

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

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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.)

BUSINESS CONFIDENTIALITY ASSERTED

The exhibits submitted with Complainant’s First Motion to Supplement the Prehearing Exchange contain material claimed to be confidential business information (“CBI”) pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI are Complainant’s Exhibits CX171 to CX173. Exhibit CX171 is an unsigned federal tax return submitted to the EPA by respondents Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd. (collectively, “Respondents”). Exhibits CX172 and CX173 consists of financial documents summarizing Taotao USA, Inc.’s accounts payable. These exhibits are therefore filed under seal pursuant to 40 C.F.R. § 22.5(d). In addition, exhibit CX175 consist of reference material subject to copyright and placed in the record under the fair use doctrine. To protect the commercial interest of the copyright holder exhibit CX175 is also filed under seal.

A complete set of the all exhibits, and a set in which the exhibits containing CBI and copyright material are omitted, have been filed with the Hearing Clerk. If you have any questions, please contact Edward Kulschinsky at (202) 564-4133, or at kulschinsky.edward@epa.gov.

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COMPLAINANT’S FIRST MOTION TO SUPPLEMENT THE PREHEARING EXCHANGE

The Director of the Air Enforcement Division of the U.S. Environmental Protection Agency’s Office of Civil Enforcement (“Complainant”) files this First Motion to Supplement the Prehearing Exchange pursuant to section 22.19(f) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), and the Prehearing Order issued by this Tribunal on May 11, 2016, as amended. Complainant has conferred with Respondents’ counsel, and Respondents intend to oppose this Motion.

The Consolidated Rules direct parties to supplement their prehearing exchanges whenever they learn that the exchange was incomplete, inaccurate, or outdated. 40 C.F.R. § 22.19(f). Complainant requests leave to add nine exhibits, numbered CX170 through CX178, to its Prehearing Exchange, together with an updated exhibit index numbered CX000-2. The first four documents consist of material provided to Complainant by Respondents in response to Complainant’s letter requesting additional information about Respondents’ claimed inability to pay the proposed penalty. These consist of Respondents’ Objections and Responses to Complainant’s Request for Documents and Information (CX170), Taotao USA, Inc.’s 2015 Federal Tax Return (CX171), Taotao, USA Inc. Accounts Payable

Aging Summary as of December 31, 2015 (CX172), and Taotao, USA Inc. Accounts Payable Aging Summary as of August 31, 2016 (CX173). Respondents have asserted a claim of CBI over documents numbered CX171, CX172, and CX173 in their entirety.

The next document is a letter from Complainant to Respondents, dated November 21, 2016, requesting documents and information concerning the economic benefit Respondents obtained through their noncompliance (CX174). In their Joint Prehearing Exchange, Respondents argued that the Complainant incorrectly utilized the “rule of thumb” described in the EPA’s Clean Air Act Mobile Source Civil Penalty Policy (“Penalty Policy”) when calculating the proposed penalty in this matter. Respondent’s Joint Prehearing Exchange at 7. Specifically, Respondents contend that the Penalty Policy states that the “rule of thumb” should not be used in cases where there is likely to be a hearing on the amount of the penalty. *Id.* Respondents further contend that they “have not benefitted from the purchase of the catalytic converter that had active materials in concentrations that were different from the active material concentrations listed in the relevant COC applications,” and the economic benefit should be calculated as \$0. *Id.*

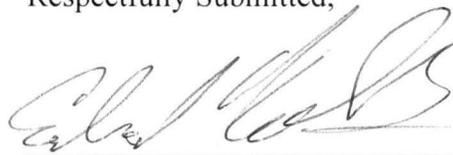
The Penalty Policy provides that the “rule of thumb” is appropriate to use when information regarding the actual economic benefit is not available. Penalty Policy at 8–9. In this case, determining Respondents’ actual economic benefit will require information concerning Respondents’ overseas manufacturing operations and internal accounting that are within Respondents’ possession or control. To address Respondents’ argument, Complainant has requested that Respondents provide information that would allow Complainant to assess Respondents’ actual economic benefit in lieu of relying on the “rule of thumb.”

