



**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 GRANTING COMPLAINANT'S FIFTH MOTION
TO SUPPLEMENT THE PREHEARING EXCHANGE**

On August 21, 2017, Complainant filed its Fifth Motion to Supplement the Prehearing Exchange (“Motion”). The Motion seeks to add to its prehearing exchange, as Complainant’s Exhibit 194, a document entitled Amendment to Report of Dr. James J. Carroll CPA. Complainant states that it retained Dr. Carroll, a Certified Public Accountant (“CPA”), to evaluate the ability of Respondent Taotao USA, Inc., to pay the proposed penalty for the violations of the Clean Air Act identified in the Amended Complaint. Mot. at 1-2. Complainant asserts that it identified Dr. Carroll in its Initial Prehearing Exchange (“PHE”) as an expert who may be qualified to testify on matters concerning the Clean Air Act civil penalty factor, “the effect of the penalty on the violator’s ability to continue in business,” including financial evaluation, . . . Respondents’ federal tax returns for years 2012 through 2015, . . . and other matters concerning Respondents’ finances and accounting.” Mot. at 2 (citing Complainant’s PHE at 6; Complainant’s Third Mot. to Supp. the Prehearing Exchange at 4). Complainant also indicates that it previously identified and provided as a proposed exhibit an initial report prepared by Dr. Carroll in relation to this matter. Mot. at 2 (citing CX192).

Complainant maintains that granting the request to supplement will not cause Respondents undue surprise or prejudice because they were previously provided notice of Dr. Carroll’s testimony and his initial report; the amendment to the report is short and based on information already in the prehearing exchange; and Respondents were scheduled to take Dr. Carroll’s deposition on August 28, 2017, and would have an opportunity to depose him about the content of the amendment. Mot. at 3. Nevertheless, Complainant notes that upon being contacted prior to the filing of the Motion, Respondents indicated that they intended to oppose it. Mot. at 1. However, to date, Respondents have not filed any opposition to the Motion and the time for doing so has expired. *See* 40 C.F.R. § 22.16(b) (“A party’s response to any written motion must be filed within 15 days after service of such motion.”). Accordingly, Respondents

are deemed to have waived any objection thereto. *See id.* (“Any party who fails to respond within the designated period waives any objection to the granting of the motion.”).

Upon consideration of the foregoing and the applicable procedural rule requiring a party to supplement a prior exchange of information where it is incomplete, inaccurate, or outdated, and the additional or corrective information has not otherwise been disclosed (40 C.F.R. § 22.19(f)), Complainant’s Fifth Motion to Supplement the Prehearing Exchange is hereby **GRANTED**.

SO ORDERED.


Susan L. Biro
Chief Administrative Law Judge

Dated: September 11, 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 hereby certify that the foregoing **Order Granting Complainant's Fifth Motion to Supplement the Prehearing Exchange**, dated September 11, 2017, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


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Dated: September 11, 2017
Washington, D.C.