UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Taotao USA, Inc.	)	**Docket No. CAA-HQ-2015-8065**
Taotao Group Co., Ltd., and	)	
Jinyun County Xiangyuan Industry	)	
Co., Ltd.	)	
	)	
Respondents.	)	

ORDER ON MOTION TO QUASH AND DISMISS

On November 12, 2015, Complainant, the United States Environmental Protection Agency ("EPA" or "the Agency"), instituted this action by filing a Complaint against Respondents Taotao USA, Inc. ("T-USA"), Taotao Group Co., Ltd. ("T-Group"), and Jinyun County Xiangyuan Industry Co., Ltd. ("JCXI") alleging in eight counts a total of 64,377 violations of sections 203(a)(l) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(l) and 7547(d), and the regulations codified at 40 C.F.R. Part 86, Subpart E and 40 C.F.R. 1068.101(a)(1), (b)(5). Complaint, *passim*. The action arises out of the Respondents allegedly manufacturing and importing into the United States motorcycles and/or recreational vehicles with catalytic converters not designed or built in accordance with their Certificates of Conformity.[1] *Id.*

The Agency served the Complaint on each of the Respondent companies by personally delivering copies thereof to Matao "Terry" Cao, President of T-USA on November 16, 2015. *See*, Confirmations of Process Serving attached to Proof of Service, filed November 25, 2015.

On December 16, 2015, two of the three Respondents, T-Group and JCXI, specially appeared for the purposes of filing a Motion To Quash and Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(5) and Brief In Support thereof ("Motion"). In the Motion, those Respondents allege an insufficiency of service of process. Specifically, they claim that they are corporations organized and existing under the laws of the People's Republic of China, a signatory to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *i.e.*, the Hague Service Convention, 20 U.S.T. 361 (Nov. 15,

[1] A Motion to Amend the Complaint is currently pending.

1965). Motion ("Mot.") at 3.[2] Therefore, they claim, any service of process upon them in litigation brought in the United States must be made abroad pursuant to the Convention. *Id*. As such, EPA's attempt to serve these Respondents in this action by serving T-USA in the United States is deficient, as T-USA is "a separate legal entity that has not been authorized to act as an authorized agent for Respondents." *Id*. In support of their argument, the Respondents cite Federal Rule of Civil Procedure 4 and *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988), among other cases. *Id.* In addition, the Motion asserts that EPA has attempted to circumvent the Hague Service Convention via its regulation requiring designation of agents for manufacturers/importers who obtain Certificates of Conformity, citing *Samann v. CIR.*, 313 F.2d 461, 463 (4th Cir. 1963) and U.S.C.A. Const. art. 6, cl. 2. *Id.* at 4.

On December 30, 2015, the Agency filed its Response to the Motion accompanied by 12 supporting exhibits ("Response").[3] In the Response, the Agency argues that T-Group and JCXI were served with this action consistent with the Consolidated Rules of Practice, 40 C.F.R. Part 22, applicable here, and that service abroad under the Hague Convention is not required. Response ("Resp.") at 5-6. Further, EPA asserts that this matter does not present compelling circumstances justifying review of its regulations and its challenge to the regulations is untimely. Resp. at 6-7.

The leading case on the applicability of the Hague Service Convention is *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 696 (1988). In that case, the Supreme Court held that whether service abroad under the Convention is required is "determined by reference to the law of the forum state." *Id*. at 701, 705 (noting foreign nationals are also entitled to the protection of the due process clause to receipt of notice of pendency of an action and an opportunity to be heard). In *Volkswagenwerk*, the forum state was Illinois, whose long-arm statute authorized substituted service on the foreign (German) corporation without requiring the documents to be served aboard. *Id.* at 706, *citing* Ill. Rev. Stat., ch. 110, § 2-209(a)(1) (1985). The Court found that where "service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications." *Id.*

This case is an administrative enforcement action initiated by the EPA against the Respondents pursuant to CAA § 205(c)(1), 42 U.S.C. 7524(c)(1). As such, the applicable law of the forum with regard to service of process is that contained in Section 22.5 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits. 40 C.F.R. § 22.5. That section provides, with regard to service of the Complaint, that "Where respondent is a domestic or foreign corporation, . . . complainant shall serve an officer, partner, a managing or general agent, *or any other person authorized by appointment* or by Federal or State law to receive service of process." 40 C.F.R. § 22.5(b)(1)(ii)(A) (emphasis added).

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[2] The pages of the Motion are unnumbered, and as such are referenced as they appear on the filing as contained in the Tribunal's electronic docket.

