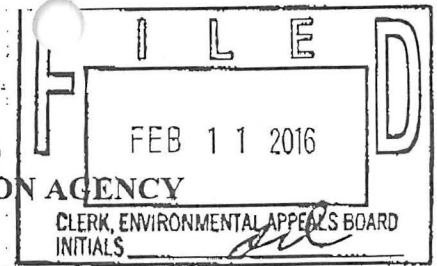


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Taotao USA, Inc.)
Taotao Group Co., Ltd., and)
Jinyun County Xiangyuan Industry Co.,)
Ltd.,)
)
Respondents)

Docket No. CAA-HQ-2015-8065

ORDER

On November 12, 2015, the Air Enforcement Division of the U.S. Environmental Protection Agency (“Complainant”) filed a complaint against three entities, Taotao USA, Inc. (“Taotao USA”), Taotao Group Co., Ltd. (“Taotao Group”), and Jinyun County Xiangyuan Industry Co., Ltd. (“JCXI”), pursuant to the Consolidated Rules of Practice that govern this administrative enforcement matter. *See generally* 40 C.F.R. pt. 22. The complaint alleges that Taotao USA, Taotao Group, and JCXI violated sections 203(a)(1) and 213(d) of Title II of the Clean Air Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and their implementing regulations by manufacturing and importing vehicles in eight separate classes that do not conform to their corresponding certificates of conformity. *See* Complaint at 6-9 (Nov.12, 2015). On December 15, 2015, Taotao USA filed a motion for an extension of time to file an answer in the above-captioned matter, and indicated that the Complainant did not oppose its motion. Also on December 15, 2015, Taotao Group and JCXI jointly filed a separate motion to quash service and dismiss the complaint against them pursuant to Federal Rule of Civil Procedure 12(b)(5), and stated that Complainant opposed their motion.

On December 22, 2015, the Environmental Appeals Board (“Board”) issued an order granting respondents an extension of time to file an answer through Tuesday, January 19, 2016.

The Board issued a second order on January 12, 2016, clarifying that the extension of time to file an answer applied to all three respondents, and that it would not rule on Taotao Group and JCXI's motion to quash service and dismiss the complaints against them. Taotao USA timely filed its answer and request for a hearing on January 19, 2016. On February 3, 2016, Complainant filed a Motion for Partial Default on Liability against Taotao Group and JCXI for failure to file an answer to the complaint despite the Board's instruction to do so no later than January 19, 2016. *See* 40 C.F.R. § 22.17. Complainant requests that the Board transfer this matter to the Office of the Administrative Law Judges for determination of an appropriate penalty against Taotao Group and JCXI in conjunction with the proceeding against Taotao USA. *See* Motion for Partial Default on Liability as to Taotao Group and JCXI at 2 (Feb. 3, 2016), *citing In re Geason Enterprises, LLC*, Dkt. No. CAA-HQ-2013-8050 (Dec. 16, 2013) (transferring to the Office of Administrative Law Judges a motion for default for failure to answer a complaint since the OALJ was also presiding over the matter involving respondents who had answered the same complaint). Complainant states that Taotao Group and JCXI oppose the motion for default.

Under the Consolidated Rules of Practice, once an answer is filed in an enforcement proceeding commenced at EPA Headquarters, one of EPA's administrative law judges ("ALJs") acts as the presiding officer in the matter. *See* 40 C.F.R. §§ 22.3, .4(a). Before an answer is filed in such a case, however, the Board generally acts as the presiding officer in the matter. *See id.* § 22.4(a). The Consolidated Rules of Practice do not directly speak to who should act as the presiding officer when answers have been filed by some, but not all, of the respondents in a matter, as is the case here. *See generally id.*

In exercising its duties under the Consolidated Rules of Practice, the Board “may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding.” *Id.* § 22.4(a)(2); *accord id.* § 22.4(c)(10) (containing the same language when the Board is acting as the presiding officer); *see also id.* § 22.1(c) (“Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the * * * Board * * *.”). In this case, it would be more efficient as well as more consistent with the intent of the Consolidated Rules of Practice to send this motion for default to the Office of the Administrative Law Judges for consideration. This would allow the ALJ assigned to conduct the proceedings in connection with Taotao USA, who has filed an answer, to also decide the pending motion for default that pertains to Taotao Group and JCXI. It makes more sense for the same ALJ to consider the default issues associated with respondents Taotao Group and JCXI, especially as there are likely to be similar or overlapping liability and/or penalty issues related to the allegations brought against each of the three respondents.

Accordingly, the Board directs the Hearing Clerk to send the motion for default to the Office of the Administrative Law Judges for action consistent with this order. This order is not intended in any way to be a determination on the merits of the motion.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: *February 11, 2016*

By: *Mary K Lynch for*
Kathie A. Stein
Environmental Appeals Judge

¹ The three-member panel deciding this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward. See 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I certify that copies of the forgoing *Order* in the matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, were sent to the following persons in the manner indicated:

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Dated: FEB 11 2016



Annette Duncan
Secretary