

**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**

**RESPONDENT TAOTAO USA INC.'S ORIGINAL ANSWER AND REQUEST FOR
HEARING**

Respondent, Taotao USA, Inc., by and through its Attorney of Record, William Chu, hereby requests a hearing on the Complaint and by way of response to the Complaint, admits, denies and alleges as follows:

RESPONSE TO PRELIMINARY STATEMENT

1. Paragraph 1 of the Complaint contains allegations about the authority under which the Complaint is issued. Such allegations constitute conclusions of law which Respondent is not required to admit or deny. Further, Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the authority under which the Complaint is issued, conclusions about the regulatory status of certain materials, and the legality of the management thereof and therefore cannot admit same. To the extent any allegation in Paragraph 1 of the Complaint is not specifically admitted, it is denied and Respondent demands strict proof thereof.

2. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

3. Admitted.

4. Admitted.
5. Admitted.
6. Admitted.
7. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
8. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
9. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
10. Admitted.
11. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
12. Admitted.
13. Denied.
14. Denied.
15. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

RESPONSE TO JURISDICTION

16. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.
17. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

18. This Paragraph contains statements of law that Respondent is not required to admit or deny. Respondent has no knowledge of what the Administrator and Attorney General determined for this matter. Subject thereto and without waiving same, denied.

19. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

RESPONSE TO GOVERNING LAW

20. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

21. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

22. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

23. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

RESPONSE TO ALLEGED VIOLATIONS OF LAW

24. This Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. As to Respondent, Taotao USA Inc., admitted.

30. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

31. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

32. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

33. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

34. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

35. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first portion of Paragraph 35. Subject thereto and without waiving same, denied. In regard to Paragraph 35(a), denied. In regard to Paragraph 35(b), denied. In regard to Paragraph 35(c), denied.

35. Admitted.

RESPONSE TO COUNT 1

36. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 35 of the Complaint above.

37. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

38. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny.

Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

39. Admitted.

40. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

41. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

42. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

43. Denied.

RESPONSE TO COUNT 2

44. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 43 of the Complaint above.

45. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

46. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC

application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

47. Admitted.

48. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

49. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

50. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

51. Denied.

RESPONSE TO COUNT 3

52. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 51 of the Complaint above.

53. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

54. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

55. Admitted.

56. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

57. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

58. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

59. Denied.

RESPONSE TO COUNT 4

60. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 59 of the Complaint above.

61. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

62. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

63. Admitted.

64. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

65. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

66. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

67. Denied.

RESPONSE TO COUNT 5

68. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 67 of the Complaint above.

69. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

70. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

71. Admitted.

72. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

73. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

74. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

75. Denied.

RESPONSE TO COUNT 6

76. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 75 of the Complaint above.

77. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

78. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

79. Admitted.

80. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

81. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

82. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

83. Denied.

RESPONSE TO COUNT 7

84. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 83 of the Complaint above.

85. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

86. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

87. Admitted.

88. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

89. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

90. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

91. Denied.

RESPONSE TO COUNT 8

92. Respondent hereby restates and incorporates by reference its Answers to Paragraphs 1 through 91 of the Complaint above.

93. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

94. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied. Second, this Paragraph contains statements of law that Respondent is not required to admit or deny. Subject thereto and without waiving same, Respondent denies that a difference in catalyst active material results in the tested vehicles not conforming in all material aspects to the COC application and that said engine family is therefore uncertified, and otherwise denies the remainder of this Paragraph.

95. Admitted.

96. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

97. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph. Subject thereto and without waiving same, denied.

98. Denied. To the extent this Paragraph contains statements of law, Respondent is not required to admit or deny. Subject thereto and without waiving same, denied.

99. Denied.

RESPONSE TO PROPOSED CIVIL PENALTY

100. Paragraphs 100 through 106 do not require specific responses in Respondent's Answer, however to the extent the proposed civil penalty is considered, Paragraphs 102 through 105 purport to summarize portions of the statutes which statutes speak for themselves, and such allegations constitute conclusions of law, to which Respondent is not required to admit or deny.

To the extent any allegation in Paragraphs 100 through 106 is not specifically admitted, it is denied and Respondent requests strict proof thereof.

RESPONDENT'S AFFIRMATIVE DEFENSES

Without admission of any issues of fact or law, except as expressly stated above, and with full reservation of all applicable rights and defenses, Respondent requests dismissal or mitigation of the allegations based upon the following factors, all of which are based upon Respondent's information and belief.

