



U.S. Department
of Transportation
**Federal Highway
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

August 9, 2005

In Reply Refer To: HSA-10/B-34G

Mr. Marc Christensen
Managing Member
Off the Wall Products, LLC
P.O. Box 1461
Salt Lake City, Utah 84110

Dear Mr. Christensen:

In your June 9 letter to Mr. Richard Powers of my staff, you informed him that your company had acquired the exclusive rights from Mr. David Wasserstrom, president of Traffic Safety Devices, Inc., to manufacture and market the ROADGUARD Barrier with either one of the Highway Assembly Kits described in our acceptance letters B34C and B34F. You further stated that you now wish to change the name of this product from the "Roadguard Barrier with Highway Assembly Kits I or II" to "Multi-Barrier Model MB-350 with MB-350 Kits I or II", respectively. You enclosed specifications and drawings for both configurations with your letter, but we have noted some potentially confusing nomenclature/information in your specification sheets. These are addressed in the final paragraph of this letter.

As you may know, the history of the ROADGUARD and several similar water-filled plastic barricades with external rail elements added to provide the necessary containment and redirection capabilities of a *bona fide* traffic barrier has been controversial, particularly in regard to the ownership of the applicable patents for these devices. Consequently, this letter shall not be construed as authorization or consent by the Federal Highway Administration (FHWA) to use, manufacture, or sell any patented device for which Off the Wall Products, LLC is not the patent holder or has not been assigned rights to manufacture and sell the device by the patent owner. Acceptance is limited to the crashworthiness characteristics of the device, and the FHWA is neither prepared nor required to become involved in issues concerning patent law. Patent issues, if any, are to be resolved by the applicant.

However, as long as your products are identical to those originally accepted as the ROADGUARD Barrier with Highway Assembly Kits I or II, and these products will no longer be manufactured, advertised, marketed, or sold by anyone else under any other name or trademark, your barrier, under its new name, Multi-Barrier Model MB-350 with MB-350 Kits I



and II, may be used as a test level 3 (TL-3) traffic barrier on the National Highway System when such use is acceptable to the contracting authority. If any of these conditions are violated, the FHWA acceptance of your product may be terminated without further notice.

Although the terms *barrier* and *barricade* are often used interchangeably, there is a critical distinction between the two terms. By definition, a traffic barrier is designed to contain and redirect an impacting vehicle although some deflection of the barrier is both allowed and expected for freestanding, temporary applications. A barricade, on the other hand, is considered to have no significant containment capabilities, even when several units are connected to form a solid line. Please note that the MB-350 is rated a TL-3 barrier only when used in conjunction with the MB-350 Kit I or Kit II and that its assumed design deflection (with either KIT) is approximately 11 feet. Your brochure showing the Multi-Barrier Model MB-350 without either kit attached is seriously misleading because that configuration is not a barrier and should not be advertised as such. Similarly, your specification sheets for the MB-350 with Kit 1 should reference FHWA acceptance letter B-34C and the text should be revised to indicate your product is classified as a barrier only when the Kit is used. The same comment applies to the MB-350 with Kit 2, but its correct FHWA acceptance letter reference is B-34F. The term barricade should not be used in the brochures unless the MB-350 has been successfully tested as a barricade (i.e., without either kit) and has been accepted as such. Please send me corrected specification sheets for our files and do not hesitate to contact Messrs. Powers or Artimovich of my staff if you have any questions regarding appropriate wording for these documents.

Sincerely yours,

/original signed by/

John R. Baxter, P.E.
Director, Office of Safety Design
Office of Safety