

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue SE
Washington, DC 20590

In re:)	
)	
MY 2008 ZAP Xebra)	FINDINGS, CONCLUSIONS, AND
NHTSA Recall Nos.)	ORDER ON ZAP'S FAILURE TO
09V-177, 09V-385,)	REASONABLY MEET ITS
12V-230, and 12V-363)	RECALL REMEDY AND
)	NOTIFICATION REQUIREMENTS

Following notice in the Federal Register and a public hearing held October 9, 2012, pursuant to 49 U.S.C. §§ 30118(e), 30120(e), and 49 C.F.R. § 557.8,¹ as set forth below, the National Highway Traffic Safety Administration (“NHTSA”) has determined that ZAP has not reasonably met its recall remedy and notification requirements and orders ZAP to take specified actions to meet those requirements.

FINDINGS

Background Regarding ZAP and the MY 2008 ZAP Xebra

1. ZAP² is a publicly owned company based in Santa Rosa, California. Under the U.S. Small Business Administration’s standards (13 C.F.R. Part 121), ZAP is a small business. ZAP reported to the United States Securities and Exchange Commission (“SEC”) that it had total assets of \$121,488,000 and total liabilities of \$65,893,000 as of the end of 2011. ZAP reported to the SEC that it had a total of 13 full-time employees as of April 9, 2012.

2. ZAP imported the Model Year (“MY”) 2008 ZAP Xebra (“vehicle” or “vehicles”) into the United States. The MY 2008 ZAP Xebra is an electric, three-wheeled motor vehicle with an enclosed sedan or truck body style. As a three-wheeled vehicle, the MY 2008 ZAP

¹ Delegations of authority: 49 C.F.R. §§ 1.95(a), 501.2(a)(1), and 501.8.

² ZAP also does business as ZAP Jonway.

Xebra is a motorcycle pursuant to 49 C.F.R. § 571.3. The MY 2008 ZAP Xebra is required to comply with Federal Motor Vehicle Safety Standard (“FMVSS”) No. 122, *Motorcycle brake systems* (49 C.F.R. § 571.122).³

3. China Qingqi Group Inc., also known as Qingqi Group Motorcycle Co. Ltd., (collectively, “Qingqi Group”) of China fabricated the MY 2008 ZAP Xebra. ZAP is the registered agent in the United States for Qingqi Group. Both ZAP and Qingqi Group are a manufacturer of the MY 2008 ZAP Xebra, pursuant to 49 U.S.C. § 30102(a)(5).

4. As of October 2012, the average market value of a MY 2008 ZAP Xebra is \$3,100. The average market value of the MY 2008 ZAP Xebra is equivalent to the purchase price, less a reasonable allowance for depreciation.

A MY 2008 ZAP Xebra Failed FMVSS No. 122 Compliance Testing

5. A MY 2008 ZAP Xebra purchased by NHTSA from a dealer and tested at Transportation Research Center Inc. (“TRC”) in late 2008 appeared noncompliant with the following requirements of FMVSS No. 122, *Motorcycle brake systems*:

A. FMVSS No. 122, S5.2.1, *Service brake system*, which is part of the first (preburnish) effectiveness requirement, because the vehicle’s service brakes did not stop the vehicle from 30 m.p.h. within 54 feet during NHTSA’s testing at TRC;

B. FMVSS No. 122, S5.3, *Service brake system—second effectiveness*, which tests the brakes following a specified burnish procedure, because the service brakes did not stop the vehicle from 30 m.p.h. within 43 feet during NHTSA’s testing at TRC;

C. FMVSS No. 122, S5.1.2.1, *Master cylinder reservoirs*, because the vehicle did not have a separate reservoir for each brake circuit with each reservoir filler opening having its own cover, seal, and cover retention device;

D. FMVSS No. 122, S5.1.3.1, *Failure indicator lamp*, because the vehicle did not have a failure indicator lamp (which is required to activate for pressure failure, low fluid, and momentarily when the ignition switch is turned to the “on” or “start”

³ Effective October 23, 2012, 49 C.F.R. § 571.122 was redesignated as 49 C.F.R. § 571.122a. 77 FED. REG. 51,650, 51,671 (Aug. 24, 2012). NHTSA intends all references to FMVSS No. 122 herein to refer to 49 C.F.R. § 571.122 prior to this change.

position); and

E. FMVSS No. 122, S5.1.2.2, *Reservoir labeling*, because the vehicle's label did not include the required warning statement and some of the letters were not at the minimum required height.

