

**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**

RESPONDENTS' MOTION TO TAKE DEPOSITIONS

Pursuant to 40 C.F.R. § 22.19(e), Respondents' Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd. respectfully move for additional discovery as follows:

I.

On May 3, 2017, the Presiding Officer granted Complainant's First and Second Motion to Supplement the Prehearing Exchange. *See* Order on Partial Accelerated Decision and Related Motions ("Order") at 2-3. The Supplementary exhibits included sworn declarations of three expert witnesses: Amelie Isin, Dr. John Warren and Dr. Ronald Heck. The Order granted Complainant's Motion for Partial Accelerated Decision on the issue of liability and stated that the matter would proceed to hearing on the issue of penalty. Order at 31. Respondents now seek additional information on the contents of each declaration submitted as supplementary exhibits from each declarant.

Complainant has identified expert witnesses on matters concerning the Clean Air Act civil penalty factor, "the effect of the penalty on the violator's ability to continue in business," and other matters concerning Respondents' finances and accounting. *See* Complainant's Initial Prehearing

Exchange at 4-6. Complainant has also identified several fact witnesses who will testify regarding pertinent facts at issue in this case. *Id.*

Respondents request the Presiding Officer to allow depositions of the following witnesses in accordance with 40 C.F.R. 22.19(e)(3):

a. Amelie Isin

Ms. Isin is designated as both a fact witness and a possible expert witness. She is the lead investigator in the matter and will likely have pertinent knowledge on vehicle examinations conducted on subject vehicles, removal and subsequent delivery of catalytic converters for testing, and Complainant's communications with Respondent Taotao USA, Inc. Respondents believe that Ms. Isin has additional information regarding Complainant's claim of "fair notice" and Respondents' cooperation. Said information is crucial to proper penalty calculation and Respondents' position that the proposed penalty is inappropriate and fails to account for all necessary penalty factors. Respondents have no further avenue to obtain this information prior to the hearing. Additionally, Ms. Isin may testify, as an expert on EPA's enforcement program, penalty calculation and catalytic converter analysis. Respondents seek additional information on these topics, such as, the sampling method employed in this matter so that Respondents have an opportunity to retain experts or collect additional evidence to challenge the methods.

b. Emily Chen

Ms. Chen is an environmental engineer with the EPA and may testify as a fact witness regarding the COC applications and confirmatory test orders her office issued, which relate to the engine families at issue in this case. Respondents seek additional information on Ms. Chen's anticipated testimony to properly prepare their defense.

c. Cleophras Jackson

Mr. Jackson is designated as a potential fact and potential expert witness and expected to testify about Respondent's COC applications, annual production reports, and confirmatory orders. He may be qualified as an expert to testify to EPA's Clean Air Act vehicle and engine regulatory program and about emissions testing. Respondents seek additional information on Mr. Jackson's anticipated testimony to properly prepare their defense and evaluate his qualifications as a potential expert.

d. Dr. John Warren

Dr. Warren's Declaration was first introduced in Complainant's second motion to supplemental the prehearing exchange, which was granted on May 3, 2017. Respondents seek additional information on Dr. Warren's theories and opinion, his qualifications, and the appropriateness his chosen method of calculations. Additional information from Dr. Warren is imperative to challenge his designation as an expert and his unfavorable written declaration.

e. Dr. Ronald Heck

Dr. Heck's written declaration was first introduced in Complainant's second motion to supplemental the prehearing exchange, which was granted on May 3, 2017. Respondents seek additional information on Dr. Heck's theories and opinion, his qualifications, and the information he relied upon in making the determination that "emissions data obtained from the low mileage tests performed by CEE are not indicative of how the catalytic converters would perform to reduce emissions at the end of the vehicles' useful life." CX176. Respondents believe that Dr. Heck's opinion relies on misinformation, for example, his statement that "[n]o data from the approved certification applications can be used to predict how vehicles with the Pd catalytic converters will perform" appears to rely on an assumption that the EDV tested for each COC application was not

equipped with a Pd catalytic converter but rather one that contained a combination of all three precious metals. *See* CX176 ¶ 28; *see also* id. ¶ 20 (“Reliable results can only be obtained by testing a catalytic converter’s performance in a particular application.”). Additional information from Dr. Heck regarding the information he relied upon and whether the fact that some COC applications relevant to this matter in fact showed that primarily Pd catalytic converters would be used. Respondents believe that the additional information will significantly reduce the proposed penalty, specifically, the gravity and egregiousness component.

