



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

AUG 23 2005

400 Seventh Street, S.W.
Washington, D.C. 20590

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Bennett Morgan
President and Chief Operating Officer
Polaris Industries
2100 Highway 55
Medina, MN 55340

NVS-214jry
EA05-002

Dear Mr. Morgan:

As you know, the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) is conducting an Engineering Analysis (EA05-002) to further investigate allegations of spontaneous, unintended transmission downshifting (SDS) in certain V92-series motorcycles (the "subject vehicles") produced by the Victory Motorcycle Division (Victory) of Polaris Industries (Polaris). With this letter, we are requesting additional information about the subject vehicles to assist us in evaluating this concern.

Unless otherwise stated in the text, the following definitions apply to this information request:

- **Subject vehicles:** all MY 1999-2001 Victory brand motorcycles, produced for sale in the U.S.
- **Alleged defect:** any allegation of degraded transmission shift performance including, but not limited to: false neutraling, unintentional, spontaneous transmission downshifting, and/or transmission lock-up involving a subject vehicle.
- **Polaris:** Polaris Industries, all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its divisions, subsidiaries (whether or not incorporated) and affiliated enterprises (including extended service contract (ESC) vendors (e.g., Aon Corporation, etc.) and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Polaris (including all business units and persons previously referred to), who are or, in or after 1993, were



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888-DASH-2-DOT
888-327-4238

involved in any way with any of the following related to the alleged defect in the subject vehicles:

- a. design, engineering, analysis, modification or production (e.g. quality control);
 - b. testing, assessment or evaluation;
 - c. consideration, or recognition of potential or actual defects, reporting, record-keeping and information management, (e.g., complaints, field reports, warranty (including extended warranty (i.e., ESC) related) information, part sales, etc.), analysis, claims, or lawsuits; or
 - d. communication to, from or intended for zone representatives, fleets, dealers, warranty administrators and/or claims personnel, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.
- **Document:** "Document(s)" is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all nonidentical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Polaris, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a nonidentical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)" also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by the manufacturer or not. If a document is not in the English language, provide both the original document and an English translation of the document.

Other Terms: To the extent that they are used in these information requests, the terms "claim," "consumer complaint," "dealer field report," "field report," "fire," "fleet," "good will," "make," "model," "model year," "notice," "property damage," "property damage claim," "rollover," "type," "warranty," "warranty adjustment," and "warranty claim," whether used in singular or in plural form, have the same meaning as found in 49 CFR 579.4.

In order for my staff to evaluate the alleged defect, additional information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following questions, repeating each question (or subsection) verbatim before the response. After Polaris' response to each request, identify the source of the information (person's name, title, and department) and the last date on which the information was gathered. If you have previously furnished ODI with information responsive to any question(s) in this request, you need not resubmit that information (unless otherwise advised). However, please cross-reference your response by the investigation number, date of response, and question number of the earlier submission. Note, we are requesting that some previously supplied information (production quantities, for example) be re-supplied in a different format.

The submitted information is to include, but not be limited to, all written reports or documents, transcriptions, notes, or other documentation of oral communications, and information contained in electronic or other storage media. For any oral communication, identify the date on which the communication took place and the names, positions, and employers of the parties involved, and relate the substance or provide a memorandum or transcript (if one is available) of the communication. If Polaris cannot respond to any specific item, please state why it is unable to do so. If Polaris is unable to supply information in any format that is specifically requested, it should contact Mr. Bob Young of my staff at 202-366-4806 before submitting its response.

If Polaris claims that any information or material responsive to the following items need not be divulged to NHTSA because it is privileged, state the nature of that information or material and identify any document in which it is found by date, subject or title, and name, position title, and employing entity of the person from whom, and all persons to whom it was sent. You must also describe any such privilege that you claim, and explain why you believe it applies.