6. Noncompliances with these requirements of FMVSS No. 122 mean that the vehicles do not stop within a distance that is the minimum standard for motorcycle braking performance and do not meet the minimum standards for equipment to insure safe motorcycle braking performance. Noncompliances with these requirements could result in limited braking and vehicle crashes.

ZAP Initiated Recalls of All MY 2008 ZAP Xebbras

7. According to ZAP, a noncompliance with FMVSS No. 122 was determined to exist in the MY 2008 ZAP Xebra on April 27, 2009.

8. ZAP first filed a notice of a recall of the MY 2008 ZAP Xebra for noncompliance with the stopping distance requirements of FMVSS No. 122 by submitting to NHTSA a Part 573 Defect and Noncompliance Report ("Part 573 Report") prepared May 18, 2009. These reports are referred to as Part 573 Reports because they are filed pursuant to 49 C.F.R. Part 573. NHTSA assigned Recall No. 09V-177 to this recall campaign.

9. ZAP later filed a notice of a recall of the MY 2008 ZAP Xebra for noncompliance with FMVSS No. 122, S5.1.2.1, *Master cylinder reservoirs*, by submitting to NHTSA a second Part 573 Report prepared September 30, 2009 and amended December 9, 2009. NHTSA assigned Recall No. 09V-385 to this recall campaign.

10. Following a lack of progress in implementing these initial 2009 recall campaigns, ZAP agreed with NHTSA to a renewed recall campaign in December 2011 and submitted new Part 573 Reports to NHTSA dated May 18, 2012 for noncompliance with the stopping distance

requirements of FMVSS No. 122, and July 18, 2012 for noncompliance with the master cylinder reservoir requirement of FMVSS No. 122. NHTSA assigned Recall Nos. 12V-230 and 12V-363 to these renewed recall campaigns, respectively.

11. ZAP's recalls include all MY 2008 ZAP Xebbras. ZAP represented that there are 691 vehicles subject to its recalls as of its most recent quarterly reports to NHTSA, dated October 31, 2012.

ZAP Failed to Remedy Any MY 2008 ZAP Xebra

12. In 2009, ZAP elected to repair the MY 2008 ZAP Xebra as its remedy for the noncompliances with FMVSS No. 122.

13. Since 2009, ZAP has repeatedly claimed that it has a repair remedy that brings the MY 2008 ZAP Xebra into full compliance with FMVSS No. 122. ZAP has failed to produce a repair remedy that brings the MY 2008 ZAP Xebra into full compliance with FMVSS No. 122.

14. On at least three occasions (in January 2012, March 2012, and May to June 2012), a MY 2008 ZAP Xebra with ZAP's repair remedy failed FMVSS No. 122 testing at an independent third-party testing facility, KARCO Engineering ("KARCO"), which was engaged by ZAP.

15. MY 2008 ZAP Xebbras with ZAP's repair remedy do not comply with FMVSS No. 122 for the following reasons:

A. A repaired vehicle does not comply with the stopping distance requirements of FMVSS No. 122, as revealed in testing at KARCO;

B. A repaired vehicle does not comply with FMVSS No. 122, S5.1.3.1, *Failure indicator lamp*, because the lamp does not have the required legend "Brake Failure";

C. A repaired vehicle does not comply with FMVSS No. 122, S5.1.3.1, *Failure indicator lamp*, because the lamp's lettering does not meet the minimum height requirement of three thirty-seconds of an inch;

D. A repaired vehicle does not comply with FMVSS No. 122, S5.1.2.2, *Reservoir labeling*, because the reservoir labeling was peeling off the vehicle and was not permanently affixed; and

E. The reservoir labeling shown in ZAP's repair procedures, as submitted to NHTSA on July 30, 2012 in response to a Special Order from NHTSA, does not comply with FMVSS No. 122, S5.1.2.2, *Reservoir labeling*, because it does not include the required wording to only use brake fluid "from a sealed container."

