



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

MAR 25 2009

1200 New Jersey Avenue SE
Washington, DC 20590

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kerry Legg
Safety and Compliance Manager
New Flyer Industries, Ltd.
25 DeBaets Street
Winnipeg, Manitoba R2J 4G5
CANADA

NVS-214gtb
PE09-012

Dear Mr. Legg:

Subject: Diminished Vehicle Braking Performance / Extended Stopping Distance in New Flyer Industries Ltd. Model Year 2004-2008 Transit Busses

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) opened a Preliminary Evaluation (PE09-012) on February 27, 2009, to investigate allegations that certain model year 2004 through 2008 New Flyer Industries vehicles have experienced diminished brake performance and/or extended stopping distance when braking.

ODI opened this Preliminary Evaluation (PE09-012) based on information developed through PE08-058 in which ODI made preliminary inquiries at Meritor WABCO Vehicle Control Systems and Haldex Manufacturing Company. Meritor WABCO Vehicle Control Systems was and is the distributor of certain brake system valves that allegedly had or could malfunction causing or contributing to diminished vehicle braking performance and Haldex Manufacturing Company manufactured the suspect valves.

As one element of PE08-058, ODI requested New Flyer Industries to provide a list "... of complaints ... that may reasonably be construed to indicate diminished brake performance..." Note that this request was intentionally general in that it broadly specified the failure effect (i.e. "diminished brake performance") but was not limited to any particular air valve manufacturer, product line, model number, specific mode of product failure, or the like.

The purpose of PE09-012 is to narrow the immediate focus of this investigation to those vehicles for which the associated safety risk appears to be the most evident. Accordingly, ODI reviewed the summary information that New Flyer provided in response to ODI's inquiry under PE08-058, edited the information to eliminate claims that pertain to vehicles owned and operated outside of the USA, and is provided this amended summary as Appendix A to this request.



Note that ODI has not posted Attachment A to the public file since New Flyer has requested that ODI treat this information as Confidential Business Information.

ODI has also noted that New Flyer filed a Defect Information Report 06V-015 that addressed 103 model year 2004-2005 model D40i, C40LF, L40LF, GE40LF, and D40LF vehicles which had been equipped with air brake relay valves identified by New Flyer Part Number 252499 and date code marking "342A4K." ODI notes that the Attachment A identifies vehicles that are outside the scope of (i.e. not addressed by) recall action 06V-015.

In order for my staff to further evaluate this issue, ODI is requesting that New Flyer Industries provide certain information.

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject Vehicles:** all 2004-2008 model year air braked vehicles manufactured by New Flyer Industries Ltd.
- **Subject Component(s):** all air brake system valves identical or similar to those installed in the vehicles identified in Appendix A.
- **Alleged Defect:** any malfunction of the "subject components" that could cause or contribute to extended vehicle stopping distance when braking.
- **New Flyer Industries, Ltd. ("New Flyer"):** 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 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 to a consultant) by or under the control of New Flyer (including all business units and persons previously referred to), who are or, in or after 2003 were 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 information, part sales), analysis, claims, or lawsuits;
 - d. Communication to, from, or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers; or
 - e. Management of any litigation involving New Flyer's products that relate to the alleged defect.

- **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 non-identical 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 New Flyer, 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 non-identical 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.

Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). When documents are produced and the

documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation.

Please repeat the applicable request verbatim above each response.

After New Flyer's response to each request, identify the source of the information and indicate the last date the information was gathered.

To the extent possible, provide the requested information in Microsoft Access 2003 or Excel 2003 electronic format.

1. For each of the 50 vehicles referenced in Appendix A, provide a table that identifies:
 - (a) New Flyer's part number of the brake control / relay valve(s) that are intended to activate the vehicle's dynamic braking system that New Flyer's investigation has determined contributed to the alleged loss of brake effectiveness / extended stopping distance;
 - (b) The name of New Flyer's supplier(s) of those air valve(s) identified in (1)a above.
 - (c) The supplier's part number for the valve(s) identified in response to Request No. 1(a) above.
2. Provide a table that identifies by vehicle model and vehicle model year, the quantity of vehicles equipped with an identical or essentially similar "subject component" that had allegedly malfunctioned in the vehicles listed in Appendix A.
3. For each of the 50 vehicles referenced in Appendix A, describe the actions that New Flyer has taken to evaluate / validate / refute the complaint and/or investigate the functionality and condition of each of the vehicle brake systems and/or its "subject components."
4. For each of the 50 vehicles referenced in Appendix A, provide New Flyer's findings regarding the vehicle brake system and /or the "subject components" and in particular their role in the allegation that the vehicle braking performance had been compromised / stopping distance extended. State which of these findings are conclusive and which are tentative.
5. For each of the 50 vehicles referenced in Appendix A, describe the actions that New Flyer has taken to evaluate / validate / refute the complaint and/or investigate the functionality and condition of each of the suspect vehicle brake systems and/or its "subject components" in similarly equipped vehicles used in similar operating conditions for similar period of time (i.e. equivalent exposure) such as, but not limited to, sister vehicles in fleet operations.

6. Provide a statement summarizing New Flyer's investigation findings to date.
7. Provide a copy of the five field reports identified as a single New Flyer File Number "107-024" in the data that New Flyer submitted to ODI-NHTSA on December 5, 2008.
8. Provide a summary of New Flyer's planned and/or proposed investigations, field informational initiatives, and/or field correction actions that New Flyer plans to implement within the next 120 days.
9. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles, that New Flyer has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins, advisories, informational documents, training documents, or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that New Flyer is planning to issue within the next 120 days.

This letter is being sent to New Flyer 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. New Flyer's failure to respond promptly and fully to this letter could subject New Flyer 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. *See* 49 CFR 578.6 (as amended by 69 Fed. Reg. 57864 (Sep 28, 2004)). This includes failing to respond to ODI information requests.

If New Flyer 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, New Flyer does not submit one or more requested documents or items of information in response to this information request, New Flyer 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.

New Flyer's response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office **April 29, 2009**.

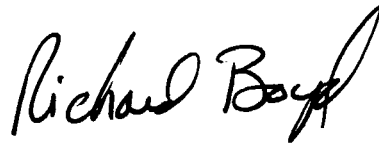
Please refer to PE09-012 in New Flyer's response to this letter. If New Flyer finds that it is unable to provide all of the information requested within the time allotted, New Flyer must request an extension from me at (202) 366-4933 no later than five business days before the

response due date. If New Flyer 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 New Flyer then has available, even if an extension has been granted.

If New Flyer 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, New Flyer must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512, to the Office of Chief Counsel (NCC-110), National Highway Traffic Safety Administration, **Room W41-227, 1200 New Jersey Avenue SE, Washington, D.C. 20590**. New Flyer 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 Mr. Tom Bowman of my staff at (202) 366-2583.

Sincerely,

A handwritten signature in black ink that reads "Richard Boyd". The signature is written in a cursive style with a large, looped initial "R".

Richard Boyd, Chief
Medium and Heavy Duty Vehicle Division
Office of Defects Investigation