



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 COMPLAINANT’S MOTION FOR ADDITIONAL DISCOVERY

On September 21, 2017, Complainant, the Director of the Air Enforcement Division of the U.S. Environmental Protection Agency’s Office of Civil Enforcement (EPA or “Agency”), filed a Motion for Additional Discovery on Ability to Pay through Requests for Production (“Motion”). The Motion requests permission to seek documents from Respondents “regarding the financial condition of Taotao USA, Inc., and entities related to Taotao USA, Inc. through non-arm’s length transactions or common ownership or control.” Mot. at 1. The Respondents filed their “Response and Objections” to the Motion on September 30, 2017 (“Response”). For the reasons stated below, the Motion is DENIED.

I. APPLICABLE STANDARDS

The Consolidated Rules of Proceedings (“Rules”) provide for discovery primarily by way of a Prehearing Exchange. 40 C.F.R. § 22.19(a). However, the Rules allow the Tribunal to order additional discovery if it:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

40 C.F.R. § 22.19(e)(1)(a)(i)-(iii).

II. THE AGENCY'S MOTION

In its Motion, the Agency seeks an order compelling production of documents relevant to Respondents' claims of inability to pay, as EPA is required to consider this factor in determining a penalty under the Clean Air Act, 42 U.S.C. § 7524(c)(2). Complainant explains that it first learned that Respondent Taotao USA, Inc. was financially related to other entities such as Daction Trading, Inc., Tao Motor Inc., 2201 Luna Road, LLC, in December 2015, a month after this action was initiated and about the same time Respondents declared the defense of "inability to pay" in their Answer. Mot. at 2-3 (citing Respondent Taotao USA Inc.'s Original Answer and Request for Hearing at 13). The Agency learned of more information relevant thereto "very recently during and subsequent to the depositions of Taotao USA's owner, Matao Cao, and Respondents' proposed witness, David Garibyan, on September 6 and 8, 2017." Mot. at 2. The Agency requested that Respondents voluntarily provide additional information about the relationship between Respondents and these other entities and their intertwined finances, but Respondents refused to do so. Mot. at 5 (citing CX 169; CX 196; CX 170).

Complainant argues that the information it seeks through the request for production "has significant probative value regarding Respondents' claim of inability to pay, and is most reasonably obtained from Respondents in this matter." Mot. at 5. Further, requiring "Respondents to produce the information, or certify they have exercised their best efforts to do so, will not cause undue delay or burden, because the information should be within the possession, custody, or control of Respondents or their principals, and because the burden is outweighed by the value of the information to assessing the merit of Respondents' claim," the Agency concludes. Mot. at 5.

III. RESPONDENTS' RESPONSE

Respondents ask this Tribunal to deny the Motion on three grounds. First, they object to the late timing of the request, stating it is "so broad, cumulative, and burdensome that it is extremely difficult, if not impossible for Respondents to provide the information before the evidentiary hearing, and still have time to sufficiently prepare their defense." Resp. at 1-2. In support, they cite the fact that the Federal Rules of Civil Procedure generally provide a party 30 days to respond to requests for production, less than the time remaining until hearing; list the 17 categories of items requested by the Complainant; complain that the Agency has already "flooded" Respondents with at least three separate discovery requests in just the past few months; and observe that the Complainant has already supplemented its prehearing exchange six times. Resp. at 2-4 (citing Fed. R. Civ. P. 34(b)(2)(A)).

Second, Respondents state that the information sought by Complainant "has little or no probative value to liability or relief sought." Resp. at 1.

Third, "Complainant has exceeded the federal limits on discovery requests," Respondents proclaim. Resp. at 1. They assert that the information sought is "personal and confidential" information pertaining to several non-parties. Resp. at 2.

IV. DISCUSSION

Submitted as “Attachment A” to the Motion is the Complainant’s (proposed) Request for Production of Documents. Mot. Att. A. The Requests are very extensive. They seek at least 27 categories of documents, including tax returns and financial statements for numerous entities, as well as correspondence on a broad range of matters. Based upon its review, this Tribunal accepts that Respondents could not fully and fairly respond to the requests while simultaneously preparing for hearing, which is set to begin in exactly two weeks, on October 17, 2017.