16. ZAP's proposal for implementing a repair remedy, as described in its 2012 Part 573 Reports, is also inadequate. ZAP proposed to either repair each owner's vehicle in Santa Rosa, California, or send the owner an installation kit for making the repairs. ZAP's complex and involved repair procedures require the person fixing the vehicle to place the vehicle on a car lift, remove all the wheels, remove and replace the brake reservoirs, remove and replace the brake pressure sensors, replace the brake lines, replace the brake pads, install a proportioning valve, rewire brake sensors and floats, and bleed the system of air, among other things. Ordinary vehicle owners are not likely competent to perform this type of work correctly. It is not reasonable for ZAP to expect owners to either ship or bring their vehicles to Santa Rosa, California, or fix their vehicles using an installation kit.

17. ZAP has not repaired any MY 2008 ZAP Xebra to be fully compliant with FMVSS No. 122. NHTSA has given no consideration to ZAP's promise, made at the hearing on October 9, 2012, to have a remedy available by December 31, 2012, in light of ZAP's failure to effectuate a remedy prior to the hearing.

18. In a letter dated April 2, 2012, ZAP told NHTSA that if it did not demonstrate a repair remedy that brought the MY 2008 ZAP Xebra into full compliance with FMVSS No. 122 by September 30, 2012, ZAP would initiate a repurchase campaign. ZAP has not initiated a repurchase campaign.

19. ZAP's delay in repairing the vehicles to bring the MY 2008 ZAP Xebbras into full compliance with FMVSS No. 122 is unreasonable. ZAP's failure to initiate a repurchase campaign for the MY 2008 ZAP Xebra is unreasonable.

20. ZAP's failure to remedy the MY 2008 ZAP Xebbras has left noncomplying vehicles on the roadway, which risks the safety of MY 2008 Xebra owners and others on the road.

**ZAP Failed to Notify or Adequately Notify NHTSA,
Owners, Purchasers, and Dealers About its Recalls**

21. In more than three years since ZAP first began the recall of the MY 2008 ZAP Xebra, ZAP has repeatedly failed to meet its obligations to notify NHTSA and MY 2008 ZAP Xebra owners, purchasers, and dealers of the noncompliances and about how it would remedy the noncompliances.

22. ZAP did not timely file a notice of a recall with NHTSA, by submitting a Part 573 Report to NHTSA within five working days of April 27, 2009, the date a noncompliance with FMVSS No. 122 was determined to exist in the MY 2008 ZAP Xebra. ZAP first prepared a Part 573 Report on May 18, 2009, and NHTSA received that Part 573 Report on May 26, 2009.

23. ZAP also repeatedly failed to submit or timely submit quarterly reports to NHTSA for its recalls, as specified by 49 C.F.R. § 573.7. ZAP thus withheld information on the progress of the recalls.

24. ZAP did not notify registered vehicle owners, based on State motor vehicle registration records, about either of its initial 2009 recall campaigns (Recall Nos. 09V-177 and 09V-385). NHTSA reminded ZAP that it needed to obtain mailing information for registered owners and send registered owners recall notices. Despite representing to NHTSA on a number of occasions that it would comply with this requirement, ZAP did not.

25. ZAP sent false or misleading notices about the initial 2009 recall campaigns to purchasers listed in a ZAP internal warranty database, which included some names and addresses for MY 2008 ZAP Xebra purchasers. According to ZAP, it mailed these notices for the noncompliance with the stopping distance requirements of FMVSS No. 122 in September 2009 or January 2010, and for the noncompliance with the master cylinder reservoir requirement in January 2010. The notices for each of these initial 2009 recall campaigns told vehicle owners to contact a dealer as soon as possible to arrange a service date to have their vehicles repaired. The notice for the noncompliance with the stopping distance requirements of FMVSS No. 122 also specifically said instructions for making the repair “have been sent to your dealer.” ZAP had not developed a repair remedy it planned to implement at the time it sent the notices.

