

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:)
)
TAOTAO USA, INC., TAOTAO) Docket No. CAA-HQ-2015-8065
GROUP CO., LTD and JUNYUN)
COUNTY XIANGYUAN INDUSTRY)
CO., LTD,)

Respondents.)
Room 1152
EPA East Building
1201 Constitution Avenue, N.W.
Washington, D.C.

Tuesday,
October 17, 2017

The parties met, pursuant to notice of the Court,
at 8:30 a.m.

BEFORE: HONORABLE SUSAN L. BIRO
Chief Administrative Law Judge

APPEARANCES:
For the Complainant:
ROBERT G. KLEPP, Esquire
ED KULSCHINSKY, Esquire
MARK PALERMO, Esquire
U.S. Environmental Protection Agency
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C O N T E N T S

VOIR

WITNESSES: DIRECT CROSS REDIRECT RECROSS DIRE

For the Complainant:

Cleophas Cawthorn 11 -- -- -- 29

Jackson, Jr. 42 171 -- -- --

APPEARANCES: (Cont'd)
For the Respondents:
WILLIAM CHU, Esquire
SALINA TARIQ, Esquire
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E X H I B I T S

COMPLAINANT'S EXHIBITS:	IDENTIFIED	RECEIVED
1 through 10	111	111
12	50	50
13 through 17	59	59
43 through 45	90	90
46	87	87
47 through 52	90	90
67	279	279
77	330	330
99 through 109	166	166
110	160	160
111 through 122	166	166
156A	15	15
191	152	152

E X H I B I T S

RESPONDENTS'

EXHIBITS:	IDENTIFIED	RECEIVED
33	197	197

1 in shortly.

2 JUDGE BIRO: Okay, Good morning, Mr. Chu.

3 MR. CHU: Good morning.

4 JUDGE BIRO: Good morning, Ms. Tariq?

5 MS. TARIQ: Yes.

6 JUDGE BIRO: Okay. Before we begin I just

7 want to go over a few matters. We entered liability

8 pursuant to a partial accelerated decision order in

9 May of 2015, so this hearing is focused solely on the

10 issue of penalty.

11 The rules that apply to this proceeding in

12 terms of evidence are the Consolidated Rules of

13 Practice; specifically, Rule 22.22, which says that

14 all evidence shall be admitted except that's

15 immaterial, irrelevant, duplicative, et cetera, and we

16 follow that rule. So, hearsay is admissible in this

17 proceeding.

18 There's an issue of confidential

19 information. If there is confidential information

20 that comes up, please advise me in advance. We'll

21 close the courtroom and anybody who's not certified to

22 hear confidential information will have to leave.

23 Are there any other preliminary matters you

24 wish to address before we begin? Counsel for the

25 Agency?

1 P R O C E E D I N G S

2 (8:30 a.m.)

3 JUDGE BIRO: We're going on the record in

4 the matter of Taotao USA, Inc., Taotao Group Co.,

5 Limited, and Junyun County Xiangyuan Industry Company,

6 Limited, EPA Docket No. CAA-HQ-2015-8065.

7 Good morning.

8 ALL: Good morning, Your Honor.

9 JUDGE BIRO: I'm Susan Biro. I'm the Chief

10 Administrative Law Judge of the Environmental

11 Protection Agency, and I have been assigned to preside

12 over this matter today.

13 Counsel for the Complainant, could you

14 identify yourself for the record?

15 MR. KLEPP: Sure. Good morning, Your Honor.

16 My name is Robert Klepp, and by way of introduction my

17 co-counsel are Mark Palermo, Ed Kulschinsky, and our

18 law clerk is Sylvia Daluce-Silva.

19 JUDGE BIRO: Welcome. Counsel for the

20 Respondents?

21 MR. CHU: Yes. Good morning. William Chu

22 with Salina Tariq, attorney, and then I've got my

23 legal assistant who is out punching holes and trying

24 to find a place to punch holes to finish up the

25 binders this morning who is Marcus Dixon. He will be

1 MR. KLEPP: To make a point, Your Honor, we

2 have -- we're kind mid-course in terms of some

3 stipulations that we have tried to engage counsel from

4 Respondents to stipulate to some facts, some documents

5 as evidence. We're not all the way through that

6 process, just to make that point. We're probably

7 going to have to work on some of the documents going

8 in as evidence without stipulations in advance.

9 JUDGE BIRO: Okay. Mr. Chu.

10 MR. CHU: Your Honor, if it may please the

11 Court. My understanding of what the Court just

12 announced is that all documents were coming in and

13 then we just argue significance or whatever we want to

14 as to the documents. So, I'm not quite sure why there

15 would be a need for a stipulation as to the documents.

16 Did I hear it correctly what the Court has announced?

17 JUDGE BIRO: If they're irrelevant or

18 immaterial or duplicitous, they're not coming in. If

19 they're not related to penalty, they're not coming in.

20 So, other than that, yes, we broadly let in

21 everything, and the weight we give it will depend on

22 how relevant it is.

23 MR. CHU: Is that subject to our arguments

24 as to the significance of the documents being offered?

25 JUDGE BIRO: We're generally very liberal

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1 about letting in evidence.

2 MR. CHU: Thank you, Your Honor.

3 MR. KLEPP: Your Honor.

4 JUDGE BIRO: I have literally read in the

5 last week or two every document you have submitted. I

6 put my little fingers on every single page and read

7 them over, including your prehearing brief, Mr. Chu.

8 I've read that many times. I've read every exhibit

9 that you submitted, all of them, page after page, even

10 the ones that pertain to liability again. So, I'm

11 pretty familiar with everything that you've submitted

12 so far.

13 I've got your most recent revised penalty

14 calculation right here. I have whatever else -- I

15 know that the Agency submitted. Actually, I didn't

16 read what you most recently submitted, some revised

17 expert report, because I didn't get time. But other

18 than that I've seen it all and I've read it all, and

19 I'm very familiar with this case.

20 So, if you'd like to make an opening

21 statement, you certainly can, but it's not evidence,

22 it doesn't get any weight, but if the Agency would

23 like to proceed.

24 MR. KLEPP: Your Honor, we would waive our

25 opening statement and just want to proceed to our

Page 10

1 first witness.

2 JUDGE BIRO: Okay. Would the Respondent

3 like to make an opening statement?

4 MR. CHU: Yes, may it please the Court.

5 JUDGE BIRO: Do you want to do that now or

6 at the beginning of your case?

7 MR. CHU: At the beginning of our case, Your

8 Honor.

9 JUDGE BIRO: Okay, that would be great.

10 Okay, Mr. Klepp, would you call your first witness?

11 MR. KLEPP: Yes, Your Honor, thank you.

12 We'd like to call as our first witness Mr. Cleophas

13 Jackson.

14 JUDGE BIRO: Mr. Reporter, would you please

15 swear the witness?

16 Whereupon,

17 CLEOPHAS CAWTHORN JACKSON, JR.

18 having been duly sworn, was called as a

19 witness and was examined and testified as follows:

20 JUDGE BIRO: Please proceed, Mr. Klepp.

21 MR. KLEPP: Your Honor, if you don't mind,

22 may I wear the remote microphone here?

23 JUDGE BIRO: Sure.

24 MR. KLEPP: Okay, thank you. May I proceed?

25 JUDGE BIRO: Please proceed.

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1 MR. KLEPP: Thank you.

2 DIRECT EXAMINATION

3 BY MR. KLEPP:

4 Q Good morning, Mr. Jackson, would you please

5 state your name and your --

6 A Cleophas Jackson.

7 Q Your full name and your duties or your

8 position at EPA.

9 A My name is Cleophas Cawthorn Jackson, Jr.

10 I'm currently the center director for the Gasoline

11 Engine Compliance Center.

12 MR. KLEPP: Your Honor, before I proceed any

13 further, you made a point earlier I'd like to raise

14 again. At some point in Mr. Jackson's testimony there

15 will be some documents that are identified by

16 Respondents as confidential business information.

17 I've marked that in my question outline and I'd like

18 to bring it up at the time when it comes up. Thank

19 you.

20 BY MR. KLEPP:

21 Q Mr. Jackson, you mentioned the Gasoline

22 Engine Compliance Center. Where is that located?

23 A The Gasoline Engine Compliance Center is

24 located in Ann Arbor, Michigan, at the National

25 Vehicle and Fuel Emissions Lab in the Compliance

Page 12

1 Division.

2 Q Is that part of a larger office within EPA?

3 A Yes, the Compliance Division is in the

4 Office of Transportation and Air Quality within the

5 Office of Air and Radiation in EPA.

6 Q And generally and briefly can you describe

7 your duties as the director of the Gasoline Engine

8 Compliance Center?

9 A Responsible for the certification and

10 compliance of approximately 2,800 engine families

11 annually; responsible for the training and direction

12 of staff that carry out those responsibilities;

13 responsible for ensuring compliance of those products.

14 Q Do you know what this case is about?

15 A Yes.

16 Q Can you briefly and generally describe it?

17 A As I understand it, the Respondents have --

18 are addressing an issue with respect to providing

19 products to the market that were not certified. They

20 introduced products in the commerce without an

21 appropriate certificate of conformity.

22 Q Do you know what kind of vehicles are

23 involved in this case?

24 A These were small Class 1A products and ATVs.

25 Q Are you familiar with the --

1 A Motorcycles.
 2 Q Excuse me. Are you familiar with the
 3 regulations that were involved in violation?
 4 A Yes, I am.
 5 Q Can you state those, please?
 6 A Sure. 40 C.F.R. Part 86, subparts (e) and
 7 (f); 40 C.F.R. Part 1051; 40 C.F.R. Part 1068.
 8 Q Are these regulations part of what is your
 9 office, Gasoline Engine Compliance Center duty to
 10 oversee?
 11 A Yes.
 12 MR. KLEPP: With Your Honor's permission I
 13 would ask Mr. Jackson to please refer to Exhibit 156A.
 14 JUDGE BIRO: Mr. Klepp, did you say 156A?
 15 MR. KLEPP: I'm sorry. Pardon me. 156A.
 16 JUDGE BIRO: Right, 156A?
 17 MR. KLEPP: Yes.
 18 JUDGE BIRO: I don't see any A.
 19 MR. KLEPP: Oh, it might not be indicated in
 20 the tab, but in the actual document it should say
 21 156A, CX-156A.
 22 JUDGE BIRO: Okay.
 23 MR. KLEPP: Is that --
 24 JUDGE BIRO: Yes, I see that. Okay.
 25 MR. KLEPP: Thank you, Your Honor.

1 BY MR. KLEPP:
 2 Q Mr. Jackson, do you recognize this document?
 3 A Yes, I do.
 4 Q Try one more time.
 5 A Yes, I do.
 6 Q Great. What do you recognize it to be?
 7 A This is my resume.
 8 Q And did you author this document?
 9 A Yes, I did.
 10 Q And is it complete and accurate as you can
 11 tell?
 12 A Yes, it is.
 13 Q Okay, I'd like to ask you some questions
 14 based on it.
 15 MR. KLEPP: Point of order, Your Honor. How
 16 do I turn the overhead on? I'm not quite ready to use
 17 that -- or off. I'm not quite ready to use it. I
 18 just don't want papers --
 19 JUDGE BIRO: Mr. Susano will help you.
 20 MR. KLEPP: Thank you.
 21 JUDGE BIRO: Mr. Jackson, could you talk up
 22 just a little bit louder for me?
 23 THE WITNESS: Sure, no problem.
 24 JUDGE BIRO: Thank you.
 25 //

1 BY MR. KLEPP:
 2 Q So, I think I asked you, Mr. Jackson, does
 3 this resume, 156A, does it accurately describe your
 4 education and background and work experience?
 5 A Yes, it does.
 6 MR. KLEPP: And I would move to admit, Your
 7 Honor, or submit this document 156A as evidence.
 8 MR. CHU: Yes, Respondent would object to
 9 this document as being relevant. Under the
 10 circumstances I don't believe he's being qualified as
 11 an expert, so his educational background resume, we
 12 would object as being irrelevant.
 13 JUDGE BIRO: Overruled. Go ahead.
 14 MR. KLEPP: Thank you.
 15 (The document referred to was
 16 marked for identification as
 17 Complainant's Exhibit No.
 18 156A, and was received in
 19 evidence.)
 20 BY MR. KLEPP:
 21 Q Mr. Jackson, with respect to your education
 22 and background do you have an undergraduate degree?
 23 A Yes, I do.
 24 Q And where is that from?
 25 A University of Michigan, Ann Arbor.

1 Q And what was that degree earned in?
 2 A Mechanical engineering.
 3 Q When did you graduate?
 4 A 1995.
 5 Q And do you have an advanced degree as well?
 6 A Yes, I do.
 7 Q And where is that from?
 8 A Wayne State University in Detroit, Michigan.
 9 Q And advanced degree in what subject?
 10 A Master's of Science and Mechanical
 11 Engineering.
 12 Q What year did you graduate from Wayne State?
 13 A 1998, degree conferred in 1999.
 14 Q Did you study any areas as undergraduate or
 15 advanced that are particularly relevant to the matter
 16 in this case?
 17 A Yes, I did.
 18 MR. CHU: Objection, Your Honor, vague.
 19 JUDGE BIRO: Sustained.
 20 BY MR. KLEPP:
 21 Q Any subject areas that you studied that have
 22 to do with vehicles and engines?
 23 A Yes, I did.
 24 Q And what was that?
 25 A Combustion analysis and vehicle dynamics.

1 Q Are you a member of, or as a student were
2 you a member of any professional organizations or
3 student organizations?
4 A Yes, I am and yes, I was.
5 Q And can you say what they were, please?
6 A Sure. The Society of Automotive Engineers,
7 the American Society of Mechanical Engineers, and the
8 National Society of Black Engineers.
9 Q And within these organization did you have
10 any leadership positions?
11 A Yes, I did.
12 Q Can you describe those, please?
13 A Sure. As an undergraduate, I served as
14 program chair in the National Society of Black
15 Engineers, and as a graduate, as an alum, I served as
16 the president chair of the Alumni Extension Chapter.
17 Q In the course of your professional career
18 have you had an opportunity to publish articles in any
19 journals?
20 A Yes, I have.
21 Q Describe what journals, where they were
22 published.
23 A Sure. So, they were published in
24 Proceedings for the Society of Automotive Engineers,
25 as well as the American Society of Mechanical

1 Engineers.
2 Q And those articles, can you generally
3 briefly describe what they were pertaining to?
4 A Sure. So, the articles were relevant to
5 issues of emissions measurement and duty cycle
6 development, specifically development of the nonroad
7 transient cycle, a duty cycle that the Agency later
8 implemented. We also developed measurement strategies
9 and technologies for measuring emissions from
10 products.
11 Q And what pollutants were you studying the
12 testing of?
13 A NOx, unburned hydrocarbons, carbon monoxide,
14 particulate matter.
15 Q The articles that you described were they
16 peer reviewed?
17 A Yes, they were peer reviewed.
18 Q And what was the purpose of peer review?
19 A The purpose of peer review is to ensure the
20 scientific utility and integrity of the product and
21 ensure the usefulness of the product to the scientific
22 community.
23 Q And how did that process work?
24 A We submitted the papers to the societies.
25 They were reviewed, we received comments back, and we

1 had to make adjustments to the papers based on those
2 comments. However, we received few comments.
3 Q After publishing those articles did your
4 findings -- did your analysis get adopted in any
5 particular way?
6 A Yes.
7 Q Explain that, please.
8 A So, one example is with a nonroad transient
9 cycle. The duty cycle was adopted by EPA and it's
10 currently in use by the Agency for regulating
11 emissions from nonroad diesel engines. Portions of
12 the cycle were also adopted for regulating large
13 spark-ignition engines. In addition to that, the
14 cycle has been adopted by the European Commission for
15 Regulating Products in Europe.
16 Q I'd like to ask you about any awards you
17 received in the course of your professional career at
18 EPA. Could you describe those?
19 A Sure. I received several service awards as
20 well as a gold medal and a bronze medal.
21 Q Gold medal in what area?
22 A The nonroad diesel transient, tier 14.
23 Nonroad diesel, tier 14.
24 Q Can you describe your role within that
25 project?

1 A Sure. Yes, I can.
2 JUDGE BIRO: Are you going to identify him
3 as an expert witness?
4 MR. KLEPP: Yes, we are, Your Honor.
5 JUDGE BIRO: Proceed.
6 MR. KLEPP: Thank you.
7 BY MR. KLEPP:
8 Q Please proceed.
9 MR. CHU: I'm sorry. I understand that he's
10 intending to qualify him as an expert, but could we at
11 least identify what area?
12 JUDGE BIRO: When he gets done laying the
13 foundation, he can offer him in whatever areas of
14 expertise Mr. Klepp thinks is appropriate.
15 MR. CHU: Yes, Your Honor.
16 MR. KLEPP: Thank you.
17 BY MR. KLEPP:
18 Q You were talking about the gold medal
19 project. Can you please continue?
20 A Sure. I served as team leader for the
21 nonroad diesel tier 4 rulemaking, and in that role I
22 had the responsibility for developing the test
23 procedures and the test cycles that would be used for
24 that category of engines and vehicles.
25 I also had the opportunity to work with the

Page 21

1 industry to develop flexibilities for implementing the
 2 rulemaking, including developing a flexibility program
 3 for equipment manufacturers to spread their
 4 engineering costs over time so they could meet the
 5 Agency's target, target for emission specs, mission
 6 requirements and performance without actually having
 7 to complete the entire redesign in a single year. We
 8 were able to design a flexibility strategy working
 9 with the industry.

10 Q And was this a rulemaking under the Clean
 11 Air Act specifically?

12 A Yes, it was. Clean Air Act, Section 213.

13 Q And what pollutants were the subject of this
 14 rulemaking.

15 A Oxides of nitrogen, unburned hydrocarbon,
 16 carbon monoxide, particulate matter.

17 Q You also mentioned a bronze medal for a
 18 different project. Can you describe that, please?

19 A Yes. I had an opportunity to serve as team
 20 leader for the heavy-duty greenhouse gas Phase I
 21 rulemaking.

22 Q What were your duties within that?

23 A On that team I had the responsibility for
 24 developing the test protocol for hybrid vehicle
 25 testing as well as for aerodynamics assessment for

Page 22

1 products. I also had the responsibility for
 2 developing the provisions for OBD implementation for
 3 heavy-duty Phase I.

4 Q In the Clean Air Act area as well?

5 A (No audible response.)

6 Q And what pollutants was concerned?

7 A Oxides of nitrogen, carbon monoxide,
 8 unburned hydrocarbon.

9 Q In addition to what you described just now
 10 have you represented the Agency in any global forum?

11 A Yes, I have. I've had an opportunity to
 12 represent EPA as a part of the group of repertoires on
 13 pollution in energy within the WP-29 in Europe on
 14 multiple occasions. I've worked to develop a global
 15 technical regulation as a part of that framework.

16 I've also worked and met with the GIME group
 17 in Europe which is a group of member states to further
 18 facilitate the implementation of regulations
 19 consistent with EPA's regulations. In addition to
 20 that I've had an opportunity to travel to both Japan
 21 and China to represent the Agency in workshops and
 22 meetings with industry and government.

23 Q The global area that you described with the
 24 U.N., did that have to do with mobile source
 25 regulation?

Page 23

1 A Yes, it did.

2 Q I believe in that project at the U.N. you
 3 had some success on behalf of the Agency. Can you
 4 describe what that is?

5 A Sure. So, I had the responsibility of
 6 ensuring that the global technical regulation as
 7 developed would be consistent with EPA regulations.
 8 The Agency's goal was to ensure that there was
 9 alignment and harmonization between the United States
 10 and Europe, and the Agency wanted to ensure that we
 11 did that to reduce the burden on industry for
 12 complying with standards in the U.S. and globally.

13 And so to do that I had to work with other
 14 scientists and engineers to develop a global technical
 15 regulation to ensure that it was consistent with EPA's
 16 regulations. We were successful because what was
 17 adopted mirrored EPA's regulations in the end.

18 Q I'd like to transition to your work these
 19 days as director of the Gasoline Engine Compliance
 20 Center.

21 A Okay.

22 Q And ask you if you could describe what
 23 areas, what sectors that center regulates.

24 A Sure. So, the Gasoline Engine Compliance
 25 Center is responsible for certification and compliance

Page 24

1 for highway motorcycles, for recreational vehicles,
 2 off-highway motorcycle, and ATVs, small spark-ignition
 3 engines, large spark-ignition engines, marine spark-
 4 ignition engines. portable fuel containers,
 5 evaporative components, and heavy-duty spark-ignition
 6 engines.

7 Q As director, what are your duties?

8 A So, again, my responsibility is to ensure
 9 products are complying. That includes developing test
 10 programs and protocols consistent with that so we can
 11 assess the performance of these products. I also am
 12 responsible for the training and development of staff
 13 as well. We're also responsible for engaging with the
 14 industry, both for outreach and for ensuring
 15 compliance.

16 Q What year did you start as director?

17 A 2012.

18 Q And you continue as director today?

19 A Yes, I do.

20 Q Prior to 2012, did you have another position
 21 within the Office of Transportation and Air Quality?

22 A Yes, I did.

23 Q Can you describe that position and your
 24 duties there?

25 A So, from 2007 to 2012, I had the

1 responsibility of being the assistant division
2 director for the Compliance Division, and in that role
3 I had the responsibility for developing the compliance
4 testing strategy for the division as a whole for all
5 the sectors as well as implementing both heavy-duty
6 and spark-ignition on on-site testing at NVFEL. So,
7 that included the diesel engine testing as well as the
8 spark-ignition engine testing programs.

9 Q Prior to your assistant director as the
10 Compliance Division did you have another position
11 within the Agency?

12 A I did, and I'm sorry. I forgot to mention I
13 was also responsible as the team leader for the heavy-
14 duty greenhouse gas rule during the time I was the
15 assistant division director. I didn't mean to leave
16 that out.

17 So, my other responsibilities, I've been
18 senior technical staff with EPA prior to that.

19 Q Can you describe as senior technical staff
20 what your duties were?

21 A Sure. So, I had the responsibility for
22 leading the implementation of the ULSD provisions, and
23 just to provide background when the Agency promulgates
24 new standards we use a systems-based approach in which
25 we control engine emission standards, vehicle

1 standards, as well as the fuel needed to support that.

2 I was responsible for implementing the fuel
3 control strategies with the fuel industry, so we met
4 regularly with API, the American Petroleum Institute,
5 the jobbers, and other downstream parties to ensure
6 the quality of the fuel was consistent with what was
7 needed to ensure the technology would function
8 effectively.

9 MR. CHU: We have an objection that the
10 witness appears to be reading a document rather than
11 answering the question. We would object to the
12 witness reading the document because the document
13 speaks for itself.

14 JUDGE BIRO: I don't observe that. Please
15 continue. Overruled.

16 MR. KLEPP: Thank you, Your Honor.

17 BY MR. KLEPP:

18 Q Prior to your senior technical staff
19 position you had another position as acting director.
20 Can you please describe your duties, responsibilities
21 there?

22 A Sure. I had the responsibility of serving
23 as a heavy-duty on-road center director, and in that
24 role we were responsible for promulgating new
25 standards for heavy-duty highway and nonroad diesel

1 engines and working with the industry to implement
2 those standards.

3 Q Prior to that you were a team leader within
4 the Assessments and Standards Division. Can you
5 briefly and generally describe your duties there?

6 A Sure. I had the responsibility for working
7 on the nonroad diesel, tier 4 rulemaking, and I've
8 also had the responsibility of serving as a team
9 leader for the small SI Phase 3 rulemaking.

10 As a team leader for the small SI Phase 3
11 rulemaking we were responsible for developing, again,
12 test procedures, also addressing cost issues
13 associated with implementing the Phase 3 standards.

14 Q Prior to that you were a project engineer
15 between 1995 and 2005. Briefly, generally, describe
16 your duties there.

17 A Sure. So, again, as the project engineer I
18 specifically served in the role as the team leader for
19 nonroad diesel, tier 4, and as I mentioned earlier, we
20 had the responsibility for developing the rulemaking,
21 working with the industry on the flexibilities in the
22 rulemaking, developing the test procedures and test
23 protocols associated with that rulemaking.

24 MR. KLEPP: Thank you, Mr. Jackson. As this
25 point, Your Honor, I would move to identify or offer

1 Mr. Jackson as an expert in the Certification and
2 Compliance Vehicle and Engine Program.

3 JUDGE BIRO: Certification and Compliance of
4 EPA's?

5 MR. KLEPP: Yes, the EPA Certification and
6 Compliance Vehicle and Engine Program.

7 JUDGE BIRO: Mr. Chu, do you wish to --

8 MR. CHU: Yes, Your Honor.

9 JUDGE BIRO: Wait. Do you wish to voir dire
10 or do you want to object?

11 MR. CHU: I would ask to voir dire if he is
12 at this time asking the Court to make that
13 determination.

14 JUDGE BIRO: Okay. We're going to give Mr.
15 Chu a chance to voir dire.

16 MR. KLEPP: I'm sorry?

17 JUDGE BIRO: We're going to give Mr. Chu a
18 chance to voir dire.

19 MR. KLEPP: Okay.

20 JUDGE BIRO: Please sit down.

21 (Pause.)

22 MR. CHU: May it please the Court.

23 JUDGE BIRO: Please proceed, Mr. Chu.

24 MR. CHU: Thank you, Your Honor.

25 //

1 VOIR DIRE EXAMINATION
 2 BY MR. CHU:
 3 Q Good morning, Mr. Jackson.
 4 A Good morning, Mr. Chu.
 5 Q How are you feeling this morning?
 6 A I feel good.
 7 Q Now, is it your belief that there is a need
 8 for expertise in terms of understanding the Clean Air
 9 Act vehicle and engines regulatory program?
 10 A I'm sorry. I'm not sure I understood your
 11 question. Is it my belief that there is a need to
 12 understand?
 13 MR. KLEPP: Your Honor, I'm going to object.
 14 I believe that calls for a legal determination.
 15 JUDGE BIRO: We're talking about his
 16 qualifications here. That's all voir dire is going to
 17 cover: whether he's qualified -- can be qualified as
 18 an expert in the field in which Mr. Klepp has offered
 19 him.
 20 MR. CHU: And just for clarification, Your
 21 Honor, I'm going to read what he was designated in the
 22 disclosures, if I may.
 23 JUDGE BIRO: I don't care what they
 24 designated him as. I only care what they've offered
 25 him as now.

1 BY MR. CHU:
 2 Q Now, Mr. Jackson, you said you've had
 3 extensive exposure to emissions, is that correct?
 4 A I said I've had experience conducting
 5 regulatory and compliance work in emissions.
 6 Q Okay. So, you don't have any specific
 7 training in reference to catalysts, do you?
 8 A So, I have had course work in combustion
 9 analysis which included some work and understanding of
 10 the function of catalysts.
 11 Q And are you aware of when the catalyst was
 12 invented?
 13 A I believe it was in late sixties, early
 14 seventies.
 15 Q And can you tell this Court what the
 16 function of the PPMs are, the previous metals?
 17 A Sure. The precious metals form the basis
 18 for the catalytic reaction. So, to clarify, if it's a
 19 three-way catalyst, you are making use of rhodium to
 20 perform the reduction reaction on the NOx in the
 21 exhaust stream. You are using both palladium and
 22 platinum to perform the oxidation reaction of the
 23 carbon monoxide and unburned hydrocarbons.
 24 Q Are you familiar with the chemical reactions
 25 that platinum specifically is used for?

1 A Somewhat familiar, yes.
 2 Q I'm sorry. You're saying somewhat familiar?
 3 A I'm familiar, yes.
 4 Q Okay. So, can you tell us what the function
 5 of platinum only is?
 6 A The function of platinum only. So, I'm not
 7 familiar with the people using platinum only
 8 catalysts.
 9 MR. CHU: I'm going to object as being non-
 10 responsive, Your Honor.
 11 JUDGE BIRO: Sustained.
 12 BY MR. CHU:
 13 Q Can you tell us, please, what the function
 14 of platinum is?
 15 A Again, so platinum is used for the oxidation
 16 reaction.
 17 Q Is it also used for the reduction? Do you
 18 know?
 19 A Platinum is used for the oxidation reaction
 20 and can be used in some cases for reduction, but
 21 primarily for the oxidation reaction.
 22 Q So, it performs both functions is what you
 23 understand, is that correct?
 24 A It can.
 25 Q Okay. And are you familiar with the --

1 what's called a substrate?
 2 A Yes.
 3 Q And what is that, please?
 4 A The substrate is the framework upon which
 5 the wash coat is placed in which the catalyst
 6 material, the precious metals are placed. So, the
 7 wash coat contains the precious metal and the wash
 8 coat is placed onto the substrate.
 9 Q And is the wash coat something similar to a
 10 mix, let's say, just for common identification,
 11 something like a pancake mix?
 12 A It is similar to a slurry, but, again, it's
 13 not quite like a pancake mix. It's much more
 14 homogeneous than a pancake mix.
 15 Q Okay. And when you say the precious metals,
 16 are you familiar as to how these precious metals are
 17 added into this wash coat slurry?
 18 A The process for adding precious metals into
 19 the slurry?
 20 Q Yes, sir.
 21 A I'm not familiar with the manufacturing
 22 process specifically. I've never participated in a
 23 manufacturing process.
 24 Q I see.
 25 MR. KLEPP: Your Honor, I'm objecting. I

1 think that this is far afield of what the purpose of
2 voir dire is, and the subject matter itself is far
3 afield of what we're here today to talk about, the
4 penalty and the violations.

5 JUDGE BIRO: Overruled. I think he's
6 testing the parameters of his expertise. Proceed.

7 BY MR. CHU:

8 Q So, it's very important the role of the
9 three-way catalyst, is that accurate?

10 A Yes.

11 Q Okay. And so this seminar that you had in
12 it was it just one seminar?

13 A I'm sorry. Oh, the course work that I took.
14 That wasn't a seminar. It was a class.

15 Q Right. What was the duration of the class?

16 A So, the class was a semester course.

17 Q And it was all about catalysts, is that
18 correct?

19 A No, that is not what I said. It was a
20 combustion analysis class in which we also discussed
21 catalysts.

22 Q Can you tell us specifically how long in
23 duration the learning, as far as the teaching went, of
24 catalysts in that class?

25 A So, let's see, it was a semester-long

1 A The emission species is oxides of nitrogen
2 which is NO and NO₂.

3 Q Right, and that's the bad stuff that gets
4 trapped in peoples' lungs, correct?

5 A That is a problem with that, yes.

6 Q Okay. And so the function of the platinum,
7 as you were taught, can you please describe that
8 clearly for us?

9 A Sure. So, again, in performance of
10 oxidation reaction on both the hydrocarbon and
11 unburned -- unburned hydrocarbons, carbon monoxide.

12 Q Right. And so there was a chemical formula
13 that you were shown in class. Do you remember that?

14 A Yes.

15 Q And that chemical formula basically was
16 2CO+NO something, correct?

17 A Yes.

18 Q Now, can you tell us, please, based upon
19 your expertise what the end products were?

20 A What the end productions of the combustion
21 process were? So --

22 Q No, sir. The end --

23 MR. CHU: Excuse me for interrupting. I'm
24 sorry, Your Honor.

25 I'm going to object as non-responsive. So,

1 course. I would suspect that several weeks of the
2 course was spent on catalysts.

3 Q I see. And so were you shown videos of how
4 nitric oxide or nitric when it hit the slurries how
5 that's converted into other compounds?

6 A No, we weren't shown videos of that, no.

7 Q Do you have any idea what those compounds
8 are that the catalysts actually converts from and
9 into?

10 A Ask that question again. I'm sorry. I'm
11 not familiar with --

12 Q One of the biggest problems with emissions,
13 as you testified earlier, are nitrates, correct?

14 A Nitrates.

15 Q Right.

16 A That can be an issue, yes.

17 Q And nitrates can be in the form of NO or
18 other forms of nitrogen, correct?

19 A So, you're referring to the oxides of
20 nitrogen. That is correct.

21 Q I'm sorry. I didn't get the last part.

22 A It sounds like you're referring to the
23 oxides of nitrogen. So, that is correct. That is a
24 problem.

25 Q The problem is the nitrates, correct?

1 may I ask the question again?

2 JUDGE BIRO: Okay.

3 BY MR. CHU:

4 Q The question is, I gave you a chemical -- I
5 gave you a chemical reaction. Do you remember that?

6 A Yes. Yeah, I remember you gave me a
7 chemical equation.

8 Q CO+N something O, right? So, the question
9 is when you were taught in class --

10 A Um-hmm.

11 Q -- do you remember seeing that formula,
12 firstly?

13 A I do remember the formula.

14 Q Okay.

15 A Or seen the formula.

16 Q And then it had an "equal to", right?

17 A Or yields, yes.

18 Q Yields or just the compounds?

19 A I'm sorry.

20 Q Mr. Jackson.

21 A What are you asking me?

22 Q Okay. Yields usually have to do with the
23 quantity, it's a measurement, is that correct?

24 A I'm sorry. What I'm saying there was not an
25 equal sign, it was a yields, yields a product.

1 Q Okay. I see what you're saying. Yield, and
2 I'm saying equal. We're saying the same thing, right?

3 A Generally, yes.

4 Q Okay. So, now just out of curiosity, in
5 your training in your master's program did you have a
6 chemistry class?

7 A I didn't have the chemistry class in the
8 master's program. I had one in the undergraduate
9 program.

10 MR. CHU: I'm objecting, it's non-responsive
11 after "I did not have a class".

12 JUDGE BIRO: Overruled. Go ahead.

13 MR. CHU: All right.

14 BY MR. CHU:

15 Q Now, you say you had a class in your
16 undergraduate that involved chemistry, is that
17 correct?

18 A Yes.

19 Q How many classes?

20 A I had general chemistry as an undergraduate.

21 Q Okay. And so in your laboratories you never
22 worked with catalysts, did you?

23 A Not in the laboratory in undergraduate, no.

24 Q Okay. And so throughout your formal
25 educational training you never worked with so-called

1 platinum.

2 A Sure. So, you would have nitrogen as one of
3 the results of that equation, and then CO₂ is the
4 other product.

5 Q Anything else, sir?

6 A So, again, with a complete combustion
7 equation you would have to also include water as a
8 production -- as a result of combustion.

9 Q Thank you. Now, because you're being
10 qualified as an expert for this case here I want to
11 make sure is that all the subsequent education that
12 you've received in terms of understanding how
13 catalysts work in terms of the small engine family
14 group?

15 A My education is with respect to formal
16 education, I've had training as an undergraduate
17 degree and a master's degree. I've also had
18 subsequent course work in our work but I don't
19 have -- I haven't -- I don't have another degree in
20 that if that's what you're asking.

21 Q Well, no, what I'm referring to is this.
22 What you've told us is, and I'll make an example.
23 There's continuing education. People can go and no
24 one is grading anyone, right?

25 A On the -- sure, you have to do well in the

1 catalysts, is that correct?

2 A Throughout my education I didn't work with
3 catalysts, no.

4 Q Okay. And so do you understand what the
5 meaning of catalyst is?

6 A Yes.

7 Q What is it, please?

8 A A catalyst is a substance intended to
9 promote a reaction without being changed by that
10 reaction.

11 Q It helps accelerate the process, correct?

12 A Yes.

13 Q Okay. So, again, in the formula I gave you,
14 the chemical formula, 2CO+NXO, okay, equals, can you
15 tell us what the compounds are that come on the other
16 side of the equation?

17 A So, one of the reasons I'm hesitant to
18 respond is because the equation with which I'm
19 familiar is the combustion equation which would
20 address the combination of gasoline or the fuel and
21 oxygen yielding those products.

22 Q I understand. So, is it accurate at this
23 point that you're unable to tell us what the equal, as
24 far as what the components are when you have 2CO₂+NXO
25 over a catalyst? And in this case I'm talking about

1 course work, but, right, there's no grade at the end
2 of that.

3 Q Right. But you have to have been there,
4 correct?

5 A Sure.

6 Q Okay. And so other than that seminar that
7 you went to --

8 A Again, it was a class. It was not a
9 seminar.

10 Q What school was it held at?

11 A Wayne State University.

12 Q That's in Lansing?

13 A That's in Detroit, Michigan.

14 Q Okay. And so you didn't -- did you get a
15 grade or was it a pass/fail?

16 A I did get a grade.

17 Q And what was the grade that you received in
18 that class?

19 A If I recall correctly, I believe I received
20 an A.

21 Q Okay, very good. And so can you tell us on
22 the final exam what the combustion catalyst equation
23 was?

24 A No, I can't tell you what was on the final
25 exam from that class.

1 Q I see. Was there a question similar to the
2 one that I posed to you?

3 A Again, I can't recall all the details of the
4 final exam for the class I took.

5 Q Okay. Would you agree that the class that
6 you took was somewhat of a survey class?

7 A No, I would not.

8 Q Is it your belief that people that had taken
9 that class and completed that class that they have
10 become an expert in terms of catalysts?

11 A I can't speak to what other people have
12 become.

13 MR. CHU: I'll pass the witness, Your Honor.

14 JUDGE BIRO: Okay. So, at this point do you
15 have an objection to his being qualified as --

16 MR. CHU: Yes, Your Honor, I would object to
17 this witness being qualified as an expert in the area
18 of what this particular complaint is about; that,
19 again, I couldn't really understand what type of
20 expertise he was being offered as. But to the extent
21 he's being offered as an expert in terms of how
22 catalysts work and what the effect of those functions
23 are, I would certainly object to his ability to
24 testify in that area.

25 JUDGE BIRO: Okay. Well, he hasn't been

1 asked to be certified specifically in catalysts. He's
2 been asked to be certified as an expert in compliance,
3 certification and compliance of EPA vehicles and
4 engine program.

5 MR. CHU: Yes, Your Honor, and in reference
6 to that that's the part that I was referencing to
7 earlier. I would object that there's any necessity
8 that an expert be offered to help this Court to
9 understand the regulatory process, Your Honor.

10 JUDGE BIRO: Okay. Mr. Klepp, do you have a
11 response?

12 MR. KLEPP: I do, Your Honor. May I re-
13 approach the witness and ask a couple of clarifying
14 questions?

15 JUDGE BIRO: Yes, you may.

16 MR. KLEPP: Thank you.

17 DIRECT EXAMINATION (Resumes)

18 BY MR. KLEPP:

19 Q Mr. Jackson, I'd like to move the timeline
20 forward a little bit to your professional experience.
21 At EPA have you had opportunities to engage in matters
22 involving catalytic converters, catalogy as a science.
23 Can you explain any of those situations?

24 A So, sure. As an EPA employee, I've had the
25 opportunity to work not only on the rulemakings to

1 develop the control strategies for those products in
2 which I was required to become more knowledgeable
3 about the subject matter both for nonroad diesel and
4 for small spark ignition. I've also had the
5 opportunity to conduct testing in the test cell on
6 those products and to develop systems that can meet
7 those new targets.

8 MR. KLEPP: Your Honor, I would again renew
9 my offer of Mr. Jackson as -- like I said --
10 regulatory program expert, Vehicle and Engine
11 Certification and Compliance Program. If you'd like
12 to know more about where I believe his testimony will
13 be going, if that would help inform the Court, I'd
14 gladly do that.

15 JUDGE BIRO: No. I'm going to overrule the
16 objection. I think that the concerns that Mr. Chu
17 raised goes to the weight in regard to perhaps a
18 specific area of catalysts, but I think that he's
19 qualified to be an expert witness in the area of
20 regulatory certification and compliance at EPA vehicle
21 and engine program.

22 Please proceed, Mr. Klepp.

23 MR. KLEPP: Thank you.

24 BY MR. KLEPP:

25 Q Mr. Jackson, I'd like to transition to the

1 regulatory program and how it works. What is the
2 mission of the Certification and Compliance Vehicle
3 Engine Program?

4 A Sure. So, consistent with the mission of
5 the Agency, which is to protect human health and
6 safeguard the natural environment, the mission of the
7 Compliance Division, specifically GUCC, is to ensure
8 compliance of the products that are certified for sale
9 in the United States to ensure that the air quality
10 goals as described in the rulemaking are achieved and
11 the air quality of the American public is improved.

12 Q And as Gasoline Engine Compliance Center,
13 what tools are available or are utilized to ensure
14 compliance with regulatory requirements?

15 A So, to ensure compliance with regulatory
16 requirements we use a multifaceted approach in three
17 basic phase: pre-certification, certification, and
18 then post-certification work.

