

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. )

**MOTION FOR LEAVE TO AMEND THE COMPLAINT  
AND TO EXTEND PREHEARING DEADLINES**

The Director of the Air Enforcement Division of the U.S. Environmental Protection Agency's Office of Civil Enforcement ("Complainant") files its Amended Complaint together with this Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines (the "Motion"), to request leave to amend the administrative Complaint against respondents Taotao USA, Inc. ("Taotao USA"), Taotao Group Co., Ltd. ("Taotao Group"), and Jinyun County Xiangyuan Industry Co., Ltd. ("JCXI") (collectively "Respondents"). This Motion is made pursuant to Rules 22.14(c) and 22.7(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), for the purpose of adding claims for additional violations of sections 203(a)(1) and 213(d) of the Clean Air Act (the "Act"), 42 U.S.C. §§ 7522(a)(1) and 7547(d). Complainant further requests that the prehearing exchange deadlines set forth in the Prehearing Order dated May 11, 2016, be extended so that Complainant's prehearing exchange will be due thirty (30) days from either the date Respondents file their answers to the Amended Complaint, or the date of an order denying the request for leave to amend. This extension would accommodate the time allowed for Respondents' opposition to the request for leave to amend and Complainant's reply, and allow reasonable time for this Tribunal to rule on the Motion.

Complainant shared a copy of the signed Amended Complaint and a draft of this Motion with Respondents' counsel on June 8, 2016. During a settlement conference held on June 10, 2016, Respondents' counsel indicated that Respondents do intend to oppose Complainant's request for leave to amend the administrative Complaint, but do not intend to oppose Complainant's request to extend the Prehearing Order deadlines.

**I. Background**

On December 24, 2013, Complainant issued a Notice of Violation to Respondents, informing them that the EPA had determined they had imported or caused to be imported approximately 64,377 vehicles in violation of sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d).

The violations pertain to vehicles that were manufactured and imported with catalytic converters that materially differ from the catalytic converters described in the vehicles' EPA-certified designs. This determination had been made on the basis of inspections conducted at the Los Angeles/Long Beach Seaport in March 2012 and June 2013, an inspection conducted at Taotao USA's Dallas, Texas warehouse in November 2013, importation information submitted by Taotao USA in progress reports required by a 2010 Administrative Settlement Agreement with EPA, and inventory information provided by Taotao USA to EPA in November 2013. The vehicles belong to the following eight engine families: ETAOC.049MC2; DTAOC.150MC2; DTAOC.049MC2; CTAOC.049MC1; ETAOX0.12A1T; DTAOX0.15G2T; DTAOX.124AAA; DTAOX0.12A1T.<sup>1</sup>

Complainant filed the original Complaint against Respondents on November 12, 2015, alleging that Respondents, including Taotao USA, Taotao Group, and JCXI, are collectively liable for the 64,377 violations identified in the Notice of Violation, pleaded in eight separate counts. On December 15, 2015, Taotao USA filed a request for additional time in which to answer and Taotao Group and JCXI filed a Motion to Quash and Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(5) ("Motion to Quash") alleging defects in service of process. The Environmental Appeals Board granted the extension request and all three Respondents, Taotao USA, Taotao Group, and JCXI, were directed to file an answer by January 19, 2016. The January 19, 2016 deadline was reiterated in the Board's Clarification Order on January 12, 2016. Taotao USA filed its answer on January 19, 2016, but Taotao Group and JCXI did not. Complainant filed a Motion for Partial Default on Liability as to Taotao Group and JCXI ("Motion for Default") on February 3, 2016. Taotao Group and JCXI did not file answers until February 9, 2016, when they each filed an answer subject to the objections in the Motion to Quash.<sup>2</sup> On February 19, 2016, this Tribunal issued an order initiating the Alternative Dispute Resolution ("ADR") process in this matter. On May 4, 2016, this Tribunal approved the report of Judge Gunning recommending termination of ADR after the parties were unable to reach a negotiated settlement.

