

So what do we conclude?

- ◆ **The data is in... and the findings are irrefutable**
 - too many people are dying or being severely injured, particularly among children
 - the economic and public health burden is staggering
 - ATVs are being operated unsafely and not in accordance with manufacture's guidelines
- ◆ **Data on non-fatal injuries is poor**
- ◆ **Reasonable legislation has not been passed**
- ◆ **Why safety laws for bicycles and motorcycles and not ATVs?**
- ◆ **Are ATVs as safe as they can be?**
- ◆ **There's still a lot more to do!**

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Publisher of Consumer Reports

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COMMENTS OF CONSUMERS UNION
to the
CONSUMER PRODUCT SAFETY COMMISSION
on

Petition Requesting Ban of **All-Terrain Vehicles** Sold for Use by Children Under
16 Years Old
Petition CP-02-4/HP-02-1
Petition on ATVs
***64353**

Consumers Union submits these comments in response to the Commission's request for comments on the petition filed with it by the Consumer Federation of America (CFA), the Natural Trails and Waters Coalition (NTWC), and other groups requesting that the Commission ban the sale of adult-size four wheel all-terrain vehicles ("ATVs") sold for the use of children under 16 years of age.

I. Introduction

Consumers Union, publisher of *Consumer Reports*, believes that the steady increase in the number of injuries and deaths to users of ATVs over the past two decades is alarming and must be addressed by the Consumer Product Safety Commission, the federal agency responsible for reducing or eliminating unreasonable risk to consumers from the use of consumer products under its jurisdiction. In our view, the petitioners have done the public a valuable service in conducting extensive research and analysis (using the agency's own statistics) to demonstrate in stark relief what we believe is a growing public health crisis for ATV users. The facts highlighted below illustrate all too clearly that the tragic injuries and deaths among all ATV users, but especially young people, will only increase unless some action is taken to reverse these unmistakable trends:

- Between 1993 and 2001, the number of injuries caused by ATV-related accidents more than doubled, with 111,700 ATV accidents occurring in 2001.
- Between 1993 and 2001, the number of ATV-related injuries suffered by children under sixteen increased 94% to 34,800 in 2001.
- Although children under sixteen account for only some 14% of all ATV drivers, they

- suffer 37% of all injuries and 38% total fatalities.
- Between 1982 and 2001, 1,714 children under age 16 (38% of the total) have been killed in ATV incidents. 799 of those were youngsters under 12 years of age.
 - Consumers injured while driving ATVs required hospitalization four times more frequently than the average for injured users of all other consumer products—nearly 16% compared to 4% respectively.
 - According to CPSC data, the risk of injury for riders of four-wheel ATVs increased from 164.7 injuries per 10,000 ATVs in 1993 to 261.8 injuries per 10,000 in 2001. The 2001 injury rate is nearly as high as it was in 1988 (275.8 injuries per 10,000), when the consent agreement (discussed at length below) between CPSC and the ATV manufacturers was entered into. The consent agreement came about, in large part, because of the alarm about injuries to riders of three-wheel ATVs.
 - ATV manufacturers, including a handful of newcomers entering the market since the expiration of the 1988 CPSC-ATV industry consent agreement, have manufactured and marketed bigger and faster ATVs, with no special features to reduce the hazards such machines pose to riders, particularly young riders.
 - Between 1993 and 2001, ATV-related advertising jumped nearly 6.5-fold from \$5.8 million to \$37.3 million.
 - In 1988, only 2.3 million ATVs were in use. That number has more than tripled, with 7 million ATVs estimated to be in use today and the industry expecting to sell one million ATVs per year by 2004.

II. ATVs and those who ride them are subject to few safety requirements

In contrast to ATVs, while the number of automobiles on the road and millions of miles driven have increased significantly, auto injury and death rates have fallen.¹ In fact, automobiles have become increasingly safer, with safer designs, mandatory safety standards, new safety equipment and rigorous testing by the National Highway Traffic Safety Administration (NHTSA)—all of which have helped reduce the injuries and fatalities per vehicle mile driven. The inverse is true for ATVs: the more ATVs in the marketplace, with greater speed and size than ever before, the higher the numbers of injuries and deaths.

Riders of ATVs enjoy none of the safety benefits experienced by drivers and passengers in automobiles. There are no mandatory safety standards that apply to ATVs to reduce or eliminate the serious risks associated with their use. In contrast, automobile occupants enjoy protection from reinforced doors, roofs or windshields (each of which is subject to mandatory safety standards set and enforced by NHTSA), use safety belts to prevent them from being thrown from the vehicle, and have the safety benefit and protection from air bags. Indeed, considerable attention has been paid to reducing death and injury. Yet, ATV drivers are operating vehicles that are inherently unstable,² and navigated over rough, unfamiliar terrain, which only heightens

¹ The overall fatality rate from motor vehicle crashes declined from 1.7 deaths per million VMT (Vehicle Miles Traveled) in 1994 to 1.5 deaths per million in 2000. This is the latest available data from NHTSA's Report, "The Economic Impact of Motor Vehicle Crashes 2000."

² See footnote 7 for the Department of Justice description of the notorious instability of ATVs.

the danger of flipping backward or rolling over. And most importantly, many of the deaths and injuries occur to consumers too young and too small to control their own safety or the safe use by others.

Every state in America requires automobile drivers to pass written and performance-based driving tests to receive a driver's license. 43 states and the District of Columbia require drivers to be at least 16 years old to obtain a license. Those rules are in sharp contrast to the dearth of safety rules and regulations covering the competence and ability of users of ATVs:

- 24 states have no minimum age limit for operating an ATV
- 42 states do not require a license to drive an ATV
- 35 states do not require any special training to drive an ATV

III. The CPSC-ATV Industry Consent Decree

In 1988, CPSC entered into a consent decree with ATV manufacturers in lieu of continuing a lawsuit against them. CPSC's suit had asked a federal court to declare ATVs to be "imminently dangerous consumer products," and sought to require manufacturers to 1) end production of three-wheel ATVs, 2) repurchase all three-wheel ATVs from dealer inventory, 3) offer financial incentives to encourage owners of three wheel ATVs to return them, and 4) provide safety education.

The consent decree, which was approved by the federal district court, included the following major elements:

- Manufacturers would cease production of any new three-wheel ATVs—an action they had largely already taken by the time the decree was approved;
- Manufacturers would recommend that ATVs with engine sizes greater than 70cc be sold only for children 12 and older, and that "adult-size" ATVs, with engines greater than 90cc, be sold only for individuals 16 and older;
- ATVs would be labeled to warn purchasers that children should not ride adult-size ATVs;
- Manufacturers would ensure that their dealers make available to actual and prospective buyers a CPSC-approved video on ATV safety, and a display a four foot by four foot poster showing updated ATV death statistics;
- Manufacturers would use their best efforts to ensure that dealers complied with the age recommendations and communicate them to prospective purchasers; and
- Manufacturers would launch a public awareness campaign designed to alert consumers to the hazards associated with ATVs.

The final decree did not include key elements of the CPSC lawsuit, including encouraging owners of three-wheel ATVs to return them to dealers or requiring owners to repurchase all three-wheel ATVs from dealer inventory.

IV. Consumers Union's History of Concern About Hazards of All-Terrain Vehicles

Consumers Union, publisher of *Consumer Reports*, has long expressed concerns about the injuries and deaths resulting from use of ATVs. In January of 1988, the *Washington Post* published a Letter to the Editor³ from Dr. R. David Pittle, one of the signatories of these comments, and former Consumer Product Safety Commissioner, and, in 1988, the Technical Director of Consumers Union. In his letter, Dr. Pittle, on behalf of Consumers Union, called the consent decree "no bargain for consumers," and argued that:

. . . [I]nstead of filing its lawsuit seeking recall of ATVs as imminent hazards, it [CPSC] entered into a preliminary settlement with manufacturers. Unfortunately, the deal the commission made was as poorly designed and dangerous for consumers as the ATVs themselves. And Terrence Scanlon's [CPSC Chairman at the time the agreement was struck] defense of the agreement offered little justification for such a weak settlement.

Pittle's letter also noted that:

. . . [B]ecause of several unique design characteristics, ATVs can veer out of control without warning, hurling rider and machine at speeds up to 50 mph helter-skelter into an unforgiving environment full of bumps, potholes, rocks and tree stumps. . . Amid all the claims of fun, the down side has been devastating: 900 deaths and 330,000 injuries (requiring emergency room care) alone since 1982, almost half to kids younger than 16.

Dr. Pittle's letter argued that the consent agreement was weak.

This agreement has no teeth—no required measures of performance and no sanctions for noncompliance by retailers—and only vague promises by manufacturers to use 'best efforts' in carrying out its terms.

The letter concluded by saying the program was likely to be ineffective, especially on a continuing basis, in reducing the injuries and deaths to ATV riders, particularly children under 16.

. . . [I]t's hard to imagine thousands of riders, many between 10 and 16 years old, herding into classes across the country. It is patently naïve—indeed irresponsible—to believe such a strategy can substantially reduce the continuing rate of death and injury. Sadly, the same population that has already suffered hundreds of deaths and thousands of injuries remains at risk and can't help piling up more gruesome statistics.

³ "Those ATVs Should Have Been Recalled," R. David Pittle, *Washington Post*, January 23, 1988.

The current statistics highlighted herein—indicating an alarming increase in deaths and injuries from ATV use over the last nine years—demonstrate that CU’s concerns expressed in 1988 have, unfortunately, come to pass. In 1993, when ATV injuries and deaths began their steep rise,⁴ there were 211 deaths. In 2000, that number was at least 547, according to CPSC statistics. That is a 159% increase. As noted above, the number of injuries during this same period doubled to 111,700 by 2001.

CU has continued to express its concerns publicly about ATV hazards in the pages of *Consumer Reports (CR)*.

In June 1994, CR published an article titled “All-terrain vehicles: Still a danger,” describing the failure of the CPSC consent agreement. “But in the six years since the CPSC acted, deaths of children under 16 have dropped only 9%, to 416. ATVs injure some 24,000 children under 16 each year, according to CPSC data. And if our experience is any indication, some dealers wink at the safety warnings.” The CR article quoted the CPSC as estimating that “80-85% of dealers are now in compliance, up from 56% in 1989.” But CR had sent a reporter out to an ATV dealership and the salesperson tried to sell him a 195cc, 320-pound ATV for his 10-year-old son, telling the reporter, “he’ll grow into it.” More recently, in November 8, 2002, *Good Morning America’s* investigative report titled “Rough Ride: Adult-Sized ATVs Pose Dangers to Children,” found nine of ten dealers recommending sales of adult-size ATVs to children.

- In June 1998, CR reported that 1,100 children under 16 had been killed and some 400,000 injured on ATVs in the last 15 years, accounting for “just under half the deaths and injuries on ATVs.” The magazine advised that “stronger protections are needed.” CR also suggested that ATV riders heed these rules:
 - ◆ Do not ride a 3-wheeled ATV—they’re too unstable. The industry agreed to stop making them, but old ones are still out there.
 - ◆ There are several sizes of ATV, some with engines as large as 500cc. No child under 16 should be on a vehicle with a 90cc engine or larger.
 - ◆ Don’t carry passengers.
 - ◆ Wear a bike helmet.
 - ◆ Take the free training course manufacturers offer new owners and their families.

April 1998 marked the expiration of the federal consent decree with all six⁵ ATV manufacturers. In 1998, CU’s Washington DC office issued a press release noting that “new government data”⁶ show the decree has not worked well” and called on Congress

⁴ Neither CPSC nor the authors of the petition before the CPSC have a definitive explanation for why injuries and deaths began to rise after 1993. CPSC has made it clear that increased usage alone does not account for the higher numbers. Among the possible explanations is the increase in bigger, faster and more powerful ATVs coming onto the market around 1993.

⁵ More manufacturers are now making ATVs than in 1998.

⁶ The study, *ATV Exposure, Injury, Death and Risk Studies*, showed that injuries to children under 16 may be as high as 47% of all injuries, comparable to the percent of injury reported in 1985, prior to the implementation of the consent decree. The study also showed that 95% of children were driving vehicles

to provide incentives for states to ban use of ATVs children under 16. We made clear in our press release:

[S]ince the 1988 consent decree on ATVs was signed, an estimated 2040 users have died and an estimated 637,000 people were injured seriously enough using these machines to require emergency room treatment.

CU, while acknowledging that consumers would be even worse off without the consent decree, noted that the decree was most effective in its early years, bringing injuries and deaths down significantly:

The overall number of ATVs in use has doubled from 1985. . . Over that time, the number of injuries has dropped 50%. . . Unfortunately, in the past four years, the consent decree hasn't managed to further reduce the number of injuries and deaths, which have remained constant each year over that period.

In short, the safety benefits of the consent decree were not nearly enough and not enduring. The problem increased dramatically once the luster of the consent decree wore off.

V. Recommendations for Consumer Product Safety Commission Action

Overall, the safety history of ATVs is a sad one, characterized by an unreasonable risk born by consumers too young, too small, and not mature enough to fend for themselves. We believe this history is of great significance to the current petition before CPSC, and have thus taken pains to recount it in some detail above. This problem is not new, and we have all gained considerable experience—in what works and what does not work—in reducing the rates of injury and death on a sustained and permanent basis.

