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



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| In the Matter of: | ) | |
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| Taotao USA, Inc., | ) | Docket No. CAA-HQ-2015-8065 |
| Taotao Group Co., Ltd., and | ) | |
| Jinyun County Xiangyuan Industry Co., Ltd. | ) | |
| | ) | |
| Respondents. | ) | |

## COMPLAINANT'S REPLY IN SUPPORT OF COMPLAINANT'S MOTION FOR PARTIAL ACCELERATED DECISION

The Director of the Air Enforcement Division of the U.S. Environmental Protection Agency's Office of Civil Enforcement ("Complainant") files this Reply in Support of Complainant's Motion for Partial Accelerated Decision concerning the liability of Taotao USA, Inc. ("T-USA"), Taotao Group Co., Ltd. ("T-Group"), and Jinyun County Xiangyuan Industry Co., Ltd. ("JCXI") (collectively "Taotao" or "Respondents"), consistent with sections 22.16(b) and 22.20 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Consolidated Rules"). Complainant requests the Presiding Officer find that Respondents are liable for the violations of section 203(a)(1) of the Clean Air Act (the "Act"), 42 U.S.C. § 7524(c)(1), and the implementing regulations at 40 C.F.R. Parts 85, 86, 1051, and 1068, because there are no genuine disputes of material fact in the record. In the alternative, Complainant requests that the Presiding Officer narrow the issues for hearing by determining what material facts remain in genuine dispute, and by ruling on those claims and defenses for which no material facts are in dispute.

## I. Standard of Review

Accelerated decision is appropriate "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law." 40 C.F.R. § 22.20(a). A motion for accelerated decision under the Consolidated Rules is analogous to a motion for summary judgement under Rule 56 of the Federal Rules of Civil Procedure. *In re Clarksburg Casket, Co.*, 8 E.A.D. 496, 502 (EAB 1999). "A factual dispute is *material* where, under the governing law, it might affect the outcome of the proceeding." *Id.* (quoting *In re Mayaguez Reg'l Sewage Treatment Plant*, 4 E.A.D. 772, 781 (EAB 1993)).

"A factual dispute is *genuine* if the evidence is such that a reasonable finder of fact could return a verdict in either party's favor." *Id.* (quoting *Mayaguez*, 4 E.A.D. at 781). To raise a genuine dispute of fact, a party opposing accelerated decision must reference "probative evidence in the record," or must produce such evidence. *In re Green Thumb Nursery, Inc.*, 6 E.A.D. 782, 793 (EAB 1997) (citing *In re Dos Republicas Resources Co., Inc.*, NPDES Appeal No. 96-1, 6 E.A.D. 643, 662 (EAB 1996)). "Summary disposition may not be avoided by merely alleging that a factual dispute may exist, or that future proceedings may turn something up." *Id.* at 793 n.24. "The mere possibility that a factual dispute may exist, without more, is not sufficient to overcome a convincing presentation by the moving party." *Id.* (quoting *United States v. Potamkin Cadillac Corp.*, 689 F.2d 379, 381 (2d Cir. 1982)).

If after drawing all reasonable inferences in favor of the non-moving party the evidence "is such that no reasonable decisionmaker could find for the nonmoving party, summary judgment is appropriate." *Clarksburg Casket, Co.*, 8 E.A.D. at 502 (quoting *Mayaguez*, 4 E.A.D. at 781).

## II. There Are No Genuine Disputes of Fact

Respondents have not come forward with any probative evidence to contradict or explain the evidence Complainant has offered into the record. Instead, Respondents argue that the results of the catalytic converter analyses may not represent the precious metal content of the catalytic converters at the time of manufacture. Response to Complainant's Motion for Partial Accelerated Decision" ("Respondents' Response") at 6–7, 17–18. Respondents do not identify any evidence to support this theory, nor do they genuinely contest that the analyses accurately reflect the precious metal content of the catalytic converters at the time of analysis. Instead, Respondents' posit that the precious metal content could have been affected by any number of factors, specifically, the low-hour mileage accumulation conducted on some vehicles by California Environmental Engineering, LLC ("CEE"),[1] and the chronological age of the catalytic

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[1] Respondents repeatedly suggest that the vehicles identified in the Amended Complaint were subjected to post-importation emissions tests that measured the vehicles' emissions over their full useful life. Respondents' Resp. at 5, 7–8, 17 & n.18. The post-importation emissions tests conducted by CEE ran the highway motorcycles to approximately 2,500 km and the nonroad vehicles for approximately 12 hours. CX098. The highway motorcycles have useful lives of no fewer than 6,000 km, and the ATVs have useful lives of no fewer than 500 hours. *See* Complainant's Motion for Partial Accelerated Decision ("Complainant's Motion") at 17–18 & n.11 (describing low-hour testing conducted by CEE and providing useful lives of the vehicle classes at issue in this case). The post-importation emissions tests conducted by CEE therefore ran each vehicle to a fraction of its useful life.

