

July 10, 2003

Refer to: HSA-10/B-113

Mr. Peter J. Connors
President
REMCON Plastics Incorporated
208 Chestnut Street
Reading, Pennsylvania 19602-1809

Dear Mr. Connors:

In your February 13 letter to Mr. Richard Powers of my staff, you requested formal Federal Highway Administration (FHWA) acceptance of a water-filled plastic barrier called the Guardsafe. You noted that this barrier and its external "coupling kit" were very similar to other products that have been accepted for use on the National Highway System (NHS). You further stated that the primary difference in your product was the design of the internal baffles, intended to reduce barrier deformation when the individual segments are filled with water. You also advised that although a similar coupling had been tested by others and was patented, the modified coupling that you are proposing to use was neither tested nor patented. The Guardsafe units are molded from low-density polyethylene and have a minimum wall thickness of 0.25 inch. The general dimensions of the Guardsafe and its coupling kit are shown in the enclosures to this letter.

In subsequent meetings with members of my staff, you were advised of their concern with your request: there remains the question of whether or not the Guardsafe itself or its pipe coupling kit infringes on existing patents. On this issue, you were advised that FHWA acceptance letters address only the crashworthiness of a proposed device and we are neither prepared nor required to become involved in issues concerning patent law. The parties to the dispute must resolve any such issues when they arise. This concern is leading to the development of a policy that will, in the future, likely require physical testing for any new product for which the manufacturer claims "equivalency" with a device that was originally accepted based on successful testing funded by others.

Because your request was made prior to adoption of the new policy, I will consider the Guardsafe with the pipe couplers described above and shown in the enclosures, to be acceptable for use on the NHS as a TL-2 temporary traffic barrier as you requested, when this use is approved by the

contracting authority. If you wish to have the Guardsafe listed as a TL-3 barrier, you must test it as such and submit the results of that testing to my office for formal acceptance. Please note that this acceptance is only for the use of the Guardsafe as a **barrier** with the coupling kit installed and does not imply that it is acceptable for use as a **barricade** without the kit, either installed in a continuous line or used as stand-alone, unconnected units. Its use as a barricade will require testing to verify its crashworthiness. Please be aware also that if at a future date you are found in violation of existing patents with the Guardsafe, this acceptance letter may be withdrawn.

Please note the following standard provisions that apply to FHWA letters of acceptance:

- Our acceptance is limited to the crashworthiness characteristics of the devices and does not cover their structural features, nor conformity with the Manual on Uniform Traffic Control Devices.
- Any changes that may adversely influence the crashworthiness of the device will require a new acceptance letter.
- Should the FHWA discover that in-service performance reveals unacceptable safety problems, or that the device being marketed is significantly different from the version that was accepted, it reserves the right to modify or revoke its acceptance.
- You will be expected to supply potential users with sufficient information on design and installation requirements to ensure proper performance.
- You will be expected to certify to potential users that the hardware furnished has essentially the same chemistry, mechanical properties, and geometry as that submitted for acceptance.
- To prevent misunderstanding by others, this letter of acceptance, designated as number B-113 shall not be reproduced except in full. This letter, and the information upon which this letter is based, is public information. All such letters and documentation may be reviewed at our office upon request.
- The Guardsafe may include patented components and if so is considered "proprietary." The use of proprietary work zone traffic control devices in Federal-aid projects is generally of a temporary nature. They are selected by the contractor for use as needed and removed upon completion of the project. Under such conditions they can be presumed to meet requirement "a" given below for the use of proprietary products on Federal-aid projects. On the other hand, if proprietary devices are specified for use on Federal-aid projects, except exempt, non-NHS projects, they: (a) must be supplied through competitive bidding with equally suitable unpatented items; (b) the highway agency must certify that they are essential for synchronization with existing highway facilities or that no equally suitable alternative exists or; (c) they must be used for research or for a distinctive type of construction on relatively short sections of road for experimental

purposes. Our regulations concerning proprietary products are contained in Title 23, Code of Federal Regulations, Section 635.411, a copy of which is enclosed.

