

**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.

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

BUSINESS CONFIDENTIALITY ASSERTED

The documents submitted with Respondents' Motion to Supplement the Prehearing Exchange contain material claimed to be confidential business information ("CBI") and Personal Identifiable Information ("PII") pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI consists of COC applications, catalytic converter tests, expert opinions on catalytic converter test results and invoices for catalytic converters. The material claimed as CBI includes personal resumes. 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.

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**Docket No.
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**RESPONDENTS' FIRST MOTION TO SUPPLEMENT THE PREHEARING
EXCHANGE**

Respondents' Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd. respectfully file this First 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"), and the Prehearing Order issued by this Tribunal on May 11, 2016, as amended. Respondents have conferred with Complainant's counsel, and Complainant intends to oppose this Motion.

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parties to supplement their prehearing exchanges whenever they learn that the exchange was incomplete, inaccurate, or outdated. 40 C.F.R. § 22.19(f). Respondents request leave to add twenty-two exhibits, and seven additional potential witnesses, to their Prehearing Exchange, together with an updated exhibit index.

A. Potential Witnesses

In addition to the potential witnesses identified in Respondents' Joint Prehearing Exchange, Respondents may call any or all of the following witnesses at the evidentiary hearing in this matter.

Respondents may supplement this list, upon adequate notice to the Tribunal and to Complainant, should information reveal the need for additional or alternative witnesses and Respondents' Motion for Continuance is granted.

1. Jonathan S. Shefftz, JShefftz Consulting. Mr. Shefftz holds a B.A. magna cum laude and Phi Beta Kappa in Economics and Political Economy from Amherst College, and an M.P.P. degree, with concentrations in Government & Business and Energy & Environmental Policy, from the John F. Kennedy School of Government at Harvard University. Although Mr. Shefftz has worked and continues to work on various EPA contracts via subcontracting with his former employer, Industrial Economics, Incorporated ("IEc"), in this matter Mr. Shefftz has been retained directly in his capacity as an independent consulting economist (d/b/a JShefftz Consulting), entirely unrelated to his relationship with IEc (which has been notified of his retention on this matter). Mr. Shefftz will testify as an expert on the economic benefit component of the Clean Air Act civil penalty factor. Mr. Shefftz's resume is included in Respondents' exhibits and is marked as RX020. The substance of Mr. Shefftz's testimony is contained in his expert report and is marked as RX004.
2. Larry Doucet, Environmental Engineer. Mr. Doucet holds a B.S. cum laude in Mechanical/Marine Engineering from U.S. Merchant Marine Academy, and M.S. in Environmental Engineering from City College of New York. He is currently employed as a Senior Professional Engineer and Regional Manager responsible for the regional operations, management, and business development for an environmental consulting and engineering firm with corporate responsibility for projects involving environmental compliance and permitting; waste management, treatment, incineration; and air pollution control. Mr. Doucet has more than 40 years of in-depth, comprehensive experience as a consulting environmental engineer,

and has worked for more than 600 clients in 43 states and abroad on literally 1,000s of projects for public and private sector clients. Mr. Doucet may be qualified to testify as an expert on the reliability of different catalytic converter testing methods and the degree of “crucial” importance, of precious metal concentrations in catalytic converters with respect to pollutant emission reductions, performance and efficiencies. Mr. Doucet’s resume is included in Respondents’ exhibits and is marked as RX021.

3. Clark Gao¹, Precision Consulting. Mr. Guo is the Founder and Chief Executive Officer of Precision Consulting, a firm that specializes in applying advanced statistical methodologies and data analysis techniques to solve complex business problems. Under his leadership, Precision has established long-term consulting relationships with several Fortune 500 firms, and was named to the 2010 Inc 500 list of the Fastest Growing Private Companies in America. Mr. Guo holds a B.S. with highest distinction from Cal Tech in both Mathematics and Economics, and an M.S. in Economics from Boston University. Mr. Guo may be qualified as an expert on statistical analyses of the results of precious metal analyses conducted on catalytic converters taken from Respondents’ vehicles, and whether the catalytic converters analyzed may be representative of catalytic converters in vehicles across respective engine families relevant to this matter. Although Mr. Gao has not yet been retained, he will likely be retained to testify if Respondents’ Motion for Continuance is granted and/or the Presiding Officer permits testimony on the issue of whether Respondents are liable for 109,964 violations based on the testing of thirty-five vehicles spread over ten engine families. Mr. Guo’s resume is included in Respondents’ exhibits and is marked as RX022.

¹ Respondents will likely retain either Mr. Gao or Mr. Gatsworth depending on whether Respondents’ Motion for Continuance is granted, given the availabilities of these proposed expert witnesses.

