

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

In the Matter of:

**Taotao USA, Inc.,
Taotao Group Co., Ltd., and
Jinyun County Xiangyuan Industry
Co., Ltd.,**

Respondents.

§
§
§
§
§
§
§

**Docket No.
CAA-HQ-2015-8065**

BUSINESS CONFIDENTIALITY ASSERTED

The documents submitted with Respondents' Third Motion to Supplement the Prehearing Exchange contain material claimed to be confidential business information ("CBI") pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI consists of vehicle and catalytic converter design information contained in Respondents' exhibits RX027A, and RX031. These exhibits are filed under seal.

A complete set of all exhibits, and a set in which the exhibits containing CBI are omitted, are being filed with the Hearing Clerk.

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

In the Matter of:

**Taotao USA, Inc.,
Taotao Group Co., Ltd., and
Jinyun County Xiangyuan Industry
Co., Ltd.,**

Respondents.

§
§
§
§
§
§
§

**Docket No.
CAA-HQ-2015-8065**

**RESPONDENTS' THIRD MOTION TO SUPPLEMENT THE PREHEARING
EXCHANGE**

Respondents' Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd. respectfully file this Third Motion to Supplement the Prehearing Exchange pursuant to section 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), the Hearing Notice and Order issued by this Tribunal on May 9, 2017, and the Order on Respondents' Motion for Continuance of the Hearing issued by this Tribunal on June 27, 2017 ("Order on Motion for Continuance"). Respondents have conferred with Complainant's counsel, and Complainant is not opposed to the Motion and additional exhibits.

The Consolidated Rules direct parties to supplement their prehearing exchanges whenever they learn that the exchange was incomplete, inaccurate, or outdated. 40 C.F.R. § 22.19(f). The Order on Motion for Continuance provided that "if a party fails to supplement their prehearing exchange by September 15, 2017, the document, exhibit, or testimony shall not be admitted into evidence unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so." *See* Order on Motion for Continuance at 2. Respondents had good cause for failing to exchange the required information because the

additional documents were provided by Complainant after the September 15, 2017 deadline. Respondents requested Complainant to provide certain documents that were referenced in the email exchange identified in the prehearing exchange as Complainant's proposed exhibits CX069, CX073, CX076 and CX096. These documents were submitted by Respondents Taotao USA, as attachments to the email exchanges in CX069, CX073 and CX076, and in the form of a compact disc referenced in CX096. Because the attachments were not included in Complainant's aforementioned exhibits, the exhibits were incomplete. Respondents' requested that Complainant provide the attachments and documents on the compact disc, and Complainant voluntarily provided said documents. Because Respondents did not have required documents in their possession prior to the September 15, 2017, deadline, they supplemented the documents they did have and identified them as Respondents' proposed exhibit RX027.

Now that Complainant has provided all the missing documents, Respondents request leave to supplement the prehearing exchange with said documents in the form of three exhibits and an amendment to existing exhibit RX027, together with an updated exhibit index.

Additional Documents and Exhibits

Respondents request leave to include an amended exhibit, RX027A, and three additional exhibits identified as RX031-RX033, together with an updated exhibit index numbered RX000. The additional exhibits include inspection reports, photographs, and catalytic converter test plan and test results. All of the documents identified in RX027A, and RX031 through RX033 were voluntarily provided to Complainant by Respondents, pursuant to Respondents' request for the documents referenced as attachments in the emails identified as Complainant's exhibits CX069, CX073, CX076, and/or CX096.

RX027A includes documents attached to the emails in Complainant's proposed exhibit CX073, all, except one, of which were included in Respondent's Second Motion to Supplement the Prehearing Exchange as RX027. Respondents now include the additional document, previously unavailable, and resubmit RX027 as RX027A.

RX031 consists of the documents attached to the emails in Complainant's proposed exhibit CX069; RX032 consists of documents attached to the emails in Complainant's proposed exhibit CX076; and RX033 consists of documents mailed to the agency in the form of a compact disc, referenced in the emails contained in Complainant's proposed exhibit CX096.

The foregoing documents consist of inspection reports, photographs and catalytic converter test plan and test results, all of which were submitted to the agency and attached to the emails included in Complainant's CX069, CX073, CX073 and the compact disc referenced in CX096. The documents are relevant to the assessment of the penalty as they relate to the following components of Complainant's proposed penalty: gravity, egregiousness, willfulness and negligence, as well as other penalty factors that should be considered in this action, including, but not limited to, Respondents' degree of cooperation. The materials are also relevant to Respondents' defense against the imposition of the proposed penalty as to one or more counts.

Copies of the exhibits are provided in tandem with this Third Motion to Supplement the Prehearing Exchange. All other exhibits that Respondents' intend to introduce as evidence at the hearing that have already been provided in Respondents' Joint Prehearing Exchange, Respondents' First Motion to Supplement the Prehearing Exchange, Respondents' Second Motion to Supplement the Prehearing Exchange and Complainant's Prehearing Exhibits.