[3] The pages the 12 exhibits are jointly sequentially numbered from 1-332 and will be cited here as follows: C's Ex. __, at ___." EPA filed a request for confidentiality of the Respondents' business information contained in its narrative Response and the exhibits attached. That request is hereby granted.

The exhibits submitted by EPA with its Response clearly evidence that both Respondent T-Group and Respondent JCXI "authorized by appointment" Respondent T-USA to receive service of process on their behalf from US EPA in regard to the matters at issue in this action. The first eight exhibits are the application packages Respondents submitted to EPA in order to obtain Certificates of Conformity ("COC") allowing the lawful importation into the United States by T-USA of the relevant vehicles manufactured by Respondents T-Group and JCXI in China. With regard to Respondent T-Group, the documents include a series letters dated June 2011-May 2013, indicating that the applications are being jointly submitted on behalf of both T-USA and T-Group. C's Ex. 1 at 4; C's Ex. 2 at 41; C's Ex. 3 at 85; C's Ex. 4 at 122. More significantly, each application is supported by a "Contractual Agreement" executed by T-USA (identified therein as the "importer") and T-Group (identified as the "manufacturer") in those same years, which explicitly provides that "Manufacturer hereby appoints Importer as its agent for service of process, for process from the US EPA . . . ."[4] C's Ex. 1 at 20; C's Ex. 2 at 59; C's Ex. 3 at 101; C's Ex. 4 at 138. Similar letters and contractual agreements, with identical provisions whereby JCXI as manufacturer appoints T-USA as importer as its "agent for service of process from the US EPA," are submitted with regard to Respondent JCXI. C's Ex. 5 at 158, 177; C's Ex. 6 at 195, 214; C's Ex. 7 at 229, 247; C's Ex. 8 at 262, 281. As such, T-USA was clearly and explicitly authorized by appointment to receive service of process on behalf of T-Group and JCXI in this action and the service made upon T-USA's President was consistent with the law of the forum. 40 C.F.R. § 22.5(b)(1)(ii)(A), C's Ex. 12 at 322 (identifying Matao Cao as T-USA's President and Director) as of January 7, 2014; C's Exs. 9-11 (Confirmations of Process Serving).

With regard to claim raised by Respondents that EPA's regulation requiring the designation of service unconstitutionally circumvents the Hague Service Convention, it is noted *Volkswagenwerk* suggests that forums are free to adopt laws that provide for service upon foreign entities in lieu of that required under the Convention, as long as such service does not violate due process requirements of notice. *Volkswagenwerk*, 486 U.S. at 706. As even service by publication has been upheld as consistent with due process, there is nothing to suggest that the service on an agent specifically appointed for such purposes by the Respondents themselves, as allowed by the Rule 22.5, would violate due process. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) ("In an appropriate case the due process requirement of notice may be satisfied by service by publication as notification supplemental to other action which in itself may reasonably be expected to convey a warning."). In any case, as a "general rule . . . challenges to rulemaking are rarely entertained in an administrative enforcement proceeding." *In re Echevarria*, 5 E.A.D. 626, 634, 1994 EPA App. LEXIS 62, *10, (EAB 1994). The decision to entertain such challenges is at best discretionary, and review of a regulation will not be granted absent the most compelling circumstances. *Id.* Respondents have offered no compelling

[4] In the Agreements the Manufacturer also certifies that the service of process designation "is in legal form required to make it binding on the manufacturer under the laws, corporate laws, or other requirements governing the making of the designation by the manufacturer at the place and time where it was made" and "The designation of Importer as an agent solely for the service of process shall remain in effect until it is withdrawn or replaced by the manufacturer." *See, e.g.*, C's Ex. 5 at 20. Respondents have not alleged that they either withdrew or replaced the designations submitted in the Agreements by EPA.

circumstances to warrant consideration of the constitutionality of the regulation they challenge here.

Based upon the foregoing, Respondents T-Group and JCXI's Motion To Quash and Dismiss Pursuant To Federal Rule Of Civil Procedure 12(b)(5) and Brief In Support thereof ("Motion") is hereby **DENIED**.

SO ORDERED.

Susan L. Biro
Chief Administrative Law Judge

Dated: June 21, 2016
Washington, D.C.

In the Matter of Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd., **Respondents**
Docket No. CAA-HQ-2015-8065

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order on Motion to Quash and Dismiss,** dated June 21, 2016, and issued by Chief Administrative Law Judge Susan L. Biro, were sent to the following parties on this 21st day of June 2016, in the manner indicated.

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Dated: June 21, 2016
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