We agree with petitioners that the alarming increase in deaths and injuries associated with ATV use calls for a new and strong response from the CPSC. Petitioners specifically request that the Commission ban the sale of adult-size four wheel all-terrain vehicles for the use of children under sixteen years of age. This proposed “youth ban” on the use of ATVs is not a new proposal. Recent data on ATV injuries and deaths, considered in the context of a prior federal court of appeals decision⁷ on this very issue, provide fertile ground for the CPSC to give serious consideration to a youth ban once again. We review this court case and its impact on this petition below.

larger than those recommended for their age, demonstrating that the Consent Decree proviso to manufacturers that they recommend that ATVs with engines greater than 90cc not be sold for use by children was totally ineffective.

⁷ Consumer Federation of America vs. the Consumer Product Safety Commission, 990 F.2d 1298, 1993.

A. Ban on the sale of adult-size four wheel all-terrain vehicles sold for the use of children under sixteen years of age: 1993 D.C. Federal Court of Appeals decision

When CPSC entered into the consent decree with ATV manufacturers in 1988,⁸ it declined to pursue a key protection that consumer groups and the state attorneys general, among others, believed was of critical importance: a ban on the sale of adult size ATVs for use by youngsters under 16 years of age. This is, of course, the same issue that forms the basis of the petition currently before the Commission.

CFA and U.S. PIRG challenged this weakness of the consent decree in federal court in a lawsuit seeking review of CPSC's decision. On April 9, 1993, the Court of Appeals for the District of Columbia rendered its decision in the case of Consumer Federation of America vs. the Consumer Product Safety Commission.⁹ The court, in a decision written by current U.S. Supreme Court Justice Ruth Bader Ginsburg, sitting at that time on the DC Circuit, denied the petition for review of the CPSC's decision. Judge Ginsburg wrote: "In view of the Commission's ongoing efforts to check ATV safety hazards by other means, and CPSC's indication that it would reconsider the rulemaking route if responses to ATV hazards proved inadequate, we deny the petition for review."¹⁰ (emphasis added).

In reaching its decision, the court was relying on a CPSC staff report presented in March 1991. This report found that ATV-related injuries treated in emergency rooms in U.S. hospitals, though "still relatively high," had declined from about 86,000 in 1986 to about 52,000 in 1990.¹¹ Injuries on three-wheeled vehicles—not marketed since the consent decree—had declined sharply, and even the injury rate for four-wheel ATVs in use had declined from 2.76 in vehicles in 1986 to 1.92 in vehicles in 1990. Total ATV deaths had declined from an estimated 347 in 1986 to about 250 in 1989. For riders under 16 years old, CPSC data showed a marked drop in deaths in three-wheel ATV use—however, there was no statistically significant decrease associated with four-wheel vehicles.

⁸ The Department of Justice (DOJ), representing CPSC and in view of the alarming rise in deaths and injuries from ATVs in the mid-1980s, filed an "imminent hazard" lawsuit against the major distributors of ATVs on December 30, 1987. In its suit, the Justice Department argued that the appearance of ATVs creates "the illusion of safe, stable easy-to-operate vehicle," giving riders "no hint of the crippling or fatal accidents that can suddenly occur, even while attempting to execute unexceptional, simple riding maneuvers." The government also charged defendants with misleading the public, especially children, by advertising ATVs as products easily operated without training or protective gear and on all types of terrain. That same day, however, the Commission and the defendant ATV distributors entered into the Consent Decree. The Final Consent Decree was filed in the federal court on April 28, 1988.

⁹ 990 F.2d 1298, 1993.

¹⁰ Five ATV distributors, American Honda Motor Co., Inc, American Suzuki Motor Corp., Polaris Industries, Yamaha Motor Corp., USA, and Kawasaki Motors Corp, intervened in this case in support of the CPSC's decision to terminate the rulemaking. Seventeen state attorneys general, on the other hand, appearing as amici curiae, urged the court to grant the consumer groups' petition.

¹¹ 990 F.2d 1298, at 1302.

The staff presented four regulatory options. 1) banning all new ATVs; 2) banning all new adult size ATVs for use by children under 16 years old (described as a "youth ban"); 3) developing new performance standards for four-wheeled ATVs; and 4) withdrawing the ANPR published in May 1985.

The staff recommended withdrawing the ANPR, citing "significant reduction in ATV-related injuries and deaths since 1985," the absence of "currently feasible performance standards for four-wheel ATVs with significant demonstrable injury-reduction potential," and the "lack of cost/benefit findings to support the issuance of the proposed bans." (CPSC's Office of Compliance and Enforcement opposed withdrawal of the ANPR, arguing that it would "end the wrong message to the public.")¹²

With respect to the youth ban, CPSC staff said that the prohibition could function as a strong warning to parents against purchasing adult-size ATVs for use by their children.

In April 1991, the three member Commission, in accord with the staff recommendations, decided to impose no new restraints and terminate the rulemaking. The CPSC set out its reasoning: "Although current injury rates leave no doubt that ATV riding can be a dangerous activity, the rate of injury has been reduced significantly over the span of the Commission's involvement."¹³

The Commission cited staff predictions of **further declines in ATV injury rates and noted it was too soon to gauge the effectiveness of the consent decree.** (emphasis added).

CPSC addressed the youth ban option:

It is not clear ... that such a ban will be any more effective in preventing injuries to children than are the age recommendations in the consent decrees...In addition, such a ban would be extremely difficult to enforce and would likely shift much of the burden of monitoring compliance from the distributors to the Commission ...The distributors have assured the CPSC that they are monitoring the dealers' conformance with the age recommendations. While serious concerns have been raised in the past about the level of conformance, the distributors have declared their intention to monitor and enforce this requirement through their franchise agreements. Therefore, it can be expected that future buyers will be better advised that children should not ride adult-sized ATVs.¹⁴

Finally, the Commission noted that, unlike the states, CPSC lacks "statutory authority to prohibit children from riding adult size ATVs."¹⁵ CPSC argued that a youth ban would be

¹² Id.

¹³ 56 Fed.Reg. 47,266 (Sept. 18, 1991).

¹⁴ See id. at 47,171-2.

¹⁵ Id. at 47,172.

distinct from a ban on the sale of lawn darts¹⁶, an example of a CPSC partial product ban, because CPSC would be required to conduct ongoing supervision of dealer communications with potential customers.

The Commission did direct its staff to examine the feasibility of developing model state legislation and of other means to promote ATV safety at the state level. The staff subsequently developed such model legislation and reached out to states to get it enacted, though none too successfully, as we note above.¹⁷ We note that the American Academy of Pediatrics (AAP) has developed a comprehensive model statute for adoption by the states that CU fully supports. The AAP bill requires riders to be at least 16 years old unless they have had training and received an operator's license from the state; lays out procedures for a state system of licensing ATV riders; requires ATV riders to carry liability insurance; prohibits using ATVs recklessly; requires all riders to wear safety helmets and eye protection; prohibits the carrying of passengers; makes it illegal for ATV operators to be under the influence of alcohol or drugs; requires ATVs to have good brake, muffler, and spark arrester systems; and sets up penalties for violations of these provisions. We believe this model law, if widely adopted, would be hugely effective in reducing the injury and death rates associated with ATVs.

The consumer groups bringing the appeals case argued that a youth ban would make it possible for the Commission, state attorneys general, and private persons to proceed directly against nonconforming dealers. Further, state attorneys general had been extremely active in urging CPSC to take stronger measures to protect children from ATVs, and the appeals court petitioners argued the Commission should have taken into account the ability of those offices to enforce a youth ban.

After reviewing these arguments and noting that the D.C. Circuit would “. . . apply an extremely deferential standard of review to an agency's refusal to institute rulemaking proceedings,”¹⁸ the court upheld the Commission's decision not to institute rulemaking but to adopt the consent decree instead. In reaching its findings, however, the court emphasized the importance of the Commission's stated willingness to resume consideration of a youth ban **“if subsequent information indicates that the actions taken under the consent decree are insufficient.”**¹⁹ The court went on to say that the Commission's **“repeated acknowledgement indicates that CPSC sees the partial product ban as a potential supplement to, and not a displacement of the consent decree provisions.”** The court also stated, **“Nothing in this opinion allows the Commission ultimately to avoid deciding whether, notwithstanding improvements attributable to the consent decree or other causes, adult-size ATVs present an**

¹⁶ See 16 C.F.R Sections 1500.18(a)(4), 1500.86(a)(3) (1988). Ban on sale of lawn darts in toy stores or toy departments if improperly labeled.

¹⁷ 24 states have no minimum age limit for operating an ATV, and 19 more allow children 12 years old or younger to drive them; 42 states do not require a license to drive an ATV; 35 states do not require any special training to drive an ATV. Utah allows children as young as 8 to drive ATVs while a 10 year old can drive them in New York, Maine and Pennsylvania.

¹⁸ Id. at 1304.

¹⁹ Id. at 1306. The court here quoted from the Commission's findings at 56 Fed.Reg.at 47,167.

“unreasonable risk” to children.”²⁰(emphasis added).

Finally, the court stated that “the Consent Decree regime should be tried out for a reasonable time before further measures are added to the regulatory agenda.” It added, “In view of the Commission’s representations that it will ‘continue to monitor the effectiveness of the Consent Decree program’ and ‘consider whether a ban of ATVs for use by children is warranted if the distributors [efforts under the Consent Decree] prove ineffective,’ we deny the instant petition for review.”²¹ (emphasis added).

B. The rise in injuries and deaths from ATV use demonstrate that the Consent Decree entered into in 1988 and the voluntary agreements between CPSC and the ATV industry after the consent decree’s expiration in 1998 have failed, and the CPSC should consider banning the use of ATVs by children, or take such other action that accomplishes that same goal.

We have set out at length the data demonstrating that there have been significant increases in deaths and injuries from ATV use. 174 children were killed last year on ATVs, and more than 34,800 were seriously injured. 95% of children who were hurt or killed were riding adult size ATVs at the time—despite the manufacturers agreement not to sell adult size ATVs for use by children under 16, despite the warning labels on the machines, and despite industry pledges to disseminate information and educate ATV riders. These numbers have increased continuously over the past nine years.²²

The CPSC’s undercover survey in December 1988 revealed that about 70% of Virginia ATV dealers were making age recommendations inconsistent with the consent decree. The problem of ATVs being sold for use by children under 16 has not improved since then.

As described above, when a *Consumer Reports* reporter went to an ATV dealership in 1994, the salesperson tried to sell him a 195 cc, 320 pound ATV for his 10 year old son, telling the reporter, “he’ll grow into it.” Similarly, when *Good Morning America* visited a series of ATV dealerships in November of this year, one salesman recommended an adult size ATV when the buyer asked what machine would be best for a 14 year old, even telling the buyer, “No, it’s not too big for him.” A second salesman also recommended an adult size ATV, adding that his 13 year old sister rides the same one. A third salesman mentioned the age limits but recommended a way to skirt the rules, telling the buyer to purchase the “vehicle as if it was for yourself.” All told, nine of 10 ATV dealers contacted at random in person or by phone recommended adult-sized ATVs for a child.

²⁰ Id. at 1306.

²¹ Id. at 1308.

²² Between 1993 and 2001, the injury rate associated with ATVs more than doubled to 111,700 in 2001; between 1993 and 2001, the number of ATV-related injuries suffered by children under sixteen increased 94% to 34,800. Although children under sixteen account for approximately 14% of all ATV riders, they suffer 37 percent of all injuries and 38% of total fatalities.

We think the evidence makes clear that far too many ATV dealers are selling adult-sized machines for use by children, the prevention of which was a central tenet of the Consent Agreement. Moreover, coincidental with the end of the Consent Agreement, this problem appears to be getting worse, not better, and clearly demonstrates that the industry's efforts at self-regulation of ATV sales have been and continue to be a dismal failure. And we must underscore that regardless of whose use the ATV is sold for, young children are using these machines and are being injured or killed at increasing rates each year.

The court of appeals in its 1993 decision relied on CPSC's pledge to continue to monitor the effectiveness of voluntary industry regulation embodied in the Consent Decree.²³ It noted that CPSC promised to consider whether a ban on ATVs for use by children is warranted if the voluntary regulation efforts prove ineffective. CU believes there is more than ample evidence that industry voluntary programs have simply not worked—the dramatic and increasing injury and death rates underscore the failure.

C. Regulatory and Other Options for CPSC Consideration

We think now is the time for CPSC to reconsider the youth ban or find another means to effectively bring about a youth ban. We recognize the difficulty of implementing and enforcing such a ban, but we urge the Commission to consider appealing to its congressional oversight committees for broad support. We also urge the Commission to enlist the cooperation and support of state attorneys general to enforce such a ban in their states.

Notwithstanding the Commission's decision on the petition, we believe there are other actions the Commission should take:

- The Chairman of the CPSC should take the lead in asking Congress to hold hearings on ATV safety based on its own injury data, and the report from the CFA, Bluewater Network, and Natural Trails and Waters Coalition, All-Terrain Vehicle ATV Safety Crisis: America's Children At Risk and the petition, whose data come almost entirely from the Commission's own records. CPSC should press upon members of Congress the need for stronger laws in the states, using the American Academy of Pediatrics Model Statute (see description, page 7 as a good example of a comprehensive law), and urge Congress to provide incentives to states to adopt the model law.

There is precedent for this approach. In 2000, Congress passed and President Clinton signed a law requiring that states enact a 0.08% BAC (blood alcohol content level) law by October 1, 2003 or lose a portion of highway funding. Federal law currently offers financial incentives to the states to adopt a 0.08% permissible blood alcohol level for drivers and has been successful in persuading states to adopt this

²³ While it is true that the Consent Decree expired in 1998, it was replaced by informal agreement between manufacturers and the CPSC wherein these manufacturers were to abide by the same rules in the Consent Decree (with the exception of Honda, which declined to be bound by the informal agreement).

provision. Prior to this law, 18 states and the District of Columbia had passed 0.08% BAC laws. In the two years since, the total number of states with 0.08% BAC laws has increased to 33 and the District of Columbia.