26. The recall notices ZAP sent to purchasers were untimely. According to information from ZAP about when it first sent recall notices, ZAP waited either five months or nine months to send recall notices about the noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 09V-177), and approximately four months to send recall notices about the noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 09V-385). In both cases, the delays were well beyond a reasonable time period for mailing recall notices. The internal warranty database ZAP used for names and addresses for recall notices included contact information associated with only about 116 out of the 691 vehicles subject to the recalls.

27. Despite sending recall notices telling owners to contact their dealers as soon as possible to arrange for a repair, ZAP did not send adequate recall notices to its dealers. In its written comments for NHTSA’s October 9, 2012 hearing, ZAP provided NHTSA for the first time a copy of a notice ZAP claims to have sent to dealers on or about September 22, 2009. That

notice does not meet the requirements for a notice to dealers. It does not include a clear statement that identifies the notice as a safety recall notice or an advisory stating that it is a violation of Federal law for a dealer to deliver a new motor vehicle covered by the notice under a sale or lease until the noncompliance is remedied. Also, dealers including ZAP's wholly owned subsidiary, Voltage Vehicles, have continued to sell new MY 2008 ZAP Xebras, even though the vehicles have not been repaired. ZAP's notice to dealers also addressed only its initial 2009 recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 09V-177). ZAP did not send recall notices to its dealers for the noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 09V-385).

28. ZAP did not send follow-up notices to owners about its initial 2009 recall campaigns. In October 2011, after NHTSA determined that there was insufficient progress based on the small number of vehicles ZAP reported as remedied at the time, NHTSA asked ZAP to renotify owners about its recalls. NHTSA specifically reminded ZAP of its obligation to notify registered vehicle owners. ZAP represented in writing that it would send follow-up notifications, but did not do so.

29. ZAP provided notices to NHTSA of its renewed recall campaigns (Recall Nos. 12V-230 and 12V-363) in May and July 2012, but failed to send notices to owners about those renewed recall campaigns until the week of NHTSA's October 9, 2012 public hearing to determine whether ZAP met its recall requirements. ZAP represented that it mailed notices of its recalls to owners based on State motor vehicle registration records the day prior to NHTSA's public hearing. Those notices reveal that ZAP has not yet developed a remedy.

30. ZAP has not sent recall notices to its dealers for its renewed recall campaigns. ZAP submitted multiple drafts of a notice to dealers to NHTSA for review. These draft notices

did not comply with the requirements for a notice to dealers or conflicted with ZAP's draft owner notice. ZAP has not sent NHTSA a draft of an adequate notice to dealers.

31. ZAP's failure to notify or adequately notify owners, purchasers, and dealers about its recalls of the MY 2008 ZAP Xebra left those people impacted by the recalls uninformed.

Complaints to NHTSA Regarding ZAP's Recalls

32. NHTSA received complaints that evidence ZAP's failure to repair the MY 2008 ZAP Xebra within a reasonable time. An owner of a MY 2008 ZAP Xebra who first received a recall notice in approximately October 2009, complained to NHTSA that his vehicle still had not been repaired when he sold it in January 2012. A former service manager of a ZAP dealership also complained to NHTSA that he was unable to get accurate or complete information from ZAP about the recalls. He reported that ZAP repeatedly told him that parts would be available within two weeks, but he was never able to get parts to repair a customer's MY 2008 ZAP Xebra.

CONCLUSIONS

1. ZAP has not reasonably met the remedy requirements under 49 U.S.C. § 30120.

A. ZAP chose to remedy the MY 2008 ZAP Xebbras to make them compliant with FMVSS No. 122 by repairing them, according to its Part 573 Reports, recall notices, and correspondence with NHTSA. ZAP has not repaired these vehicles to be compliant with FMVSS No. 122 within a reasonable time. This is a violation of 49 U.S.C. §§ 30120(a) and (c).

B. After failing to repair the MY 2008 ZAP Xebbras adequately within a reasonable time, ZAP failed to refund the purchase price of the vehicles, less a reasonable allowance for depreciation (or replace the vehicles without charge with identical or reasonably equivalent vehicles). This is a violation of 49 U.S.C. § 30120(c).

2. ZAP has not reasonably met the notification requirements under 49 U.S.C. §§

30118-30119 and 49 C.F.R. Parts 573, 577 and 579.