19 The pre-certification work includes
20 combination of compliance assistance as well as
21 compliance engagement. So, specifically that is we
22 work -- we develop workshops for the industry to
23 describe how to implement the rulemakings. We also
24 develop videos to help people understand how to
25 navigate the process. We develop guidance documents

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1 to help manufacturers navigate the process, as well.
 2 In addition to those, we also host pre-
 3 certification meetings with manufactures where they're
 4 free to come in and talk to us about their
 5 certification plans in advance of submitting their
 6 applications for certificate of conformity. We try to
 7 do pretty extensive outreach to work with the
 8 industry, both domestically and internationally, to
 9 try to help them understand how to implement the
 10 rules.
 11 We also, during the certification process,
 12 undertake significant review of the applications to
 13 ensure that the technology being implemented or
 14 suggested by the manufacturer is consistent with
 15 meeting the performance standards anticipated by the
 16 regulations.
 17 And then for post-certification once they
 18 receive their certificate -- I'm sorry.
 19 One other aspect of the certification
 20 process and pre-certification process is confirmatory
 21 testing which we may choose to issue a test order for
 22 a product to ensure that that product, at least at a
 23 low hour level, is compliant with the emission
 24 standards.
 25 We then for our post-certification may

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1 engage in a multitude of testing options as well.
 2 Those include production vehicle testing where we may
 3 issue a test order for a production vehicle for a
 4 product that's actually already been manufactured by
 5 the manufacturer. We have asked them to provide that
 6 to the Agency for testing.
 7 In addition to that we may conduct selective
 8 enforcement audits where we visit a manufacturer's
 9 facility or issue a letter audit in which we may
 10 actually audit the laboratory and audit their
 11 production from their production lines. We also
 12 conduct testing as well.
 13 Q Stepping back to the pre-certification that
 14 you describe. You described, sir, confirmatory
 15 testing. What factors do you utilize to make a
 16 decision about confirmatory testing?
 17 A So, we use both a systematic and a random
 18 approach for selection for confirmatory testing. The
 19 systematic approach includes looking at a
 20 manufacturer's compliance history, the technology they
 21 are intending to employ, as well as their production
 22 volumes. But we also incorporate a level of random
 23 selection into the process so that we can be sure
 24 we're trying to have an effective engagement strategy
 25 for testing and ensuring product compliance across the

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1 market.
 2 Q And you also described in the production
 3 phase that there is production testing. Can you
 4 describe that again, or talk about the factors
 5 involved there, please?
 6 A Sure. So, when a manufacturer has received
 7 a certificate of conformity the regulations allow EPA
 8 to issue what's called a production vehicle test order
 9 in which manufacturers are required to deliver the
 10 product to EPA, one or more products to EPA for
 11 testing. In addition to that, EPA may choose on its
 12 own to go out and do in-use testing. We may require
 13 products from the market and conduct testing.
 14 Q In the post-production phase that you
 15 described and the tools there can you describe in-use
 16 testing and how that works?
 17 A Sure. So, again, in-use testing can be
 18 twofold. Again, there's the production vehicle test
 19 order where we are testing products at low hour but
 20 there can also be in-use testing where we're testing
 21 products further out in their useful life, their
 22 regulatory useful life, to ensure compliance.
 23 Q And does the Gasoline Engine Compliance
 24 Center engage in outreach to manufacturers of vehicles
 25 and engines and, if so, can you describe that?

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1 A Yes, we do. So, again, we try to engage in
 2 outreach to provide manufacturers with an
 3 understanding of the regulations and how to implement
 4 those regulations. We do that through a series of
 5 guidance documents. We also provide webinars to
 6 manufacturers as well as in-person workshops for
 7 manufacturers, both domestically and internationally.
 8 We also provide videos for manufacturers to walk them
 9 through the process.
 10 Q I would ask for you to please look at
 11 Exhibit No. CX012.
 12 (Pause.)
 13 MR. KLEPP: Thank you. Excuse me.
 14 BY MR. KLEPP:
 15 Q Mr. Jackson, CX012, do you recognize this
 16 document?
 17 A Yes.
 18 Q What do you recognize it to be?
 19 A It's a document, a draft guidance document
 20 that provides the major steps of compliance and
 21 certification.
 22 Q Who is it published by?
 23 A It was published by the Compliance Division
 24 within the Office of Transportation and Air Quality.
 25 Q Is it the ordinary business of the Office of

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1 Transportation and Air Quality to publish guidance?
 2 A Yes.
 3 Q Is it in the ordinary course of business of
 4 Office of Transportation and Air Quality to publish
 5 this kind of guidance in particular?
 6 A Yes.
 7 Q And this guidance, was it issued in the
 8 ordinary course of the business of Office of
 9 Transportation and Air Quality?
 10 A Yes.
 11 Q Also, does the Office of Transportation and
 12 Air Quality keep records of guidance that it issues?
 13 A Yes.
 14 Q And is this guidance one that would have
 15 been kept in the recordkeeping ordinary course?
 16 A Yes.
 17 Q And does it reflect requirements that
 18 pertain to the program between the years 2012-2016?
 19 A Yes.
 20 Q In your view in looking at it today is it an
 21 accurate and complete version of that guidance
 22 document?
 23 A Yes.
 24 Q And can you briefly -- I think you already
 25 did.

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1 MR. KLEPP: Your Honor, with your permission
 2 I would offer CX012 as evidence.
 3 JUDGE BIRO: Mr. Chu?
 4 MR. CHU: Your Honor, we don't have an
 5 objection to this document coming in, but as far as
 6 the truth of the matters asserted in the document we
 7 would object to that.
 8 JUDGE BIRO: It's a hearsay objection. I'll
 9 take it as your objection going to the weight to be
 10 given to the document and to statements made therein,
 11 but I'll admit it.
 12 MR. KLEPP: Thank you, Your Honor.
 13 (The document referred to was
 14 marked for identification as
 15 Complainant's Exhibit No. 12
 16 and was received into
 17 evidence.)
 18 MR. KLEPP: Also, with Your Honor's
 19 permission I would like to turn Mr. Jackson's
 20 attention to what is marked within the document EPA
 21 000367, and what you're see there is a series of steps
 22 that really describe the program major steps and how
 23 it works. With Your Honor's permission, I would like
 24 for Mr. Jackson to be able to maybe stand up from the
 25 witness box and speak from the slide and inform

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1 through his testimony.
 2 JUDGE BIRO: Okay.
 3 MR. KLEPP: Thank you.
 4 JUDGE BIRO: Did we straighten it out?
 5 Okay, great.
 6 MR. KLEPP: Oh, the other thing, if I might
 7 approach the witness and provide him with a walk-
 8 around microphone. Thank you.
 9 JUDGE BIRO: Please.
 10 (Pause.)
 11 THE WITNESS: Is that alright? Can you hear
 12 me.
 13 MR. KLEPP: Yes, coming across.
 14 THE WITNESS: So, this document, this flow
 15 chart is intended to provide the major steps
 16 associated with the certification process, and so you
 17 can see in the beginning the first step, Step No. 1.
 18 Oh, is there a problem?
 19 JUDGE BIRO: Again, Mr. Jackson, you can
 20 talk up just a little bit.
 21 THE WITNESS: Yes, ma'am.
 22 JUDGE BIRO: I'd appreciate it.
 23 THE WITNESS: Can you hear me how?
 24 JUDGE BIRO: I can.
 25 THE WITNESS: Okay, thank you.

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1 So, the first step in the process the
 2 manufacturer is required to register with EPA, and
 3 that process includes the manufacturer submitting
 4 their information to EPA to identify them as a
 5 manufacturer. That's the fundamental aspect of the
 6 process to protect the confidential information that a
 7 manufacturer may share with EPA.
 8 Part of that process is obtaining a
 9 manufacturer code and identify through the code in
 10 their process who can speak for the company, and so
 11 that includes the company approving official identify
 12 who can receive confidential business information from
 13 the company as a part of that registration process.
 14 Again, we transfer information to the
 15 company about their applications through what's called
 16 the CDX System. We store the information in a secure
 17 system, or verify EBCIS system, and we transfer that
 18 information through the CDX System, which is the
 19 central data exchange. We want to ensure that the
 20 person receiving that information has been identified
 21 by the company as the appropriate recipient so that we
 22 don't share inappropriate information with outside
 23 parties.
 24 Step No. 2 --
 25 MR. CHU: Your Honor.

1 THE WITNESS: -- the manufacturer --
 2 JUDGE BIRO: Wait one second, Mr. Jackson.
 3 MR. CHU: Yes, we would object that the
 4 response is non-responsive and that the question calls
 5 for a narrative. It appears that the witness is
 6 talking about whatever is coming to him rather than
 7 necessarily answering the question; because he's
 8 describing things that I don't believe necessarily are
 9 responsive to the question.
 10 I don't know the format, whether this Court
 11 would allow the continued narrations or is it going to
 12 be a question and answer format.
 13 JUDGE BIRO: Well, it depends on what the
 14 question is. We don't usually allow narrative
 15 answers, but if the question calls for a narrative
 16 answer then that's what you get.
 17 MR. CHU: Yes, Your Honor.
 18 JUDGE BIRO: So, overruled. Go ahead to the
 19 next question.
 20 THE WITNESS: Yes, Your Honor. Oh, I'm
 21 sorry. You said the next question? Do you want me to
 22 continue?
 23 JUDGE BIRO: Would you like to ask another
 24 question, Mr. Klepp?
 25 MR. KLEPP: Sure. Mr. Jackson -- if I may,

1 Your Honor.
 2 BY MR. KLEPP:
 3 Q Mr. Jackson, you've just explained the
 4 registration process. Would you move down the
 5 timeline a bit and explain to us about the group, the
 6 grouping and vehicle engine families in the pre-
 7 certification phase?
 8 A Sure. So, the manufacturer in the pre-
 9 certification phase is responsible for grouping other
 10 engines and vehicles into engine families which
 11 characterize the specific engine characteristics that
 12 most -- that identify the products as the most similar
 13 so the manufacturers have to group products with the
 14 same catalysts, with the same combustion cycle, with
 15 the same fuel, with the same general engine design
 16 into what's called the single-engine family. Those
 17 groupings are identified in Step No. 2.
 18 And so I would just like to ask, just so I'm
 19 clear, should I continue on or are you going to ask
 20 questions each time?
 21 MR. KLEPP: I think, if I may, Your Honor,
 22 can I intersperse with some questions to keep it
 23 moving that way?
 24 JUDGE BIRO: I think that would be good.
 25 MR. KLEPP: Okay, thank you.

1 BY MR. KLEPP:
 2 Q Next, after the engine family phase would
 3 you describe what comes next?
 4 A Step 3, the manufacturer conducts emissions
 5 testing to demonstrate compliance, so the manufacturer
 6 either at their own facility or at a contract facility
 7 will conduct emissions testing consistent with the
 8 regulatory requirements to demonstrate their products
 9 are compliant with the standards.
 10 Q And then following the emissions testing
 11 phase would you describe phase -- or Step No. 4?
 12 A Step No. 4 is the opportunity for the
 13 manufacturer to prepare their application for
 14 submission to the Agency. Again, in part of the
 15 preparation process they may want to come in and meet
 16 with EPA and to describe their design and what they
 17 intend to do in advance to explain how they -- how
 18 they've calibrated their product, to describe
 19 auxiliary emissions control devices they may have in
 20 place. That's their opportunity to do that prior to
 21 submitting, formally submitting their application.
 22 Q And then the following step would you
 23 describe what is there?
 24 A The manufacturer then needs to pay the
 25 appropriate certification fees. This is a service the

1 Agency provides to the manufacturer and that fee must
 2 be paid -- actually accrues to the Treasury.
 3 Q The last pre-certification phase would you
 4 please describe that?
 5 A The manufacturer actually submits their
 6 application, their complete application to the Agency,
 7 and in so doing the process, the formal process for
 8 review begins.
 9 Q Now I believe you're about to move to the
 10 phase of the certification of conformity is issued.
 11 Would you describe the step there?
 12 A Sure, once you --
 13 MR. CHU: Objection, Your Honor, leading.
 14 JUDGE BIRO: Overruled. Go ahead.
 15 THE WITNESS: Once the manufacturer receives
 16 the certificate of conformity, then they begin to
 17 build their products consistent with the certificate
 18 of conformity that they receive. And so if a
 19 manufacturer builds a product it should match that
 20 certificate of conformity. It must be identical in
 21 all material respects.
 22 BY MR. KLEPP:
 23 Q The next phase in the timeline, please, or
 24 the major steps described.
 25 A So, Step No. 8 is labeling each new engine

1 in a vehicle. The manufacturer in their application
2 describes what the label looks like. That label
3 provides several descriptors of that product, and that
4 allows for the Agency and our colleagues in
5 enforcement or elsewhere to be able to identify that
6 product in the marketplace to ensure that it is what
7 it's supposed to be, and that it's actually -- it's
8 actually received the certificate of conformity.

9 Q What might pertain to any amendments? Can
10 you describe that, please?

11 A Sure. So, Step 9 specifically focuses on if
12 a manufacturer wants to submit what we sometimes call
13 a running change or add a model to an engine family
14 they can submit those amendments to the application
15 after it's been -- after it's already been submitted.

16 Q And following that, the reporting
17 requirements, please.

18 A Sure. So, at the end of the year, within
19 three months, and in some cases within nine months,
20 manufacturers are required to submit reports to the
21 Agency regarding their performance over the previous
22 year, how that product has performed either in the
23 real world, and the production volumes, et cetera, for
24 a given family.

25 If they've had defects that passes specific

1 thresholds, they will need to report that information
2 to the Agency.

3 Q And lastly I believe pertains to warranty
4 service. Would you talk about that, please?

5 A Sure. So, manufacturers are required to
6 track the warranty claims against their products, and
7 again, once a threshold is past they may initiate
8 recall on products if there is a certain number of
9 defects, and in fact if -- if, in fact, the
10 manufacturer chooses not to engage in a recall and the
11 Agency believes that a recall is warranted the Agency
12 may order a recall.

13 MR. KLEPP: Thank you, and with the Court's
14 permission may I ask Mr. Jackson to return to his
15 seat?

16 (Pause.)

17 Your Honor, maybe a point of housekeeping
18 and evidentiary is that there are a number of
19 guidances that are a part of our prehearing exchange
20 from CX012, which Mr. Jackson just spoke from, but
21 CX013 through CX017 are also programmatic guidance.
22 They're in the prehearing exchange and I would seek to
23 admit them or offer them as evidence at this time.

24 Counsel and I have had a discussion about
25 these. I'm not sure if we have agreement there, but

1 that's my offer.

2 JUDGE BIRO: Mr. Chu.

3 MR. CHU: What's particularly happening? I
4 heard --

5 JUDGE BIRO: Claimant's Exhibits 013 to 017,
6 would you like him to lay a foundation for them or can
7 we stipulate to their admission?

8 MR. CHU: We would not have an issue on the
9 admissibility. Again, the weights, we have an issue
10 with, Your Honor.

11 JUDGE BIRO: Okay. So we will admit without
12 objection CX013 to 017.

13 MR. KLEPP: Thank you, Your Honor.

14 (The documents referred to
15 were marked for
16 identification as
17 Complainant's Exhibit Nos.
18 013 to 017, inclusive, and
19 were received in evidence.)

20 BY MR. KLEPP:

21 Q Mr. Jackson, if I could please ask you to
22 return to looking at CX012, specifically page 000369.

23 During your walk-through of the phase of
24 description that you provided for grouping vehicles
25 into engine families, I'd ask for you to look on page

1 000369 and see language there where it mentions Item 7
2 with regard to catalytic converters.

3 Would you please read that out loud and then
4 explain what those words on that page mean?

5 A "The number, location --

6 JUDGE BIRO: Wait one second.

7 MR. CHU: I object. The document speaks for
8 itself.

9 JUDGE BIRO: Overruled. Go ahead. We're
10 looking at page 369. It's part of Complainant's
11 exhibit identified as 012.

12 THE WITNESS: Item 7 specifically says, "The
13 number, location, volume and composition of catalytic
14 converters that specifically has reference to
15 providing the Agency with information about the design
16 of the exhaust system as it relates to the catalysts
17 to provide information about the catalysts precious
18 metal content, the precision metal loading, also
19 information about the location of the catalyst and
20 dimensions of the catalyst which anticipates velocity
21 concerns, et cetera."

22 BY MR. KLEPP:

23 Q Thank you. And also during your walk-
24 through you described the emissions testing phase.
25 Would you provide further description of that, please?

1 A Would I provide a description of the
2 emissions testing phase by the manufacturer?
3 So, the manufacturer conducts testing at a
4 low-hour test point and they continue to test at least
5 four different test points over the course of the
6 testing of the product, but they need to test the end
7 of useful life to determine full useful life
8 compliance of a product. Once they have determined
9 full useful life compliance, they may from that
10 develop what's called a deterioration factor for
11 applicability to similar designs.
12 Q A deterioration factor, is that a regulatory
13 term and, if so, could you please describe it?
14 A Sure. So, a deterioration factor is a ratio
15 of end-of-life emissions performance to low-hour life
16 emissions performance. It is an opportunity for the
17 manufacturer to be able to demonstrate compliance with
18 simply using this mathematical expression and in the
19 case of a catalysts providing a multiplicative factor
20 in combination with a low-hour test result to
21 determine an end-of-life report, end-of-life result.
22 Q What are some of the rules, or not rules,
23 but the methods regarding an appropriate deterioration
24 factor?
25 A So, an appropriate deterioration factor must

1 be developed on the product that is sufficiently
2 similar, materially similar to the product for which
3 it's being applied.
4 So, if a manufacturer develops a
5 deterioration factor with a given catalysts design,
6 with a given combustion system design, with a given
7 cylinder configuration, et cetera, we would expect
8 that the DF would then be applied to similar products.
9 MR. CHU: Object, Your Honor. The question
10 asked for rules. Objection, it's not responsive. He
11 didn't specify his particular rule.
12 JUDGE BIRO: That was a description of the
13 rule, I assume, but, okay, sustain. Ask the question.
14 BY MR. KLEPP:
15 Q Okay, Mr. Jackson, would you please describe
16 deterioration factor and the methods used to employ an
17 appropriate deterioration factor?
18 A Sure.
19 MR. CHU: Objection. That's a compound
20 question.
21 JUDGE BIRO: It is. Sustained.
22 MR. KLEPP: Okay, thank you.
23 BY MR. KLEPP:
24 Q Would you please, Mr. Jackson, describe
25 deterioration factor?

1 A Deterioration factor is a mathematical
2 expression relating the end-of-life emissions
3 performance to the low-hour emissions performance.
4 Q And what are the methods used to
5 appropriately apply deterioration factor to a
6 particular test?
7 A So a manufacturer develops a deterioration
8 factor by testing a product at low hour and at test
9 points throughout its useful life and extending to the
10 end of its useful life, and then develops that ratio,
11 if it's a catalyzed product, rationing the NW select
12 performance, the LOR performance, and they may apply
13 that to other products that are sufficiently similar.
14 Q You mention useful life. What's the
15 importance of that term?
16 A The regulatory useful life is the period of
17 time over which that product must be compliant with
18 the emission standards.
19 Q And where is that in the regulations, in the
20 legal authority?
21 A That's in both the statute as well as the
22 regulations 40 C.F.R. 1051, and 40 C.F.R. Part 86.
23 Q Drawing your attention back to this
24 document, CX012, this guidance document, page in
25 particular 000373, and the third paragraph on that

1 page.
2 MR. CHU: Object, Your Honor. It's leading,
3 the word "guidance document" is suggestive, and the
4 document is what it is.
5 JUDGE BIRO: It's titled "Guidance".
6 MR. CHU: I understand.
7 JUDGE BIRO: Overruled.
8 BY MR. KLEPP:
9 Q Again, Mr. Jackson, drawing your attention
10 to page 373 and, in particular, the description there
11 about -- under the heading "Application Format", can
12 you describe application format as it's written here
13 and what its purpose is?
14 A So, the application format provides
15 information to the manufacturer on what ought to be
16 included and how that information ought to be provided
17 to the Agency for the certification application, and
18 it also includes ensuring that the application is
19 accurate and complete.
20 Q In the second paragraph within that heading
21 and within that section there's some words to the
22 effect of the application package is the primary
23 information source of the engine family you intend to
24 certify. Can you please explain what the meaning of
25 that passage is?

1 A So, the Agency relies on the information
2 provided by the manufacturer to assess whether or not
3 the technology that the manufacturer has chosen will
4 be compliant over the course of the useful life of a
5 given product. That is the basis by which you make
6 decisions, one of the bases by which you make
7 decisions on whether or not we ought to test the
8 product and subsequently whether or not we ought to
9 issue a certificate of conformity.

10 Q In the course of your position as director
11 of Gasoline Engine Compliance Center have you had
12 opportunities to observe various manufacturer
13 operations?

14 A Yes.

15 Q And another aspect of your walk-through had
16 to do with the production phase and producing vehicles
17 that -- can you describe -- withdrawn. Sorry.

18 What steps have you seen manufacturers take
19 to ensure compliance of produced vehicles?

20 A Manufacturers typically undertake quality
21 control processes, including utilizing quality control
22 methods like ISO 9000 to ensure production
23 consistency. They implement those strategies both
24 internally and externally with their supplier base.
25 They utilize those strategies with regular evaluation

1 of the products that they are building, evaluation of
2 the products they are supplied by their Tier 1 and
3 Tier 2 suppliers both with in-house testing and
4 testing at the supplier's facility to ensure those
5 product meet the standards that they've set for them.

6 Q Is there any frequency with which
7 manufacturers engage in that kind of assuring meeting
8 specifications?

9 A Sure. I think there's generally -- there
10 can be a range of frequency. I think, for some of the
11 larger manufacturers it's typically on a quarterly
12 basis. They will evaluate the products being provided
13 by suppliers. Some manufacturers perhaps in an
14 interest to save money may do that less frequently.

15 Q Have you had an opportunity to meet or
16 observe with respect to Respondents here, Taotao USA,
17 Taotao manufacturers, and their efforts to ensure
18 production is meeting specifications?

19 A So, we had an opportunity to meet with the
20 manufacturer, the OEMs of the products in China in May
21 of this year.

22 Q And what were your observations with respect
23 to their ability, or to their efforts to ensure
24 production line meeting specifications?

25 A So, our observations were that that

1 manufacturer -- it wasn't clear to us what level of
2 detail quality review actually happened. There may
3 have been some that happened periodically, but we did
4 not get the impression that it was a quarterly review
5 process.

6 Q I'd like to move your attention to Document
7 No. CX013. What is the -- do you recognize --

8 A Did you say CX013?

9 Q Yes, I did. Thank you.

10 A Okay.

11 Q Do you recognize this document?

12 A Yes, I do.

13 Q What do you recognize it to be?

14 A The recommended application format for
15 certification of highway motorcycles.

16 Q Is this a document, a guidance issued by the
17 Office of Transportation and Air Quality?

18 A Yes.

19 Q Drawing specifically your attention to page
20 393, longer -- 000393, specifically under the heading
21 "For Exhaust Emission Control" and "Information to be
22 Included" and "A list that follows".

23 Would you please state what the purpose of
24 these words on this page is?

25 A The purposes of the words on this page are

1 to ensure the manufacturer provides information to the
2 Agency that clearly describe the catalyst being used,
3 the fuel system being used, and other engine design
4 parameters of emissions control strategies being
5 employed by the manufacturer. We specifically request
6 at the outset a detailed description of the catalytic
7 converters, the type, number, location, arrangement,
8 volume, and composition of the catalytic converters.

9 Q Thank you, Mr. Jackson. If I might step
10 back a step. Was this guidance available to the
11 regulated community?

12 A Yes, it is available on our website.

13 Q And was it available during the period of
14 time 2012 to 2016?

15 A Yes.

16 Q Also, CX012, the document you were looking
17 at earlier, was it available to manufacturers in the
18 regulated community?

19 A Yes.

20 Q And was it available --

21 MR. CHU: I have an objection. Calls for
22 speculation --

23 JUDGE BIRO: He's not speculating.

24 MR. CHU: -- that it was available.

25 JUDGE BIRO: He said it was available.

1 MR. CHU: For the manufacturers.
 2 JUDGE BIRO: For the manufacturers on the
 3 website in 2012. Is that your testimony, Mr. Jackson?
 4 THE WITNESS: Yes.
 5 MR. KLEPP: Thank you, and we're going to go
 6 through -- never mind. Withdrawn.
 7 BY MR. KLEPP:
 8 Q Staying on CX013, page -- never mind. I
 9 would like to move you along to CX014. Do you
 10 recognize this document?
 11 A Yes.
 12 Q And what do you recognize it to be?
 13 A Specifically, the on-highway motorcycle
 14 certification review sheet.
 15 MR. KLEPP: Excuse me, Your Honor. I have a
 16 document control --
 17 (Pause.)
 18 BY MR. KLEPP:
 19 Q What is the purpose of this particular
 20 document?
 21 A It is intended to be an aid to manufacturers
 22 so that they can check and ensure their applications
 23 are complete prior to submission.
 24 Q And where was it published during the period
 25 of time --

1 A It's available on our website.
 2 Q I was going to get to the period of time of
 3 2012 to 2016.
 4 A Available to the manufacturers in the same
 5 format.
 6 Q What was OTAQ, or Office of Transportation
 7 and Air Quality's purpose in issuing this review
 8 sheet?
 9 A The purpose is to provide the manufacturers
 10 with a document that helps them complete applications
 11 in the way that are -- in a way that would be accurate
 12 and complete. The goal is just to provide assistance
 13 to the industry.
 14 Q If I might move your attention down lower on
 15 this document to paragraph six. Oops, not quite. On
 16 the other side of the page if you would, page EPA
 17 000400. Can you describe what is in Section 10 of
 18 this document?
 19 A So, specifically it says in the application
 20 for certification that they need to submit completed
 21 applications to EPA, and it says "You can follow our
 22 recommended format", and it talks about submission of
 23 the electronic and paper copy documents, of what's
 24 called the Certificate Summary Information. It goes
 25 on to describe what needs to be included in the

1 application, a description of the manufacturing and
 2 assembly process, agreements between manufacturers and
 3 importers that are relevant, and it also goes on to
 4 describe what needs to be included including a
 5 detailed description of the catalytic converter and
 6 emissions-related components.
 7 Q There's a lot of words on this page, Mr.
 8 Jackson. Can you point to where or identify where the
 9 reference to catalytic converter is, please?
 10 For the record can you please say out loud
 11 how many boxes down within that list there is?
 12 A About six boxes down.
 13 Q For the record I'm not sure you were talking
 14 on the mike, but under the application contains header
 15 there are a number of boxes. You said the sixth?
 16 A It is the sixth box down under the heading
 17 "The Application Contains".
 18 Q If I might draw your attention to Document
 19 CX015, do you recognize this document?
 20 A Yes.
 21 Q What do you recognize it to be?
 22 A Major steps of certification and compliance,
 23 specifically as it relates to ATVs and off-highway
 24 motorcycles.
 25 Q Is this a document published by the Office

1 of Transportation and Air Quality?
 2 A Yes.
 3 MR. CHU: Permission to voir dire, Your
 4 Honor.
 5 JUDGE BIRO: I'm sorry?
 6 MR. CHU: Permission to voir dire. The
 7 document says "draft" on it and he's saying this was
 8 the document that was actually published.
 9 THE WITNESS: This is actually the draft
 10 document that was available on our website.
 11 JUDGE BIRO: It already --
 12 MR. CHU: Well, I understand. I just -- not
 13 for purposes of the admission of the document; for the
 14 purposes of the idea that it was -- this document was
 15 published.
 16 JUDGE BIRO: You can do it on cross-
 17 examination. Overruled.
 18 MR. CHU: Yes, Your Honor.
 19 MR. KLEPP: Thank you, Your Honor.
 20 BY MR. KLEPP:
 21 Q For CX015, where was this available to
 22 manufacturers, vehicles and engines between the time
 23 period 2012-2016?
 24 A Available on our website.
 25 Q I would draw your attention specifically to

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1 page 000405. Do you recognize what's on that page?
 2 A Yes.
 3 Q And what is that?
 4 A Step-by-step description of the major steps
 5 associated with certification and compliance.
 6 Q Now, earlier, Mr. Jackson, you provided Your
 7 Honor and the rest of us with your walkthrough of the
 8 steps involved, the major steps involved in vehicle
 9 certification. That was in Document CX012. What did
 10 that process describe? For what kind of vehicles?
 11 A That was a description for the certification
 12 and compliance process for highway motorcycles.
 13 Q Here on this page what does this process
 14 describe, for what kind of vehicles?
 15 A Similar process for ATVs and off-highway
 16 motorcycles.
 17 Q So as not to belabor the testimony here and
 18 for efficiency purposes is there any substantive
 19 difference between what's on this page that you're
 20 looking at now and CX015, major steps?
 21 A These are essentially the same. The only
 22 differences would be the applicable regulations, but
 23 these are essentially the same.
 24 Q When you say "essentially the same" you mean
 25 between this document and the document you talked

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1 about earlier?
 2 A Yes.
 3 MR. CHU: Objection, calls for a legal
 4 conclusion. I believe it's up to the Court to decide
 5 if they're the same or not.
 6 JUDGE BIRO: Overruled. Go ahead.
 7 MR. KLEPP: Thank you, Your Honor.
 8 BY MR. KLEPP:
 9 Q Mr. Jackson, in the course of the regulatory
 10 program does the Environmental Protection Agency set
 11 emission standards and limitations that apply to
 12 manufacturers of vehicles and engines?
 13 A Yes, EPA promulgates the emissions limit
 14 values.
 15 Q And then how do manufacturers of vehicles
 16 and engines go about meeting those standards?
 17 A Manufacturers are free to design their
 18 products using the technology they deem appropriate
 19 and cost effective for their market. The Agency
 20 evaluates the decisions the manufacturers have made to
 21 determine if we believe that the technology that's
 22 utilized will meet the performance requirements the
 23 Agency has set.
 24 Q Are these design specifications that you're
 25 describing now, are they regulatorily prescribed?

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1 A The design specifications, in other words,
 2 what the manufacturer chooses to use, are not
 3 proscribed in the regulations. The regulations sets
 4 the performance limits.
 5 Q And it's up to your office to review those
 6 design specifications?
 7 A Yes, we review those design specifications
 8 to ensure that if we believe those design
 9 specifications will meet the standards over their
 10 useful life we can issue a certificate of conformity.
 11 Q And in your experience and opinion is the
 12 fact that the design specifications are not
 13 regulatorily prescribed does that make them any less
 14 vital or important to the program and how it operates?
 15 A No, those are actually critical to how our
 16 compliance program functions. It's important for us
 17 to know that the design specifications provided by the
 18 manufacturer are in fact consistent with the
 19 production specifications.
 20 MR. CHU: Objection. Non-responsive. Calls
 21 for a yes or no.
 22 JUDGE BIRO: Overruled.
 23 MR. KLEPP: Thank you, Your Honor.
 24 BY MR. KLEPP:
 25 Q Going back to what you described earlier,

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1 the tools of compliance that your office, the Gasoline
 2 Engine Compliance Center utilizes, how would
 3 confirmatory testing as a compliance tool be affected
 4 where the design information in the certificate of
 5 compliance application was wrong or incomplete?
 6 A It would render our assessments inaccurate
 7 if in fact the design information did not match the
 8 production information. The Agency would be testing
 9 and making assessments based on a different product.
 10 We would have no way of knowing how that particular
 11 product would perform throughout its useful life. We
 12 perform confirmatory testing at a low-hour test point.
 13 Q And then what you also described earlier in
 14 your compliance tools had to do with production
 15 vehicle testing.
 16 A Yes.
 17 Q How might that compliance tool be affected
 18 by wrong or misleading information in the certificate
 19 of conformity application?
 20 A So --
 21 MR. CHU: Objection. Calls for speculation,
 22 Your Honor. Permission to voir dire if he actually
 23 knows the process.
 24 JUDGE BIRO: Overruled. I think it's within
 25 his expert opinion.

1 THE WITNESS: We perform production vehicle
 2 testing again at a low-hour test point, and when we
 3 perform at a low-hour test point we would not have an
 4 ability to determine full useful life performance.
 5 There would be irreparable harm, and the only way, if
 6 we were to determine that their production vehicle
 7 somehow was different from the certification vehicle
 8 it would required the Agency to test almost every
 9 production vehicles to ensure that it was compliant at
 10 multiple points throughout its useful life. That's
 11 not practical from an Agency perspective nor is it
 12 feasible for manufacturers, for the industry.

13 Q Another compliance tool that you described
 14 earlier had to do with selective enforcement audits.
 15 How might that compliance tool be affected by wrong
 16 information, incomplete information in the certificate
 17 of conformity application?

18 A The selective enforcement audit is, again, a
 19 product -- an opportunity or tool for the Agency to
 20 test the productions at a low-hour test point directly
 21 off the production line, and so, again, if there's
 22 wrong information in the certification application we
 23 would not be able to determine full useful life
 24 performance in compliance with the standard.

25 Q Mr. Jackson, another part of your walk-

1 through of the program and how it works, drawing your
 2 attention to the description you provided of emissions
 3 testing, how would harm occur to the program if EPA,
 4 your office, could not rely on the emissions data
 5 vehicle to accurately represent the produced vehicles?

6 A Again, the harm to the program would be such
 7 that we would not be able to make a determination, an
 8 accurate determination about full useful life
 9 compliance. It would be a different product
 10 altogether.

11 MR. CHU: Your Honor, may I request counsel
 12 speak into the mike because I couldn't tell the last
 13 it was related or I couldn't tell what he was saying.

14 JUDGE BIRO: Okay, would you like the
 15 question read back to you, Mr. Chu?

16 MR. CHU: If the Court may, I'd like to hear
 17 that question.

18 JUDGE BIRO: Mr. Reporter, can you read it
 19 back?

20 (Pause.)

21 JUDGE BIRO: Mr. Klepp.

22 MR. KLEPP: Yes.

23 JUDGE BIRO: It's 10 o'clock. Would you
 24 like to take a few minutes break and when we come back
 25 we can have the court reporter read the question and

1 continue?

2 MR. KLEPP: That would make sense. Thank
 3 you, Your Honor.

4 JUDGE BIRO: We will stand in recess for 15
 5 minutes until 10:15.

6 (Whereupon, a short recess was taken.)

7 JUDGE BIRO: Let's go back on the record and
 8 can you please read it to Mr. Chu?

9 MR. CHU: Mr. Dixon, my legal assistant got
 10 out by -- he made it.

11 JUDGE BIRO: Mr. Dixon.

12 MR. DIXON: Good morning.

13 JUDGE BIRO: Thank you for joining us.

14 MR. DIXON: Thank you.

15 (Whereupon, the question was read back by
 16 the court reporter.)

17 MR. CHU: I'm sorry. The last word?

18 THE COURT REPORTER: Vehicles, "to
 19 accurately represent the produced vehicles".

20 MR. CHU: Thank you, Your Honor.

21 JUDGE BIRO: Okay. Mr. Klepp.

22 MR. KLEPP: Thank you. Just for
 23 clarification, my memory is a little short. Did you
 24 get a response to the question?

25 THE COURT REPORTER: Yes.

1 MR. KLEPP: Thank you.

2 BY MR. KLEPP:

3 Q Transitioning, Mr. Jackson, in your
 4 experience as director of Gasoline Engine Compliance
 5 Center have you had opportunities to meet with vehicle
 6 engine manufacturers?

7 A Yes.

8 Q On approximately how many occasions has that
 9 happened?

10 A I would say approximately 30 to 40 meetings,
 11 maybe more.

12 Q Over the course of these meetings have you
 13 formed an impression of manufacturers' awareness of
 14 the regulatory requirements that they're responsible
 15 for?

16 MR. CHU: Objection. Calls for speculation,
 17 the awareness of these manufacturers.

18 JUDGE BIRO: Overruled. Go ahead.

19 THE WITNESS: Yes, I have. Some
 20 manufacturers seem to take great care to develop, both
 21 to develop in-house expertise, whether it's legal in-
 22 house staff or engineering staff, to do in-depth
 23 review of the regulations, to query the Agency when
 24 they have questions or concerns that demonstrate that
 25 they have spent time considering the regulations.

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1 Some other manufacturers take a different
2 approach. Some manufacturers choose to use external
3 contract testing as an example or external counsel or
4 external consultants to support their efforts.
5 BY MR. KLEPP:
6 Q Over this time where you've been the
7 director of the Compliance Center have you had an
8 opportunity to meet with representatives of the Taotao
9 companies?
10 A Yes.
11 Q Approximately how many times has that
12 happened?
13 A I believe we've had maybe two to three in-
14 person meetings.
15 Q Over the course of those meetings and in
16 your duties as director have you formed an impression
17 of the awareness of the Taotao companies in terms of
18 their -- withdrawn.
19 Over the course of this time have you formed
20 an impression of the awareness of the Taotao companies
21 for their responsibilities under the regulations?
22 MR. CHU: Objection. Calls for speculation.
23 JUDGE BIRO: It's not speculation to give an
24 estimate or an approximation or give his opinion based
25 on his own experiences. Please answer. Overruled.

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1 THE WITNESS: Yes, ma'am. My impression is
2 based on statements made by the company to us by Mr.
3 Matao Cao and by Mr. David Garibyan, that they weren't
4 fully aware of some of the provisions and were asking
5 for our help in identifying the provisions or
6 understanding the provisions.
7 MR. CHU: Objection, non-responsive. His
8 impression of their awareness. He's saying specific
9 facts rather than his awareness, or no, their
10 awareness of -- his impression of their awareness. If
11 the question is did you tell you something, relayed to
12 you something, but the question is his impression. He
13 hasn't answered --
14 JUDGE BIRO: Overruled. I think he's giving
15 the basis for his impression.
16 MR. CHU: Okay.
17 BY MR. KLEPP:
18 Q Making a transition. What pollutants are
19 regulated by your program under the Clean Air Act?
20 A Unburned hydrocarbons, carbon monoxide,
21 oxides of nitrogen.
22 Q What is oxides of nitrogen?
23 A Oxides of nitrogen as a result of complete
24 combustion, NO, NO2 that result from internal
25 combustion engine operation.

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1 Q And what is the effect of oxides of nitrogen
2 on human health and the environment?
3 A Oxides of nitrogen have the --
4 MR. CHU: Objection. He has not been
5 qualified as an expert in that area of health
6 consequences.
7 JUDGE BIRO: Well, first, he's already
8 testified to some of that earlier when you asked him
9 questions, so overruled.
10 THE WITNESS: Oxides of nitrogen have the
11 impact on human health of decreasing lung function.
12 Oxides of nitrogen are also, in combination with
13 unburned hydrocarbons and sunlight, a precursor to
14 ground-level ozone formation.
15 BY MR. KLEPP:
16 Q Are there standards that EPA has set that
17 are part of the regulatory program that you're the
18 director of?
19 A Yes.
20 Q Moving on, you also mentioned carbon
21 monoxide. Can you explain what that is?
22 A Sure. It is also a gas that is a result of
23 incomplete combustion.
24 Q And what is the effect of carbon monoxide on
25 human health and the environment?

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1 A Sure. So, adversely impacts the human
2 body's ability to absorb oxygen which can result in
3 asphyxiation with prolonged exposures; certainly
4 headaches, near-term exposure.
5 Q Are there regulations that EPA set,
6 regulations that -- excuse me. Withdrawn.
7 Do the regulations that you direct as part
8 of your program include standards for carbon monoxide?
9 A Yes.
10 Q And you also described unburned
11 hydrocarbons. Can you explain what those are?
12 A Unburned hydrocarbons are the result of
13 incomplete combustion, particularly when the results
14 of combustion is such that fuel that entered the
15 combustion chamber did not fully burn and result in
16 being exhausted through the exhaust port and out the
17 tailpipe.
18 Q And what is the effect of unburned
19 hydrocarbons on the environment or human health?
20 MR. CHU: I'm going to object again. He's
21 not been qualified as an expert in that area.
22 JUDGE BIRO: Okay. I'll give you a standing
23 objection to these questions. Overruled.
24 MR. CHU: Thank you.
25 THE WITNESS: So, hydrocarbons have some

1 carcinogenic effects, but in addition to that unburned
2 hydrocarbons can also serve as a nucleation site for
3 particulate matter.

4 BY MR. KLEPP:

5 Q And in your program that regulations
6 vehicles and engines are there standards that are set
7 for unburned hydrocarbons?

8 A I'm sorry, I didn't hear your question.

9 Q In the regulatory program that Gasoline
10 Engine Compliance Center oversees compliance, are
11 there standards for unburned hydrocarbons?

12 A Yes.

13 Q I'd like to transition and ask for your
14 attention to go to CX00046 -- excuse me. That would
15 be a page number. Exhibit No. CX046.

16 JUDGE BIRO: Mr. Klepp, what page is that
17 again? What page is that again?

18 MR. KLEPP: The page, Your Honor, is Exhibit
19 CX046 and it's a one-page exhibit. It's EPA 000643.

20 JUDGE BIRO: Thank you.

21 BY MR. KLEPP:

22 Q Mr. Jackson, do you recognize this document?

23 A Yes.

24 Q And what is this document?

25 A This is a certificate of conformity issued

1 to Taotao USA.

2 Q Have you seen this document before?

3 A Yes.

4 Q Can you briefly describe it and what its
5 purpose is?

6 A This document is a license to produce
7 products for sale in the United States of America.
8 Specifically this document identifies the engine
9 family for which this permission has been granted. It
10 identifies the applicable regulations associated with
11 both the exhaust and evaporative standards. It also
12 identifies the vehicle category, fuel type, engine
13 type as well as key emissions-related components,
14 including air injection and the presence of a
15 catalyst.

16 Q Does this document have a date on it?

17 A This document has an effective date of July
18 6, 2011, and an expiration date of December 31, 2012.

19 Q And the engine family on this document can
20 you refer to that and -- is there an engine family on
21 this document?

