Memorandum

U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

CONCURRENCES	
RTG. SYMBOL	NVS210
INITIALS/SIG	
DATE	4/28/14
RTG. SYMBOL	NVS-200
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Subject: Unresponsive Manufacturers **Date:** APR 29 2014

SIGNED BY F Borris

From: Frank S. Borris II, Director
Office of Defects Investigation

**Reply to
Attn of:** NVS-215/cg

SIGNED BY N Lewis

Thru: Nancy L. Lewis
Associate Administrator for Enforcement

To: O. Kevin Vincent
Chief Counsel

We are referring to your office for further enforcement action the attached list of manufacturers. Each of these manufacturers has failed to respond to requests for information regarding safety recalls, or to supply required quarterly reports on their safety recalls. A printed list is attached and is also available electronically at your request. Our respective staffs also have access to a shared folder where this information is housed, together with information on prior manufacturers referred for similar enforcement action. Most manufacturers on this list failed to supply responses to an information request issued pursuant to an Equipment Query (EQ) investigation involving the disposition of recalled equipment, and despite repeated requests and warnings for them to do so.

We consider these refusals to supply required information to be violations of 49 U.S.C. §§ 30120(d) and 30166. Accordingly, we refer this matter to your office for further enforcement activity, including civil penalties, as it deems appropriate.

Attachment:
RMD NCC Referrals April2014

cc: Jennifer Timian, Chief
Recall Management Division

Tim Goodman, Acting Assistant Chief Counsel
For Litigation and Enforcement

Nick Englund, Trial Attorney

Memorandum

U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

Subject: Ricon Corporation Continued Manufacturing Defective Product

Date:

From: Frank S. Borris II, Director
Office of Defects Investigation

**Reply to
Attn of:** NVS-215/cg

Thru: Nancy L. Lewis
Associate Administrator for Enforcement

To: O. Kevin Vincent
Chief Counsel

We are referring Ricon Corporation (Ricon), to your office for consideration of an action for civil penalties. During the course of its investigation into the distribution and supply of certain Ricon defective wheelchair lifts in equipment query (EQ) 13-003, the Office of Defects Investigation (ODI) discovered that Ricon continued manufacturing lifts with the same safety defect. Ricon did not cease its manufacturing of the defective lifts until after ODI repeatedly requested information from Ricon, specific to the ending production date for the defective lifts. And, even then, the company required reminders to file a new recall report that would address these defective lifts.

I. Background

On October 23, 2012, Ricon decided a defect existed in certain model S-Series and K-Series wheelchair lifts manufactured after August 1, 2006, and equipped with an optional armored pendant cable. According to Ricon, the cable could be installed such that it doesn't clear the wheelchair lift. In addition, the cable could be installed without a protective cover or the protective cover could itself be installed incorrectly. As a result, the cable may contact the power lug at the base of the wheelchair lift causing a short circuit that could result in a fire. Approximately 3,780 wheelchair lifts were recalled. This matter was assigned recall number 12E-038. A copy of the 573 Report is attached as Exhibit A.

On January 11, 2013, Ricon expanded its 2012 recall to an additional 295 wheelchair lifts. This matter was assigned recall number 13E-001. A copy of the 573 Report is attached as Exhibit B. The total population of the affected wheelchair lifts from both recall campaigns is 4,075. Recall 13E-001 supersedes Recall 12E-038. The completion rate for the 2013 campaign as of its last quarterly report was 27.3%.

On June 13, 2013, RMD opened an EQ to investigate the supply and distribution of the recalled lifts to ensure that all vehicle manufacturers using the lifts in manufacturing or for modifying new vehicles were aware of the safety defect, and could conduct their own recall campaigns, as appropriate. RMD followed its usual procedure and issued information request (IR) letters to those manufacturers Ricon identified as purchasers of the defective lifts, and to solicit defect decisions, ensure they filed of 573 reports, and ensure they conducted safety recalls as appropriate. In response to the IR letter, twelve manufacturers filed Part 573 Reports and announced plans to conduct safety recalls for their affected vehicles. One manufacturer reported that it did not purchase any lifts with the armored pendant cables, and therefore did not need to conduct a recall. Two other manufacturers have not responded to RMD's inquiries, and are subject to a separate referral to your office for further enforcement action.