1. The Complaint fails to state a claim upon which relief can be granted. Specifically, there have been no allegations of Respondent exceeding emission standards under the Clean Air Act.
2. Complainant has not alleged any facts showing that Respondent's conduct was a cause in fact of any release of excess emissions from mobile sources as set forth in Paragraph 20 of the complaint, including hydrocarbons, oxides of nitrogen, and carbon monoxide, nor has Respondent caused any impact to any regulatory scheme.
3. In the event that any catalysts active material was either missing or not present in the quantity or concentration described in the relevant COC applications for the 8 Engine Families, as asserted in the Complaint, such deviations from the COC applications were *de minimis* in their contribution to any potential emission of excess pollutants and were therefore insufficient as a matter of law under the due process and equal protection rights guaranteed by the United States Constitution and pursuant to the *de minimis* doctrine to give rise to any liability.
4. The regulations implemented by the EPA and asserted against Respondent are unconstitutional and overstep the reaches of Chevron Deference. The Supreme Court in *Chevron* stated that when a statute is ambiguous as to its purpose, agency interpretations are given controlling weight, "unless they are arbitrary, capricious, or manifestly contrary to the statute.

Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 844, 104 S. Ct. 2778, 2782 (1984). The relevant statute from Paragraph 20(b) of the Complaint, Section 213 of the Clean Air Act, states that the EPA has the authority to implement emissions standards to regulate actions that “cause, or significantly contribute to, air pollution which may reasonable be anticipated to endanger public health or welfare.” 42 U.S.C. §7547. Respondent argues that the Governing Law asserted in Paragraphs 20 through 23 of the Complaint is not a reasonable interpretation of Section 213 of the Clean Air Act, as there have been no actual allegations of contributions to air pollution. It is unfair to assess a penalty when there has been no assertion of any air pollution.

5. The EPA has not met its burden of establishing that it has jurisdiction over this matter or that it has the ability to assess a penalty in excess of \$320,000.00. The EPA has provided no proof that the Administrator and the Attorney General jointly determined that this matter is appropriate for an administrative penalty assessment proceeding, beyond a mere assertion in Paragraph 18 of the Complaint. Therefore, the EPA has not proven that it has jurisdiction over this matter through an administrative penalty assessment proceeding.

6. The relief sought is not proper having due regard to the gravity of the violation, the size of Respondent’s business, and the effect on Respondent’s ability to continue business.

7. Respondent affirmatively states that certification violations are generally not of “major” egregiousness. The Mobile Source penalty policy itself states that “violations should be classified as "Major" if vehicles or engines are uncertified and there is no information about the emissions from these vehicles or engines, or test data of the uncertified engines shows the engines to exceed emissions standards.” Respondents argue that information about emissions from these vehicles and test data is available, and should be analyzed in any penalty policy analysis, if any analysis is performed.

8. The claims asserted by Complainant may be barred by any or all of the affirmative defenses contemplated by Federal Rules of Civil Procedure. To the extent that Complainant's claims may be barred by one or more of said affirmative defenses not specifically set out above, such defenses cannot be determined until there is further discovery.

RESPONDENT'S REQUEST FOR HEARING

Pursuant to the consolidated Rules of Practice, 40 C.F.R. Part 22, Respondent hereby requests a hearing on this matter in which it will contest allegations of material fact and applications of law in the Complaint and contest the appropriateness of the proposed penalties in the Complaint.

PRAYER

WHEREFORE, Respondent prays that the Complaint be withdrawn with prejudice in whole or in part as it pertains to Respondent, and for such other relief, at law or in equity, to which Respondent shows itself to be justly entitled.

Respectfully submitted,



William Chu
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Dallas, Texas 75244
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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that on January 19, 2016 the foregoing Answer was filed electronically through the Office of Administrative Law Judges (OALJ) e-filing system.

I certify that one copy of the foregoing Answer was served by certified mail on January 19, 2016 to the Hearing Clerk for the EPA Office of Administrative Law Judges at the address listed below:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

I certify that a copy of the foregoing Answer was served by certified mail on January 19, 2016 to Ed Kulschinsky, counsel for Complainant and Robert Klepp, counsel for Complainant, , as follows:

Ed Kulschinsky
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

Robert G. Klepp
U.S. EPA, Air Enforcement Division
1200 Pennsylvania Ave., NW
Mail Code 2242A
Washington, DC 20460



William Chu