

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

In re:)	
)	
Taotao USA, Inc.,)	CAA Appeal No. 18-01 & 18-02
Taotao Group Co., Ltd., and)	
Jinyun County Xiangyuan Industry Co., Ltd.)	
)	
Docket No. CAA-HQ-2015-8065)	
)	

**MOTION TO CONSOLIDATE APPEALS, ALLOW A CONSOLIDATED RESPONSE,
EXTEND THE RESPONSE DEADLINE, AND AUTHORIZE SERVICE BY EMAIL**

The Director of the U.S. Environmental Protection Agency’s Air Enforcement Division (“Complainant”) requests that the Environmental Appeals Board (“EAB”) grant Complainant leave to file a single response brief not to exceed 60 pages or 28,000 words addressing Clean Air Act (“CAA” or “the Act”) Appeal Nos. 18-01 and 18-02; extend the deadline for Complainant’s response by 14 days, from October 10, 2018, to October 24, 2018; consolidate CAA Appeal Nos. 18-01 and 18-02 pursuant to 40 C.F.R. § 22.12(a); and authorize or require service by email or other electronic means.

Complainant has consulted opposing counsel regarding these requests. Respondents oppose the request to file a single response brief; do not oppose the request to extend Complainant’s filing deadline to October 24, 2018; oppose the request to consolidate CAA Appeal Nos. 18-01 and 18-02; and do not oppose the request to authorize service by electronic means.

I. Background

On August 7, 2018, Chief Administrative Law Judge Susan L. Biro issued an Initial Decision in this matter assessing a penalty against Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County

Xiangyuan Industry Co., Ltd. (collectively “Respondents”), jointly and severally, for violations of CAA Sections 203(a)(1) and 213(d), 42 U.S.C. §§ 7522(a)(1), 7547(d). On September 6, 2017, Taotao USA, Inc. (“Taotao USA”) filed a Notice of Appeal and appeal brief in CAA Appeal No. 18-02 identifying four issues for appeal. Also on September 6, 2017, Taotao Group Co., Ltd. (“Taotao Group”) and Jinyun County Xiangyuan Industry Co., Ltd. (“JCXI”) filed a Notice of Appeal in CAA Appeal No. 18-01, listing six issues for appeal, along with a motion requesting additional time in which to file their appeal brief.

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 extended the deadline for Complainant’s responses to both CAA Appeal 18-01 and CAA Appeal 18-02 to October 10, 2018. Taotao Group and JCXI filed their appeal brief on September 20, 2018.

II. Argument

Since its inception, this matter has proceeded as a single action against all three Respondents jointly and severally. Respondents have been represented throughout by common counsel who has, with rare exception, acted jointly on behalf of all Respondents. This common counsel represented all Respondents at the evidentiary hearing in this matter, and now continues to act as common counsel on appeal.

CAA Appeal Nos. 18-01 and 18-02 arise from a single proceeding before the Office of Administrative Law Judges, and involve a common set of facts and issues of law. Three of the issues raised in CAA Appeals 18-01 and 18-02 are identical. *Compare* Taotao USA’s Br. 3–4, CAA App. 18-02 (Sept. 6, 2018) (issues 1, 2, & 4), *with* Taotao Group’s Br. 1–2, CAA App. 18-01 (Sept. 20, 2018) (issues 2, 4, & 5 [sic – first of two ¶5s listed in the Taotao Group brief]). A fourth issue in each appeal,

concerning application of the relevant penalty policy, is nearly identical, differing only in how the penalty adjustments were applied to each party. *Compare* Taotao USA’s Br. 3–4, CAA App. 18-02 (Sept. 6, 2018) (issue 5), *with* Taotao Group’s Br. 2, CAA App. 18-01 (Sept. 20, 2018) (issue 5 [sic – second of two ¶5s listed in the Taotao Group brief]). However, notwithstanding this broad overlap, the appellate brief filed by Taotao Group and JCXI in CAA Appeal No. 18-01 addresses the common issues using new and expanded arguments different from those presented in the brief filed by Taotao USA in CAA Appeal No. 18-02.

a. Request for Leave to File a Single, Expanded Brief Addressing Both Appeals

Because the issues raised in CAA Appeals 18-01 and 18-02 overlap so extensively, Complainant requests leave to file a single consolidated response, with an expanded page limit, to respond to both appeal briefs, rather than two separate responses addressing each appeal individually. A consolidated response brief would ensure that the issues common to both appeals are addressed in a clear and consistent manner, avoiding potential confusion. It would also maximize efficiency by eliminating the need for duplicative arguments in separate briefs. Because the brief would respond to complex matters argued in two separate appellate briefs, Complainant requests that the length limitation for the consolidated response brief be extended to a maximum of 28,000 words or alternately 60 pages, pursuant to 40 C.F.R. § 22.30(a)(3)(i). This equates to the length allowed to Respondents for their two briefs, and the length to which Complainant would be entitled were it to file two separate briefs in response. 40 C.F.R. § 22.30(a)(3).