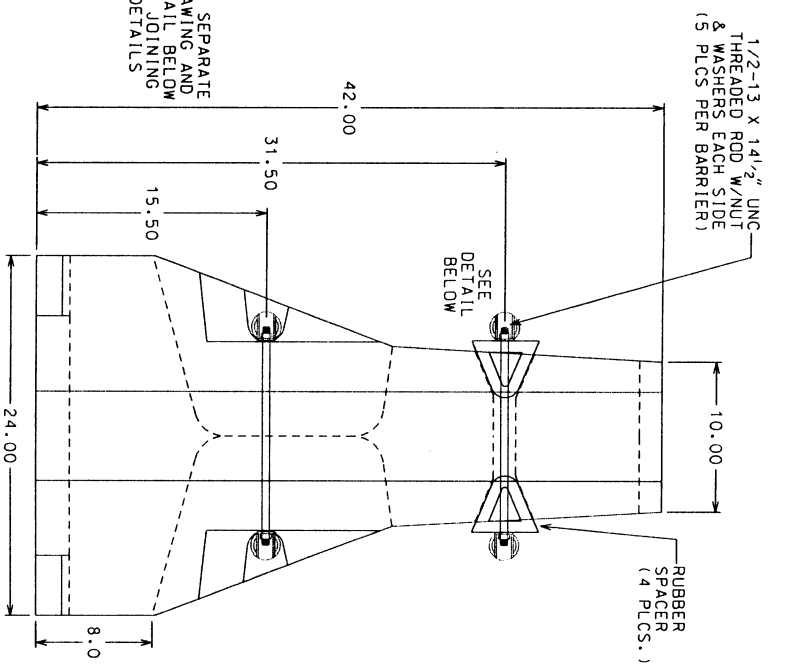
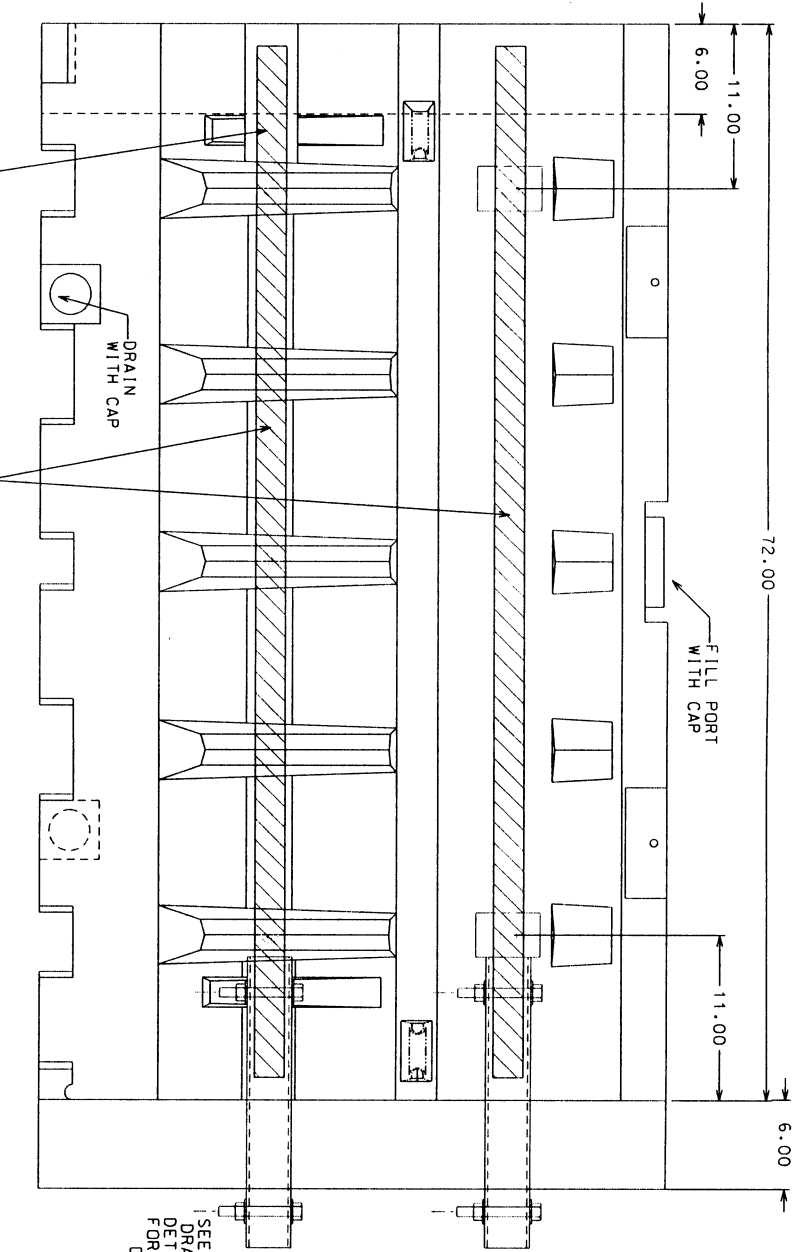
Sincerely yours,

(original signed by Michael S. Griffith)

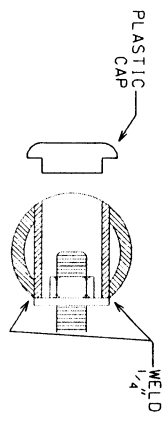
Michael S. Griffith
Acting Director, Office of Safety Design
Office of Safety

2 Enclosures

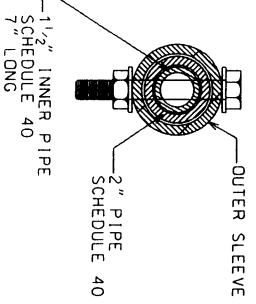
REV.	DESCRIPTION	DATE	APPROVED
01	ADDED DETAILS	2/27/03	PFE



2" DIA. SCHEDULE 40
ASTM 120 WELDED
X 69" LENGTH
(4 PER BARRIER)



