



U.S. Department of Transportation
**National Highway Traffic Safety
Administration**



1200 New Jersey Avenue SE.
Washington, DC 20590

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 4, 2016

Mr. Michael Goodin
Chief Executive Officer
ARC Automotive, Inc.
1729 Midpark Road
Knoxville, Tennessee 37921

Re: ARC's Response to EA16-003

Dear Mr. Goodin:

The purpose of this letter is to express several concerns the Agency has regarding ARC Automotive, Inc.'s ("ARC") behavior in connection with the above-captioned investigation and related matters. In light of ARC's actions, as described more fully below, the Agency has concluded that ARC is neither being forthcoming with the information that it is legally obligated to supply, nor is it being cooperative in aiding NHTSA's ongoing investigation of a potentially serious safety defect

As was relayed to ARC and ARC's counsel at a meeting on October 3, 2016, ARC's actions in response to the August 9, 2016 Information Request are both insufficient and disappointing. Prior to NHTSA's transmittal of this Information Request, ARC proposed a response date of September 8, 2016, and indicated that date would allow ARC sufficient time to answer the questions and collect the data requested. As stated in the Information Request, if ARC were to find it was unable to provide all of the information requested within the time allotted, ARC must request an extension no later than five business days before the response due date. Additionally, if ARC was unable to provide all of the information requested by the original deadline, it must submit a partial response by the original deadline with whatever information ARC then has available, even if an extension has been granted.

On August 31, 2016, ARC contacted NHTSA and indicated that it would be unable to meet the due date set forth in the Information Request. On September 1, 2016 ARC proposed a revised schedule for submission of production data information requested in the Information Request. NHTSA accepted the revised schedule as proposed by ARC, which provided for certain information to be produced by September 8, September 14, and September 23.

In the late afternoon on September 7, 2016 – the day before ARC’s self-proposed deadline – ARC contacted NHTSA via telephone and indicated it would be unable to supply all of the requested information that was due on September 8, per ARC’s proposed schedule. Instead of producing a partial response as required by the Information Request, ARC requested an additional day to submit the production data that was due September 8, 2016, which NHTSA agreed to. ARC eventually submitted the information on September 9, 2016.

On September 14, 2016 at 4:48pm, ARC’s counsel contacted NHTSA and indicated that production information that was due on September 14 – again, a date proposed by ARC – was not available because there were “IT issues” with some of the data. ARC indicated that the information would be sent by courier on September 15, 2016 to be received by early morning. Although ARC did eventually provide the information on September 15, it was not received at NHTSA’s headquarters until 5:15 p.m. Furthermore, inspection of the submission properties revealed that, despite ARC’s promises that the material would be delivered by early morning, the submission itself had not been finalized until 12:30 p.m. on September 15, 2016.

Given the issues surrounding ARC’s prior response submissions, on Wednesday September 21, 2016, NHTSA contacted you to reaffirm that ARC would be submitting its response on Friday September 23 in full. During that telephone conversation, you indicated for the first time that there were “issues” obtaining some of the requested data pertaining to ARC’s manufacturing entity in Italy. You indicated that the Italy data was old and did not “mesh” with ARC’s current IT infrastructure, and requested that for Friday’s submission ARC be permitted to submit estimated numbers based on sales, to be supplemented with the requested production data once you were able to complete your analysis. You did not indicate that there were any issues in obtaining the additional information that was due to be submitted on the 23rd, and in fact stated that you were currently working on getting that data into a proper format. You affirmatively indicated that ARC would provide the remaining requested data by Friday September 23. When NHTSA requested that the submission be provided at a “reasonable time,” you indicated that there would be no issue in complying with that request.

NHTSA received no such submission on Friday, September 23, 2016. Instead, at 5:24 pm, a voicemail was left for the NHTSA investigator stating that data from China had “just been received.” ARC stated that the information would be sent to the Agency via FedEx “today” and that NHTSA would have it first thing Monday morning. The stated package enclosing ARC’s partial response was not received by the Agency until approximately 2:30 pm on Monday, September 26.

Initially, as a matter of our enforcement discretion, NHTSA permitted ARC to take a reasonable period of time to collect additional documents and information responsive to the Information Request. However, ARC has repeatedly failed to comply with the explicit directives of the Information Request regarding extensions and partial submissions, and has failed to provide full and complete responses to the Agency’s inquiries. Additionally, ARC’s failure to timely notify NHTSA that it was “experiencing issues” – whether actual or perceived – has hindered the Agency’s investigation. Such behavior is not proactive, and is counter to your assertion that the company is doing everything within its power to cooperate in the Agency’s investigation.

Furthermore, beyond ARC's lax response to compulsory process, ARC's attitude and approach to the Agency's investigation remains troubling. Since this investigation was opened, ARC has on more than one occasion questioned the necessity of providing certain information, failed to provide documents in a readable format, appeared nonchalant in its approach to developing a testing plan or protocol, and has advocated for the closure of the investigation without possessing or providing a full understanding of the root cause for at least one of the underlying inflator ruptures.