22 A Yes.

23 Q Is that an engine family that you're
24 familiar with from this case?

25 A Yes.

1 Q And is this a document that was issued by
2 the Office of Transportation and Air Quality?

3 A Yes.

4 Q And is it in the ordinary course of Office
5 of Transportation and Air Quality's business to issue
6 document such as these?

7 A Yes, it is.

8 Q Is it also the ordinary course of business
9 of the Office of Transportation and Air Quality to
10 maintain records such as this document?

11 A Yes, it is.

12 Q Does this document on its face to you appear
13 complete and accurate?

14 A Yes, it does.

15 MR. KLEPP: Your Honor, I would offer CX046
16 as evidence.

17 MR. CHU: No objections, Your Honor.

18 JUDGE BIRO: 046 is admitted into the
19 record.

20 (The document referred to was
21 marked for identification as
22 Complainant's Exhibit No.
23 046, and was received in
24 evidence.)

25 MR. KLEPP: Thank you, Your Honor.

1 And on that note there are a number of
2 Certificates of Conformity. They start at CX043 and
3 they go through CX052, and I would ask if we could
4 offer those as evidence at this time.

5 MR. CHU: No objections, Your Honor.

6 JUDGE BIRO: They Complainant's Exhibits 042
7 through 052?

8 MR. KLEPP: I might have misspoken, Your
9 Honor. It's CX043 --

10 JUDGE BIRO: Four-three.

11 MR. KLEPP: -- through CX052.

12 MR. CHU: Just to clarify. I want to make
13 sure since we're not looking at each one, that we're
14 talking only about the certificate, which we've had
15 some issues on identifying documents.

16 JUDGE BIRO: Okay. So, why don't you look
17 over the exhibits. They are 042 through 053 (sic).

18 MR. KLEPP: I'm checking, Your Honor.

19 JUDGE BIRO: Okay, take your time.

20 MR. KLEPP: Thank you.

21 (Pause.)

22 I may have misspoken twice. So, our
23 intention is to offer into evidence CX043 through
24 CX052, Your Honor.

25 MR. CHU: Again, for the record, we don't

1 have any objections as long as those are the documents
 2 represented to be certificates of conformity issued by
 3 the EPA.
 4 JUDGE BIRO: I think that is, in fact, Mr.
 5 Klepp's representation.
 6 MR. KLEPP: It is, Your Honor.
 7 JUDGE BIRO: Okay, so we've already admitted
 8 046. So, we'll admit without objection 043 to 045 and
 9 047 to 052?
 10 MR. KLEPP: I just got a little bit lost,
 11 Your Honor. You stopped in the middle and I was
 12 trying to go the whole span.
 13 JUDGE BIRO: Okay.
 14 MR. KLEPP: Can you please repeat yourself?
 15 Thank you.
 16 JUDGE BIRO: Yes, to not be confusing, we're
 17 admitting at this point Complainant's Exhibit 042
 18 through 052? No?
 19 MR. CHU: I'm going to consult with my --
 20 JUDGE BIRO: I'm still not on the right --
 21 MR. CHU: Yes, I believe 53. No, I'm sorry.
 22 No, that's right. That's what I see.
 23 JUDGE BIRO: 043 to 052.
 24 MR. CHU: I'm checking. Yes, 52, and that's
 25 the end.

1 JUDGE BIRO: Are we all in agreement,
 2 Complainant's Exhibit 043?
 3 MR. KLEPP: Yes.
 4 (Laughter.)
 5 MR. KLEPP: Through 052, if I may, Your
 6 Honor.
 7 JUDGE BIRO: Tell me one more time.
 8 MR. KLEPP: I have it on highest authority
 9 at my table over here that we're seeking to introduce,
 10 offer as evidence CX043 through CX052.
 11 MR. CHU: No objections.
 12 JUDGE BIRO: Okay. Admitted into the
 13 records Complainant's Exhibits 043 to 052. Yes? Okay.
 14 MR. KLEPP: Thank you.
 15 (The documents referred to
 16 was marked for identification
 17 as Complainant's Exhibit Nos.
 18 043, 044, 045, 047, 048, 049,
 19 050, 051 and 052, and were
 20 received in evidence.)
 21 BY MR. KLEPP:
 22 Q So, Mr. Jackson, referring to CX046, which I
 23 believe you were looking at earlier.
 24 A Yes.
 25 Q Okay, would you please describe what it says

1 with respect to engine models -- excuse me -- engine
 2 families and models?
 3 A The certificate covers only those vehicles
 4 which conform in all material respects to the design
 5 specifications that apply to those vehicles described
 6 in the documentation required by 40 C.F.R. Part 86,
 7 and are produced during the model year production
 8 period stated on the certificate, as defined in 40
 9 C.F.R. Part 86.
 10 Q And up in the table of data towards the top
 11 of this document can you describe the key emission
 12 components that are identified there?
 13 A Air injection catalysts, carburetor.
 14 Q And can you describe anywhere on this page
 15 where it refers to the regulatory emission standards
 16 that apply?
 17 A So, the exhaust emission standards that are
 18 applicable for hydrocarbons. It lists one gram per
 19 kilometer; CO, 12 grams per kilometer; HC plus NOx not
 20 applicable.
 21 Q Can you describe anywhere on this page where
 22 it refers to the length or the duration or the useful
 23 life that the standards apply?
 24 A The full useful life, it references the EPA
 25 minimum, EPA required minimum, and so for this

1 category, if it's 49 cc, it would be 6,000 kilometers.
 2 The 6,000 kilometers is not listed. It simply
 3 references the regulations.
 4 Q And would you please describe down at the
 5 bottom the language that is more narrative on this
 6 page and the purpose of this language, some key
 7 provisions there and their purpose?
 8 A The narrative language --
 9 MR. CHU: Object, compound. I'm having
 10 trouble following some objective compound questions.
 11 JUDGE BIRO: Sustained.
 12 MR. KLEPP: Fair enough, Your Honor. Thank
 13 you, Your Honor.
 14 BY MR. KLEPP:
 15 Q On the bottom of the page is there anything
 16 that refers to any other document that is important
 17 for understanding this certificate?
 18 A Sure. The last paragraph.
 19 Q And would you say what that is?
 20 A It specifically says, "The certificate
 21 covers only those vehicles which conform in all
 22 material respects to the design specifications that
 23 apply to those vehicles described in the documentation
 24 required by 40 C.F.R. Part 86, and are produced during
 25 the model year production period stated on the

1 certificate as defined in 40 C.F.R. Part 86."

2 Q I would draw your attention to a different
3 document, CX004.

4 MR. KLEPP: Your Honor, if I may a
5 procedural matter. This document and others that
6 might follow have been identified by Respondents as
7 confidential business information, and I would seek
8 guidance from Your Honor about how to proceed in
9 testimony and use of these.

10 JUDGE BIRO: Okay. Mr. Chu, do you continue
11 to assert confidential business information as to
12 these documents?

13 MR. CHU: To the extent he doesn't talk
14 about the design, I don't know if that's possible, I
15 would be okay with him talk about the document without
16 everyone leaving the room. So, if he's going to talk
17 about how it's designed in terms of the design, then I
18 would continue --

19 JUDGE BIRO: Design of the engine
20 specifically? Is that what you --

21 MR. CHU: The overall, the overall unit.
22 I'm not sure how he's wanting to use this.

23 JUDGE BIRO: So, can you modify your
24 questions to accommodate that or should we close the
25 courtroom?

1 MR. KLEPP: Your Honor, I think it might be
2 prudent to close the courtroom because I do want to do
3 a fairly detailed walk-through of some of the things
4 that counsel is referring to: the engine design, the
5 pollution control, emissions design, et cetera.

6 JUDGE BIRO: Okay. So, we'll close the
7 courtroom. Anybody who is not approved to hear CBI by
8 the Agency will have to leave, other than anybody from
9 your own team, obviously, Mr. Chu, you'd like to
10 remain, and we'll mark the courtroom as closed.

11 So, let's take a five-minute break to
12 accomplish that.

13 (Whereupon, a short recess was taken.)

14 JUDGE BIRO: Gentlemen, ladies, are we ready
15 to proceed?

16 MR. KLEPP: We are, Your Honor.

17 JUDGE BIRO: So, we've closed the courtroom,
18 and the only people remaining, Mr. Chu, I assume are
19 people that you do not object --

20 MR. CHU: That's correct, Your Honor

21 JUDGE BIRO: -- to being present. They are
22 either people with the Agency or have been certified
23 to hear CBI or our technician who we will take a
24 statement from to protect the CBI information that he
25 might otherwise hear.

1 MR. KLEPP: Thank you, Your Honor. May I
2 proceed?

3 JUDGE BIRO: Please proceed.

4 MR. KLEPP: Thank you.

5 BY MR. KLEPP:

6 Q I would like to track back, Mr. Jackson,
7 before I go where we're going next with respect to
8 what Your Honor has just referred to.

9 I asked you earlier if you had had an
10 opportunity to meet with representatives of the Taotao
11 USA and Taotao Group, JCXI, and their consultants.

12 A Yes.

13 Q And on approximately how many occasions did
14 that happen?

15 A Two to three occasions.

16 Q And the impressions that you said you formed
17 over those meetings and other interactions, what are
18 those impressions?

19 A Again, the impressions I have is that, and
20 this is again based on statements from Mr. David
21 Garibyan and Mr. Matao Cao, that they were not as
22 aware of the regulatory requirements as they felt they
23 should have been. And so my impression from that is
24 that they weren't engaged as maybe they could have
25 been.

1 Q What facts or interactions actually gave you
2 that impression?

3 A The nature of the questions that they tend
4 to ask in some instances seemed to be somewhat
5 superficial or seemed to indicate that they haven't
6 actually looked at the regulations in some cases.

7 Q Can you give an example of that?

8 A So, not off the cuff. I'd have to go back
9 and check my notes, but I do recall just sort of very
10 basic questions about what ought to be included in the
11 application types of questions, or when things were
12 inaccurate in the applications they were surprised.

13 I do remember one example. There was an
14 issue with maintenance and some of the maintenance
15 records, and they were unaware of the provisions in
16 the regulations that address when maintenance can be
17 performed on vehicles.

18 Q In the interactions you've had with vehicle
19 and engines manufacturers generally what's the range
20 of size from large to other sizes?

21 A The manufacturers we deal with? We deal
22 with some small, small volume manufacturers as well as
23 very large multinational manufacturers.

24 Q And do you have an impression as to how
25 Taotao companies fit within this spectrum of sizes

1 from large to small?

2 A Sure. So, for the classes of products in

3 which they sell based on their production data

4 provided to the Agency by the manufacturers, by the

5 industry, Taotao in Class 1A is the number one

6 manufacturer from a production volume perspective.

7 Last year they are number one in Class 1B, and they're

8 in the top five, I believe number four for ATVs and

9 UTVs for production volume.

10 MR. CHU: I'll object as hearsay. I mean,

11 that's not the best evidence. Two objections.

12 JUDGE BIRO: Okay. Best evidence is not an

13 objection, it applies to documents, and it refers to

14 copies. What were your other objection?

15 MR. CHU: Hearsay.

16 JUDGE BIRO: Hearsay.

17 MR. CHU: He's talking about out-of-court

18 document for the truth of the matters asserted.

19 JUDGE BIRO: Yes, it is hearsay but it's

20 admissible in this proceeding. Overruled.

21 BY MR. KLEPP:

22 Q Mr. Jackson, is there -- in your experience

23 is there a correlation among vehicle and engine

24 manufacturers between size and effort engaged to

25 follow the program's requirements?

1 MR. CHU: Yes, I'm going to object to this

2 line of questions. This is pure speculation. He's

3 not qualified to render an opinion in that regard so

4 it's pure speculation. One, he's not qualified as an

5 expert to speculation.

6 JUDGE BIRO: What's the question again?

7 MR. KLEPP: May I please -- I'll try and

8 reformulate it, Your Honor.

9 JUDGE BIRO: Okay.

10 BY MR. KLEPP:

11 Q Your impression, Mr. Jackson, have you

12 formed an impression as to a correlation between size

13 and effort to comply with the regulatory requirements

14 of the program?

15 JUDGE BIRO: Okay. Objection overruled. Go

16 ahead.

17 THE WITNESS: My impression is that some

18 manufacturers that are larger tend to invest

19 significant resources into ensuring compliance and to

20 learning and understanding the regulations. They take

21 time to meet with the Agency to engage in the process

22 earlier in the process. They also have significant

23 quality control processes in their -- in their design

24 processes, in their warranty systems to ensure they're

25 complying with the regulations.

1 Some smaller manufacturers may choose -- may

2 choose to have significantly smaller infrastructure or

3 may not have the types of systems in place that some

4 of the larger manufacturers may have.

5 BY MR. KLEPP:

6 Q Have you formed an impression as to the

7 comparing Taotao as a large vehicle engine

8 manufacturer to other large vehicle engine

9 manufacturers?

10 MR. CHU: Your Honor, can I have a running

11 objection, please?

12 JUDGE BIRO: Yes, you may.

13 MR. CHU: Thank you.

14 THE WITNESS: The impression that I have is

15 that at least to date they had not spent as much

16 effort as some of the other larger manufacturers or

17 large manufacturers in developing some of those

18 systems.

19 BY MR. KLEPP:

20 Q On those occasions that you described where

21 you met with Taotao representatives do you recall any

22 particular names of individuals that you met with?

23 A Yes.

24 Q And who are they?

25 A We met with Mr. David Garibyan, Mr. Matao

1 Cao and when we were in China we met with Mr. Matao

2 Cao's father and mother. I believe is father's name

3 was Yuejin Cao.

4 Q Did they identify themselves as holding any

5 particular office or position within these companies?

6 A Mr. Yuejin Cao said that he was the

7 president of the entire operation and that his son,

8 Mr. Matao Cao, I think he also goes by Terry, had

9 responsibility for the U.S. importers.

10 Q Now I'd like -- I'm sorry. Now I'd like to

11 draw your attention to CX046. Excuse me. I just

12 misspoke. CX004.

13 Mr. Jackson, are you familiar with this

14 document?

15 A Yes.

16 Q And what is it?

17 A This is an application for a certificate of

18 conformity for Taotao, Taotao USA.

19 Q Are there other ways to identify this

20 particular document?

21 A I'm sorry?

22 Q How else would you identify this particular

23 document?

24 A So, this cover page is a letter from their

25 certification consultant, Mr. James Xu, identifying

1 the engine family and the models that would be covered
2 by the certificate, if issued.

3 Q And on that cover page what is the engine
4 family that's referred to?

5 A The engine family designation on this page
6 is CTAOC.049MC1.

7 Q Now, earlier I asked you to look at CX046.
8 If you can recall was that the same engine family in
9 that document as this CX004?

10 A Yes.

11 Q While you were looking at CX046 you made a
12 reference to some narrative that was a reference to
13 vehicles described in documentation required by 40
14 C.F.R. Part 86.

15 A Yes.

16 Q Can you please identify whether this
17 document, CX004, has any relation to that narrative
18 reference in CX046?

19 MR. CHU: May it please the Court. Could we
20 get a clarification as to what version, what year
21 we're talking about of that particular C.F.R.?

22 JUDGE BIRO: Do you have --

23 THE WITNESS: I'm sorry. You're asking me
24 what version of what? The version of the C.F.R.?
25 What was the question?

1 JUDGE BIRO: For the particular certificate
2 of conformity what version of the C.F.R.?

3 THE WITNESS: The version of the C.F.R. that
4 was applicable in that model year. I'll have to look
5 at the model year.

6 JUDGE BIRO: That model year. So, if it was
7 a 2012 model year would it be the C.F.R. that was
8 applicable in 2012?

9 THE WITNESS: Yes.

10 JUDGE BIRO: Is that sufficient, Mr. Chu?

11 MR. CHU: Yes, Your Honor. That satisfies
12 me.

13 BY MR. KLEPP:

14 Q Explain, if you would, Mr. Jackson, the
15 relationship between CX046 and CX004.

16 A CX004 is the application. This is the
17 document that contains information describing the
18 family for which the certificate of conformity was
19 issued.

20 Q Mr. Jackson, I'd ask for you to please turn
21 to -- within Document No. CX004, the application, page
22 No. EPA 000118. Can you describe what you see on that
23 page?

24 A Yes. So, this is, again, a letter from Mr.
25 James Xu to EPA, and specifically it identifies the

1 fact that -- it identifies the engine family
2 designation and the models covered within this
3 application.

4 Q Are you familiar with Mr. James Xu?

5 A Mr. James Xu is the -- yes, I am. I believe
6 he's the certification consultant for Taotao USA.

7 Q Is he a certification consultant on this
8 document and this engine family only as far as you
9 know?

10 A No. As far as I know, he's a certification
11 consultant for multiple engine families from the
12 Taotao Group.

13 Q Stepping back to the period of time from
14 2012 through 2016, what is your knowledge of Mr. Xu's
15 relationship to Taotao USA, Taotao Group, JCXI.

16 MR. KLEPP: If I may refer to them as JCXI,
17 Your Honor. It's Junyun County Xiangyuan,
18 Incorporated, but I feel awkward always mispronouncing
19 a name that I don't know. If I might proceed to just
20 refer to them as JCXI.

21 JUDGE BIRO: Absolutely.

22 MR. KLEPP: Thank you.

23 BY MR. KLEPP:

24 Q So, what is your awareness, familiarity or
25 knowledge of Mr. James Xu, consultant to Taotao USA,

1 Taotao Group, JCXI during that period 2012 to 2016?

2 A My understanding was he was a designated
3 primary contact for certification. He was the
4 individual that submitted their applications.

5 Q So, in terms of what you described before,
6 some large vehicle engine manufacturers having an in-
7 house capacity as opposed to some using a
8 consultant --

9 A Yes.

10 Q -- can you use this document and explain how
11 this fits into that scenario?

12 A Sure. So, it appears based on the
13 submission that Mr. James Xu works with the
14 manufacturer to prepare the application document and
15 submit it on their behalf. In some instances with
16 larger manufacturers or other manufacturers I should
17 say, they will prepare completely internally and so it
18 will be in-house staff, engineers or whomever, who
19 prepare the documentation for submission to the
20 Agency. In this case the company hired a consultant
21 to help them with that process.

22 MR. CHU: Yes, I'm going to object. It's
23 non-responsive. He asked specifically about three
24 separate entities, and it's not a response as to which
25 entity he's referring to.

1 JUDGE BIRO: Sustained. Do you want to
 2 clarify?
 3 MR. KLEPP: I do, Your Honor. Thank you.
 4 BY MR. KLEPP:
 5 Q Taking it step by step what is the role of
 6 Taotao USA in this application?
 7 A Taotao USA is identified as the certificate
 8 holder.
 9 Q And as certificate holder what was the job
 10 that they, or what were they -- what's their role in
 11 this --
 12 A So, the certificate holder --
 13 Q Wait, wait. Let me ask you a halfway decent
 14 question, if you would.
 15 As a certificate holder why would they be
 16 seeking a certificate?
 17 A That allows them to introduce products into
 18 commerce in the United States.
 19 Q And would they also be know as an importer?
 20 A Importers can be certificate holders, yes.
 21 Q Within this application can you identify any
 22 other Taotao companies and the roles that they would
 23 have?
 24 A So, in the application documents it
 25 references Taotao USA, but it also references Taotao

1 Group. It also references -- well, I guess in this
 2 application it also references the OEM as being Taotao
 3 Group Company Limited in Lishui, China.
 4 Q Have you had an opportunity to visit a
 5 facility associated with Taotao Group in China?
 6 A Yes.
 7 Q Are they a manufacturer of vehicles and
 8 engines in China?
 9 A Yes.
 10 Q If I could call your attention to page
 11 000119 and 000120, can you describe this document and
 12 its purpose?
 13 A So, again these are part of that document
 14 that describe who the original manufacturer is. It
 15 describes information about the engine family,
 16 statement of compliance, and on page 000120 it
 17 provides a description of the manufacturing process, a
 18 statement of identity, and a statement of
 19 conformity, and then gives contact information for Mr.
 20 James Xu, Stanley Marketing and Consulting.
 21 Q Is this letter signed?
 22 A It is signed, yes.
 23 Q And who would it be signed by?
 24 A So, the printed date in English is Matao
 25 Cao, President, Taotao USA.

1 Q Is there a date associated with --
 2 MR. CHU: Objection. Not responsive after
 3 the name. He asked who signed. He didn't say what
 4 the capacity.
 5 JUDGE BIRO: Matao Cao. Oh, as president,
 6 that's the part?
 7 MR. CHU: Yes, Your Honor. The question was
 8 only who signed. He didn't ask a question about
 9 capacity. So, non-responsive.
 10 JUDGE BIRO: Overruled. Go ahead.
 11 THE WITNESS: Okay, so it's signed and the
 12 printed name in English is Matao Cao, President,
 13 Taotao USA, Incorporated.
 14 BY MR. KLEPP:
 15 Q Now, is this letter part of the COC,
 16 certificate of conformity application?
 17 A Yes.
 18 Q And did your office, you, those that you
 19 direct, undertake to review this application?
 20 A Yes.
 21 Q And in the course of that review did you
 22 have an opportunity to review the language on these
 23 two pages, 000119-120?
 24 A So, staff reviewed, yes.
 25 Q And with respect to some of these -- I'm

1 going to step through the paragraphs. Statement of
 2 identity, would you please read that language and
 3 interpret what it means?
 4 A Sure. "This letter will confirm that all
 5 our model year 2012 motorcycles are identical in all
 6 material respects to the motorcycles described in the
 7 application for certification," and that seems to be
 8 consistent with the language on the certificate of
 9 conformity saying that all the models for which this
 10 certificate is intended to be applicable are going to
 11 comply in all material respects.
 12 Q The section right above that, the
 13 description of the manufacturing process, can you read
 14 and interpret what that paragraph means?
 15 A "These motorcycles are assembled at the --"
 16 JUDGE BIRO: No, no. We're not going to
 17 start reading whole paragraphs into the record.
 18 MR. KLEPP: Just briefly and generally, if I
 19 may, Your Honor. Just the gist of what's in that
 20 section.
 21 MR. CHU: Yes, may I have a running
 22 objection that the documents speak for themselves and
 23 I'm objecting to reading the documents.
 24 JUDGE BIRO: Right, we're not going to read
 25 whole paragraphs into the record, or certainly not

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1 whole documents, but a sentence here and there you can
 2 have an objection and we're going to overrule those
 3 objections and let it be read.
 4 MR. KLEPP: Understood and I'll be very
 5 brief on this. Thank you.
 6 THE WITNESS: I apologize if --
 7 JUDGE BIRO: No, that's no problem, Mr.
 8 Jackson.
 9 THE WITNESS: So, this paragraph basically
 10 says the product should be manufactured by Taotao
 11 Group in China, and that there will be no further
 12 modifications after they leave the factory.
 13 BY MR. KLEPP:
 14 Q Now, as you undertook or your staff
 15 undertook review of this application, this letter,
 16 this language, are there things here that you took at
 17 face value within the four corners of the document you
 18 didn't question?
 19 A Yes, we take everything the manufacturer
 20 tells us as being what the manufacturer intends to
 21 tell us. We assume that it's accurate. We take it at
 22 face value.
 23 MR. KLEPP: Your Honor, I think it's a
 24 housekeeping point to raise at this time that there
 25 are a number of substantially the same documents from

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1 CX001 through CX010. I would say that they're all
 2 certificate of conformity application documents and I
 3 would ask for them to be, or I would offer them as
 4 evidence at this time.
 5 JUDGE BIRO: Tell me the numbers again just
 6 to make sure.
 7 MR. KLEPP: This is an easy one. CX001
 8 through CX010.
 9 JUDGE BIRO: Okay.
 10 MR. CHU: Yes, we would not agree. We would
 11 request that he move up each of those documents.
 12 JUDGE BIRO: You would object to each one of
 13 these applications?
 14 MR. CHU: Yes, Your Honor.
 15 JUDGE BIRO: Your own applications?
 16 MR. CHU: Yes, Your Honor.
 17 JUDGE BIRO: Okay, identify them for the
 18 record individually.
 19 MR. KLEPP: I will, Your Honor, and I'm
 20 going to do that now and get it over with if I might.
 21 BY MR. KLEPP:
 22 Q Mr. Jackson, would you please turn in the
 23 volume to CX002?
 24 MR. CHU: Your Honor, my colleagues have
 25 told me that we had agreed somehow, so I'll stay with

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1 that.
 2 JUDGE BIRO: Okay.
 3 MR. CHU: Yes, she reminded me.
 4 JUDGE BIRO: That you had already stipulated
 5 to the admission of these documents?
 6 MR. CHU: Right.
 7 JUDGE BIRO: Okay. So, we will admit into
 8 the record without objection --
 9 MR. CHU: And without reading everything in
 10 those 10.
 11 JUDGE BIRO: Okay. Complainant's Exhibits
 12 001 through 010.
 13 MR. KLEPP: Yes, Your Honor.
 14 JUDGE BIRO: Okay.
 15 (The documents referred to
 16 were marked for
 17 identification as
 18 Complainant's Exhibit Nos. 1
 19 through 10, inclusive, were
 20 received in evidence.)
 21 BY MR. KLEPP:
 22 Q Mr. Jackson, within CX004 would you please
 23 turn to page 000123, and given what we'd like to do
 24 here, I think, is move through efficiently would you
 25 please describe what you see here and the key points

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1 on this page?
 2 A Sure. This family is an engine of family
 3 description page that lists the models covered by the
 4 certificate and also provides information to describe
 5 the engine and exhaust control system associated with
 6 this family, including specifically the exhaust and
 7 emissions control system, the three-way catalyst and
 8 pulse air injection system. It also provide
 9 information, basic information about the operation of
 10 the engine.
 11 Q I would ask for you to turn to page 000124
 12 and describe the words on this page and what they are.
 13 A This page describes the emissions data
 14 vehicle, the vehicle that was used to generate the
 15 data submitted to the Agency. And so specifically it
 16 again describes the configuration, meaning that this
 17 was intended to be a 49-state engine, meaning
 18 certified for sale in the 49 states versus having a
 19 car executive order as well. It also provides
 20 information about the mass of the vehicle.
 21 Q Is there anything here that refers to the
 22 exhaust emission control system?
 23 A It does. The exhaust emissions control
 24 system is identified as a three-way catalysts and also
 25 having pulse air injection.

1 Q And I would ask for you to then turn to page
 2 000125 and looking there describe what's on that page.
 3 A This is the vehicle control information
 4 label and this is the label that is made available to
 5 the public on the vehicle and it says that this engine
 6 conforms to EPA regulations applicable to the 2012
 7 model year, and then it also identifies the emissions,
 8 the engine exhaust emission control as three-way
 9 catalysts and pulse air injection.
 10 Q Thank you, and I would ask for you to
 11 take -- go a page further and take a look at page
 12 000126. Would you describe what's on that page?
 13 A This page describes the emissions control
 14 system and auxiliary emissions control devices that
 15 this family may utilize. It describes, in fact, that
 16 it uses gravity-fed carburetor; that it has pulse air
 17 injection. It identifies the fact that it also has a
 18 catalytic converter and provides information about the
 19 precious metal composition, the ratios in loading.
 20 Q Would you refer to that specific active
 21 material portion of this page and tell what your
 22 understanding of that is?
 23 A My understanding of which portion? The
 24 catalytic converter?
 25 Q I'm looking at the very bottom.

1 A Okay.
 2 Q And I'd ask for you to please also look at
 3 the very bottom when it comes to the catalytic
 4 converter description active material.
 5 A Sure. The active material identifies
 6 platinum, palladium and rhodium as the active
 7 material. So, those are the precious metals.
 8 Q Are they described in any relation to each
 9 other?
 10 A They provide the ratios for those precious
 11 metals, a ratio of two to 10 to one.
 12 Q Is that in any way related to the term you
 13 used earlier, three-way catalyst?
 14 A Yes, this is an indication that it uses
 15 those three precious metals to engage in the reaction
 16 we discussed earlier, the reduction of NOx and the
 17 oxidation of hydrocarbons and carbon monoxide.
 18 Q Now, you have reviewed several pages of very
 19 detailed engine and emission control description. Can
 20 you tell us why the Gasoline Engine Compliance Center
 21 needs all this information?
 22 A Sure. So, we assess whether or not we
 23 believe the engine as designed with the catalysts as
 24 described would actually be compliant over the full
 25 useful life of the product. Specifically, if we take

1 a look at the engine design and engine out emissions,
 2 and we take a look at the control strategy and the
 3 fueling strategy for the engine and compare that to
 4 the catalyst. If we see something anomalous about the
 5 catalyst that may cause us to be concerned potentially
 6 issue a test order for that product.
 7 As an example, this particular precious
 8 metal distribution is rhodium, palladium and platinum.
 9 If it only listed palladium, we might be concerned
 10 about the performance of this product over full useful
 11 life. If it only listed palladium, it could be
 12 compliant with a low-hour test, but may not be
 13 compliant due to palladium poisoning over the full
 14 useful life.
 15 Q You described the review of this
 16 application. Can you go a little further and talk
 17 about what your staff, what you at times do to review
 18 an application?
 19 MR. CHU: Your Honor, that question -- I
 20 object to being vague and I'm going to object that he
 21 doesn't have personal knowledge of what the staff
 22 actually did on this particular application.
 23 JUDGE BIRO: Okay.
 24 MR. CHU: If he want the question asked in
 25 general what they do, but they're asking specifically.

1 JUDGE BIRO: He's the director. He's asking
 2 generally what they do. Is that correct?
 3 MR. KLEPP: It is, Your Honor.
 4 JUDGE BIRO: Okay.
 5 MR. CHU: That's okay. If that's the
 6 question, I'm okay.
 7 THE WITNESS: So, the staff generally
 8 utilize a multi-tiered approach to review of the
 9 application. There is an initial review for
 10 completeness and general accuracy that's done. It's
 11 then passed along to an engineer on the team who
 12 provides a more detailed review, technical review of
 13 the application for the issues I just mentioned, and
 14 then from time to time I will spot check audit. I
 15 don't review every single application. There are
 16 2,800 applications, so I don't review all of them each
 17 year, but to the staff's credit they do review them
 18 and they provide that detailed review, and like I
 19 said, I may spot check audits from time to time.
 20 BY MR. KLEPP:
 21 Q Are there certain assumptions that you and
 22 your staff would make in the course of review of this
 23 application?
 24 A The fundamental assumption we make is that
 25 the manufacturer is being honest with us about their

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1 design, about their testing, about the compliance of
 2 their test facilities, and about the fact that their
 3 production will match what they've told us in the
 4 application.
 5 Q Earlier on you were looking at guidance that
 6 your office, that the Office of Transportation and Air
 7 Quality issued. Drawing your memory there, it was
 8 about application formation. I don't have the right
 9 word. CX013. Application, it begins with an F. Hold
 10 on one second.
 11 Recommended application format. There was
 12 language there that talked about your application is
 13 the primary source of information. Can you make a
 14 connection between that guidance and that information
 15 to the public and what you're describing here?
 16 A Sure. So, this is the information that the
 17 agency reviews to make a determination about how to
 18 proceed and what actions to take as it relates to a
 19 potential certificate of conformity.
 20 Q I'd like for you to take a look within this
 21 document, CX004, take a look at page No. EPA 000136, I
 22 believe. Yes, 000136. And just thumbing through it
 23 and also looking at the pages in between from 000136
 24 through 000150, those pages, can you describe what
 25 this document is?

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1 A This appears to be a final test report for
 2 the emissions data vehicle.
 3 Q So, can you explain the relevance of this
 4 document? Is this a document within the COC
 5 application?
 6 A This would be the information we would
 7 review when we're taking a look at the testing that
 8 was done on the EDB.
 9 Q Is it typical that a test report would be
 10 part of the COC application?
 11 A Yes.
 12 Q And is there a date on this particular
 13 report?
 14 A So, the date printed on the cover page says
 15 September and October 2010.
 16 Q And is there a vehicle identification number
 17 there?
 18 A Yes.
 19 Q I'm going to ask you to please read the last
 20 five digits of that vehicle identification number.
 21 A zero-zero-nine-six-seven.
 22 Q And please keep it in mind because I'm going
 23 to go back there later, if you would. Thank you.
 24 Also, within this final report, emissions
 25 document, would you turn to page 137, 000137? At the

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1 bottom of that page is there a header that describes a
 2 section called Test Protocol?
 3 A Yes.
 4 Q Would you please describe briefly what the
 5 test protocol paragraph is saying?
 6 A This paragraph says that it was basically
 7 tested to full useful life at 6,000 kilometers,
 8 consistent with the provisions of 40 C.F.R. Part 86.
 9 Q Is there a specific number of kilometers
 10 that's referred to there?
 11 A So, that paragraph says approximately 6,000
 12 kilometers, later it seems to --
 13 Q With your knowledge of the program and the
 14 regulations and how they work would you explain the
 15 significance of that 6,000 kilometers?
 16 A Six thousand kilometers for a Class 1A
 17 product is full useful life.
 18 Q Is it also the test distance that applies
 19 for those Class 1A document --
 20 A Yes.
 21 Q -- or vehicles?
 22 A Yes.
 23 Q So, when I say "test distance", a test
 24 distance for what purpose?
 25 A Again, it provides the Agency with an

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1 understanding of the emissions at the specific points
 2 during the operation throughout the full useful life
 3 of the product, and so that identifies what test point
 4 this actually represents -- the final test result
 5 represents.
 6 Q I'm trying to hone in on but what particular
 7 purpose would the test be for?
 8 A So, for certification and once you've done a
 9 full useful life test you can determine a
 10 deterioration factor from that, but this was before
 11 certification purposes.
 12 Q That word again "deterioration factor", can
 13 you put that into what the test protocol here and how
 14 it works?
 15 A Sure. So, again, the deterioration factor
 16 is a mathematical expression relating end of useful
 17 life performance to low-hour performance of the
 18 engine. And so this test report would provide
 19 information that could be used to develop that
 20 deterioration factor because the EDB was tested for
 21 the full useful life.
 22 Q All right.
 23 A And apparently all of the test points.
 24 Q If I may ask this question with a layman's
 25 understanding? Is that to get to where you would know

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1 the deteriorated emissions performance of the
2 particular vehicle?
3 A Yes.
4 MR. CHU: Objection, leading, suggestive.
5 He's asked a series of questions and now he wants the
6 answer and he's leading.
7 MR. KLEPP: I'm just trying to move it
8 along, Your Honor.
9 JUDGE BIRO: Sustained. Go ahead. Try
10 again.
11 MR. KLEPP: Okay.
12 BY MR. KLEPP:
13 Q Mr. Jackson, would you please -- what's the
14 purpose of a deterioration factor in the test process?
15 A The deterioration factor characterizes the
16 performance of the product over its full useful life
17 so that when the Agency conducts testing on a product,
18 particularly at low-hour test points, it has a basis
19 for determining full useful life performance without
20 testing that particular vehicle to full useful life.
21 So --
22 Q Are there limitations on use of
23 deterioration factors?
24 MR. CHU: Objection. He has not been
25 qualified as an expert in that area in terms of --

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1 MR. KLEPP: May I try again? May I try
2 again, Your Honor?
3 JUDGE BIRO: Sure.
4 BY MR. KLEPP:
5 Q Are there regulatory limitations on the use
6 of deterioration factor?
7 A Sure. So, the deterioration factors are
8 applicable for similar technology products. If a
9 manufacturer wanted to apply a deterioration factor to
10 a product with a different catalyst as an example, or
11 a different configuration, we wouldn't allow that type
12 of carry across.
13 Q All right, you're mentioning a term that --
14 nevermind. Strike that.
15 What does the term "carryover" mean?
16 A Carryover is a term simply used to describe
17 using the same emissions data for subsequent model
18 years because the manufacturer has identified for the
19 Agency that the product has essentially not changed
20 from one model year to the next.
21 Q Are there limitations, regulatory
22 limitations on the use of carryover?
23 A So, the administrator does not have to
24 accept the data. In fact, major issue test orders
25 request additional testing, and particularly the

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1 regulations don't stipulate a specific year in which
2 that may happen. But as we review the results we may
3 make requests for additional data.
4 MR. CHU: Objection after yes. We're
5 getting about narratives and I will start objecting
6 after he answers the question but adds non-responsive
7 responses to it. So, I'm objecting after yes.
8 JUDGE BIRO: Overruled. Go ahead.
9 MR. KLEPP: Thank you, Your Honor.
10 BY MR. KLEPP:
11 Q I would ask, Mr. Jackson, would you please
12 turn your attention to what is marked Exhibit CX-one-
13 one-zero.
14 JUDGE BIRO: This is Complainant's Exhibit
15 110?
16 MR. KLEPP: At this time it's one-one-zero,
17 Your Honor.
18 JUDGE BIRO: Yes, why can't we call them
19 110?
20 MR. KLEPP: Okay.
21 (Laughter.)
22 JUDGE BIRO: That would be so much easier
23 for me if we could just do that.
24 MR. KLEPP: Your Honor, CX110.
25 JUDGE BIRO: Thank you.

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1 BY MR. KLEPP:
2 Q Are you there, Mr. Jackson?
3 A Yes, I am.
4 Q Thank you. Do you recognize this document?
5 A Yes, I do.
6 Q And what do you recognize it to be?
7 A This appears to be a test report from
8 California Environmental Engineering.
9 Q Does it have a date on it?
10 A Yes, it does. It has a test date and it has
11 what appears to be a signature date.
12 Q What is the date on the report?
13 A The test date is July 18, 2014. The
14 signature date is July 21, 2014.
15 Q Oh, are we looking at the same document?
16 A Document 110?
17 Q Yes.
18 A I believe we are.
19 Q Can you repeat the date you just said?
20 A The test date says July 18, 2014, and --
21 JUDGE BIRO: It does.
22 MR. KLEPP: It does?
23 THE WITNESS: -- the signature date --
24 MR. KLEPP: Let me take a brief pause here.
25 Your Honor, I'm looking at what is our document CX110,

1 page EPA 0001477.
 2 JUDGE BIRO: In the middle of the page it
 3 says "Test Date 7-18-2014".
 4 MR. KLEPP: Oh.
 5 JUDGE BIRO: And the signature line says
 6 "7-21".
 7 MR. KLEPP: I understand. At the bottom
 8 there's a signature and a date and that's where I was
 9 looking.
 10 MR. CHU: My bad. And we would accept the
 11 two dates.
 12 MR. KLEPP: Okay.
 13 BY MR. KLEPP:
 14 Q So, going back to everybody in the room who
 15 understands except me, going back to the date on this
 16 test date, would you please repeat that?
 17 A The test date says July 18, 2014.
 18 Q And then turning to the very next page, EPA
 19 001478, is there an engine family identified there?
 20 A Yes.
 21 Q And would you please refer to that engine
 22 family and its number?
 23 A The engine family name or number is
 24 CTAOC.049MC1.
 25 Q And is there a vehicle identification number

1 on this document?
 2 A Yes.
 3 Q Would you please read the last five digits
 4 of this vehicle identification number?
 5 A Zero-zero-zero-one.
 6 Q Recalling what I asked you about the other
 7 test data --
 8 A Yes.
 9 Q -- as part of CX004, is this the same
 10 vehicle identification number or different?
 11 A This would be a different number.
 12 Q Now I'd ask for you to also look -- oh, from
 13 the pictures here and what you know described in terms
 14 of the engine family, what kind of vehicle is being
 15 tested?
 16 A This appears to be a Class 1A highway
 17 motorcycle.
 18 Q And if you would please look at -- regulated
 19 under what part if it was a vehicle and engine highway
 20 motorcycle?
 21 A 40 C.F.R. Part 86.
 22 Q I would ask for you to draw your attention
 23 to EPA 001480, and underneath the heading "Test
 24 Procedures and Equipment" please read that first
 25 paragraph and identify, based on your knowledge of the

1 program, anything that seems inaccurate, wrong, or
 2 concern about this particular description?
 3 A So, I assume you want me to read to myself
 4 and identify it verbally?
 5 Q Please read to yourself and then speak from
 6 it.
 7 A So, this paragraph seems to indicate that
 8 testing was done in a manner consistent with 40 C.F.R.
 9 Part 1051. The concern we would have is that this is
 10 a highway motorcycle which ought to be compliant with
 11 40 C.F.R. Part 86.
 12 Q And does it, in this short sentence that
 13 makes up this paragraph, refer to a highway
 14 motorcycle?
 15 A In this paragraph no. It refers to off-road
 16 ATV.
 17 Q I'd ask for you then to draw your attention
 18 to -- by the way, if it were -- looking back at the
 19 picture does that appear -- on EPA 001478 -- is that a
 20 picture of what you're -- based on your knowledge
 21 working in this program appears to be a highway
 22 motorcycle or an ATV?
 23 A Based on this picture it appears to me to be
 24 a highway motorcycle.
 25 Q And the engine family that is identified in

1 this front part of this test report is that an engine
 2 family typically identified with a highway motorcycle
 3 or an ATV?
 4 A A highway motorcycle.
 5 Q Highway motorcycles under the regulations
 6 that you're familiar with, do they have -- what is the
 7 useful life distance for that vehicle?
 8 A For this vehicle it would be 6,000
 9 kilometers.
 10 Q I'd ask for you to please turn to page
 11 within this document 001482. Looking there, what do
 12 you see on that page in terms of -- well, let me
 13 rephrase my question.
 14 What's the purpose of this page?
 15 A This page appears to provide the test
 16 results.
 17 Q And those test results, can you read them
 18 and say what they are showing?
 19 A Sure. So, the -- it provides the
 20 hydrocarbon, NOx, and CO emissions and it adds the
 21 HC+NOx emissions. It provides the multiplicative
 22 deterioration factor as provided by Taotao, indicating
 23 that low-hour testing was done on this vehicle and the
 24 deterioration factor was applied. It then provides
 25 the full useful life emissions. What does seem a

1 little unusual --

2 Q Before you go further I would ask you to

3 please take a look at page EPA 001488.