The final four documents are submitted to the record in conjunction with Complainant’s Motion for Partial Accelerated Decision, filed with this First Motion to Supplement the Prehearing Exchange.

The document marked CX175 consists of material excerpted from a treatise on catalytic converter technology, *Catalytic Air Pollution Control: Commercial Technology*, by Ronald M. Heck, Robert J. Farrauto, and Suresh T. Gulati. Complainant has marked the exhibit as subject to copyright and requests that it be filed under seal to protect the interests of the copyright holders. The document marked CX176 is the Declaration of Ronald M. Heck, Complainant's expert witnesses in the field of catalytic technology, who was previously identified in Complainant's Initial Prehearing Exchange. The documents marked CX177 and CX178 are excerpts of rules concerning motor vehicle certification as published in the Federal Register.

Granting this request to supplement the Prehearing Exchange will not cause Respondents undue surprise or prejudice. No hearing date has been set in this matter. Further, much of the material being added to the Prehearing Exchange either was provided by Respondents, has already been shared with Respondents, or is available to the public. Pursuant to § 22.19(f) of the Consolidated Rules, Complainant requests the Tribunal grant this First Motion to Supplement the Prehearing Exchange.

Respectfully Submitted,



Edward Kelschisky for

Robert G. Klepp, Attorney Advisor
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building
Room 1111A, Mail Code 2242A
Washington, DC 20460
(202) 564-5805
klepp.robert@epa.gov

11/29/2016
Date

11/28/2016
Date



Edward Kulschinsky, Attorney Adviser
Air Enforcement Division
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
(202) 564-4133
kulschinsky.edward@epa.gov

CERTIFICATE OF SERVICE

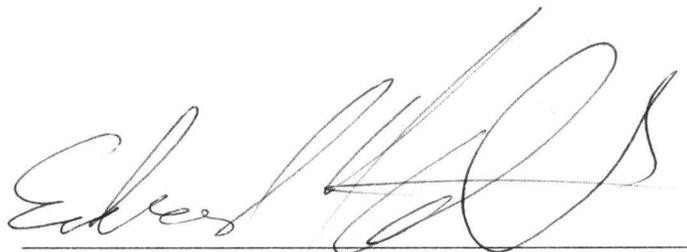
I certify that the foregoing Complainant's First Motion to Supplement the Prehearing Exchange in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, together with Complainant's proposed exhibits that do not contain CBI, were filed this day electronically using the EPA Office of Administrative Law Judges' E-Filing System. In addition, the original and two copies of Complainant's Motoin, two full sets of Complainant's proposed supplemental exhibits, and one set of Complainant's proposed supplemental exhibits from which exhibits containing CBI have been omitted, were filed this day by hand delivery to the Headquarters Hearing Clerk in the EPA Office of the Headquarters Hearing Clerk at the address listed below:

U.S. Environmental Protection Agency
Office of the Headquarters Hearing Clerk
1300 Pennsylvania Ave., NW, MC-1900R
Ronald Reagan Building, Room M1200
Washington, DC 20004

I certify that three copies of Complainant's First Motion to Supplement the Prehearing Exchange, and one compact disc containing a full set of Complainant's proposed exhibits in an electronic format, were sent this day by certified mail, return receipt requested, for service on Respondents' counsel at the address listed below:

William Chu, Esq.
The Law Offices of William Chu
4455 LBJ Freeway, Suite 909
Dallas, TX 75244

11/28/2016
Date



Edward Kulschinsky, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave., NW
William J. Clinton Federal Building
Room 1142C, Mailcode 2242A
Washington, DC 20460
p. (202) 564-4133
f. (202) 564-0069
kulschinsky.edward@epa.gov