- CPSC should enlist the expertise of automotive engineers and other technical experts to review the design of ATVs. There is no question about the hazardous nature of even ordinary use of these machines. The Justice Department described ATVs as an "imminent hazard" in its 1987 case, arguing that they give "the illusion of safe, stable easy-to-operate vehicle," and give "no hint of the crippling or fatal accidents that can suddenly occur, even while attempting to execute unexceptional, simple riding maneuvers." DOJ recommend mandatory safety standards in its 1987 complaint.

Conclusion

We urge the Commission to move decisively to implement the youth ban, as requested by the petitioners, as its first step. Banning ATVs for use by the young would prevent untold tragedies and ruined lives.

We understand the Commission has extended the deadline for submission of comments for an additional 90 days until completion of a CPSC study that will include exposure data for ATV usage. While we are filing these comments today, we respectfully reserve the right to submit an addendum to them after reviewing any new data from the Commission's report that we believe is relevant to this petition.

Whatever actions the Commission chooses to take, we believe it is imperative that it take definitive steps to reverse the tragic trend that has emerged with regard to injuries and deaths from ATV use. Indeed, there is no other product under CPSC's jurisdiction that has as many deaths each year to children as ATVs—and these deaths are preventable.

December 23, 2002

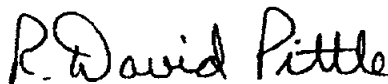
Respectfully submitted,

CONSUMERS UNION

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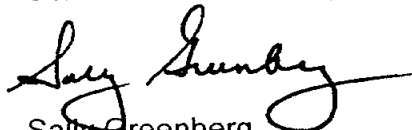
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Attachment A

NEWS

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CU Calls for Congressional Crackdown on All-Terrain-Vehicles

WASHINGTON – Today marks the expiration of a ten year old federal consent decree with all six all-terrain vehicle (ATV) manufacturers, Consumers Union said new government data shows the decree has not worked well enough and called on Congress to provide incentives for states to ban ATVs for use by children under 16.

“The Consumer Product Safety Commission’s limited resources constrain its ability regulate ATVs effectively,” said Dr. David Pittle, Technical Director and Vice President of Consumers Union, publisher of Consumer Reports magazine. “The only effective response would be a Congressional inquiry into the many dangers these vehicles pose, with an eye toward banning their sale and use by children under 16. Children under 16 have no more business driving an ATV than they have driving an automobile.”

A Consumer Product Safety Commission (CPSC) review of the impact of the ten year consent decree released yesterday shows a startling number of deaths and injuries linked to ATV use, many involving children. The study, “*ATV Exposure, Injury, Death and Risk Studies*,” includes a special injury survey which suggests that injuries to children under sixteen may be as high as 47 percent of all injuries. This rate is comparable to the percent of injury reported in 1985, prior to the consent decree being implemented. The new study also shows that 95 percent of the children injured were driving vehicles larger than those recommended for their age.

Because of several unique design characteristics, ATVs can veer out of control without warning, hurling rider and machines up to 50 mph helter-skelter into unforgiving terrain, full of rocks, bumps and tree stumps.

“Since the 1988 consent decree on ATVs was signed, an estimated 2,040 users have died and an estimated 637,000 people were injured seriously enough using these machines to require emergency room treatment. At least one third of those children under 16,” said Dr. Pittle. “These products were designed for fun, but the price for many has been too high, especially for young children.”

MORE-MORE-MORE

The 1988 decree, which substituted for formal agency rule-making by the Consumer Product Safety Commission, required that large warning labels be placed on ATVs by manufacturers cautioning consumers about the hazards of sharp turns and advising against use by children under 16 years. Dealers were also required to offer training incentives for first time buyers and manufacturers were required to monitor and prevent sale of larger ATVs for use by children under 16. In addition, the manufacturers of ATVs voluntarily agreed to stop production of the more dangerous 3-wheel vehicle. The CPSC is expected to extend many of the provisions in the current consent decree.

"There is no question that without the consent decree we would be much worse off," said Pittle. The overall number of ATVs in use has doubled from 1985, when they numbered 1,942,000 to 1997, with 3,660,000 in use. Over that time, the number of injuries has dropped by 50 percent. According to Pittle, "The consent decree was most effective in its early years, bringing injuries and deaths down significantly. Unfortunately, in the past four years, the consent decree hasn't made a further dent in the numbers of injuries and deaths, which have remained constant each year over that period."

The effectiveness of certain aspects of the consent decree are called into the question by the report. For example, though manufacturers agreed under the consent decree not to sell the larger ATVs to consumers for use by children under 16, the CPSC report shows that 95 percent of the injuries to children take place when they are riding the larger vehicles. The report also indicates that only 11 percent of ATV drivers have ever participated in a training program, despite the ATV driver training incentives required under the decree.

Furthermore, the new CPSC review shows at least 20 percent of ATVs in use today are the most dangerous kind: three-wheelers, whose manufacture was banned under the consent decree of 1988. At that time, manufacturers predicted that the vehicles would have only a seven year life. Instead, ten years later, one-fifth of all ATVs in use today are three wheelers.

"Amid all of the claims of fun, these machines have caused paraplegia, permanent brain injuries and other untold tragedies. With injuries in 1997 numbering 54,500, a new strategy is needed to reduce the dangers of ATVs to consumers," said Sally Greenberg, Senior Product Safety Counsel for CU's Washington office.

Among the manufacturers of ATVs are Yamaha, Suzuki, Kawasaki, Honda, and Polaris.

-30-

NOTE: State by state data on deaths associated with ATV use is available upon request

Consumers Union, Publisher of Consumer Reports magazine, is an independent nonprofit testing, educational and information organization serving only the consumers. We are a comprehensive source of unbiased advice about products and services, personal finance, health, nutrition and other consumer concerns. Since 1936, our mission has been to test products, inform the public and protect consumers.

Protect

Union in action

All-terrain vehicles put children at risk

In May, on the eve of her eighth birthday, Julie Johnson took a ride on an all-terrain vehicle that a 14-year-old friend was driving near the Ocala National Forest in Florida. "I turned around and it had already happened," says her cousin Edward Clay Haerter, who rode ahead of them. After hitting a pothole, Julie's ATV flipped over, landing on her. She died en route to the hospital.

With their oversized tires and handlebars, ATVs look like fun, and roughly 4 million are in use. Young people like them because they don't require a driver's license. But 1,100 children under 16 have been killed and some 372,000 injured on ATVs in the last 15 years. They account for roughly 40 percent of all deaths and injuries on ATVs, despite the fact that large ATVs (97 percent of those sold) carry warnings that children under 16 shouldn't be riding them.

Even for adults, all-terrain vehicles are inherently tricky. Make a wrong turn, and an ATV can veer out of control. The gas engine can easily do 40 mph, and they're used on terrain that includes the unexpected and the unforgiving—like tree roots and rocks.

For 10 years, a federal consent decree with ATV manufacturers required,

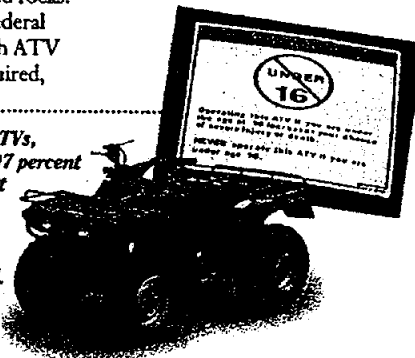
among other things, that ATVs with an engine of 90 cc (cubic centimeters) or larger carry a label warning that they were not to be used by children under 16. The decree expired in April, although manufacturers have continued to use the label anyway.

But stronger protections are needed, Consumers Union urges. "We believe Congress needs to come up with incentives to get states to make it illegal for children to be on large ATVs," says Technical Director R. David Pittle. States should consider mandatory licensing, safety classes, and helmet use.

In the meantime, all ATV riders should:

- Avoid riding three-wheeled ATVs—they're too unstable. The industry doesn't make them anymore, but old ones are still out there.
- Never allow a child under 16 to ride a vehicle with an engine of 90 cc or larger.
- Never carry passengers; ATVs aren't designed for them.
- Always wear a motorcycle helmet.
- Take the free training that manufacturers offer owners and their families. Call 800 887-2887 to find a course near you.

Adults only Large ATVs, which account for 97 percent of the market, aren't safe for children under 16. Warning labels are used, but they aren't required.



Those ATVs Should Have Been Recalled (Cont'd.)

At the height of the Christmas clearance sales, the Consumer Product Safety Commission announced a deal that was no bargain for consumers: instead of filing its lawsuit seeking the recall of ATVs ("all-terrain vehicles") as imminent hazards, it entered into a preliminary settlement with the manufacturers (final consideration by CPSC is scheduled for mid-February). Unfortunately, the deal the commission made was as poorly designed and dangerous for consumers as the ATVs themselves. And Terrence Scanlon's defense of the agreement [Free for All, Jan. 16] offered little justification for such a weak settlement.

We've all seen one of these obnoxious three- or four-wheeled vehicles racing down a dirt path alongside the highway as we headed to the beach, or watched commercials featuring smiling kids tearing around in the rigged outdoors. Large, puffy balloon tires, fresh air, no traffic—what safer fun could a kid have? Already 2.3 million of these vehicles have found their way into American homes, most with youngsters under 16.

The commission's staff examined the vehicles and found them far less friendly than they look. Because of several unique design characteristics, ATVs can wear out of control without warning, hurling rider and machine at speeds up to 50 mph better-skilled into an unforgiving environment full of bumps, pot-holes, rocks and tree stumps. Too often, the 300-pound vehicle lands on top of the rider. And all the claims of fun, the down side has been devastating: 900 deaths and 330,000 injuries (requiring emergency room care) alone since 1982, almost half to kids younger than 16.

The commission studied the problem so long it came dangerously close to suffering paralysis by analysis. Finally, in December 1986, it voted (Scanlon dissenting) to curb the carnage by asking the Justice Department to seek among other things, a recall of all three-wheeled models and four-wheelers sold for use by kids under 16. But no legal action has taken place since the vote.

Now, one year later, a settlement has been reached. Scanlon boasts that CPSC "sought—and, thankfully, got—a halt to [the] sale of the three-wheeled models." Actually, manufacturers simply agreed to encourage retailers to not sell last year's three-wheelers left in stock. The industry had already stopped manufacturing these products. The commission can hardly call this a concession.

Unfortunately, the agreement does not include recall, even though one manufacturer made such an offer. Instead of offering to design less hazardous new products or recalling the known hazard, the industry promises to set up a nationwide program to teach new and recent owners how to survive the risks of using an ATV. Even though the classes are free, they are voluntary.

It's hard to imagine hundreds of thousands of riders, many between 10 and 16 years old, herding into classes across the country. It is patently naive—indeed, irresponsible—to believe such a strategy can substantially reduce the continuing rate of death and injury.

So what happens to the 1 million or so consumers who bought an ATV thinking it was a great toy for their youngsters? Without a substantial incentive to return the product, few consumers are likely to park their \$1,500 to \$2,000 investment in the garage until Junior gets old enough to ride it properly. Sadly, the same population that has already suffered hundreds of deaths and thousands of injuries remains at risk and can't help piling up more gruesome statistics.

Perhaps the most troubling part of the agreement is the provision that new buyers sign a declaration that they fully understand the dangers and will abide by 12 safety precautions. It's reasonable enough to advise consumers never to drive at "excessive speeds"; never do "wheelies,

trumps or other stunts"; never drive an ATV without proper instruction; and always be "extremely careful when approaching hills, turns and obstacles." But having the parent sign a promise to comply with each and every warning as well as a statement acknowledging "that failure to obey these warnings could result in death or severe bodily injury" will do little to affect how a 12-year-old will actually use the machine. Worse, instead of protecting the consumer, the signed declaration will help protect the manufacturer from liability when injury does occur. Federal endorsement of such a scheme will only make it more damaging.

This agreement has no teeth—no required measures of performance and no sanctions for noncompliance by retailers—and only vague promises by manufacturers to use "best efforts" in carrying out its terms. Industry's offer was, however, entirely predictable. After all, the program doesn't cost much, and the manufacturers blame the kids' behavior to begin with.

But for a majority of the commissioners to accept such a pathetic remedy is deeply disturbing. As leaders of the principal agency responsible for product safety, they have both the authority and the resources to carry out their mandate vigorously—that they lack is the will to act. Scanlon's hand-wringing over the threat of a prolonged battle to protect consumers is no excuse for the agency to shrink from its responsibility. Given the serious and widespread nature of the hazard, the preliminary settlement is unacceptable. Should it become final, the public will be poorly served.

—R. David Pille
The writer, a former Consumer Product Safety commissioner, is technical director of Consumers Union, publisher of Consumer Reports.

The Washington Post
Saturday, Jan. 23, 1988

All-terrain vehicles: Still a danger

Between 1982 and 1988, 456 children were killed riding all-terrain vehicles, three- and four-wheeled motorized carts that can tip or flip over all too easily. Some highly publicized lawsuits gave ATVs considerable notoriety and forced the U.S. Consumer Product Safety Commission to take action.

