

**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)
Co., Ltd.)
)
Dkt. No. CAA-HQ-2015-8065)
)

MOTION FOR EXTENTION OF TIME

Taotao Group Co., Ltd. (“Taotao Group”) and Jinyun County Xiangyun Industry Co., Ltd. (“JCXI”) (collectively “Movants”) request that the Environmental Appeals Board (“EAB”) grant a two week extension of time to file their Appeal Brief in support of their Notice of Appeal seeking review of a decision of Administrative Law Judge Susan L. Biro, issued on August 7, 2018, assessing a joint and several civil penalty of \$247,982.55 against Taotao Group and \$1,353,167.40 against JCXI for violations of sections 203 and 213 of the Clean Air Act, 42 U.S.C. §§ 7522, 7547, and implementing regulations codified at 40 C.F.R. Part 86, Subpart E and 40 C.F.R. §§ 1051, 1068. The Notice of Appeal is attached with Statement of Issues.

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).

In addition to representing Taotao Group and JCXI in this Complaint, Movant's counsel also represents Taotao USA, Inc., the importer and COC holder, the ALJ has held jointly and severally liable for the entire penalty amount. The Initial Decision was served on Movants' counsel via electronic mail on August 7, 2018 at 4:06 PM CST¹. The Initial Decision spans over 51 pages. The length of the decision and the complicated nature of the issues makes it highly improbable for Movant's counsel to submit an adequate brief in the time allowed under the applicable regulations, without causing unnecessary confusion as to the issues that pertain to Taotao USA, Inc.'s (the importer), liability and penalty assessment determination, and those that solely pertain to Taotao Group and JCXI (the alleged manufacturers). Therefore, in the interest of fairness, Movants must submit their brief separate from the brief filed by Taotao USA, Inc.

Movant's counsel believes that a two-week extension will allow Movants sufficient time to submit an adequate appeal brief and will not prejudice the Appellee. Movants represent that Opposing Counsel has been consulted and opposes the request.

For the reasons set forth above, respectively requests that its Motion for Extension of Time to respond to the be granted and that the EAB extend the deadline for Movant's appeal brief to September 20, 2018,

Respectfully Submitted,

/s/William Chu
William Chu
Texas State Bar No. 04241000
The Law Offices of William Chu
4455 LBJ Freeway, Suite 1008
Dallas, Texas 75244
Telephone: (972) 392-9888
Facsimile: (972) 392-9889
wmchulaw@aol.com
Attorney for Appellants

¹ Movant's Counsel resides in Texas.

CERTIFICATE OF CONFERENCE

I certify that I made contact via telephone with a counsel for appellee in this cause, and they are opposed to this motion.

/s/ William Chu

CERTIFICATE OF SERVICE

I certify that a copy of foregoing Motion for Extension of Time was sent to all parties or to all counsel of record on September 6, 2018 in accordance with the Texas Rules of Civil Procedure.

/s/William Chu

ISSUES FOR APPEAL

1. Did the ALJ's err in concluding that Complainant had adequately served Taotao Group and JCXI in accordance with the service requirements of Hague Convention?
2. Did the ALJ erroneously conclude that all 109,964 on-road and nonroad vehicles were not covered by their respective EPA-issued COCs because they did not conform, in all material respects, to the design specifications in their COC applications, regardless of whether they were identical to their respective engine family's emission data vehicles, which passed end of useful life emission tests?
2. Did the ALJ erroneously conclude that Taotao Group and JCXI were liable as manufacturers of the vehicles, and jointly and severally liable for the assessed penalty because they harmed the regulatory scheme by submitting false data about *their* catalytic converters in *their* COC applications, even though Taotao Group and JCXI neither manufactured the non-conforming catalytic converters, nor submitted any data about the third-party catalytic converters, and the COC applications were not *theirs*?
3. In spite of the DOJ's express condition on the jurisdictional waiver stating that the waiver does not extend to violations do not go beyond mere harm to the regulatory scheme and those that cause excess emissions, did the ALJ erroneously conclude that because harm to the regulatory scheme ultimately leads to potential harm to the environment, the administrative court had jurisdiction over this complaint even though Complainant clearly sought a penalty for harm from actual or potential emissions?
4. Although liability was determined solely based on (a) a finding that the catalytic converters in the imported vehicles did not match the catalytic converters described in their respective COC applications, and (b) a finding that all 109,964 subject vehicles were uncertified because they

contained the same catalytic converters as the emission data vehicles tested for each respective engine families and were therefore all the same, did the ALJ then erroneously conclude at the penalty stage that the imported vehicles had a potential for excess emission because all useful life emission tests were conducted on emission data vehicles that were *not the same* as the imported vehicles?

5. Did the ALJ erroneously make a penalty determination based on the Complainant's upward biased penalty calculation without regard to the statutory factors and the DOJ's conditional waiver, and without considering each Appellant's distinct benefit, culpability and history of noncompliance?