4. Joseph L. Gatsworth. Mr. Gatsworth is a professor of statistics and economics at the George Washington University. He has a PhD in Mathematical Statistics from Columbia University. Mr. Gatsworth may be qualified as an expert on statistical analyses of the results of precious metal analyses conducted on catalytic converters taken from Respondents' vehicles, and whether the catalytic converters analyzed may be representative of catalytic converters in vehicles across respective engine families relevant to this matter. Although Mr. Gatsworth has not yet been retained, he will likely be retained to testify if Respondents' Motion for Continuance is granted. Mr. Guo's qualifications are included in Respondents' exhibits and is marked as RX023.
5. Granta Nakayama, Assistant Administrator Office of Enforcement and Compliance Assurance. Mr. Nakayama is one of the primary authors of the Clean Air Act Mobile Source Penalty Policy ("Penalty Policy), which Complainant has relied upon in calculating its proposed penalty assessment. Mr. Nakayama is expected to testify regarding the Clean Air Act Mobile Source Penalty Policy, the appropriateness of its application in the present matter, and whether Complainant has properly applied the Penalty Policy to calculate the proposed penalty assessment. Because Mr. Nakayama has authored the penalty policy, he may qualify as the expert witness on the Penalty Policy.
6. Jacqueline Robles Werner², Air Enforcement Division of the Office of Civil Enforcement. Upon information and belief, it appears that Ms. Werner either co-authored the Penalty Policy or substantially assisted in its development. Ms. Werner will likely testify regarding the Penalty

² To the extent that Mr. Nakayama and Ms. Werner are not able to testify as authors of the penalty policy, Respondents additionally designate the primary author of the Penalty Policy as a potential witness in addition to Mr. Nakayama and/or Ms. Werner.

Policy and whether Complainant accurately calculated its proposed penalty in accordance with the Penalty Policy.

7. Amelie Isin³, United States Environmental Protection Agency ("EPA") Region 3, formerly of EPA ' s Mobile Source Enforcement Branch ("MSEB"), Air Enforcement Division ("AED"), Office of Civil Enforcement ("OCE"), Office of Enforcement and Compliance Assurance ("OECA"). Ms. Isin may testify about the calculation of the proposed civil penalty in this matter, the application of the Penalty Policy to the facts of this case and the specific factors applied to these facts that resulted in the calculation of the proposed civil penalty in this case.

B. Documents and Exhibits

See "Respondents' Joint Prehearing Exchange Index," for a list of the exhibits that Respondent may introduce at the hearing. Copies of the exhibits are provided in tandem with this 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, or Complainant's Prehearing Exhibits. Respondents will supplement this Exchange, upon adequate notice to the Tribunal and to Complainant, to include additional exhibits if more information regarding the matter is obtained, the need for such additional exhibits is discovered, or if the Motion for Continuance is granted.

The supplemental exhibits include an expert's report on financial factors in civil penalty setting including Respondents economic benefit and ability to pay, invoices relating to the

³ If Ms. Isin is not the person primarily responsible for calculating Complainant's proposed penalty assessment, and it is later discovered that the proposed penalty was calculated by Edward Kulschinsky, Robert Klepp or some third-party, Respondents designate the person in fact responsible for the proposed penalty assessment as stated in CX160 as a potential witness, currently and in addition to Ms. Isin.

economic benefit analysis, amounts paid by Respondents in this matter, steps taken to achieve compliance, and emission test reports.

Granting this request to supplement the Prehearing Exchange will not cause Complainant undue surprise or prejudice. Much of the material being added to the Prehearing Exchange is already in Complainant's possession, or shared with the Agency during the course of investigations in this matter: the catalytic converter invoices directly relate to the economic analysis of the Penalty Policy; the additional COC applications were submitted to the Agency, and Emission Tests were also previously provided to the Agency.

The expert report prepared by Mr. Shefftz pertains to matters relating to the assessment of penalties, provides an economic analysis that the current Penalty Policy requires to calculate the economic benefit, within the framework of the Penalty Policy, and provides a more thorough explanation of witness's expected testimony at the hearing.

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

Dated: June 16, 2017

Respectfully Submitted,



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Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies that on June 16, 2017 the foregoing Respondents' Joint Prehearing Exchange, together with Respondents' Proposed Exhibits that do not contain CBI, were filed electronically using the EPA Office of Administrative Law Judges' E-Filing System. In addition, a copy of Respondents' Joint Prehearing Exchange, a full set of Respondents' Proposed Exhibits, and a set of Respondent's Proposed Exhibits from which exhibits containing CBI have been omitted, were sent the same day via certified mail, return receipt requested, to the Headquarters Hearing Clerk in the EPA Office of the Headquarters Hearing Clerk at the address listed below:

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W., Mail Code 1900R,
Washington, D.C. 20460

The undersigned certifies that a copy of Respondents' Joint Prehearing Exchange, together with a full set of Respondents' Proposed Exhibits were sent the same day via certified mail, return receipt requested, for service on counsel for Complainant at the address listed below:

Ed Kulschinsky, Esq.
Robert Klepp, Esq.
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
William J. Clinton Federal Building
Room 1142C, Mail Code 2242A
Washington, DC 20460
(202) 564-4133



Dated: June 16, 2017

William Chu

RESPONDENTS' JOINT PREHEARING EXCHANGE INDEX

<i>Exhibit No.</i>	<i>CBI OR PII</i>	<i>Title</i>	<i>Pages</i>
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	Invoice for Catalytic Converters from Nanjing Enserver and Beijing ENTE	000195-000207
RX015	CBI	Comparable Prices from Nanjing Yingsi Weier and Underlying Invoices	000208-000217
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