One vehicle tested by CEE was later subjected to full-useful life testing at Lotus Engineering, Inc. ("Lotus"), in response to a confirmatory test order issued to T-USA. *See* Complainant's Mot. at 18 n.13 (describing testing conducted by Lotus). Contrary to Respondents' assertion on page 8 of their Response, the confirmatory test order was issued by the EPA's Office of Transportation and Air Quality ("OTAQ"), and not byComplainant. The vehicle was tested twice at Lotus, and it exceeded the emissions standard of 12 g/km for CO on both tests despite having previously met the emissions standard during low-hour testing at CEE. 40 CFR. § 86.410-2006(a)(1) (emissions standards); *see* CX112 at EPA-001523 (CEE report showing CO emissions of 6.796 g/km); CX136 at EPA-001845 (Lotus report showing CO emissions of 15.12 g/km and 15.28 g/km).

converters.[2] Respondents' Resp. at 6–7, 17–18. Respondents also propose that different testing methods and the act of removing the catalytic converter from the muffler could have influenced the results. *Id.* at 17–18.

No factor identified by Respondents could have affected the ratio of precious metals contained within the washcoat of each catalytic converter analyzed. Second Heck. Decl. at ¶¶ 2–9 (provided as Attachment A to this Reply). As explained in Complainant's Motion for Partial Accelerated Decision ("Complainant's Motion"), a catalytic converter fundamentally consists of a honeycomb-shaped substrate coated with a catalytically active washcoat, encased in a steel housing. Complainant's Mot. at 9–10 (citing CX175). Precise combinations of precious metals, the catalytic components used for exhaust emission control, are present in the washcoat. *Id.*

Neither passage of time, nor use, nor handling will affect the ratio of precious metals in the washcoat. Second Heck Aff. at ¶ 2. In general, precious metals do not leave the washcoat surface. *Id.* at ¶¶ 4–6. Catalytic converters' in-use performance will deteriorate over time due to sintering (when the precious metals coalesce around each other), contamination or poisoning, occlusion, or when the catalytic converter loses portions of the washcoat. Complainant's Mot. at 9–10 (citing CX175 at EPA-002372 to EPA-002405); Second Heck Aff. at ¶¶ 8. None of these processes changes the ratio of precious metals contained within the washcoat. Second Heck Aff. at ¶ 8. The only way precious metals can leave the washcoat is through volatilization, which would require temperatures in excess of 1200 °C, well beyond what the washcoat would experience in normal use. Second Heck Aff. at ¶¶ 4–7. Such temperatures would destroy the

[2] Respondents identify one catalytic converter that was obtained during an inspection on March 27, 2012, and was analyzed approximately one year later on June 12, 2013. Respondents' Resp. at 6–7 & n.7. Other catalytic converters were analyzed within weeks of collection. *See* Complainant's Mot. at 14–23 (describing inspections and subsequent analyses).

catalytic converter. Second Heck Aff. at ¶ 4, 6. There is no evidence that the catalytic converters analyzed in this matter were subjected to conditions that would change the precious metal content of their washcoats. *See* Second Heck Aff. at ¶ 9 (stating that emissions tests performed by CEE would not affect the precious metal content of a catalytic converter); CX096 (stating that emissions testing will not alter the precious metal content of a catalytic converter).

This is reflected in the analytical results. Both catalytic converters with zero mileage accumulation and catalytic converters with low-hour mileage accumulation were consistently found to have very low quantities of platinum or rhodium in proportion to the quantity of palladium present.[3] *See* Complainant's Mot. at Attach. B. They are effectively palladium catalytic converters, rather than the three-way catalytic converters described in the COC applications. CX176 at EPA-002408, EPA-002411.