As RMD was preparing its closing report for the investigation, it reviewed the Ricon 573 reports again and discovered the manufacturer had not provided the inclusive dates of manufacturing for its defective lifts. Specifically, it had provided a beginning date, but not an ending date. RMD assumed this was a simple housekeeping matter and contacted Ricon to obtain this information. Ricon, however, did not respond and continued to ignore repeated requests for months. Finally, on January 15, 2014, Ricon emailed RMD a letter stating that their production facility mis-handled an engineering change, and 356 defective units were produced and shipped to customers after the two recall campaigns were issued. A copy of Ricon's letter is attached as Exhibit C. Ricon did not offer to recall the missed lifts or submit a 573 Report to recall the lifts they knew were defective and that they had not remedied. RMD initiated that effort and, after repeated requests and threats and another letter demanding a response, on March 27, 2014, Ricon filed a 573 Report with RMD to recall the 356 wheelchair lifts. RMD's letter to Ricon is attached as Exhibit D. Ricon's latest 573 Report was assigned recall number 14E-010. A copy of the 573 Report is attached as Exhibit E.

Ricon's continued manufacture and sale of defective lifts is a blatant violation of both 49 U.S.C. 30118 and of 49 U.S.C. 30112. First, Ricon failed to make a timely defect decision and notify

NHTSA of that decision. Ricon's failure is not an oversight of a matter of days or even weeks. It is months and months of continued production, distribution, sale, and profit from products it had every reason to know were defective. Second, its conduct is now specifically prohibited under the adjustments made to the Safety Act under the MAP-21 Act. Specifically, according to the terms of 49 U.S.C. 30112 (a) (3): …. "a person may not sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States any motor vehicle or motor vehicle equipment if the vehicle or equipment contains a defect related to motor vehicle safety about which notice was given under section 30118 (c) or an order was issued under section 30118 (b)."

Section 30112(b) lists some specific instances under which its prohibitions do not apply. A cursory review of those exceptions demonstrates that none are applicable to this case. Many of those exceptions apply strictly to motor vehicles, and Ricon's conduct concerns equipment; Ricon is not a reseller of equipment after its first purchase; the instant lifts were not exported or intended for export, etc.

As for subsection (b)(1)'s exception for manufacturers that can establish an affirmative defense they had "no reason to know" and "despite exercising reasonable care" that the products they manufactured are defective, that exception plainly does not apply. Ricon had every reason to know its equipment was defective – it made two prior defect decisions as to it. Ricon's admitted failure to apply an engineering change in production demonstrates its lack of any reasonable care.

II. Conclusion

Ricon's continued manufacturing and distribution of defective products after a safety defect decision has been made is a serious matter. Ricon's alleged change in staffing and poor recordkeeping is not an accepted reason under the Safety Act for excusing this continued manufacturing and distribution. Ricon's failures to respond timely and appropriately to ODI's requests for information, and to make a defect decision and conduct a recall on the products once it says it realized it continued making wheelchair lifts with the same defective cable, are aggravating factors. ODI recommends a severe penalty for Ricon's blatant violation of the Safety Act.

Attachments:

Exhibit A: Ricon's 573 Report - 12E-038
Exhibit B: Ricon's 573 Report - 13E-001
Exhibit C: Ricon's Clean Point Letter
Exhibit D: RMD's Response to Ricon's Clean Point Letter
Exhibit E: Ricon's 573 Report - 14E-010

cc: Jennifer Timian, Chief
Recall Management Division

Cynthia Glass
Recall Management Division

Tim Goodman, Acting Assistant Chief Counsel
For Litigation and Enforcement