

**BEFORE THE 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)	CAA Appeal No. 18-01 & 18-02
Co., Ltd.)	
)	
Dkt. No. CAA-HQ-2015-8065)	
)	

MOTION TO EXTEND THE REPLY DEADLINE, AND ALLOW SEPARATE REPLY BRIEFS OR AN EXPANDED REPLY BRIEF

Taotao USA, Inc. (“Taotao USA”), Taotao Group Co., Ltd. (“Taotao Group”) and Jinyun County Xiangyun Industry Co., Ltd. (“JCXI”) (collectively “Appellants”) respectfully request that the Environmental Appeals Board (“EAB”) extend the deadline for Respondents’ reply brief by 14 days from November 5, 2018¹ to November 19, 2018; and allow Taotao Group and JCXI to file their own reply brief, separate from the brief to be filed by Taotao USA, or alternatively, a single expanded brief that accounts for the length of the response.

Appellants have consulted opposing counsel regarding these requests. Appellee opposes the extension, the request to file two separate briefs, and the filing of a single expanded brief.

¹ Because there is no clear deadline for such reply briefs in 40 C.F.R. Part 22, except for a reference in 40 C.F.R. 22.16 to replies to responses that challenge motions, or the Board’s Practice Manual, Respondents’ are uncertain if their motion for leave to file reply briefs, and the accompanying briefs, are due 10 days or 15 days after service of the response. *See* 40 C.F.R. § 22.16(b); *see also* Practice Manual at 48 (referring only to such replies in case of permit appeals). However, the requested 14 days extension is based on a presumed deadline of 10 days, instead of 15.

BACKGROUND

Before initiating this appeal, Appellants consulted Appellee regarding an extension to file their appeal briefs. However, because Appellee was opposed to the request, Taotao USA timely filed its Notice of Appeal and appeal brief (Dkt. No. 3), while Taotao Group and JCXI filed an opposed motion requesting additional time in which to file their appeal brief (Dkt. No. 2).

On September 11, 2018, the Environmental Appeals Board (“EAB”) issued its “Order Granting Motion for Extension of Time and Setting Deadline for Responses,” which granted Taotao Group and JCXI’s motion and set the deadline for Complainant’s responses to both CAA Appeal 18-01 and CAA Appeal 18-02 to October 10, 2018 (Dkt. No. 4, 10). Taotao Group and JCXI filed their appeal brief on September 20, 2018 (Dkt. No. 5). The October 10, 2018 deadline gave Appellee 34 days to respond to Taotao USA’s appeal brief and 14 days to respond to Taotao Group and JCXI’s appeal brief.

On September 25, 2018, Appellee filed a Motion to Consolidate Appeals, Allow a Consolidated Response, Extend the Response Deadline, and Authorize Service by Mail (“Appellee’s Motion”). *See* Dkt. No. 7, 10. Appellee’s Motion requested a 14 day extension to its response deadline. *Id.* Appellants did not oppose the extension, but did oppose the request to consolidate the appeals. *Id.*

As stated in Taotao Group and JCXI’s motion for extension , said Appellants desired to submit a brief separate from the brief filed by Taotao USA, in the interest of fairness, and to prevent unnecessary confusion as to the issues that pertain to Taotao USA’s (the importer) liability and penalty assessment determination, and those that solely pertain to Taotao Group and JCXI (the alleged manufacturers). Dkt. No. 2.

On September 27, 2018, the EAB granted Appellee's Motion in its entirety, and Appellee's new response deadline of October 24th gave Appellee 48 days to respond to Taotao USA's appeal brief (Dkt. No. 8), and 28 days to respond to Taotao Group and JCXI's appeal brief, resulting in a single 85 pages long response filed on October 24, 2018 (Dkt. No. 14). The response brief raises several new issues that Appellants did not previously have the opportunity to address, which will be more fully explained in their motions for leave, and accompanying briefs.