1. State, by model and model year, the number of subject vehicles Polaris has manufactured for sale or lease in the United States. Separately, for each subject vehicle manufactured to date by Polaris, state the following:
 - a. Vehicle identification number (serial number);
 - b. Model Number (i.e., V92, V92C, V92SC, V92SE, etc.);
 - c. Model Year;
 - d. Production Date;
 - e. Registration Date;
 - f. Warranty Expiration Date;
 - g. Extended Warranty Start Date;
 - h. Extended Warranty End Date;
 - i. Extended Warranty (ESC) Vendor (corporate name, e.g., Aon, etc.);

- j. Customer First Name;
- k. Customer Last Name;
- l. Customer Address;
- m. Customer City;
- n. Customer State;
- o. Customer Zip Code;
- p. Customer Phone number; and
- q. Selling dealer Victory identification number (e.g., 26912, 28468, etc.).

Provide the table in Microsoft Access 2000, or a compatible format, entitled "PRODUCTION DATA." See *Enclosure 1, Data Collection Disc*, for a pre-formatted table that provides further details regarding this submission.

2. State the number of each of the following, received by Polaris, or of which it is otherwise aware, which relate to, or may relate to, the alleged defect:
 - a. Consumer complaints;
 - b. Field reports, including dealer field reports;
 - c. Reports involving a crash, injury, or fatality, based on claims against Polaris involving a death or injury, notices received by Polaris alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;
 - d. Property damage claims;
 - e. Third-party arbitration proceedings where Polaris is or was a party to the arbitration; and
 - f. Lawsuits, both pending and closed, in which Polaris is or was a defendant or codefendant.

For subparts "a" through "d", separately state the total number of each item Polaris has identified (e.g., consumer complaints, field reports, etc.). Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint).

In addition, for items "c" through "f", provide a summary description of the alleged problem, and causal and contributing factors, and Polaris' assessment of the problem, with a summary of the significant underlying facts and evidence. For items "e" and "f", identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information:
 - a. Polaris's file number or other identifier used;
 - b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
 - c. Vehicle owner name (Last, First);
 - d. Vehicle owner street address (e.g., 123 So. Main St.);

- e. Vehicle owner city;
- f. Vehicle owner zip code;
- g. Vehicle owner phone number;
- h. Vehicle VIN;
- i. Vehicle model year;
- j. Vehicle model (e.g., V92, V92C, V92SC, etc.);
- k. Vehicle's mileage at time of incident;
- l. Incident date;
- m. Report or claim date;
- n. Whether a crash is alleged;
- o. Whether property damage is alleged;
- p. Number of alleged injuries, if any;
- q. Number of alleged fatalities, if any; and
- r. A detailed description of how the matter was resolved. Include in this description whether it was through warranty, goodwill, ESC, or customer pay.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "COMPLAINT DATA." *See Enclosure 1, Data Collection Disc, for a pre-formatted table that provides further details regarding this submission.*

4. Produce all documents related to each consumer complaint, field report, crash/injury report, etc. that Polaris includes in its response to Request No. 2. These documents are to be organized by VIN within each information category (i.e., consumer complaints, field reports, crash/injury reports, etc.). For lawsuits, provide a copy of the initial, and any amended, complaints. In addition, for each vehicle identified within the scope of Request No. 2, provide a copy of the Unit Inquiry information (sample enclosed). Each Unit Inquiry document is to be ordered by VIN within each information category.
5. If Polaris has issued any service or technical bulletins, advisories, or other communications to dealers, zone offices, field offices, and/or extended warranty vendors that relate to the alleged defect, provide a copy of each such document. Also, include the latest draft copy of any such communication that Polaris is planning to issue within the next 120 days, and state the date on which it plans to issue the communication. If no such documents have been issued, so state. For each document identified:
 - a. Provide a complete chronology listing all activities or events, including, but not limited to incidents involving the subject component, which led Polaris to believe it needed to undertake the communication;
 - b. Provide a listing (in chronological order) of all information related to any testing through which the need for the communication was identified and/or assessed, even if the testing was being conducted for another purpose. Please provide a copy of each item listed; and
 - c. Provide the number of repairs and/or replacements paid for by Polaris that resulted from the communication identified. List your response by repairing dealer (and include the dealer name, address, and phone number).

