



**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 ON MOTION FOR LEAVE TO AMEND THE COMPLAINT AND TO
EXTEND PREHEARING DEADLINES**

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’ alleged manufacture and import into the United States of motorcycles and/or recreational vehicles with catalytic converters not designed or built in accordance with their Certificates of Conformity. *Id.* Respondents filed answers to the Complaint on January 19, 2016 and February 9, 2016, respectively.

On June 14, 2016, the Agency filed a Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines (“Motion”) pursuant to Rules 22.14(c) and 22.7(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules”). 40 C.F.R. §§ 22.14(c), 22.7. EPA seeks leave to amend the Complaint to add allegations of additional violations of sections 203(a)(1) and 213(d) of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7522(a)(1) and 7547(d), and to extend the prehearing deadlines to allow time for the Respondents to file their answers to the new allegations prior to submitting the prehearing exchanges as scheduled under my Prehearing Order issued on May 11, 2016. The Respondents did not file any response to the Motion.

Discussion

The Rules of Practice provide, in relevant part, that:

The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

40 C.F.R. § 22.14(c).

The Rules of Practice do not, however, illuminate the circumstances in which amendment of the complaint is, or is not, appropriate. As EPA indicates in its Motion, the Environmental Appeals Board (“EAB”) has “expressly adopted” the liberal policy regarding pleadings and amendments found in Federal Rule of Civil Procedure (“FRCP”) 15, and described in *Foman v. Davis*, 371 U.S. 178 (1962). *Chem-Solv, Inc.*, EPA Docket No. RCRA-03-2011-0068, 2014 EPA ALJ LEXIS 14, at *16-17 (ALJ, June 5, 2014) (citing, *inter alia*, *Lazarus, Inc.*, 7 E.A.D. 318, 333 (EAB 1997), *Carroll Oil Co.*, RCRA (9006) Appeal No. 01-02, 2002 EPA App. LEXIS 14 at *35 (EAB, July 31, 2002), *In the Matter of Asbestos Specialists, Inc.*, TSCA Appeal No. 92-3, 4 E.A.D. 819, 827 n. 20 (October 6, 1993)).

The FRCP’s liberal stance toward amending pleadings provides that leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a).² The Supreme Court has also endorsed this liberality in interpreting Rule 15(a), finding that “the Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Foman*, 371 U.S. at 181-82 (quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957)).

In considering a motion to amend under Rule 15(a), the Court has held that leave to amend shall be freely given in the absence of any apparent or declared negative reason, such as undue delay, bad faith or dilatory motive on the movant’s part, repeated failure to cure deficiencies by previous amendment, undue prejudice, or futility of amendment. *Id.* at 182; accord *Carroll Oil*, 2002 EPA App. LEXIS 14 at *37; see also *Yaffe Iron and Metal Co. v. U.S. EPA*, 774 F.2d 1008, 1012 (10th Cir. 1985) (administrative pleadings should be “liberally construed” and “easily amended”). Similarly, the EAB has found that a complainant should be given leave to freely amend a complaint in EPA proceedings in accordance with the liberal policy of FRCP 15(a) as it promotes accurate decisions on the merits of each case. *In the Matter of Asbestos Specialists, Inc.*, 4 E.A.D. at 830; *In the Matter of Port of Oakland and Great Lakes Dredge and Dock Company*, MPRSA Appeal No. 91-1, 4 E.A.D. 170, 205 (EAB, August 5, 1992).

² FRCP 15(a) provides that:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served Otherwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

In the instant matter, Complainant seeks to amend the original Complaint to revise the numbers of violations alleged in Counts 1–3 and Counts 5–8 based on Respondents’ production reports for model years 2013–2015, and to add two counts alleging that Respondents Taotao USA and JCXI are liable for an additional 1,681 violations of the Act stemming from the importation of vehicles in engine families FTAOX0.15G2T and GTAOX0.15G2T. The proposed amended complaint also reflects Taotao USA’s new address, and corrects a typographical error involving paragraph numbering in the original Complaint. Motion at 3. EPA alleges it obtained Respondents’ 2015 production reports in May, 2016, which indicated that more vehicles were produced by Respondents for sale in that year than had been shown in Respondents’ April 18, 2016 response to EPA’s Request for Information. *Id.* As a result, EPA then compared the Respondents’ production reports for prior years with the allegations made in the Complaint, and found other disparities. *Id.* It is those disparities the Agency wishes to correct by amending the Counts of the existing Complaint. *Id.* Furthermore, the Agency states that in January and February, 2016, it also inspected vehicles from additional engine families (FTAOX0.15G2T and GTAOX0.15G2T) manufactured by Respondent JCXI and imported into the United States by Respondent T-USA, and that these had not been previously identified in the Complaint. Motion at 2. Upon testing in March, 2016, EPA states that it found that the engines’ catalytic converters evidenced the same type of non-compliance that has been alleged regarding the other engine families in the original Complaint. *Id.* As such, the Agency wishes to add two additional counts, covering these new engine families, to the Complaint. *Id.*

As the Respondents have not filed any argument in opposition to the Motion, and there is no evidence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendment on the part of Complainant, or undue prejudice to the Respondents, or futility of the proposed amendments, the Agency’s Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines is hereby **GRANTED**. Per 40 C.F.R. § 22.14(c), Respondents shall have **20 days** from the date of service of the amended complaint to file their answers.

The new deadlines for prehearing exchanges shall be as follows:

August 26, 2016	Complainant’s Initial Prehearing Exchange
September 9, 2016	Respondents’ Prehearing Exchange(s)
September 16, 2016	Complainant’s Rebuttal Prehearing Exchange

The provisions of my May 11, 2016 Prehearing Order not contradicted by this order shall remain in effect.

SO ORDERED.



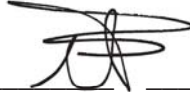
Susan L. Biro
Chief Administrative Law Judge

Dated: July 5, 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 on Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines** dated July 5, 2016, and issued by Chief Administrative Law Judge Susan L. Biro, were sent to the following parties on this 5th day of July 2016, in the manner indicated.



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Dated: July 5, 2016
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