The agency worked out a consent agreement with manufacturers, who agreed to stop selling three-wheeled ATVs and to label four-wheeled models with a warning that only ATVs with an engine of 90cc or less be used by children under 16.

But in the six years since the CPSC acted, deaths of children under 16 have dropped only 9 percent, to 416. ATVs injure some 24,000 children under 16 each year, according to CPSC data. And if our experience is any indication, some dealers wink at the safety warnings.

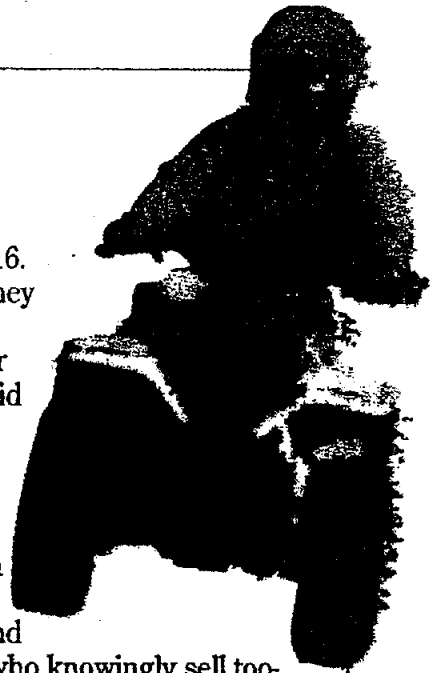
The salesperson at one Connecticut dealership tried to sell our reporter a 195cc, 320-pound ATV for his 10-year-old child. "Doesn't this seem kind of big for a kid?" our reporter asked. "He'll grow into it," the salesperson replied. A large sticker on the machine said: "Never operate this vehicle if you are under 16."

Consumer organizations, including the U.S. Public Interest Research Group, are urging the CPSC to enforce an outright ban on the sale of ATVs for use by

children under 16.

A CPSC attorney downplayed the need for tougher remedies. He said the agency will continue to enforce the consent agreement through random undercover investigations and punish dealers who knowingly sell too-powerful ATVs for use by youngsters. Since 1990, he said, 20 to 25 dealers have lost their franchise agreements for violating the agreement. The agency estimates that 80 to 85 percent of dealers are now in compliance, up from 56 percent in 1989. The attorney added that the agency will probably be looking at the ATV problem once again because of the ongoing deaths and injuries.

The American Academy of Pediatrics and several consumer groups went to Federal court in 1992 seeking to force the CPSC to modify and enforce its 1988 consent agreement. A judge turned back that effort, but stated that the commission's refusal to implement more stringent regulations "represents an unwillingness or inability to recognize what appears to be an obvious need of its expertise." Well put.



TESTIMONY REGARDING ATV SAFETY ISSUES
U.S. CONSUMER PRODUCT SAFETY COMMISSION
FIELD HEARING
MORGANTOWN, WEST VIRGINIA
JUNE 5, 2003

DEBORAH L. NAPIER, ESQ.

MR. CHAIRMAN AND COMMISSIONERS, thank you for this opportunity to share with you my personal experiences with the recreational use of off-highway vehicles (OHVs) including all-terrain vehicles (ATVs). My appearance at today's hearing and the content of my testimony were not revealed to the organized rider group representatives or any other interest. My testimony today is intended to assist in identifying issues which may lead to a reduction in pediatric injuries and deaths associated with the use of ATVs. Please interrupt my testimony if I use jargon (a term, acronym or abbreviation) which you do not understand.

An OHV is generally defined to include any motor vehicle used on terrain other than a hard surface such as paved roads or highways. OHVs are designed for use on dirt roads, sand, snow, trails, tracks and turf. An all-terrain vehicle is one example of an OHV.

A diverse group of people ride OHVs. I will try to limit my comments to what I know best, the recreational use of ATVs, even though a large percentage of the machines are used in agriculture, landscape & trail design and maintenance, search & rescue operations and other commercial uses. The recreational use of ATVs includes trail riding, "backyard" riding, racing and use by anglers and hunters.

The post-consent decree years have been marked by a heightened polarization between those who use and those who oppose the use of ATVs. One indication of this polarization is the presence of the parties to the most recent Petition filed with the Consumer Product Safety Commission last year. It is unclear to me what, if any, legitimate voice resource conservation advocacy organizations have in a discussion regarding pediatric injuries associated with the use of a consumer product legally sold in interstate commerce.

To reduce injuries associated with the use of ATVs there needs to be a sound commitment for leadership, cooperation and collaboration among the stakeholders. The vilification of riders and/or owners of ATVs will not promote that goal. Although some successes were accomplished by the 1987 Consent Decree, a look at recent injury statistics reveals room for improvement. Perhaps a new carefully crafted agreement will provide a reduction in injuries. However, I would respectfully suggest the Commission consider additional factors.

A draconian approach to the regulation of ATVs surely will be met with a resounding cry of rebellion from the riding public. I have already seen the beginnings of this rebellion as groups anticipate the results of today's hearing. How this issue plays out in the media will ultimately affect the success or failure of any organized attempt to reduce injuries.

As we begin a new look at the recreational use of ATVs, let's consider *all* of the new information which is available to us in 2003. It is imperative that we look at the long-term as well as the short term consequences of riding OHVs. For example, since 1987

we have seen a tremendous upsurge in pediatric obesity. A child born in 1987 who is now in their teen years has spent a far greater percentage of her growing years in a sedentary lifestyle than I did. Every major health organization has recognized the need to get our children moving and to get them moving in vigorous outdoor activities. Combating pediatric obesity and avoiding obesity related disease is a primary goal of the U.S. Centers for Disease Control and Prevention.

We need to use every means possible to encourage children to recreate in ways that they enjoy and that are available to them where they live. This includes children residing in urban as well as rural areas. Our children need access to safe and legal places to recreate. Our children need appropriate supervision for their recreational activities. Children who do not find fulfillment from team sports need encouragement to pursue the sports they find exciting. Although some of these individual athletic endeavors do not require a ball field, a swimming pool or a soccer field they do require their own places, access and supervision. This may mean a skate park, a series of trails such as the Hatfield-McCoy trail network, a motocross track or someone's field.

The CPSC should look deeper at ATV injuries both in terms of how the injury occurred as well as whether the injury was the result of an intentional act. Let's stop using the word "accident" when a child is injured. Injuries result from an intentional act or are the result of unforeseen consequences, i.e., unintentional injuries. It may be sobering information for this panel to consider but at the outset of my remarks I mentioned the increasing polarization of this discussion. There are organized groups of extremist

individuals who have decided to use their own methods to discourage OHV use. An area on the National Forests in Idaho, which is popular with ATV users, is seeing a dramatic increase in trail sabotage. This area has been identified by U.S. Forest Service law enforcement officers as seeing more environmental terrorist activity over the past several years. Trails have been criss-crossed with boards full of nails which are set up to damage tires. In other areas there have been reports of cables or wires stretched across trails. In a rural county just west of Washington, D.C. there have been reports of adults harassing children riding on a tree farm. The riders had the landowners' permission to ride there. But apparently someone didn't like their activity.

Gates and signs on trails which are not clearly marked have resulted in rider injuries when the rider did not have enough time to react on approach or could not see the fixed obstacle in fading light. The act of installing signage or gates on trails without regard to possible impact if a rider does not see the object will result in unintentional injuries. As more areas are closed to motorized recreation and gates are installed to limit access to a trail, it is critical that the needs of all recreationists are considered before the design and installation of man-made obstructions.

The Commission must consider in this fact-finding stage and during its deliberations, the most critical factor in every child's life – parental involvement and supervision. Ask whether the parent is directly supervising the child himself or whether the parent has chosen another mature adult to provide supervision for the child's recreational activities. Is there a responsible facilities manager on site? Is there a responsible coach for the

child? In short, are parents parenting their children or has the parenting role been abdicated? Indeed, it takes a village to raise a child.

The beneficial bond of parent and child or child and adult extends beyond one's immediate family. The Colorado OHV media campaign uses the words of children to encourage adults to do the right thing by staying on the trail and riding responsibly. In Montana an OHV school curriculum has been developed in coordination with the U.S. Forest Service to teach school age children to use appropriate protective gear when riding. These are good examples of teaching tools we should build on.

There is an additional issue in need of a solution. It is quite common for children to live with one parent and to leave periodically for visitation with the other parent. It is not uncommon for OHV organizations to receive phone calls from distraught parents asking what to do when a child leaves for visitation with the non-custodial parent and the custodial parent does not feel the child is riding an OHV safely. This is a real issue which should be addressed. Too often the custodial parent's concerns are dismissed. Opportunities for skills training of all concerned parties should be available and court-ordered when necessary to insure the child's safety. At no time however is training a substitute for responsible adult supervision of the rider-child. Resources for rider education and skills training should be readily available to concerned parents, attorneys and judges in domestic relations cases.

Current guidelines for assessing rider skills and ability to ride an ATV do not account for the wide variation throughout the pediatric population of an individual child's mental, physical and emotional aptitudes. Some children are racing at high levels of motorized sports competition before another child of the same age has mastered riding a bicycle. I can share examples from my own extended family of six boys, five of whom are under the age of 13. Of primary concern to me is the adult consumer who pushes his or her child beyond their abilities. We have all observed this tendency on the soccer field.

When fashioning new guidelines for ATVs don't forget those exceptionally competent children who gain so many benefits from mastering the challenge they seek through OHV recreation. Last year I met a young boy who experienced numerous surgeries to correct severe congenital spinal and hip malformations. His height was diminished; he was shorter than his peers and it was obvious to me that he suffered emotionally from even the good-natured taunts of his buddies. Nicky's condition will never allow him to play team sports. One thing Nicky had going for him was his ability to ride his ATV in competition. When Nicky rode he soared. He was a successful and confident child when he was riding. That confidence will follow Nicky throughout his life. With his ATV, Nicky experiences the sheer joy and exhilaration of his athleticism in a way his classmates can on the ball field or at the skate park.

Let's put the focus on increasing rider education and skills training. We need safe, legal riding areas and training facilities. We need summer camps for children to attend for training on their OHVs. We need to reach out to parents, children and their friends who

will be exposed to OHVs where they play, whether it is in their neighbor's field or on a National Forest. We need to reach out to a riding public that may not belong to organized rider groups. Successful rider organizations know the most effective way to reach riders is through peer pressure. Public service type ads in rider magazines may be "preaching to the choir" and may not be reaching the riding public most in need of educational campaigns.

We need to involve Mom. We need to place responsible riding messages in the mainstream media. Rather than vilify ATVs and OHV riders in the media, we need to increase public awareness as to safe and responsible operation of OHVs by anyone who happens to hop on an ATV.

We should be looking for ways to educate the occasional rider who may not own an ATV himself or herself but who will be exposed to ATV recreation in their peer group. These children and young adults are unlikely to see responsible riding messages in print media targeted to the enthusiast population. Many parents (myself included) whose children and adolescents may be exposed to ATVs, but who are not part of the enthusiast crowd, are unlikely to be exposed to these magazines.

We need a nationwide effort to increase public awareness as to the safe and responsible use of OHVs on the same scale as the national SAFEKIDS campaign which identified the proper use of child car seats, booster seats and seat belt restraints.

I will be happy to answer any questions. Thank you.

**STATEMENT OF ROGER F. HAGIE
CHAIRMAN, SPECIALTY VEHICLE INSTITUTE OF AMERICA**

I am Roger Hagie, Director of Public Affairs for ATV distributor Kawasaki Motors Corp., U.S.A. I am appearing today in my capacity as Chairman of the Board of Trustees of the Specialty Vehicle Institute of America (SVIA), and will be specifically speaking about some of the initiatives undertaken by the SVIA and its member companies. SVIA is an industry trade association whose members are ATV manufacturers or distributors. Our affiliate organization, the ATV Safety Institute ("ASI") is responsible for development and delivery of the hands-on ATV rider training course, and will address this and other issues in a separate presentation.

I am here today on behalf of the SVIA and ASI-supporting companies which, in addition to Kawasaki, include Alpha Sports, American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Motor Corporation of America, and Yamaha Motor Corporation, U.S.A. I am also speaking on behalf of Polaris Industries Inc., which supports participation in the ASI Rider Course training program.

The safety of our customers is of paramount concern to the entire industry, and we share the CPSC's goal of reducing ATV accidents. The ATV industry is committed to continuing to take appropriate action to ensure that its products are being used in a safe and proper manner, and call upon all the groups represented at the hearing to work together to lower the accident rate through specific actions I will discuss later in this testimony.

In rapidly increasing numbers, Americans are enjoying ATVs and using them responsibly for both work and play. Tens of millions of ATV users ride their ATVs in a safe and appropriate manner every day. They are tremendously useful products and have become an essential tool for farmers, law enforcement officials, military and others. Recent television stories showing state

officials using ATVs to recover the debris from the Columbia Space Shuttle tragedy and of our military forces using ATVs in Iraq underscore the product's utility and importance.

ATV sales have more than doubled from about 360,000 to over 800,000 between 1997 and 2002. Unfortunately, with this increased popularity has come an increase in estimated ATV-related accidents.

The SVIA Companies and Polaris share CPSC's strong interest in ATV safety. For the industry, even one injury is one too many. Indeed, I believe that all persons and groups represented at this hearing agree that the accident rates involving improper use of ATVs must be lowered. And, while we may disagree on some issues, I believe it is possible that, through these hearings, we can come to a consensus on a common agenda for reducing injuries caused by the improper and inappropriate use of ATVs.