6. State, by model and model year, a total count for each of the following categories of claims having been paid by Polaris (including extended warranty vendors) that relate to, or may relate to, the alleged defect: warranty claims; extended warranty claims; claims resolved by a good will repair (e.g., where the customer paid for the labor and Polaris paid for the parts); field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, provide the following information:

- a. Polaris (and/or extended warranty vendor) claim number;
- b. Repair type (basic warranty, extended warranty, goodwill, etc.);
- c. Vehicle owner name and address;
- d. Vehicle owner phone number;
- e. VIN;
- f. Repair Date;
- g. Repair mileage;
- h. Repairing dealer Victory identification number (e.g., 26912, 28468);
- i. Labor operation number;
- j. Problem code;
- k. Replacement part number(s) and description(s);
- l. Whether the vehicle was transported to the dealer for repair (y/n);
- m. Concern stated by customer; and
- n. Comments, if any, by dealer/technician relating to claim and/or repair.

Provide the information for this request in a Microsoft Access 2000 format in a table titled "WARRANTY DATA." See Enclosure 1, Data Collection Disk, for a pre-formatted table providing further details regarding this submission.

7. Provide a listing of all vendors who have offered/are offering third-party extended warranty coverage through authorized Polaris/Victory dealers to purchasers of a subject vehicle. Provide the following for each vendor identified:
- a. Corporate name;
 - b. Contact Information;
 - c. Identity (name, title, and contact information) of the vendor's employee responsible for managing the extended warranty program;
 - d. Identity (name, title, and contact information) of the Polaris employee responsible for managing the extended warranty program;
 - e. Identity (name, title, and contact information (i.e., corporation name (including Polaris where/if applicable), department, address, and phone number) of the person(s) maintaining custody of the records related to extended warranty claims involving a subject vehicle; and
 - f. All documents concerning any communication between Polaris and those vendors you identify that could relate to the alleged defect in any way.
8. State whether the Aon Corporation (and/or any of its subsidiaries) continues to offer extended warranty coverage (e.g., PolarisStar Protection Plus, etc.) for Victory motorcycles through

Victory authorized dealers. Include with your response all contracts and agreements between Polaris and Aon relating to any extended warranty/extended service contract covering a subject vehicle. If Aon is no longer the extended warranty vendor, please explain why not; identify the vendor now offering the coverage, and provide a copy of all contracts between Polaris and the current vendor.

9. Describe, in detail, the process to be used when an owner presents a subject vehicle to a Victory dealer complaining about shift quality/transmission performance. Include in your description, process variations dependent upon owner status, i.e., original owner or second owner; vehicle still within basic warranty coverage term or not; vehicle covered by an in-force extended warranty or not, etc. Provide all documents provided by Polaris to the dealer describing this process.
10. Separately, for both basic and extended warranties applicable to subject vehicles, describe, in detail, the warranty coverage provided. Include in your description, the coverage term and items covered. For each warranty described, provide all warranty-related material given to the vehicle purchaser when buying the bike.
11. Describe, in detail, the circumstances under which Polaris authorized the following repair types involving an out-of-warranty subject vehicle whose owner complained about transmission shift-quality/performance.
 - a. A repair where the customer was not charged;
 - b. A repair where the customer paid for labor, only; and
 - c. A repair where the customer paid for parts, only.

For each description (a-c), identify the vehicles repaired, by VIN.

12. Provide all agendas, minutes, course and/or segment descriptions, etc. from calendar year 2001-2005 In-Field Service Update training sessions. In addition, by calendar year/training location, identify all Polaris personnel conducting the training.
13. Individually, for each and every transmission kit shipped to a certified dealer by Polaris, provide the following in an Excel spreadsheet: transmission kit number (i.e., p/n 2201878, 2202148, 2202149, 2202430, 2202431, 2202432, and 2202433); date shipped, Polaris dealer number for the dealer ordering the kit, and whether the dealer paid for the kit.
14. Provide a listing, in an Excel spreadsheet, of all dealers who are selling/have sold Victory Motorcycles in the United States since 1998. List your response by dealer number (e.g., 26912, 28468, etc.) and include the dealer corporate name, d/b/a, retail store address, phone number, and name of the dealer principal.
15. Identify and provide copies of all documents reflecting any study, survey, and/or investigation (including assessments of motorcycles involved in field failures) pertaining to the alleged defect that are known to Polaris since it responded to our August 4, 2004 information request. Include all pertinent documents, regardless of whether they are in interim, draft, or final form.

