



**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 DENYING MOTION FOR PARTIAL DEFAULT

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)(1) and 213(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7522(a)(1) 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, Respondent T-USA filed a Motion for Extension of Time to answer, and 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. By Order dated December 22, 2015, the Environmental Appeals Board (“EAB”) granted *all three* Respondents until January 19, 2016 to file their answers to the Complaint.²

¹ A Motion to Amend the Complaint is currently pending.

² On December 30, 2016, the EAB issued a Clarification Order stating that the extension granted to all three Respondents stands and that “[t]he Board will not rule on Taotao Group’s and JCXI’s motion to quash service and dismiss the complaints against them,” apparently intending to allocate such responsibility to the undersigned.

Respondent T-USA timely filed its Original Answer and Request for Hearing on January 19, 2016. The other two Respondents did not submit answers to the Complaint. In response, on February 3, 2016, the Agency filed a Motion for Partial Default on Liability as to Taotao Group Co., Ltd. and Jinyun County Xiangyuan Industry Co., Ltd. (“Motion”) pursuant Section 22.17 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. § 22.17 (“A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint”).

On February 9, 2016, Respondents T-Group and JCXI each filed their own Original Answers and Request for Hearing, subject to their pending Motion to Quash. Further, they filed a Response to the Complainant’s Motion for Partial Default (“Response”) on February 23, 2016, asserting that under the Rules they cannot be held in default until proper service has been established, which has not yet occurred as set forth in their Motion to Quash. Response at 1. They also noted the filing of their Answers in the interim as a precaution in light of “procedural uncertainty.” *Id.* On February 29, 2016, the Agency filed a Reply to the Response reiterating the claim that the two Respondents failure to timely file answers consistent with the extension of time to do so granted by the EAB, subjects them to default.

Thereafter, the parties unsuccessfully engaged in Alternative Dispute Resolution, until May 9, 2016, when the undersigned was designated to preside over this matter for the purposes of hearing.

Simultaneously herewith, this Tribunal has issued an Order denying the pending Motion to Quash. In light of the pendency of such motion challenging proper service and the Answers filed by T-Group and JCXI in the interim, the Motion for Default 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 Denying Motion for Partial Default**, 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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