To reduce injuries, in our opinion, will require a three-pronged program. This program must include: 1) continued and enhanced rider education; 2) state legislation regulating ATV use; and 3) parental involvement and supervision when children are riding ATVs. If we do these three things, accident rates will fall. In contrast, more federal intervention will not be effective in further reducing ATV-related injuries.

Let me elaborate on this three-pronged safety program in a bit more detail. First, rider education. Over the past two decades, the SVIA Companies, along with Polaris, have made unprecedented efforts to promote safe and responsible ATV use and deter children under 16 from using adult-size ATVs. The industry strongly recommends, actively supports and offers incentives to its new customers that enroll in free industry-sponsored safety courses, a unique offering that no other industry undertakes. ATV safety educational efforts include nationwide public safety campaigns, safety messages in television and radio, and print advertisements.

Safety programs specifically geared toward children include the distribution of thousands of brochures, posters, CD-ROMs and classroom materials to public schools, youth focused organizations and libraries around the country. Safety messages are also prominently communicated by a variety of on-product labels, hangtags, safety videos and the ATV safety alert, that are provided to purchasers of ATVs marketed by these companies.

In addition, ATV dealers are prohibited from selling adultsize ATVs for use by children under 16. Dealer compliance is checked by undercover monitoring by both CPSC and the companies themselves, and corrective actions are taken against dealers who fail to meet this requirement.

As Chairman of the industry's trade association, I am proud of these accomplishments. I believe that CPSC has dealt with no other private industry that has implemented such far reaching, on-going and creative approaches to encourage socially and environmentally responsible use of vehicles and to deter children from using products intended for adults.

The SVIA Companies and Polaris are open to considering new and effective ways to enhance ATV rider education, including through industry and usergroup educational programs.

However, education is only part of the answer. We believe that the most effective way to further strengthen ATV safety is through state legislation. Unlike CPSC, the states have authority to regulate directly the use of ATVs. Similar to safety measures for other motorized vehicles such as automobiles and motorcycles, a key to safe and responsible use of ATVs is through state legislation regulating operator use. The ATV industry strongly supports state legislation that imposes clear age limits and other safety rules on ATV operation. The companies have long promoted model state legislation that prohibits the use of adultsize ATVs

by children under 16, multiple riders on a single vehicle, and requires protective gear and helmets while riding.

In some states, including West Virginia, the state legislature has been unable to agree upon legislation that would enhance ATV safety. For this reason, the ATV industry invites CPSC, along with riding clubs, user organizations, consumer groups and others to join us in a renewed campaign to advocate for state legislation that supports and promotes safe and responsible ATV use. We believe that through joint cooperation between these groups and increasing the involvement of the CPSC, we can enact appropriate state law measures that will make a difference in injury rates. Properly enforcing state age restrictions on ATV use can significantly reduce the number of injuries and fatalities involving children and is the most effective way to achieve further meaningful reductions in accidents.

The final element of this three-pronged safety program is parental involvement and supervision. Parents play an essential role in selecting the most appropriate sized ATV models for children under 16 and supervising children using ATVs at all times. Parents must also ensure that their children are properly trained on the safe and appropriate operation of ATVs. Our research has found that in the fatalities that occurred over the past 6 years in West Virginia, 88% of them involved behaviors that the industry warns against in their rider education program.

In conclusion, I would like to reiterate that all of us here today share the goal of reducing injuries and accidents involving ATVs. We firmly believe that we can achieve this objective by working together to increase rider education, enact state legislation and encourage parental supervision of children riding ATVs.

Stevenson, Todd A.

From: Staron, Ann [astaron@WILLKIE.COM]
Sent: Thursday, May 29, 2003 6:31 PM
To: Stevenson, Todd A.
Subject: Request for June 5, 2003 Public Hearing in Morgantown, West Virginia



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> Attached is a letter from Roger Hagie, Chairman of the Board
of Trustees
> of the Specialty Vehicle Institute of America, requesting time to speak at
> the June 5, 2003 hearing, along with a copy of his testimony. An original
> copy of the letter and 10 copies of the testimony will be hand-delivered
> to your office tomorrow morning.
>
> Please let me know if you have any problems accessing the documents.
>
> <<181805v1.pdf>> <<6300000486.PDF>>
>
> Ann M. Staron
> Legal Assistant
> WILLKIE FARR & GALLAGHER
> 1875 K Street, N.W.
> Washington, D.C. 20006
> Main: (202) 303-1000
> Direct: (202) 303-1171
> Main Fax: (202) 303-2000
> Direct Fax: (202) 303-2171
> Email: astaron@willkie.com
>

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Statement by
Jeff DeVol
DeVol's Cycle Center
1117 Broadway Avenue
Parkersburg, WV 26101

Hammond, Rocky

From: Jeff DeVol [devols@charter.net]
Sent: Thursday, May 29, 2003 6:35 PM
To: Hammond, Rocky
Subject: Tentative Text of Oral Presentation: Public Hearing on ATV

DEVOL'S CYCLE CENTER

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1-304-428-8245
1-304-428-6910 fax
atv@1st.net

Thursday, May 29, 2003

To: Consumer Products Safety Commission
Office of the Secretary
C/O Rockelle Hammond via e-mail

From: Jeff DeVol, VP/GM

RE: Tentative Text of Oral Presentation, Public Hearing on ATV Safety
June 5th, 2003 Morgantown, WV

Mr. Chairman, Honorable Commissioners, ladies and gentlemen: I want to thank the Commission for this opportunity to share comments and insights on the important issue of ATV safety and specifically on the safety of young ATV operators and the current petition before the commission that attempts to address those matters.

I have been a dealer of motorcycles and ATV's since 1978 in Parkersburg, West Virginia. I have also ridden motorcycles and ATV's as an enthusiast since 1972, at the age of fourteen. I was among the first licensed instructors trained to teach the ATV rider course in 1985 by the Specialty Vehicle Institute of America and subsequently by the ATV Safety Institute. I am the proud father of four children, two of whom just recently turned age 16 and 14 respectively. It is upon those experiences and from those perspectives that my comments are based.

The statistics on injuries and death from accidents while riding ATV's are well known to most of us here. They are indeed troubling and each occurrence of severe or fatal injury is quite tragic. Thankfully, I can only imagine the unbearable horror of one of my children becoming severely injured while riding an ATV.

The statistics do tell us what is happening, but they do not tell us why it is happening and indeed provide neither answers nor even an indication of what can help reduce accidents. We must look closer.

In my vocation, I have daily contact with consumers and prospective consumers of All-Terrain Vehicles. I have cataloged many of their comments regarding ATV safety issues. Let me read to you now a sample of replies and comments from real consumers on my sales floor once they have been informed of the manufacturer's operator age/engine size recommendations:

"I understand what they say, but I supervise my kids."

"I am not going to buy an ATV that small and have them grow out of it in a year, they grow fast when they are twelve."

"You mean that (the manufacturer) does not make an ATV for a 10yr old, but it's OK for them to ride this dirt bike. Well, a

5/30/03

4-wheeler has to be safer than a dirt bike."

"You can't put a 14yr. old on a 90cc. It's too small and a waste of money, she won't ride something that small."

"He is 5' 10" tall and weighs 150 pounds. He is larger than most adults are now and can ride better than most adults that I know, I'm not going to buy him a little kid's 4-wheeler."

"It's up to me what bike my kid rides. I know my kids better than (the manufacturer) does."

"Well, he rides my 300cc ATV now and handles it just fine. In fact he can ride it better than I can."

"Well, I'm buying the ATV for my use only then, what can you tell me about it."

"If you don't want to sell me the ATV, I will go to somewhere that does want my business."

The preceding comments were actual statements from actual consumers. Those comments regarding the age appropriateness of a given ATV are typical of the vast majority of our customers and are commonplace. It is a very rare occurrence when we inform a consumer of the age recommendations and the parent/buyer readily acknowledges the credibility of the recommendations and the seriousness of the issue and tells "Johnny or Jane" that they can't have the age inappropriate ATV. When our dealership refuses to sell the age inappropriate ATV, we are very confident that the consumer simply goes to another dealership to make their intended purchase. Some consumers, once educated by their first dealer contact, may simply conceal the age of the intended user from the next dealer in order to make the purchase. It is clear to us that the vast majority of ATV consumers typically do not find the present age/engine size recommendations at all credible. Many consumers find any guideline on the size of ATV that is appropriate for their child as absurd. We are presented with consumers whose ATV purchase intentions for their child are completely inappropriate to the point of absurdity – some who intend that their 8yr old ride a high performance 400cc adult machine.

The above discussion just begins to treat the subject of inappropriately sized ATV's purchased for use by children and attempts to relate the nature of the environment in which those purchases are made. Another important subject is the very common situation of children operating ATV's that are not, or were not, purchased exclusively for the child's use nor even purchased primarily for the child's use. The vast majority of the ATV's that we sell are to mature buyers over age 30; in fact, industry surveys show that the average age of the ATV buyer is slightly north of age 40. Those buyers purchase ATV's primarily for their own intended uses; be they hunting, utility, or leisure recreational use. Yet, we also see indications that others in the household, including younger children, sometimes operate those ATV's. Practical considerations often dictate that an ATV serve many uses for its owner and the ATV is capable of serving a wide range of uses. That versatility is a primary factor in the ATV's popularity among and value to consumers. So, in a great many cases we have this "household ATV" that dad uses for hunting and his chores; mom uses it for her chores; and the kids also use it for chores or recreation. While we agree that a "one size fits all" approach is not appropriate for all members of the household, it may seem reasonable to the consumer who does not have the budget, storage space, or use opportunity for more than one ATV. I am confident though that the vast majority of accidents involving children are while riding this "household ATV", rather than an ATV that was purchased exclusively or primarily for their use. That situation is so important that it bears repeating: The vast majority of children who have accidents on ATV's are operating the "household ATV" and are not riding an ATV that was specifically purchased for them.

The preceding two discussions bring out factors that demonstrate why previous attempts to control access to ATV's by children through restrictions on the sellers has been less effective than we would have liked them to be. It is my opinion that the current petition before the Commission regarding ATV's and young operators, brought by the Consumer's Federation of America and others, if granted would have no positive effect on the safety of children, as it likewise seeks a remedy that places responsibility on the seller rather than the buyer/owner. In the former discussion, the buyer's disagreement with and resultant discounting of the recommendations renders them ineffective. The stubborn determination of the vast majority of buyers to make a purchase that is at odds with the recommendations leads them to circumvent the gatekeepers and exercise their will. In the latter discussion the fact that the child has access to the ATV is completely isolated from the sales process and the seller, the child's access and use of the ATV is controlled or granted solely by the ATV's owner – the parent.

While the above discussions just begin to scratch the surface of the many facets involved with the issue of ATV safety and young operators, the reasonable conclusion drawn from the discussion of those factors is that if it is deemed desirable and necessary to prohibit young children from riding ATV's that are of a given size, or altogether, that such prohibition must come from the buyer/owner/parent, not the seller. The regulation of the use of a product is admittedly beyond the scope of the

Commission's authority. The regulation of the relationship between parent and child and their activities that take place largely on private property are problematic for any governing authority. However, when it comes to young operators my friend and President of the "Oldie Wheeler's ATV Club", Perry Hunt coined a concise and true phrase: "The key to ATV safety is the person with the keys to the ATV."



Specialty
Vehicle
Institute of
America

Testimony for
West Virginia Hearing
Before Consumer Product Safety Commission
Re:

Petition Number: CP-02-4/HP-02-1

Statement by
Elisabeth Piper
Director, Corporate Affairs
Specialty Vehicle Institute of America
2 Jenner Street, Suite 150
Irvine, CA 92618-3806

**STATEMENT OF ELISABETH PIPER
DIRECTOR, CORPORATE AFFAIRS
SPECIALTY VEHICLE INSTITUTE OF AMERICA**

Thank you, Tom. Good morning.

I think you would agree that the program Tom just described is impressive. It can be even stronger...much stronger. But we need help. We need new owners, especially parents, to get involved in the training process. Let me explain.

There may be a perception that once an ATV is purchased that the new owner doesn't hear from the industry again. Nothing could be further from the truth.

In fact, within 48 hours, in most cases, the new ATV owner and his or her family are contacted by the industry to encourage them to enroll in a free RiderCourse.

At the time of sale the dealer completes a Rider Training Certificate and faxes it to ASI. ASI enters the purchaser information into a database where it is transferred to an automated predictive dialer phone system the following day.

The dialer automatically dials ATV purchasers. When a connection is reached a trained enrollment representative explains the benefits of the ATV RiderCourse, answers questions, restates the safety messages, and enrolls the purchaser and eligible family members in a class. Should an answering machine be encountered, the enrollment representative leaves a message and a toll-free number for the customer to call.

Once enrolled, the buyer is sent a confirmation letter with the specific class information, instructor name and number, what to bring to class, and a map on the back of the letter to the training site.

The instructor receives a class roster one week before the class with student names and phone numbers. The instructor then places calls to the students to confirm attendance, answer any questions, and coordinate any loaned equipment, such as ATVs

and helmets. Once a student completes a class, the instructor sends the completed roster to ASI.

In 2002, 47,287 students completed students the ASI's half-day, hands-on ATV RiderCourse. To accomplish this we:

- Entered 449,743 Rider Training Certificates from ATV dealers across the U.S.
- Made 1 million outbound telephone calls with over 350,000 connections
- Enrolled over 90,000 students
- Processed 9,000 course reports

Should a buyer not be available for the classes scheduled in their area at the time we call, we can place them on a "buyers waiting" list. Whenever a new class is scheduled in their area, they are automatically placed back on the active call list.

