



**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 GRANTING RESPONDENTS’ MOTION FOR LEAVE TO RESPOND AND  
COMPLAINANT’S MOTION REQUESTING OFFICIAL NOTICE**

On June 23, 2017, the Agency filed a Motion Requesting Official Notice (“Motion”). The Motion asks the undersigned Presiding Officer to take official notice of certain matters enumerated therein which the Agency asserts are “not subject to reasonable dispute and within the specialized knowledge of the Agency.” Mot. at 1. As authority, the Motion cites 40 C.F.R. § 22.22(f) and Federal Rule of Evidence 201(a). Mot. at 1.

Further, the Motion indicates that the Respondents oppose the relief sought therein. Mot. at 1. As such, the Respondents had 15 days from the date of filing to timely submit their opposition thereto, but failed to do so. *See*, 40 C.F.R. § 22.16(b) (“A party’s response to any written motion must be filed within 15 days after service of such motion.”). However, on August 10, 2017, the Respondents filed a Motion for Leave to Respond to Complainant’s Motion Requesting Official Notice (“Response”). While suggesting that no harm is caused by the late-filed Response, the Respondents fail to offer in their Response any good cause for filing late. Resp. at 1. Nevertheless, Respondents go on to assert in their Response that the Motion is “confusing” and the matters as to which official notice is sought involve “facts that are subject to reasonable dispute.” *Id.* Specifically, Respondents state the Motion requests notice be taken of certain policies, “without identifying what facts Complaint seeks the Presiding Officer to judicially notice.” *Id.* As such, Respondents claim they are uncertain as to what the Complainant exactly wishes to be officially noticed, and asks that the Complainant “clear up any confusion by specifying the precise facts the Motion seeks to establish, thereby providing Respondents the opportunity to adequately determine whether they have any objections to the relief sought within.” Resp. at 2.

**Discussion**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules”) provide that a presiding officer may take official notice “of any matter which can be

judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency.” 40 C.F.R. § 22.22(f). In turn, the Federal Rules of Evidence provide that federal courts “may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b).

Upon review, the Motion asks this Tribunal to take official notice of the following:

- 1) That the maximum penalty assessed in this proceeding may exceed \$320,000 pursuant to the agreement between the Attorney General and the Agency memorialized in the documents filed with Complainant’s Prehearing Exchange on August 25, 2016, as CX026 and CX028, and recognized by the Presiding Officer on page 18, footnote 25 of the Order on Partial Accelerated Decision and Related Motions, issued May 3, 2017; and
- 2) The existence of the following four (4) EPA policies, available from EPA’s official website, and marked as exhibits and filed with Complainant’s Prehearing Exchange on August 25, 2016:
  - Clean Air Act Mobile Source Civil Penalty Policy: Title II of the Clean Air Act Vehicle and Engine Certification Requirements, Jan. 16, 2009, marked CX022, available at [https://www.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy\\_0.pdf](https://www.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf) (“Penalty Policy”);
  - Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013), Dec. 6, 2013, marked CX023, available at <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf> (“2013 Inflation Policy”);
  - Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective August 1, 2016), July 27, 2016, marked CX024, available at <https://www.epa.gov/sites/production/files/2017-01/documents/finalpenaltyinflationguidance.pdf> (“2016 Inflation Policy”);
  - Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action, June 29, 2015, marked CX025, available at <https://www.epa.gov/sites/production/files/2015-06/documents/atp-penalty-evaluate-2015.pdf> (“Ability-to-Pay Guidance”).

Mot. at 1-2.

Despite Respondents' claim to the contrary, the request for official notice does not appear confusing and none of these matters appear to be in reasonable dispute, as they can all be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

In the case of the penalty exceeding \$320,000, the Agency provided official documents in support as part of its Prehearing Exchange and this Tribunal made a finding thereon as part of its Order on Partial Accelerated Decision issued in May 2017. Respondent offers no evidence or argument that that finding was erroneous and, as such, it remains law of the case. *In the Matter of Serv. Oil, Inc.*, 2011 EPA App. LEXIS 41, \*20-21 (E.P.A. Dec. 7, 2011) ("Under the [law of the case] doctrine, once a court decides an issue of fact or law, either explicitly or by necessary implication, that court's decision on the issue will be treated as binding -- i.e., as the 'law of the case' -- in subsequent proceedings in the same case."), citing *Gander Mountain Co. v. Cabela's, Inc.*, 540 F.3d 827, 830 (8th Cir. 2008), *Crowe v. Smith*, 261 F.3d 558, 562 (5th Cir. 2001), *DiSimone v. Browner*, 121 F.3d 1262, 1266-67 (9th Cir. 1997).

Similarly, with regard to the existence of the four Agency policies, the Complainant provides citation to them on the Agency's official website, "a source whose accuracy in this matter cannot reasonably be questioned." Mot. at 2. Further, it notes that the Rules *require* the Presiding Officer to "consider any civil penalty guidelines issued under the Act" when determining the amount of a recommended civil penalty and that such policies are "within the specialized knowledge and experience of the Agency." *Id.* citing 40 C.F.R. §§ 22.27(b), 22.22(f). While the policies speak for themselves, the Respondents retain the right to argue the proper application of the policies to the penalty to be imposed upon them, if any, either at hearing, or even more appropriately, in their post-hearing briefs.

Thus, for all of the reasons outlined above, both Respondents' Motion for Leave to Respond to Complainant's Motion Requesting Official Notice, as well as Complainant's Motion Requesting Official Notice are **GRANTED**. The Presiding officer hereby takes judicial notice of its prior finding that the penalty in this matter may exceed \$320,000 and the four penalty policies identified in the Motion and accessible on the Agency's official website.

**SO ORDERED.**



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Susan L. Biro  
Chief Administrative Law Judge

Dated: August 18, 2017  
Washington, D.C.

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

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing Order Granting Respondents' Motion for Leave to Respond and Complainant's Motion Requesting Official Notice, dated August 18, 2017, were sent this day to the following parties in the manner indicated below.

  
\_\_\_\_\_  
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Dated: August 18, 2017  
Washington, D.C.