Respondents complain that test results may not be reliable and some variance may reasonably be expected because different catalytic converters were found to have differing active material concentrations.[4] Respondents' Resp. at 6. Those differences speak to the quality of the

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[3] Respondents refer to a catalytic converter from engine family CTAOC.049MC1 analyzed by SGS in 2012. Respondents' Resp. at 17 n.18 (citing CX077). This catalytic converter was not randomly selected via inspections or pursuant to the test order (CX098), and instead was self-selected by T-USA for analysis pursuant to the compliance plan T-USA agreed to as part of its 2010 Administrative Settlement Agreement ("ASA"). CX077 at EPA-000908–10, EPA-000918–19; *see* CX067 at EPA-000815, EPA-000830 (ASA requirement for pre-importation catalytic converter testing). Though the catalytic converter contained precious metals in greater quantities than the catalytic converters later analyzed as part of Complainant's investigation, it still contained those precious metals in a ratio different from that specified in the corresponding COC application. CX077 at EPA-000939.

[4] Respondents note that the catalytic converter analysis reports prepared by ERG state that certain differences were "within the acceptable range." Respondents' Resp. at 7, n.8. What the reports say is that the check standards used to calibrate the equipment returned results within an acceptable range, meaning that the analytical results for each precious metal are expected to be accurate to within a certain range. *See* CX063, CX066, CX089, CX125, CX127, CX129,

catalytic converter manufacturing process, not to the reliability of the analyses. More importantly, Respondents don't explain how any variability in the analyses would change the conclusion in this case. Each catalytic converter analyzed was found to have precious metals in ratios substantially and significantly different from the ratios specified in the corresponding COC applications. The differences are well beyond anything that could be attributed to variations in test results.

Respondents last argue that the analyses should be discounted because they were performed using methods different from those Respondents used to determine the specifications provided in their COC applications. Respondents' Resp. at 17–18. The majority of the catalytic converters were analyzed by SGS, a company Respondents selected, and analyzed pursuant to a plan Respondents agreed to.[5] Respondents should not now be heard to object to the methods used by the company they chose. Respondents also don't explain what method was used to determine the specifications, or how it differs from the methods employed by SGS, ERG, or Region 9. Respondents may not know, because in their Response they explain that the specifications provided in their COC applications came from the companies that manufactured the catalytic converters. *Id.* at 14 & n.17. This brings us to the crux of Respondents' defense.

Respondents state that they installed "[c]atalytic converters purchased from the same manufacturer with the same specifications . . . on the test vehicle and all other vehicles belonging

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CX131–33, CX144, CX147, CX152 (providing daily calibration results performed on check standards).

[5] *See* CX096 (discussing test plan and confirming that emissions testing does not affect the catalytic converters' precious metal content); CX098 (test plan identifying SGS); Complainant's Mot. at 16–21, Attach. B (summarizing implementation of test order and listing catalytic converter analyses); *see also* CX077 at EPA-000912 (stating that T-USA's consultant approached SGS about analyzing catalytic converters); CX082 (notifying EPA that T-USA would use SGS for pre-importation catalytic converter testing).

to the same engine family." *Id.* When preparing their COC applications, Respondents used the specifications provided to them by the catalytic converter manufacturers. *Id.* Those specifications were not accurate. The catalytic converters installed on Respondents vehicles had lower quantities of catalytically active precious metals, in substantially different ratios, than specified in the applications. *See* Complainant's Mot. at Attach. B (summarizing precious metal content of catalytic converters with record citations). These facts are not genuinely in dispute, and they do not provide a defense. Section 203(a)(1) of the Act imposes strict liability on vehicle manufacturers and importers. *See* 42 U.S.C. § 7522(a)(1) (imposing liability regardless or mens rea or culpability). Respondents are ultimately responsible if their vehicles do not match the specifications in the COC application, even if those specifications originated with an upstream supplier.

**III. <u>Disputes of Law Should Be Resolved in Complainant's Favor</u>**

Respondents devote the majority of their Response to disputes of law concerning what constitutes a violation of the Act. *See* Respondents' Resp. at 3–6, 9–16. Complainant has already addressed the substance of Respondents' legal arguments in Complainant's Motion and "Complainant's Second Motion to Supplement the Prehearing Exchange and Combined Response Opposing Respondents' Motion to Dismiss for Failure to State a Claim and Motion for Accelerated Decision" ("Complainant's Combined Response"), which are incorporated herein by reference. Complainant will therefore only address Respondents' legal arguments briefly here.

