

Background

On August 4, 2006, Polaris filed a defect information report (06V-298) with NHTSA, notifying it that some of its 2001 Victory V92 motorcycles and some of its 1999-2000 Victory V92 motorcycles that received a transmission replacement last built in 2001 contained a safety-related defect. According to Polaris, under certain conditions, these motorcycles could experience third gear failures that could result in a lock-up of the transmission. This, in turn, could cause a loss of control and a crash. Polaris reported that it was planning to install a rear sprocket damper assembly to correct for the possible third gear failures, but that the schedule for implementing the remedy campaign was still under development. Subsequently, on November 22, 2006, Polaris issued a letter to the affected owners notifying them of the defect and stating that limited numbers of kits needed to repair the motorcycles (referred to as "Rear Sprocket Cushion Drive Kits") were expected to be distributed the week of December 18, 2006. Owners were instructed to contact Victory dealers to schedule repair appointments.

During the final stages of testing, however, Polaris found that the remedy kits were not sufficient to address the risk of third gear failures, and therefore additional work was needed to develop a better remedy. Polaris advised the agency of its finding and the resulting delay in delivery of remedy kits in January, 2007.

On March 8, 2007, NHTSA received a package containing two petitions from Robin R. Harrill. The first petition, captioned a "Petition for Rulemaking, Defect, and Noncompliance Order," requested that NHTSA order Polaris to assume all costs motorcycle owners may have incurred to replace the third gear assemblies on the affected motorcycles. The second petition, captioned a "Petition for Hearing on Notification and Remedy of Defects," requested a hearing to address Polaris's alleged failure to meet its obligation to remedy those defective assemblies.

The crux of both petitions is that Polaris has been unreasonably slow in making the Rear Sprocket Cushion Drive Kits available to owners and dealers. In support of his petitions, Mr. Harrill provided a timeline of events concerning the recall, an account of certain conversations he had with various Polaris personnel, and summaries of various communications Polaris had issued as to the status and availability of the kits.

In the meantime, and at the agency's request, Polaris prepared another notification letter for owners. On or about April 20, 2007, NHTSA received a draft of this letter together with an amended defect information report. Polaris stated in its report that this second owner notification mailing was to start April 30, 2007. Polaris further reported that it was going to simultaneously publish on its Web site a reminder notification to dealers about the recall, together with a parts availability date. Both of these actions took place.

In mid-May, 2007, the remedy kits for the affected motorcycles were made available to dealers.

Decision

The filing and disposition requirements for petitions for rulemaking, defect, and noncompliance orders, are found in 49 CFR part 552. The stated scope of part 552 is to, among other things, allow interested persons to request the agency "make a decision that a motor vehicle * * * contains a defect which relates to motor vehicle safety." 49 CFR 552.1. The stated scope of Part 552 does not include ordering manufacturers to reimburse owners for their costs in remedying defective motor vehicles, or taking any other action related to repairing or replacing defective motor vehicles or motor vehicle equipment.

Here, Polaris has already admitted that its vehicles have a defect that relates to motor vehicle safety. Therefore, the issue of whether the Polaris motorcycles in question have a safety-related defect has been resolved, and so any agency determination mirroring the manufacturer's decision would be meaningless.

The filing and disposition requirements for petitions for hearings on notification and remedy of defects, are found in 49 CFR part 557. One of the stated purposes of part 557 is to enable NHTSA to respond to petitions for hearings on whether a manufacturer has reasonably met its obligation to remedy a safety-related defect identified in its product. 49 CFR 557.2. Pursuant to 49 CFR 557.8, a manufacturer can be ordered to take certain actions to ensure its compliance with the recall requirements. One such action could be requiring the manufacturer to reimburse owners' costs for their independent repairing or replacing of equipment in order to fix a defect.

In deciding whether to grant petitioner's second petition, we have taken into consideration the nature of his complaint and the seriousness of the alleged breach of Polaris's obligation to

remedy. We have also considered that there have been approximately eight owner complaints to NHTSA (including one the petitioner filed) about the delays in repair due to the lack of availability of the Rear Sprocket Cushion Drive Kits at local dealerships.

Based on our consideration of these factors, we have determined that any hearing related to the reasonableness of the remedy would be moot because the alleged problem—delays in repair kits needed to fix the transmission defect—has been resolved. Polaris has delivered the kits to its dealers and all owners have been notified of the defect.¹

For all of the reasons above, this petition is denied. This decision does not, of course, prevent the agency from taking future action if warranted.

Authority: 49 U.S.C. 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on January 15, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC 20590-4535.

¹ In phone calls with the agency, the petitioner reported that he had received a call from his dealer letting him know the repair kits had arrived and offering to schedule an appointment for a repair. He also reported that he no longer owns a motorcycle involved in the remedy campaign addressed by this notice.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or

- precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

- M—Modification request.
 PM—Party to application with modification request.

Issued in Washington, DC, on January 16, 2008.

Delmer F. Billings

Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION TO SPECIAL PERMITS

Application No.	Applicant	Reason for delay	Estimated date of completion
11579-M	Austin Powder Company, Cleveland, OH	3, 4	02-29-2008.
10964-M	Kidde Aerospace & Defense, Wilson, NC	4	02-29-2008.

NEW SPECIAL PERMIT APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
14385-N	Kansas City Southern Railway Company, Kansas City, MO	4	02-29-2008.
14546-N	BOC Gases, Murray Hill, NJ	4	02-29-2008.
14402-N	Lincoln Composites, Lincoln, NE	1, 3	01-31-2008.
14436-N	BNSF Railway Company, Topeka, KS	4	02-29-2008.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 675]

Consolidated Appropriations Act, 2008—Solid Waste Rail Transfer Facilities

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of legislation.

SUMMARY: This notice advises the public of new legislation affecting the Board, the Consolidated Appropriations Act, 2008, Public Law No. 110-161, 121 Stat. 1844 (2007), and how the Board plans to proceed to ensure compliance with that legislation.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: On December 26, 2007, the Consolidated Appropriations Act, 2008, Public Law No. 110-161, 121 Stat. 1844 (2007) (Act), was enacted into law, which among other things, provides the Board with funding for fiscal year 2008. As pertinent here, section 193 of the Act provides:

(a) None of the funds appropriated or otherwise made available under this Act to the Surface Transportation Board of the Department of Transportation may be used to take any action to allow any activity described in subsection (b) in a case, matter, or declaratory order involving a railroad, or an entity claiming or seeking authority to operate as a railroad, unless the Board receives written assurance from the Governor, or the Governor's designee, of the State in which such activity will occur that such railroad or entity has agreed to comply with State and local regulations that establish public health, safety, and environmental standards for the activities described in subsection (b), other than zoning laws or regulations.

(b) Activities referred to in subsection (a) are activities that occur at a solid waste rail transfer facility involving—

- (1) the collection, storage, or transfer of solid waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)) outside of original shipping containers; or
- (2) the separation or processing of solid waste (including baling, crushing, compacting, and shredding).

While the Board will continue to accept and process petitions, notices, and other filings in conformance with its regulations, the Board will ensure compliance with the Act by providing notice herein that no pertinent Board decision issued during the period covered by the Act will authorize any of the aforementioned activities prior to

receipt of the written assurance referenced in the Act from the governor (or governor's designee) of the state where such activities are proposed. The Board intends to include in all pertinent agency decisions issued during that period a statement substantially similar to the following:

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term 'solid waste' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

Board filings, decisions, and notices are available on its Web site, <http://www.stb.dot.gov>.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,
Acting Secretary.

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