;
(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

Id.

The Agency seeks an Order directing Respondents to answer interrogatories and requests for production of documents as outlined in Attachment A to its Motion. The requests are necessary, the Agency states, because Respondents have challenged its calculation of their economic benefit resulting from their violations and have not provided evidence or exhibits in support of their assertion. Mot. at 2. The Agency previously requested this information nearly a year ago, and Respondents indicated they would provide it if liability were established. Mot. at 2-3; CX 174; CX 181. Additionally, the Agency seeks documents relied on by Jonathan Shefftz, an expert witness for Respondents who used a methodology different from the Agency's to calculate Respondents' economic benefit. This information will enable a full assessment of "the weight and reliability of the factual assertions, data, and opinions included in" Mr. Shefftz's expert report, the Agency asserts. Mot. at 5.

In addition to finding that Respondents have waived any objections to the Motion, I find that these requests will neither unreasonably delay the proceeding nor unreasonably burden Respondents, particularly given their indication in 2016 that such information would be provided upon the determination of liability.¹ Additionally, I find that the information sought is most reasonably obtained from Respondents and has significant probative value relative to the relief sought by the Agency. *See* 40 C.F.R. § 22.19(e)(1).

Thus, for the reasons outlined above, the Agency's Motion for Additional Discovery is **GRANTED**. Respondents shall file and serve their responses to the Agency's discovery requests, as identified in Attachment A to the Motion, no later than **September 29, 2017**.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

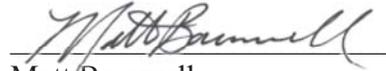
Dated: September 20, 2017
Washington, D.C.

¹ Liability was determined several months ago. *See* Order on Partial Accelerated Decision and Related Motions (May 3, 2017).

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 that the foregoing **Order on Agency's Motion for Additional Discovery**, dated September 20, 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: September 20, 2017
Washington, D.C.