Respondents advance three fundamental legal arguments in their defense. First, they contend that "there is no requirement that a highway motorcycle produced after the effective date of its corresponding COC must conform in all material respects to the vehicles described in the application for COC." Respondents' Resp. at 5. Instead, Respondents contend that highway

motorcycles are covered by a COC if they conform to the prototype test vehicle used for certification, or to "the engine family's emissions."[6] *Id.* at 5–6. Respondents claim that their highway motorcycles are covered by COCs because, though neither the certification prototypes nor their production vehicles conform to the COC applications, they do conform to each other.

This approach would make the COC application process a superfluous paper exercise. *See* Complainant's Mot. at 5–6 (describing information submitted in COC application). The COC application must accurately describe the engine family to be covered, *including the certification prototype*.[7] *See* Complainant's Combined Resp. at 11–12, 16–17 (discussing requirement for COC applications to accurately describe vehicles being certified). It also discounts the language in COC themselves, which condition coverage on vehicles conforming, "in all material respects, to the design specifications . . . described in the documentation required" for certification. CX043–CX052; *see* Complainant's Combined Resp. at 15–16

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[6] Separately, Respondents note that non-identical nonroad vehicles with different catalytic converters may be in the same engine family, so long as they have similar emissions characteristics. Respondents' Resp. at 6. Respondents appear to imply that nonroad vehicles are covered by a COC so long as they meet emissions standards. *Id.* Respondents ignore the very provision they cite to, 40 C.F.R. § 1068.103(a), which states that COCs only cover engines or equipment (including nonroad vehicles) that "conform to the specifications described in the certificate and the associated application for certification." 40 C.F.R. § 1068.103(a); *see* 40 C.F.R. § 1068.30 (defining "equipment" to include nonroad vehicles). While it is possible for a single COC to cover vehicles with different emissions controls, the differences must be disclosed in the COC application prior to approval. *See* 40 C.F.R. § 1051.230(e) (describing how to group vehicles with different emissions controls into a single engine family); Complainant's Mot. at 5 n.5 (discussing 40 C.F.R. § 1051.230(e)).

[7] Respondent refers to provisions concerning the suspension, revocation, or voiding of COCs. Respondents' Resp. at 12–13. Submitting false or incomplete information in a COC application may be grounds for suspending, revoking, or voiding the COC *ab initio*. 40 C.F.R. §§ 86.442-78(a)(1)–(c), 1051.255(c)(2)–(e); Complainant's Combined Resp. at 14 n.11. Proceedings to suspend, revoke, or void a COC are pursued by OTAQ rather than Complainant, and are distinct from enforcement proceedings to assess and recover civil penalties for violations of the Act. *See* 42 U.S.C. §§ 7524(c), 7525(b).

(discussing COC conditions); Complainant's Mot. at 27 (describing COC conditions). The Administrator may issue COCs "upon terms deemed necessary to assure the vehicles will meet the requirements of the Act." Complainant's Combined Resp. at 15 (citing 40 C.F.R. §§ 86.437-78(a)(2)(ii), 1051.255(a)). Respondents have no basis for claiming that these conditions lack legal force. *See* Respondents' Resp. at 13 (claiming COC conditions lack force because the COC is not itself a regulation).

Respondents' second fundamental legal argument is that a difference cannot be material unless it causes a vehicle to exceed emissions standards. *See id.* at 6. As explained in Complainant's Motion, Respondents' approach "would essentially require that EPA test, or require manufacturers to test, every vehicle produced for sale in the United States," which would be "contrary to the plain language of the Act." Complainant's Mot. at 30–31 (citing *United States v. Chrysler Corp.*, 591 F.2d 958, 961 (D.C. Cir. 1979)). Complainant's position, ratified by the Court of Appeals for the District of Columbia Circuit in *United States v. Chrysler Corp.*, is that a difference is material if it "reasonably may be expected to affect emission controls." *Chrysler Corp.*, 591 F.2d at 960; *see* Complainant's Mot. at 26–28, 31–33 (describing materiality of the violations and the continuing viability of *Chrysler Corp.*).