On January 21, 2016, and February 25, 2016, the EPA inspected entries of vehicles that had been detained by United States Customs and Border Protection at the Los Angeles/Long Beach Seaport. The entries contained recreational vehicles that had been manufactured by JCXI, and imported by Taotao USA. The recreational vehicles were labeled as belonging to engine families FTAOX0.15G2T and GTAOX0.15G2T. During the inspections, the EPA took catalytic converters from vehicles in each engine family and sent them to EPA test facilities for analysis. The catalytic converters were analyzed on February 12, 2016, March 3, 2016, and March 4, 2016. The analytic results show that the vehicles in these engine families were manufactured with catalytic converters that are materially different from the catalytic converters described in these engine families' certified designs. The vehicles were therefore imported into the United States in violation of sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d).

On April 8, 2016, the EPA issued a request for information to Taotao USA and JCXI under section 208(a) of the Act, 42 U.S.C. § 7542(a), asking, among other things, how many vehicles from

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<sup>1</sup> An "engine family" is a group of engines of a single model year that are expected to have similar emission characteristics throughout their useful life. 40 C.F.R. §§ 86.420-78, 1051.230.

<sup>2</sup> The Motion to Quash and Motion for Default have not been resolved by agreement and are pending before this Tribunal.

engine families FTAOX0.15G2T and GTAOX0.15G2T had been manufactured, imported, or sold in the United States. On April 19, 2016, Respondents' replied through counsel that 871 vehicles belonging to engine family FTAOX0.15G2T, and 391 vehicles belonging to engine family GTAOX0.15G2T, had been imported into the United States.

On May 9, 2016, and May 11, 2016, Complainant, in the course of preparing the Amended Complaint, obtained from the EPA's Office of Transportation and Air Quality ("OTAQ") and reviewed end-of-model year U.S.-directed production reports that Respondents are required to submit to the EPA under 40 C.F.R. §§ 86.415-78(b) and 1051.250(a). In the production report for model year 2015, Respondents stated that 1,290 vehicles in engine family FTAOX0.15G2T were produced for sale in the United States, which is 419 vehicles more than were disclosed for this engine family in Respondents' April 18, 2016 response to the request for information. The disparity between the production report and the request for information with regard to the number of reported vehicles was cause for EPA to examine production reports for model years 2012 through 2014 for each engine family named in Counts 1 through 8 in the original Complaint. EPA found that for seven of the eight engine families identified in the Notice of Violation and the Complaint, Respondents' production reports for model years 2013 and 2014 show that the number of vehicles produced in those families for sale in the United States are greater than the numbers identified in the Notice of Violation and pleaded in the original Complaint. For one engine family, CTAOC.049MC1, the production report for 2012 states fewer vehicles were produced for sale in the United States than the number of vehicles pleaded. However, the number in the 2012 production report is contradicted by later information Taotao USA submitted to EPA in 2012 and 2013 under the Administrative Settlement Agreement, upon which information EPA relied when preparing the Notice of Violation and original Complaint.

## **II. Analysis**

Complainant requests leave to amend the Complaint to revise the numbers of violations alleged in Counts 1 through 3 and Counts 5 through 8 based on Respondents' production reports for model years 2013 through 2015,<sup>3</sup> and to add two counts alleging that respondents Taotao USA and JCXI are liable for an additional 1,681 violations of the Act stemming from the importation of vehicles in engine families FTAOX0.15G2T and GTAOX0.15G2T. The Amended Complaint also reflects Taotao USA's new address, and corrects a typographical error with paragraph numbering in the original Complaint.

After an answer has been filed, a complaint may be amended "upon motion granted by the Presiding Officer." 40 C.F.R. § 22.14(c). "The Environmental Appeals Board has 'expressly adopted' the liberal policy regarding pleadings and amendments found in Federal Rule of Civil Procedure 15 and described in *Foman v. Davis*, 371 U.S. 178 (1962)." *Chem-Solv, Inc.*, EPA Docket No. RCRA-03-2011-0068, 2014 EPA ALJ LEXIS 14, at \*\*16-17 (ALJ, June 5, 2014) (citing *Lazarus, Inc.*, 7 E.A.D. 318, 333 (EAB 1997); *Carroll Oil Co.*, 10 E.A.D. 635, 649 (EAB 2002)). Leave to amend should be "freely given" absent "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to

