

**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**

**RESPONDENTS TAOTAO GROUP CO. LTD., AND JINYUN COUNTY XIANGYUAN  
INDUSTRY CO., LTD.'S, RESPONSE TO COMPLAINANT'S MOTION FOR PARTIAL  
DEFAULT**

Respondents Taotao Group Co., Ltd. (“Taotao Group”), and Jinyun County Xiangyuan Industry Co., Ltd. (“JCXI”), (hereinafter collectively “Respondents”) file this, Respondents Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.’s, Response to Complainant’s Motion for Partial Default, consistent with 22.16 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) for Motion Responses. Respondents are not in Default in the matter at hand. Respondents filed a Motion to Quash for improper service on December 16, 2015 and the Court has yet to make a determination as to this Motion to Quash. The Office of Administrative Law Judges specifically states that “[u]nder the Rules of Practice, however, there must be proof that the respondent was properly served with the complaint before it can be held in default for failing to respond to it. 40 C.F.R. § 22.15(a) (an answer must be filed . . . "within 30 days after service of the complaint"). *In re Geason Enters., L.L.C.*, 2014 (E.P.A. Jan. 13, 2014). Second, Respondents did not file their Answer by January 19, 2016, due to the procedural uncertainty in the resolution of the Motion to Quash for improper service, as Respondents justifiably did not want to waive their Motion to Quash and potentially

have an Answer be deemed as an admission of proper service. Regardless, Respondents have subsequently filed individual Answers, subject to and without waiving the Motion to Quash Service.

### **Background**

The EPA initiated this current action by filing its Complaint on November 12, 2015, under section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1) against Taotao USA, Inc., Taotao Group, and JCXI. On November 16, 2015, the EPA attempted to effectuate service on Respondents through personal service on “Taotao USA. Attn. Matao Cao President.” On November 25, 2015, EPA filed its Certificate of Service with the Court. Taotao USA, Inc., is an entirely separate legal entity from Respondents. Taotao USA, Inc., is an importer and has individually applied for the Certificates of Conformity. Respondents Taotao Group and JCXI are corporations organized and existing under the laws of the People’s Republic of China, a signatory to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, better known as the Hague Convention, 20 U.S.T. 361, reprinted at 28 U.S.C. Federal Rules of Civil Procedure, Rule 4 (hereinafter “Hague Convention”). Therefore, any service of process upon Respondents for litigation in the United States must be made pursuant to the Hague Convention. The EPA has yet to serve the Chinese translated copies of the Complaint to Respondents, pursuant to the Hague Convention.

As a result of this improper service, Respondents made a special appearance in the case for the limited purpose of filing their Motion to Quash Service and Dismiss on December 16, 2015. On December 30, 2015, Complainant filed and served its Response opposing the Motion to Quash. On December 22, 2015, the Environmental Appeals Board (“Board”) issued an order granting Respondents an extension of time to file an answer through Tuesday, January 19, 2016.

The Board issued a second order on January 12, 2016, clarifying that the extension of time to file an answer applied to all three Respondents, and that it would not rule on Taotao Group and JCXI's Motion to Quash Service and Dismiss. Taotao USA, Inc. timely filed its Answer and Request for Hearing on January 19, 2016. Respondents did not file an Answer at this time as the Motion to Quash Service had not been decided, therefore any Answer would be filed outside the due order of pleadings. On February 3, 2016, Complainant filed a Motion for Partial Default on Liability against Taotao Group and JCXI. On February 9, Respondents Taotao Group and JCXI individually filed Answers to the Complaint, subject to and without waiving their Motion to Quash. On February 11, 2016, the Board issued an order sending the Motion for Default to the Office of the Administrative Law Judges for consideration.

### Argument

#### 1) Proof of proper service has yet to be provided, as the Motion to Quash has yet to be decided.

Respondents Taotao Group and JCXI cannot be found in Default, as there has been no proof provided that Respondents were properly served with the Complaint. According to a 2014 ruling by The Office of Administrative Law Judges ("OALJ"), "[u]nder the Rules of Practice, ... there must be proof that the respondent was properly served with the complaint before it can be held in default." *In the Matter of Geason Enterprises, L.L.C., et al.*, Docket No. CAA-HQ-2013-8050 (Jan. 13, 2014). By filing their Motion to Quash Service and Dismiss on December 16, 2016, Respondents have timely challenged that the service of the Complaint was improper in this matter. This Motion to Quash has yet to be heard before the OALJ or the Board. As such, proof has not been given that Respondents were properly served, and accordingly, under the Rules of Practice, Respondents cannot be held in default.

2) Respondents were justified in not filing their Answer on January 19, 2016.

Respondents were justified in not responding to the Answer on January, 19, 2016, as it was reasonable to believe that an Answer could be deemed as an admission that service of the complaint was proper in this case. Additionally, the procedural uncertainty surrounding which entity would rule on the Motion to Quash, the Board or the OALJ, prevented Respondents from confidently filing Answers subject to and without waiving their Motion to Quash. After receiving the Order that the Board would not rule on Respondents' Motion to Quash, Respondents were placed in a procedural black hole. There was no guarantee when the Motion to Quash would be ruled upon or which entity would hear the case. Respondents' concerns about waiving their Motion to Quash and uncertainty as to the procedure in this matter show good cause as to why default should not be granted.

Regardless, Respondents subsequently filed individual Answers to the Complaint on February 9, 2016, subject to and without waiving their Motion to Quash Service and Dismiss. Complainants argue in their Motion for Partial Default that Respondents have hindered this proceeding and prejudiced the Complainant. *See* Motion for Partial Default at 5. As the Motion to Quash has yet to be decided, Respondents have since filed Answers, and the Motion for Default was not assigned to the OALJ until February 11, 2016, two days after Respondents filed Answers, Respondents fail to see any prejudice against the Complainant or disruption in this proceeding.

**Conclusion**

For the foregoing reasons, Respondents respectfully request that the Court deny Complainant's Motion for Partial Default against Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.

Respectfully submitted,



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William Chu  
Texas State Bar No. 04241000  
4455 LBJ Freeway, Suite 909  
Dallas, Texas 75244  
Telephone: (972) 392-9888  
Facsimile: (972) 392-9889  
[wmchulaw@aol.com](mailto:wmchulaw@aol.com)  
**COUNSEL FOR RESPONDENTS**

**CERTIFICATE OF SERVICE**

This is to certify that on February 23, 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 February 23, 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 February 23, 2016 to Ed Kulschinsky, counsel for Complainant and Robert Klepp, counsel for Complainant, at the address listed below:

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](mailto:Kulschinsky.edward@epa.gov)

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



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William Chu