Respondents attempt to distinguish *Chrysler* from this matter by noting that Chrysler Corp. had assembled the emissions-related parts at its own plant, and those parts were wholly different from the parts specified in the COC application. Respondents' Resp. at 13. In this case, Respondents purchased the catalytic converters from two different manufacturers; relied on the catalytic converter manufacturers to provide the part specifications; and installed catalytic converters "from the same manufacturer with the same specifications . . . on the test vehicle and all other vehicles belonging to the same engine family." *Id.* at 14. This is a distinction without a

difference. The specifications were wrong. As in *Chrysler Corp.*, the parts are different from what Respondents described in their COC applications. As in *Chrysler Corp.*, the vehicles are not covered by COCs, even if the difference does not cause the vehicles to exceed emissions standards.

Respondents third fundamental legal argument is that the manufacturers of the vehicles identified in the Amended Complaint, T-Group and JCXI, are not "manufacturers" as defined by section 216(1) of the Act, 42 U.S.C. § 7550(1), and are therefore not subject to the prohibitions in section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1). *See* Respondents' Resp. at 9–10 (arguing that T-Group and JCXI are not liable under the Act). Respondents do not identify any basis in the Act or its implementing regulations to support their argument. Instead, they focus on informational documents Complainant provided in the record.

Respondents first cite to CX014, which is an "On-Highway Motorcycle Certificate Review Sheet" ("Review Sheet"). Respondents' Resp. at 9–10. The Review Sheet indicates that a COC may only be issued to a U.S. manufacturer or U.S. importer/distributor. CX014 at EPA-000399. Respondents do not explain how this limitation would excuse T-Group or JCXI from liability for introducing uncertified vehicles into United States commerce. The Review Sheet also describes the information that must be included with a COC application, including a "detailed description of catalytic converter(s) and emission-related components," a "statement that production motorcycles are identical in all material respects to the motorcycles tested *and described in the application for certification*, and an agreement between the U.S. importer and foreign motorcycle manufacturer containing among other things the "name and contact information of a cognizant representative of the manufacturer . . . who EPA can contact for emission compliance, warranty and other issues." CX014 at EPA-000400–01 (emphasis added).

Respondents next cite to exhibits CX019, CX020, and CX021, three enforcement alerts, and argues that they show how the term "manufacturer" can have a number of different meanings, none of which include T-Group or JCXI. Exhibit CX019 is an enforcement alert titled "EPA Enforcing Stringent Standards for All Nonroad Engines." CX019 at EPA-000439. The second page of the exhibit contains a section titled "Importer and Manufacture Responsibility," which states in relevant part:

> Both the original engine manufacturer (the company that assembles the engine) and the importer are responsible for ensuring that engines imported to the United States comply with all certification standards and requirements. For example, importers and manufacturers are prohibited from importing or manufacturing engines that are not properly EPA-certified and labeled.

CX019 at EPA-000441. Exhibit CX020 is titled "Many Scooters and Off-Road Motorcycle Imports Fail to Meet EPA Standards," and it states in relevant part:

> Both the original motorcycle manufacturer (the company that assembles the motorcycles) and the importer are responsible for complying with the regulations.

CX020 at EPA-000444. The third enforcement alert, CX021, is titled "Manufacturers of Highway Motorcycles and Nonroad Vehicles and Engines Fall Short of Recordkeeping and Reporting Requirements." CX021 at EPA-000447. Again, it states in relevant part:

> The term "manufacturer" is defined broadly in the CAA and its regulations. The term includes not only "any person engaged in the manufacturing or assembling" of vehicles or engines ("assemblers"), but also anyone who imports vehicles or engines or who is "under the control of any such person in connection with the distribution" of vehicles or engines. 42 U.S.C. § 7550(1); 40 C.F.R. §§ 1051.801, 1054.801, 1060.801. . . .
>
> EPA is aware that the certification, assembly, and distribution of a vehicle or engine sometimes involves multiple companies with varying degrees of affiliation. Especially in the case where foreign companies assemble vehicles or engines, a second company may hold a COC for the vehicles or engines . . . .

> Although there are many possible business relationships, at a minimum, every company that holds a COC and every company that assembles vehicles or engines covered by that COC is a "manufacturer" when it comes to the recordkeeping and reporting requirements.

CX021 at EPA-000448. Though CX021 is addressing recordkeeping and reporting requirements under section 208 of the Act, 42 U.S.C. § 7542, those requirements use the same definition of "manufacturer" as the prohibitions set forth in section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1). *See* 42 U.S.C. § 7550(1) (defining the term "manufacturer" for both 42 U.S.C. § 7522 and 42 U.S.C. § 7542). Taken together, the enforcement alerts support what is already clear from the plain language of the Act. Both the vehicle manufacturer and the importer are responsible for ensuring that their vehicles are covered by COCs.