b. Request to Extend the Deadline for Complainant’s Response to October 24, 2018

The issues presented for appeal by Taotao USA, Taotao Group, and JCXI raise intricate matters of regulatory interpretation in the context of rigorously contested litigation and a complex factual background. Complainant’s brief will require EPA management review because resolution of the issues

may have implications for the national certification program regulating vehicles and engines. Further, the appellate brief filed by Taotao Group and JCXI in CAA Appeal No. 18-01 addresses issues raised in the brief filed by Taotao USA in CAA Appeal No. 18-02 in new ways, requiring Complainant to read the briefs together to fully understand and respond to Respondents' appeal. Pursuant to 40 C.F.R. §§ 22.7(b) and 22.30(e)(3), Complainant requests an extension of time to file its response by 14 days to Wednesday, October 24, 2018. The request is reasonable given the complex, overlapping issues presented in the appeals. The additional time is needed to effectively address the issues in Complainant's response, and to allow EPA management review. The extension is short and will not cause Respondents undue prejudice.

c. Request to Consolidate CAA Appeal Nos. 18-01 and 18-02

The Consolidated Rules of Practice governing this proceeding provide that the EAB may consolidate two proceedings where there are "common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings." 40 C.F.R. § 22.12(a).

As described above, CAA Appeal Nos. 18-01 and 18-02 arise from a single proceeding involving all the parties, and present common questions of fact and law. Given the broad overlap of the issues concerning both liability and penalty, consolidation will expedite and simplify consideration of the appeals. Consolidation would not confuse the issues or adversely affect the rights of any party. The EAB is a sophisticated adjudicator capable of considering each argument raised on behalf of Respondents in each appeal. Complainant therefore requests that the EAB consolidate CAA Appeal Nos. 18-01 and 18-02.

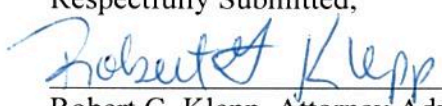
d. Request to Authorize Electronic Service

Finally, pursuant to 40 C.F.R. § 22.5(b)(2), Complainant requests the EAB authorize or require service by email or other electronic means in CAA Appeal Nos. 18-01 and 18-02. In the proceeding below, the Administrative Law Judge issued an Order Requiring Electronic Service on July 18, 2017 (Dkt # 97), and Respondents have already served their appeal briefs on Complainant using electronic means. For administrative clarity and economy, Complainant requests the EAB authorize service by electronic means in these appeal proceedings.

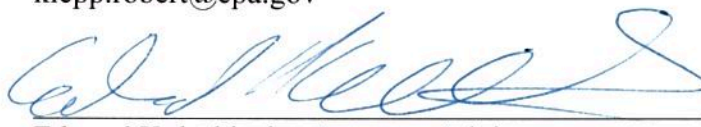
CONCLUSION

For these reasons and for good cause shown, Complainant requests that the EAB grant Complainant leave to file a single response brief not to exceed 60 pages or 28,000 words addressing both CAA Appeal Nos. 18-01 and 18-02; extend the deadline for Complainant's response by 14 days, from October 10, 2018, to October 24, 2018; consolidate CAA Appeal Nos. 18-01 and 18-02; and authorize service by email.

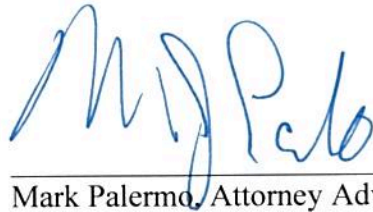
9/25/18
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Respectfully Submitted,

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CERTIFICATE OF SERVICE

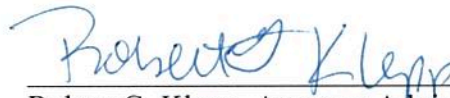
I certify that the Motion to Consolidate Appeals, Allow a Consolidated Response, Extend Response Deadline, and Authorize Service by Email in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, CAA Appeal Nos. 18-01 & 18-02, was filed and served on the Environmental Appeals Board this day through the Environmental Appeals Board E-Filing System.

I certify that three copies of the foregoing Motion were sent this day by email and by certified mail, return receipt requested, for service on Respondents' counsel at the address listed below:

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9/25/18



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