

PA. Application for surface water withdrawal of up to 0.499 mgd.

13. *Project Sponsor and Facility:* Southwestern Energy Company (Cold Creek—Giroux), Herrick Township, Bradford County, PA. Application for surface water withdrawal of up to 0.249 mgd.

14. *Project Sponsor and Facility:* Southwestern Energy Company (Mill Creek—Kennedy), Stevens Township, Bradford County, PA. Application for surface water withdrawal of up to 0.249 mgd.

15. *Project Sponsor and Facility:* Southwestern Energy Company (Ross Creek—Billings), Stevens Township, Bradford County, PA. Application for surface water withdrawal of up to 0.249 mgd.

16. *Project Sponsor and Facility:* Southwestern Energy Company (Sutton Big Pond), Herrick Township, Bradford County, PA. Application for surface water withdrawal of up to 5.000 mgd.

17. *Project Sponsor and Facility:* Southwestern Energy Company (Tunkhannock Creek—Price), Gibson Township, Susquehanna County, PA. Application for surface water withdrawal of up to 0.380 mgd.

18. *Project Sponsor and Facility:* Southwestern Energy Company (Wyalusing Creek—Ferguson), Wyalusing Township, Bradford County, PA. Application for surface water withdrawal of up to 1.500 mgd.

19. *Project Sponsor and Facility:* Southwestern Energy Company (Wyalusing Creek—Campbell), Stevens Township, Bradford County, PA. Application for surface water withdrawal of up to 1.500 mgd.

20. *Project Sponsor:* UGI Development Company. *Project Facility:* Hunlock Power Station, Hunlock Township, Luzerne County, PA. Application for surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

21. *Project Sponsor:* UGI Development Company. *Project Facility:* Hunlock Power Station, Hunlock Township, Luzerne County, PA. Application for consumptive water use of up to 0.870 mgd.

22. *Project Sponsor and Facility:* Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, PA. Corrective modification to passby flow condition (Docket No. 20090631).

23. *Project Sponsor:* United Water Resources. *Project Facility:* United Water PA—Harrisburg Operation, Newberry Township, York County, PA. Application for groundwater withdrawal of up to 0.172 mgd from Paddletown Well.

### Public Hearing—Projects Scheduled for Rescission Action

1. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080903), Town of Tioga, Tioga County, N.Y.

2. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080906), Athens Township, Bradford County, PA.

3. *Project Sponsor and Facility:* Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, PA.

4. *Project Sponsor and Facility:* East Resources, Inc. (Tioga River) (Docket No. 20080609), Mansfield, Richmond Township, Tioga County, PA.

5. *Project Sponsor and Facility:* Montrose Country Club (Docket No. 20020603), Bridgewater Township, Susquehanna County, PA.

### Public Hearing—Request for Administrative Hearing

1. Petitioner Delta Borough, York County, Pennsylvania; RE: Delta Borough Public Water Supply Well No. DR-2; Docket No. 20090315, approved March 12, 2009.

### Opportunity to Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: [rcairo@srb.net](mailto:rcairo@srb.net) or Stephanie L. Richardson, Secretary to the Commission, e-mail: [srichardson@srb.net](mailto:srichardson@srb.net). Comments mailed or electronically submitted must be received prior to September 4, 2009, to be considered.

**Authority:** Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808

Dated: August 11, 2009.

**Thomas W. Beauduy,**  
Deputy Director.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2009-0008]

### Beall Corporation; Grant of Application for a Temporary Exemption From FMVSS No. 224

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for temporary exemption.

**SUMMARY:** In accordance with 49 CFR part 555, this notice grants the Beall Corporation's application for a temporary exemption from the requirements of Federal Motor Vehicle Safety Standard ("FMVSS") No. 224, "Rear Impact Protection." The exemption applies to the company's dump body trailers. The basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The exemption is effective for three years.

**DATES:** The exemption from the applicable FMVSS is effective from August 20, 2009 through August 20, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ari Scott, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41-326, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820; E-mail [ari.scott@dot.gov](mailto:ari.scott@dot.gov).

### SUPPLEMENTARY INFORMATION:

#### a. Rear Impact Protection

FMVSS No. 224, *Rear Impact Protection*, requires all trailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or more be fitted with a rear impact guard that conforms to FMVSS No. 223, "Rear impact guards." This requirement, however, has presented problems for certain specialized vehicles, such as road construction vehicles, where interaction between the rear impact guard and the specialized paving or dumping equipment can cause engineering hurdles. In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Beall Corporation, d/b/a Power Truckweld ("Beall"), a dump body trailer manufacturer, petitioned the agency for a temporary exemption from the rear impact protection requirements in FMVSS No. 224 (49

CFR 571.224) based on economic hardship.<sup>1</sup>

#### **b. Statutory Background of Petition for Economic Hardship**

The National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for this section to NHTSA.