Additionally, a number of incidents involving ARC's product have been brought to NHTSA's attention by vehicle manufacturers and other suppliers. These incidents range from testing failures to recalls, and raise serious questions regarding the quality and integrity of ARC's air bag inflators. While vehicle manufacturers and other suppliers have voluntarily notified NHTSA of these and other incidents without the need for a formal request, ARC has failed to take any steps to notify the Agency of these incidents, or their potential relationship to the incidents under investigation. After the Agency learned of one of these incidents earlier this year, the Agency contacted ARC and indicated that the company needed to provide this type of information to NHTSA proactively. Instead of noting the serious nature of these incidents and committing to work with NHTSA to determine the appropriate range of issues at hand, ARC's counsel stated that they had no obligation to provide such information and chastised Agency staff for indicating otherwise.

Compounding ARC's failure to inform the Agency of these matters, ARC has also failed to comply with Standing General Order 2015-02A, issued in the underlying Preliminary Evaluation, which requires ARC to file a report within five days of receiving notification of an inflator field rupture. On July 8, 2016, a fatal rupture occurred in Newfoundland, Canada. NHTSA was notified of this incident on by both Transport Canada and by Hyundai. Although ARC was clearly notified of the incident – as demonstrated by ARC's attendance at an inspection of the vehicle that occurred on July 26, 2016, – ARC has failed to provide any report to NHTSA regarding that incident. As noted by the Standing General Order, failure to comply with that obligation calls for the imposition of daily civil penalties.

ARC's response to the Agency's investigation to date does not demonstrate the behavior that NHTSA expects of manufacturers, much less manufacturers of vital safety components utilized in vehicles across the globe. To the contrary, ARC's behavior has demonstrated a lack of cognizance regarding the seriousness of this investigation and the underlying issues. ARC has been given every consideration, yet has failed to respond in kind. Moving forward, the Agency expects to observe a marked difference in ARC's approach, both to this investigation and to its relationship with NHTSA. Specifically, the Agency enumerates the following expectations regarding ARC's behavior in this investigation:

- Pursuant to a Standing General Order that will be executed this week, ARC must notify NHTSA within twenty-four (24) hours of receiving notification of a potential inflator rupture. ARC also must submit a report to NHTSA within five (5) days of receiving notification of a potential or alleged rupture. If the rupture is a field rupture, ARC must use the form attached to Standing General Order 2015-02A. If the rupture is not a field rupture, ARC must use a form to be provided by NHTSA pursuant to a new Standing General Order. To be clear, this obligation is not limited to failures within the United States.

- ARC must comply with all provisions of Standing General Order 2015-02A.
- ARC will comply with all instructions as set forth in any Information Requests, subpoenas, or other Agency requests or compulsory process pertaining to this investigation.
- Requests for extensions regarding Information Request submissions that do not follow the established protocol will be denied.
- Extensions will not be granted for future Information Request or other information submissions absent extraordinary or compelling circumstances.
- Data submissions must be physically received by NHTSA no later than 4:30 p.m. on the applicable due date.
- Data submissions to the Agency shall be submitted in their original format unless otherwise requested by the Agency (i.e., excel spreadsheets shall be submitted as excel spreadsheets and not as pdf documents). To the extent data submissions in their original format are unreadable, non-transmittable, or would otherwise be difficult or impossible for the Agency to review or for ARC to submit, ARC shall discuss the appropriate format for the data with NHTSA no less than five (5) business days after receiving the request for data or information from the Agency.
- Prior to submitting data or information to the Agency, ARC shall ensure that the means of submission (i.e. disk, flash drive, etc.) and the content therein is fully complete and readable.
- ARC shall take all necessary steps to expedite the testing program as previously agreed upon by the Agency, General Motors, FCA, Kia, Key Safety Systems, and Delphi, including but in no way limited to submission of amended test protocol as previously discussed.

It should be noted that the Agency in no way waives its right or obligation to demand civil penalties for the violations outlined in this letter, or any other violations that have occurred to date regarding ARC's actions. A determination as to the imposition of civil penalties shall be made after the Agency has concluded its investigation, and will be considered in the context of ARC's actions through the remainder of this investigation. Should ARC fail to appropriately work with the Agency and other relevant entities in the underlying investigation, in addition to civil penalties NHTSA will pursue all available enforcement options, including but not limited to the immediate notice of administrative depositions and scheduling of a public hearing to obtain the requisite information to pursue our investigation.

The Agency is hopeful that moving forward ARC will take all appropriate steps to meet the aforementioned expectations and to fully cooperate with the Agency in pursuing the resolution of this and future investigations.

Sincerely,



Michael Brown
Acting Director
Office of Defects Investigation