4 MR. CHU: I'm sorry. I didn't hear the last

5 number.

6 JUDGE BIRO: Four-eight-eight.

7 MR. KLEPP: Yes, Your Honor.

8 MR. CHU: Thank you.

9 BY MR. KLEPP:

10 Q Would you please talk about what is on this

11 page?

12 A This is the mileage accumulation log sheet.

13 Q What does it provide in terms of the end of

14 the mileage accumulation?

15 A It provides an odometer reading of what

16 appears to be 2,500 kilometers.

17 Q Does that 2,500 kilometers, based on your

18 knowledge of the regulatory program, signify anything?

19 A That would seem to be a low-hour test point

20 for an ATV.

21 Q So, back to the page that you were looking

22 at earlier, EPA 001482.

23 A Yes.

24 Q With respect to what is said there in that

25 single sentence or two sentences that describe the

1 test, the word "useful life", do you have any concerns

2 when you look at that and look at the rest of this

3 test report?

4 A So, again, for useful life emissions

5 information here is not based on actual testing to

6 full useful life, but based on the application of a

7 deterioration factor. However, when I look at what

8 appears to be the deterioration factor a

9 multiplicative deterioration factor, at least my math

10 comes up with a different number than what is provided

11 in the table for the full useful life emissions.

12 Q Staying with the narrative that talks about

13 the multiplicative deterioration factor, what does it

14 say as far as the source of that what I'm going to

15 call DF?

16 A Provided by the manufacturer?

17 Q I'd ask you to look at the very, very

18 last page of this test report, and it's EPA 001495.

19 To me what looks like an incomplete sentence there,

20 can you please read it and say what it means?

21 A "Deterioration factors page extracted from

22 certification application for". So, what I would

23 assume is making a reference to is that --

24 MR. CHU: Objection. Calls for speculation.

25 JUDGE BIRO: Sustained.

1 MR. KLEPP: Okay, thank you, Your Honor.

2 BY MR. KLEPP:

3 Q When it says "certification application", is

4 there an engine family that's within this report that

5 your knowledge of the regulatory program would help

6 you to know the meaning of these words?

7 A Yes.

8 Q Can you say what that is?

9 A CTAOC.049MC1.

10 Q In the course of your testimony today have

11 you looked at the certificate of conformity

12 application with respect to that particular engine

13 family?

14 A Yes.

15 Q And was that CX004?

16 A The certificate was not CX -- the

17 application was CX004.

18 Q Yes. If I said certificate, I meant to say

19 certificate of conformity application.

20 A Yes.

21 Q Okay. So, the vehicle tested in connection

22 with the certificate of conformity application was the

23 same one as tested here or a different one?

24 A It would appear to be a different vehicle,

25 but the same family.

1 Q And appear to be based on the different

2 vehicle identification number?

3 A Yes.

4 Q Appear to be also based on the different

5 times that the two tests were performed?

6 A Yes.

7 Q I'm back on page EPA 001482. In order for

8 that piece of information about the multiplicative

9 deterioration factors provided by Taotao to be

10 reliable what would you need to know about the

11 reference to that certification application and the

12 tests there?

13 MR. CHU: Objection. I believe he's being

14 asked a question that this engineer would be asked.

15 As such, he's not qualified -- has not been qualified

16 to answer that type of question.

17 JUDGE BIRO: Overruled. Go ahead.

18 THE WITNESS: Your question was? I'm sorry.

19 BY MR. KLEPP:

20 Q My question is as far as what you would

21 undertake analyzing this test result and looking at

22 this information, multiplicative deterioration factor.

23 A Yes.

24 Q In order for you to feel comfortable that

25 it's reliable and it's referenced to the COC

1 application what would you need to know?
 2 A We would want to know that the engine that
 3 was used for this vehicle was the same, had the same
 4 control strategy, you would want to know that the
 5 exhaust system was the same, same catalyst, same
 6 precious metal loading, et cetera.
 7 Q Speaking to the catalysts in this case, as
 8 you're aware the violations are that the production
 9 vehicles are different, catalytic converters are
 10 different than those certified and covered under the
 11 COC.
 12 MR. CHU: Objection, Your Honor. I don't
 13 believe that's an accurate reflection of what the
 14 complaint states.
 15 JUDGE BIRO: I think it is.
 16 MR. CHU: That is different. I thought they
 17 used much stronger language.
 18 JUDGE BIRO: Well, it might have used much
 19 stronger language.
 20 MR. CHU: Yes.
 21 JUDGE BIRO: But for this purposes --
 22 MR. KLEPP: I'm not willing to use stronger
 23 language, Your Honor.
 24 JUDGE BIRO: -- saying that they're
 25 different is the basis of the violation so I think

1 it's sufficient.
 2 MR. CHU: Yes, Your Honor.
 3 JUDGE BIRO: Please proceed.
 4 MR. KLEPP: Thank you.
 5 BY MR. KLEPP:
 6 Q Would a different, a vehicle equipped with a
 7 different catalytic converters than the vehicle tested
 8 here in CX110, could that vehicle provide an accurate
 9 reliable deterioration factor for purposes of this
 10 low-hour test?
 11 MR. CHU: Your Honor, I object. Calls for
 12 speculation. He's not been qualified as an engineer
 13 expert that is qualified to do these kind of tests and
 14 knows what to do with these types of vehicles in those
 15 types of tests.
 16 JUDGE BIRO: Overruled. Go ahead.
 17 THE WITNESS: No.
 18 BY MR. KLEPP:
 19 Q And why not?
 20 A If the product is different, if it's a
 21 different vehicle, different engine design, different
 22 catalyst design, we would not apply that deterioration
 23 factor to a different engine family.
 24 Q Mr. Jackson, what is the function of a
 25 carburetor on a vehicle or an engine?

1 A The carburetor introduces the fuel-air
 2 mixture into the combustion chamber.
 3 Q What is an adjustable parameter?
 4 A It is an engine control strategy for an --
 5 MR. CHU: I'm going to object to be
 6 irrelevant. In this case here, adjustable parameters
 7 that's not something that has been alleged. It was
 8 something that was done before.
 9 JUDGE BIRO: It's relevant to the issue of
 10 penalty based on their claim of a prior history. So,
 11 overruled. Go ahead.
 12 MR. KLEPP: Thank you, Your Honor.
 13 Before I proceed there I would like to just
 14 step back and ask a couple of other catalytic
 15 converter questions of Mr. Jackson.
 16 BY MR. KLEPP:
 17 Q You were talking a little bit about this
 18 difference between the COC application engine
 19 emissions data vehicle and the test here in CX110.
 20 Can you talk about the difference between a three-way
 21 catalyst and a palladium-only catalyst and a concern,
 22 if any, there?
 23 A Sure. So, again the concern would be, as
 24 alluded to earlier, a catalyst with rhodium, platinum
 25 and palladium, and we would assume if the -- based on

1 the loading and the ratios that it has the ability to
 2 become compliant throughout its full useful life. A
 3 catalyst that is palladium only we would initially
 4 have some concerns about the durability -- I'm sorry,
 5 that was palladium only we would have concerns about
 6 its durability about its full useful life. A
 7 palladium-only catalyst could potentially have very
 8 similar results as a palladium, platinum, rhodium
 9 catalyst at low-hour test points. However, a
 10 palladium-only catalyst may be subject to poisoning at
 11 higher useful life, at higher engine hours, engine
 12 mileage.
 13 Q A certificate of conformity application
 14 containing a test emission result like -- or with
 15 CX110 as part of it what would you do with that
 16 application in terms of making sure that what you were
 17 certifying was meeting the regulatory requirements?
 18 MR. CHU: Yes, I'll object as being confused
 19 and vague. Furthermore, the use of the test that he's
 20 referring to, the CEE test, we had an agreement that
 21 we would not have the -- we would not call the expert
 22 to testify if they had no challenges to the emission
 23 test results.
 24 Now what we've been hearing this morning
 25 challenging the test results and as such we called off

1 that expert because we told him that we needed that
2 expert. Now a non-expert is challenging what he did
3 in the situation, and I believe that emissions was not
4 going to be an issue in terms of what we're doing in
5 this case here because there is virtually no emission
6 violation to support the case, plus this is what the
7 DOJ was talking about as well in their letter of what
8 this case was supposed to be about. It's about the
9 regulatory scheme.

10 So, it appears that this is not relevant to
11 the complaint and to the letter issued by the
12 Department of Justice.

13 JUDGE BIRO: Okay, Mr. Klepp.

14 MR. KLEPP: Thank you, Your Honor. What
15 we're talking about here with Mr. Jackson is the
16 program and potential harm. What we've agreed to
17 through courses of communication with counsel had to
18 do with our penalty calculation. For purposes of
19 penalty calculation, we modified for the Counts 1
20 through 8 from major to moderate. That's different.
21 We gave some benefit to these test results over there
22 for purposes of penalty calculation.

23 What is still an issue for penalty
24 calculation purposes is just what Mr. Jackson is
25 testifying to right now -- program harm. If things

1 are getting by that aren't up to the regulatory
2 requirements in terms of emissions test harm has
3 occurred and that's what I'm asking from his
4 testimony.

5 MR. CHU: May I respond, Your Honor?

6 JUDGE BIRO: I read the agreement in the
7 letters from DOJ and they say that you are not going
8 to seek any penalty based on actual emissions that go
9 above the standard. So, that is not an issue in this
10 proceeding. If it relates to program harm, that is
11 something that you are allowed to seek.

12 Is your objection, Mr. Chu, to continuing to
13 ask questions in regard to emissions that relate to
14 program harm or are you complaining that you need the
15 CEE witness to deal with the emissions issue?

16 MR. CHU: It appears if this Court allows
17 this testimony to come in then, yes, Your Honor.
18 They're talking about a test from an approved EPA
19 entity which the EPA suggested that they go to, and
20 now they're challenging it, and part of the test plan,
21 which this Court is very familiar with, was that they
22 would work with this low mileage test, low use, and
23 now we're continually --

24 JUDGE BIRO: Low hour, is that what we're
25 talking about?

1 MR. CHU: Right. It's a low usage, and so
2 that was the agreed test plan of which the evidence
3 will show my client spent over \$200,000 at their
4 request to have those things done with this approved
5 EPA contractor. So, now we're attacking this
6 contractor, we're attacking the test plan, and I'm not
7 sure if that's appropriate or relevant for the purpose
8 of the complaint and subject to the DOJ's letter.

9 JUDGE BIRO: Okay. I don't know what you
10 agreed to, but I think to the extent that it's
11 relevant to harm to the program it's going to come in.
12 If you feel you need to call and respond CEE you can
13 call them in your case or on rebuttal. If you can't
14 do that now because you somehow relied in an agreement
15 with the Agency, I will give you a chance to call them
16 at a later date.

17 MR. CHU: Thank you, Your Honor.

18 MR. KLEPP: Thank you, Your Honor.

19 JUDGE BIRO: Please proceed.

20 MR. KLEPP: May I please have the last
21 question read back?

22 (Whereupon, the record was played back by
23 the court reporter.)

24 BY MR. KLEPP:
25 Q Should I repeat it?

1 A So, if you're asking if we received this as
2 the only test data for a product would we issue
3 another test -- might issue a test order to evaluate
4 the product ourselves.

5 Q I would like to then switch to where I was
6 before, a carburetor as part of an engine design
7 specification. What is its function?

8 A The carburetor introduces the fuel-air
9 mixture into the combustion chamber.

10 Q What is an adjustable parameter?

11 A An adjustable parameter is an element of
12 design, either mechanical or otherwise, that impacts
13 the performance of the product such that the emissions
14 may vary, depending on how that parameter is adjusted.

15 Q Is that something, a term -- adjustable
16 parameter -- that your regulatory program utilizes?

17 A Yes.

18 Q And in what sense?

19 A We identify for manufacturers the fact that
20 they need to identify in their application all
21 adjustable parameters and the adjustable range within
22 which those parameters may be moderated, modified, and
23 so we have communicated to the industry that the
24 agency has the ability, and the regulations
25 communicate the ability to test anywhere within the

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1 adjustable range.

2 Q And why do you need them to test within the

3 adjustable range?

4 A Because we want to be sure that given the

5 emissions impact associated with how that particular

6 parameter is adjusted that they are appropriately

7 characterized in the worst case submissions.

8 Q May a carburetor have an adjustable

9 parameter?

10 A Yes.

11 Q How would that work?

12 A So, things like the jetting or the fuel-air

13 mixture screws, idle speed set screws could be

14 consider adjustable parameters, depending on the range

15 in which they set them.

16 Q And if a manufacturer submits a certificate

17 of conformity application failing to identify an

18 adjustable parameter carburetor what's the potential

19 harm to the program in that situation?

20 A We would not necessarily be aware that there

21 was the potential for emissions to be a lot higher

22 than how they were characterized in the application if

23 in fact it's adjustable outside the range for which

24 the Agency is aware.

25 Q If that were to occur with respect to a

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1 highway motorcycle what part of the regulation, what

2 provisions under the regulations would be violated?

3 A So, if a manufacturer has an adjustable

4 parameter that has not been identified, that in and of

5 itself is a violation of 40 C.F.R. Part 86. In

6 addition to that if that adjustable parameter is such

7 that it is only activated outside of the test cycle,

8 those kinds of adjustable parameters could be

9 considered defeat devices.

10 Q If it were an ATV certificate of conformity

11 application what provisions of the regulations would

12 be affected?

13 A 40 C.F.R. 1051.

14 Q In the case here, the matter before the

15 Court, your knowledge of the violations, on the

16 highway motorcycle vehicles that were violated what

17 part of the regulations were affected?

18 A For this case, as I understand it, the

19 catalyst did not match the catalyst as described, so

20 Part 86 would be applicable for the highway

21 motorcycles.

22 Q With respect to the ATVs and off-highway

23 motorcycles involved in this matter before the Court,

24 what part of the regulations are violated?

25 A Part 1051.

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1 MR. CHU: Your Honor, hearsay. They're

2 trying to prove the truth of the matters asserted.

3 This is not the best evidence as to any inaccuracies

4 or missing or inappropriate catalyst and this

5 testimony is being used to support test results of

6 which are not in evidence and which have not been

7 proven up, have not been qualified by a competent

8 expert.

9 JUDGE BIRO: Overruled. Go ahead.

10 MR. KLEPP: Thank you.

11 BY MR. KLEPP:

12 Q Switching topics, Mr. Jackson. In the year

13 of 2017 did you have an opportunity to conduct a

14 selective enforcement audit with respect to Taotao

15 USA?

16 A Yes.

17 Q And did you also conduct a selective

18 enforcement audit with respect to Taotao Group, Inc.?

19 A Yes.

20 Q And JCXI, as well?

21 A That was the manufacturer, the OEM

22 identified, yes.

23 Q Where did that selective enforcement audit

24 take place?

25 A So, the selection occurred in Lishui in

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1 China at their production facility.

2 Q Who attended from your Gasoline Engine

3 Compliance Center at that selective enforcement audit?

4 A Cleophas Jackson, Emily Chen, Mike Delduca.

5 Q And when you were at the Lishui location who

6 did you meet with with regard to Taotao USA?

7 A We met with Mr. David Garibyan, Mr. Matao

8 Cao or Terry Cao, and Mr. Yuejin Cao, as well as Mr.

9 Terry Cao's mother, and then other staff members. I

10 don't have all of their names, engineering staff and

11 others.

12 Q I'd like to ask this question. When you

13 were at that location who did you meet with with

14 respect to the Taotao Group?

15 A Those same names I just mentioned.

16 Q Did your selective enforcement audit have a

17 protocol that you were seeking to implement?

18 A So, consistent with the regulatory

19 provisions we were -- 40 C.F.R. 1051 and C.F.R. 1068

20 we were selecting products for testing, so we selected

21 products from the production line. We provided serial

22 numbers to the manufacturer, and we selected based on

23 that.

24 MR. CHU: I'll object to the relevance.

25 We're talking about something in 2017. This complaint

1 was filed in 2015, I believe, and, you know, we talked
2 about adjustable parameters and harm, and again my
3 objection was that it's -- the issue here is harm to
4 the program, and not harm as to emissions. I want to
5 make that clear. And so now we've gone, I believe,
6 beyond by asking about a sub-audit in 2017 of entities
7 in China.

8 JUDGE BIRO: Okay. Do you have a response?

9 MR. KLEPP: I think I'm on firm ground, Your
10 Honor. It talks about the ability to pay issue. It
11 also talks about the level of sophistication in terms
12 of compliance with the regulations and potential
13 program harm in that respect.

14 JUDGE BIRO: So, an audit conducted in 2017
15 regarding their manufacturing facilities is going to
16 what exactly? It's going to --

17 MR. KLEPP: I think it --

18 JUDGE BIRO: -- program harm?

19 MR. KLEPP: It goes to program harm because
20 he had an opportunity during that selective
21 enforcement audit to -- I believe I'd be jumping the
22 gun a little bit, but what I believe Mr. Jackson is
23 going to say -- my offer of proof is when asked he had
24 an opportunity to observe conditions on the factory
25 floor. So, I think that goes to robustness in terms

1 of --

2 JUDGE BIRO: That were the same as in 2012?

3 MR. KLEPP: I would -- no. Well, the
4 violations here span from 2012 through 2016. So,
5 we're a year later than when it happened, and so
6 that's one aspect.

7 But the other aspect is I wanted to get to a
8 point where Mr. Jackson's testimony would be about the
9 individuals and representations made to him about the
10 related companies and how those representations lead
11 to something in the line of the case law of In Re:
12 New Waterbury related companies for ability to pay.

13 JUDGE BIRO: Okay. I'll overrule. Go
14 ahead.

15 BY MR. KLEPP:

16 Q I'm going to seek just a clarification that
17 the audit took place in 2017, is that correct, Mr.
18 Jackson?

19 A Yes.

20 MR. KLEPP: Give me one second.

21 JUDGE BIRO: Yes.

22 (Pause.)

23 BY MR. KLEPP:

24 Q Approximately how long did you spend in
25 Lishui conducting the selective enforcement audit?

1 A It was a full day audit, and we left late in
2 the evening, maybe about eight -- 8:30.

3 Q Your purpose in going there was to select
4 vehicles representing engine families?

5 MR. CHU: Objection. Leading, suggestive,
6 Your Honor.

7 JUDGE BIRO: It's transitional.

8 MR. KLEPP: I'm sorry?

9 JUDGE BIRO: Overruled. Go ahead.

10 MR. KLEPP: Thank you.

11 THE WITNESS: Yes, we were going to select
12 families for testing.

13 BY MR. KLEPP:

14 Q How many engine families did you identify?

15 A There were three engine families selected,
16 eight vehicles each initially.

17 MR. CHU: Your Honor, I'm going to object.

18 I don't think I've seen these selective audit reports,
19 one; which company they were at; which manufacturer;
20 these types of things. I can't defend and the witness
21 is talking about hearsay so I haven't seen these
22 audits.

23 JUDGE BIRO: That would have been in
24 discovery. If you asked for it you would have gotten
25 it. I really -- I don't see what the argument could

1 be now, so I'm going to overrule.

2 MR. KLEPP: May I proceed, Your Honor?

3 BY MR. KLEPP:

4 Q Mr. Jackson, I would ask for you to please
5 refer to CX191 in your books, Exhibit CX191.

6 (Pause.)

7 JUDGE BIRO: Mr. Klepp.

8 MR. KLEPP: Yes, you're there. Thank you.

9 BY MR. KLEPP:

10 Q Mr. Jackson, do you recognize this document?

11 A Yes.

12 Q And what do you recognize it to be?

13 A The presentation, the slides presented to
14 EPA during our visit in Lishui, China.

15 Q Presented to EPA by whom?

16 A By the staff of Taotao, which included an
17 engineer. She was identified as an engineer who
18 worked for the company as well as Mr. Matao Cao, Mr.
19 David Garibyan, Mr. Yuejin Cao who spoke during the
20 course of this presentation.

21 Q I would ask --

22 MR. CHU: Your Honor, I'm going to object to
23 hearsay. I'm going to object to the use of this
24 particular document. It has not been properly
25 authenticated, and either the document speaks for

1 itself if it's being accepted, and I would object to
 2 this witness testifying about presentations as to this
 3 document and not identifying clearly who that
 4 particular person was communicating with him on behalf
 5 of -- it's non-responsive, it's vague in terms of --
 6 it's not a vague question. The response is non-
 7 responsive because it's vague in terms of the answer.
 8 JUDGE BIRO: Okay. Hearsay is admissible.
 9 He's trying to lay a foundation for the document.
 10 He's asking the basic questions. Overruled.
 11 MR. KLEPP: Thank you, Your Honor.
 12 BY MR. KLEPP:
 13 Q Mr. Jackson, in the course of your
 14 conducting a selective enforcement audit, Gasoline
 15 Engine Compliance Center, is it the ordinary course of
 16 business to collect information during those audit
 17 procedures?
 18 A Yes.
 19 Q Is this document that you're looking at,
 20 CX191, the type of information that you would usually
 21 receive in the course of a selective enforcement
 22 audit?
 23 A Yes.
 24 Q Is it the ordinary course of Gasoline Engine
 25 Compliance Center's business to maintain records of

1 documents received during a selective enforcement
 2 audit?
 3 A Yes.
 4 Q Was this document, CX-191, kept as a record
 5 in the ordinary course of how the Gasoline Engine
 6 Compliance Center maintains its records?
 7 A Yes.
 8 MR. KLEPP: Your Honor, I would offer CX191
 9 as evidence at this time.
 10 MR. CHU: We object. The proper foundation
 11 has not been laid. The foundation as to whether or
 12 not this document was prepared at or about the time by
 13 someone with knowledge was not established. As such,
 14 it has not met the predicate to offer this as a
 15 business record as they have attempted to do. This is
 16 not a document that was created ordinary in the course
 17 of the EPA.
 18 JUDGE BIRO: I don't know whether it was
 19 Taotao's business record, but it was an EPA business
 20 record in the sense that he got it during his audit.
 21 It became an EPA business record once they presented
 22 it to him.
 23 MR. CHU: And there's a proper way to
 24 authenticate -- lay the foundation in that situation.
 25 We're objecting that a foundation has not been laid

1 for that.
 2 JUDGE BIRO: Mr. Jackson, are you familiar
 3 with this exhibit?
 4 THE WITNESS: Yes.
 5 JUDGE BIRO: Have you looked through it? Is
 6 it exactly what you received on the day that you did
 7 your inspection?
 8 THE WITNESS: Yes. It does not appear to be
 9 different from what we saw when we were there in
 10 Lishui.
 11 MR. CHU: I'm going to object. It's not
 12 responsive to the question. Was this the exact copy?
 13 He referred to something about similar to the
 14 presentation.
 15 JUDGE BIRO: Is this the presentation that
 16 you received?
 17 THE WITNESS: Yes.
 18 JUDGE BIRO: Yes.
 19 THE WITNESS: Yes.
 20 JUDGE BIRO: And does this relate to
 21 Taotao's motorcycles, cars production at its
 22 facilities?
 23 THE WITNESS: Yes, this relates to Taotao's
 24 production at their facility.
 25 JUDGE BIRO: Okay. Admitted.

1 MR. KLEPP: Thank you, Your Honor.
 2 (The document referred to was
 3 marked for identification as
 4 Complainant's Exhibit No.
 5 191, and was received in
 6 evidence.)
 7 MR. CHU: For the record I wanted to make it
 8 clear that we've got Taotao USA, which is one of the
 9 Respondents, an American U.S. company; Taotao Group;
 10 and then this other manufacturer, and I'm just
 11 objecting that we're lumping the individual Respondent
 12 companies together.
 13 So, when asked is this something that Taotao
 14 gave you, how is that properly included as to all the
 15 Respondents without the proper foundation is what I'm
 16 objecting to, Your Honor, the way that it's being
 17 referenced.
 18 JUDGE BIRO: Well, how can we differentiate
 19 when all the companies met with him together --
 20 MR. CHU: And that's --
 21 JUDGE BIRO: -- at the plant?
 22 MR. CHU: And this is something on my cross-
 23 examination we will get into, but the idea of not
 24 having this witness identify that a representative is
 25 in a representative capacity in each entity and each

1 of the other entities because the evidence will show
2 that he met other entities there. They're not being
3 clear and responsive to the questions and they're just
4 leaving it as one name.

5 JUDGE BIRO: Okay, Mr. Chu, on cross-
6 examination you can clarify all those issues.
7 Overruled.

8 MR. KLEPP: Thank you, Your Honor.

9 BY MR. KLEPP:

10 Q So, on the cover of this page document do
11 you see a reference to any of the Taotao entities as
12 you understand them?

13 A On the cover page?

14 Q Yes.

15 A Yes, there's a reference to Taotao Group
16 Company, Limited.

17 Q And then internally will you please look at
18 the very next page, EPA 0002520? Do you also see a
19 reference to any of the Taotao entities as you
20 understand them?

21 A Again there's a reference to Taotao Group
22 Company, Limited.

23 Q And going down two pages further I'd ask for
24 you to please look at page 002522. I'd ask for you to
25 please describe what's on that page and your

1 understanding.

2 A The page is titled "Taotao China and Taotao
3 USA", and seems to provide some description, flow
4 chart description of the structure of Taotao Group
5 Company and a relationship with other business
6 entities, Junyun County Xiangyuan Industry Company,
7 Limited, and Taotao USA.

8 Q During your time meeting with
9 representatives of Taotao USA, Taotao Group and JCXI
10 in Lishui did someone speak for --

11 MR. CHU: Objection. Assuming facts not in
12 evidence.

13 JUDGE BIRO: Overruled.

14 BY MR. KLEPP:

15 Q Did someone speak from this page as part of
16 that presentation that you described?

17 A Yes.

18 Q And when that presentation was being given
19 who was -- can you describe in a picture where you
20 were, who was with you, who was with folks related to
21 Taotao Group?

22 A We were in a conference room and again there
23 was an engineering staff person there, another
24 engineering staff present in the meeting, as well as
25 Mr. Matao Cao, Mr. David Garibyan, Mr. Yuejin Cao and

1 Mr. Matao Cao's -- Yuejin Cao and Mr. Matao Cao's
2 mother were present.

3 Q And looking at page 002522, who was speaking
4 while this page was in front of you, if you remember?

5 A Sure. So, it was a combination of
6 individuals speaking and describing the structure of
7 the company.

8 Q Who were those individuals?

9 A Initially it was the engineer who was giving
10 the presentation, and then Mr. Matao Cao and Mr.
11 Yuejin Cao spoke.

12 Q What was the sum and substance of what they
13 were saying to you at that time?

14 A They were saying that these companies were
15 all related and that Mr. Yuejin Cao had the
16 responsibility for the overall company, but that Mr.
17 Matao Cao had specific responsibility for the U.S.
18 entities.

19 Q From the conference room where did you go
20 next?

21 A So, we then proceeded to the production
22 floor.

23 Q And production floor for what purpose?

24 A To begin the selection and audit process.

25 Q And can you say what happened next in terms

1 of audit selection, vehicle selection, audit process?

2 A Sure. We provided a series of serial
3 numbers and during the initial course of the
4 presentation I believe they had some of those serial
5 numbers pulled out of storage so that we could go and
6 pick them from the boxes. Some of them had already
7 been boxed.

8 And then subsequent to our identification of
9 those products that had been previously pulled out we
10 removed them from the boxes and marked and identified
11 components so that we could be sure that nothing was
12 changed prior to testing, and then subsequently later
13 in the day we deleted two of the vehicles that had
14 previously been selected and added two additional
15 vehicles from the production line directly.

16 Q In that factory facility was there any
17 observations made about production lines and vehicles
18 and manufacturers of those vehicles and importers of
19 those vehicles?

20 MR. CHU: Permission to voir dire. We've
21 got two manufacturers and we're talking in
22 generalities. I would ask that we at least have the
23 witness identify, if he knows, which one of the
24 Respondents' location he was at when he did what he's
25 testifying to. It's unfair to --

1 JUDGE BIRO: I'll let you clarify on cross-
 2 examination.
 3 MR. CHU: Thank you, Your Honor.
 4 JUDGE BIRO: Go ahead, Mr. Jackson.
 5 THE WITNESS: So, again, we issued test
 6 orders for Taotao USA and Tao Motors, and so we went
 7 to the production floor where those engine families
 8 that we identified were being produced, and made the
 9 selection based on that.
 10 I don't speak or read Mandarin, or I think
 11 there's a local dialect in that area, I don't speak
 12 the local dialect either, and so I don't know if there
 13 were some other distinction identified on the
 14 production floor, but from what we could tell they
 15 were simply production lines for which these engine
 16 families were being produced, from which these engine
 17 families were being produced.
 18 BY MR. KLEPP:
 19 Q Tracking back to what you described earlier
 20 in the conference room and the situation there, did
 21 anyone from the Respondents say anything to you
 22 concerning business plans and an initial public
 23 offering?
 24 A They did. They indicated that they were
 25 planning to transition more to the use of Tao Motors

1 in the United States and that they planned to build
 2 new facilities there in Lishui. They actually talked
 3 about the fact they -- they were pretty proud of the
 4 fact they had a new facility being built there in
 5 Lishui, and later in the day they took the opportunity
 6 to show us where that new facility was being built.
 7 Q Mr. Jackson, please proceed. You described
 8 an opportunity to observe a new facility. Can you
 9 talk about that?
 10 A Sure. So, what was communicated to us was
 11 that the facility would be bigger than their current
 12 production facility, and at least visibly, based on
 13 what we could see from what appeared to be the
 14 beginning of the foundation, it appeared like it would
 15 be bigger than their current facility.
 16 Q Who was with you during those observations?
 17 A Mr. Matao or Terry Cao, Mr. Yuejin Cao, and
 18 their mother, as well as Emily Chen and Mike Delduca.
 19 MR. KLEPP: Your Honor, I'd like to --
 20 THE WITNESS: I'm sorry. As well as our
 21 driver.
 22 BY MR. KLEPP:
 23 Q I'm sorry, Mr. Jackson.
 24 A As well as the driver. I'm sorry. The
 25 driver, as well as the driver that had been provided

1 to us.
 2 MR. KLEPP: Your Honor, I am practically
 3 complete with questions. I would like to track back
 4 to CX110, the emissions test there, and offer it at
 5 this time as evidence.
 6 JUDGE BIRO: Okay.
 7 MR. KLEPP: Did I say that right, 110.
 8 JUDGE BIRO: Okay. Complainant's Exhibit
 9 110, it's the one we argued about the dates. Is there
 10 an objection?
 11 MR. CHU: I stated in my earlier objection
 12 about the use of this test, that they are attempting
 13 to discredit this approved CEE company that's approved
 14 and suggested by the EPA. So, for those purposes we
 15 would object to its admission.
 16 JUDGE BIRO: Okay.
 17 MR. KLEPP: That it impeach their own
 18 contractor.
 19 JUDGE BIRO: Okay. We're going to overrule
 20 the objection. We're going to admit the exhibit,
 21 Complainant's Exhibit 110.
 22 //
 23 //
 24
 25 (The document referred to was

1 marked for identification as
 2 Complainant's Exhibit No.
 3 110, and was received in
 4 evidence.)
 5 MR. KLEPP: Thank you, Your Honor.
 6 To follow on that point there are a number
 7 of what I would represent as the same emissions tests
 8 conducted by the same lab facility, CEE, and they are
 9 in the prehearing exchange as documents CX099 through
 10 CX-122, and I would offer all of those as evidence on
 11 the same basis.
 12 JUDGE BIRO: You have the same objection,
 13 Mr. Chu?
 14 MR. CHU: Your Honor, I don't know what he's
 15 using those other tests for. I understand why he
 16 attached this one because he pointed out. So, this is
 17 not supposed to be an admission type of inquiry is my
 18 understanding. It's about the regulatory scheme and
 19 the harm to the regulatory scheme.
 20 JUDGE BIRO: To the regulatory program.
 21 MR. CHU: Right.
 22 JUDGE BIRO: Right, I understand.
 23 MR. CHU: And so I don't believe they're
 24 relevant in terms of describing what the Court has to
 25 decide in terms of amounts of fines under these

1 circumstances. It talks about the regulatory scheme.
2 I want to steer away from the DOJ issues and
3 the more we have these emissions tests coming in it
4 appears we're pushing in that direction that they've
5 said we shouldn't be. So, that's what I'm saying.

6 JUDGE BIRO: Doesn't it go to the gravity of
7 the violation, these tests?

8 MR. CHU: Then I believe we've stepped over
9 the line if we go there.

10 JUDGE BIRO: Okay, what do you think, Mr.
11 Klepp?

12 MR. KLEPP: Your Honor, on the same point
13 that I made earlier that they all in some aspect
14 represent -- they represent two things in this case.
15 On the one hand it's how EPA calculated its gravity
16 with respect to -- base gravity, whether we were
17 minor, moderate, or major, and for the counts that
18 they apply to, Counts 1 through 8, EPA in its
19 discretion made a determination moderate.

20 Why? Because these low-hour tests gave us
21 something. So, Ms. Isin will testify about what was
22 going on in her calculation of the penalty in that
23 respect. That's over there.

24 But what Mr. Jackson is testifying to all
25 has to do with programmatic harm associated with

1 violations basically.

2 And so they want to talk about potential
3 harm. Well, you can't talk about potential harm if
4 there are no emission violations, and they've not been
5 allowed to allege emission violations because if they
6 do we've got to go to the District Court to address
7 those issues.

8 So, I'm at a little loss as to why we're
9 being pulled in that direction, and now he wants these
10 test results to come in and make the argument that
11 there is a potential harm when in fact they authored
12 this particular test plan or assisted in it, and as
13 such they should not be able to argue that,
14 particularly in light of the fact that the emissions
15 testing that they wanted done show that there was no
16 harm in this situation.

17 JUDGE BIRO: I understand the point that
18 you're making and I agree that we are limited in to
19 the types of damages that can be awarded here. But
20 that seems to me a point to be made in the post-
21 hearing brief, to argue what are the limits to the
22 damages that can be awarded, what can be the basis for
23 the award of damages and what are the limits.

24 But as to these exhibits I don't see that
25 they're not relevant or material in some way to the

1 getting documents such as these test reports.

2 Why do I say that? Because throughout the
3 papers and the aggressive litigation that we've had
4 back and forth it's been, I believe, Respondents'
5 position that these tests are proof that Mr. Jackson's
6 office would certify. They even put an addendum in.
7 It's the last two exhibits in their RX prehearing
8 exchange that, in essence, the gist of it is you
9 should after the fact certify the vehicles in this
10 case.

11 Why? Because we have the emission -- there
12 were no excess emissions, and I'm trying to say they
13 don't -- they don't pass the test. They don't pass
14 the certification test.

15 MR. CHU: May I respond, Your Honor?

16 JUDGE BIRO: Yes.

17 MR. CHU: Counsel wants all the CEE tests.
18 There was a test plan and to test these at low mileage
19 and low use. That's what's involved in this
20 complaint. What they want to do is use other test
21 results as well and then step us over and pushing
22 beyond that they were after emissions violations is
23 where this is taking us, and, again, it's always been
24 my understanding that if you don't have the -- this is
25 evidence, according to their test, of no emission

1 issue of determining an appropriate penalty in this
2 case.

3 MR. CHU: All I'm saying is that the tests
4 that they're wanting to use are basically all tests
5 that were performed. What I'm saying, if we're going
6 to admit any test that they only be the ones that were
7 the focus of this test plan at CEE with their
8 suggested so-called testing agency that was approved
9 by the EPA and was recommended by Ms. Isin.

10 I just want to stick with what the test plan
11 had. It's like this. If they wanted it tested over
12 the useful life they could have made that request.
13 These would be vehicles that had not been used, okay,
14 and that wasn't requested. They agreed to this test
15 plan and now the argument is that testing plan which
16 my client will show spent over \$200,000 to do because
17 they asked that the --

18 JUDGE BIRO: But aren't these the tests that
19 were done according to that plan?

20 MR. CHU: No, not all -- no, no, no. That's
21 what I'm saying. He's offering and asking for
22 exhibits and exhibit numbers, what is it? RX9 - RX10
23 are not part of this.

24 MR. KLEPP: Your Honor, to be clear I didn't
25 mention RX9 and RX10, and that's not what I was

1 referring to.
 2 JUDGE BIRO: Aren't we talking about
 3 Complainant's Exhibits 99 through 122?
 4 MR. KLEPP: Yes, Your Honor.
 5 MR. CHU: Again, Your Honor, I apologize.
 6 The way that they're grouped it's hard for me to focus
 7 on that as counsel was having difficulty as well. So,
 8 if he's not talking about RX9 and 10 --
 9 JUDGE BIRO: No. He's just talking about
 10 Exhibits 99 through 122.
 11 MR. CHU: Those that are covered in the
 12 plan.
 13 JUDGE BIRO: Yes.
 14 MR. CHU: Okay. Then I'll step back a
 15 little bit on the objection, but I'll stand on the
 16 rest of it.
 17 JUDGE BIRO: Okay. Well, then we're going
 18 to overrule and admit Complainant's Exhibits 99 through
 19 122.
 20 //
 21 //
 22 //
 23 //
 24 //
 25

1 (The documents referred to
 2 were marked for
 3 identification as
 4 Complainant's Exhibit Nos. 99
 5 through 109, inclusive, 111
 6 through 122, inclusive, and
 7 were received in evidence.)
 8 MR. KLEPP: Thank you, Your Honor. I
 9 believe I have no further questions. May I just take
 10 a moment on the side over here.
 11 JUDGE BIRO: Of course, but I was thinking
 12 that we could break for lunch. You could discuss if
 13 you have any further questions, and then we could
 14 either proceed with those questions or proceed with
 15 Mr. Chu's cross-examination. Would that be
 16 acceptable?
 17 MR. CHU: I'm sorry, I didn't catch. We're
 18 going to break for lunch and we're going to begin the
 19 cross-examination?
 20 JUDGE BIRO: Unless it turns out that there
 21 are a few extra questions that you want to ask.
 22 MR. CHU: Right. Okay.
 23 JUDGE BIRO: Would that be acceptable?
 24 MR. CHU: That's acceptable to me, Your
 25 Honor.

1 MR. KLEPP: Yes, Your Honor.
 2 JUDGE BIRO: Okay. So, Mr. Jackson, please
 3 don't discuss your testimony while we're on break
 4 because Mr. Chu on cross is entitled to have you as if
 5 we continued on just like now, okay?
 6 THE WITNESS: Yes, Your Honor.
 7 MR. CHU: That also include the attorneys as
 8 far as discussing?
 9 JUDGE BIRO: Right, but I assume that Mr.
 10 Jackson, the attorneys know what the rules are.
 11 MR. CHU: Yes, Your Honor.
 12 JUDGE BIRO: Tell Mr. Jackson because he may
 13 not know.
 14 MR. CHU: Yes, Your Honor, I understand.
 15 Thank you.
 16 JUDGE BIRO: We'll stand in recess. How
 17 long do you think you'll need?
 18 MR. CHU: For lunch?
 19 JUDGE BIRO: Yes.
 20 MR. CHU: Oh, an hour, Your Honor.
 21 JUDGE BIRO: Okay, so we'll stand in recess
 22 until 1:15.
 23 MR. CHU: That would be fine.
 24 JUDGE BIRO: Okay.
 25 MR. KLEPP: Thank you, Your Honor.

