



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

1200 New Jersey Avenue SE  
Washington, DC 20590

JAN 23 2009

Mr. Thomas C. Baloga  
Vice President  
Engineering, U.S.  
BMW of North America, LLC  
P.O. Box 1227  
Westwood, NJ 07675-1227

Dear Mr. Baloga:

This letter responds to BMW of North America, LLC (BMW) regarding its December 12, 2008 letter advising the agency that BMW will conduct a safety recall to replace the exhaust pipe tips in 2007 and certain 2008 Mini Cooper S vehicles (subject vehicles). Your letter included a 49 CFR § 573.6 defect information report. We are pleased that BMW reconsidered its previous position and decided to undertake a safety recall.

Your letter also goes on to express BMW's disagreement with the National Highway Traffic Safety Administration (NHTSA) regarding my November 26, 2008 Initial Decision concerning the subject vehicles. This disagreement does not change the fact that BMW is conducting a safety recall pursuant to 49 CFR Parts 573 and 577. An attachment to your letter raises several factual and legal points. Although BMW had every opportunity to press those points throughout the administrative process, and could have pursued that process further, BMW instead chose to conduct a safety recall. Therefore, while BMW is welcome to continue to express its views on those issues, its doing so at this point does not change the fact that it is conducting a safety recall.

In its attachment to the 573 report to the agency, BMW writes that "NHTSA's Initial Decision is factually unsupported and legally unsound." BMW goes on to write that the investigation was "not sufficiently thorough to support a determination by NHTSA or BMW that the subject vehicles contain a safety related defect." And, BMW writes, "...the Initial Decision (Report) notably does not contain comparable data regarding the problem experience of other vehicle models." We disagree with BMW on all of these points.

The Initial Decision was justified. This is not a complicated issue and the data are very clear. After the redesign of the Mini Cooper S for MY 2007, the incidents of burn injuries dramatically increased by a factor of ten. The subject vehicles stand alone in regard to the relative frequency of burns related to exhaust pipe contact.



As to comparable data, neither statute nor case law requires the agency to conduct the type of peer review that BMW maintains was lacking here. In any event, BMW has provided the agency with complaint, field report, and Early Warning Report data on all Model Year (MY) 2002 through 2008 Mini Cooper brand vehicles. The data allow a comparison of the subject vehicle to other very similar but yet not identical Mini Cooper vehicles as it regards the design defect of the tail pipe tips. The data clearly demonstrate a strikingly higher rate of injury for the subject vehicles as compared to the earlier MY and model vehicles (Cooper and convertible models). We have also reviewed ODI complaint data and EWR data for all light vehicles, including the vehicles identified by BMW as having caused such tailpipe burns, and considered the opportunity that BMW had to submit data. We are unaware of any other vehicle that has resulted in the rate of burns from exhaust pipe tips that the subject vehicles experienced. More important, we have no doubt that the number of failures in the subject vehicles is significant and that NHTSA could have sustained its burden on that issue had it been litigated.

Furthermore, I do not agree with BMW regarding the seriousness of the leg burn injuries sustained by its customers. The burn injuries are significant and quite painful, with many second-degree burns and at least one third-degree burn, on which BMW received a report.<sup>1</sup> Particularly disturbing is BMW's comparison of these burns to the subjective impressions of consumers about braking lock-ups that were found to be insufficient evidence of a defect in a case decided twenty years ago. The burns experienced by BMW's customers, including in at least two cases young children, are real and not based on subjective impressions. BMW's repeated assertions that its customers should have avoided contact with the hot exhaust pipes simply ignores the unsafe design of these vehicles that increased the likelihood of such contact.

We disagree with BMW's characterization of the design defect identified by NHTSA as "exhaust pipes that extend beyond the bumper face." As stated in the Initial Decision letter and report and in several conversations with BMW, the issue of a defect in design in the subject vehicles does not involve the mere fact that the exhaust pipes extended beyond the bumper face. As stated quite clearly in our Initial Decision, the apparent defect in this case is in the exhaust pipe tips, "which, as designed, protrude beyond the rear bumper cover to such an extent and are so situated that they burn people who are performing completely foreseeable tasks at the rear of the vehicle." We maintain this is a defect.

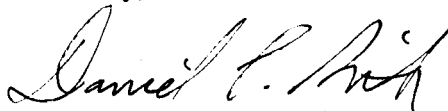
In short, the burns were sufficient in number, in the context of the design of the exhaust tips and in light of the population of the subject vehicles, for NHTSA to consider the vehicles to have a defect. The burns are sufficiently serious that they are safety related.

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<sup>1</sup> See Customer Service Request Detail # 200819201741

If, as BMW maintains in its December 12 letter, BMW wishes to cooperate with NHTSA on matters relating to consumer safety and work constructively with NHTSA in the future, we welcome that development.

Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel C. Smith".

Daniel C. Smith  
Associate Administrator for Enforcement