f. Dr. James Carroll

Respondents seek information regarding Dr. Carroll’s determination that Respondents have an ability to continue in business, the calculation models employed, and the information relied upon. Respondents cannot successfully challenge the witness and his proposed testimony without this information.

g. Mario Jorquera

Mr. Jorquera is a potential fact witness who may have information regarding EPA’s inspection program, and about his inspections of Respondents’ vehicles. Because Mr. Jorquera has personally inspected shipments of Respondents’ vehicles, he is the only person who can testify to the facts surrounding the inspections, i.e. why were the shipments inspected, what was found, how often does the Agency inspect similar shipments, etc. Mr. Jorquera is the only witness who can shed light on these facts.

h. Witnesses on ERG tests - Andy Loll, Colin Wang, Sam King, Brent Ruminiski and Cassidy Owen

The foregoing witnesses are the only witnesses who can provide information on the catalytic converter tests performed ERG. Because the tests are crucial to Complainant’s case,

Respondents cannot present their defense to the proposed penalty without obtaining all necessary facts regarding the handling of the converter, the testing methods employed, and the accuracy of these methods compared to test methods employed by other catalytic converter test labs. Respondents also seek information on whether testing catalytic converters is common industry practice, the accuracy of test results, and how often does the laboratory test catalytic converters for the Agency. It appears that tests performed at ERG differ from those performed at SGS, Respondents therefore seek information regarding the possible causes for said differences.

i. Witnesses on Region 9 tests - Nathan Dancher and Peter Husby

The foregoing witnesses are the only witnesses who can provide information on the catalytic converter tests performed at EPA's Region 9 Laboratory. Because the tests are crucial to Complainant's case, Respondents cannot present their defense to the proposed penalty without obtaining all necessary facts regarding the handling of the converter, the testing methods employed, and the accuracy of these methods compared to test methods employed by other catalytic converter test labs. Respondents also seek information on whether testing catalytic converters is common Agency practice.

j. Witnesses on NEIC tests - Jennifer Suggs and Benjamin Burns

The foregoing witnesses are the only witnesses who can provide information on the catalytic converter tests performed at NEIC. Because the tests are crucial to Complainant's case, Respondents cannot present their defense to the proposed penalty without obtaining all necessary facts regarding the handling of the converter, testing methods employed, and the accuracy of these methods compared to test methods employed by other catalytic converter test labs.

k. Stan Culross

Witness conducted emissions testing on engine family ETAOC.049MC2, pursuant to a confirmatory test order. Because all other vehicles belonging to the engine family passed emissions at CEE and the only vehicle that allegedly exceeded emissions was tested by Lotus Engineering, Inc., Respondents have reason to believe that the test at Lotus was not properly conducted. Furthermore, given that CO emissions of the vehicle reported by Lotus are nearly three times higher than the CO emissions of similar vehicles tested at CEE, the witness likely has additional information to explain the difference. Because only one vehicle was tested by Lotus, Mr. Culross is the only witness who can shed light on these factual issues.

II.

Because the information is primarily available through Complainant's above-mentioned designated witnesses, the information sought cannot reasonably be obtained by alternative methods of discover. Additionally, given the likelihood that some the aforementioned witnesses will not be present to testify at the hearing now that the hearing has been limited to the issue of penalties, there is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing. Respondents further need to depose these witnesses to effectively retain their own rebuttal witnesses.

Depositions in this matter would support the principles of fairness, truthful fact-finding, and prevention of surprise. The consequences to Respondents not having this information in advance of the hearing would be severely prejudicial at the hearing.

Respondents propose that the depositions take place via video conference at times agreed upon by both parties or designated by the Presiding Officer. Said video depositions will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party.

III.

WHEREFORE, Respondents respectfully request the Presiding Officer to enter an order permitting Respondents' counsel to take the above-described depositions.

Dated: June 16, 2017

Respectfully Submitted,



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CERTIFICATE OF CONFERENCE

Counsel for the Respondent has confirmed that Counsel for Complainant is opposed to the requested depositions.



William Chu

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion to Depose Witnesses in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, was filed and served on the Presiding Officer this day through the Office of Administrative Law Judge's E-Filing System.

I certify that a copy of the foregoing Motion was sent this day via certified mail for service on Complainant's counsel as follow:

Edward Kulschinsky
Robert Klepp
Air Enforcement Division
Office of Enforcement and Compliance Assurance

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William J. Clinton Federal Building
Room 1142C, Mail Code 2242A
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Dated: June 16, 2017

William Chu