1 (Whereupon, at 12:15 p.m., the hearing in
 2 the above-entitled matter was recessed, to resume at
 3 1:15 p.m. this same day, Tuesday, October 17, 2017.)
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1 AFTERNOON SESSION
 2 (1:16 p.m.)
 3 JUDGE BIRO: Okay, Mr. Klepp, do you have
 4 any additional questions on direct?
 5 MR. KLEPP: Not at this time, Your Honor.
 6 We would rest.
 7 JUDGE BIRO: Okay. Do you wish to conduct
 8 cross-examination?
 9 MR. CHU: Yes, Your Honor.
 10 JUDGE BIRO: Okay. Mr. Jackson.
 11 Whereupon,
 12 CLEOPHAS CAWTHORN JACKSON, JR.
 13 having been previously duly sworn, was
 14 recalled as a witness herein and was examined and
 15 testified further as follows:
 16 MR. CHU: Your Honor, I don't plan to go
 17 into any CBI at this -- right now, so if others wanted
 18 to come and watch I have no problem with that.
 19 JUDGE BIRO: Okay. Is that going to be true
 20 for your whole cross?
 21 MR. CHU: Right.
 22 JUDGE BIRO: Okay. All right, so maybe you
 23 can take the signs back off. Thank you, Mr. Chu.
 24 MR. CHU: Thank you, Your Honor.
 25 We had a very nice walk over to the corner

1 bakery. Took a cab back and got to see the Trump
 2 Hotel. My son asked me yesterday. He said, have you
 3 seen President Trump yet? Have you been to the White
 4 House? I said he's not ready for me.
 5 JUDGE BIRO: Well, tomorrow if you want you
 6 can try the museum across the street where we went
 7 today and they have a cafeteria right in there. It's
 8 a little closer.
 9 MR. CHU: So, someone said walk that way,
 10 and we walked that way, you know.
 11 JUDGE BIRO: Right along this little strip
 12 of the mall there's not much.
 13 MR. CHU: We learned a lesson.
 14 JUDGE BIRO: Real estate is too valuable.
 15 MR. CHU: We learned a lesson.
 16 JUDGE BIRO: The Ronald Reagan Building
 17 right behind us have a large food court right on the
 18 cafeteria level.
 19 MR. CHU: Thank you.
 20 JUDGE BIRO: Sorry. I'm so sorry. I should
 21 have mentioned that before.
 22 MR. CHU: No. I asked for directions, you
 23 know. Thank you. May it please the Court.
 24 //
 25 //

1 CROSS-EXAMINATION
 2 BY MR. CHU:
 3 Q Hello, Mr. Jackson.
 4 A Hell, Mr. Chu.
 5 Q It's been awhile, right?
 6 A Sure, it's been a few weeks.
 7 Q Do you remember promising me something at
 8 the deposition that you were going to check out?
 9 A Do I remember promising you something
 10 that -- what was the last part?
 11 Q You know, remember we examined the
 12 certificate of conformity form?
 13 A Okay. I'll take your word for it. I'm not
 14 sure what you're referring to specifically, but okay.
 15 Q Do you remember me showing you the C.F.R.s
 16 from the earlier years?
 17 A I remember you showing me a printout with
 18 some documents on it that had the regulations, what
 19 appeared to be the regulations listed.
 20 Q The reason I asked you these questions about
 21 the C.F.R. is because you testified under oath that
 22 part of what you do is to be very knowledgeable, and I
 23 use the word "very", with the C.F.R.s that are
 24 relevant to what you do, is that correct?
 25 A I believe I testified to the fact that we

1 use the C.F.R.s because those are the regulations that
 2 govern what we do.
 3 Q So, when I say "very" am I mischaracterizing
 4 your familiarity with the C.F.R.s and the statutes?
 5 A No, I'm familiar with the C.F.R. but I
 6 choose to read the C.F.R. versus quoting a lot from
 7 memory. I choose to read what's there.
 8 Q Okay. You talked a bit about design. Do
 9 you remember that?
 10 A I do remember the discussion about design,
 11 yes.
 12 Q Now, I take it in your mechanical
 13 engineering studies you didn't actually do design
 14 work, did you?
 15 A I did have course work in mechanical
 16 engineering design, yes.
 17 Q So, is that the same as like focusing on
 18 design work?
 19 A Is having a course in mechanical engineering
 20 design the same as focusing on design work? I'm not
 21 sure I understand the question.
 22 Q Well, just because a person has a course,
 23 basic chemistry or a class course in design work
 24 doesn't really make that person a chemist nor does it
 25 make that person a designer, a mechanical engineering

1 designer. Would you agree with that?

2 A I think that's an accurate statement.

3 Q Okay. You ever heard the term "Jack of all

4 trades"?

5 A Yes, I have heard that term.

6 Q And so someone who has a little knowledge

7 sometimes can be dangerous, would you agree?

8 A I would have to understand the context.

9 Q Okay. We talked initially during the voir

10 dire about nitrates.

11 A Yes.

12 Q Okay. And you do understand that NO_x is not

13 really how you describe N-O-X representing a number.

14 Do you know that?

15 A NO_x is not how we described that?

16 Q Right. N-O.

17 A NO_x is the way we've characterized NO₂.

18 Q Right. But in reality the N-O with the

19 small x on the bottom of the O represents the number

20 of oxygens, does it not?

21 A Yes.

22 Q So, when you describe that as NO_x that's not

23 really a true and accurate depiction or explanation of

24 what N-O little x on the bottom means. Would you

25 agree?

1 A No, I wouldn't agree. NO_x is a reference,

2 again, to N-O and N-O-2.

3 Q And that's just something that's understood

4 at the Agency, correct?

5 A It's been promulgated in the standards, so

6 the regulations identify it as such.

7 Q Right, but it's described as N-O little x,

8 right?

9 A It's described as N-O subscript x, yes.

10 Q Right. And it's just that some people have

11 adopted the reading of that, or the spelling of it

12 just call it NO_x, right?

13 A I would assume so.

14 Q Is that where you got it from?

15 A So, again, when we speak N-O subscript x, we

16 say NO_x for shorthand.

17 Q I see. Okay. And that's something that you

18 were taught in your undergraduate studies?

19 A Not in my undergraduate studies, no.

20 Q It was something you picked up with the EPA,

21 correct?

22 A With EPA and in the combustion analysis

23 class in my master's program.

24 Q Okay. When you talk of this combustion

25 analysis class are you referring to the same one when

1 you got a little exposure to catalysts?

2 A I did have exposure to catalysts there, yes.

3 Q So, it's yes that it was when you got a

4 little exposure to catalysts, right?

5 A I received exposure in that class, yes.

6 Q And so who is, in your department, that

7 performs technical certifications related to

8 catalysts? Who is your catalyst expert? Do you have

9 a name of a person?

10 A So, we certify engines and vehicles. We

11 don't certify catalysts.

12 Q Sir, who is your catalyst expert in your

13 department?

14 A I don't know if we have someone we would

15 call a catalyst expert. We have engineers who

16 understand how the products work.

17 Q Such as yourself.

18 A I think several people understand how the

19 products work. I would think I have an understanding

20 of how the products work.

21 Q But earlier I believe you don't really

22 understand the process in how these catalysts are

23 manufactured. Is that accurate?

24 A I think what I said was I've never

25 participated or observed the manufacturing process.

1 That's what I had reference to.

2 Q I'm sorry.

3 A I can't -- I can't speak to the

4 manufacturing process beyond I know that the precious

5 metals are added to the wash coat, and the wash coat

6 is added to the substrate.

7 Q And just so every --

8 A I don't know the machinery if that's what

9 you're asking me. I don't know the machinery as such.

10 Q I understand, but just so that everyone

11 understands, the substrate -- can you describe the

12 substrate for us?

13 A Sure. So, typically the substrate is

14 composed of a ceramic material. It's a honeycomb

15 structure. What else would you like to know?

16 Q I would like to know if your department is

17 aware that the description --

18 A Oh, I'm sorry. There are also metal

19 substrates. Forgive me. There are also metal

20 substrates as well. Forgive me.

21 Q If I may finish. I just wanted to make sure

22 that the people in your department that are under you,

23 that you supervise, are aware that the substrates in

24 the catalysts that's associated with these small

25 engine family groups, okay, are more likely than not

1 made with metal.
 2 A They are more likely than not made with
 3 metal. Okay?
 4 Q They are more likely made with metal.
 5 A Okay. I think I mentioned earlier that
 6 there are ceramic and metal substrates.
 7 Q Do you know one way or the other?
 8 A I'm sorry. Do I know one way or the other?
 9 What's the question?
 10 Q Whether it's ceramic more or metals more in
 11 these types of vehicles.
 12 A There aren't a lot of metal substrates, but
 13 I don't have the exact percentages so I couldn't tell
 14 you which is more.
 15 Q Would that be a concern with your department
 16 about the so-called technology associated with
 17 catalysts?
 18 A If it's a metal or a ceramic substrate?
 19 Q Yes, sir.
 20 A Is that what you're asking? Not
 21 necessarily.
 22 Q So, would it be acceptable that the
 23 substrate material be interchangeable?
 24 A Well, we would want to be sure that however
 25 the catalyst is described it is described accurately.

1 So, if it's a different substrate material than what
 2 they've described for us that might be a concern.
 3 That might lead us to believe that there are other
 4 things that are different about the catalyst.
 5 Q And right now I'm going to just stay with
 6 the metal versus ceramic. So, can you tell us,
 7 please, does anyone in your department know anything
 8 about the difference between a ceramic substrate
 9 honeycomb, and a metal substrate honeycomb?
 10 A Yes.
 11 Q Who would that person have been?
 12 A I think we generally all have -- most of us
 13 have an understanding of the difference between metal
 14 and ceramic.
 15 Q So, who would have the most familiarity with
 16 the function of a ceramic versus a metal substrate?
 17 A I'm not sure I have the answer to that
 18 question.
 19 Q Okay. So, next so that we can get a
 20 picture, normally these catalysts are cylindrical,
 21 would you agree?
 22 A So, the brick, the metal brick, which can be
 23 rectangular or cylindrical, is fit inside of an oblong
 24 case, metal case.
 25 Q So, how is that different from cylindrical?

1 A I'm just describing what the brick could
 2 look like. So, yes.
 3 Q Something that's cylindrical --
 4 A It could be oblong, but yes.
 5 Q You've seen oblong cylindrical shapes, have
 6 you not?
 7 A Yes.
 8 Q Okay. Now, because we started this
 9 conversation about design, remember?
 10 A I do remember you broaching that, yes.
 11 Q And now you're speaking more words
 12 associated with design, correct?
 13 A I suppose so.
 14 Q Okay. And so you are also aware that
 15 catalysts can come in different shapes as well, not
 16 just cylindrical, right?
 17 A Yes.
 18 Q Okay. So, who in your department would know
 19 the effect of one shape versus another?
 20 A I think we would all take a look at that and
 21 I don't know if -- again, if we can identify a
 22 specific individual who would be called catalyst
 23 experts, so I'm not sure I can answer that question.
 24 Q Even though your department that you spot
 25 check in the performance of the responsibilities of

1 the people under you they really have very little
 2 knowledge about catalysts, would you agree?
 3 A No, I would not agree.
 4 Q So, you believe that everyone is as versed
 5 as you are with the concept of a catalyst. Would you
 6 agree?
 7 A So, I wouldn't be able to speak to if
 8 everyone is as versed as I am more or less. I think
 9 we all have good working knowledge of them.
 10 Q And that's what you've explained and given
 11 us, that you have some working knowledge of catalysts,
 12 correct?
 13 A That is correct.
 14 Q Okay. Now, sometimes I like to have
 15 examples that make the facts a little more clear,
 16 okay? You heard me use the word "pancake mix" when we
 17 talked about the wash coat. Remember?
 18 A Yes.
 19 Q Okay. Now, is it your understanding that
 20 this mesh of metal that's in these catalysts they
 21 create surfaces?
 22 A Yes.
 23 Q And is it your understanding, and if it's
 24 not just tell me, is it your understanding that the
 25 purposes of the honeycomb with the surface is to be

1 able to get some of this wash coat, which I call
2 pancake mix, so that it sticks and dries onto the
3 metal surfaces?

4 A Yes.

5 Q Okay. And you also testified that TWC
6 represented that there would be three precious metals,
7 is that correct?

8 A I testified that a TWC was a three-way
9 catalyst. Usually that means to maintain it has three
10 precious metals, but it refers to the three equations,
11 three reactions that are happening.

12 Q I'm a little bit confused by that. Okay.
13 Do you or do you not define TWC catalysts to mean that
14 there are at least three precious metals involved with
15 that catalyst?

16 A I define TWC to mean that the reactions, the
17 three reactions that are taking place in the catalyst,
18 three main reactions taking place in the catalyst.

19 Q So, it doesn't matter what the catalytic
20 material is within that catalyst. Is that what you're
21 saying?

22 A That is not what I'm saying.

23 Q So again back to my question. If it's three
24 does that three represent platinum, palladium and
25 rhodium? Yes or no.

1 A No, the three represents the reactions that
2 are taking place.

3 Q Okay. And so it doesn't have anything to do
4 with those precious metals. It could be 10 precious
5 metals, right?

6 A I didn't say it didn't have anything to do
7 with those precious metals. Those specific precious
8 metals bring about the reaction and the use of all
9 three ensure the consistency of the catalyst's
10 performance over time.

11 Q The only, and again if you know
12 chemistrywise, rhodium acts as a what? Oxidating
13 or --

14 A It's the reduction equation.

15 Q Reduction.

16 A Yes.

17 Q And what is it reducing and what's it
18 reducing?

19 A Again, the NO_x is being reduced to nitrogen
20 and provide some excess oxygen for the next reaction.

21 Q And that's rhodium, right?

22 A That's rhodium.

23 Q And that's the -- kind of the big thing that
24 the emission standards really want to hit, right?

25 A The emission standards are for NO_x, unburned

1 hydrocarbons and carbon monoxide.

2 Q Is there a differential in terms of which
3 one of those three that you just stated that they're
4 more concerned with?

5 A That who's more concerned with?

6 Q The EPA.

7 A We are concerned that the design as a whole
8 will become compliant throughout the useful life of
9 the product.

10 Q So, it would be safe to say you really don't
11 know which one of those pollutants are more the focus
12 of the EPA's attention. Would that be accurate?

13 A No, that would not be accurate. I didn't
14 say I didn't know. I said we are concerned with all
15 three of those pollutants.

16 Q I understand that but is there one that
17 you're more concerned with and why? And the reason I
18 ask that you talked about health effects, you talked
19 about effects to the environment. You remember that
20 conversation?

21 A I do, yes.

22 Q So, since you talked about it I'm going to
23 ask you about that. So, can you tell us which one of
24 those are more harmful?

25 A I think they each have health effects

1 associated with them that the Agency is concerned
2 about. I don't feel like I'm in a position to
3 indicate an Agency policy that contradicts the fact
4 that we regulate all three of those.

5 Q The reason I ask that you have seen
6 catalysts, have you not, that only contain one
7 precious metal, rhodium?

8 A There are some catalysts that may only
9 contain rhodium.

10 Q In fact, your department approves those
11 catalysts, don't they?

12 A I think some have been approved.

13 Q That's a yes?

14 A I think some have been approved. Again, I'd
15 have to go back and look at the cert applications.
16 Again, since I don't review every single cert.
17 application I don't want to speak out of turn.

18 Q So, when you say "I think" does that mean
19 that it's possible that they have never approved a
20 catalyst with only rhodium, or are you saying you
21 believe it has been?

22 A I believe it has been.

23 Q Thank you. And again, that's just a
24 reducing catalyst, right?

25 A Reduces NO_x.

1 Q And converts that into nitrogen, right?
 2 A And oxygen.
 3 Q Do you know whether or not the nitrogen is
 4 what turns the sky blue or not?
 5 A The sky is blue because of O3, the triatomic
 6 oxygen molecule.
 7 Q Okay. So, obviously if the EPA and your
 8 agency, department, authorizes catalysts with only
 9 rhodium, then it's not necessarily true that the
 10 carbon monoxide, okay, is as important. Is that an
 11 accurate statement?
 12 A I would not say that's an accurate
 13 statement. Again, I don't feel like I'm in a position
 14 to be able to determine Agency policy over what's more
 15 important versus another. The Agency regulates all
 16 three.
 17 Q How is it that you allow catalysts to be
 18 approved with only one reaction?
 19 A I think that in review of the application in
 20 total and looking at the test results of the engine
 21 and potentially with confirmatory tests we may make
 22 the determination that the product is compliant.
 23 Q Because it doesn't harm the air, correct?
 24 A No, I'm not saying that.
 25 Q Well, isn't the ultimate test -- remember

1 that chart you had that you stepped up and you --
 2 A Oh, yes.
 3 Q Okay. And you were describing how it was
 4 important that you did all those things?
 5 A That's -- what I was saying is that is the
 6 chart that describes the process for certification.
 7 Q Right. And so now we've gone from TWC,
 8 meaning three chemical reactions, to one, and what I'm
 9 saying is since you talked about policy remember those
 10 draft documents we talked about?
 11 A Yes.
 12 Q Okay. By you allowing your department to
 13 issue certificates of conformity with only one
 14 catalyst aren't you dictating policy?
 15 A No. We're implementing the policy.
 16 Q And so someone else above you decided that a
 17 rhodium, single metal catalysts is more than
 18 sufficing. Is that accurate?
 19 A No, I wouldn't say that someone above me
 20 made that determination.
 21 Q Okay. So, because your expertise, my
 22 understanding was that you would tell us about how the
 23 program runs, and so policy is very important in what
 24 you do, is it not?
 25 A Policy is important in what we do, yes.

1 Q And would you agree that the policy of the
 2 EPA changes with the administrations?
 3 A I would agree that the Agency's policy
 4 changes from time to time even during an
 5 administration potentially or between administrations.
 6 It depends on the situation.
 7 Q That's a factor, right?
 8 A A factor, sure.
 9 Q And currently what is the policy on the --
 10 what EPA is supposed to do, if you know, at this time
 11 from President Trump?
 12 A As it relates to what?
 13 Q As it relates to the actions taken by EPA
 14 against the businesses in this country.
 15 MR. KLEPP: Object to form, Your Honor, and
 16 relevancy.
 17 JUDGE BIRO: What are you asking exactly?
 18 MR. CHU: What I'm asking is my
 19 understanding, my studies of how decisions are made is
 20 that those matters are factored in by prior judges in
 21 terms of the administration, the contacts. I'm just
 22 using what I developed in terms of analysis of the
 23 system.
 24 JUDGE BIRO: I can assure you that I am not
 25 taking that into consideration.

1 MR. CHU: Thank you, Your Honor.
 2 JUDGE BIRO: I am taking into consideration
 3 the law as it exists, the regulations as it exists,
 4 and the policies that go from administration to
 5 administration only affect the outcome to the extent
 6 they change the law or the regulations.
 7 MR. CHU: I apologize. There's just an
 8 article I picked up from someone from Washington
 9 University, so -- where they did the study. So
 10 maybe --
 11 JUDGE BIRO: I've been doing this 20 years.
 12 The administrations come and go. I'm still here.
 13 MR. CHU: I understand.
 14 BY MR. CHU:
 15 Q Okay. So, sir, you're the one that kind of
 16 mentioned policies, remember?
 17 A Yes.
 18 Q Okay, because in your direct examination
 19 this idea of Agency -- do you know what I'm talking
 20 about?
 21 A I'm sorry, I don't quite follow your
 22 question.
 23 Q Integrity, these types of things, have you
 24 heard those words used in reference to the Agency?
 25 A I apologize. I heard you say integrity in

1 reference to the Agency, but I missed a few of your
2 words.

3 Q I didn't have -- I left it blank. I didn't
4 know if you had any other words. You know, earlier in
5 your direct examination you gave us what I consider
6 lectures about things, so I'm asking you now if you
7 can give me a little lecture about Agency blank,
8 integrity, that line of thought.

9 A I'm not sure I can respond because I'm not
10 sure what you're asking me.

11 MR. KLEPP: Objection to form, Your Honor.

12 JUDGE BIRO: Sustained.

13 MR. CHU: All right.

14 BY MR. CHU:

15 Q You spoke heavily about outreach, and when I
16 say "heavily" I heard it at least three times. Do you
17 remember that?

18 A I do remember discussing outreach, yes.

19 Q And do you remember in our deposition I
20 talked to you about Head Start?

21 A Yes, I do remember that conversation.

22 Q And basically the idea behind that was to
23 compare what you were doing with foreign manufacturers
24 and manufacturers in general, even manufacturers like
25 GM in Detroit, okay, that you want as part of what you

1 do is to reach out and help people and companies meet
2 or exceed the emission standards. Is that accurate?

3 A We do want to provide compliance assistance
4 so that manufacturers understand what their
5 responsibilities are. Yes.

6 Q Now I understand that you don't really do
7 enforcement, right, your department?

8 A That's right. We're the Compliance
9 Division.

10 Q But through your post-manufacturing
11 certification inspections, interviews, and
12 investigations you kind of are doing enforcement,
13 aren't you?

14 A No. Our responsibility is compliance.
15 There is another office in EPA that handles
16 enforcement.

17 Q So, how is compliance not equivalent to
18 enforcement?

19 A So, I think that's a great question. From
20 our perspective compliance is part of the
21 implementation of the regulations, and so we may test
22 products that are in the field and whatnot. However,
23 if there is an action to be taken the action that we
24 would take in our office is to take action on the
25 certificate based on the information that we identify.

1 But that's the limit of what we would do is to take
2 action on the certificate.

3 The Office of Enforcement will follow up
4 with any sort of enforcement or penalty actions that
5 need to happen after that. We wouldn't be engaged in
6 that.

7 Q So, do you know how this complaint went from
8 your compliance to an enforcement investigation?

9 MR. KLEPP: Your Honor, objection. That
10 calls for privileged information.

11 JUDGE BIRO: What exactly would be
12 privileged about that?

13 MR. KLEPP: To the extent it does, I would
14 like to limit --

15 JUDGE BIRO: Oh.

16 MR. KLEPP: -- the answer to the question.

17 JUDGE BIRO: Mr. Jackson, don't answer about
18 any discussion you had with the attorneys giving any
19 advice. Just a general process I think would be
20 appropriate.

21 THE WITNESS: So, if I'm clear about this, I
22 believe this case originated with the Office of
23 Enforcement.

24 BY MR. CHU:

25 Q Do you remember during your deposition we

1 visited the first exhibit?

2 A I'm sorry. Would you please refresh my
3 memory what the first exhibit was?

4 Q Certainly. I take it you haven't had an
5 opportunity since your deposition to review your
6 deposition. Is that accurate?

7 A That is accurate.

8 Q Okay. Is there any reason why you wouldn't
9 have done that in preparation for your testimony?

10 A Sure. I think we received -- I think I
11 received it late last week, and had a lot of other
12 things I had responsibility for and was not able to do
13 so.

14 Q So, sometimes in the performance of your job
15 and responsibility you don't get to everything, right?

16 A I try to get to everything. That's part of
17 my central responsibility in compliance. However,
18 this case has been the Compliance Division working
19 with the Office of Enforcement, so it's not what I
20 would do on a typical daily basis.

21 Q I'm sorry. Was that a yes or a no? I
22 didn't get it.

23 A I try to get my job done. If your question
24 is do I get my work done, I try to get my work done.

25 Q And sometimes you just can't get it all

1 done, would you agree?
 2 A I think it's true that there are times when
 3 we can't get everything done in a given day.
 4 Q Because what you're entrusted with by the
 5 taxpayers is to do your job accurately, correct?
 6 A Yes.
 7 Q Now, when did you first become aware that
 8 Chinese vehicle manufacturers, okay, was a focus of
 9 attention for the EPA?
 10 A So, I guess to answer that question I have
 11 to be clear that it's not just Chinese manufacturers
 12 that are the focus of the EPA. So, I don't want to
 13 answer incorrectly.
 14 If you said Chinese manufacturers are a
 15 focus, I'd have to say we address all manufacturers
 16 regardless of country of origin.
 17 MR. CHU: Your Honor, may I use the --
 18 JUDGE BIRO: Mike, can they use this
 19 machine? Can you -- okay, that's great. Thank you.
 20 BY MR. CHU:
 21 Q Do you see the exhibit sticker under there?
 22 A Yes.
 23 Q Okay. Do you remember this document that I
 24 asked you about during your deposition? This is the
 25 first document, right?

1 A This does look like a document that you
 2 showed to me. I don't know if it was the first
 3 document but I do remember you showing, I think, this
 4 document to me during the deposition.
 5 Q And it talks about what we've been talking
 6 about today, correct?
 7 A This document seems to talk about penalties
 8 being assessed in an enforcement case.
 9 Q When we talk about nonroad vehicles we're
 10 talking about what? Dirt bikes? ATVs? Do you know?
 11 A Yes.
 12 Q Anything else?
 13 A Sure. So, the term "nonroad equipment" can
 14 range from construction equipment. It could range
 15 from diesel to gasoline powered. It can also be hand-
 16 held equipment. It really runs the range.
 17 Q Do you see the date on the top there?
 18 A Yes.
 19 Q What's that date, please?
 20 A That date is September 2006.
 21 Q And do you remember spending about 10
 22 minutes perusing this document? Remember that?
 23 A I didn't keep track of the time but I do
 24 remember looking at the document.
 25 Q Remember I asked you if you would peruse it

1 and you asked me is that what I really want you to do?
 2 Do you remember that?
 3 A I do remember that, yes.
 4 Q So, that did happen.
 5 A I looked at the document.
 6 Q Well, perusal means what? You explain?
 7 A A detail review of the document.
 8 Q So, you did more than just look at it,
 9 didn't you?
 10 A I looked at the document. I didn't commit
 11 it to memory.
 12 Q Oh, I understand, but you explained on the
 13 record that -- did I want you to peruse it or not, and
 14 you said that would require you to take time and read
 15 it in detail. Is that accurate?
 16 A Yes, but I don't recall your response at
 17 this time if you asked me to just peruse it or just
 18 look at it. I can't remember what your follow-up
 19 response was.
 20 Q But you did peruse this document in your
 21 deposition.
 22 A I remember looking at it, yes.
 23 Q Now, back in 2006 did your department begin
 24 dealing with emission issues on these types of
 25 vehicles?

1 A Yes. This division did look at
 2 certification and compliance for these types of
 3 vehicles.
 4 MR. CHU: We would move for admission of
 5 Exhibit 5, an EPA Enforcement Alert dated September
 6 2006.
 7 JUDGE BIRO: Do I have a copy of this? Did
 8 you provide a copy to the other side, to the Agency?
 9 MR. CHU: May I approach?
 10 MR. KLEPP: Counsel, may I ask? I've just
 11 been handed a binder. May I ask what document inside
 12 it?
 13 MR. CHU: This one should be 34, I believe,
 14 is that right? Thirty-three, and I apologize. My
 15 assistant who stayed over to fix this is not here.
 16 It's 33.
 17 JUDGE BIRO: Okay. This is the document
 18 that's been identified as Exhibit 33, is this page 1
 19 through 4?
 20 MR. CHU: Yes, Your Honor. And it's also
 21 described as CX019.
 22 JUDGE BIRO: This was formally identified as
 23 the Complainant's Exhibit No. 19?
 24 MR. KLEPP: I believe I'm looking at that
 25 document. Yes, Your Honor, CX019.

1 JUDGE BIRO: Is there any objection?
 2 MR. KLEPP: No objection, Your Honor.
 3 JUDGE BIRO: Okay. So, we're going to mark
 4 this as Respondents' Exhibit 33 and admit it into the
 5 record?
 6 MR. CHU: Yes, Your Honor.
 7 (The document referred to was
 8 marked for identification as
 9 Respondents' Exhibit No. 33,
 10 and was received in
 11 evidence.)
 12 BY MR. CHU:
 13 Q So, would it be safe to say that your
 14 department was just beginning to ramp up after 2006 in
 15 looking at emission issues with these types of
 16 vehicles?
 17 A So, the Compliance Division began certifying
 18 ATVs and recreational vehicles in 2006.
 19 Q And that was all because the EPA had
 20 determined that there are issues with Chinese
 21 manufactured vehicles of this type, correct?
 22 A No, that's not correct. There was a
 23 rulemaking that was promulgated and so compliance and
 24 implementation followed from the rulemaking that was
 25 promulgated prior to that, not because of Chinese

1 manufacturers, but because of the air quality impacts
 2 associated with the sector.
 3 Q Sir, I would ask you to look --
 4 A Am I supposed to have something up?
 5 Q Okay, put it back on the screen here. Can
 6 you see that?
 7 A Yes.
 8 Q Sometimes it's hard to read off the screen.
 9 Do you see the second sentence where it starts off
 10 with "A"?
 11 A Are you referring to the sentence that says,
 12 "A disturbing portion of these engines"?
 13 Q Yes, could you read that for us, please?
 14 A "A disturbing portion of these engines are
 15 not certified to meet emission standards under the
 16 Clean Air Act."
 17 Q So, that second line would really kind of
 18 interest your department wouldn't it?
 19 A If there are products that are not
 20 certified, I think that would interest the Office of
 21 Enforcement.
 22 Q Okay. And a vehicles that's not certified
 23 also includes vehicles that were certified but because
 24 of some error the certification is no longer valid.
 25 Is that accurate?

1 A I'm sorry. I'm going to repeat back your
 2 question to make sure I understand it.
 3 Q Please.
 4 A Did you ask me a vehicle that is not
 5 certified is sometimes included with a vehicle that is
 6 certified because of an error? Did I misstate that?
 7 Q Yes. In this complaint here --
 8 A Yes, this is an enforcement alert, yes.
 9 Q -- it's alleged --
 10 A Oh, this complaint. Okay. Now I know which
 11 one you're talking about. Okay.
 12 Q In the complaint here it's alleged that
 13 109,000 vehicles are not certified. Is that accurate?
 14 A That's my understanding of the complaint.
 15 Q And would it be safe to say that your
 16 department did certify those vehicles at some earlier
 17 time?
 18 MR. KLEPP: Objection, Your Honor.
 19 JUDGE BIRO: And the basis for the
 20 objection?
 21 MR. KLEPP: My basis is it's a vague
 22 question and it calls for a legal conclusion.
 23 MR. CHU: Can I respond, Your Honor?
 24 JUDGE BIRO: Overruled.
 25 Do you know whether you certified those

1 vehicles?
 2 THE WITNESS: If the products were
 3 determined to be not the same products as what we
 4 certified, then, no, we did not certify them.
 5 BY MR. CHU:
 6 Q That's the point I'm getting to is that
 7 there's a little rule with the EPA that says if we
 8 determine and we decide that you had not met what's in
 9 the application, the material I would say "met
 10 portions", okay -- I know that's grammatically wrong,
 11 but --
 12 A No, no, I'm trying to follow.
 13 Q That's okay. So, if that becomes the case
 14 upon some sort of post-manufacturing check, okay, then
 15 based upon that inspection and testing result your
 16 department could declare that in their opinion that
 17 vehicle which was taken is not a certified vehicle.
 18 Is that accurate?
 19 A Again, to be clear to answer your question,
 20 we don't make that determination. The Office of
 21 Enforcement makes that determination.
 22 Q And so when that occurs basically that
 23 certificate that covers that class of engine families,
 24 did I say that right?
 25 A The certificate covers specific engine

1 families.

2 Q And just to make that clear engine families

3 include many different models, right?

4 A It can include multiple models in an engine

5 family, yes.

6 Q Okay. As we saw earlier in the examination,

7 there were at least what, 10?

8 A There were at least 10, yes.

9 Q Okay. So, it's kind of deceptive in terms

10 of looking at the application and saying that it's one

11 vehicle specific. In other words, one motorcycle, one

12 ATV, that's not really how an engine family is

13 identified, is it?

14 A I didn't say that was how an engine family

15 was identified.

16 Q I understand. I just want to make it clear

17 for the record that it's not identified that way.

18 A So, an engine family is identified based on

19 the products that are sufficiently similar. Sorry,

20 apparently you disagree with that.

21 Q No, go ahead.

22 A Oh, okay.

23 Q I'm not -- if I put my hands, I'm not

24 stopping you. I'm never stopping you, okay?

25 A Okay. All right. So, an engine family does

1 not include just a single engine. I think that's the

2 answer to your question.

3 Q Because there was some talk about it's a

4 motorcycle, the engine family, the one that was

5 tested, it talked about ATV. It really -- when you

6 say "engine family" you mean what it says, right?

7 It's an engine.

8 MR. KLEPP: Object to form, Your Honor.

9 JUDGE BIRO: Yes, but it's fine. Overruled.

10 Go ahead.

11 THE WITNESS: All right. So, you're asking

12 me does an engine family -- you're asking me what does

13 it include or?

14 BY MR. CHU:

15 Q Well, okay. Earlier when you were

16 describing a VIN number.

17 A Yes.

18 Q You remember that?

19 A Yes.

20 Q A VIN number is the personal identification

21 number of an identified vehicle, correct?

22 A Yes.

23 Q So, in the 109,000 vehicles, the subject of

24 this litigation, there are 109,000 VIN numbers. Would

25 you agree?

1 A Yes, there should be.

2 Q Okay. And when you group the engine

3 families 109,000 become 10 engine families, correct?

4 A I believe that's the count of engine

5 families.

6 Q You believe or you know? I need to know.

7 A Based on the complaint, that's what is on

8 the complaint is 10.

9 Q What I meant is do you know when we talk,

10 when the EPA talks about engine families that they're

11 talking about what you and I are talking about?

12 A Right, I'm going to restate your question.

13 When EPA talks about engine families, is the EPA

14 talking about what I'm talking about and what you're

15 talking about?

16 Q Right.

17 A So, I know what I'm talking about. I'm not

18 sure, I wasn't clear on what you're talking about.

19 Q I used the word literally engine family, a

20 family of engines.

21 A Yes.

22 Q Is that how you read it as well?

23 A I read engine family as engine family. Yes,

24 as a group of engines. Yes.

25 Q And that same engine can be placed in

1 different types of models, right?

2 A It can be placed in different models of

3 vehicles, yes.

4 Q So, when we go to separating these engine

5 families we're breaking them up into groups that

6 basically have the same engine. Is that accurate?

7 A Engine and exhaust system.

8 Q Okay. So, the exhaust system, which is

9 different from the engine, is also covered under the

10 designation of engine family. Is that your testimony?

11 A Yes.

12 Q Okay. So, what is it -- because I believe

13 the exhaust system consist of two separate

14 manufacturers that produce the catalyst. Is that

15 accurate?

16 A So, there can be a substrate manufacturer.

17 There can be a wash coat manufacturer. There can be a

18 canning manufacturer. So, it depends on the specific

19 situation.

20 Q My question was about a catalyst

21 manufacturer and you went and start telling me about

22 the component manufacturer. Is there any reason why

23 you did that?

24 A Your question to me was does the exhaust

25 system manufacturer consist of two manufacturers, and

1 I said if you're referring to the catalyst there are
 2 multiple manufacturers involved, could potentially be
 3 involved in the manufacture of a catalyst.
 4 Q Very good. I stand corrected. Okay.
 5 So, you're aware that Taotao USA doesn't
 6 manufacture anything. Is that accurate?
 7 A I believe that's the case, that they're an
 8 importer but they are --
 9 Q But you went to China and you visited some
 10 place and I believe you describe it as what? Li?
 11 A Hopefully I'm pronouncing it correctly,
 12 Lishui.
 13 Q How do you spell that?
 14 A I don't remember off the cuff. Sorry. It's
 15 L-I-U-S-H-U-I, I think, or something like that, but I
 16 forget.
 17 Q L-I-U-S-H-E-Y?
 18 A E-U. I mean, sorry, S-H-I-U. I think
 19 that's how we spelled it, but I don't remember.
 20 Q And you pronounce it as Lishui?
 21 A That was how I remember hearing most of the
 22 folks pronounce it that were there, and it's not -- I
 23 you know, I think it's like Lishui or Lishui. You
 24 know, I don't pronounce Chinese well since I don't
 25 speak it.

1 Q Just talk about that for a minute. When you
 2 were asked earlier about describe, sir, the scene, the
 3 place, you left out some things, didn't you?
 4 A I'm not sure what you're referring to.
 5 Q You left out the State Department's trusted
 6 interpreter, didn't you?
 7 A That's right. I sure did. There was an
 8 interpreter there.
 9 Q So, when you talked about you had
 10 conversation isn't it important to let this Court know
 11 that there was a translator and you, in fact, was --
 12 you didn't have actual one-to-one conversations with
 13 the alleged people you spoke with?
 14 A Well, to be clear, Mr. Matao Cao spoke
 15 English very well. Mr. David Garibyan spoke English
 16 very well, and Mr. Yuejin Cao spoke some English. So,
 17 my assumption was that when they were speaking in
 18 English that they were speaking words that I would
 19 understand and I understood them to be English. But
 20 if there were words spoken in Chinese or in the local
 21 dialect I would not have understood those.
 22 Q There is a difference in the spoken Chinese
 23 language and local dialects.
 24 A That was my understanding, yes.
 25 Q So, you're saying if they were speaking in a

1 local Chinese dialect you didn't understand it.
 2 A If they were speaking in any Chinese dialect
 3 I wouldn't have understood it.
 4 Q That's what I thought. Just so the record
 5 is clear, you don't know any Chinese, do you?
 6 A I think I know hello.
 7 Q How about "xiexie"?
 8 A I have no idea what you just said.
 9 Q You didn't hear anyone say that to you,
 10 thank you?
 11 A I did "xiexie", so I remember "xiexie" and
 12 "ni" --
 13 Q "Hao."
 14 A "Ni hao", like hello or good morning, I
 15 think, but I think that's about it.
 16 Q Pretty good. That's a good start, right?
 17 A Well.
 18 Q In fact, it became so cordial that you were
 19 invited to Terry's father's home for lunch, didn't
 20 you?
 21 A That's right. We were told there weren't
 22 many facilities for us to eat lunch in the area so we
 23 went to Mr. Cao's home for lunch.
 24 Q Okay. And were you treated with respect?
 25 A We were treated with respect.

1 Q Okay.
 2 A They offered to give us lunch for free and
 3 we refused and paid for it. We paid for the lunch.
 4 Each person paid for the lunch.
 5 Q I understand, and you had no idea whether or
 6 not that violated any customs in that country, did
 7 you?
 8 A For us to pay for the lunch?
 9 Q Right. I'm saying you had no idea.
 10 A I'm not sure if it violated customs in the
 11 country, but I did not want to receive the lunch for
 12 free.
 13 Q I understand that. Obviously, your precious
 14 time that you spent with them you didn't charge them
 15 for that, did you?
 16 A I'm sorry. Did I charge the manufacturer
 17 for the time we spent with them? Is that what you're
 18 asking me?
 19 Q Let me clarify. The Judge said I could do
 20 this on cross-examination, okay? So, you say
 21 manufacturer. You describe Terry, okay?
 22 A Um-hmm.
 23 Q And Terry, as you could see from the
 24 diagrams, is 100 percent owner of what?
 25 A I don't have the document in front of me but

1 I believe it was Tao Motors USA, or Tao Motors.
 2 Q You keep saying Tao Motors. Is that your
 3 testimony?
 4 A Yes, Tao Motor.
 5 Q This is one of the documents that you and I
 6 talked about during your deposition, remember?
 7 A Yes.
 8 MR. KLEPP: Your Honor, my objection is
 9 based on the document. It's marked as an exhibit.
 10 It's been spoken to earlier, and Mr. Jackson at this
 11 time does not have it in front of him, and I think in
 12 order for this to proceed efficiently could the
 13 document please be placed in front of him?
 14 JUDGE BIRO: Sustained. Do you have a set
 15 of exhibits for the witness?
 16 MR. CHU: I'm sorry. I thought he had a
 17 screen in front of him.
 18 JUDGE BIRO: He should also have the written
 19 exhibits. He's entitled to see them. Do you have a
 20 set of exhibits you can give him?
 21 MR. CHU: I could give him mine. I thought
 22 that there was a copy that was left up there earlier,
 23 but I'll be happy to give him mine.
 24 JUDGE BIRO: That's why we ask everybody to
 25 make five sets of exhibits.

1 MR. CHU: I'm using the one that they
 2 introduced and it was admitted is what I'm using.
 3 JUDGE BIRO: Oh, it's in the Complainant's
 4 book? Okay.
 5 MR. CHU: Yes, Your Honor. It was the one
 6 that he offered.
 7 JUDGE BIRO: Mr. Jackson, open up to what
 8 page are we looking at?
 9 MR. CHU: It's CX191, EPA 2523, Your Honor.
 10 JUDGE BIRO: It's CX191?
 11 MR. CHU: Yes, Your Honor.
 12 JUDGE BIRO: And what page again? I'm
 13 sorry.
 14 MR. CHU: Two-five-two-three.
 15 JUDGE BIRO: Mr. Jackson, do you have that?
 16 THE WITNESS: Yes, I do.
 17 BY MR. CHU:
 18 Q Mr. Jackson, isn't it true that no one in
 19 China ever told you that Matao Cao owned 100 percent
 20 of Tao Motors? Is that accurate?
 21 A So, I'm not sure if that's accurate the way
 22 you said it --
 23 Q Okay.
 24 A -- because what I recall was them telling us
 25 that Matao Cao had the responsibility for Tao Motor

1 exclusively.
 2 MR. CHU: Objection. Non-responsive. It
 3 was someone tell you, and he said "I thought".
 4 THE WITNESS: No, the folks that we met
 5 with, Matao Cao and Yuejin Cao, and those two in
 6 particular mentioned his responsibility for Tao Motor.
 7 BY MR. CHU:
 8 Q Now, do you agree that you were in some
 9 conference room with the State Department translator?
 10 A Yes.
 11 Q And would you agree that this very screen
 12 shot of the presentation was translated to you by the
 13 State Department translator?
 14 A It was translated by the State Department
 15 translator and spoken to by Matao Cao and Yuejin Cao.
 16 MR. CHU: I'm going to object to non-
 17 responsive. My question is about the translator and
 18 not who all spoke to you
 19 JUDGE BIRO: Okay, sustained. I'm not sure
 20 I understand your question, Mr. Chu.
 21 MR. CHU: My question was did the translator
 22 translate the presentation of this particular --
 23 JUDGE BIRO: This page that's in English,
 24 right here? Did they translate what's already in
 25 English?