If first-time riders do not show up for the scheduled class, we place their name back into the active call list to be contacted for training. Some of the extra effort we expend to encourage the first-time purchasers without prior riding experience include:

- priority calling, in other words, they get called first
- paid mileage if the site is farther than 50 miles and travel cost is a barrier
- finally, if we have a site but the local instructor is not available, we will make an instructor from outside the area available to teach the class

But we don't stop there. If a new owner refuses the offer of free training, or indicates he or she wants to call us back, we mail a postcard with our toll-free number as a reminder.

In summary, the only way a first-time buyer without prior riding experience is removed from the active call list is if he or she either refuses completely or actually completes the training.

So, as you can see, we're relentless.

In fact, we believe we can confidently say that no other private industry has implemented such far-reaching, ongoing and creative approaches to encourage socially and environmentally responsible use of vehicles and to deter children from using products intended for adults.

But, even with all this effort -- more than 1 MILLION calls to new owners as just one example -- only about 25 percent of all first time buyers without prior riding experience in the United States take advantage of the free training sessions offered by ASI.

It should be noted here that, according to the 2001 CPSC ATV exposure survey, only four percent of all injured riders received formal training. The study also found that of children younger than 16 injured on ATVs, 95 percent rode adult-sized vehicles.

These statistics, and others that are being cited in other presentations, point to the need for more owner and parental participation and supervision from the very first stage – enrolling in a RiderCourse immediately after purchasing an ATV.

Parents hold the safety of their children in their hands and they can provide their children with a fun and safe ATV experience by ensuring that they enroll themselves and their children in an ATV rider training course; that they purchase the right sized ATV for their child's age; provide their child with protective gear; and always, ALWAYS supervise their children under 16 whenever they ride.

I also would like to note that the ATV Safety Institute also recognizes that some new ATV distributors do not participate in this extensive rider training and awareness program. ASI has actively contacted these distributors to invite them to become a part of ASI and reap the benefits of offering their customers free, hands-on training. At this time, SVIA and ASI would like to, once again, extend this offer.

In closing, the ATV industry strongly recommends, actively promotes and offers incentives to its new customers to enroll in free industry-sponsored safety courses, a unique offering that no other industry undertakes.

We welcome ideas and comments, and we are open to working with all concerned groups to improve participation in rider training.

We all share the same goal – to reduce ATV accidents caused by improper use. When properly used, ATVs are safe products.

Thank you.

ATV Safety Institute

Testimony for
West Virginia Hearing
Before Consumer Product Safety Commission
Re:

Petition Number: CP-02-4/HP-02-1

Statement by
Tom Yager
Vice President, Safety Programs
ATV Safety Institute
2 Jenner Street, Suite 150
Irvine, CA 92618-3806

**STATEMENT OF TOM YAGER
VICE PRESIDENT, SAFETY PROGRAMS
ATV SAFETY INSTITUTE**

Thank you, Roger. Good morning. I am Tom Yager, vice president of safety programs at the ATV Safety Institute, or ASI. ASI was formed in 1988 as a division of SVIA to implement an expanded national program of ATV safety and awareness that SVIA initiated in 1983.

The ATV industry's voluntary safety program, through ASI, was originally created in partnership with CPSC. To this very day, we remain committed to continuing that fruitful relationship and our extensive safety work.

ASI's primary goal is to foster and promote the safe and responsible use of all-terrain vehicles in the United States, thereby reducing crashes and injuries that may result from improper use. Our programs are designed to inspire rider awareness that promotes a commitment to safety and respect for the environment.

ASI is the recognized leader in ATV safety. We improve the safety of riders through the delivery of hands-on training and the publication of educational materials for the ATV community.

Each week 200 - 300 training classes are conducted – what are known as ATV RiderCourses – by more than 1,500 licensed instructors at nearly 1,000 sites throughout the United States. More than a half million people have been trained since ASI was founded 15 years ago.

ASI also works with state, armed forces, independent agencies and corporations to present seminars, develop safety materials and coordinate training programs targeted to fill specific needs.

ASI is committed to increasing public awareness of ATV safety programs. It produces and distributes public service messages to ATV enthusiast magazines and other publications read by potential ATV riders. There also are several publications

available to promote safe riding practices. We have examples of these educational materials (in the back of the room) if you would like to see them.

ASI also has a VHS video titled, *Ride Safe, Ride Smart*, that provides a rider-friendly look at how to get a proper start in ATV riding, as well as a CD-ROM-based computer game titled, *ATV Rally* that emphasizes proper use.

Only licensed instructors are authorized to teach the *ATV RiderCourse*. All ASI instructors must complete a comprehensive training program and meet specific ASI requirements to become licensed.

The *ATV RiderCourse* is a hands-on, half-day program that is available free of charge to all individuals who have purchased a participating company's new ATV, including the purchaser's eligible family members.

We focus our efforts on the first time purchaser without prior riding experience. CPSC has identified these riders as those most likely to benefit from rider training. It also is available to all ATV

riders who don't qualify for free training, such as purchasers of used ATVs or other prospective riders, for a reasonable fee.

The ATV RiderCourse offers students an opportunity to increase their safety knowledge and to practice basic riding skills in a controlled environment under the direct supervision of a licensed instructor.

The class is conducted completely outdoors and has a maximum class size of eight students for one instructor. The main themes in the ATV RiderCourse are safety and responsible use. Environmental ethics are taught as well as riding skills and state and local laws and regulations for operating ATVs.

ASI's instruction is targeted as much at the parent as it is to the child. As a first step in the process, we help parents make the decision as to whether ATVing is appropriate for their child through the use of a publication called "Parents, Youngsters and All-Terrain Vehicles."

This booklet includes a readiness checklist that covers visual perception/motor skills development, physical development,

social/emotional development, and reasoning and decision-making ability. If the parent has determined that ATV riding is the right activity for their child, we will train the child with participation from the parent.

Students practice basic safety techniques with hands-on exercises covering starting and stopping, turning – both gradual and quick – negotiating hills, emergency stopping and swerving, and riding over obstacles. Particular emphasis is placed on the safety implications relating to each lesson.

The course also covers protective gear, environmental responsibility and state and local laws. Participants receive an ATV RiderCourse Handbook, which reinforces the safety information and riding techniques covered during the ATV RiderCourse.

A major component of the RiderCourse is what we call The Golden Rules. These rules are reinforced beginning at the dealer, throughout the training experience, and extended through educational materials. In summary The Golden Rules are:

- Take an approved training course.
- Ride an ATV that's right for your age.
- Supervise kids under 16.
- Wear the right safety gear, especially a helmet.
- Rider only, no passengers.
- Ride only on designated trails and always ride responsibly.

Individuals six years of age and older may take the class.

Riders younger than 16 are restricted to ATVs of the appropriate size recommended for the rider's age. There are special teaching provisions for students younger than 16, and parents are encouraged to attend as well. Students younger than 12 participate in separate classes, and a parent must be present during the entire course.

As I mentioned earlier, ATV riders that purchased used ATVs from a dealer or private party can complete the ATV

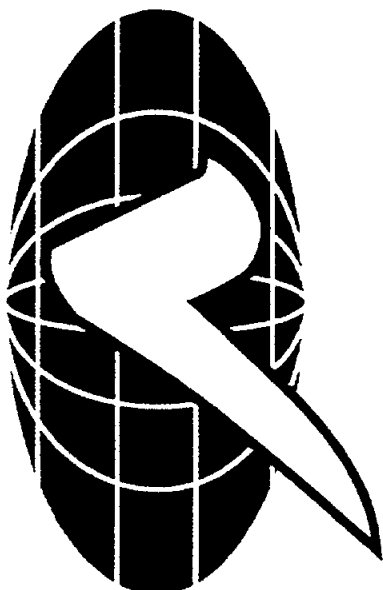
RiderCourse as well. The process is the same except that the ATV rider initiates contact with ASI. They can find our contact information in printed materials such as the owner's manual, the ASI Web site, or their local ATV dealer. The cost for training is 125 dollars for adults and 75 dollars for riders under age 16. Approximately 25 percent the annual training is completed by paying students.

We have just introduced a new program that allows prospective purchasers to take a training course first, then get reimbursed when they buy a new ATV from a member company.

We have posted some of the positive feedback we have received from students after they've attended one of our RiderCourses at various locations throughout this room.

Thank you. Now I would like to introduce Elisabeth Piper, director of public affairs at the Specialty Vehicle Institute of America.

Jim Brenner



VERITAS

Geophysical Integrity

Enhancing ATV Safety

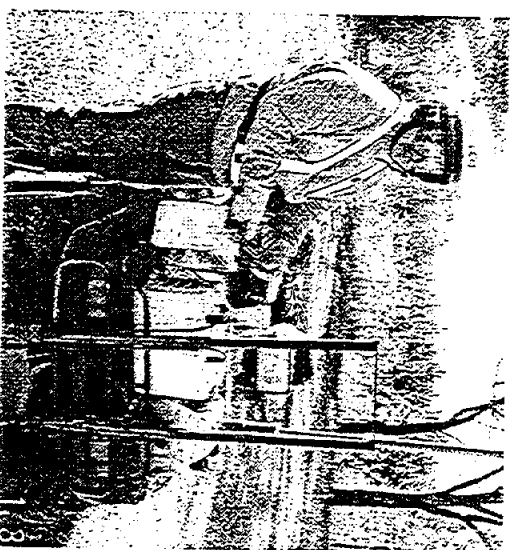
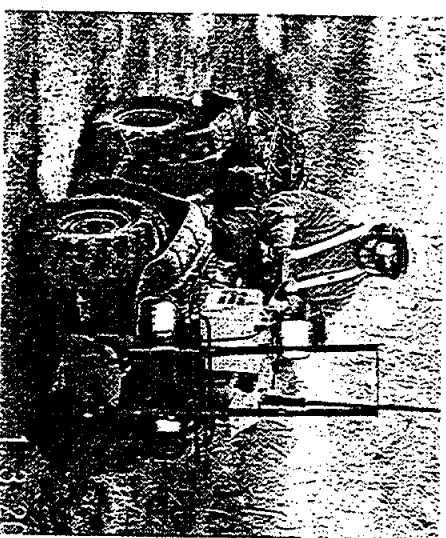
U.S. Consumer Product Safety Commission

Saving Lives and Keeping Families Safe

June 5th, 2003

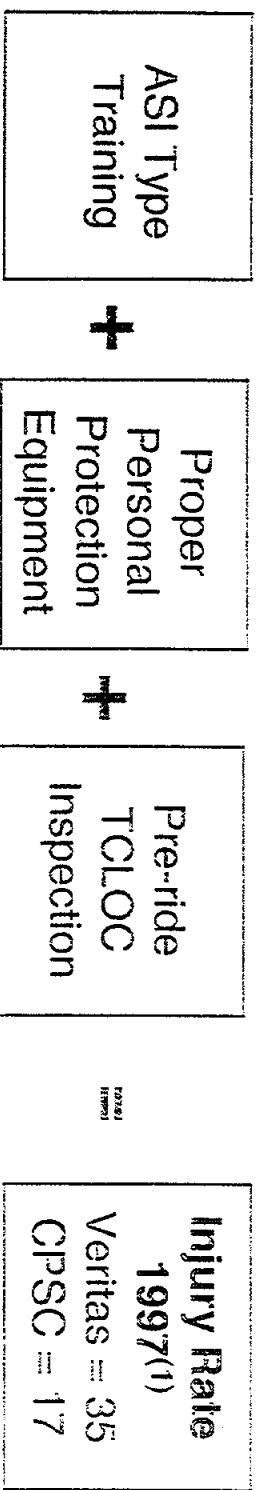
Veritas Rides "More Miles Than Anyone!" (1)

- 60 ATVs
- Operated 20 hr per day
- Ridden an average 30 miles per day roughly 10,000 miles per year!
- One Veritas ATV is equivalent to 10 - 18 recreational ATVs

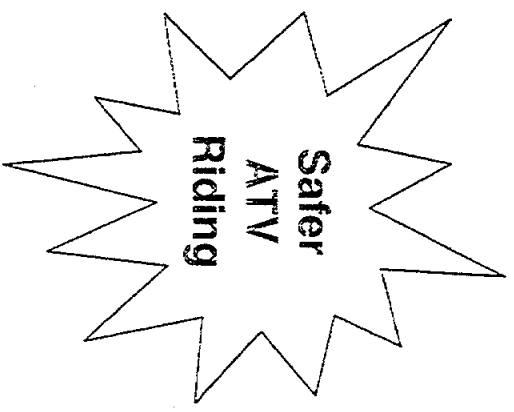
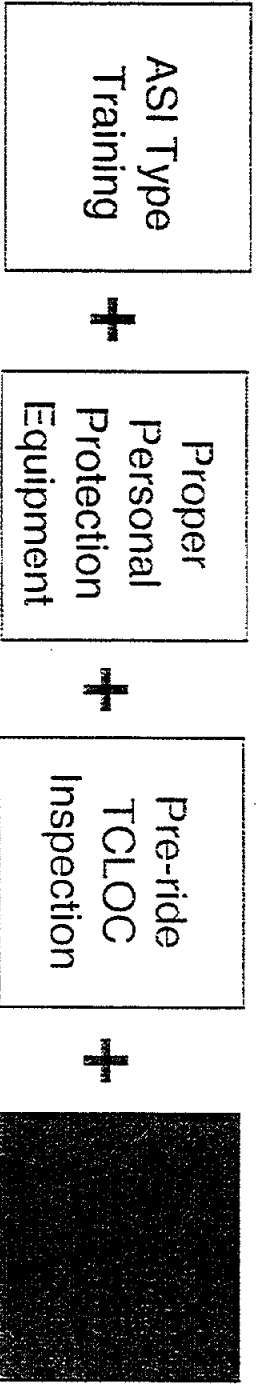