A. ZAP failed to notify owners, purchasers, and dealers of its recalls as follows:

(1) ZAP failed to send recall notices to owners based on State motor vehicle registration records (or other sources), as required by 49 U.S.C. § 30119(d)(1) and 49 C.F.R. § 577.7, for its initial 2009 recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 09V-177). This is a violation of 49 U.S.C. §§ 30118(c), 30119(d), and 49 C.F.R. §§ 577.5 and 577.7.

(2) ZAP failed to send recall notices to owners based on State motor vehicle registration records (or other sources), as required by 49 U.S.C. § 30119(d)(1) and 49 C.F.R. § 577.7, for its initial 2009 recall campaign for noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 09V-385). This is a violation of 49 U.S.C. §§ 30118(c), 30119(d), and 49 C.F.R. §§ 577.5 and 577.7.

(3) ZAP failed to send recall notices to dealers for its initial 2009 recall campaign for noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 09V-385). This is a violation of 49 U.S.C. § 30118(c) and 49 C.F.R. § 577.13.

(4) ZAP failed to send recall notices to dealers for its renewed recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 12V-230). This is a violation of 49 U.S.C. § 30118(c) and 49 C.F.R. § 577.13.

(5) ZAP failed to send recall notices to dealers for its renewed recall campaign for noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 12V-363). This is a violation of 49 U.S.C. § 30118(c) and 49 C.F.R. § 577.13.

(6) ZAP failed to send renotifications to owners for its initial 2009 recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 09V-177). This is a violation of 49 U.S.C. § 30119(e) and 49 C.F.R. § 577.10.

(7) ZAP failed to send renotifications to owners for its initial 2009 recall campaign for noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 09V-385). This is a violation of 49 U.S.C. § 30119(e) and 49 C.F.R. § 577.10.

B. ZAP failed to adequately notify owners, purchasers, and dealers of its recalls as follows:

(1) ZAP failed to send recall notices to dealers containing required

information for its initial 2009 recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 09V-177). This is a violation of 49 C.F.R. § 577.13.

(2) ZAP failed to timely send recall notices for its initial 2009 recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 09V-177). This is a violation of 49 U.S.C. § 30119(c) and 49 C.F.R. § 577.7.

(3) ZAP failed to timely send recall notices for its initial 2009 recall campaign for noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 09V-385). This is a violation of 49 U.S.C. § 30119(c) and 49 C.F.R. § 577.7.

(4) ZAP failed to timely send recall notices for its renewed recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 12V-230). This is a violation of 49 U.S.C. § 30119(c) and 49 C.F.R. § 577.7.

(5) ZAP failed to timely send recall notices for its renewed recall campaign for noncompliance with the master cylinder reservoir requirement of FMVSS No. 122 (Recall No. 12V-363). This is a violation of 49 U.S.C. § 30119(c) and 49 C.F.R. § 577.7.

C. ZAP failed to adequately notify NHTSA about its recalls as follows:

(1) ZAP failed to timely notify NHTSA within five working days after a noncompliance with FMVSS No. 122 was determined to exist. This is a violation of 49 U.S.C. § 30119(c) and 49 C.F.R. § 573.6.

(2) ZAP repeatedly failed to submit or timely submit quarterly reports to NHTSA for its recalls. This is a violation of 49 C.F.R. § 573.7.

(3) ZAP failed to timely submit a copy to NHTSA of the recall notices to it sent to dealers for its initial 2009 recall campaign for noncompliance with the stopping distance requirements of FMVSS No. 122 (Recall No. 09V-177). This is a violation of 49 C.F.R. § 579.5.

ORDER

Based on the Findings and Conclusions set forth above, ZAP is ordered to remedy the MY 2008 ZAP Xebra by refunding the purchase price, less a reasonable allowance for depreciation (the “refund remedy”), and to provide notice of this refund remedy to owners,

purchasers, and dealers. Noncompliant vehicles may not be sold, offered for sale, introduced or delivered into interstate commerce. 49 U.S.C. § 30112. To prevent resale, offering for sale, and introduction or delivery into interstate commerce of the noncompliant vehicles, ZAP is ordered to pick up each vehicle for which it provides a refund and submit documentation of the destruction or permanent disablement of such vehicles as specified below. ZAP shall take the following specified actions to meet its recall remedy and notification requirements and to provide information to NHTSA, pursuant to 49 U.S.C. §§ 30112, 30118-30120, 30166, and 49 C.F.R. Parts 573 and 577.

