



U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
WASHINGTON, D.C. 20590

January 8, 1979

THE ADMINISTRATOR

Mr. Ralph Nader
P.O. Box 19367
Washington, D.C. 20036

Dear Mr. Nader:

I have been reviewing some correspondence between yourself and Mr. Lynn Bradford concerning questions you originally raised in your letter dated November 26, 1977, about the operation of the Office of Defects Investigations. I thought you might be interested in the progress we have been making in this program.

As you know, the Office of Defects Investigations has been restructured under the management of Mr. Bradford and has been placed under a new Office of Enforcement headed by Mr. Frank Berndt. Indeed, I believe the fact of central importance about the whole defects program is the presence of Mr. Bradford's able and committed management. He has transformed that office from one of ineffectuality to perhaps one of the most successful programs in the agency. This is demonstrably witnessed by the 12.9 million vehicles recalled in 1977, the largest number of recalls in the history of the industry, and 9 million cars plus the Firestone tires recalled in 1978.

You asked Mr. Bradford a number of specific questions which he answered on December 19, 1977. I would like to take this opportunity to supplement some of the comments he made.

Your inquiry to Mr. Bradford appears to me to have two parts. You asked what he thinks are the central problems in the defects area, and, in addition, you suggest areas where you think he might increase our scrutiny and commit resources. We find your suggestions most helpful; I renew the suggestion that you visit the agency and discuss these matters with Mr. Bradford and Mr. Berndt. Their invitation to you in this regard is a standing one.



It's a law we
can live with.

In addition to any discussion you may want to have with them, I thought I might note some of my perceptions regarding the defects program, a program with which, as you know, I am vitally concerned. In this regard, you should also be aware that we have dramatically increased resources available to the Defects Office from \$700,000 to slightly under \$2 million.

Many of our defect information gathering processes you are familiar with, such as the computer storage of consumer complaints, the parts return program, the analysis of communications between manufacturer and dealer, the routine analysis of warranty data, the Hotline, etc. All of these efforts have been streamlined and generally enhanced in the past year.

The Hotline, for example, has been transferred from our Office of Public and Consumer Affairs to the Defects Office, and it has been physically moved from another building to within the confines of the Defects Office itself. The Hotline has been increased from a Supervisor and four operators to the present staff of a Supervisor and 11 operators plus 3 operators under outside contract. To further our ability to handle the volume of consumer complaints via the Hotline phones, we have expanded the number of lines and added automatic recording devices. This enables us to offer 24-hour-a-day, 7-day-a-week service to the public. As a result, our completion rate has risen to approximately 95 percent on high volume days. We have increased the computer and automated support to this program. Although the automated system is not completed at this time, we are now able to mail a hard copy within 24 hours of receiving a phone request for recall information. Shortly, this same capability will be available to forward defect questionnaires to speed receipt of defect reports for engineering analysis. In the recent past, I have required the senior managers of the agency to spend time answering phones and generally familiarizing themselves with the Hotline program. I believe that this increased awareness within the agency itself has already helped to promote the use and success of the Hotline as a basic contributor to the Defects Office. In addition, Ms. Patricia Wallace, Chief of the Hotline Office, received an Administrator's Award this winter for her leadership of that office during the past year.

This initial information gathering system, the early warning system, has helped us recognize defects in vehicles at an earlier stage in their life, long a goal of the safety advocates within the agency. In this regard, many of the recalls we influenced in the past months have been newer vehicles than those involved in past investigations, and this certainly makes for a more meaningful response to our statutory commands. In addition, of course, the early warning information gathering system has also been enhanced by new and increased vigilance in our investigative activities.

In our two-stage investigatory effort, composed first of the engineering analysis stage and second of the formal investigation, the changes have been fundamental. The Engineering Analysis Division of the Defects Office scrutinizes the product of our information gathering system and analyzes problems

for presentation to the Defect Review Panel, a panel composed of engineers, consumer specialists, and lawyers who will determine whether or not to open a formal investigation. During the engineering analysis stage, the data is analyzed, the manufacturer is interrogated in a preliminary way and some initial testing may be done. In the past, Defect Review Panel meetings were held infrequently. Sometimes many months would pass between Panel meetings, whereas now the meetings are held almost monthly. Similarly, formal investigations themselves are now often completed in a very few months with a successful recall whereas in the past, as you know, many investigations were pending for years.