(1) Glen Hanson, ATV Magazine, May 2003

Training, PPE And Inspections Had No Impact . . . Speed Was Identified As Root Cause



No Safety Impact



⁽¹⁾ Rate Is per 1000 ATVs
 TCLOC = Tires, Controls, Lights, Oil, Chassis
 PPE = Head protection, Goggles, Jacket or long sleeved shirt, Gloves, Long Pants, Over the ankle boots



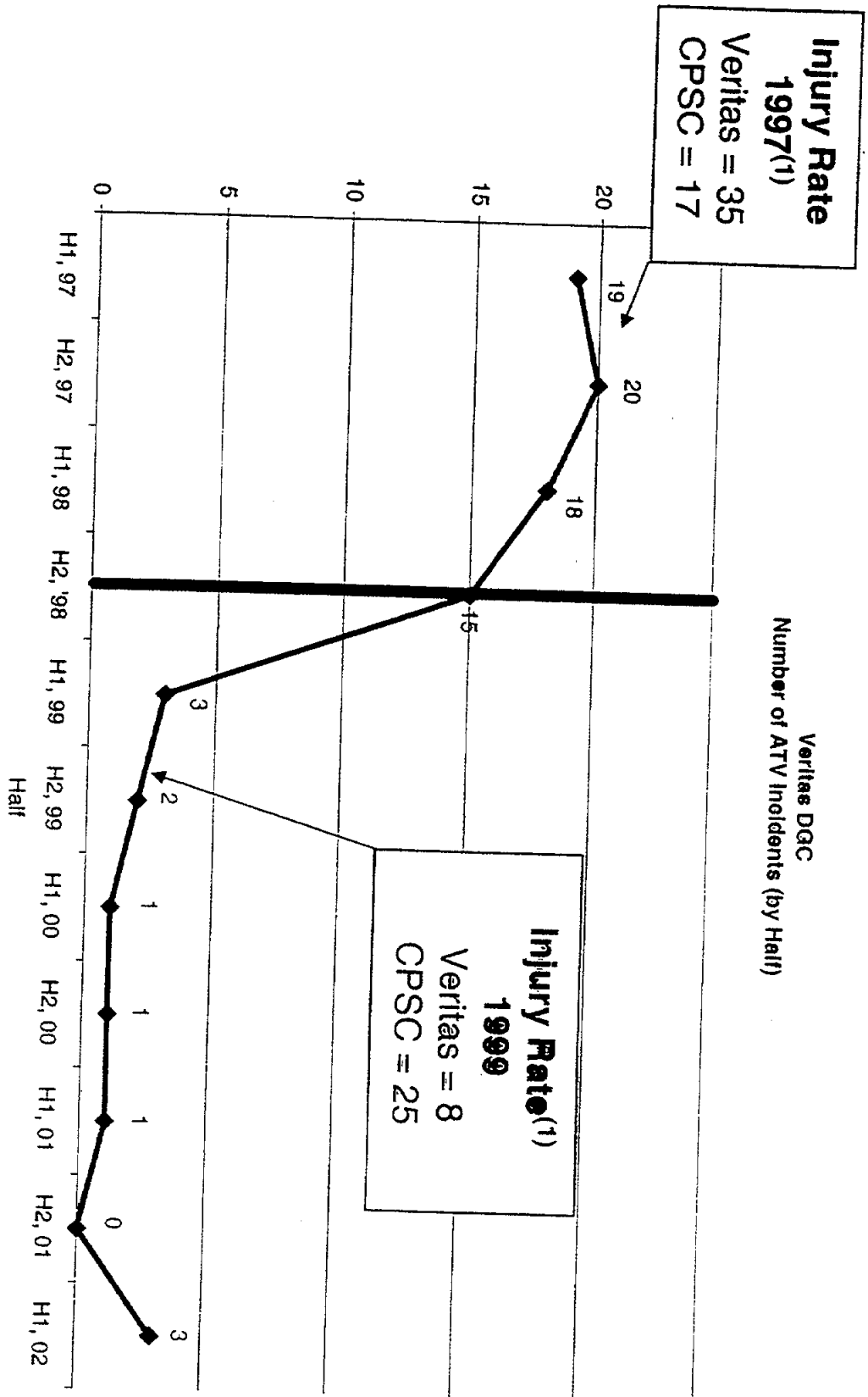
Electronic Speed Limiting . . . The Only Viable Option

Goal: Retain engine RPM, Tamper Proof, Flexible, In Expensive

Limiter Type	Limitations	Cost
Manual throttle stop	<ul style="list-style-type: none"> • Easy to tamper • Increased safety issues due to restrained RPM 	\$5.00
Removal of top end gears (3 rd and 4 th)	<ul style="list-style-type: none"> • Expensive • Negative impact to engine life 	\$300.00
Electronic Speed Limiter	<ul style="list-style-type: none"> • Affordable price 	Parts \$50.00 Installation \$100.00



The Results . . . Immediate Impact In Injury Reduction



System Implementation

⁽¹⁾ Rate Is per 1000 ATVs



A Recreational Version Provides Riders A Choice Based On Skill Level and Rider Terrain " " "

Three control settings are available based on type/skill of use

Standard

15 mph

Every day recreational and commercial use on all types of terrain

Road

30 mph

Special use on flat and predictable surfaces

Open

Excess of 60 mph

High risk usage recommended for use on only "track" type environments

... While Not Impact ATV Performance



VERITAS
Geospatial Integrity

The Impact Can Be Substantial And Achieved At Little Cost To The Manufacturers

- **Can prevent 54,000 injuries in three years**
- **Minimal cost, \$35**
- **2.5% participation rate to break even**
- **10% ATV participation rate potential cost savings \$1.0B by 2007**



You Can Enhance ATV Safety



VERITAS
Geophysical Integrity

Statement by
Ronald (Buck) Warfield
Chief Instructor
ATV Safety Institute

Ronald (Buck) Warfield

688 Route 32
Sykesville, MD 21784
(410) 489-4078

Mr. Warfield has in-depth experience, knowledge and expertise in the fields of All-Terrain Vehicle (ATV) Safety and ATV Operations. He is nationally recognized for his work in training and monitoring Licensed ATV Safety Instructors by eight major ATV manufacturers; including Honda, Yamaha, Kawasaki, Suzuki, Arctic Cat, Bombardier, Cannondale and AlphaSports. Under guidelines established by the ATV Safety Institute (ASI) and the Specialty Vehicle Institute of America (SVIA), Mr. Warfield has trained and licensed Instructors for agencies including the Air Force, Border Patrol, U.S. Forest Service, U.S. Park Service, State Parks, State and local Police Departments and private commercial businesses. He has been one of the primary training Chief Instructors for ASI, training and supervising their employed Instructor body for over thirteen years.

In 1985 Mr. Warfield was trained and certified by the Specialty Vehicle Institute of America (SVIA) as an ATV Instructor. In 1989, he furthered that training and expertise by becoming an ATV Safety Institute (ASI) Licensed Chief Instructor. From 1989 to the present, he has been continually under contract by ASI to train, license and monitor that Agency's employed ATV Instructor staff. Since 1988 ASI has maintained over one thousand Licensed Instructors throughout the United States. ASI Instructors must attend a bi-annual in-service workshop to maintain their Licensing status. Mr. Warfield, under contract to ASI conducts an average of twelve workshops annually. ASI also relies on Mr. Warfield to monitor Instructor performance during actual student teaching classes. Instructors have been terminated by ASI based on adverse performance evaluated and documented by Mr. Warfield. ASI utilizes more than one hundred training sites throughout the country. Each site must be evaluated and approved by an ASI Chief Instructor. Mr. Warfield has conducted more than thirty of these site evaluations.

Mr. Warfield is one of the senior Chief Instructors currently under contract to ASI. He has established an Instructor Training Facility at Rocky Meadows Farm in central Maryland. This is a one hundred fifty acre farm owned and operated by the Warfield family. The training facility includes a classroom building, a marked flat track and a wooded trail. ASI has utilized it for the past several years for Instructor Training on the east coast. Additionally, over one thousand novice ATV riders have completed the ASI RiderCourse program conducted at this facility by Mr. Warfield.

Education

Mr. Warfield graduated from the Glenelg High School in Maryland in 1966. In January of 1970, he entered the Maryland State Police Training Academy and successfully complete that six-month course in general police studies. Graduating at the rank of Trooper, Mr. Warfield was employed by the Maryland State Police as a police officer for twenty-three years and retired from that Agency in January of 1993.

In 1985 he attended a one-week seminar conducted by the Specialty Vehicle Institute of America and received certification as an SVIA approved ATV Instructor. From 1985 to present, he has attended the mandatory Instructor in-service training seminars conducted by SVIA and ASI. Mr. Warfield elevated his expertise by attending and completing Chief Instructor training in 1989. He has attended mandatory annual Chief Instructor two-day workshops conducted by ASI since that initial training date.

Major Projects/Achievements

In 1984, Mr. Warfield initiated one of the first organized ATV Rider Training Programs in the country. Acting as both a Maryland State Trooper and volunteer 4H Leader, he sought the guidance of the newly formed Specialty Vehicle Institute of America in establishing this State Police/4H safety program.

Directed primarily at younger riders, the training was conducted by then Trooper Warfield while on duty and in uniform. In 1985 he attended and completed the SVIA program to obtain an Instructor Certification. This local training received national recognition in 1987. Trooper Warfield was awarded the National Safety Council's Merit Award for innovative safety programs. In addition, he received the "Trooper of the Year" commendation awarded by the Maryland State Police that same year.

As a result of this success, along with other community based policing initiatives enacted by Trooper Warfield, the Maryland State Police elevated his position from routine patrol duties to Coordinator of MSP Crime Prevention Programs. He was placed in charge of the D.A.R.E. Program, Neighborhood Watch, Crime Solvers and other community initiatives. In 1987 Trooper Warfield established the Maryland State Police ATV Patrol Unit. This unit consisted of four uniformed Troopers certified by SVIA and qualified to operate two MSP ATVs. The unit, one of the first of its kind in the Nation, was utilized extensively for search and rescue, crowd control and other related police assignments. Trooper Warfield was issued a new marked Ford Bronco and two ATV Unit trailer that became his assigned transportation. During this period, the Maryland State Police also relied upon Trooper Warfield's expertise to review and evaluate all ATV accidents that occurred within their jurisdiction. These included both off-highway and highway collisions. Trooper Warfield was an invited guest speaker on ATV Safety for community groups and organizations throughout Maryland and the Mid-Atlantic States. He maintained his position in charge of this operation and the entire Crime Prevention Unit through 1993 when he retired.

With this background in both police duties and ATV Safety, he frequently assists police and public organization in establishing written operational orders for Departmental ATV use. His expertise has been utilized by the Air Force, Border Patrol, the U.S. Forest Service, the U.S. Park Service and local police in not only training their personnel as Instructors, but also in establishing those Agencies' Operational Orders.

Upon retiring from the police force in 1993, Mr. Warfield's availability to ASI was significantly increased. His peers at the ATV Safety Institute have on multiple occasions recognized him for his outstanding work ethic and assignment volume. On July 01, 2000, Mr. Warfield was selected by ASI to conduct an ATV RiderCourse Seminar for the compliance officers of the Consumer Product Safety Commission. These participants were responsible for monitoring the CPSC ATV Consent Decree enacted in 1988. On August 20, 2001, Mr. Warfield was contracted by ASI to facilitate an informational ATV Safety Seminar for the entire West Virginia Legislative body.

Another major undertaking began in June of 2001. Mr. Warfield was selected by ASI to participate as a member of their Curriculum Revision Board. For approximately six months, the Board reviewed, evaluated and redesigned the training manuals utilized by ASI for both Instructor Training and Chief Instructor Training.

Exhibits

Copy of newspaper article re: Tfc. Buck Warfield dated 1990
Copy of current ASI Chief Instructor's License
CPSC Program Monitors RiderCourse Training contract in Sykesville, MD dated 06/01/2000
Detailed report (4 pages) of Instructor performance and termination in Alpharetta, GA dated 08/08/2000
California Park Ranger training contract in Ocotillo Wells, CA dated 10/23/2000
Diagram utilized for ASI Site Approval in Macon, GA dated 12/16/2000
Professional Development contract in Lafayette, LA dated 03/23/2001
Professional Development contract in Olympia, WA dated 04/06/2001
Training Site Evaluation Report for MX Track in Albany, OR dated 04/08/2001
US Park Contract in Boise, ID dated 04/16/2001
Professional Development Workshop contract in Peru, IN dated 04/28/2001
US Forest Service contract in Payson, AZ dated 05/07/2001
US Border Patrol contract in Sierra Vista, AZ dated 06/11/2001
ASI Curriculum Design Project contract in Gorman, CA dated 06/25/2001
Instructor Performance Evaluation contract in Salem, OR dated 10/19/2001
US Forest Service training contract in Bessemer, MI dated 10/28/2001
Florida Fish & Wildlife Contract in Havana, FL dated 01/12/2002
Texas Dept. of Safety Certification dated 02/28/2002
ASI Employed Instructor contract in Lowville, NY dated 04/08/2002
Air Force contract at Eglin AFB in Ft. Walton, FL dated 06/23/2002
Rocky Meadows Instructor Training contract in Sykesville, MD dated 10/10/2002

Lester Horst

ATV HEARING

ATTEN: Rockelle Hammond
Office of the Secretary
Consumer Product Safety Commission
Washington, D.C. 20207

My name is Lester Horst I am from greencastle PA. I have been an ATV safety instructor for 14 years and have enjoyed riding ATV's as recreation for the past 25 years. My wife and three children also enjoy riding ATV's. We as a family recognize that any time you participate in an activity there are risks associated with that activity. To minimize the risks with ATV riding we always supervise our children, ride off road on trails for ATV use, and wear proper protective gear which includes helmet with eye protection, long sleeve shirt or jacket, long pants, gloves, and over the ankle boots. this has provided our family many years of safe and fun ATV riding.

