



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

Office of the Administrator

1200 New Jersey Ave., SE
Washington, D.C. 20590

October 21, 2014

In Reply Refer To:
HOA-1

Gregory Mitchell
President
Trinity Highway Products, LLC
2525 Stemmons Freeway
Dallas, TX 75207

Dear Mr. Mitchell:

Our number one priority is safety. In 2005, FHWA issued a letter (FHWA No. CC-94) stating that the Trinity Highway Products, LLC (Trinity) ET-Plus guardrail end treatment met crash testing criteria established by the American Association of State Highway and Transportation Officials (AASHTO) and was eligible for federal aid reimbursement. In response to actions taken by several States and questions raised about the eligibility and performance of this device, on October 10, 2014, the FHWA transmitted a memo to each of its fifty-two Division Administrators requesting that they ask all State Departments of Transportation to immediately provide to the Office of Safety any crash information involving the ET-Plus.

On October 20, 2014, the jury in *United States of America, ex rel. Joshua Harmon v. Trinity Industries, Inc.* (No. 2-12-cv-0089-JRG) issued a verdict that Trinity made a false or fraudulent claim to the Federal Highway Administration (FHWA) in obtaining a 2005 letter of federal funding eligibility for the ET-Plus. The FHWA continues to evaluate the eligibility and performance of the ET-Plus.

In light of these events and to support FHWA's ongoing evaluation of the ET-Plus, FHWA has concluded that Trinity must perform additional crash testing of the ET-Plus. Accordingly, FHWA requests that Trinity perform testing and provide to FHWA the information specified in Attachment A to this letter. Please provide the crash testing plan required by Attachment A to FHWA by Friday, October 31, 2014. Should Trinity not comply with this request, FHWA may suspend and/or revoke the eligibility of the ET-Plus.

Please contact me with any questions.

Sincerely,

Gregory G. Nadeau
Acting Administrator

Attachment A

Requested Testing and Information

The Federal Highway Administration (FHWA) requests that Trinity Highway Products, LLC (Trinity) perform testing and provide to FHWA information as described below:

1. In addition to the testing required by the Virginia Department of Transportation (VDOT) on October 10, 2014, Trinity should conduct the following testing of the ET-Plus (with 4" channel) at a nationally accredited testing facility other than the Texas Transportation Institute using NCHRP 350 criteria:
 - a. Tests 3-30 and 3-31 at a 27.75 inch guardrail height (as requested by VDOT),
 - b. Tests 3-32 and 3-33 at a 27.75 inch guardrail height, and
 - c. Tests 3-30, 3-31, 3-32 and 3-33 at a 31 inch guardrail height.

These tests include the testing requested by the VDOT. Trinity shall perform this testing at a nationally accredited testing facility which has not previously tested the ET-Plus. The selected lab should disclose the financial interest it has in any roadside safety hardware.

2. Before this testing is conducted, Trinity should prepare a test plan report and submit that report to FHWA for approval. This report should, at a minimum, identify and explain how Trinity intends to conduct the crash-testing, where and when such testing will be performed, and when Trinity will provide the test results to FHWA. This test plan should be submitted to FHWA by October 31, 2014. All crash tests are to be conducted in accordance with NCHRP 350 requirements. Testing shall be performed and completed as expeditiously as possible.
3. Trinity should allow FHWA personnel and consultants to be present at the crash testing.
4. Consistent with the test plan, Trinity should provide to FHWA detailed product schematics for the system and the head, depicting all dimensions.
5. In addition to this crash testing, Trinity should also provide to FHWA all information and data, including but not limited to photos and videos, that Trinity has regarding existing or previously conducted crash testing or field performance of the ET-Plus which has not previously been provided to FHWA. Please provide such information within 21 days of receipt of this letter.
Any material submitted to FHWA that Trinity claims as business confidential should be labeled as such.