1 MR. CHU: Correct.
 2 JUDGE BIRO: Into what language would they
 3 have to translate that for Mr. Jackson?
 4 MR. CHU: I believe that the testimony will
 5 be that there was an explanation of the relationship
 6 between the companies, and that was what was being
 7 translated. So, it's not just what he read in English
 8 on the screen, but there was an actual State
 9 Department translator that was translating for Mr.
 10 Jackson's benefit at this presentation, and that's the
 11 question I'm asking.
 12 JUDGE BIRO: Was there a translator?
 13 MR. CHU: He already said there was a
 14 translator. I'm asking did she translate to you this
 15 information that was being presented? In other words,
 16 I'm trying to find out whether or not someone, whoever
 17 it was that was talking during this presentation,
 18 okay, whether or not that message was translated to
 19 him.
 20 JUDGE BIRO: Mr. Jackson, was the
 21 presentation in English or in Chinese?
 22 THE WITNESS: So, the bulk of the
 23 presentation was in Chinese, translated into English,
 24 but there were times when Mr. Matao Cao or Mr. Yuejin
 25 Cao would interject in English.

1 JUDGE BIRO: So, I think the question here
 2 is when they were talking about this particular page?
 3 THE WITNESS: Yes.
 4 JUDGE BIRO: Were they speaking in English
 5 or in Chinese?
 6 THE WITNESS: Both.
 7 JUDGE BIRO: Both. Okay, so the extent it
 8 was Chinese was it being translated to you?
 9 THE WITNESS: Yes.
 10 JUDGE BIRO: Okay.
 11 BY MR. CHU:
 12 Q And do you remember the translator
 13 explaining what your eyes see and what we see on this
 14 slide?
 15 A I remember the translator as well as Mr.
 16 Matao Cao and Mr. Yuejin Cao providing a description
 17 of what we see and what they intended to communicate.
 18 Q What I'm talking about is your statement
 19 that Tao Motor is 100 percent owned by Matao Cao. Do
 20 you remember making that statement?
 21 MR. KLEPP: Objection, Your Honor.
 22 Mischaracterizes his testimony.
 23 THE WITNESS: I think my statement was, I
 24 think it was or maybe it should have been that Matao
 25 Cao had the responsibility, sole responsibility for

1 the U.S. company. That was the message communicated
 2 to us.
 3 BY MR. CHU:
 4 Q So, no one explained to you or told you that
 5 Matao Cao was the owner of Tao Motors, is that
 6 accurate?
 7 A No, that's not accurate. We were told that
 8 by -- verbally during the course of the conversation.
 9 Q So, in spite of what was on that last screen
 10 it's your belief that whatever was translated,
 11 whatever was said by any individual in China was that
 12 Matao Cao was the 100 percent owner of Tao Motors?
 13 A That Matao Cao was responsible for the U.S.
 14 operations of the company, so Tao Motor and Taotao Mr.
 15 Matao Cao had responsibility for.
 16 MR. CHU: Objection. Non-responsive. The
 17 question was ownership, owner. He says
 18 responsibility. He's not answering my question.
 19 MR. KLEPP: Your Honor, I have an objection.
 20 The words from counsel misrepresent Mr. Jackson's
 21 testimony. He continues to use the phrase "100
 22 percent owner", and I don't believe that ever came
 23 from Mr. Jackson.
 24 JUDGE BIRO: Okay. Maybe they are speaking
 25 as cross purposes.

1 Mr. Jackson, did they say at any point the
 2 words that Matao Cao was the 100 percent owner of Tao
 3 Motors?
 4 THE WITNESS: I don't recall those exact
 5 words being said. I recall the words being that he
 6 had the responsibility for the company in the United
 7 States.
 8 JUDGE BIRO: I understand. Okay.
 9 BY MR. CHU:
 10 Q Sir, will you look at the next slide, and
 11 it's 2522.
 12 A Yes.
 13 Q Does that clearly indicate that Matao Cao is
 14 the 100 percent owner of the certificate holder
 15 involved in this complaint?
 16 A It does -- it does seem to indicate that,
 17 but to be honest there are multiple arrows pointing to
 18 Taotao USA.
 19 Q Which one says owned 100 percent? Can you
 20 tell?
 21 A The one pointing from Matao Cao to Taotao
 22 USA.
 23 Q So was that explained in Chinese that day
 24 what that arrow meant and translated to you?
 25 A So, again, this slide as well as the next

1 slide were discussed together, and so we didn't go
 2 arrow by arrow.
 3 Q So, is it possible that somehow you confused
 4 the companies that you visited in China?
 5 A No.
 6 Q Okay. So, can you tell this Court in 2017,
 7 and first of all, are you sure it was 2017, it wasn't
 8 2016?
 9 A It was 2017.
 10 Q You didn't do an audit in 2016?
 11 A We did not visit Lishui, China, in 2016.
 12 Q Okay. And what month, again, was this?
 13 A This was the month of May.
 14 Q Okay. So, you've approved certificates for
 15 Tao Motors, have you not?
 16 A I believe we have approved certificates in
 17 the past for Tao Motor and Taotao.
 18 Q Thank you. And it's very clear that the
 19 certificates that were approved had manufactures
 20 designated that are neither of the respondents in this
 21 complaint, would you agree?
 22 A You mean the OEM? When you say the
 23 manufacturers do you mean the OEM of the product?
 24 Q I use manufacturer as the entity that
 25 actually put the bike or vehicle together.

1 A Yes, other entities were listed in the
 2 application.
 3 Q Yes, because when you use OEM it's kind of
 4 like you taught me a minute ago. We could talk about
 5 a whole lot of OEMs in China, right?
 6 A Sure.
 7 Q So, I'm going to stick with -- when I say
 8 "manufacturer" I'm referring strictly to the two
 9 Respondents here that actually put the vehicle
 10 together. Is that okay with you? Is that definition
 11 okay?
 12 A All right. So, when you -- so, I think I
 13 heard two different things from you. You said you're
 14 referring to the Respondents here as the two
 15 individuals that actually put the vehicles together,
 16 but you said earlier that they didn't put the vehicles
 17 together, so I want to make sure I understand your
 18 question.
 19 Q Are you aware that there are three
 20 Respondents in this case?
 21 A I believe so. It's Taotao, Taotao USA,
 22 maybe some other aspects of Taotao Group. I just
 23 don't -- I have it in front of me so I need to look at
 24 it to see.
 25 Q And I understand your confusion. I'm going

1 to help clear it up here.
 2 (Pause.)
 3 I hate to ask for your help. Do you
 4 remember the exhibit number when you stood up and
 5 talked about the things that your department does?
 6 They're looking for it.
 7 A The flow chart. I don't remember --
 8 Q Do you know what I'm talking about?
 9 A Do you mean the flow chart?
 10 Q Yes, the flow chart.
 11 A I don't remember the exhibit number. I'll
 12 have to look for it.
 13 Q While she's looking, I think what's
 14 confusing here is on the flow chart, on the top right-
 15 hand side there it says "manufacturer", right?
 16 A Oh, I'm sorry. You're referring to the
 17 other exhibit.
 18 Q Do you remember?
 19 A On the top right-hand side. So, I'll have
 20 to look at the document to see where it's located.
 21 Q You don't remember then.
 22 A Well, you're referring to a specific portion
 23 of the document. I want to look at the document
 24 before I respond.
 25 Q Certainly, and I can respect that. So, you

1 and I both know that the actual applicant for the
 2 certificates that's at issue in this complaint was
 3 Taotao USA. Agree?
 4 A Yes.
 5 Q And you've already said that you're aware
 6 that they do not manufacture, as you call them an
 7 importer, remember?
 8 A I did say they were an importer, yes.
 9 Q But the regulations allow the EPA to
 10 designate the person or entity that applies for a
 11 certificate of conformity as a manufacturer, is that
 12 accurate?
 13 A That is accurate. It may be a manufacturer
 14 or importer. They may be designated as a manufacturer
 15 for purposes of holding a certificate.
 16 Q What I'm saying are you aware of the
 17 regulation where it says if you are applying for a
 18 certificate that we can call you a manufacturer? Are
 19 you familiar --
 20 A That is in the regulation and the statute.
 21 Q Okay. So, that's it. So, it's confusing
 22 when we talk about manufacturers so that's why I kind
 23 of further defined that in my questioning, that when I
 24 speak of manufacturers I'm speaking of the companies
 25 that actually put the vehicles together, not the parts

1 people.
 2 A Not the? Not the what people?
 3 Q Parts. Part.
 4 A Parts. Okay, gotcha. Sorry.
 5 Yes, it's my understanding that you're
 6 talking about the OEM, the manufacturer who assembled
 7 the product.
 8 Q So, when you approved the Tao Motor
 9 applications, I'm asking whether or not you're aware
 10 that neither of the manufacturers in this complaint
 11 that have their operations in China are listed as Tao
 12 Motors' manufacturer.
 13 A So, neither of the -- let me sure, I'll
 14 repeat back. Am I aware that neither of the
 15 manufacturers who actually assemble the products are
 16 listed in the complaint or are the folks listed in the
 17 complaint are listed in the application?
 18 Q I'm going to break it down. Tao Motor has
 19 filed for applications for certificates before with
 20 your Department, correct?
 21 A Yes.
 22 Q And you have approved those in the past.
 23 A Yes.
 24 Q And do you remember whether or not any of
 25 the actual manufacturer of the vehicle or vehicles for

1 Tao Motors was either one of the manufacturing
 2 Respondents in this case?
 3 A I believe so, but I would need to look at
 4 the application before I state with certainty.
 5 Q Because earlier you kind of lumped everyone
 6 together and just called everyone the same, right?
 7 A I did not. I repeated what the
 8 manufacturers told us when we went there.
 9 Q And so I'm trying to figure out if there
 10 were -- if there was a different manufacturer for Tao
 11 Motors then, in essence, you would have at least
 12 potentially seen three manufacturers on your last
 13 trip.
 14 A So, we issued test orders for the families
 15 that were certified on behalf of Taotao, and Tao
 16 Motor, and so the number of other subsequent
 17 manufacturers that may have been present are
 18 identified, I know what the manufacturer told us when
 19 they were present, that these folks were all part of
 20 the same manufacturing group. They were all related
 21 companies but --
 22 Q So, basically you just kind of lumped them
 23 together and kind of --
 24 A I did not. The company did. The companies
 25 did.

1 Q Okay. Now, this 191 exhibit, which is in
 2 evidence, would you agree clearly delineates the
 3 relationships?
 4 A I would agree that there is a chart on this
 5 document that shows relationships.
 6 Q Okay.
 7 A Your question was does it clearly delineate,
 8 and I would say based on the verbal conversation I
 9 would say it doesn't clearly delineate what was said
 10 to us verbally.
 11 Q So, when you say that we audited some
 12 vehicles in China at some Chinese manufacturer, that's
 13 about all you can really say, isn't it?
 14 A I can see we visited the Taotao Group's
 15 facilities and selected products from the engine
 16 families that were identified in our test order.
 17 Q And when you say Taotao facilities, remember
 18 what are the two names of the manufacturers associated
 19 with Taotao USA?
 20 A You're asking who are the two manufacturers,
 21 OEM? The folks that manufacture the products?
 22 Q The vehicles, not the products.
 23 A For Taotao USA?
 24 Q Yes, sir.
 25 A I believe one is Junyun County, but I'll

1 have to go back to look at the cert applications.
 2 Q And so when you say Taotao then you're
 3 talking about one manufacturer versus a different
 4 manufacturer, correct?
 5 A So, when I say Taotao in reference to our
 6 visit generally I'm referring to the Taotao Group and
 7 the collection of companies as the company identified
 8 it.
 9 Q So, what you're basically saying is I can't
 10 read the signs, but somehow whatever I see is all the
 11 same. Is that what I'm hearing?
 12 A No, not at all. I never said that.
 13 Q Well, how did you know you were in Taotao
 14 Group's factory versus being in Junyun's factory
 15 versus being in factory three, Tao Motors supplier's
 16 factory?
 17 A Sure. So, I could read the signs as we
 18 walked in. But, again, my reference to the companies
 19 that were present was based on what the companies told
 20 us when we were present, what they said to us.
 21 Q And I understand that you --
 22 A But, again, I don't read Chinese. So, if
 23 there were specific distinctions in Chinese, I
 24 wouldn't be able to make that determination.
 25 Q Would you agree that something potentially

1 was lost in the translations?
 2 A It's possible something could be lost in the
 3 translation but the portions that were in English were
 4 not lost on me, not the English portions.
 5 Q Right, and I apologize for getting off into
 6 describing manufacturers, okay? But I'm going to --
 7 okay, it's Complainant's Exhibit 12.
 8 (Pause.)
 9 Do you have that?
 10 A Yes.
 11 Q Okay. Now, do you see how on the right the
 12 entity starting the process is identified as what?
 13 A New manufacturers only.
 14 Q Okay. Basically, in this complaint here
 15 you've never had an application from Taotao Group nor
 16 Junyun manufacturer in China, is that accurate?
 17 A Do you mean an application for a certificate
 18 of conformity?
 19 Q Yes, sir.
 20 A No, they have not applied for a certificate
 21 of conformity. They've been listed in the certificate
 22 of conformity, but they didn't apply for a certificate
 23 of conformity. They were listed in the application I
 24 should say.
 25 Q I appreciate the explanation, but if --

1 never mind.
 2 Now, you testified under oath that this
 3 Exhibit 12 was available online for the world to see.
 4 Is that accurate?
 5 A Yes.
 6 Q Okay. Can you tell us what it means by the
 7 word "draft"?
 8 A It means that it is not final.
 9 Q So, which one should the world be looking
 10 at, a final document or a draft?
 11 A So, we posted or this was posted as a draft
 12 document on our website, which is typically what you
 13 would do. The draft document is always posted on the
 14 website.
 15 Q I understand. So, is the manufacturing
 16 world, importer world, are they obligated to abide by
 17 the drafts?
 18 A So, no, manufacturers are not obligated to
 19 abide by the drafts. They're obligated to abide by
 20 the regulations, and these guidance documents are
 21 meant to help manufacturers understand the
 22 regulations.
 23 Q Now, this was actually for the benefit of
 24 your people so that they can get training, correct?
 25 A No. This was provided to the manufacturers.

1 Q Okay. Now I'm going to read you the first
 2 line. It says, "This step-by-step guidance is
 3 intended to assist you in the certification process."
 4 So, that's not supposed to help the people working for
 5 you.
 6 A It's designed to help the manufacturer. The
 7 guidance documents are prepared for the manufacturers.
 8 Q So, on the top where it says "HMC Workshop
 9 2", who is -- what is HMC?
 10 A Highway motorcycle.
 11 Q So, is this one of those outreach things
 12 that you were talking about?
 13 A Yes.
 14 Q Okay. Is there any reason why the EPA
 15 hasn't produced the actual document as far as you
 16 know?
 17 A No particular reason as I understand it.
 18 So, again, that was created before I started in the
 19 center, but no particular reason other than we just
 20 never go around to it, and it was helpful in its
 21 current form.
 22 Q Helpful in its current form, but the actual
 23 adopted guidance document is not this one, right?
 24 A There was no actual adopted guidance
 25 document. There was no final guidance document. And

1 again to be clear, guidance, it's not mandatory, it's
 2 meant to be helpful. The mandatory requirements are
 3 the regulations.
 4 Q So, would it be safe to say that Exhibits 12
 5 through 18 were just helpful governmental forms?
 6 A I believe you mean 17 and, yes, they're
 7 intended to be helpful. I don't believe you intended
 8 to include 18 in your statement, so I believe it's
 9 through 17. They were intended to be helpful.
 10 Q Right. So, we're back to engine families,
 11 right?
 12 A Yes.
 13 Q And the emission -- did you describe it as
 14 emission system? Is that how you classified it?
 15 A Engine families, exhaust system, engine and
 16 exhaust system.
 17 Q Exhaust system, and in the exhaust is the
 18 muffler, right?
 19 A Yes.
 20 Q And in the muffler is catalyst or no
 21 catalyst, agree?
 22 A That is possible, yes.
 23 Q Okay. And we didn't talk about that but you
 24 have approved on behalf of Taotao USA applications for
 25 similar types of these vehicles that did not contain a

1 catalyst. Is that accurate?
 2 A So, I don't want to go back and review all
 3 the Taotao and Tao Motors applications, but I believe
 4 that is accurate, that we have approved some that did
 5 not have a catalyst. I believe that's accurate. We
 6 approve a lot, so it's possible one of the Taotao or
 7 Tao Motors may not have had a catalyst. I would have
 8 to go back and check.
 9 Q So, in actuality on these low emission as
 10 described vehicles the true need for a catalyst has
 11 not been determined. Is that accurate?
 12 A No, I don't think that is accurate.
 13 Q Now, do you know Professor Heck?
 14 A Do I know what?
 15 Q Professor Heck.
 16 A Professor?
 17 Q He was one of the experts in your case here.
 18 A Professor who?
 19 Q H-E -- is it C-T?
 20 JUDGE BIRO: C-K, Heck.
 21 MR. CHU: C-K, Heck.
 22 JUDGE BIRO: C-K.
 23 THE WITNESS: Oh, Heck. Thank you.
 24 MR. CHU: Oh, I'm sorry.
 25 THE WITNESS: The name sounds familiar but I

1 don't recall right now.
 2 BY MR. CHU:
 3 Q Do you know that he's an expert for the EPA
 4 in terms of catalysts?
 5 A No, I didn't recall that at present, no. I
 6 may have known that in the past. I don't recall it at
 7 present. I'm not saying he's not. I just don't --
 8 Q I'm sorry, I didn't hear the last.
 9 A I'm not saying he's not. I just don't
 10 recall at present.
 11 Q But you have available to you the assistance
 12 of a person that's knowledgeable, formally trained,
 13 who's done research and has written papers in
 14 reference to catalysts, do you not?
 15 A Are you saying do we have access to
 16 Professor Heck? Is that what you're asking me, or Dr.
 17 Heck?
 18 Q What I'm saying is do you know whether or
 19 not he has been an expert for the EPA?
 20 A No, I'm not familiar with him personally.
 21 Q So you have no idea of his relationship with
 22 the EPA.
 23 A So, I'm not saying that because I may have
 24 come across him in the past, but not in recent history
 25 so I don't recall at present.

1 Q Wouldn't it be good for someone like
 2 yourself, head of a department, doing the things that
 3 you tell us you've done, to know someone that's a
 4 little bit more knowledgeable about catalysts?
 5 A For what reason?
 6 Q For the safety of the individuals in this
 7 country as well as our environment.
 8 A So, you're asking me is it important that we
 9 know Professor Heck or someone like that. We haven't
 10 needed to avail ourselves of his services so.
 11 Q So, raise my hands high. We have one
 12 catalyst manufacturer and then we have two -- a second
 13 catalyst manufacturer associated in this complaint,
 14 correct?
 15 A Do we have catalyst manufacturers associated
 16 in this complaint? Yes, there are some catalyst
 17 manufacturers. I'm assuming your --
 18 Q And one is from Beijing and the other is
 19 from Nanjing. Have you heard of those?
 20 A I have.
 21 Q Okay. And you probably don't know, but bei
 22 means north, nan means south.
 23 A Okay, thank you.
 24 Q So, there are two manufacturers, okay, and
 25 in these 10 engine families there's basically just a

1 few catalysts that are manufactured for all those
 2 models. Is that accurate?
 3 A I think that's accurate, and can I go back
 4 and look at the applications? I think that's a
 5 relatively accurate statement.
 6 Q So, when you break down by engine families
 7 you're actually creating more diversity. Would that
 8 be accurate?
 9 A When we break down by engine families we are
 10 creating more diversity in what way?
 11 Q Well, you're dividing the lot up into more
 12 separate subcategories, are you not?
 13 A Manufacturer provides their engine family
 14 descriptions to us and we're defining the families
 15 based on what we discussed before, the engine
 16 description and the exhaust system description.
 17 Q So, it's possible that the Beijing
 18 manufacturer, the same catalysts is used in different
 19 models, right?
 20 MR. KLEPP: Objection, Your Honor. Form.
 21 It calls for speculation and also relevance to this
 22 line of question.
 23 JUDGE BIRO: Sustained.
 24 BY MR. CHU:
 25 Q So, it's not the catalysts that you're

1 really concerned with, is that right?
 2 MR. KLEPP: Objection, Your Honor. Same,
 3 relevance.
 4 JUDGE BIRO: Overruled. Do you understand
 5 the question?
 6 THE WITNESS: You asked are we concerned
 7 about the catalysts, and I would say, yes, we are
 8 concerned about the catalyst that's used in these
 9 systems.
 10 BY MR. CHU:
 11 Q That's the whole focus on this complaint,
 12 isn't it?
 13 A The focus of the complaint from the Office
 14 of Enforcement. It's my understand there is a concern
 15 with the catalyst in the products.
 16 Q And you're here basically to explain how it
 17 is that your group approves these applications
 18 knowing, and I'm going to articulate, that they're
 19 wrong, right?
 20 MR. KLEPP: Objection, Your Honor. Form.
 21 JUDGE BIRO: It's a leading question, but
 22 he's allowed to lead on cross.
 23 MR. KLEPP: I understand that, Your Honor,
 24 but I think that the form of the question --
 25 JUDGE BIRO: But because it?

1 MR. KLEPP: It suggests answers. The line
 2 of question recently has put Mr. Jackson in an
 3 impossible to answer situation with these vague formed
 4 questions. That's my objection.
 5 JUDGE BIRO: Overruled. Go ahead.
 6 THE WITNESS: So, your question is do we
 7 knowingly approve something that we know is wrong?
 8 BY MR. CHU:
 9 Q Right.
 10 A No, we wouldn't intentionally approve
 11 something that we know is wrong.
 12 Q Because if in 2006 you realize that the
 13 Chinese manufacturers were not as knowledgeable in
 14 meeting the requirements of your department and the
 15 enforcement department can you tell us what outreach
 16 you did from 2006 through 2012 to the Chinese
 17 manufacturer in China?
 18 A So again to be clear, I can't speak to the
 19 knowledge level of the Chinese manufacturers, and I
 20 don't know that EPA has made a statement about the
 21 knowledge level of Chinese manufacturers, and whether
 22 or not the Agency conducted outreach, they provided
 23 workshops that everyone is invited to, and we don't
 24 only invite certain manufacturers. Everyone is open
 25 to come to the workshops that we host.

1 Q Right. So, you knew in 2006 that there were
 2 issues with emissions and with regulatory requirements
 3 from Chinese manufacturers. Is that accurate?
 4 A I think this enforcement alert points to
 5 some concerns that the Office of Enforcement had.
 6 Q Now, I'm putting it back on the screen and
 7 asking you to look at Complainant's Exhibit 191, page
 8 367. Are you there with me?
 9 A Yes.
 10 Q Okay. So, why wasn't there a reference
 11 point for new manufacturers to indicate that you don't
 12 actually have to build anything to be in that
 13 classification?
 14 A You're asking why didn't we tell
 15 manufacturers they don't have to build anything?
 16 Q Right. I mean --
 17 A What is the purpose of us communicating that
 18 to the manufacturers? I'm not sure we thought that
 19 was something that they needed to know. I mean, it's
 20 in the regulations. We need to communicate to them.
 21 They don't need to build. I'm not sure I understand
 22 the question.
 23 Q What I'm saying is for someone reading that,
 24 even someone here, when it says "new manufacturer".
 25 A Um-hmm.

1 Q Then if someone wasn't building something
 2 their natural inclination would be I can't apply for
 3 it, right?
 4 MR. KLEPP: Your Honor, objection. I
 5 believe I heard counsel refer to CX191, which drew my
 6 attention to the slide presentation, and then the
 7 questions that ensued refers to a different document.
 8 So, there's some confusion here and I'd like the
 9 record to be clear.
 10 MR. CHU: Okay. If I did, I meant CX12.
 11 BY MR. CHU:
 12 Q Is that what you have in front of you, CX-
 13 12?
 14 A Yes, I have CX12.
 15 Q You didn't pull out 191 when I said --
 16 A You gave a page number subsequent to that
 17 and initially I started to look for 191 when you said
 18 the page number. I noticed I had the page number
 19 open.
 20 Q Okay. So, what I'm saying is these clear
 21 messages to the public, including the Chinese public,
 22 sometimes they're not as clear as you would like it to
 23 be. Would that be accurate?
 24 A So, I think that we try to communicate
 25 messages to the public and whether or not they

1 understand it we hold workshops so they can ask us
 2 questions. I can't speak to whether or not it's clear
 3 for them or not. We can only base it on if they have
 4 questions about what are providing.
 5 Q I said it would not be as clear, did you --
 6 A I can't speak to that. I can only speak to
 7 if they have questions about it.
 8 Q Now, earlier when you were asked about
 9 impressions, you remember four or five or eight
 10 questions that you were talking about impressions, and
 11 you had no problem giving your impressions then,
 12 right?
 13 A Based on what they said to me, that's right.
 14 Q And so what I'm asking is your impression of
 15 looking at this document and telling me that someone
 16 who is not familiar with the regs and the EPA when
 17 they read that is that clear?
 18 A So, someone who is not familiar with the
 19 regs with EPA --
 20 Q Yes, sir.
 21 A -- but they want to apply for a certificate
 22 of conformity?
 23 Q Thinking about it.
 24 A But they wouldn't read the regulations
 25 before thinking about applying?

1 Q Well, let's say someone like Thomas Edison,
 2 you know. There weren't regulations back then.
 3 A Okay. I'm sorry, your point?
 4 Q So, if you show Thomas Edison back then a
 5 diagram like this --
 6 A Okay.
 7 Q -- it says what it says. Would you agree?
 8 A It says what it says.
 9 Q Now let's talk about the next thing that it
 10 says what it says. Look at number three.
 11 A Yes.
 12 Q What does it require them to do?
 13 A Conduct emissions tests to demonstrate
 14 compliance.
 15 Q And is it true that your knowledge of the
 16 engine families associated with this complaint and the
 17 engines that were tested pursuant to the agreement
 18 with the EPA that is basically no emissions
 19 violations?
 20 MR. KLEPP: Objection. Calls for a legal
 21 determination.
 22 JUDGE BIRO: Sustained.
 23 MR. CHU: It's a factual, Your Honor.
 24 Knowledge of the facts.
 25 JUDGE BIRO: I didn't even understand the

1 question.
 2 MR. CHU: I'll rephrase it. I'm sorry.
 3 BY MR. CHU:
 4 Q You know about the agreed testing that was
 5 handled between Ms. Isin and Taotao USA, is that
 6 accurate?
 7 A I know that there was some testing that was
 8 requested.
 9 Q And you heard some talk about this morning
 10 that CEE was an approved company to perform these
 11 tests. Did you hear that?
 12 A I heard you make that statement.
 13 Q Okay. And you actually looked at and
 14 examined a particular report. Do you remember that?
 15 A Yes.
 16 Q And with the help of Mr. Klepp you were able
 17 to identify what appear to be some discrepancies,
 18 right?
 19 A Yes.
 20 Q And you really don't know if those are true
 21 discrepancies or not other than reading what you read.
 22 A I'm sorry. Do I know that they were true
 23 discrepancies? I know that what I made reference to
 24 was what I saw in the paper.
 25 Q Right, and when you look at this document

1 here and it tells us about a manufacturer you and I
 2 both know that doesn't mean someone that actually
 3 builds a vehicle, right?
 4 A Based on what's in the statute and what's in
 5 the regulations.
 6 Q So, what I'm saying is sometimes what we
 7 read doesn't necessarily mean what it says.
 8 A Well, again, the statute defines
 9 manufacturer as either the person who assembles it or
 10 the importer.
 11 Q Now, when it talks about conduct emission
 12 test to determine compliance, that's the emission
 13 test, correct?
 14 A Yes.
 15 Q Why doesn't it say somewhere in this flow
 16 chart, okay, check the precious metals, make sure you
 17 have some precious metal, make sure you check that it
 18 has a certain quantity, and make sure you check that
 19 there's a certain weight of this pancake mix that I
 20 call -- we both call wash coat, okay?
 21 MR. KLEPP: Objection to form, Your Honor.
 22 Compound question.
 23 JUDGE BIRO: Overruled.
 24 THE WITNESS: So, this is meant to be the
 25 major steps of the certification and compliance

1 process. Not every product may have a catalyst, and
 2 so this is meant to provide folks with the major steps
 3 they need to undertake. It is included in the
 4 specific application documents and certainly in some
 5 of the other documents you provide that if they have a
 6 catalyst they need to provide a detailed description.
 7 BY MR. CHU:
 8 Q Do you see anything similar with Exhibit 33
 9 that's behind this CX12?
 10 MR. KLEPP: Objection to form, Your Honor.
 11 CX13, CX12 both --
 12 MR. CHU: Not CX, you're right.
 13 Respondents' 33, the enforcement alert that I've put
 14 up here for you.
 15 BY MR. CHU:
 16 Q You're very good about identifying dates,
 17 right, or seeing dates?
 18 A Sure.
 19 Q Okay. Do you see the two dates on the two
 20 different documents?
 21 A Yes.
 22 Q What are those dates?
 23 A The enforcement alert is dated September
 24 2006. The major steps document is dated March 2005.
 25 Q So, why is it that if you saw this

1 enforcement alert and you're in tune with the rest of
 2 the EPA that this flow chart doesn't have that
 3 important information about one of the components that
 4 now the EPA says is so important, that being a
 5 catalyst?
 6 MR. KLEPP: Object to form, Your Honor.
 7 Calls for speculation.
 8 JUDGE BIRO: Not necessarily. Maybe he
 9 knows. Overruled.
 10 THE WITNESS: So, again, the document that
 11 was created in 2005 gives the major steps in the
 12 certification process. Since every engine in the
 13 vehicle system may not have a catalyst specific
 14 component issues are not addressed. The major steps
 15 in the certification process are addressed in the 2005
 16 document.
 17 BY MR. CHU:
 18 Q Is \$3.3 million a lot of money?
 19 MR. KLEPP: Objection to form, Your Honor.
 20 THE WITNESS: I guess that's a relative
 21 question. If you ask me that question, I would say
 22 yes, for me it's a lot of money. For someone like you
 23 maybe it's not. I don't know.
 24 MR. CHU: Well, it's a lot of money for me,
 25 too. Okay.

1 BY MR. CHU:
 2 Q But my point is if we're outreaching, as you
 3 said, and we're helping the public, including the
 4 Chinese, okay, that we talk kind of somewhat
 5 vehemently about because allegedly they're involved in
 6 illegal acts. Do you see that?
 7 A Do I see illegal acts?
 8 Q Illegal, they're involved in illegal acts
 9 according to the enforcement alert.
 10 A Okay. So, I don't see it right now, but
 11 I'll take your word for it.
 12 Q Oh, I'm sorry, yes.
 13 A Thank you.
 14 Q Okay. So, if you know someone is breaking a
 15 law, rolling past red lights and all, you see that.
 16 You feel a need to kind of tell them?
 17 A If I see someone running a red light do I
 18 feel the need to tell them?
 19 Q Well, let's talk about it's a family member.
 20 They never really stop, they roll --
 21 A Okay.
 22 Q -- past a red light. We both know that's
 23 not right, right?
 24 A Sure.
 25 Q Okay. So, if the EPA knew in 2006 what they

1 did know and you're outreaching with these wonderful
 2 workshops and flow charts, why is it that there's no
 3 warning here do not roll past the stop sign?
 4 A Again, this is the major steps in the
 5 certification process. So, there are other documents
 6 that inform manufacturers they need to provide
 7 specific information about their catalysts in their
 8 actual application, but that flow chart specifically
 9 has the major steps in the process.
 10 Q And when we go page after page on these sets
 11 of documents starting with CX12, okay?
 12 A Okay.
 13 Q You were questioned in CX12, EPA Bates stamp
 14 369. Remember that?
 15 A Yes.
 16 Q And you were asked to find number seven,
 17 which you did?
 18 A Yes.
 19 Q Okay. And somehow someone just happened to
 20 put the word -- the words "the number". That means
 21 what?
 22 A Number of catalysts. It could mean --
 23 Q More likely than not in the type of vehicles
 24 that's involved here they were -- were they all single
 25 catalyst vehicles?

1 A For the vehicles involved in this complaint,
 2 I believe they were all single, not multiple
 3 catalysts.
 4 Q Location would be --
 5 A Catalytic converter.
 6 Q Location would be what? What does that
 7 mean?
 8 A Its location in the exhaust system. So,
 9 most manufacturers that put it in their muffler simply
 10 say it's in the muffler, but it helps identify its
 11 location relative to the exhaust port.
 12 Q So, you're saying there are some vehicles
 13 that you approve where the catalyst is not inside the
 14 muffler.
 15 A So, it is possible for some sectors. I
 16 think for most of these sectors they probably put it
 17 in the catalyst. For this sector most of them are in
 18 the catalyst, but there are some other sectors in our
 19 center where they may have close couple catalysts.
 20 Q These catalysts are pretty inexpensive
 21 components, aren't they?
 22 A Pretty expensive?
 23 Q Inexpensive.
 24 A Again, I guess that's a relative term. I
 25 would assume that it's actually a pretty significant

1 investor for a manufacturer.
 2 Q Do you have any idea what these catalysts on
 3 the average costs?
 4 A Yeah, though I don't recall at present what
 5 the cost numbers are. I recall numbers like a hundred
 6 dollars per ounce for each of the precious metals,
 7 \$115 per ounce for the precious metals, but I don't
 8 recall the catalyst costs off the cuff.
 9 Q So, the answer is "I don't know"?
 10 A The answer is I don't recall at present what
 11 the current catalyst costs are.
 12 Q But you believe somehow they're significant.
 13 I know that earlier when we talked about 3.3 million
 14 we both thought that was significant.
 15 A We both thought what was significant?
 16 Q \$3.3 million.
 17 A I think it's a lot of money personally.
 18 Q So, you mentioned that the catalyst is some
 19 sort of quantification of being -- that you thought it
 20 was --
 21 A I think it's one of the cost drivers for the
 22 design and construction of vehicles.
 23 Q So, you really have no idea what the cost is
 24 in relationship to the cost of the vehicles.
 25 A No. Actually, I think it's a significant

1 cost driver.
 2 Q Is that 10 percent, 20 percent, 30 percent?
 3 Do you know?
 4 A I would say in some cases it could be as
 5 much as 10 to 15 percent, but I don't want to be
 6 quoted on that because I want to go back and check the
 7 actual numbers.
 8 Q Because you'd be guessing if you did, right?
 9 A That's an estimate.
 10 Q Okay. And it's not based upon anything you
 11 can relate to at this moment.
 12 A So, the reason why I'm hesitant is only
 13 because in the rulemaking we actually put together
 14 cost estimates based on precious metal, lower cost of
 15 substrates, et cetera. But I haven't reviewed that in
 16 some time so I don't recall what the current cost
 17 might be or even what they were in a rulemaking.
 18 Q Now, can you tell this Court, from the best
 19 of your recollection, what the cost of platinum is in
 20 reference to the cost of the catalyst, if you know?
 21 A Well, so platinum is one of the precious
 22 metals in the catalyst material. It is approximately
 23 125, I think, per ounce, but I haven't checked in the
 24 last few days. It's the most expensive catalytic
 25 material in the catalyst.

1 MR. CHU: I'm sorry. I'm going to object as
 2 non-responsive.
 3 JUDGE BIRO: I think it was. Overruled.
 4 BY MR. CHU:
 5 Q So, you think that because it's expensive
 6 it's a high cost in reference to the total cost of a
 7 catalyst.
 8 A Yes.
 9 Q There's no quantification there, right?
 10 A No quantification of what?
 11 Q The qualifier that you use is that you
 12 believe platinum costs a lot of money, so therefore it
 13 is a major cost of the catalyst.
 14 A So, let's -- let me be clear. I think all
 15 three of the precious metals cost a lot. Platinum
 16 costs the most.
 17 Q Okay. Now, we all know in general the price
 18 of gold, right?
 19 A We know in general -- I didn't hear the last
 20 part.
 21 Q The price of gold.
 22 A I don't know the price of gold right now.
 23 Q Gold is anywhere from 1,000 to 2,000 dollars
 24 an ounce.
 25 MR. KLEPP: Objection, Your Honor. He's

1 already said he doesn't know.
 2 JUDGE BIRO: Sustained.
 3 BY MR. CHU:
 4 Q So, you've never heard the price of gold.
 5 A Have I ever heard the price of gold?
 6 Q Yes, sir.
 7 A I'm sure I've heard it at some point but I
 8 don't recall what it is. I don't think about it that
 9 often.
 10 Q You say you know the price of platinum.
 11 What timeframe are you referring to?
 12 A So, that's just in general. There's no
 13 specific timeframe. I don't know what it is right now
 14 this very second. I just recall that in the past
 15 having to look it up. That's around what it was, but
 16 I don't -- I don't keep track of that on a daily
 17 basis.
 18 Q It was what? I'm sorry. How much?
 19 A Again, that was a guesstimate from what I
 20 recall. Maybe 125 per ounce.
 21 Q \$125 per ounce.
 22 A I think so.
 23 Q Okay.
 24 A But I'll have to go back and check.
 25 Q Okay.