Many people use ATV's as a way to enjoy the outdoors. A few months ago a lady took the safety course who bought herself an ATV for her 65 birthday. She couldnt walk very well so the ATV provided a way she could still get around and enjoy the outdoors.

Today we hear a lot about kids in trouble and alcohol and drug abuse. I believe that by providing activities for kids it will help keep them out of trouble. With proper training and supervision ATV riding can be a great activity for kids today.

The statistics on ATV's show a rise in the number of ATV's sold. The number of injuries, number of riders, and number of hours riden have also increased. The number of riding areas and trails has not kept up with the increase in ATV use. The existing trails are becoming more crowded and there are more people riding in places not intended for ATV use.

Some things that will make ATV riding more safe is to get proper safety training and more places to ride ATV's.

From: Lester Horst
4495 Coseytown road
Greencastle PA 17225

Note: 10 hard copies of this are being sent by mail

CPSC STATEMENT FOR MORGANTOWN, W.V. HEARING

Dick Lepley, PMDA, NOHVCC, 5-28-03

My name is Dick Lepley, and I'm here as a member and representative of the Pennsylvania Motorcycle Dealer's Association. I'm also the Pennsylvania State Representative for the National Off-Highway Vehicle Conservation Council, also known as NO-VACK (NOHVCC). I have owned and operated a motorcycle-ATV dealership in Northwest Pennsylvania since 1967. My dealership employs 50 people, and represents ATV's, and other products offered by Honda, Yamaha, Polaris, Kawasaki, and Suzuki. We also sell motorcycles produced by Victory and Harley-Davidson. We are one of the largest dealers in Pennsylvania. Being in business for 36 years has kept us very close to the ATV business, and to ATV owners in the Keystone State, and Northeast Ohio. I'm here to present the dealer's perspective on the ATV business. I want to preface my conversation by saying that I am a parent, and like the dealers I represent, I find injury and death abhorrent regardless of how it occurs, whether it's represented by the roughly 50,000 people who die each year on our highways, or by the 750 to nearly 1,000 people who die each year riding bicycles. It seems that in any venue involving the risk of injury or death, the youngest members of our population are the ones exposed to the highest risk.

For example, according to a government survey, the percentage of those over the age of 24 killed in auto accidents each year is 18.1% per 100,000 vehicles. That percentage jumps to 48.2% when one takes a look at 15 to 24 year old drivers. I think all of us at one time or another have made the comment to a friend or acquaintance that "I don't know how I made it to adulthood when I consider how I drove, played, etc."

With the aforementioned data in mind, our first point is this...the PMDA is extremely concerned that current ATV fatality statistics are viewed as an "epidemic" when in fact the number of fatalities has been between 299 in 1986 and 270 in 2001, with two years when the numbers were over 300. The numbers, as provided by CPSC have essentially remained constant in spite of the fact that ATV industry growth the last several years has approached 50 per-cent per year. Total industry sales are nearing one and a half million vehicles per year with more than half those sold being ATVs. In Pennsylvania, the DCNR reports a total of a hundred and one (101) fatalities between 1997 and 2002. At the same time, the number of active registrations in the Keystone State have increased from 27,636 in 1996 to 167,567 in April of 2003. PMDA members fail to see these statistics as an "epidemic".

Second, we feel the industry and dealers alike are doing everything possible to encourage the safe use of our products. Attached with my testimony are copies typical of the forms our customers sign when they pick up their new ATV's. In them the customer is made aware of the risk involved in off road riding. He also acknowledges the age restrictions, and is made advised of the safety training available. Additionally, safety and warning labels are prominently located on the ATV's, and the manufacturers provide an ample supply of printed and video material to assist riders in the proper operation of their products. And, in the case of Polaris, the customer is subjected to a mandatory video, and hands on ride training prior to taking delivery. Additionally, Polaris will not provide the customer with a warranty if he or she refuses to take the training. In short, we believe the industry, and we dealers are doing everything possible to insure the safe operation of the ATV's we sell.

Third, we believe the age restrictions that are in place cause more harm than good. We are often forced to put young people on machines that are too small for them, and hence are more difficult to control than units that are properly sized. By the way, the age restrictions often result in one of two things happening on the sales floors of our dealerships.

A, the consumer is angered when told he cannot buy a vehicle, and he is lost as a customer...or B, he learns how the game is played, and armed with that data, goes to the next dealership and buys what he wants anyway.

Fourth, we want to go on record as saying the "mystery shopping" of dealerships that is a spin-off of the original Consent Decree is, in our opinion, extremely in-effective. The tax dollars spent implementing it would serve all of us much more effectively if they were aimed at training programs instead. Additionally, the concept has created an invisible wall of mis-trust between you who wish to guide our sport, and those of us who understand it best. PMDA is interested instead in creating a meaningful platform of communication with CPSC in order to move the sport forward in a positive manner.

Fifth, we want to state that ATV's are like any other product. Of themselves they can inflict no harm, nor do any damage. That domain is strictly in the hands of the users. Speaking of users, I've never seen a product more versatile than an ATV. It contains within its structure the ability to work and to play at the same time. It has given aging and handicapped citizens the ability to access the lands that belong to all of us, and has certainly helped them maintain a positive outlook on life.

It has saved farmers, and American business countless millions of dollars by providing a platform that is affordable to buy, and even more affordable to operate. And, if properly supervised, and controlled by parents it is an excellent learning and disciplinary tool for youngsters, and teaches them much needed lessons about proper land use, machine maintenance, trail etiquette, personal responsibility, and a host of other things.

The first real boom in the motorcycle business came to America in the late Sixties, soon after I got into business. And, one of that boom's most exciting elements was family participation in the sport. I didn't see that phenomenon again until ATV's became popular, and the family aspect is even more viable this time around because safely riding an ATV can be mastered by almost anyone. Travel to the Allegheny National Forest on any weekend, and what you'll see are families enjoying themselves together. In today's land of broken homes, destroying any entity that has the ability to bring, and keep families together must be given serious consideration.

And then there's the economy. In Pennsylvania alone, Off Highway Vehicles pump 1,033,516,601.00 dollars yearly into the Keystone State's economy, and as much needed additional riding areas are developed not only will revenues increase, improper use, and quite likely injuries, will decrease.

I would suspect the numbers are much the same in other States. Speaking of riding areas, it is our opinion that a number of the players in this assault on the ATV sport are using it simply as a platform to push other agendas, with the most onerous being the total elimination of off road vehicles from the landscape, in an effort to prevent an entire class of Americans from exercising their inalienable right to access land that belongs to all of us. Concern for safety doesn't shine anywhere through this transparent ruse.

In closing, I want bring attention to the growing tendency in this country to force large numbers of our population to give up what they love because of the indiscretions of an irresponsible few. In this case it's millions of responsible ATV owners, and land users. Instead of trying to legislate safety, which we feel cannot be done, we should work together to provide sufficient amounts of world class training, and places to safely enjoy this great land of ours, and we should return to a point in time where individuals are expected to assume responsibility for their actions. The PMDA, and its members would gladly be a part of that equation. Thank you.

SALESPERSON DELIVERY CHECKLIST - TRX

SALESPERSON QUALITY CONTROL CHECK

- Set-Up And Pre-Delivery Checklist complete, all signatures in place
- Vehicle is washed and clean
- Engine starts easily, idles at proper RPM
- Vehicle is free of water, fuel and oil leaks
- Fit and finish is acceptable
- Fuel tank is full with the proper fuel

SALESPERSON ADMINISTRATION CHECK

- Title work in progress
- Off-road registration in progress
- Financing application approved
- Insurance application forms completed, binder issued
- Unit checked against order to verify correct VIN
- All requested accessories installed
- Training incentive decal applied to the right front fender
- Warranty registration completed
- Delivery file contains all documents needed for review (warranty booklet, safety pamphlet, accessory brochure, New Purchaser ATV Rider Training Certificate, dealership chain of command, and Practice Guides)

CUSTOMER INFORMATION CHECK

The customer has received the following:

- Customer copy of the ATV Rider Training Certificate
- Information about the ATV Safety Institute (ASI) safety training course and the toll-free phone number (1-800-887-2887) to find the nearest ASI training location
- An explanation of the following items: the customer must
 - **ALWAYS** read the Owner's Manual carefully and follow the operating procedures described. Pay special attention to the warnings contained in the manual and on all labels.
 - **ALWAYS** be careful when operating an ATV, especially when approaching hills, turns, and obstacles and when operating on unfamiliar terrain.
 - **ALWAYS** follow these age recommendations:
 - A child under 12 years old should never operate an ATV with engine size greater than 70 cc.
 - A child under 16 years old should never operate an ATV with engine size greater than 90 cc.

CUSTOMER INFORMATION CHECK (Cont'd)

- An explanation of and recommendation to use a D.O.T. approved motorcycle helmet and other safety apparel
- An explanation of the importance of protecting the environment when riding off-road
- An opportunity to view available safety videos
- An explanation of the importance of safe operation, the availability of free training
- A copy of the customer video, Ride Safe, Ride Smart
- The location of the Owner's Manual and the importance of reading it.
- A copy of the "Tips & Practice Guide for the ATV Rider" booklet for those purchasing a TRX250TE/TM, TRX300, TRX300FW, TRX300EX, TRX350TE/TM/FE/FM, TRX400FW, TRX400EX, TRX450FE/FM, or TRX500FA
- A copy of the "Parents, Youngsters & ATVs" booklet for those purchasing a TRX90
- A copy and explanation of the warranty policy and review of required maintenance schedule
- A review of all warning labels on the vehicle and their importance to the operator
- A tour of the dealership, including a review of available accessories and safety apparel, introductions to the parts and service managers and/or receipt of their business cards, and mention of the dealership's days and hours of operation
- An explanation of the dealer's chain of command
- Information regarding the "Honda Rider's Club of America" (HRCOA) and a membership application form
- An explanation of and materials about the HondaCare Protection Plan™ (HPP)
- A reminder of the first service as noted in the Owner's Manual

SALESPERSON AND CUSTOMER VEHICLE FAMILIARIZATION

Inspection and operation procedures that should be performed, if applicable, before each ride:

Control Familiarization:

- Throttle operation
- Front and rear brakes
- Parking brake
- Reverse mechanism
- Lighting switches
- Manual starter
- Shift buttons (TRX250TE, TRX350TE/FE, TRX450FE and TRX500FA models only)

Review of Pre-ride Inspection Procedures (perform those applicable):

- Engine oil - check level, check for leaks
- Fuel - check level, check for leaks
- Brakes - check operation
- Tires - check condition and air pressure
- Drive chain - check condition and adjustment, lubricate if necessary
- Throttle - check for smooth opening and closing in all steering positions
- Headlight switch and headlight dimmer switch - check for proper operation
- Engine stop switch - check for proper function
- Steering - check that the wheels turn properly
- Nuts, bolts, and fasteners - check that all are secure

Operating Procedures:

- Starting procedures - electric & manual
- Break-in procedures
- I have reviewed the items checked above with the customer named below.



- **NEVER** operate an ATV without proper instruction. Take a training course.
- **NEVER** allow a child under 16 years old to operate an ATV without adult supervision. Children need to be observed carefully because not all children have the strength, size, skills or judgment needed to operate an ATV safely.
- **NEVER** carry a passenger on an ATV. Carrying a passenger may upset the balance of the ATV and may cause it to go out of control.
- **NEVER** operate an ATV on pavement. The vehicle is not designed to be used on paved surfaces and may be difficult to control.
- **NEVER** operate an ATV on a public road, even a dirt or gravel one, because you may not be able to avoid colliding with other vehicles. Also, operating an ATV on a public road may be against the law.
- **NEVER** operate an ATV without an approved motorcycle helmet, eye protection, boots, gloves, long pants and a long-sleeved shirt or jacket.
- **NEVER** consume alcohol or drugs before or while operating an ATV.
- **NEVER** operate an ATV at excessive speeds. Go at a speed which is proper for the terrain, visibility conditions, and your experience.
- **NEVER** attempt to do wheelies, jumps or other stunts.
- **NEVER** lend your ATV to anyone who has not taken a training course or has not been driving an ATV for at least a year.

Salesperson Name _____ (Please Print)

Salesperson Signature _____ Date: _____

Dealer Name _____ Dealer No. _____ Phone (____) _____

Purchase Date _____ Model _____ VIN _____

I acknowledge that the items checked above have been reviewed with me and explained to my satisfaction.

Customer Name _____ (Please Print) Phone (____) _____

Customer Signature _____ Date: _____

(If the customer is under the age of 18, the parent or guardian must sign and indicate their relationship)