

F I L E D

Sep 27 2018

Clerk, Environmental Appeals Board
INITIALS *[Signature]*

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:)
)
)

Taotao USA, Inc.,)
Taotao Group Co., Ltd., and)
Jinyun County Xiangyuan Industry Co., Ltd.)

CAA Appeal No. 18-01 & 18-02

Docket No. CAA-HQ-2015-8065)
_____)

**ORDER CONSOLIDATING APPEALS, ALLOWING A CONSOLIDATED RESPONSE,
EXTENDING THE RESPONSE DEADLINE, AND AUTHORIZING SERVICE BY
EMAIL**

By motion filed with the Environmental Appeals Board (“Board”), the U.S. Environmental Protection Agency’s Air Enforcement Division (“EPA”), requests that the Board consolidate CAA Appeal Nos. 18-01 and 18-02; allow EPA to file a consolidated response addressing both appeals and extend the response page-length limit to 60 pages or 28,000 words; extend EPA’s deadline to file its response(s) by 14 days (i.e., to October 24, 2018); and authorize or require service by electronic means. *See* Motion to Consolidate Appeals, Allow a Consolidated Response, Extend the Response Deadline, and Authorize Service by Email (“Motion”). EPA represents that it consulted with opposing counsel and that the Respondents in these two appeals do not oppose the request to extend EPA’s response deadline and to authorize service by electronic means, but oppose the request to consolidate the two appeals and the response brief. *Id.* at 1.

In support of its request to consolidate the two appeals, EPA relies on 40 C.F.R. section 22.12(a), which states that the Board “may consolidate any or all matters at issue in two proceedings [before it] where: there exists common parties or common questions of facts or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties ***.” 40 C.F.R. § 22.12(a); *see* Motion at 4. EPA explains that the two appeals arise from the same proceeding before the Administrative Law Judges, involve the same parties, a common set of facts, and present common questions of fact and law. Motion at 2, 4. It explains that “since its inception this matter has proceeded as a single action against all three Respondents,” and that “Respondents have been represented throughout by common counsel,” who “continues to act as common counsel on appeal.” *Id.* at 2. Therefore, EPA reasons, given the broad overlap of the issues presented on both appeals, consolidation will expedite and simplify consideration of the issues and would not adversely affect the rights of any party. *Id.* at 4.

With respect to its request to file a single consolidated response brief, EPA explains that a consolidated response “would ensure that the issues common to both appeals are addressed in a clear and consistent manner, *** [, and] “would *** maximize efficiency by eliminating the need for duplicative arguments in separate briefs.” *Id.* at 3. The new page-length or word limitation on the consolidated response (i.e., not exceed 60 pages in length or 28,000 words) “equates to the length allowed to Respondents for their two briefs, and the length to which [EPA] would be entitled were it to file two separate briefs.” *Id.*

Additional time to file a consolidated response is necessary, EPA explains, “to effectively address the issues[.]” and “allow EPA management review” because the appeals “raise intricate

matters of regulatory interpretation” with “implications for the national certification program regulating vehicles and engines.” *Id.* 3-4. Finally, in support of its requests for a Board order authorizing or requiring service, EPA cites to 40 C.F.R. § 22.5(b)(2) and explains that Respondents have already served their appeal briefs on EPA using electronic means.

For good cause shown, EPA’s Motion is **GRANTED** in its entirety. Pursuant to 40 C.F.R. § 22.12(a) both appeals are now consolidated. EPA’s consolidated response brief must be filed with the Board no later than **October 24, 2018**, and must not exceed 60 pages in length or 28,000 words.¹ In addition, the parties are authorized to serve each other by email. *See* 40 C.F.R. § 22.5(b)(2).

The parties are also informed that pursuant to 40 C.F.R. § 22.6, the EAB may use e-mail (Clerk_EAB@epa.gov) to serve orders and decisions in this matter at the addresses provided by the parties. Parties shall promptly file a notice in this matter informing the Board and the other parties if their e-mail address changes.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated:

September 27, 2018

By:



Kathie A. Stein

Environmental Appeals Judge

¹ Except for the page-length or words limitation authorized by this order, all other requirements specified in 40 C.F.R. sections 22.5 and 22.30(a) still apply to EPA’s response brief.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Consolidating Appeals, Allowing a Consolidated Response, Extending the Response Deadline, and Authorizing Service by Email* in the matter of Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd., CAA Appeal Nos. 18-01 and 18-02, were sent to the following persons in the manner indicated:

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Dated: **Sep 27 2018**



Eurika Durr
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