

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

**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 REQUESTING OFFICIAL NOTICE**

The Director of the Air Enforcement Division of the U.S. Environmental Protection Agency’s Office of Civil Enforcement (“Complainant”) files this Motion requesting that the Presiding Officer take official notice of matters not subject to reasonable dispute and within the specialized knowledge of the Agency. Respondents oppose this Motion.

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) provide that a presiding officer may take official notice “of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency.” 40 C.F.R. § 22.22(f). In turn, the Federal Rules of Evidence provide that federal courts “may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(a).

Complainant requests that the Presiding Officer officially notice that the maximum penalty assessed in this proceeding may exceed \$320,000<sup>1</sup> pursuant to the agreement between the Attorney General and the Agency memorialized in the documents filed with Complainant’s Prehearing Exchange on August 25, 2016, as CX026 and CX028, and recognized by the Presiding Officer on page 18, footnote 25 of the Order on Partial Accelerated Decision and Related Motions, issued May 3, 2017. The exercise of the EPA and Department of Justice’s discretionary authority to waive the limit for administrative penalties is a matter both within the Agency’s specialized knowledge and experience, and not subject to judicial review. 42 U.S.C. § 7524(c)(1). The existence of the agreement in this case is readily determined from the letters

---

<sup>1</sup> In an administrative penalty proceeding brought pursuant to Clean Air Act section 205(c)(1), 42 U.S.C. § 7524(c)(1), the penalty may not exceed \$320,000 unless the Agency and the Attorney General jointly determine a larger penalty is appropriate. 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4 Table 1, 1068.125(b).

from the Department of Justice to the EPA, documents whose accuracy cannot reasonably be questioned.

Complainant also requests that the Presiding Officer officially notice the following EPA policies that were marked as exhibits and filed with Complainant's Prehearing Exchange on August 25, 2016:

- Clean Air Act Mobile Source Civil Penalty Policy: Title II of the Clean Air Act Vehicle and Engine Certification Requirements, Jan. 16, 2009, marked CX022, available at [https://www.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy\\_0.pdf](https://www.epa.gov/sites/production/files/documents/vehicleengine-penalty-policy_0.pdf) ("Penalty Policy");
- Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013), Dec. 6, 2013, marked CX023, available at <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf> ("2013 Inflation Policy");
- Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016), July 27, 2016, marked CX024, available at <https://www.epa.gov/sites/production/files/2017-01/documents/finalpenaltyinflationguidance.pdf> ("2016 Inflation Policy");
- Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action, June 29, 2015, marked CX025, available at <https://www.epa.gov/sites/production/files/2015-06/documents/atp-penalty-evaluate-2015.pdf> ("Ability-to-Pay Guidance").

The Agency's Penalty Policy, 2013 Inflation Policy, 2016 Inflation Policy, and Ability-to-Pay Guidance are all documents that are self-evidently statements of EPA policy and are readily available from the EPA's official public website, a source whose accuracy in this matter cannot reasonably be questioned. These types of policies are generally known in administrative enforcement proceedings governed by the Consolidated Rules, which require the Presiding Officer to "consider any civil penalty guidelines issued under the Act" when determining the amount of a recommended civil penalty. 40 C.F.R. § 22.27(b). To that end, the policies and guidance documents are also "within the specialized knowledge and experience of the Agency." 40 C.F.R. § 22.22(f).

Taking official notice of these matters now will help reduce the duration of the evidentiary hearing in this matter and focus the hearing on matters of genuine dispute that can only be resolved after an evidentiary hearing.

Respectfully Submitted,

6/23/2017  
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  
p. (202) 564-4133  
kulschinsky.edward@epa.gov

6/23/17  
Date



Mark Palermo, 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 3319C, Mail Code 2242A  
Washington, DC 20460  
p. (202) 564-8894  
palermo.mark@epa.gov



**CERTIFICATE OF SERVICE**

I certify that the foregoing Motion Requesting Official Notice in the *Matter of Taotao USA, Inc., et al.*, Docket No. CAA-HQ-2015-8065, was filed and served on the Presiding Officer this day through the Office of Administrative Law Judge's E-Filing System.

I certify that an electronic copy of this Motion was sent this day by e-mail to the following e-mail addresses for service on Respondents' counsel: William Chu at [wmchulaw@aol.com](mailto:wmchulaw@aol.com), and Salina Tariq at [stariq.wmchulaw@gmail.com](mailto:stariq.wmchulaw@gmail.com). I further certify that three copies of the foregoing Motion 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

6/23/2017  
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  
p. (202) 564-4133  
[kulschinsky.edward@epa.gov](mailto:kulschinsky.edward@epa.gov)