1 A But that number sounds familiar.
 2 Q Do you know how many grams there are in a
 3 pound?
 4 MR. KLEPP: Your Honor, I'm going to object
 5 to relevance. We've been down a line of questioning
 6 that seems far afield from anything that's been part
 7 of Mr. Jackson's direct.
 8 JUDGE BIRO: What are we getting to here?
 9 MR. CHU: Well, getting to his knowledge,
 10 the Agency's knowledge of the cost of precious metals
 11 and why they believe that a lack of precious metals is
 12 a motivator in this case. That's what I'm reading
 13 from the complaint.
 14 JUDGE BIRO: He says platinum is expensive.
 15 MR. CHU: It is.
 16 JUDGE BIRO: And therefore he assumes that a
 17 part that involves platinum and palladium and rhodium
 18 is going to be expensive.
 19 MR. CHU: And that's the assumption, and
 20 without any quantification or testimony --
 21 JUDGE BIRO: That's his whole testimony.
 22 That's what he believes. He took those three
 23 expensive metals, he knows that they use some amount
 24 of those three expensive metals, and therefore he has
 25 concluded that therefore the catalyst is relatively

1 expensive. That's everything that he knows.
 2 What does the price of gold have to do with
 3 anything?
 4 MR. CHU: It's relative to platinum, that's
 5 all. I'll move on.
 6 JUDGE BIRO: I don't know that. Do you
 7 know? I mean, what relevance would it be? Relative
 8 to platinum because we make wedding rings out of both
 9 of them?
 10 MR. CHU: There's less platinum than there
 11 is yellow gold.
 12 JUDGE BIRO: Now you're testifying.
 13 MR. CHU: No, I'm just -- you're saying what
 14 does it mean. I'm just saying if he knows or not. If
 15 he doesn't know, he's answered the questions and he
 16 says, I know of the price of platinum. I don't know
 17 the price of gold. So --
 18 JUDGE BIRO: Because he works with those
 19 three metals as part of his --
 20 MR. CHU: Right. I'm asking him now to
 21 quantify his hypothesis in terms of why he feels the
 22 catalyst cost is a major component of the vehicles,
 23 and he's saying he knows the price at some point or
 24 knew the price.
 25 JUDGE BIRO: Yes, and he said that he

1 thought it was because of some policy or --
 2 THE WITNESS: The rulemaking.
 3 JUDGE BIRO: -- the rulemaking they had done
 4 a number of years ago. He doesn't know the current
 5 prices now.
 6 MR. CHU: And the timeframe that we're in
 7 right now is a couple of years ago, in 2012, so I feel
 8 that that's relevant.
 9 JUDGE BIRO: Well, if he has any more
 10 recollection on that point you can ask him but it
 11 seemed like that was --
 12 MR. CHU: He's given --
 13 JUDGE BIRO: He's exhausted everything he
 14 knows.
 15 MR. CHU: He's given an answer. He said 125
 16 per ounce is what he gave me, and then I wanted to
 17 break that down into a quantitative number. He's an
 18 engineer. He should know the conversions and I'm
 19 trying to see how much of that we can get because it's
 20 a certain amount in grams that we're even talking
 21 about.
 22 JUDGE BIRO: I bet this is something I could
 23 take administrative notice of.
 24 MR. CHU: Okay. Your Honor, we'd ask the
 25 Court to take judicial notice or administrative notice

1 that the amount of precious metals in these matters
 2 are probably less than .2 grams.
 3 MR. KLEPP: Objection, Your Honor. The way
 4 it's been phrased here I -- it seems very vague, very
 5 speculative, and to take judicial notice of that
 6 statement seems --
 7 JUDGE BIRO: I wasn't thinking of in this
 8 specific case. I was thinking of the price of
 9 platinum generally.
 10 MR. CHU: Yes, Your Honor. Okay. And the
 11 reason I mention that is 'cause they were pointing to
 12 the load and contents of the precious metals in one of
 13 the applications that they had talked about previously
 14 as part of the evidence in this case.
 15 So, I thought you were saying that you could
 16 take judicial notice of that fact that was already --
 17 JUDGE BIRO: I take judicial notice that
 18 platinum today, apparently, is \$934 an ounce.
 19 MR. CHU: Thank you, Your Honor.
 20 MR. KLEPP: May I offer something, Your
 21 Honor?
 22 JUDGE BIRO: Yes.
 23 MR. KLEPP: There is, I believe, a whole
 24 part of Respondents' case that is going to have to do
 25 with precious metals and pricing as part of their

1 economic benefit report, or a portion of their expert
 2 report. So, why do this here with Mr. Jackson when
 3 he's stretching for everything he can think of and
 4 using guess work.
 5 JUDGE BIRO: His choice. It's his choice.
 6 Overruled.
 7 MR. KLEPP: Fair enough.
 8 BY MR. CHU:
 9 Q So, Mr. Jackson, this Exhibit 12 has not
 10 really been updated, has it?
 11 A No.
 12 Q And wouldn't it be more beneficial as far as
 13 an outreach to actually tell manufacturers and
 14 importers that the EPA permits an allowance or a
 15 tolerance for the amounts of precious metals in these
 16 wash coats?
 17 MR. KLEPP: Objection, Your Honor. Form of
 18 question and relevance.
 19 JUDGE BIRO: Overruled. Go ahead.
 20 THE WITNESS: Are you asking me do we have
 21 guidance documents that provide a tolerance?
 22 BY MR. CHU:
 23 Q I'll get to that next but the question was
 24 the question. Would it be more beneficial if we look
 25 at a guidance document that was manufactured in 2005

1 and we're in 2017 today, that your EPA should advise
 2 the public and this Court that there is a tolerance
 3 factor?
 4 A So, again, this document was intended to
 5 provide major steps in certification process. So, if
 6 you're asking me should this document have that level
 7 of detail in it, that was not the original intent. We
 8 certainly could take that into account and provide
 9 more information.
 10 Q Is there any plans in the horizon to do
 11 that?
 12 A We have been talking about guidance
 13 documents to provide more information to manufacturers
 14 as time goes forward. That could be something that we
 15 incorporate.
 16 Q In fact, you, yourself, have authored PPT,
 17 at least one PPT presentation wherein you specifically
 18 wrote in that there is a tolerance level. Is that not
 19 accurate?
 20 A So, I believe you're referring to a guidance
 21 document we were assembling for submission of
 22 information as relates to catalysts. So, we had a
 23 portion of that document included in PowerPoint
 24 presentations.
 25 Q You remember when I asked you about

1 tolerances and variances in your deposition at first
 2 you told me you can't do that?
 3 A I don't remember my exact words, but I do
 4 remember making reference to responding to one of your
 5 questions regarding tolerances.
 6 Q I'm sorry?
 7 A I do remember responding to one of your
 8 references to tolerances. I don't remember my exact
 9 words.
 10 Q Right. And then after I showed you your
 11 actual PowerPoint you then agreed with me, oh, yes,
 12 you can have a tolerance or a variance on the
 13 quantities of precious metals. Do you remember that?
 14 A What I agree with you is that we had that
 15 document, that excerpt from a document in a PowerPoint
 16 slide. We haven't finalized that guidance document
 17 yet, though.
 18 Q I understand but what I'm getting clear --
 19 A Template, I should say. Excuse me. That
 20 template.
 21 Q -- clarification is that in your area of
 22 certification, which includes post-manufacturing
 23 investigation. Is that the right word or --
 24 A Compliance.
 25 Q Compliance, okay. That you're accepting

1 tolerances in the amount of precious metals in the
 2 catalysts.
 3 A I don't know if I could say that is an
 4 accurate statement as yet, and I'll tell you why. The
 5 guidance document that you have from that presentation
 6 to engage in outreach even before we publish some
 7 guidance documents we'll share it with the industry to
 8 get their reaction before we formally publish it, and
 9 that may not have been reviewed and finalized with OGC
 10 as yet.
 11 Q Sir, I'm going to ask you to look at
 12 Respondents' Exhibit 37.
 13 MR. CHU: Thirty-seven, Your Honor.
 14 THE WITNESS: Is that in this set of binders
 15 or is there another set of binders?
 16 MR. CHU: Judge, may I approach the witness?
 17 JUDGE BIRO: Yes, you may.
 18 (Pause.)
 19 THE WITNESS: I have it.
 20 BY MR. CHU:
 21 Q Now, apparently, even though you were one of
 22 the authors on this document you didn't write that in
 23 there, did you?
 24 MR. KLEPP: Objection, Your Honor.
 25 JUDGE BIRO: That's arguing with the

1 witness. Sustained.
 2 BY MR. CHU:
 3 Q Did you write that in there?
 4 A So, author to the PowerPoint presentation?
 5 Q Yes, sir.
 6 A I did not draft the guidance document or the
 7 template.
 8 Q Thank you. Do you know who did that?
 9 A The template was assembled and is still
 10 being assembled by the team of certification
 11 engineers.
 12 Q But as far as this presentation you actually
 13 did present this, did you not?
 14 A I did present this as something we wanted
 15 the industry to review and give us feedback on.
 16 Q And you were satisfied with what you were
 17 telling them, right?
 18 A We were telling them that we wanted their
 19 feedback. So, yes, I was satisfied with asking for
 20 their feedback.
 21 Q And could you just read for us Note 2
 22 because this is not the clearest one?
 23 MR. KLEPP: Objection, Your Honor, to the
 24 extent that he's asking him to read from a document
 25 not in evidence.

1 MR. CHU: Your Honor, I'm going to offer
 2 Respondents' Exhibit 37 at this time. He's identified
 3 it as a document that he's used.
 4 MR. KLEPP: Objection.
 5 JUDGE BIRO: And what's the objection?
 6 MR. KLEPP: The objection is this is not a
 7 document that is part of the prehearing exchange and
 8 counsel is looking at it for the first time here, and
 9 objection on that basis.
 10 JUDGE BIRO: Sustained. Move on.
 11 MR. CHU: I'm sorry?
 12 JUDGE BIRO: Sustained. Move on.
 13 BY MR. CHU:
 14 Q Was this an exhibit in your deposition?
 15 A I think I remember this coming up. I don't
 16 know if it was an exhibit or not. I don't remember
 17 how it was identified.
 18 Q Okay. Do you remember Mr. Klepp being in
 19 the room?
 20 A During the deposition?
 21 JUDGE BIRO: I don't care if it was an
 22 exhibit to his deposition. I don't care if it, you
 23 know, hung on his office door every day. If it wasn't
 24 in the prehearing exchange it's not coming in.
 25 MR. CHU: Understand, Your Honor.

1 BY MR. CHU:
 2 Q So, the so-called understanding of catalyst
 3 and its function and needs in these types of vehicles
 4 is still a work in progress with your department. Is
 5 that accurate?
 6 A All right. So ask the first part of your
 7 question again. The what part of the catalyst?
 8 Q Whether or not -- let me start over.
 9 Understanding the need of catalysts in these types of
 10 vehicles it's still a work in progress?
 11 A Understanding the need for a catalyst, I
 12 wouldn't say that's a work in progress. Manufacturers
 13 decide if their design needs a catalyst or not.
 14 Understanding the description of the catalysts is a
 15 part of what they need to include in their
 16 application, and we've been working with the industry
 17 of late to see if we need to modify any of our
 18 guidance documents or any of our templates what they
 19 report to us because we seek industry feedback from
 20 time to time.
 21 Q Okay. And so are you aware of any
 22 standardized tests that have been adopted by the EPA
 23 to actually test the weight and composition of
 24 catalysts or catalytic materials?
 25 A So, I am aware that the Office of

1 Enforcement has conducted tests. Whether or not it's
 2 a standardized protocol within the Office of
 3 Enforcement, I would have to defer to them to answer
 4 that question.
 5 Q And you discover that basically from one of
 6 the enforcement document that you reviewed during your
 7 deposition. Is that accurate?
 8 A That and there's a paper, an essay paper on
 9 the subject.
 10 Q Basically, it's just been the last few years
 11 that there's been any adoption of any acceptable
 12 method of testing the catalyst. Is that accurate?
 13 MR. KLEPP: Objection to relevance, Your
 14 Honor. How is this at all relevant to penalty?
 15 MR. CHU: To the extent that you allowed
 16 emissions to be discussed.
 17 JUDGE BIRO: I think it is. I think it goes
 18 to gravity. Go ahead. Overruled.
 19 THE WITNESS: I'm not aware of the
 20 timeframe.
 21 MR. KLEPP: Your Honor, if I may. We've
 22 been going for just about two hours. Would it be --
 23 JUDGE BIRO: You'd like a break.
 24 MR. KLEPP: -- an okay time to take a break?
 25 JUDGE BIRO: If you would like. Can we --

1 MR. CHU: Yes, Your Honor, that would be
2 fine.
3 JUDGE BIRO: Okay. It's 3:15. Let's stand
4 in recess to 3:30?
5 MR. KLEPP: Thank you.
6 JUDGE BIRO: Fifteen minutes. Okay.
7 (Whereupon, a short recess was taken.)
8 JUDGE BIRO: Please be seated.
9 Are you waiting for --
10 MR. CHU: Your Honor, if it please the
11 Court:
12 BY MR. CHU:
13 Q Okay. On Exhibit 12, EPA Bates No. 369,
14 also on the screen in front of you, and we're on No.
15 7. Do you see that on the screen?
16 A Yes.
17 Q Okay. Do you see it highlighted there?
18 A Yes.
19 Q Okay. We talked about the location but we
20 did not discuss volume, okay? So, can you tell this
21 Court what you were referring to, what the EPA was
22 referring to in this draft guidance document about
23 volume?
24 A Sure. So, the volume of the catalyst
25 material -- the volume of the catalyst, the substrate

1 volume.
2 Q You actually want the size, right?
3 A Yes.
4 Q So, it's more than just volume?
5 A Yes.
6 Q Because the volume of the substrate, which
7 you just mentioned, actually the volume could be
8 greater in proportion, right?
9 A In proportion to what?
10 Q Well, to the actual volume of the catalyst.
11 A Your question is can the volume of the
12 catalyst be greater in proportion to the volume of the
13 catalyst?
14 Q Right.
15 A I'm not sure I follow your question.
16 Q So, you can't tell us one way or the other
17 when you have this honeycomb substrate that's involved
18 in these types of catalysts whether or not the amount
19 of wash coat that can expose precious metals is -- the
20 volume of that is greater than filling the area of the
21 catalyst with complete wash coating.
22 A So, I believe you're referring to the
23 surface area, the catalyzed surface area versus the
24 volume of the catalyst.
25 Q Correct.

1 A Okay. And your question about that is what
2 exactly?
3 Q Well, the purpose of the substrate, the
4 honeycomb, is to create greater surface area. Would
5 you agree?
6 A Yes.
7 Q Okay. And because the more wash coat you
8 have exposed to the gas that's going through there --
9 A Yes.
10 Q When I refer to gas what gases am I
11 referring to?
12 A I'm assuming you're referring to the exhaust
13 gas from the engine.
14 Q Okay. Then those gases can connect or touch
15 more particles of precious metals because of those
16 honeycombs, correct?
17 A Yes.
18 Q And if you put too much wash coat on it then
19 it would tend to clog the path of the gases and it
20 would reduce the exposure of the small particles of
21 precious metals in the wash coat. Would you agree?
22 A Well, so the porous nature of the honeycomb
23 substrate is such that they try to coat every bit of
24 the surface area with wash coat. They try not to clog
25 specific channels when they manufacture it.

1 Q So, in your classes they've talked about
2 those things, right?
3 A Well, to some extent in the classes and then
4 work experience as well.
5 Q Good. And then the final portion of this
6 seven talks about the composition of catalytic
7 converter. What exactly does that mean?
8 A So, that specifically gets at the issue of
9 the precious metal descriptions that we talked about
10 earlier: the loading, the amount of precious metal
11 that's present, the ratio of the various precious
12 metals that are present.
13 Q Was your department back in 2005/2006 -- let
14 me take that back.
15 When did you join your department?
16 A I joined the Compliance Division in 2007.
17 Q Okay. So, in your department in 2007 would
18 it be safe to say that the people in your department
19 was aware of the use of these honeycomb catalysts?
20 A Yes.
21 Q Okay. And you just testified that through
22 your exposure, I guess, experience and training, that
23 you understand somewhat how the wash coat is applied,
24 right?
25 A Yes.

1 Q And is it accurate to say that you've seen
2 either slides, videos, or something as to the slurry?

3 A When manufacturers of the catalysts have
4 presented it, yes, I have been to the facilities.

5 Q And you've noticed how -- that they're
6 basically almost nano size particles on these precious
7 metals.

8 MR. KLEPP: Objection, Your Honor, to this
9 line of questioning. I don't see how it relates at
10 all or it's relevant to the penalty.

11 MR. CHU: May I respond, Your Honor?

12 It will go to so that what he testified to
13 earlier that there's actually a tolerance, and the
14 evidence will establish that the way they've asked for
15 the information on these applications and in the ASA,
16 the resettlement agreement, is not correct in the way
17 they ask for the information.

18 JUDGE BIRO: Well, we're not going to
19 undermine the ASA agreement. Whatever you agreed to,
20 whether you should have, that's fine. But does this
21 have anything to do with this case and what happened
22 in this particular case that --

23 MR. CHU: Yes, Your Honor, it has to do with
24 what my client attempted to do to satisfy this need to
25 get testing done on these catalysts, and so it goes to

1 show that because of the variance, the tolerance
2 levels, the same amount of precious metals can never
3 be one set number, and this is what we're asking this
4 witness to tell us if he knew or didn't know -- if he
5 knows or doesn't know that fact when they were
6 approving these particular applications, especially
7 the carryover ones, because the proffered testimony is
8 going to be that they were still approving the
9 carryovers when they had the information about
10 catalysts that allegedly did not meet what the
11 applications had.

12 JUDGE BIRO: I think I dealt with this
13 variance issue in my order on accelerated decision.
14 You raised an issue about how it was uncertain, that
15 they didn't meet it because there was a variance in
16 the various test results, and I found that the
17 variance was within the tolerance of the test, and
18 they were still not in compliance. So, now I'm not
19 sure exactly how this is going to help the penalty.

20 MR. CHU: I believe in tomorrow's testimony
21 we will see that there were catalyst test results,
22 okay, in the same year that this Court decided that
23 there were violations in 2012 from Harrison Wolf, who
24 was a consultant that was recommended by Ms. Isin,
25 that the test results came back, that they were within

1 range of three carburetors or three catalysts that
2 were tested, two tested right. The third one was 10
3 percent more than what was stated, but in that same
4 year the catalyst results that this Court was
5 presented with in the summary decision indicated that
6 they didn't match through two other labs.

7 And so what it goes to is the penalties in
8 that situation as to the damage. How is it that these
9 are okay? You have 23,000 vehicles. You've got good
10 tests, you've got bad tests, and it's the same. One
11 of it was with the same SGS agency. So, I think the
12 Court has to calculate that when -- if the Court is
13 going to assess any penalties.

14 JUDGE BIRO: The carburetors.

15 MR. CHU: No, catalysts.

16 JUDGE BIRO: Carburetors.

17 MR. CHU: Catalysts.

18 JUDGE BIRO: Catalysts. There were some
19 catalyst tests where they were in compliance?

20 MR. CHU: Yes, Your Honor, in 2012, that's
21 what the evidence is going to show. It's one of our
22 exhibits. It's Harrison Wolf, the consultant, and
23 they went ahead and they hired SGS, which is one of
24 the companies that tested the 23 units, and in those
25 tests they came back with two that were on point, one

1 had 10 times of one of the precious metals than what
2 was stated in the application.

3 So, there's 23,000 vehicles that are
4 involved in the assessment in 2012. So, I believe
5 it's important for the Court, not on liability, but on
6 damages, to have that information before it which
7 we'll be presenting. This is how this all ties in.

8 JUDGE BIRO: Could we stipulate to what
9 those results are?

10 MR. CHU: I have no problem with that
11 because they're --

12 JUDGE BIRO: This is an exhibit you've
13 exchanged?

14 MR. KLEPP: I'm sorry, Your Honor. I'm
15 having a --

16 JUDGE BIRO: This is an exhibit you've
17 exchanged?

18 MR. CHU: Harrison Wolf. Yes, what number?

19 MS. TARIQ: CX77.

20 MR. CHU: CX70 --

21 MS. TARIQ: Seven.

22 MR. CHU: -- seven, Your Honor. That it was
23 three catalysts, and this is the importance of the
24 ASA. The ASA said you -- and we'll get a chance to
25 read it. It's not real clear what they want but this

1 consultant said just take three catalysts out of all
 2 these engine classes, and that was sent to SGS.
 3 JUDGE BIRO: Yes.
 4 MR. CHU: Two came in no problem. The third
 5 one 10 times the amount, and then there were 23,000
 6 vehicles for 2012 that they were throwing in and
 7 saying these are bad.
 8 JUDGE BIRO: But I've already ruled on that.
 9 MR. CHU: Right, and this is not to the
 10 liability. This is to damages, penalties.
 11 JUDGE BIRO: No, I don't think it goes to --
 12 I don't see how that goes to damages or penalties. I
 13 think that goes to liability. I really -- I'm sorry.
 14 I don't see how that goes.
 15 MR. CHU: And I understand it, Your Honor.
 16 I was just -- I've read some of the decisions by the
 17 courts here and one of the cases say sometimes the
 18 liability is so intertwined with the damages in these
 19 situations. So, it's our belief that it's similarly
 20 the situation.
 21 So, again, I'm not arguing liability. The
 22 Court's ruled on that. I'm just saying as far as it
 23 goes to damages I think it's important for the Court
 24 to see the evidence that says we're not as bad as they
 25 say that we are.

1 JUDGE BIRO: So, is there an objection to
 2 that admission, to that exhibit that says apparently
 3 in some tests they came back on their catalysts and
 4 they were in compliance?
 5 MR. KLEPP: Just to make the point, Your
 6 Honor. Those tests, which I don't have in front of me
 7 right now, but I think I can speak to accurately,
 8 aren't for any engines or vehicles that are part of
 9 the engine families in the complaint.
 10 You've got parts. I think counsel's
 11 argument is if you follow this labyrinth you'll find
 12 suppliers that gave them catalysts that are the same
 13 parts that they would represent are the parts in the
 14 vehicles here. So, if you follow this winding line
 15 you'll get --
 16 JUDGE BIRO: But this is why I don't
 17 remember these tests because the ones -- all the ones
 18 in this case that involved these vehicles came back
 19 out of compliance.
 20 MR. KLEPP: That is correct.
 21 JUDGE BIRO: But for other tests regarding
 22 other vehicle engines they came back in compliance.
 23 MR. KLEPP: Right.
 24 MR. CHU: Your Honor, and that's why we're
 25 bringing the point about the two catalyst

1 manufacturers, okay.
 2 JUDGE BIRO: I read in your brief, your
 3 prehearing brief, you said that there were two
 4 manufacturers and five different catalysts.
 5 MR. CHU: Correct.
 6 JUDGE BIRO: Is that correct?
 7 MR. CHU: Correct.
 8 JUDGE BIRO: And are the five different
 9 catalysts in the vehicles that are at issue in this
 10 case or just five different catalysts that your
 11 clients used in all of their vehicles?
 12 MR. CHU: The last part. There's five
 13 catalysts used -- let me --
 14 (Pause.)
 15 It's the 77, and I'm sorry, this one is just
 16 so faint, but it's what we highlighted, and it is our
 17 belief that this was one of the --
 18 JUDGE BIRO: What is the exhibit?
 19 MR. CHU: -- engine families that's
 20 mentioned, engine family that's mentioned in the
 21 complaint.
 22 JUDGE BIRO: Okay, I'm going to let you move
 23 forward because we're wasting too much time here. If
 24 this relates to an engine family in the complaint,
 25 I'll let you ask the questions about the test results.

1 MR. KLEPP: May I be heard, Your Honor?
 2 JUDGE BIRO: Yes.
 3 MR. KLEPP: We would be willing to stipulate
 4 to the report counsel is referring to with this
 5 explanation. It is a test on a vehicle that is not --
 6 was not subject to any of the testing that came
 7 forward as a result of EPA's test order, and the labs
 8 that were conducting those tests at the time that the
 9 test order was in effect. It has been analyzed and
 10 also shown to not directly meet the certified
 11 specification.
 12 When I say that I mean this test that Mr.
 13 Chu is referring to. It's closer than the very
 14 different palladium-only test results that were found
 15 in the 208 -- I'm calling it 208 -- in the test order
 16 results that are the basis for the violation in Your
 17 Honor's liability decision. It's an outlier
 18 nonetheless. It's outside of our test order and its
 19 protocol.
 20 We would be willing to stipulate to it if it
 21 comes into briefs, through arguments later, but I
 22 would just like to move along and I don't think Mr.
 23 Jackson should be sitting there testifying to things
 24 relating essentially to liability.
 25 JUDGE BIRO: Okay. That's all argument and

1 we'll deal with weight of the evidence, but let's move
2 forward now. If it relates to any of the vehicles at
3 issue here or any of the engine models, we can talk
4 about it. If it's not related to these engines or
5 these vehicles, we're not going to talk about it.

6 MR. CHU: Yes, Your Honor. I understand
7 that.

8 MR. KLEPP: And I'm sorry, Your Honor, and I
9 beg to just -- I will interrupt just a second. We
10 also addressed it in our papers in our motions that
11 did precede your liability decision, the May 3rd
12 order.

13 JUDGE BIRO: Okay.

14 MR. KLEPP: Thank you.

15 JUDGE BIRO: Let's go.

16 BY MR. CHU:

17 Q Mr. Jackson, you were asked about adjustable
18 parameters on direct. Do you remember that?

19 A Yes.

20 Q Okay. And you were asked about carburetors

21 --

22 A Yes.

23 Q -- as well.

24 A Yes.

25 Q And I believe you testified that there is a

1 range that these carburetors can be tested in. Is
2 that accurate?

3 A There are adjustable parameters that have a
4 range.

5 Q Okay. And so as such, are you familiar with
6 the first violation back in 2009 that was alleged
7 then?

8 A I am somewhat familiar with it.

9 Q Okay. And what you do you allow consultants
10 who are somewhat experts in dealing with your
11 department. Is that correct?

12 A We allow individuals who serve as
13 consultants. I won't speak to their expertise. I'll
14 simply speak to the fact that they serve as
15 consultants for the manufacturers. I can't speak to
16 their expertise.

17 Q So, there's no required certification,
18 application has to be approved before they can act as
19 a consultant to file on behalf of an entity or an
20 individual applications for certificates of
21 conformity.

22 A No, manufacturers select their consultants.

23 Q Okay.

24 A Whatever qualification procedures they may
25 use that address that.

1 Q As far as you're aware, James Xu had been
2 working with your department as long as you had been
3 there. Is that accurate?

4 A I believe that is accurate.

5 Q Okay. And as far as applications involving
6 carburetors, okay, and adjustable screws, isn't it
7 true that in 2009-2010 the certification department
8 that you were in was not allowing adjustable screws
9 with the carburetors?

10 A So, in 2009 and '10, I didn't work in this
11 sector, so when you say where they allowing it, I
12 don't know what was in the applications at this point
13 for 2009 and '10.

14 Q Okay. And I'm not exactly sure why you were
15 asked questions about the carburetor or screws other
16 than the fact that I'm thinking it has something to do
17 with this prior violation. So, you're not really
18 familiar with that at all, right?

19 A When you say "that" what are you referring
20 to?

21 Q Are you familiar with the ASA that was
22 entered into in June of 2010?

23 A I'm aware of it in general. I don't know
24 the specifics of it, all the specifics of it.

25 Q And do you know why you were telling us

1 about adjustable parameters in reference to the action
2 here?

3 A Do I know why the attorney asked me the
4 question?

5 Q No, no. I'm asking do you know why you're
6 talking about adjustable parameters in reference to
7 how it applies to the assessment of penalties here.

8 MR. KLEPP: Objection, Your Honor, to the
9 extent that Mr. Jackson is not here to talk about the
10 penalty calculation which I think this question goes
11 to.

12 JUDGE BIRO: Sustained. Go ahead.

13 BY MR. CHU:

14 Q In fact, one of the issues that you're
15 currently involved with on applications from Taotao in
16 terms of the recertifications is an issue dealing with
17 an adjustable parameter, is it not?

18 THE WITNESS: (Per the Court's order, the
19 answer was stricken from the record.)

20 JUDGE BIRO: Okay, we're going to strike
21 that all from the record.

22 THE WITNESS: I'm sorry.

23 JUDGE BIRO: That whole answer. We're going
24 to sustain an objection. You've got to move on.

25 MR. CHU: Yes, Your Honor.

1 JUDGE BIRO: He's not going to get to any of
 2 that.
 3 THE WITNESS: I apologize. I didn't mean
 4 to.
 5 BY MR. CHU:
 6 Q So, when you were asked the question about
 7 your awareness as to the ability of the applicant,
 8 Taotao USA, you mentioned that they had questions for
 9 you that didn't seem -- how did you characterize it?
 10 A It didn't appear as if they were familiar
 11 with the regulations.
 12 Q Okay. Now, people who apply don't have to
 13 necessarily be familiar with the regulations, do they?
 14 A Someone who applies for a certificate of
 15 conformity should be familiar with the regulations
 16 because they're applying for a certificate that
 17 indicates that they are complying with the
 18 regulations. So, yes, they have to be familiar with
 19 the regulations.
 20 Q So, let's talk about the history here. We
 21 have a James Xu that's been representing Taotao USA
 22 since at least 2008. Would you agree?
 23 A I don't know the exact year, but I know he's
 24 represented them for some time.
 25 Q Okay. And so how is it that a consultant

1 like that who represents -- and let me ask you. Do
 2 you know whether or not James Xu also represents a
 3 multitude of Chinese importers and manufacturers?
 4 A I think he does represent some others, but I
 5 don't have the list with me.
 6 Q Okay. And so how is it that something so
 7 simple as an adjustable carburetor screw is not known
 8 by James Xu? Do you have any idea?
 9 MR. KLEPP: Objection, Your Honor. Calls
 10 for speculation.
 11 JUDGE BIRO: Sustained.
 12 BY MR. CHU:
 13 Q So, Taotao USA, the importer/manufacture,
 14 entrusted the application process to Mr. Xu and your
 15 department, correct?
 16 A I believe they entrusted the application
 17 process to Mr. James Xu.
 18 Q And in the outreach programs that you had at
 19 those times you were outreaching to people such as Mr.
 20 Xu and not necessarily Taotao USA, the importer. Is
 21 that accurate?
 22 A The outreach program was for anyone who was
 23 interested in listening. We didn't say certain folks,
 24 the manufacturers couldn't participate. Absolutely
 25 not. We would never exclude manufacturer.

1 Q And did you remember any Taotao
 2 representatives other than Mr. Xu ever be invited to
 3 one of these outreach programs before 2010?
 4 A So, I can't speak to the specific invitation
 5 list. We send out the notification of workshops
 6 through a list serve, and typically the membership on
 7 the list serve includes all the manufacturers who
 8 certified with us.
 9 MR. CHU: Your Honor, we would offer
 10 Complainant's Exhibit CX67 at this time, which is the
 11 administrative settlement agreement.
 12 MR. KLEPP: We have no objection, Your
 13 Honor.
 14 JUDGE BIRO: Complainant's Exhibit CX67 is
 15 admitted into the record.
 16 (The document referred to was
 17 marked for identification as
 18 Complainant's Exhibit No. 67,
 19 and was received in
 20 evidence.)
 21 BY MR. CHU:
 22 Q Mr. Jackson, do you see EPA 811?
 23 A Yes.
 24 Q Okay. And do you see paragraph 14?
 25 A Yes.

1 Q And does it clearly indicate there that Mr.
 2 Xu had submitted applications that failed to identify
 3 an adjustable parameter?
 4 A Yes. It says Respondent failed to -- it
 5 identified that there are no adjustable parameters on
 6 the engine families.
 7 MR. KLEPP: Excuse me, Your Honor, point of
 8 order. May I ask what page we're on?
 9 MR. CHU: Page 811, or page 4 of this
 10 exhibit.
 11 MR. KLEPP: Thank you. And is there a
 12 paragraph that you were just referring to because I
 13 missed it?
 14 MR. CHU: Fourteen.
 15 MR. KLEPP: Thank you.
 16 BY MR. CHU:
 17 Q So, this wasn't a situation about a
 18 parameter being identified. This was simply a point
 19 where the consultant didn't check off the box that
 20 said "adjustable parameter". Is that accurate?
 21 MR. KLEPP: Objection, Your Honor. We've
 22 already heard testimony from Mr. Jackson that he's a
 23 stranger to and didn't have knowledge of this
 24 particular exhibit.
 25 MR. CHU: Your Honor, to the extent that

1 that's accurate, he still was qualified as an expert
 2 on compliance program and this is part of the
 3 compliance and certification process.
 4 JUDGE BIRO: So, your question is?
 5 MR. CHU: Did the consultant --
 6 JUDGE BIRO: I'm sorry?
 7 MR. CHU: I'm sorry. You said my question
 8 was, I'm sorry. Go ahead.
 9 JUDGE BIRO: So, the question is whether not
 10 this was just -- whether somebody checked a box or not
 11 a violation?
 12 MR. CHU: Correct.
 13 JUDGE BIRO: Okay. Can you answer that?
 14 Overruled.
 15 THE WITNESS: So, I can say that checking a
 16 box could be part of it, but it could also be that the
 17 application itself may have said that there were no
 18 adjustable parameters in text in the application.
 19 BY MR. CHU:
 20 Q Mr. Jackson, isn't it true that there's
 21 actually a box there for where you check off no
 22 adjustable parameters and one that says adjustable
 23 parameters, as far as you know about the application?
 24 MR. KLEPP: Objection to form, Your Honor.
 25 JUDGE BIRO: Overruled. Go ahead.

1 THE WITNESS: There is an opportunity for a
 2 box, I believe, yes.
 3 BY MR. CHU:
 4 Q I'm sorry. I didn't get that.
 5 A There is an opportunity to check off whether
 6 or not you have adjustable parameters.
 7 Q So, when I say box, I'm correct, right?
 8 A I believe so in the online document. So,
 9 again, I have never submitted an application so I
 10 haven't gone into the online front end of the
 11 document.
 12 Q But you review these applications and you've
 13 reviewed --
 14 A I review the back end, that's right. If
 15 you're asking about the front end, I didn't verify. I
 16 just want to make sure I'm being clear.
 17 Q So, you've never on the record actually
 18 looked at an application from front to end?
 19 A No. I'm talking about the front end, the
 20 manufacturer sees the front facing aspect of it. I
 21 don't review that. The manufacturer submits it. I
 22 review what they submit on the back end.
 23 Q And the back end is the application such as
 24 this one where someone either checks off no adjustable
 25 parameters or yes we have adjustable parameters, is

1 that accurate?
 2 A Yes. In addition to that there is narrative
 3 text where they may say no adjustable parameters.
 4 There is narrative text in the application where they
 5 may say there is no adjustable parameters.
 6 Q Ask you to look at page 5 or Bates No. 812.
 7 Do you see the amount of \$260,000?
 8 A Yes.
 9 MR. CHU: And, Your Honor, at this time we'd
 10 ask the Court to take judicial notice that back in
 11 2012 this was either above or close to the maximum
 12 administrative penalty that's set out at that time,
 13 subject to approval of the DOJ to seek or allow the
 14 seeking of higher penalties.
 15 JUDGE BIRO: I'd have to go and check what
 16 was the threshold in 2012. Is that true?
 17 MR. KLEPP: As I stand here, Your Honor, I
 18 don't know what the maximum administrative cap was in
 19 2012, and I don't think it's accurate to request
 20 judicial notice. So, I really can't go along with or
 21 agree to what is being proposed here.
 22 MR. CHU: May I respond, Your Honor?
 23 JUDGE BIRO: Yes.
 24 MR. CHU: I'm only saying that whatever the
 25 cap was I'm asking this Court to take judicial notice

1 of that cap back in 2012.
 2 JUDGE BIRO: Okay, but I can only take
 3 administrative notice.
 4 MR. CHU: Administrative. I'm sorry.
 5 Administrative.
 6 JUDGE BIRO: And I can only take it if you
 7 provide me evidence that that's the case or it is
 8 commonly known. I am sure that that is not commonly
 9 known, and I don't know it right now. But if you
 10 provide me with documentation, I will take
 11 administrative notice --
 12 MR. CHU: Thank you, Your Honor.
 13 JUDGE BIRO: -- of whatever the amount was
 14 and whatever this is in relation to it. But right now
 15 I'm not.
 16 MR. CHU: Thank you, Your Honor.
 17 BY MR. CHU:
 18 Q So, sir, other than that violation when you
 19 look at paragraph 14 you don't see anything else
 20 that's included other than that violation, do you?
 21 MR. KLEPP: Objection, Your Honor.
 22 Relevance.
 23 JUDGE BIRO: Your question is is there
 24 anything else for the violation other than the
 25 \$260,000 penalty?

1 MR. CHU: No, the failure to identify an
2 adjustable parameter.

3 JUDGE BIRO: You want him to read this whole
4 document and make that determination because he said
5 he wasn't familiar with it?

6 MR. CHU: No, Your Honor, I don't want him
7 to read the whole document. I'll withdraw the
8 question.

9 BY MR. CHU:

10 Q So, back to what your impression was of
11 Terry and David. Can you tell us now what your
12 impression was of James Xu knowing what you know?

13 A My impression of Mr. James Xu is that he has
14 several clients. He does not always submit accurate
15 information. I think that from time to time our staff
16 will have to go back, or I should say accurate or
17 complete information. I think based on what I know
18 now that's the case.

19 Q If someone had been submitting applications
20 from at least the time that you arrived in 2007 until
21 2010 you stated earlier those individuals should be
22 familiar with the regulations. Do you hold that true
23 as to Mr. Xu?

24 A So, again just to clarify, I arrived in the
25 Compliance Division in 2007. I started as a Gasoline

1 Engine Compliance Center director in 2012. But I do
2 think that people that are submitting applications
3 should be familiar with the regulations.

4 Q And for someone not to know whether or not a
5 carburetor in these vehicles were adjustable, had
6 adjustable screw, wouldn't you consider that as being
7 just totally off?

8 A For the person submitting the application?

9 Q Right.

10 A Or for the manufacturer. It would seem
11 unusual that the manufacturer wouldn't know it, that
12 their screw is adjustable.

13 Q But we all know that carburetors have a
14 screw that you can adjust, correct?

15 A Yes.

16 Q And the only way that you can stop that
17 adjustment is to somehow seal it. Would you agree?

18 A You can seal it or you can have an
19 adjustable range by placing some sort of screw or
20 shorting the screw or some sort of a spring in it to
21 shorten the travel range.

22 Q Would you be surprised that at that time
23 before you were in charge that the recommendation was
24 to seal the carburetor so that it could not be
25 adjusted?

1 A Would I be surprised about that?

2 Q Yes, sir.

3 MR. KLEPP: Objection. Calls for
4 speculation, Your Honor.

5 JUDGE BIRO: Overruled.

6 THE WITNESS: No, I wouldn't be surprised.

7 MR. CHU: Okay.

8 BY MR. CHU:

9 Q So, it appears that if that's the case that
10 someone said you had to seal it, and now as the
11 director and expert you're telling this Court there
12 was an alternate method and you could just state a
13 range, right?

14 MR. KLEPP: Object to form, Your Honor.
15 Vague, confusing, compound question.

16 JUDGE BIRO: Sustained.

17 BY MR. CHU:

18 Q So, as the expert that you are for someone
19 in 2010 to not inform the public that sealing was not
20 the only available solution would you consider that to
21 be say a bad act on the EPA?

22 A No. Again, if the manufacturer asserted
23 that they had no adjustable parameters, then the
24 viable solution is to seal it. If the manufacturer
25 provides an adjustable range, then that's possible to

1 limit the range of travel of the adjustable parameter.
2 So, no, I wouldn't consider it bad acting to tell
3 someone to seal it if they're saying they're not
4 adjustable at all.

5 Q The issue that I'm asking questions about is
6 familiarity with the regulations.

7 A Okay.

8 Q And you criticize my client's
9 representatives as not knowing those regulations,
10 correct?

11 A I was asked for an assessment of them. I
12 wasn't being critical of them. I was stating my
13 assessment.

14 Q Well, why don't you do that in a way that
15 this Court would increase any penalties the Court
16 found appropriate by telling them that they just were
17 missing things that were in the regs?

18 A I don't know what the penalty structure or
19 process is. I'm not in the Office of Enforcement, so
20 I'm only here to answer the questions I'm asked. I
21 don't have another goal with respect to the penalty.

