

Harrisburg North Golf Course), Upper Paxton Township, Dauphin County, Pa. Consumptive water use of up to 0.200 mgd and surface water withdrawal of up to 0.200 mgd.

13. *Project Sponsor and Facility:* Spring Creek Golf Course (Spring Creek), Derry Township, Dauphin County, Pa. Consumptive water use of up to 0.081 mgd and surface water withdrawal of up to 0.081 mgd.

14. *Project Sponsor:* Titanium Hearth Technologies, Inc. *Project Facility:* TIMET North American Operations, Caernarvon Township, Berks County, Pa. Consumptive water use of up to 0.133 mgd, and settlement of an outstanding compliance matter.

15. *Project Sponsor and Facility:* Conestoga Country Club (Well 1), Manor and Lancaster Townships, Lancaster County, Pa. Groundwater withdrawal of 0.281 mgd.

16. *Project Sponsor and Facility:* Rock Springs Generation Facility, Rising Sun, Cecil County, Maryland. Modification of surface water withdrawal, groundwater withdrawal, and consumptive water use approval (Docket No. 20001203).

Public Hearing—Enforcement Action: The Commission accepted a settlement offer in the amount of \$8,500 for the following project.

Project Sponsor and Facility: Standing Stone Golf Club (Docket No. 20020612), Oneida Township, Huntington County, Pa.

Public Hearing—Denial of Request for Administrative Hearing: Under Section 808.2 of the Commission's Regulation relating to administrative appeals, the Commission denied a request for an administrative hearing concerning the following project:

Project Sponsor: Mountainview Thoroughbred Racing Association; *Project Facility:* Withdrawal of up to 0.400 mgd (30-day average) for maintenance and operation of a horse racing and casino gaming facility, Docket No. 20080305;

Location: East Hanover Township, Dauphin County, Pa. Appellant: East Hanover Township, *et al.*

Public Hearing—Denial of Request to Reopen Docket: Under Section 806.32 of the Commission's Regulation relating to reopening of project approvals, the Commission denied a request for the reopening of the following project approval:

Project Sponsor: Mountainview Thoroughbred Racing Association Project;

Facility: Consumptive Use of up to 0.438 mgd (peak day) for maintenance and operation of a horse racing and casino gaming facility, Docket No. 20020809;

Location: East Hanover Township, Dauphin County, Pa. Appellant: East Hanover Township.

Public Hearing—Denial of Request for Reconsideration of Denial of Request for Stay: Under Section 808.2 of the Commission's Regulation relating to administrative appeals, the Commission denied a request for reconsideration of its previous denial of a request for stay of the following project approval:

Project Sponsor: Mountainview Thoroughbred Racing Association; *Project*

Facility: Withdrawal of up to 0.400 mgd (30-day average) for maintenance and operation of a horse racing and casino gaming facility, Docket No. 20080305;

Location: East Hanover Township, Dauphin County, Pa. Appellant: East Hanover Township, *et al.*

Public Hearing—Projects Tabled:

1. *Project Sponsor and Facility:* East Resources, Inc. (Seeley Creek), Town of Southport, Chemung County, N.Y. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

2. *Project Sponsor and Facility:* East Resources, Inc. (Crooked Creek; near Middlebury Center), Middlebury Township, Tioga County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

3. *Project Sponsor and Facility:* Fortuna Energy Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

4. *Project Sponsor and Facility:* Fortuna Energy Inc. (Towanda Creek), Franklin Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

5. *Project Sponsor and Facility:* Fortuna Energy Inc. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Applications for consumptive water use of up to 0.250 mgd and surface water withdrawal of up to 0.250 mgd.

6. *Project Sponsor and Facility:* Neptune Industries, Inc. (Lackawanna River), Borough of Archbald, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

7. *Project Sponsor:* United States Gypsum Company. *Project Facility:* Washingtonville Plant (Well W-A8), Derry Township, Montour County, Pa. Application for groundwater withdrawal of 0.350 mgd.

8. *Project Sponsor:* Pennsy Supply, Inc. *Project Facility:* Hummelstown

Quarry, South Hanover Township, Dauphin County, Pa. Application for surface water withdrawal of up to 29.925 mgd.

Authority: Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: July 10, 2008.

Thomas W. Beauduy,

Deputy Director.