NHTSA established Part 555, "Temporary Exemption from Motor Vehicle Safety and Bumper Standards," to implement the statutory provisions concerning temporary exemptions. Vehicle manufacturers may apply for temporary exemptions on several bases, one of which is substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith. A petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5 and 555.6, and include a number of items, including the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301. A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in the year preceding the filing of its application did not exceed 10,000 vehicles (49 CFR 555.6(a)(2)(v)).

#### **c. The Petition**

Beall manufactures trailers in Washington and Oregon. The company has been in existence for over a decade. Beall requested an exemption for a period of three years upon the grant of the petition. The following is a brief summary of the salient points of Beall's petition. More complete information can be found by examining the notice of receipt or the petition itself, available in the NHTSA docket (NHTSA-2009-0008).

In its petition, Beall stated that the total number of vehicles produced in the 12-month period prior to filing the petition was 79. Of those vehicles, 64 were dump body type trailers that would be covered by the requested

temporary exemption. The largest number of Dump Body trailers the petitioner sold in recent years is 79 in 2005.

Beall stated that the denial of the requested exemption will result in substantial economic hardship. According to the statements of the petitioner, the denial of exemption could cost the company 40 percent of its projected sales during the period covered by the exemption, a situation which could cause the layoff of 100% of its employees. Additionally, Beall asserted that if the exemption is denied, it would lose the entire \$800,000 goodwill investment associated with the 2001 purchase of Pioneer Truckweld. It also noted that several of its competitors, such as Reliance and Columbia Body Manufacturing, have received exemptions from FMVSS No. 224, and that it needs to be able to compete effectively with these entities in the dump body trailer sales market, as well as the dump body truck market, as many customers will not allow a manufacturer to bid on a dump body truck if they cannot supply a dump body trailer.

Beall also provided specific financial information with its statement for the years 2004 through 2006. In 2004, it indicated that it posted a loss of over \$200,000. In 2005, that loss was approximately \$138,000. Finally, in 2006, the total loss was over \$53,000. In the event that the petition were denied, Beall estimated that it will lose over \$24,000 in the year following the denial. While Beall did not provide specific financial information regarding the projected financial impact of a grant, it stated that such a grant is necessary for the survival of the Power Truckweld division.

The petitioner believed that it is impossible to estimate the cost of compliance because the method by which compliance may be achieved is unknown at this time, and requires substantial further engineering analysis. Beall stated that it has tried, unsuccessfully, to design or outsource the design of a device that would satisfy FMVSS No. 224 for dump body trailers.

In explaining why it has not been currently able to meet the rear impact protection requirements, Beall pointed to a number of technical challenges associated with designing a compliant rear impact protection system. Namely, it stated that a device designed to satisfy FMVSS No. 224 for dump body applications must also be capable of moving clear, so that the hopper of the paving machines can pass through the space initially occupied by the rear impact protection device. It argued that

if the paving machine cannot position itself underneath the dump body, the asphalt will spill out as the dump body raises and unloads the asphalt. The petitioner stated that it has been pursuing the design of acceptable systems in a joint project with the Mechanical Engineering department at Montana State University, using techniques such as Finite Element analysis and physical testing devices. In addition, it claimed to have designed acceptable guards for a number of non-asphalt paving applications.

Beall stated it has considered several alternative means of compliance. These include plastically deforming devices and hinged and retractable devices. However, the petitioner believed that there are a number of problems with regard to these solutions. First, due to clearance issues, space for retractable devices is not readily available, and redesign of the vehicle to accommodate such devices could result in decreased stability. Second, the petitioner stated that asphalt paving surface has the effect of rendering these sorts of devices unusable over time. Finally, Beall noted that trailers could be operated with these devices in the retracted position, resulting in no safety benefits.

Beall stated that under a temporary exemption, it would continue to pursue a compliant rear impact protection device that would meet the current standards, including attachment and methods of maintenance to ensure proper function while in service. The petitioner stated that it will continue to work with others in the paving industry to develop an acceptable solution.

Beall's believed that the public interest would benefit from this exemption, stating the following:

It would be in the public's interest to allow Pioneer Truckweld to manufacture the equipment required to improve and expand the road building effort in the Western United States while an intense effort is maintained by Pioneer Truckweld to design an acceptable under ride device that will perform well in a paving operation.

Additionally, in its petition, Beall noted that the failure to receive an exemption could cause the closure of the Pioneer Truckweld operation and the layoff of 38 employees in U.S. operations.

