

NUS-214
R. Young

19 2006

Ms. Erika Z. Jones
Mayer, Brown, Rowe & Maw, LLP
1909 K Street, NW
Washington, DC 20006-1101

Re: Confidentiality Determination/EA05-002 (April 25, 2006 Polaris Meeting)

Dear Ms. Jones:

This responds to your May 4, 2006 letters requesting confidential treatment for materials presented and discussed by Polaris Industries (Polaris) during an April 25, 2006 meeting held with the agency's Office of Defects Investigation. You state that Polaris provided these materials to the agency voluntarily. Your letters seek confidential treatment for this information on a permanent basis. I am construing your request as seeking confidential treatment for an indefinite period of time.

Polaris contends that this information, which it describes as consisting of a presentation and an analysis designed to explain certain technical issues discussed during the meeting, were voluntarily submitted. You also assert that the disclosure of the materials would cause Polaris to suffer substantial competitive harm. Consequently, you assert that this information is entitled to protection under Exemption 4 of the Freedom of Information Act.

I have decided to grant your request.

Because the materials described above were voluntarily submitted to the agency, we reviewed your claim for confidential treatment under the test announced in *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871 (D.C. Cir. 1992), and its progeny. Under that test, financial or commercial information provided to the government on a voluntary basis is "confidential" for purposes of Exemption 4 of the Freedom of Information Act (FOIA) if it is the kind of information that would customarily not be released to the public by the submitter. Your letter indicates that the information that is the subject of the request is information that you would not customarily release to the public. Therefore, I am according confidential treatment to the information contained in your submission.

Because I have reached my decision based on the *Critical Mass* standard, there is no need to evaluate whether the disclosure of these materials would meet the substantial competitive harm test under *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Subject to the conditions below, this grant of confidential treatment will remain in effect indefinitely.

This grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR § 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information (49 CFR § 512.10). If necessary, you will be notified prior to the release of any information under the procedures established by our regulations (49 CFR § 512.22(b)).

Sincerely,

Otto G. Matheke, III
Senior Attorney

NHTSA:NCC111:Kido:65263:05/19/06: pl1
NCC-113:Subj/Chron, mk, om NCC06-002865
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