1. By November 26, 2012, ZAP shall provide a written report to NHTSA stating, under oath, that it will remedy the MY 2008 ZAP Xebra by refunding each owner of a MY 2008 ZAP Xebra the average market value of \$3,100, as required by this Order.
2. By November 26, 2012, ZAP shall submit to NHTSA for approval a draft notification letter to owners consistent with the requirements of 49 C.F.R. § 577.10, which specifies that ZAP will provide a remedy of refunding each owner of a MY 2008 ZAP Xebra the average market value of \$3,100 and specifies a method for owners to request such a refund (including requirements that the owner transfer title and possession of the MY 2008 ZAP Xebra to ZAP upon payment). If NHTSA does not approve the draft notification, ZAP shall provide NHTSA with a revised draft incorporating NHTSA's revisions within five business days of receiving NHTSA's revisions to ZAP's draft.
3. Within five business days of receiving NHTSA's written approval on a draft notification to owners or revisions to ZAP's draft, ZAP shall mail the notification by registered mail with return receipt service to each registered owner based on State motor vehicle registration records (or, if the vehicle is not identified in any State motor vehicle registration records, most recent purchaser, in accordance with 49 U.S.C. § 30119(d) and 49 C.F.R. § 577.7) of a MY 2008 ZAP Xebra.
4. On the same date of mailing the notification to owners, ZAP shall mail a notification by registered mail with return receipt service to each MY 2008 ZAP Xebra dealer, consistent with the requirements of 49 C.F.R. § 577.13. This notice shall specify that ZAP will provide a remedy of refunding each owner of a MY 2008 ZAP Xebra the average market value of \$3,100.

5. Within five business days of mailing the notification to owners, ZAP shall provide NHTSA with a list of the name, address, and vehicle identification number (“VIN”) for each person to whom ZAP mailed a notification. This list shall account for each of the 691 vehicles subject to the recalls. If ZAP becomes aware that an owner did not receive the notice (whether because the notice was returned by mail, or otherwise), ZAP shall make a reasonable effort to obtain current contact information for that owner and to resend the notice to the owner. Within five business days of becoming aware that an owner did not receive the notice, ZAP shall notify NHTSA and provide NHTSA with a written declaration under oath identifying the reasonable effort made by ZAP to resend the notice to the owner.
6. Within five business days of mailing the notification to dealers, ZAP shall provide NHTSA with a copy of the notification and a list of the name and address for each dealer to whom ZAP mailed a notification. If ZAP becomes aware that a dealer did not receive the notice (whether because the notice was returned by mail, or otherwise), ZAP shall make a reasonable effort to obtain current contact information for that dealer and to resend the notice to the dealer. Within five business days of becoming aware that a dealer did not receive the notice, ZAP shall notify NHTSA and provide NHTSA with a written declaration under oath identifying the reasonable effort made by ZAP to resend the notice to the dealer.
7. For any MY 2008 ZAP Xebra owner who requests a refund of \$3,100, ZAP shall make a payment to the owner by a bank cashier’s check no later than 30 calendar days of the date of the owner’s request for a refund. ZAP may condition payment on the owner’s transfer of title and possession of the MY 2008 ZAP Xebra to ZAP upon payment.
8. For any title to a MY 2008 ZAP Xebra in ZAP’s possession (whether because the owner requested a refund or otherwise), within 10 days of obtaining the title or within 10 days of this Order, whichever is later, ZAP shall permanently mark the title on each side “Junk Automobile—Does Not Meet Federal Standards.” Within 10 days of so marking the title for a vehicle, ZAP shall hire an approved third-party data consolidator⁴ to report the vehicle to the National Motor Vehicle Title Information System as a Junk Automobile.
9. For any MY 2008 ZAP Xebra for which ZAP issues a refund, ZAP shall arrange to pick up, transport, and dispose of the vehicle (as specified in paragraph 10 of

⁴ A list of approved third-party data consolidators is available on the National Motor Vehicle Title Information System website at http://www.vehiclehistory.gov/nmvtis_auto.html.

this Order) at ZAP's sole expense no later than 30 calendar days of issuing a refund.