I share your concerns with the intransigence of certain manufacturers in responding to the agency's information gathering requests. Many of the evasive or dilatory tactics engaged in by manufacturers in the past have been obviated or lessened in the past year or so by our use of subpoena power, an authority that was never exercised by the agency until last year. As a result of our use of the general subpoena authority, including the use of special orders, the industry has become increasingly aware that evasive or dilatory tactics used in the past in responding to engineering or other information requests from the Defects Office will promptly result in the issuance of special orders or subpoenas, and court enforcement. The Firestone case is a good example of our determination to pursue such requests and of the courts' agreement with our use of this authority. I believe most companies are now being more responsive to our early investigative requests for information than they have been in the past.

1. Chief Problems

Mr. Bradford commented that one of his chief difficulties is answering a large quantity of inquiries from the public about particular defects. The workload is indeed substantial. Mr. Bradford's office receives 4,000 letters per month. We have tried to remedy this problem in part by hiring a correspondence specialist to assist the engineering staff, by quickly formulating form letters for response to a large volume of mail on one subject, where appropriate, and by having our Executive Secretariat and Public Affairs office answer some of the mail.

Other hindrances to the effectiveness of the Defects Office include:

(a) The need to hire some talented staff. For example, we have searched for a chief investigator who is knowledgeable in this area for some time.

(b) The lack of test facilities has caused some significant delays (for example, in the Pinto case). We have recently established a small testing staff at our Vehicle Research and Test Center in Ohio. However, the staff is still very small, and the facility is not yet complete. For example, we will be adding a crash testing barrier to the facility by next summer.

(c) Until we reallocated significant funds to the program, the tiny size of the budget virtually prohibited the defect testing activities.

(d) There are certain deficiencies in both the statute and our regulations which must be amended to more effectively carry out the program. For example, the three-year statute of limitations applicable to tire recalls in the radial age is outdated. In addition, of course, the statute should be amended to clearly authorize the agency to require tire manufacturers to conduct media recall campaigns under Government auspices.

2. Adequacy of Vehicle Defect Notices

As Mr. Bradford mentioned, the law is very specific about the content of manufacturer safety defect notices to the public. In most instances, the manufacturers submit the notices to the agency prior to sending them to the public. The Office of Defects reviews these notices and, from time to time, will require manufacturers to amend the notices for clarity or specificity.

While the manufacturer, for product liability reasons, often attempts to avoid making damaging admissions in these notices, the agency has made it quite clear that the wording must accurately describe the nature of the risk caused by the defect, such as the likelihood of a crash occurring, and how it will be corrected. Manufacturers, when asked, have made the requested changes in the notices.

One phenomenon we have discovered is that some manufacturers will designate notices to dealers as non-safety-related when, in fact, the agency believes that there is a safety-related problem involved. For example, one such instance involved fires in Cadillac engines, in which the manufacturer was required to convert a "product improvement" campaign into a safety defect campaign. When a manufacturer sends out a notice which the agency believes does not comply with the letter and intent of the law in describing the nature of the defect, the correction, or the risk, the agency has required the manufacturer to send a second notice. This occurred, for example, in recall campaign 77V-246. Volkswagen did not evaluate the risk to traffic safety adequately. They failed to inform the vehicle owners that the defect could result in a vehicle crash. Volkswagen was required to modify the owner letter and re-notify vehicle owners.