PIPE ATTACHMENT
DETAIL



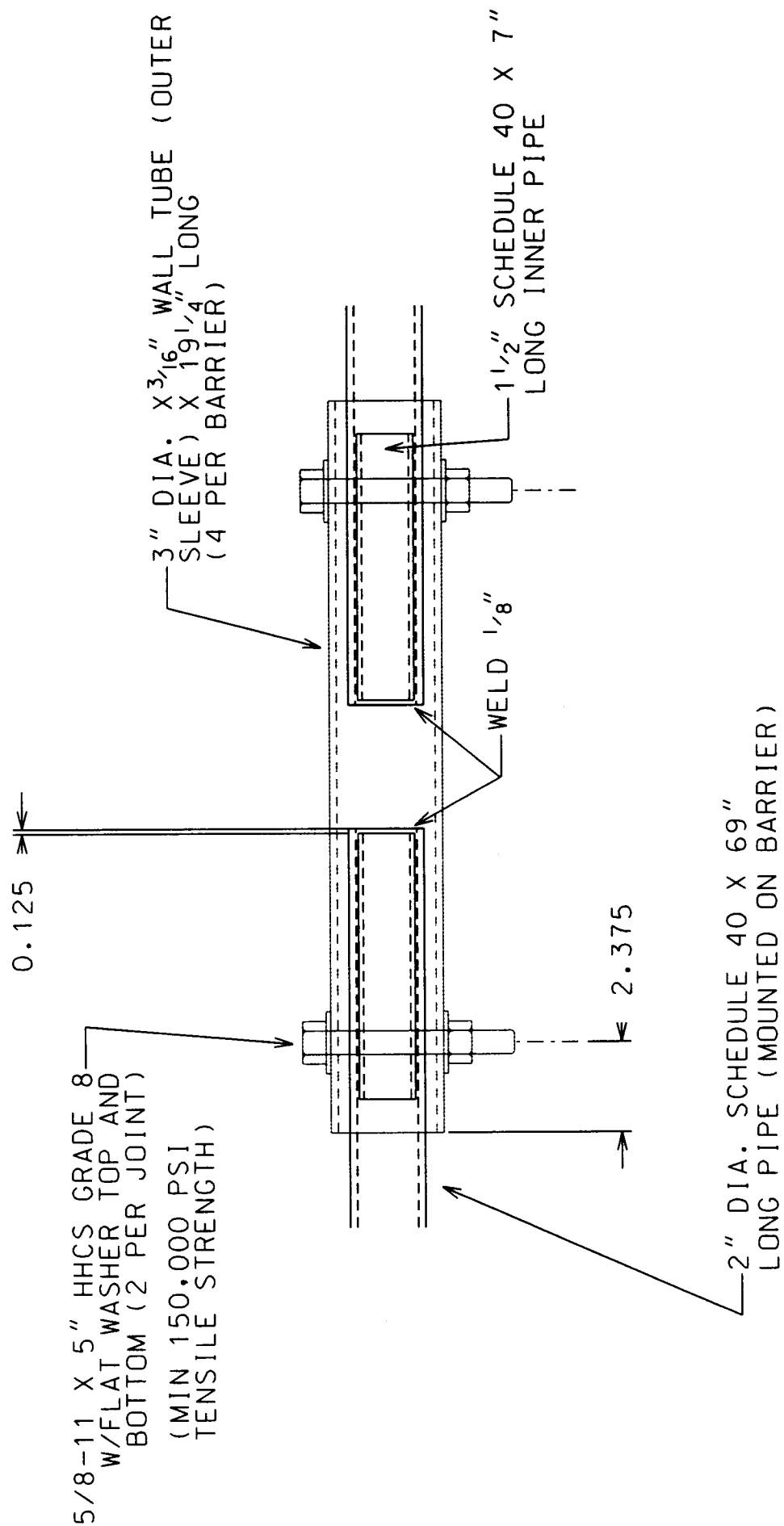
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REMCN PLASTICS INC

TITLE: REMCON GUARDSAFE BARRIER
GENERAL SPECIFICATIONS
(WITH OS-TL-2 HARDWARE)

DATE:	2/6/03	SCALE:	N.T.S.	SHEET:	10F1	PROJECT:	367
DRAWN BY:	PFE	DWG. NO.:	B-20062	CHKD.:			

TYPICAL INNER PIPE PREPARATION FOR PROPER WELD.



TITLE: REMCON GUARDSAFE BARRIER JOINING ASSEMBLY (FOR GS-TL -2 OPTION)

DRAWN	DATE	SHEET	DWG NO.	SCALE	PROJECT
PFE	2/12/03	10F1	A-20079	N.T.S.	1367

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