



**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 RESPONDENTS’ MOTION FOR
CONTINUANCE OF THE HEARING**

In May, this Tribunal granted the Agency’s Motion for Partial Accelerated Decision on the question of liability and denied the Respondents’ Motion to Dismiss and Motion for Accelerated Decision. *See* Order on Partial Accelerated Decision and Related Motions (May 3, 2017) (“Order”). Subsequently, on May 9, 2017, I issued an Order setting a hearing on the penalty in this matter for July 18, 2017.¹

A month later, Respondents filed a motion asking the hearing be continued for 90 days. Respondents’ Motion for Continuance of the Hearing (June 9, 2017) (“Motion”). Most of the motion presents argument that is inappropriate in that it relates to Respondents’ grievances with the Order and not to matters that have anything to do with a continuance of the hearing date. However, in the final pages, Respondents assert they need additional time to seek to depose the Agency’s witnesses, retain rebuttal witnesses, review and challenge the evidence, shift their attention from liability to penalty, and ensure the availability of their witnesses. Mot. at 7-8.

The Agency responds that Respondents’ request is “mystifying” and “strains credulity” given the amount of time they have already had to prepare their case. Complainant’s Response to Respondents’ Motion for Continuance of the Hearing at 2 (June 26, 2017). According to the Agency, Respondents are circumventing the prehearing exchange provisions and seeking to impermissibly expand the prehearing discovery and litigation period. Complainant’s Response to Respondents’ Motion for Continuance of the Hearing at 3-5. “This is not how the administrative hearing process is supposed to work under the Consolidated Rules – there must be an end to case preparation and a clear path set for resolution of the proceeding,” the Agency argues. Complainant’s Response to Respondents’ Motion for Continuance of the Hearing at 6. Ultimately, the Agency opposes an extension of 90 days as well as any extension of time to file

¹ I later denied Respondents’ request for reconsideration or permission to seek interlocutory appeal. *See* Order on Respondents’ Motion for Reconsideration or Interlocutory Appeal (June 15, 2017).

supplements to the prehearing exchange or other non-dispositive motions. But the Agency notes also that several pending motions cannot be fully resolved until a few days before the scheduled hearing. Consequently, the Agency's proposes the hearing be continued until the week of August 21, 2017. Complainant's Response to Respondents' Motion for Continuance of the Hearing at 6-7.

Under the Rules governing this proceeding, I have the authority to "take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues," and I may postpone the hearing "upon motion and for good cause shown." 40 C.F.R. §§ 22.4(c)(10), 22.21(c). In this case, most of Respondents' arguments do indeed "strain credulity," as the Agency states, and seem primarily designed to cause delay. However, I find there is good cause to postpone the hearing, primarily to ensure the availability of witnesses, some of whom presumably must travel from China. Additionally, in light of the magnitude of the proposed penalty, it is not inappropriate to allow Respondents additional time to develop a more complete understanding of the case against them and how the penalty was calculated. The extent to which it is or is not appropriate for them to depose the Agency's witnesses will be addressed in a separate order.² Although the Agency proposes a shorter continuance, the current state of this Tribunal's docket cannot accommodate the Agency's request.

Accordingly, Respondents' Motion is **GRANTED**.³ The hearing date, and related deadlines, are postponed as follows:

Settlement Status Reports. Complainant is directed to file Status Reports as to the status of any settlement negotiations between the parties, *which shall not include any specific terms of settlement*, on or before **August 4, 2017**. Complainant shall file a second Status Report as to the status of any settlement negotiations on **September 29, 2017**.

Supplements to Prehearing Exchange. Any addition of a proposed witness or exhibit to the prehearing exchange shall be filed with an accompanying motion to supplement the prehearing exchange. Because all questions of liability have been answered, supplements offered after the date of this Order are unlikely to be accepted into the record unless they relate to the unresolved penalty portion of this proceeding. A document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Notwithstanding the deadline set forth in 40 C.F.R. § 22.22(a)(1), if a party fails to supplement their prehearing exchange by **September 15, 2017**, the document, exhibit, or testimony shall not be admitted into evidence unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so. Motions to supplement the prehearing exchange filed after September 15, 2017, will not be considered absent extraordinary circumstances.

² Respondents on June 17, 2017, filed a motion to depose a number of the Agency's witnesses.

³ Because this Order reschedules the hearing for a date specifically requested by Respondents, there will be no further postponements at their request.

Joint Stipulations. On or before **September 15, 2017**, the parties shall file a Joint Set of Stipulated Facts, Exhibits, and Testimony. The time allotted for the hearing is limited. Therefore, the parties must make a good faith effort to stipulate as much as possible to matters that cannot reasonably be contested so that the hearing can be concise and focused solely on those matters that can only be resolved after an evidentiary hearing.

Prehearing Motions. All non-dispositive prehearing motions, such as motions for subpoenas or motions in limine, must be filed on or before **September 22, 2017**.

Prehearing Briefs. The parties may, if they wish, file prehearing briefs on or before **September 29, 2017**. If filed, Complainant's brief should specifically state each count of the Complaint and each claim therein that will be tried at the hearing and indicate which counts and claims will not. If filed, Respondent's brief should identify each of the defenses Respondent intends to pursue at the hearing.

Prehearing Conference. A prehearing conference will be scheduled in advance of the hearing and conducted by a staff attorney.

Hearing. The hearing in this matter shall begin promptly at **8:30 a.m. on Tuesday, October 17, 2017**, and shall continue if necessary through Friday, October 20, 2017, at the following location:

**EPA Administrative Courtroom
EPA East Building, Room 1152
1201 Constitution Avenue, NW
Washington, D.C. 20460**

Individuals requiring special accommodations at the hearing, including wheelchair access and translation services, must contact Mary Angeles, Headquarters Hearing Clerk, at (202) 564-6281, no later than 30 days prior to the scheduled hearing, so that appropriate arrangements can be made. A staff attorney for the undersigned, Matt Barnwell, can be contacted should you have any procedural questions or questions about what to expect at the hearing, at (202) 564-3245 or barnwell.matt@epa.gov.

RESPONDENTS ARE ADVISED THAT FAILURE TO APPEAR AT THE HEARING, WITHOUT GOOD CAUSE HAVING BEEN SHOWN, MAY RESULT IN THE ENTRANCE OF DEFAULT JUDGMENT AGAINST THEM.

IF ANY PARTY DOES NOT INTEND TO ATTEND THE HEARING, OR HAS GOOD CAUSE FOR NOT BEING ABLE TO ATTEND THE HEARING AS SCHEDULED, IT SHALL NOTIFY THE UNDERSIGNED AT THE EARLIEST POSSIBLE MOMENT.

SO ORDERED.



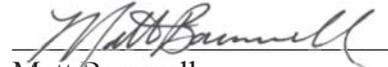
Susan L. Biro
Chief Administrative Law Judge

Dated: June 27, 2017
Washington, D.C.

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 Respondents' Motion for Continuance of the Hearing**, dated June 27, 2017, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


Matt Barnwell
Attorney Advisor

Original by Hand Delivery to:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
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Dated: June 27, 2017
Washington, D.C.