3. Relation Between Quality Control and Defect Recalls

As Mr. Bradford explained in his earlier letter, the agency does not attempt nor would it have the resources to follow the quality control activities of each motor vehicle manufacturer. The penalty for a manufacturer of having to recall a vehicle is substantial: the adverse publicity

combined with the cost of carrying out the recall puts a significant priority on proper design and selection of parts and materials, as well as quality control. We have found that tough enforcement of the defect recall law is the best incentive to encourage manufacturers to properly design and manufacture their vehicles. Quality control, we think, also plays an important role in relation to warranty claims which can be quite expensive if the manufacturer does not take proper precautions during the manufacturing process. Both warranty and recalls are costly programs for the manufacturer, and provide a much stronger economic incentive than occasional Government inspectors looking for a needle in a haystack.

4. Diagnosis of How a Defect Occurs

The agency's regulations, as Mr. Bradford explained, require "A chronology of all principal events that were the basis for the determination of the existence of a safety related defect including (a summary of) all warranty claims, field service bulletins and other information"

When the agency conducts an investigation of a particular defect, a complete file of all information used in making the determination is compiled and placed in the public docket. This material contains a diagnosis of how the defect occurred where it is known to the agency. Also, all of the answers from the manufacturer to questions posed by the agency are placed in the public docket. Only information which is confidential and not relevant to the determination of a defect is withheld.

5. Information From Manufacturers of Replacement and Used Parts

We have been in contact with the trade associations and some individual manufacturers of replacement and rebuilt parts to request their assistance in alerting us to potential safety-related defects. Information from these sources as well as from our Parts Return Program, which covers new and used car dealers as well as independent repair facilities, is terribly important in giving us early notice about a problem. We appreciate your suggestions that we communicate with the parts manufacturers.

6. Accurate and Complete Responses From Manufacturers

The Firestone Company is the first one which the agency has taken to court for failure to provide information in response to subpoena during a defect investigation. As you know, the court endorsed the agency's position and required Firestone to provide all of the requested information.

In most cases, corporate responses to agency interrogatories are carefully worded and do not violate the letter of the law. Since the litigation in the Firestone case, we think it unlikely that many companies will refuse to provide requested information, but we have not yet litigated the question of evasive responses. Contrary to the practice in the last Administration, we have insisted that companies respond to inquiries fully during the course

of the defect investigation and, to date, we have not had occasion to bring suit.

If a company provides deceptive or false information to the agency, they could be in violation of Title 18 of the U.S. Code and would be subject to criminal prosecution. I know of no case to date in which this has been the case.

7. Percentage Return of Recalled Vehicles

As Mr. Bradford pointed out, our research indicates that the percentage of vehicles returned depends on the seriousness with which a consumer perceives the recall, how new the recalled car is, and the amount of public notice to which the consumer is exposed, primarily through newspaper, radio and TV media. The wording of the defect notice is rather closely reviewed and the agency has insisted that information about the potential likelihood of a crash be made known to the consumer. With the active work of the Office of Defects, many of the vehicles being recalled today are of quite recent vintage, and are therefore more likely to be returned for correction. The long delays in completing defect investigations under the last Administration, and the earlier lack of publicity about the agency's defect activities, we estimate, has made a distinct difference in the percentage of vehicles returned for correction.

One possible way now being explored to assure the correction of defective vehicles is to make the annual issuance of a vehicle license plate conditioned upon the correction of the vehicle in accordance with any recall campaign. This activity would have to be authorized by each motor vehicle administrator or, in most cases, by State legislation.

8. Defect Recall Insurance

We have checked with a number of major insurance companies about insuring against excessive costs incurred as a result of safety defect recalls. As far as we can determine, no such insurance is currently offered, and the prevailing attitude among insurers is that the cost of premiums for such insurance would be prohibitive for any manufacturer.

9. Manufacturers Making Money on Vehicle Recalls

It is doubtful that motor vehicle manufacturers earn money on a defect recall campaign. While it is true that consumers who bring their vehicles to dealers for the recall correction might, at the same time, buy other service and parts, it must be presumed that many of these services would have occurred even without the recall. Also, the manufacturer does not

benefit from the repair service, but makes money only on the sale of parts. As Mr. Bradford pointed out, if manufacturers in fact made money on a recall, it is doubtful that they would oppose them with such vehemence.

Thank you again for your many helpful suggestions.

Sincerely,

Joan Claybrook
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