10. For any MY 2008 ZAP Xebra in ZAP's possession (whether because the owner requested a refund or otherwise), within 30 calendar days of having taken possession of the vehicle, ZAP shall either (1) permanently disable the MY 2008 ZAP Xebra by removing the batteries and disposing of them in a lawful manner and storing the remainder of the vehicle on ZAP's own property, or (2) deliver the vehicle to a facility with the capability to crush or shred a motor vehicle and that is a participant in the End of Life Vehicle Solutions (ELVS) Mercury Switch Recovery Program.⁵ ZAP shall deliver the vehicle to such a facility for the purpose of disposing of the vehicle by crushing or shredding. ZAP shall expressly engage the disposal facility to remove and dispose of the batteries, all antifreeze, lead products, mercury switches, and such other toxic or hazardous vehicle components prior to crushing or shredding in accordance with applicable Federal and State requirements.

11. Within one month of mailing the notification to owners and again within every month thereafter for a total of 18 occurrences, ZAP shall provide NHTSA with a list as specified by 49 C.F.R. § 573.8, which includes the status of the refund remedy with respect to each MY 2008 ZAP Xebra. The status of the refund remedy for each vehicle shall include: (1) a statement of whether the owner of the vehicle responded to ZAP's notice; (2) a description of the owner's response, if any (such as a request for a refund), including the date of the response; and (3) a description of any action taken by ZAP (such as payment of a refund), including the date of such action. For each MY 2008 ZAP Xebra for which ZAP issues a refund, the list shall also state the dates on which ZAP picked up the vehicle, and either (1) permanently disabled the vehicle and stored it on its own property, or (2) delivered the vehicle to a facility, as specified above, for the purpose of disposing of the vehicle by crushing or shredding. ZAP shall provide a written declaration under oath certifying that the information is accurate and complete and, where the vehicle has been delivered to a facility for crushing or shredding, attaching a statement from the disposal facility or facilities verifying that the vehicles were disposed of as required. For each such vehicle, whether delivered to a facility or disabled and retained by ZAP on its property, ZAP shall submit with its monthly report a copy of the title, marked as required by paragraph 8, above

⁵ Participants in the End of Life Vehicle Solutions (ELVS) Mercury Switch Recovery Program are listed in a database accessible on the website <http://www.eqonline.com/services/ELVS-Mercury-Switch-Recovery-Program/state-report-all.asp?state=all>.

12. At the same time as each list required by paragraph 11 of this Order, ZAP shall provide NHTSA with a copy of each return receipt for the notifications ZAP mailed to owners and dealers. ZAP shall also provide NHTSA with a copy of each title to a MY 2008 ZAP Xebra marked as required by paragraph 8 of this Order. ZAP need not provide NHTSA a copy of any return receipt or title ZAP previously provided to NHTSA. If ZAP has no new return receipts or titles in any given month, ZAP shall provide NHTSA with a written declaration under oath so stating.

ZAP shall provide each required submission to: Office of the Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue SE, Washington, DC 20590.

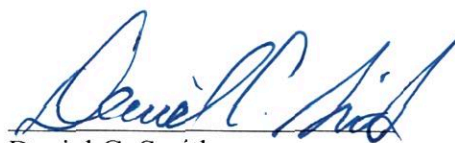
If NHTSA determines that these specified actions do not result in an adequate number of vehicles being remedied, NHTSA may require ZAP to take additional specified action, and may take any other action authorized by law.

By issuing this Order, NHTSA is not foregoing any remedies available to it under the law, including without limitation any civil or criminal action to seek penalties or other appropriate relief. NHTSA reserves all rights and remedies available to enforce any violation cited in this Order and to enforce this Order.

This Order does not waive or modify ZAP's responsibility and obligation to comply with all applicable laws.

This Order is effective upon the date of issuance.

Issued: November 13, 2012

A handwritten signature in blue ink, appearing to read "Daniel C. Smith". The signature is written in a cursive style with a horizontal line underneath it.

Daniel C. Smith
Senior Associate Administrator
for Vehicle Safety