T-Group and JCXI are the "manufacturers" of the vehicles identified in the Amended Complaint. Because the vehicles were not covered by COCs, T-Group and JCXI violated section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1). *See* Complainant's Mot. at 29–30; Complainant's Combined Resp. at 20–21.

## IV. It is Appropriate to Include the 2010 Administrative Settlement Agreement in the Administrative Record

Respondents claim that Complainant has impermissibly attempted to rely on the administrative settlement agreement ("ASA") between Complainant and T-USA to prove liability in this matter. Respondents' Resp. at 15. However, Respondents do not specifically identify which portions of Complainant's Motion they believe attempt to use the ASA as

evidence that Respondents are liable for the violations alleged in the Amended Complaint. Simply put, Complainant has not attempted to rely on the ASA to prove liability in this matter.

Respondents also argue that the ASA is inadmissible hearsay, is irrelevant, and is "highly prejudicial."[8] Respondents' Resp. at 15–16. It is not clear that the ASA would constitute hearsay under Federal Rule of Evidence 801(d)(2) because it was signed by Complainant and by T-USA. Even if it is hearsay, under the Consolidated Rules hearsay is admissible in administrative enforcement proceedings. *In re William E. Comley, Inc.*, 11 E.A.D. 247, 266 (EAB 2004). The ASA is relevant to the determination of the penalty in this matter because it pertains to T-USA's culpability and history of compliance with the Act. *See* 42 U.S.C. § 7524(c)(2) (listing history of

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[8] Respondents also complain that the compliance plan they agreed to as part of the ASA was "unduly burdensome" in part because it required "unnecessary and overly costly" testing. Respondents' Resp. at 15. In a separate but related protest, Respondents complain that they incurred significant costs in connection with the emissions testing and catalytic converter analyses conducted in response to the test order dated February 6, 2014 (CX098). *Id.* at 8. Complainant issued the test order to Respondents after inspections conducted at the Los Angeles/Long Beach Seaport and T-USA's warehouse revealed that their vehicles were equipped with catalytic converters different from the catalytic converters described in corresponding COC applications. *See* Complainant's Mot. at 13–17 (describing events leading up to issuance of test order).

The results of the catalytic converter analyses suggest that the testing was not "unnecessary" because they revealed that Respondents' vehicles are equipped with emissions controls materially different from those described in the corresponding COC applications. Respondents are benefitting from the emissions testing conducted pursuant to the test order in the form of a reduced penalty demand because the test results suggest that the vehicles identified in Counts 3 through 8 are still likely to meet emissions standards. Complainant characterized the violations in Counts 3 through 8 as "moderate" rather than "major" when calculating the proposed penalty, resulting in an estimated $500,000 difference in the penalty EPA is seeking. *See* Complainant's Initial Prehearing Exchange at 10 (explaining that Counts 1, 2, 9, and 10 were characterized as major violations subject to a gravity penalty multiplier of 6.5, while Counts 3 through 8 were characterized as moderate violations subject to a gravity penalty multiplier of 3.25).

To the extent the testing costs incurred by Respondents are proven and at all relevant, it would be to the determination of an appropriate penalty in this matter, and not to the determination of liability.

compliance as a factor to be considered when determining penalty). Further, the ASA and T-USA's failure to timely implement its terms in part led to the investigation that discovered the violations alleged in the Amended Complaint, and the ASA therefore provides background information relevant to the Tribunal's understanding of this matter. *See* Complainant's Mot. at 12–13. Inclusion of the ASA in the record is therefore not unduly prejudicial. In addition, the Presiding Officer "is an experienced Administrative Law Judge" capable of impartially evaluating the evidence in this matter. *See In re Rocky Mountain Prestress, Inc.*, 2 E.A.D. 4, 7 (CJO 1985) (quoting *In re Bell & Howell Co.*, 1 E.A.D. 811, 818 n.6 (CJO 1983)) (stating that unlike a lay juror, a presiding officer can remain impartial after considering prejudicial evidence).