Although Appellee's served a redacted portion of the response brief via electronic mail on October 24, 2018, Appellants' counsel received the full, unredacted version, by mail, the following day. On Thursday, November 1, 2018 (within five business days after receiving the response in the mail), Appellants' contacted Appellee, through counsel, via email, to confer on this motion and Appellee responded on November 2, 2018, stating the agency's opposition.

ARGUMENT

The EAB may extend the deadline for filing the appeal brief if good cause is shown and there is no prejudice to opposing parties. *See In re B & B Wrecking and Excavating, Inc.*, 4 E.A.D. 16, 17 (EAB 1992); *see also In re Guam Waterworks Auth.*, NPDES Appeal Nos. 09-15 & 09-16, at 4 (EAB Nov. 3, 2009) (Order Granting Motion in the Alternative to Timely File Summary Petitions with Extension of Time to File Supplemental Briefs); *In re City & Cnty. of Honolulu*, NPDES Appeal No. 09-01, at 2-3 (EAB Feb. 2, 2009) (Order Granting Alternative Motion for Extension of Time to File Petitions for Review).

Throughout the proceedings before the ALJ, Appellee has grouped all three Appellants together, resulting in an Initial Decision, which fails to substantively distinguish between the three separate entities and assesses a joint and several liability based on the history and conduct of one party, and imputing it on others. *See* Dkt. No. 1. The Initial Decision, as well as the decision on

liability is therefore riddled with confusion and justified by implicit suggestions that the three Appellants have acted in concert, and are liable for the conduct of the other. To avoid said confusion and generalization, Appellants submitted two separate appeals, which have now been consolidated.

Because reply brief deadlines, with motions for leave, are based on responses that are limited to 30 pages or 14,000 words, *see* 40 C.F.R. 22.30(a)(3), in the interest of fairness, Appellants request an extension to the general deadline in this case where Appellee's response brief consists of 76 pages and about 30,000 words (excluding the table of contents, table of authorities, certificates and signatures).² *See* Appellee's Response Brief. Appellants have been represented by common counsel for the duration of this action, and given the length of the response brief, and the confusion on issues caused by the submission of a single response, makes it highly improbable for Appellants' counsel to submit an adequate brief in the time allowed under the applicable regulations, and in a single reply brief. In case, the EAB is unwilling to allow the filing of two separate reply briefs, Appellants' respectfully request that they be permitted to submit a single consolidated reply with an extended length limitations of 30 pages or 14,000 words. This equates to the length of reply briefs permitted under the rules for responses that are half the length of Appellee's response brief. 40 C.F.R. § 22.30 a)(3).

Appellants' counsel believes that a two-week extension will allow Appellants sufficient time to submit adequate reply briefs and will not prejudice the Appellee, who has already submitted its response, and was permitted an extension to file said response, which Appellants did

² Appellants do not challenge the word-limit, or claim that it seemingly exceeds the Order Consolidating Appeals Allowing a Consolidated Response Extending the Response Deadline and Authorizing Service by Email (Dkt. No. 8). But merely mention the length to show that reply briefs, or an expanded reply brief cannot adequately respond to the newly raised issues or arguments in said expanded response within the 10 days deadline.

not oppose). On the other hand, a denial of the extension will prejudice Appellants, who, upon information and belief, have valid reasons to reply to the response and will forego the opportunity to do so in the absence of sufficient time. Furthermore, this is Taotao USA's first request for an extension.

For the reasons set forth above, Appellants respectively request that this motion be granted and Appellants be permitted to file motions for leave to submit, with two accompanying reply briefs or a single consolidated reply brief that consists of 30 pages or 14,000 words, on or before November 19, 2018.

Respectfully Submitted,

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Date: November 2, 2018

Attorney for Appellants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing instrument was sent this day via electronic mail to the following e-mail addresses for service on Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov, Robert Klepp at Klepp.Robert@epa.gov, and Mark Palermo at Palermo.Mark@epa.gov.

Date: November 2, 2018

/s/William Chu
William Chu