Furthermore, the Agency offers no good cause for waiting until this very late date to submit this very substantial request for additional discovery on ability to pay. It acknowledges in its Motion being aware for close to two years of the Respondents’ defense of inability to pay as well as of companies potentially related to the Respondents whose assets might be relevant to this issue. Mot. at 2. Almost a year ago, on October 13, 2016, the Agency wrote Respondents requesting extensive information relevant to their ability to pay, and it appears that Respondents promptly notified the Agency of their refusal to voluntarily comply with such request. *See* CX 169; CX 170. Still, EPA did not follow up until taking the depositions of Respondents’ witnesses almost a year later, in September 2017, just a month before hearing. Further, it did not request these additional documents until after the depositions were completed. Respondents, on the other hand, initiated their requests for depositions in June 2016. In sum, the record establishes that the Agency has had plenty of opportunity to undertake discovery on the issue of ability to pay and related entities in a timely manner, but failed to do so.¹

As such, this Tribunal sees the merit in Respondents’ objection to the extremely late timing of Complainant’s very burdensome request for additional discovery. Granting the Agency the discovery it now requests will unfairly burden the Respondents in their hearing preparation and/or further delay the hearing, which has already been postponed significantly. This matter is now one of this Tribunal’s oldest pending cases, and it is the responsibility of this Tribunal to see that matters are efficiently adjudicated. 40 C.F.R. § 22.4(c)(10).

CONCLUSION

Therefore, based upon the foregoing, Complainant’s Motion for Additional Discovery on Ability to Pay through Requests for Production is hereby **DENIED**.

¹ The Prehearing Order issued on May 11, 2016, provided for completion of the prehearing exchange process by July 29, 2016, which was extended over a year, until September 15, 2017, as a result of multiple requests made by the parties. The Agency filed its Initial Prehearing Exchange Statement on August 25, 2016, and has since supplemented it at six times. *See* Complainant’s First Motion to Supplement the Prehearing Exchange (“First Motion”) (Nov. 28, 2016); Second Motion (Jan. 3, 2017); Third Motion (Jun. 16, 2017); Fourth Motion (Jul. 31, 2017); Fifth Motion (Aug. 21, 2017); Sixth Motion (Sep. 15, 2017). On August 17, 2017 and September 20, 2017, the Agency’s previous requests to undertake additional discovery though requests for admissions, depositions, interrogatories and document production were granted.

SO ORDERED.



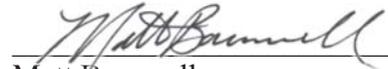
Susan L. Biro
Chief Administrative Law Judge

Dated: October 3, 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 the foregoing **Order Denying Complainant's Motion for Additional Discovery**, dated October 3, 2017, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


Matt Barnwell
Attorney Advisor

Original by Hand Delivery To:

Mary Angeles
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Room M1200
1300 Pennsylvania Avenue, N.W.
Washington, DC 20004

Copies by E-Mail To:

Edward Kulschinsky, Esq.
U.S. EPA, 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
Email: kulschinsky.edward@epa.gov
Attorney for Complainant

Robert G. Klepp, Esq.
U.S. EPA, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
Room 1111A, Mail Code 2242A
Washington, DC 20460
Email: klepp.robert@epa.gov
Attorney for Complainant

Mark J. Palermo, Esq.
U.S. EPA, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
Room 3319C, Mail Code 2242A
Washington, DC 20460
Email: palermo.mark@epa.gov
Attorney for Complainant

William Chu, Esq.
Salina Tariq, Esq.
The Law Office of William Chu
4455 LBJ Freeway, Suite 909
Dallas, TX 75244
Email: wmchulaw@aol.com
Email: stariq.wmchulaw@gmail.com
Attorneys for Respondents

Dated: October 3, 2017
Washington, D.C.