#### **d. Notice of Receipt**

On February 12, 2009 (74 FR 7102), we published a notice announcing receipt of an application from Beall for a temporary exemption from the requirements of FMVSS No. 224 for its dump body trailer designs. We invited public comment on Beall's application,

<sup>1</sup> In accordance with the requirements of 49 U.S.C. 30113(b)(2), we published a notice of receipt of the application and asked for public comments. To view the application, notice, or response to the notice (no comments were received), please go to: <http://www.regulations.gov> (Docket No. NHTSA-2009-0008).

but received no comment in response to the publication.

#### e. Final Decision

We are granting Beall's petition for exemption. The manufacturer satisfies the criterion that its total motor vehicle production in its most recent year of production does not exceed 10,000. In its petition, Beall noted that it produced 79 vehicles in the 12 months period prior to requesting the exemption, of which 64 were dump body type trailers that would be covered by the requested temporary exemption. Based on this, we conclude that Beall is eligible for the requested exemption.

The agency may grant such a petition if it finds that the petitioner would suffer financial hardship if an exemption were not granted, that the petitioner has tried in good faith to comply with the standard, and that an exemption would be in the public interest and consistent with the purposes of the Vehicle Safety Act.

The fundamental problem which is causing Beall to be unable to fully comply with the rear impact requirements relates to the design and function of the vehicle. As stated in the petition for exemption, the bodies at issue are raised as to discharge out of the rear. Therefore, they require the area to the rear of the vehicle, where the rear impact protection material would ordinarily be located, to be clear enough for the discharge to proceed smoothly. Despite significant expenditures of capital and labor in pursuit of compliance, Beall was unable to bring its vehicle into compliance. While engineering research and possible alternative solutions are being considered, the company currently requires a temporary exemption in order to sell its vehicles in their current state.

Beall has shown the necessary aspects to receive a temporary exemption on the basis of financial hardship. These include demonstrated financial hardship, good faith efforts to comply with the standard, and a showing that receiving the exemption would be in the public interest. We discuss these below.

First, Beall's financial statements show substantial financial hardship. As stated above, Beall estimates that it could lose substantial money if it is unable to sell its dump body trailers. Furthermore, given the economic downturn in recent months, we believe that it is likely that Beall's economic condition has deteriorated further since it originally submitted its petition.

Second, the petitioner has shown a good faith effort to comply with the standard. Again, as stated above, the petitioner has undertaken substantial

research and design efforts in order to try and comply with the standard. It has worked on designing internal solutions, partnered with the Mechanical Engineering department at Montana State University, and tried to find third-party suppliers that could design equipment that could overcome the formidable design challenges. It has also searched for alternative means of compliance, such as plastically deforming devices and mounting the box higher on the vehicle. Finally, it continues to work on design changes that could allow it to comply with the full FMVSSs.

Third, we believe that the public interest is served by granting this exemption. There is a problem in practicability in complying with the requirements of the standard. This is a trailer that requires a controlled release of the materials from the dump body, which complicates the ability to install a rear impact protection system that does not interfere with the trailer's operation. Additionally, these trailers are used primarily in road construction applications, thereby removing them generally from the flow of traffic (although they may still be used in some in-traffic situations, such as transport to and from road construction sites). Coupled with the very low number of vehicles expected to be produced during the temporary exemption, the negative safety impact of the exemption will be insignificant. In contrast, permitting this type of vehicle to be sold to the public serves the public interest.

*Public Interest Considerations.* Dump body trailers are used primarily for road-paving and other construction tasks, and frequently discharge road material via the rear of the vehicle. In considering whether granting a petition is in the public interest, NHTSA also considers the impact of not granting the exemption on consumer choice and the economy, as well as the relative impact of the exemption on safety. Beall states that the failure to receive an exemption could cause the closure of the Pioneer Truckweld operation and the layoff of 38 employees in U.S. operations. Given the relatively few companies that produce these sort of specialized trailers, we believe that the exemption would have benefits with regard to enhancing consumer choice and facilitating construction projects. Also, we note again that given the relatively low number of vehicles produced by the petitioner over its history, and the fact that they are primarily used in road construction tasks as opposed to being driven in the flow of traffic, the safety impact of the lack of required rear

impact protection equipment is likely to be relatively small.

In consideration of the foregoing, we conclude that compliance with the requirements of FMVSS No. 224, *Rear Impact Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption would be in the public interest and consistent with the objectives of traffic safety.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Beall Corporation is granted NHTSA Temporary Exemption No. EX 09-03, from FMVSS No. 224. The exemption covers only dump body trailers manufactured by the company. The exemption shall remain for three years as indicated in the **DATES** section of this notice.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: August 14, 2009.

**Ronald L. Medford,**

*Acting Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in Ohio

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. § 139(J)(1). The actions relate to a proposed highway project, the Interstate Routes 70 and 71 and interchanges, in the City of Columbus, Franklin County, State of Ohio (FRA-70-8.93, Project Identification Number 77369). Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. § 139(J)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 16, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.