22 Q And so my question to you is if the Agency
23 is somewhat unsure about what the regs say, how
24 they're enforced and how they're utilized, then I just
25 want you to give your honest opinion as to whether or

1 not you hold that lack of understanding of the regs
 2 against the people at EPA as you would against people
 3 like you described, Terry and David. Make a
 4 comparison.
 5 A I know --
 6 MR. KLEPP: Objection form, Your Honor. It
 7 assumes a fact not in evidence if the Agency was
 8 unsure about the interpretation of a reg. There's
 9 been no testimony about that.
 10 JUDGE BIRO: Sustained.
 11 MR. CHU: That's fine, Your Honor. I was
 12 just going to say he's an expert. I can ask him a
 13 hypothetical.
 14 JUDGE BIRO: He didn't testify that there
 15 was any misunderstanding or confusion by the Agency.
 16 He said there were these two options, and, you know,
 17 they could -- the manufacturer could do either one,
 18 and then identify that there were no variable
 19 parameters?
 20 THE WITNESS: Adjustable parameters.
 21 JUDGE BIRO: Adjustable parameters, and I
 22 don't know. They didn't advertise this apparently in
 23 their regs. That was your point.
 24 MR. CHU: Yes, Your Honor.
 25 JUDGE BIRO: But there was no confusion and

1 that was your question.
 2 MR. CHU: Correct.
 3 BY MR. CHU:
 4 Q Just to clarify, the regs allow screws in
 5 the carburetor to be adjusted, correct?
 6 A It is possible to have an adjustable range
 7 if the manufacturer identifies it in the application.
 8 MR. CHU: Objection, non-responsive. The
 9 regs allow it or they don't. I'm not sure possible.
 10 Answer is not responsive.
 11 MR. KLEPP: May I be heard?
 12 JUDGE BIRO: That was a long way to yes, but
 13 go ahead.
 14 MR. KLEPP: Thank you.
 15 JUDGE BIRO: You understand the question,
 16 Mr. Jackson?
 17 THE WITNESS: Yes, ma'am. I believe --
 18 JUDGE BIRO: Would you be allowed to have an
 19 adjustable carburetor?
 20 THE WITNESS: You could have an adjustable
 21 parameter on your carburetor and identify it.
 22 JUDGE BIRO: And that would be consistent
 23 with the regulations?
 24 THE WITNESS: Yes, ma'am. But my point was
 25 that it has to be -- you have to identify it. That's

1 what the regulations say.
 2 JUDGE BIRO: You have to identify it.
 3 THE WITNESS: Yes, ma'am.
 4 JUDGE BIRO: Okay.
 5 MR. CHU: Thank you.
 6 BY MR. CHU:
 7 Q So, now, you also -- strike that. Get this
 8 straight. When you say "Terry", is this a
 9 conversation you had with him?
 10 MR. KLEPP: Objection, Your Honor. Mr.
 11 Jackson has not himself said Terry. Counsel has said
 12 Terry, so I object on that basis.
 13 MR. CHU: Yes. To the best of my memory he
 14 described Matao Cao and David that he spoke to that
 15 was not aware of the regulations. So, if that's not
 16 the case, I'll not ask him.
 17 JUDGE BIRO: Let's specify what conversation
 18 we're talking about here.
 19 MR. KLEPP: Your Honor, if I may. My
 20 specific point is that there is this use of a name
 21 "Terry", and that did not come from Mr. Jackson.
 22 JUDGE BIRO: Right, that's apparently a
 23 common name used by Mr. Matao Cao, is that correct?
 24 MR. CHU: That's correct. I believe that
 25 the record will indicate he did talk and say "Terry"

1 when he was on direct.
 2 JUDGE BIRO: Okay. The familiarity of the
 3 name makes me uncomfortable. So, let's see if we can
 4 just go with Mr. Matao Cao. Did he tell you whatever
 5 you would like to ask.
 6 MR. CHU: Yes, Your Honor.
 7 BY MR. CHU:
 8 Q Did Mr. Matao Cao have a conversation with
 9 you about an application and not the conversation that
 10 you alluded to earlier?
 11 A We had general conversations about the
 12 applications.
 13 Q Okay.
 14 A Yes.
 15 Q And so based upon those conversations it's
 16 your impression that he is not knowledgeable about the
 17 regulations. Is that accurate?
 18 A When you ask is it my impression, it's what
 19 he said. I'm only reiterating what he said to us.
 20 Q Your impression earlier was that there was
 21 something wrong with Matao Cao in encounters with EPA.
 22 Was that not your impression?
 23 A I don't believe I said there is something
 24 wrong with Matao Cao. I believe my reference was to
 25 what he said to us, that he didn't have an

1 understanding of the regulations.
 2 Q And is that unusual that an applicant or a
 3 representative of an applicant would ask questions
 4 about what to do in an application?
 5 A It is not unusual for an applicant to ask
 6 questions.
 7 Q So, in those questions that you testified
 8 about that you used to create an impression was
 9 anything out of the ordinary?
 10 A So, again, the impression, as I mentioned
 11 earlier, was based on what he said to us specifically,
 12 but the questions were questions that seemed to
 13 indicate he hadn't spent a lot of time looking at the
 14 regulations.
 15 Q And how is that bad?
 16 A I didn't put the qualifier bad on it. I
 17 simply said that's the situation.
 18 Q So, that's just as I said earlier, that's
 19 somewhat of a normal situation, is it not?
 20 A Well, when you say "normal", it is normal
 21 for a manufacturer to ask questions. It was of
 22 concern that they were asking questions that seemed
 23 pretty much a straightforward reading of the
 24 regulations so.
 25 Q Can you tell us specifically what the

1 question was, if you remember it?
 2 A No, I don't recall all the questions
 3 specifically.
 4 Q Now, as to Mr. Garibyan, can you tell us how
 5 many of these types of conversations you had with him?
 6 A I might say probably two to three.
 7 Q Was that related to Taotao Motors or some
 8 other company?
 9 A I would say related to either but I should
 10 probably check if I have notes or something, check to
 11 see which company he was speaking to at the time. I
 12 don't want to speak out of turn.
 13 Q Sir, I missed it. Was that in reference to
 14 Taotao USA or some other company?
 15 A Oh, Taotao USA.
 16 Q Okay. And you believe that occurred in the
 17 last 12 months?
 18 A We did have meetings within the last 12
 19 months, yes.
 20 Q Okay. But prior to that time, let's say the
 21 rest of 2016 or 2015, were there questions that Mr.
 22 Garibyan asked on behalf of Taotao USA that caused you
 23 to be concerned?
 24 A No, I guess before that. I think we had
 25 maybe one meeting before that, and it seems like a

1 pretty straightforward meeting.
 2 Q Now, you actually don't get involved with
 3 applicants or had not gotten involved with applicants
 4 in the past. Is that accurate?
 5 A I don't get involved with applicants on a
 6 daily basis until an issue is broached to me.
 7 Q And basically you weren't really in
 8 communication with Taotao until you received
 9 communications from their attorney. Is that correct?
 10 A No, I don't believe that's correct. As I
 11 mentioned, we had a meeting, I think it was a
 12 precertification meeting a year or two ago, and I
 13 don't recall a conversation with attorneys before that
 14 about Taotao. I'll have to go back and check, but I
 15 don't -- it didn't drive that. There was a meeting
 16 where they wanted to come in and talk to us about
 17 their application.
 18 Q And had you ever had complaints from
 19 importers, manufacturers, that complained about your
 20 staff not being able to communicate effectively in
 21 English?
 22 A I have heard complaints from you.
 23 Q And as such, did you investigate and
 24 determine that there were some issues?
 25 A Did I investigate that there were some

1 issues?
 2 Q Correct.
 3 A So, I don't -- I wouldn't say I launched a
 4 formal investigation. I chatted with staff about
 5 making sure they're clear in their communications.
 6 Q And is it accurate to say that your
 7 department has made errors in the certifications and
 8 non-certification of applications?
 9 A I would assume we have made mistakes. I
 10 would assume we have made mistakes because we're
 11 human. I don't know what errors you're referring to.
 12 Q If the EPA has information that the
 13 catalysts on manufacturers' models did not exactly
 14 match the loads in the original application, but
 15 approved carryover applications with that knowledge
 16 wouldn't that be wrong?
 17 A So, again just to make sure I'm clear about
 18 your question. If the product that's manufactured
 19 doesn't match the certificate of conformity that's a
 20 different product, and so it doesn't necessarily
 21 impact the certificate, the new application for a
 22 certificate of conformity.
 23 So, you're referring to if the Office of
 24 Enforcement identifies a product in the field that
 25 doesn't match the certificate of conformity, then it's

1 not covered by that certificate. So, it's a different
 2 issue.
 3 Q But if you have knowledge of that and it's a
 4 carryover application why does your department still
 5 approve that carryover application?
 6 A So, again, if you're referring to a
 7 situation where -- are you referring to a catalyst
 8 situation? Because, again, if the product that's in
 9 the field doesn't match the application, it's a
 10 different product, so we're not -- we can't not
 11 approve something for a different product that wasn't
 12 certified before. We're reviewing a specific
 13 application. That's what we're reviewing.
 14 Q And that's what I'm talking about. A
 15 carryover is the extension annually from an
 16 application that may have originally been filed years
 17 before. Is that accurate?
 18 A Yes, I think that's a fair characterization.
 19 Q And so if the EPA has knowledge that there
 20 is some discrepancy between the test results and the
 21 identified loads in the original application why would
 22 your department continue to approve those carryover
 23 applications?
 24 A Which test results are you referring to?
 25 Q I'm referring to, let's say, a test

1 result --
 2 A For.
 3 Q -- on a catalyst --
 4 A On a catalyst, okay.
 5 Q -- by the EPA.
 6 A Okay. So, again, to reiterate the point I
 7 was trying to make earlier because it appears you're
 8 conflating an issue of enforcement with an issue of
 9 certification. So, again, if the Office of
 10 Enforcement identifies a product in the field that
 11 doesn't match the certificate of conformity, then that
 12 means that product is not certified.
 13 And so when you say we have information that
 14 a product didn't match you're referring to two
 15 different issues. That's an issue for enforcement to
 16 deal with, that product in the field that was
 17 uncertified. That doesn't address the fact that we
 18 have an application for a product A that we are
 19 certifying.
 20 Q So, is it your opinion as an expert today
 21 that just because a vehicle identified by a VIN number
 22 doesn't match that doesn't mean that all vehicles in
 23 that engine family also doesn't match?
 24 MR. KLEPP: Objection, Your Honor. That
 25 sounds like a liability question. I don't see it's

1 relevance to penalty.
 2 MR. CHU: Again, Your Honor, it's to the
 3 penalty. I understand we're not talking about
 4 liability. To the extent that it affects the penalty,
 5 this is why I'm asking the question.
 6 JUDGE BIRO: Sustained.
 7 BY MR. CHU:
 8 Q Now, you never had anyone in your department
 9 order a catalyst test for loads and ratios, have you?
 10 A We may have asked manufacturers for
 11 information, but I don't know if we've ever ordered
 12 someone to do it.
 13 Q Is it safe to say that if you don't know,
 14 then you probably had not?
 15 A So, when you use the term "order" usually
 16 that's a document that I would sign, and I don't
 17 recall signing any letter ordering a manufacturer to
 18 do catalyst testing.
 19 Q But as far as your department itself
 20 conducting a test on a catalyst, has that ever
 21 occurred?
 22 A I don't recall the Gasoline Engine
 23 Compliance Center conducting catalyst tests.
 24 Q Now, do you have any idea as an expert how
 25 the wash coats are removed from the catalyst?

1 MR. KLEPP: Objection, Your Honor. That's
 2 not his area of expertise.
 3 JUDGE BIRO: Sustained.
 4 BY MR. CHU:
 5 Q Now, have you ever attended a class, seminar
 6 or training where it was explained how the wash coats
 7 are removed?
 8 MR. KLEPP: Continued objection, Your Honor.
 9 JUDGE BIRO: What relevance is this?
 10 MR. CHU: He testified earlier that he was
 11 aware of the Enforcement Division's standards for
 12 testing of the so-called catalysts. He was allowed to
 13 testify about his impressions of the emissions testing
 14 that was done, and so I am asking questions about the
 15 testing on the catalysts.
 16 JUDGE BIRO: So, in terms of removing the
 17 substrate for the purposes of testing, is he aware of
 18 how that's done?
 19 MR. CHU: Yes, Your Honor.
 20 JUDGE BIRO: Okay. Overruled.
 21 THE WITNESS: So, I'm not intimately
 22 familiar with the process of opening the can and
 23 separating the substrate from the can.
 24 MR. CHU: Thank you.
 25 BY MR. CHU:

1 Q I just want to clarify that I said the wash
 2 coat from the substrate, Mr. Jackson.
 3 A Removing the wash coat from the substrate,
 4 I'm not intimately familiar with the process. I know
 5 that there are various options for crushing the
 6 catalyst and doing a math calculation. There are
 7 other chemical processes, but I'm not intimately
 8 familiar with those processes.
 9 Q But you've been involved in someone
 10 explaining that somewhere along the way to you, right?
 11 A I think I've heard it a couple of times but
 12 I don't do that work. Someone else does that work.
 13 Q And I understand that, but you don't know
 14 who that person is.
 15 A I'm sorry?
 16 Q You don't know who that person is.
 17 A Who does the work?
 18 Q Right.
 19 A I believe EPA may have a laboratory that
 20 does some of that, but I don't remember their names at
 21 this point. I believe EPA has a laboratory that does
 22 some of that but I do not remember the names of the
 23 staff who do that work.
 24 Q Is that the enforcement, the NE that you
 25 were talking about, NEIS or something?

1 A So, the Office of Enforcement, I'm sure,
 2 does some of that work.
 3 Q Okay. And so as an engineer you're familiar
 4 with sampling, right?
 5 A Yes.
 6 Q So, you testified that you were aware of a
 7 method where you crushed the catalyst, right?
 8 A Yes.
 9 Q Okay. Do you remember anyone telling you or
 10 talking about acid?
 11 MR. KLEPP: Objection, Your Honor, to the
 12 relevance of this to the penalty at issue here.
 13 MR. CHU: May I? It goes directly to the
 14 Court evaluating how those tests were performed based
 15 upon the standard that he can't articulate, but I
 16 believe Ms. Isin will be able to, and it goes to the
 17 issue of whether or not causation was established by
 18 their allegations that the test results, if any, that
 19 was accepted by the Court actually supports that
 20 finding.
 21 JUDGE BIRO: That sounds like we're back to
 22 liability again.
 23 MR. CHU: I don't see how we can separate
 24 that from the damage because if there's an issue that
 25 the tests that were performed is not accurate it goes

1 to damages because the Court's weighing no material
 2 found. For example, we have basically the same model
 3 that's examined by SGS and then one that's ERG, and
 4 then SGS can't find the trace metals. The other one
 5 they can find. I believe the Court has to look at
 6 those results when deciding if and what amount of
 7 penalties should be imposed.
 8 JUDGE BIRO: No. Sustained.
 9 MR. CHU: Okay.
 10 BY MR. CHU:
 11 Q So, you had an opportunity to meet the enemy
 12 in China, is that correct?
 13 MR. KLEPP: Object to the form of the
 14 question, Your Honor.
 15 THE WITNESS: To meet the what in --
 16 JUDGE BIRO: Sustained.
 17 MR. KLEPP: Argumentative.
 18 BY MR. CHU:
 19 Q You met these violators, right?
 20 A I'm sorry. You're referring to Mr. Matao
 21 Cao and -- who are you referring to?
 22 Q Sir, I'm talking about the Respondents in
 23 this action. Do you believe Mr. Matao Cao is a
 24 Respondent in this action?
 25 A Yes.

1 MR. KLEPP: Objection, Your Honor. That
 2 calls for a legal determination, and in fact it's not
 3 the case.
 4 JUDGE BIRO: Okay, sustained. It's in fact
 5 not the case.
 6 MR. CHU: Yes, Your Honor. It just goes to
 7 bias.
 8 JUDGE BIRO: Shows bias?
 9 MR. CHU: Well, he believes that Matao Cao
 10 is a Respondent in this case.
 11 JUDGE BIRO: And how does that show bias?
 12 MR. CHU: Well, Your Honor, there was the
 13 article that we talked about in Respondents' 33 that
 14 seemed to identify so-called the country known as
 15 China, and so I believe I have a right to determine if
 16 there is some bias in the situation against people
 17 from China in terms of what's going on in this case
 18 here.
 19 JUDGE BIRO: I just don't see how that
 20 question goes to show that.
 21 BY MR. CHU:
 22 Q So, Mr. Jackson, do you see that the
 23 Respondents in this case -- do you know who the
 24 Respondents or what the Respondents are?
 25 A So, again, I see on the sheet in front of me

1 it says Taotao USA, Incorporated.
 2 Q Good. Taotao USA. Okay. And then there
 3 are two, as you call them, OEMs, right?
 4 A I believe so but I'd have to look at the
 5 paperwork.
 6 MR. KLEPP: Your Honor, point of order. I
 7 believe there might be some cause for confusion. The
 8 document up in front of Mr. Jackson is actually the
 9 ASA. I believe counsel is asking questions based on
 10 the matter before Your Honor which would have a
 11 different caption.
 12 So, I see some confusion in the question and
 13 the response here.
 14 MR. CHU: I agree, Your Honor. I didn't
 15 know what document he was reading off of. I thought
 16 he was looking at one of the documents in this case
 17 because I asked him specifically about this case.
 18 JUDGE BIRO: Okay. Maybe we can just take
 19 the documents down, and we're asking not to rely on
 20 any documents at the moment.
 21 MR. CHU: Yes, Your Honor.
 22 JUDGE BIRO: Just what your understanding
 23 is, Mr. Jackson.
 24 THE WITNESS: So, my understanding of the
 25 Respondents are is that it's Taotao USA and some

1 related companies, but I don't remember all the names
 2 of the related companies off the cuff. I'd have to
 3 read it on the document.
 4 BY MR. CHU:
 5 Q You know that the suppliers of Taotao USA
 6 are only two, right?
 7 A So, I would again need to look at the
 8 certification application to confirm that.
 9 Q The application, I believe, without telling
 10 us anything other than who the manufacturer is, but
 11 again that application that you looked at earlier only
 12 has one manufacturer, right?
 13 MR. KLEPP: Objection to form Your Honor;
 14 vague and confusing question.
 15 JUDGE BIRO: Sustained. So, the
 16 manufacturers of the catalyts.
 17 MR. CHU: No, Your Honor, I'm talking about
 18 the vehicles. This is so bad. We're using the word
 19 "manufacturer", but I was referring -- we're talking
 20 about the application for the certificate, and in that
 21 application it does list the manufacturer of the
 22 vehicle and also identifies the manufacturer of the
 23 catalyts. So, I need to be more clear.
 24 JUDGE BIRO: Right. Okay.
 25 MR. CHU: I'm sorry.

1 JUDGE BIRO: Sustained. Rephrase.
 2 MR. CHU: Yes, Your Honor. Okay.
 3 BY MR. CHU:
 4 Q Are you aware that the manufacturer of
 5 vehicles for Taotao USA is basically two companies?
 6 A That sounds familiar but I would need to
 7 confirm that by looking at all the applications from
 8 the certificate holder.
 9 MR. CHU: And I believe we had admitted
 10 those applications earlier, so let me find out what
 11 number those are. I believe that's Complainant's 1
 12 through 10.
 13 (Pause.)
 14 MR. KLEPP: Before we proceed, Your Honor,
 15 the last thing we left off was counsel referring to
 16 CX1 through 10. What I see up on the screen and I
 17 assume might be in front of Mr. Jackson is a COC
 18 itself, which is later in the documentation outside of
 19 CX1 through 10.
 20 JUDGE BIRO: Okay.
 21 MR. KLEPP: So, again, I'm trying to avoid
 22 confusion here.
 23 JUDGE BIRO: I understand. I think Mr.
 24 Jackson is looking at the right document at the
 25 moment.

1 THE WITNESS: Yes, ma'am. So, yes, two
 2 manufacturers.
 3 BY MR. CHU:
 4 Q So, do you know the names of the two
 5 manufacturers for Taotao USA?
 6 A Taotao Group Company --
 7 MR. KLEPP: Objection, lack of foundation,
 8 Your Honor.
 9 JUDGE BIRO: Oh, no. Overruled.
 10 THE WITNESS: Taotao Group Company, Limited
 11 and Junyun County Xiangyuan Industry Company, Limited.
 12 MR. CHU: Thank you.
 13 THE WITNESS: County Industries. Sorry.
 14 County Xiangyuan Industry Company. Sorry.
 15 MR. CHU: Thank you.
 16 BY MR. CHU:
 17 Q Now, I'm going to ask you to look at CX45.
 18 This is one of the document that you were testifying
 19 about during your direct.
 20 A Yes.
 21 Q Now, you had read the bottom paragraph at
 22 least two, if not three times. Do you remember that?
 23 A Yes.
 24 Q And during your deposition I had you look at
 25 that as well, remember?

1 A So, no, I don't specifically remember this
 2 one, but I trust you had -- I believe that you did.
 3 Q So, in this exhibit here would you agree
 4 that this form is a form that dates back to -- as far
 5 as 1981?
 6 A This format for the certificate? No. No,
 7 the format doesn't date back to 1981.
 8 Q Okay. So, do you know whether or not that
 9 language that's on that last paragraph, okay, whether
 10 or not that's consistent with 40 C.F.R. Part 86 as it
 11 was in 2012?
 12 MR. KLEPP: Objection, Your Honor. What
 13 counsel I think is proceeding into is not -- and
 14 outside of penalty area, a liability area. Those
 15 arguments that counsel made in the course of motions
 16 that led up to Your Honor's accelerated decision as to
 17 regulatory changes over time settled matters involving
 18 liability.
 19 MR. CHU: Yes, I'm not even going to respond
 20 because I'm asking about a regulation.
 21 JUDGE BIRO: What's the relevance?
 22 MR. CHU: The relevance is this language is
 23 not in the new, it's in the old.
 24 JUDGE BIRO: In the old reg.
 25 MR. CHU: Yes, ma'am.

1 JUDGE BIRO: It's not in the new reg.
 2 MR. CHU: No.
 3 JUDGE BIRO: And that's the argument that
 4 you made in opposing the motion for summary judgment
 5 or for accelerated decision, and I ruled on it. So
 6 sustained.
 7 BY MR. CHU:
 8 Q So, is it the policy of the EPA to continue
 9 using language that's no longer in effect?
 10 MR. KLEPP: Objection.
 11 MR. CHU: They're seeking penalties and if
 12 the penalties -- not the liability -- the penalties
 13 are based upon something that is not what the law is,
 14 it's important that I bring that to the attention of
 15 the Court on the penalty issue, not the liability.
 16 JUDGE BIRO: What does that have to do with
 17 what the Respondent did? I just don't understand what
 18 the EPA having old language in its form has anything
 19 to do with what the Respondent did in this case and
 20 what penalty should be imposed upon it as a result of
 21 its actions.
 22 MR. CHU: And at the close of evidence it
 23 will clearly show that the Respondents acted
 24 accordingly with the directions of the EPA though they
 25 were in error.

1 JUDGE BIRO: They acted in accordance with
 2 EPA's regulations even though -- if they acted in
 3 accordance with the wrongly cited regulations in the
 4 certificate of conformity?
 5 MR. CHU: With the complete interpretation
 6 of the actions against my client/clients.
 7 JUDGE BIRO: Sustained. Move on.
 8 MR. CHU: Okay.
 9 BY MR. CHU:
 10 Q Do you believe that Taotao USA intentionally
 11 did what was alleged?
 12 MR. KLEPP: Objection, Your Honor. Calls
 13 for a legal conclusion.
 14 JUDGE BIRO: He's an expert. He can draw
 15 conclusions.
 16 MR. KLEPP: Legal ones?
 17 JUDGE BIRO: I don't think intent is a
 18 legal, necessarily a legal conclusion. I think
 19 there's a common understanding of intent.
 20 THE WITNESS: Do I believe that Taotao
 21 intentionally produced products that were non-
 22 compliant?
 23 MR. KLEPP: I'm sorry to be up again.
 24 Relevance.
 25 JUDGE BIRO: No, I think it's relevant.

1 Overruled.
 2 BY MR. CHU:
 3 Q So, the question was, and I just want to
 4 clarify this. We keep mixing Taotao USA up with the
 5 actions of OEM manufacturers. You just said Taotao
 6 USA produced. Did you not say that?
 7 A I don't know. I don't remember.
 8 Q Okay. So, when I talk about Taotao USA I'm
 9 talking about an entity that, as you agreed earlier,
 10 didn't manufacture anything, right?
 11 A Okay.
 12 Q So, do you believe that they violated the
 13 Clean Air Act intentionally?
 14 A Do I believe that Taotao USA intentionally
 15 violated the Clean Air Act, and I think the evidence
 16 then that's been presented shows that they did. When
 17 you say "intentionally" it's the responsibility of the
 18 certificate holder to be sure their products are
 19 compliant. And so from my perspective if they choose
 20 to not pay attention then they're intentionally not
 21 paying attention.
 22 Q So, as you heard earlier there were test
 23 results on catalysts and models, okay, that indicated
 24 that they were in line with what was on the
 25 applications, okay. So, how is it that Taotao USA in

1 2012 hiring a consultant to help satisfy the EPA, how
 2 is that intentionally doing something as you stated?
 3 MR. KLEPP: I'm going to object, Your Honor.
 4 The characterization of the earlier reference, there
 5 was one test result, not test results.
 6 MR. CHU: Yes.
 7 JUDGE BIRO: Did that even come into
 8 evidence?
 9 MR. KLEPP: I think counsel owes a fair
 10 question with accurate information in it to Mr.
 11 Jackson.
 12 MR. CHU: Yes, I will go over Exhibit -- is
 13 it 67? Seventy-seven? Seventy-seven, to show the
 14 three catalysts that were tested.
 15 MR. KLEPP: Your Honor, I'm aware of that
 16 document, I'm aware of that test, and I go back to my
 17 objection which is it's one result.
 18 MR. CHU: And I'm saying it was three --
 19 three catalysts tested. So I'll go over it.
 20 MR. KLEPP: Only one is relevant, Your
 21 Honor.
 22 JUDGE BIRO: Okay, let's not argue this.
 23 Are you familiar with any of those results, the test
 24 results that we're talking about?
 25 THE WITNESS: I don't believe I am. It

1 doesn't sound familiar other than what counsel has
 2 said.
 3 JUDGE BIRO: So, then as an expert can I ask
 4 you a hypothetical? If there were test results --
 5 THE WITNESS: Okay.
 6 JUDGE BIRO: -- on three catalysts, and one
 7 of which showed it in compliance in terms of its metal
 8 ratio and its metal percentages, would that impact
 9 your opinion on whether they intentionally violated
 10 the Act?
 11 THE WITNESS: So, I'm sorry. Is that a yes
 12 or no question because it could have an impact, but we
 13 will need to look at the broader context. If it's
 14 three tests done fairly close to each other, we might
 15 believe that they were -- the manufacturer
 16 intentionally picked product that are in compliant to
 17 test, and the rest of their production may be
 18 different.
 19 One issue that has been raised in our
 20 dialogue with the industry is that de-canting can
 21 happen, and so you can produce a batch that's
 22 compliant. So, if you sample from the compliant batch
 23 and the remainder of your products would be de-canted,
 24 then the remaining products wouldn't be compliant.
 25 So, just because someone has test results that show

1 compliance wouldn't necessarily cause me to believe
 2 that everything is necessarily compliant if you're
 3 looking at catalysts as an example. If there was a
 4 concern, I'd want a broader sampling over a broader
 5 period of time.
 6 JUDGE BIRO: Does that answer your question,
 7 Mr. Chu?
 8 MR. CHU: Yes, Your Honor, it certainly
 9 does.
 10 BY MR. CHU:
 11 Q What's more important in the regulatory
 12 scheme, emission testing or the contents in a
 13 catalyst?
 14 A They're all important. We don't assign a
 15 relative importance to it.
 16 Q Which one is easier to determine?
 17 A For NVFEL, the emissions from the products
 18 are easier. For a lab that crushes catalysts on a
 19 regular basis doing a catalysts analysis would be
 20 easier.
 21 Q So, you're saying that both are relatively
 22 easy, right?
 23 A No, I'm not saying they're relatively easy.
 24 I'm saying you asked which was easier.
 25 Q Yes, sir.

1 A And I'm responding to that question. For a
 2 laboratory that's set up to do emissions testing,
 3 emissions testing would be easier. For a lab that's
 4 set up to do catalyst testing, catalyst testing would
 5 be easier.
 6 Q Let me pose this. What's easier for the EPA
 7 to test, emissions or the contents of a catalyst?
 8 A Same response. If it's an EPA catalyst lab,
 9 it would be the catalyst content. If it's an
 10 emissions lab, it would be the emissions.
 11 Q What's easier for the manufacturer, the
 12 actual OEM to test, the emissions or the catalyst?
 13 A Well, that's dependent on the manufacturer
 14 because some manufacturers have the ability to do the
 15 analysis, or they contract it out on a regular basis.
 16 So, when you're asking what's easier, it's -- they can
 17 do both.
 18 Q Do you understand the processes used to test
 19 exhaust?
 20 A Yes.
 21 Q You hook up what?
 22 A So, if it's a chassis test you connect it to
 23 the end of the tailpipe and you send the exhaust
 24 sample through the sample train into a dilution
 25 tunnel, and it's sampled by the analyzers.

1 Q How long does that take?
 2 A How what?
 3 Q How long does it take to have a screen test
 4 of the exhaust?
 5 A Oh. Approximately -- well, after set up and
 6 after you do -- so just to be clear when you run an
 7 FTP test you have to do what's -- it's not called a
 8 break-in, but sort of a warm-up-type cycle first, the
 9 first day. Then the second day you actually run the
 10 test. So, the actual test itself is 20 minutes, but
 11 you don't just run it once.
 12 Q And the factories that you've inspected, and
 13 I believe you testified to was like 40 or 60
 14 factories, is that correct?
 15 A No, I didn't say we tested 40 or 60
 16 factories. I said I've met with 30 to 40
 17 manufacturers in the sector.
 18 Q I'm sorry. So, 40 to --
 19 A Thirty to 40 manufacturers.
 20 Q Thirty to 40. So, in the 30 or 40
 21 manufacturers that you've meet with was that at their
 22 manufacturing facilities?
 23 A In some case it was at their facility. In
 24 other cases it was at our laboratory.
 25 Q So, could you say at least half of those

1 were at the manufacturer, OEM facilities?
 2 A No, I wouldn't say half of those meetings
 3 were there.
 4 Q Do you remember seeing any companies from
 5 that 30 or 40 that actually had a laboratory set up to
 6 crush and test catalysts?
 7 A Some manufacturers did have that capability.
 8 Q Was that in China, Japan, Korea or Europe?
 9 A So, I think we saw that in Japan. I don't
 10 recall seeing it in China. I'm pretty sure we saw
 11 it -- I know we saw it in Japan and I think some in
 12 the United States, but I don't recall seeing it in
 13 China.
 14 Q Okay. So, in your flow chart one of the
 15 primary concerns was the emission standards being met
 16 or significantly below that, correct?
 17 A Yes, our concern is that the emissions
 18 standards are at or below the standard --
 19 Q So, as far --
 20 A -- achieves values.
 21 Q So, as far as the emissions results from the
 22 vehicles that Taotao USA sought for either new
 23 certification or recertification can you tell this
 24 Court, please, how those emissions results compare to
 25 the higher limit?

1 A Compare to the? Oh, the limit. I believe
 2 that many of their products were compliant. I think
 3 we had maybe one or two that were not compliant, but I
 4 think for the -- many of them were compliant when
 5 tested --
 6 Q Well, the ones --
 7 A -- at lower hours.
 8 Q The ones that were not complaint you did not
 9 approve the applications, correct?
 10 A That's correct.
 11 Q So, I'm talking only about the ones that you
 12 approved. So, can you tell this Court are we like 50
 13 percent below or 30 percent or 70 percent? Do you
 14 have any idea how compliant they were on those
 15 vehicles?
 16 A I would say maybe they were at 50 percent or
 17 at 60 percent of the standard, but I have to go back
 18 and look.
 19 Q Is that a good thing?
 20 A It is a good thing to be compliant with the
 21 standard.
 22 Q And so for nearly 10 years now Taotao USA as
 23 the importer has been compliant in a good way with the
 24 emission standards. Is that accurate?
 25 A Taotao USA has passed low-hour testing.

1 Q I'm sorry. I didn't understand what you
 2 said.
 3 A Taotao USA has passed low-hour testing.
 4 Q And that's not something that your
 5 department has requested?
 6 A Yes, it is.
 7 Q Okay. So, that's a standard, that's what
 8 you require manufacturer to have to do, isn't it?
 9 A We require them to conduct low-hour testing
 10 and I also mentioned the DF earlier and I also
 11 mentioned full useful life testing, and we have not
 12 done extensive full useful life testing.
 13 Q Because you don't require that from the
 14 people seeking these application -- seeking these
 15 certificates, correct?
 16 A No, we do. We absolutely require either
 17 useful life testing or that they apply a DF to a low-
 18 hour test result.
 19 Q In fact, that's known in your trade as a
 20 confirmatory test, correct?
 21 A When we do the low-hour test, that's right.
 22 Q So, the low is a confirmatory or is a high a
 23 confirmatory?
 24 A The low-hour test is typically the
 25 confirmatory test.

1 Q Isn't it accurate that you require a testing
 2 of over the useful life for new applications?
 3 A Yes.
 4 Q Okay. And then for the recertifications you
 5 also require a test over the useful life, do you not?
 6 A We may allow low-hour testing with the DF
 7 apply, but we do require end-of-life results.
 8 Q Well, to get those results one would have to
 9 do a useful life test. Would you agree?
 10 A Yes, you do a full useful life testing to
 11 get end-of-life results. Yes.
 12 Q So, therefore, based upon those useful life
 13 tests that you approved for Taotao USA and based upon
 14 what you know about this particular customer of the
 15 EPA would you say that those have been in that same 50
 16 to 60 percent below the standard range?
 17 A Based on the data reported to us by the
 18 manufacturer, yes.
 19 Q Okay, and that's all you can rely on, right?
 20 A Because we haven't done full useful life
 21 tests.
 22 Q And you haven't found a need to do that,
 23 have you?
 24 A I wouldn't necessarily say we haven't found
 25 the need, but we prioritize the use of our resources.

1 Q Because, in fact, one of the labs that you
 2 like to use in Michigan had to shut down, right?
 3 A As I understand it one of the labs we used
 4 in Michigan did shut down.
 5 Q That was the Lotus Lab?
 6 A Yes.
 7 Q Had a lot of bad news about bad equipment.
 8 A No, actually it did not have a lot of bad
 9 news about bad equipment.
 10 Q Okay. They just went out of business.
 11 A So, I'm not privy to the details surrounding
 12 their business situation.
 13 Q So, when you talk about resources you don't
 14 have a lab like Lotus now for you to pay monies to run
 15 tests.
 16 A Do we have a lab to pay money to to run a
 17 test?
 18 Q Like Lotus.
 19 A We do have another contract, other contract
 20 laboratories we use.
 21 Q So, therefore, if you felt a need for Taotao
 22 USA to have had these tests you have not made that
 23 request as of this time, correct?
 24 A You know, I need to check. We may have
 25 issued a test order for Taotao, but I don't recall an

1 active test order at present.
 2 Q Okay. And nothing has been done in terms of
 3 retaliatory actions.
 4 A I'm sorry. Excuse me. Except for the
 5 selective enforcement audit, so there is testing in
 6 the selective enforcement audit.
 7 Q You're talking about the 2017 May actions,
 8 correct?
 9 A Yes.
 10 Q Okay. And when you say self-audit that
 11 means you ask them to cooperate, is that correct?
 12 A I said selective enforcement audit. I
 13 didn't say self-audit.
 14 Q I'm sorry. I misspoke. The select audit.
 15 A Selective enforcement audit, SEA.
 16 Q Right.
 17 A We issue an SEA test order.
 18 Q And they have to take it upon themselves,
 19 whoever you issue that or had issued that to, to do
 20 certain tests at their own expense, correct?
 21 A That's right.
 22 Q Okay. As far as you know, you don't even
 23 know exactly which companies you're talking about at
 24 this time. Is that accurate?
 25 A I know that we issued the test orders to

1 Taotao USA and Tao Motor.
 2 Q Okay. I thought you said earlier you had
 3 issued directives or did these audits of the
 4 manufacturer is the OEM. Is that not correct?
 5 A You thought I said earlier that we did what?
 6 Q That you did this selective --
 7 A Enforcement audit.
 8 Q -- enforcement audit on the actual OEM
 9 manufacturers, right?
 10 A No. I said we issued the selective
 11 enforcement audit test orders to the manufacturer of
 12 record, which is the certificate holder.
 13 Q The importer, right?
 14 A In this case it's the importer.
 15 Q Okay. So, you did not issue anything to the
 16 actual OEM manufacturer of the units.
 17 A We visited the location the manufacturer
 18 asked us to to select the products.
 19 Q So, is it safe to say at the time you
 20 selected the product those -- the ownership of those
 21 units had not been transferred to Taotao USA?
 22 A Since Taotao USA identified that facility as
 23 the production facility where we could obtain the
 24 vehicles for SEA testing, we didn't request
 25 information about ownership. They simply told us this

1 is where you can get the vehicles, and when we arrived
 2 the folks who purported represented Taotao USA and Tao
 3 Motors identified the products.
 4 Q Your group didn't identify the products?
 5 A We selected the products --
 6 Q Thank you.
 7 A -- we wanted to test.
 8 Q So, it wasn't the importer that selected the
 9 product, correct?
 10 A Well, they don't select --
 11 MR. KLEPP: Objection, Your Honor.
 12 THE WITNESS: Oh.
 13 MR. KLEPP: Objection, Your Honor. I don't
 14 see the relevance to this. The penalty we're talking
 15 about, a 2017 event, a selective enforcement audit.
 16 MR. CHU: I'm sorry. If we're going to
 17 exclude the prior testimony, I have no problem with
 18 not talking about this.
 19 MR. KLEPP: Prior testimony, Your Honor, I
 20 believe was all relevant to who owns who and what is
 21 the relationship between companies over in China, not
 22 the depth and breadth of the exact enforcement audit,
 23 and how vehicles were selected for Mr. Jackson's
 24 programmatic purposes.
 25 MR. CHU: I thought the purpose of it was to

1 show factors for this Court to decide the gravity.
 2 JUDGE BIRO: We're talking about a 2017
 3 selective enforcement audit. Is that something
 4 totally separate?
 5 MR. KLEPP: My understanding, Your Honor, is
 6 none of the vehicles in 2017 have anything to do with
 7 the engine families in the amended complaint.
 8 MR. CHU: As I said earlier, I don't know
 9 anything about it, so that's why I had objected. So
 10 now I believe I'm hearing --
 11 JUDGE BIRO: Didn't I strike everything
 12 about that, about the 2017 audit while you started
 13 talking about it?
 14 MR. CHU: You questioned it. I don't
 15 remember it being struck, but if we can get that
 16 cleared now I'll move on.
 17 JUDGE BIRO: I'm interested. Go ahead.
 18 Overruled.
 19 BY MR. CHU:
 20 Q So, were there discussions about what to do
 21 about catalysts in those vehicles that you identify or
 22 did in fact those vehicles not have a catalyst?
 23 A For the vehicles for the selective
 24 enforcement audit?
 25 Q Let me withdraw that.

1 A My concern, again, goes back to what we were
 2 discussing earlier about -- when we start discussing
 3 the design of the product because those are the new
 4 products. I mean, I can talk about the fact that we
 5 did a selective enforcement audit. That's public
 6 information. That we made selections, that's public
 7 information. But, you know, whether or not they had
 8 certain components I'm a little concerned that I'm
 9 delving into the CBI of the company.
 10 JUDGE BIRO: Right, and that's the part I
 11 struck.
 12 MR. CHU: Okay.
 13 THE WITNESS: I'm sorry. Excuse me, Your
 14 Honor. May I stand? I just have a little bit of a
 15 leg cramp?
 16 JUDGE BIRO: Oh, sure. Of course. We can
 17 take a break. What time is it?
 18 MR. CHU: It's almost five, Your Honor.
 19 JUDGE BIRO: It's five. Why don't we stop
 20 for the day. 5:01. Could we stop for the day? Do
 21 you have much more on cross?
 22 MR. CHU: I can pick up tomorrow.
 23 JUDGE BIRO: Okay. So, why don't we stand
 24 in recess. What time tomorrow could we begin again?
 25 MR. CHU: I'm good with the time we had this

1 morning. Nine would be nice since we're on Central
 2 Time, but I can do 8:30.
 3 MR. KLEPP: Your Honor, whatever time suits
 4 the Court.
 5 JUDGE BIRO: We can accommodate Mr. Chu
 6 since he traveled so far and we'll start at nine.
 7 MR. CHU: Thank you,
 8 JUDGE BIRO: I just want to go over before
 9 we leave today the exhibits that I have identified as
 10 being admitted into the record so that we keep track.
 11 MR. KLEPP: Yes, Your Honor.
 12 JUDGE BIRO: And I have it at the Agency's
 13 request their Exhibits 1 through 10, 12 through 17, 43
 14 through 52, 99 through 122, and 156A. And at the
 15 Respondents' request we admitted Respondents' Exhibit
 16 33, and Respondents' -- and at the Respondents'
 17 request we admitted Complainant's Exhibit 67.
 18 Are we good?
 19 MR. KLEPP: Just checking.
 20 MR. CHU: Yes, Your Honor.
 21 JUDGE BIRO: Okay. Why don't you check and
 22 if we're not tomorrow morning tell me.
 23 MR. KLEPP: Your Honor, if I may, I believe
 24 I did not hear from you a reference to CX191, which is
 25 the slide of the summary of the factory.

1 JUDGE BIRO: Okay. Did we admit Exhibit
 2 191?
 3 MR. KLEPP: My understanding.
 4 MR. CHU: Yes, Your Honor, I believe you
 5 admitted it. I objected. You admitted it.
 6 JUDGE BIRO: Okay. So, then add to that
 7 list Complainant's Exhibit 191.
 8 MR. CHU: And 77, was it 77? I thought I
 9 offered 77.
 10 JUDGE BIRO: Did you offer it or did we
 11 identify it? How about -- is that Complainant's
 12 Exhibit 77 that you --
 13 MR. CHU: Yes, Your Honor. There was some
 14 discussion, but I didn't think there was an objection.
 15 JUDGE BIRO: Is there an objection to
 16 Complainant's Exhibit 77?
 17 MR. KLEPP: If it was offered earlier, I
 18 missed it. If it's being offered now, let me just
 19 confirm.
 20 MR. CHU: I offer it now.
 21 MR. KLEPP: Your Honor, we don't object.
 22 JUDGE BIRO: You have no objection?
 23 MR. KLEPP: No.
 24 JUDGE BIRO: Okay. So, in the Respondents'
 25 request the document identified as Complainant's

1 Exhibit 77 is admitted into the record.
 2 (The document referred to was
 3 marked for identification as
 4 Complainant's Exhibit No. 77,
 5 and was received in
 6 evidence.)
 7 JUDGE BIRO: Mr. Jackson, have a lovely
 8 evening but please don't discuss your testimony
 9 further with anyone.
 10 THE WITNESS: Yes, ma'am.
 11 JUDGE BIRO: Okay, thank you.
 12 THE WITNESS: Thank you.
 13 JUDGE BIRO: Okay, we will resume tomorrow 9
 14 a.m.
 15 (Whereupon, a short recess was taken.)
 16 JUDGE BIRO: Mr. Reporter, we're going to go
 17 back on the record.
 18 Mr. Reporter, in this matter there is
 19 confidential business information that the Respondent
 20 has identified that involves matters that we wish to
 21 keep secret, he and the Agency wish to keep secret.
 22 You've had an opportunity to hear them in your
 23 capacity as the court reporter in this matter.
 24 Do you understand that you've heard
 25 confidential matters and that you are constrained from

1 disclosing them to anyone for any reason without
 2 notifying the parties first?
 3 THE COURT REPORTER: I understand, Your
 4 Honor.
 5 JUDGE BIRO: Okay, thank you. Mike?
 6 MR. SUSANO: I do as well. Yes, I do
 7 understand as well.
 8 JUDGE BIRO: And give me your full name.
 9 MR. SUSANO: Michael P. Susano.
 10 JUDGE BIRO: And you're an EPA contractor?
 11 MR. SUSANO: I am an EPA contractor employed
 12 by International Video Conferencing, Incorporated.
 13 JUDGE BIRO: And you agree to those terms?
 14 MR. SUSANO: I do agree.
 15 JUDGE BIRO: Okay. Thank you.
 16 (Whereupon, at 5:06 p.m., the hearing in the
 17 above-entitled matter was recessed, to reconvene at
 18 9:00 a.m. on Wednesday, October 18, 2017.)
 19 //
 20 //
 21 //
 22 //
 23 //
 24 //
 25 //

REPORTER'S CERTIFICATE

DOCKET NO.: CAA-HQ-2015-8065
 CASE TITLE: EPA v. Taotao USA, et al.
 HEARING DATE: October 17, 2017
 LOCATION: Washington, D.C.

I hereby certify that the proceedings and
 evidence are contained fully and accurately on the
 tapes and notes reported by me at the hearing in the
 above case before the United States Environmental
 Protection Agency.

Date: October 17, 2017

Rick Sanborn
 Official Reporter
 Heritage Reporting Corporation
 Suite 206
 1220 L Street, N.W.
 Washington, D.C. 20005-4018

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