16. Provide a "Unit Inquiry – Service & Warranty" printout for each of the 28 reports Polaris was able to identify during its "initial review" of the reports provided by NHTSA as described in Mr. Nakayama's May 27, 2005 letter. For each of the 28 VINs, also identify (by Victory dealer number) the original selling dealer and, if different, each of the servicing dealers completing any identified service work
17. Provide Polaris' assessment of the effect the change in transmissions for the 2001 model year had on transmission durability and shift quality. Identify, and provide legible copies of, any test and/or field data analysis providing qualitative evidence of the design change effectiveness conducted by, or on behalf of, Polaris.
18. Provide all documents concerning the following vehicles, organized chronologically by VIN, whether they pertain to the alleged defect or not.
 - a. 5VPCB15L8Y3003076;
 - b. 5VPCS15D6Y3000802;
 - c. 5VPCB15D4Y3001771;
 - d. 5VPCB15DXX3000221;
 - e. 5VPCB15D2Y3001333; and
 - f. 5VPCB15L9Y3001708.
19. Furnish Polaris' current assessment of the alleged defect in the subject vehicles, including:
 - a. The causal or contributory factors;
 - b. The wear condition of the transmission shift forks that have been involved incidents involving the alleged defect that have been investigated to date – this should be limited to parts that have been inspected, tested, or otherwise analyzed by, or for, Polaris;
 - c. The wear condition of the transmission gear engagement dogs that have been involved in incidents involving the alleged defect that have been investigated to date – this should be limited to parts that have been inspected, tested, or otherwise analyzed by, or for, Polaris;
 - d. The reason for the transmission-related warranty rate differences between the 1999-2000 model years and MY 2001 subject vehicles.

This letter is being sent to Polaris pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information. Polaris failure to respond promptly and fully to this letter could subject Polaris to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) Please note that maximum civil penalties under 49 U.S.C. § 30165 have increased as a result of the recent enactment of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Public Law No. 106-414 (signed November 1, 2000). Section 5(a) of the TREAD Act, codified at 49 U.S.C. § 30165(b), provides for civil penalties of up to \$5,000 per day, with a maximum of \$16,050,000 for a related series of violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. This includes failing to respond to ODI information requests.

If Polaris cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If, on the basis of attorney-client, attorney work product, or other privilege, Polaris does not submit one or more requested documents or items of information in response to this information request, Polaris must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Polaris' response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by October 3, 2005. Please refer to EA05-002jry when responding to this letter. If Polaris finds that it is unable to provide all of the information requested within the time allotted, Polaris must request an extension from Richard Boyd at (202) 366-4933 no later than five business days before the response due date. If Polaris is 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 Polaris then has available, even if an extension has been granted.

If Polaris claims that any of the information or documents provided in response to this information request constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, Polaris must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512, as amended (68 Fed. Reg. 44209 et seq; July 28, 2003), to the Office of Chief Counsel (NCC-113), National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, S.W., Washington, D.C. 20590. Polaris is required to submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted.

If you have any technical questions concerning this matter, please call Bob Young of my staff at (202) 366-4806.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. DeMeter', with a long horizontal line extending to the right.

Kathleen C. DeMeter, Director
Office of Defects Investigation
Enforcement

Enclosure -- CD Rom with a sample Unit Inquiry printout and Access table information.

cc:

Mr. Joseph Eisert, Esq.
Kirkland & Ellis, LLP
655 Fifteenth Street, NW
Washington, DC 20005