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<sup>3</sup> Complainant does not seek to amend Count 4, which relates to engine family CTAOC.049MC1. As explained above, the 2012 production report for this engine family is contradicted by the later report Taotao submitted to EPA indicating a greater number of vehicles were produced for sale in the United States. The number of vehicles pleaded in Count 4 in the original Complaint was admitted by Respondents in paragraph 63 of their answers.

cure deficiencies by amendments previously allowed, [or] undue prejudice to the opposing party by virtue of allowance of the amendments, [or] futility of amendments.” *Carroll Oil Co.*, 10 E.A.D. at 649–50 (quoting *Foman*, 371 U.S. at 182).

Complainant has not unduly delayed bringing this Motion, and is not acting in bad faith or with dilatory motive. Complainant did not discover the existence of the new alleged violations arising from engine families FTAOX0.15G2T and GTAOX0.15G2T until several months after the original Complaint was filed, and did not know the scope of the new alleged violations until April 19, 2016. The parties were engaged in ADR at that time. During ADR, Complainant informed Respondents of the recent violations in an effort to settle all outstanding claims. Complainant further informed Respondents that it intended to move to amend the Complaint if the parties failed to reach a negotiated settlement through ADR. After the parties were unable to reach a negotiated settlement and ADR was terminated, Complainant discovered the disparity with regard to the number of vehicles under the new alleged violations. This caused Complainant to examine information relied upon in drafting the Notice of Violation and original Complaint, and in so doing obtained Respondents’ U.S.-directed production reports showing the extent of noncompliance was significantly greater than Complainant initially understood. Since the termination of ADR, Complainant has acted expeditiously to bring this Motion. Complainant has not previously sought or received permission to amend the Complaint.

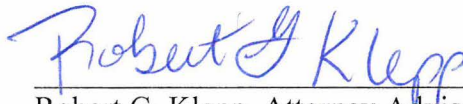
This Motion, if granted, will not unduly delay this proceeding, or cause Respondents undue surprise or prejudice. Respondents learned of the claims arising from engine families FTAOX0.15G2T and GTAOX0.15G2T during ADR, and the parties attempted to negotiate a settlement that would have resolved those claims. With regard to the additional vehicles alleged in counts 1 through 3 and 4 through 8, any settlement during ADR would have forestalled their discovery and prevented Complainant from pursuing further enforcement. With the parties unable to reach settlement, the litigation is still in its early phases. The parties have yet to submit their prehearing exchanges, and the evidentiary hearing has not been scheduled. Though the number of violations alleged in the Amended Complaint is greater than the number alleged in the original Complaint, the violations are substantively identical to those in the original Complaint. There is no indication that amendment would be futile because the parties have not yet completed their information exchange. Respondents will have a full opportunity to prepare and present their defense.

### **Conclusion**

For the reasons set forth in this Motion, Complainant requests that the Motion to Amend the Complaint and to Extend Prehearing Deadlines be granted, and Respondents ordered to answer the Amended Complaint, as provided by 40 C.F.R. § 22.15(c).

Respectfully Submitted,

6/14/2016  
Date



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**CERTIFICATE OF SERVICE**

I certify that the original and two copies of the foregoing Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines (the "Motion") in the Matter of Taotao USA, Inc., et al., Docket No. CAA-HQ-2015-8065, were filed and served on the Presiding Officer 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 one copy of the foregoing Motion was sent this day for personal service on each Respondent's officer or agent for service of process at the addresses listed below:

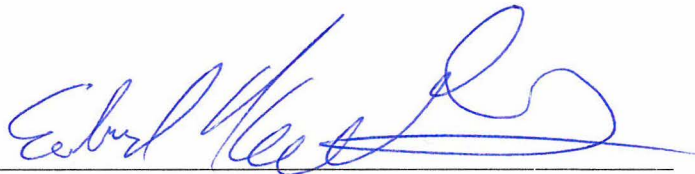
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