CONCLUSION

Granting this request to supplement the Prehearing Exchange will not cause Complainant undue surprise or prejudice. All of the material being added to the Prehearing Exchange is already in Complainant's possession, shared with the Agency during the course of investigations in this matter, and provided voluntarily by Complainant pursuant to a request for information and documents.

Pursuant to § 22.19(f) of the Consolidated Rules, Respondents request the Tribunal grant this Third Motion to Supplement the Prehearing Exchange.

Respectfully Submitted,



10/04/2017
Date

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

CERTIFICATE OF SERVICE

The undersigned certifies that on October 4, 2017 the foregoing Respondents' Third Motion to Supplement the Prehearing Exchange and exhibits, with CBI omitted, was filed electronically using the EPA Office of Administrative Law Judges' E-Filing System. In addition, a hard copy of Exhibits RX027A and RX031, with CBI, was sent the same day via certified mail to the Headquarters Hearing Clerk at the address listed below:

Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460

The undersigned certifies that an electronic copy of Respondents' Third Motion to Supplement the Prehearing Exchange, with CBI protected password, was sent the same day for service by electronic mail to Complainant's counsel: Edward Kulschinsky at Kulschinsky.Edward@epa.gov; Robert Klepp at Klepp.Robert@epa.gov; and Mark Palermo at Palermo.Mark@epa.gov.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'William Chu', written in a cursive style.

William Chu

RESPONDENTS' PREHEARING EXCHANGE INDEX

| <i>Exhibit No.</i> | <i>CBI OR PII</i> | <i>Title</i> | <i>Pages</i> |
|--------------------|-------------------|---|---------------|
| RX000 | | Respondents' Prehearing Exchange Index | |
| RX001 | CBI | Confirmatory Testing & Correspondence on engine family FTAOC.049MC2 | 000001-000032 |
| RX002 | | Email from Larry Swiencki | 000033 |
| RX003 | CBI | Taotao USA, Inc.'s 2014 Tax Returns | 000034-000080 |
| RX004 | CBI | Expert Opinion on Financial Factors in Civil Penalty Setting Including Economic Benefit and Ability to Pay | 000081-000127 |
| RX005 | | Invoices for Catalyst Testing at SGS | 000128-000135 |
| RX006 | | Email Confirming Employment of Harrison Wolf | 000136-000137 |
| RX007 | | Invoices, Harrison Wolf | 000138-000142 |
| RX008 | | Annual Progress Report 2011-2012 by Harrison Wolf | 000143-000181 |
| RX009 | | CEE Emission Test Report on vehicle belonging to engine family ETAOC.049 MC2 – Vin # L9NTEACT7E1000882 | 000182-000183 |
| RX010 | | Tovatt Engineering Emission Test Report Vin # L9NTEACT7E1000882 | 000184-000185 |
| RX011 | | Amount spent on Agency's Requested tests in 2014 | 000186 |
| RX012 | CBI | Catalytic Converter Tests at Shanghai Motor Vehicle Inspection Center – 35X70mm from Nanjing Enserver – Count 1 & 3 | 000187-000190 |
| RX013 | CBI | Catalytic Converter Test at Shanghai Motor Vehicle Inspection Center – 35X100mm from Nanjing Enserver – Count 2 | 000191-000194 |
| RX014 | CBI | Invoices for Catalytic Converters from Nanjing Enserver and Beijing ENTE | 000195-000208 |
| RX015 | CBI | Comparable Prices from Nanjing Yingsi Weier dated 2012, 2016 and 2017 | 000209-000217 |
| RX016 | CBI | Penalty/Catalytic Converter Chart | 000218-000224 |
| RX017 | | Invoices for Payments to Consulting Firm and other compliance efforts | 000225-000256 |
| RX018 | | Approved COCs for similar vehicles without catalytic converters | 000257-000264 |
| RX019 | CBI | COC applications for similar vehicles without catalytic converters | 000265-000445 |
| RX020 | PII | Resume of Jonathan S. Shefftz | 000446-000456 |

| | | | |
|--------|-----|--|-----------------|
| RX021 | PII | Resume of Larry Doucet | 000457-000460 |
| RX022 | PII | Resume of Clark Guo | 000461-000474 |
| RX023 | | Qualifications of Joseph Gatsworth | 000475-000492 |
| RX024 | PII | Resume of James Xu | 000493 |
| RX025 | PII | Resume of Larry Swiencki | 000494-000496 |
| RX026 | PII | Invoices for Payments to CEE in 2014 | 000497-000547 |
| RX027A | CBI | Catalytic Converter test results from Chinese laboratories previously submitted to EPA during email exchange | 000548-000581 |
| RX028 | CBI | Addendum to engine families –counts 1-4 | 000582-000583 |
| RX029 | CBI | Addendum to engine families – counts 5-10 | 000580-000582 |
| RX030 | | Business Records Affidavits | 000584-000585 |
| RX031 | CBI | Documents submitted during email exchange between Taotao and EPA in 2011 | 000586-001221 |
| RX032 | | Documents submitted during email exchange between Taotao and EPA in August-December of 2012 | 0001222-0001226 |
| RX033 | | Photographs submitted to EPA | 0001227-001330 |