**Conclusion**

There are no genuine disputes of fact regarding liability. Respondents manufactured their vehicles with catalytic converters purchased from two different suppliers. Respondents Resp. at 14. Respondents obtained the catalytic converter specifications from the suppliers, and reported those specifications in Respondents' COC applications. *Id.* Vehicles purportedly belonging to each engine family were equipped with catalytic converters from the same supplier with the same purported specifications. *Id.* Those specifications were not correct. The catalytic converters actually contained precious metals in ratios completely different from the specifications provided in the COC applications. *See* Complainant's Mot. at App. A ¶¶ 33–107 (describing precious metal content of catalytic converters equipped on each engine family identified in the Amended Complaint). Respondents have not come forward with probative evidence to dispute the facts stated in Complainant's Motion, and have admitted material facts in their papers. Respondents' attempts to explain the differences in precious metals ratios, i.e., different test methods, passage

of time, different stages of useful life, the act of removing the catalytic converter from the muffler, are based on speculation and are an attempt to distract from the crux of this case.

The only genuine disputes in this matter concern questions of law that can be resolved by the Presiding Officer. Complainant maintains that because Respondents' production vehicles were built with catalytic converters that were not described in the corresponding COC applications, the difference is material, and the vehicles are not covered by the COCs. Respondents therefore imported, sold, offered for sale, or delivered for introduction into commerce in the United States 109,954 vehicles in violation of sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1), 7547(d).

For the reasons set forth herein, Complainant requests the Presiding Officer find that Respondents are liable for 109,954 violations of section 203(a)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1), and the implementing regulations at 40 C.F.R. Parts 85, 86, 1051, and 1068, as alleged in the Amended Complaint. In the alternative, Complainant requests that the Presiding Officer narrow the issues for hearing by resolving disputes of law, determining what material facts remain controverted, and by ruling on those claims and defenses for which no material facts are in dispute.

Respectfully Submitted,

1/13/2017
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**UNITED STATES**
**ENVIRONMENTAL PROTECTION AGENCY**
**BEFORE THE ADMINISTRATOR**

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| In the Matter of: | ) | |
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| Taotao USA, Inc., | ) | Docket No. CAA-HQ-2015-8065 |
| Taotao Group Co., Ltd., and | ) | |
| Jinyun County Xiangyuan Industry Co., Ltd. | ) | |
| | ) | |
| Respondents. | ) | |

## SECOND DECLARATION OF RONALD M. HECK

I, Ronald M. Heck, declare and state as follows:

1. The statements made in this declaration are based on my personal knowledge gained through my education in the field of chemical engineering, my professional experience in the field of catalytic air pollution control technology, and knowledge I have gained from my review of documents which are specifically related to this matter.
2. The ratio of the precious metals platinum (Pt), palladium (Pd), and rhodium (Rh) in a catalytic converter's washcoat are not affected by time, contamination, handling, operation, or environmental conditions.
3. Catalytic converters are designed to operate on vehicles for the vehicles' full useful life, and are therefore designed to withstand a wide range of temperatures and other environmental factors.
4. The only way precious metals can leave the washcoat surface is through volatilization. This would require the precious metals to reach a temperature in excess of 1200 °C. Such

temperatures are hot enough to melt aluminum and would severely damage the catalytic converter. A catalytic converter would not reach these temperatures in normal use.

5. In general, apart from the extreme temperature conditions that would ordinarily not occur, precious metals do not leave the washcoat.
6. When a catalytic converter is not in use, there is no mechanism by which precious metals could be lost from the washcoat, other than exposure to extreme temperatures that would destroy the catalytic converter.
7. Catalytic converters normally operate between 275 and 875 °C. These temperatures would not affect a catalytic converter's precious metal content.
8. A catalytic converter's in-use performance may deteriorate over time due to sintering, contamination or poisoning, occlusion, or washcoat loss. However, none of these processes change the precious metal content of a catalytic converter's washcoat.
9. The low-mileage emission tests performed by California Environmental Engineering, LLC (CEE) would not affect the precious metal content of a catalytic converter's washcoat.

I do affirm, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the contents of the foregoing are true and correct to the best of my knowledge.

Executed this 12th day of January 2017.

Ronald M. Heck
RMH Consulting
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Frenchtown, NJ 08825

## CERTIFICATE OF SERVICE

I certify that the original and two copies of the foregoing Complainant's Reply in Support of Complainant's Motion for Partial Accelerated Decision ("Reply") in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065 was 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 the foregoing Reply were sent this day by certified mail, return receipt requested, for service on Respondents' counsel at the address listed below:

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1/13/2017
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