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BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Dorel Juvenile Group [Cosco] (DJG); Denial of Applications for Determination of Inconsequential Noncompliance

Dorel Juvenile Group (DJG), of Columbus, Indiana, the parent company manufacturing Cosco brand child restraints, determined that certain tether webbing used on various child restraints (39 models and 3,957,826 units) failed the webbing strength requirements of S5.4.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems".¹ DJG also determined that certain harness webbing used on various child restraints (14 models and 54,400 units) failed the webbing strength requirements of FMVSS No. 213, S5.4.1(b). For each noncompliance, DJG filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." DJG also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301, "Motor Vehicle Safety," on the basis that the noncompliance in both situations is inconsequential to motor vehicle safety.

Notices of receipt of the applications were published on July 30, 2002 and December 3, 2002 in the **Federal Register** (67 FR 49387 and 67 FR 72025) with 30-day comment periods. In response to the first petition, NHTSA received one comment from Advocates for Highway and Auto Safety (Advocates) in support of establishing a minimum breaking strength requirement (Docket No. NHTSA-2002-12479-2). NHTSA received no comments in response to the second petition.

The noncompliant tether webbing used on Cosco child restraints failed to meet the percent-of-strength

¹ Throughout this Notice, all references to FMVSS No. 213 are based on the version of the standard in effect for the applicable manufacturing dates of the noncompliant webbing.

requirement of FMVSS No. 213 when subjected to the abrasion test. The tether webbing retained only 55 percent of its new webbing strength; 75 percent was and is required by the standard. The noncompliant harness webbing failed to meet the percent-of-strength requirement of FMVSS No. 213 when exposed to a carbon arc light. The harness webbing retained only 37 percent of its new webbing strength; 60 percent was and is required by the standard.

As indicated above, NHTSA's standards were based on retention of a specified percentage of the original strength of the webbing. However, there was no minimum strength requirement. These DJG petitions for inconsequential noncompliance highlighted NHTSA's concern that the standard could allow manufacturers to use low strength and potentially unsafe webbing provided that the webbing retained most of its strength following exposure to abrasion or light. At the time of receiving these petitions, NHTSA had undertaken a rulemaking to consider whether to amend FMVSS No. 213 to require a minimum breaking strength for webbing to ensure that all child restraints being introduced into the market would have adequate webbing strength to provide child safety protection over their lifetimes. NHTSA postponed final determinations on these petitions in order to obtain the benefit of public comments responding to the proposed breaking strength requirements. In a rule published on June 7, 2006 (71 FR 32855), NHTSA established minimum breaking strength requirements.²

Abrasion Petition Summary

As part of the Agency's 2001 testing activities, NHTSA tested the tether webbing used on DJG child restraints to the requirements in FMVSS No. 213. FMVSS No. 213, S5.4.1(a) "Performance requirements," requires that the webbing of belts provided with a child restraint system, after being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS No. 209, "Seat belt assemblies," have a breaking strength of not less than 75 percent of the strength of the unabraded webbing when tested in accordance with S5.1(b) of FMVSS No. 209. Section 5.1(b) of FMVSS No. 209 requires that the median value of three webbing samples meet the abrasion requirement.³ Following the

² Under the final rule the webbing must meet both minimum breaking strengths and percent-of-strength retention requirements to be compliant with the Standard.

³ The 75 percent webbing reduction requirement is calculated using median breaking strength values of abraded webbing (out of three samples) and

abrasion test, the DJG tether webbing retained only 55 percent of the original webbing breaking strength (from 19,803 N to 10,903 N). The noncompliant tether webbing was manufactured between January 2000 and September 30, 2001. On July 11, 2001, as a result of its fiscal year 2001 testing, NHTSA notified DJG of a potential noncompliance regarding DJG's tether webbing utilized for their tether assembly.

DJG determined that one of the tether webbing suppliers had provided some webbing that did not meet the abrasion test requirements. However, DJG contended that because its unabraded webbing strength was high, noncompliance with the 75 percent abrasion strength requirement of S5.4.1(a) of FMVSS No. 213 is inconsequential to motor vehicle safety. DJG stated that its abraded strength of 10,903 N is far in excess of the anchorage strength requirement specified in FMVSS No. 225, "Child restraint anchorage systems." DJG also asserted that the abraded webbing strength test procedure set forth in S5.4.1(a) of FMVSS No. 213 is flawed, and that a minimum abraded breaking strength should be specified. Therefore, DJG filed the petition claiming that the noncompliance is inconsequential to motor vehicle safety.

