

NVS-212
J. Cooper

Thomas C. Baloga
General Manager
Safety Engineering and Intelligent
Transportation Systems
BMW of North America
P.O. Box 1227
Westwood, NJ 07675-1227

JAN 10 2007

Re: Request for Confidential Treatment/Follow-Up Report to PE05-053

Dear Mr. Baloga:

This responds to your November 30, 2006, letter requesting confidential treatment for information submitted by BMW of North America, LLC (BMW) in response to an agency information request in the above-referenced investigation.

BMW contends this information is confidential and related to system design and performance of certain vehicles systems and components. BMW asserts this information is not customarily made public.

I have decided to grant your request.

The information provided by BMW was not submitted in response to any formal agency request. I have therefore determined that BMW provided this information voluntarily. Accordingly, I have reviewed your request under the principles set forth in *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871(D.C. Cir.1992). Under the test set forth in *Critical Mass*, financial or commercial information provided to the government on a voluntary basis is "confidential" for purposes of Exemption 4 if it is the kind of information that would customarily not be released to the public by the submitter.

Your letter indicates the data contained in your response is data that BMW would not customarily release to the public. Accordingly, I am granting confidential treatment to the information contained in your submission.

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,

Original Signed By

Otto G. Matheke, III
Senior Attorney

NHTSA:NCC-111(Transtecs)jj:01/03/07:(1/9/07)
NCC-113 Subj/Chron, jj, om, cyt **NCC06-007610**
Info: Thomas Z. Cooper w/enclosure
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