NHTSA Decision on Abrasion Petition

As summarized above, DJG contended that because the unabraded webbing strength was high, the noncompliance with the 75 percent abrasion strength requirement was inconsequential to motor vehicle safety. However, both the unabraded webbing strength and the degradation rate requirements are important from a safety perspective, as explained in the preamble to the June 2006 final rule.⁴ While DJG focused on the unabraded strength of the webbing, it largely ignored the high degradation rate of the webbing in the restraints covered by its Part 573 report. This lack of breaking strength retention after abrasion signals the distinct probability that the webbing strength would be insufficient throughout a lifetime of use.⁵

original (unabraded) webbing (out of three samples).

⁴ 71 FR 32856-858, June 7, 2006 (minimum breaking strength requirement for new webbing); 71 FR 32858-859, June 7, 2006 (minimum percent-of-strength requirement for exposed webbing).

⁵ We note that following abrasion, the Dorel tether webbing had a strength of 10,903 N. Under the 2006 rule, the minimum strength for new webbing is 15,000 N. That rule did not change the 75 percent strength retention requirement. As a frame of reference, webbing that had a strength of 15,000 N that retained 75 percent of its strength would have a strength of 11,250 N. The Dorel tether webbing had a strength, after exposure, of only 10,903 N.

DJG also stated that the abraded webbing strength in its restraints, as measured at 10,903 N, is far in excess of the anchorage strength requirement specified in FMVSS No. 225. However, as noted in the preamble to the June 2006 final rule, the abrasion test is an accelerated aging test that provides a snapshot of the webbing over prolonged exposure to environmental conditions. The test does not replicate the lifetime use of the webbing⁶ and therefore the webbing would have less strength after further abrasion. If the webbing from a child restraint lost a significant percentage of its strength under the test, there would be substantial questions about its ability to perform as intended over a long term use of the child restraint. The high degradation rate of the DJG webbing gives significant cause for concern that the webbing could abrade to the point where the webbing strength is lower than the tether anchor strength, providing for an unsafe connection to the vehicle.

Finally, DJG stated that a minimum abraded breaking strength should be specified in the standard. Advocates expressed a similar concern, stating in its comment that NHTSA should establish an absolute webbing strength requirement for unabraded webbing, as well as a minimum numerical breaking strength requirement for webbing that has been subjected to abrasion.⁷ NHTSA agreed with both Dorel and Advocates and, following the submission of these petitions, published a proposal to revise the standard. The final rule reaffirmed that retaining control over material degradation rates is critical to ensure sufficient webbing strength over time.⁸

In summary, the DJG webbing met only 55 percent of the original webbing breaking strength in the abrasion test. Such substantial (almost 50 percent) degradation in strength, notwithstanding the original webbing strength, indicates that the webbing could not be relied upon to provide adequate strength for the life of the restraint.

In consideration of the foregoing, NHTSA has decided that DJG has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, DJG's application is hereby denied. DJG must fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

⁶ 71 FR 32859, June 7, 2006.

⁷ Advocates made no recommendation either to grant or to deny the petition.

⁸ 71 FR 32855-860, June 7, 2006.

Light Exposure Petition Summary

The noncompliant harness webbing was identified as gray Wellington style #N2216E1-917, lots numbered 2063F, 2100F, and 2140D, manufactured from March 15, 2002 through August 1, 2002. FMVSS No. 213, S5.4.1(b) requires that the webbing of belts provided with a child restraint system meet the requirements of S4.2(e) of FMVSS No. 209. FMVSS No. 209, S4.2(e), requires a breaking strength of not less than 60 percent of the strength before exposure to a carbon arc light when tested by the procedure specified in S5.1(e) of FMVSS No. 209. Following the carbon arc exposure test, the DJG harness webbing retained only 37 percent of the original webbing breaking strength (from 12,371 N to 4,539 N).

DJG pointed out that testing at Veridian⁹ (simulating a 30 mph (48 km/h) crash condition) showed a dynamic load of between 846 N and 1,433 N. DJG asserted that its light-exposed harness webbing breaking strength of 4,539 N far exceeded these dynamic loads. DJG argued that without a minimum breaking strength requirement, other webbing with a much lower initial breaking strength could comply with the standard at a much lower breaking strength than the DJG's 4,539 N, as long as it retained 60 percent of the original webbing strength. DJG commented that while its webbing, which was made of nylon fabrics, was noncompliant when exposed to carbon arc light filtered by a Corex-D filter (tested according to the standard's requirements), the webbing was compliant when exposed to carbon arc light filtered by a soda-lime glass filter (specified by the standard for use only for polyester fabrics). DJG also commented that because the standard relies on carbon arc light for resistance to light testing, the method is obsolete. DJG stated in Exhibit 7 to its petition that after being subjected to a xenon arc lamp for 300 hours the webbing retained 93.5 percent of its initial breaking strength. Therefore, DJG argued that the noncompliance is inconsequential to motor vehicle safety.

NHTSA Decision on Light Exposure Petition

First, DJG asserted that its light-exposed harness webbing breaking strength of 4,539 N far exceeds forces in dynamic crash testing at 30 mph by a factor of 3.1 to 6.8 times. NHTSA does not find this persuasive. A 30 mile per hour test is not indicative of the upper limit of safety. The test conditions in FMVSS No. 213 reflect the concern that

child restraints will withstand even the most severe crashes.¹⁰ These are well above 30 mph.¹¹

DJG also asserted that under a standard that lacks a specific minimum strength requirement, manufacturers could produce webbing with very low after-exposure strength if the pre-exposure strength was also low. This assertion is theoretical. The agency's FY 2000 to FY 2002 available compliance test data for harness webbing¹² showed that the median strength after light exposure was 10,636 N, and that the median exposed/original webbing strength ratio was 10,636 N/12,594 N or 84 percent, both of which are far superior to DJG's webbing strength after light exposure of only 4539 N and strength ratio of 37%.¹³ In order to prevent manufacturers from producing harness webbing with low strengths before and after light exposure, NHTSA established minimum breaking strengths in the June 2006 final rule.

DJG provided test data for its nylon webbing filtered by a soda-lime glass filter. However, the standard specifies that webbing made of nylon fabrics, as in this case, be tested using the Corex-D filter. The soda-lime glass filter is appropriate only for polyester webbing. Therefore, the DJG compliant data was based on testing using an inappropriate light filter, and was not conducted according to FMVSS No. 213 requirements.

Finally, DJG did not substantiate its statement that carbon arc testing is obsolete for testing child restraint webbing materials. NHTSA believes that the test results obtained by the carbon arc test method are an appropriate reflection of the strength capabilities of DJG's webbing. While NHTSA has decided to use a xenon arc lamp for weathering tests of glazing materials under FMVSS No. 205, "Glazing materials,"¹⁴ the conclusion in that rulemaking does not mean that the carbon arc is not indicative of the sunlight spectral power distribution or that it produces invalid weathering results for webbing materials.

In summary, the DJG harness webbing met only 37 percent of the original webbing breaking strength when tested according to the standard with a Corex-

D filter. Such a rapid (over 60 percent) strength degradation is an indication of a quality control problem for that webbing and signals the distinct probability that the webbing strength would be insufficient throughout its use.¹⁵

In consideration of the foregoing, NHTSA has decided that DJG has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, DJG's application is hereby denied. DJG must fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

Authority: 49 U.S.C 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: July 14, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Meeting Future Hazardous Materials Transportation Safety Challenges

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public workshop—"Transporting Hazardous Materials Safely—the Next 100 Years."

SUMMARY: PHMSA is hosting a public workshop to identify and discuss strategies for meeting emerging hazardous materials transportation safety challenges, particularly in the development of innovative safety solutions that provide the Department of Transportation, other federal agencies, state agencies, the regulated community, and emergency response organizations with flexible tools to manage and reduce safety risks. The workshop will provide an opportunity for PHMSA and its stakeholders to discuss the future direction of the hazardous materials transportation safety program, with a focus on three broad themes: (1) Safety, Risk Reduction, and Integrity

¹⁰ 55 FR 17970, April 30, 1990.

¹¹ The forces in a crash increase exponentially as velocity increases.

¹² 70 FR 37734, June 30, 2005; Docket NHTSA-2005-21243-0002.

¹³ Of the 109 samples from the FY 2000 to FY 2002 compliance data, only the DJG (Cosco) harness webbing failed to meet the current 60 percent of original strength requirement after exposure to light.

¹⁴ 68 FR 43964, July 25, 2003.

¹⁵ We note that following light exposure, the Dorel harness webbing had a strength of 4539 N. Under the 2006 rule, the minimum strength for new webbing is 11,000 N. That rule did not change the 60 percent strength retention requirement. As a frame of reference, webbing that had a strength of 11,000 N that retained 60 percent of its strength would have a strength of 6,600 N. The Dorel tether webbing had a strength, after exposure to light, of only 4,539 N.

⁹ Veridian is now known as Calspan.