



MOTOR CARRIER FACTORS GROUP

**Fatal Grade Crossing Accident
Midland, TX; 11/15/2012**

HWY-13-MH-003
(18 Pages)



**NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF HIGHWAY SAFETY
WASHINGTON, D.C. 20594**

A. ACCIDENT

LOCATION: At the intersection of South Garfield Street and the Union Pacific Railroad (UPRR), Mile Post 554.65, DOT grade crossing inventory #796-331L, Midland, Midland County, Texas

VEHICLE 1: 2006 Peterbilt truck-tractor in combination with a 2005 Transcraft Eagle Drop Deck (Flatbed) Semitrailer

OPERATOR: Smith Industries of Midland, Texas

VEHICLE 2: Union Pacific Freight Train ZLCAI-14, consisting of 4 locomotives and 84 loaded cars

OPERATOR: Union Pacific Railroad (UPRR)

VEHICLE 3: 2008 Ford Crown Victoria Police Interceptor

OPERATOR: Midland County Sheriff's Office

DATE: November 15, 2012

TIME: Approximately 4:35 p.m. CST

NTSB #: HWY-13-MH-003

B. MOTOR CARRIER FACTORS GROUP

Gary Van Etten, Group Chairman
NTSB

Michael Fox, Group Member
NTSB

Ty Hartley, Group Member
General Manager
Smith Industries, Inc.

Lt. Ray Leible, Group Member
Midland Police Department

C. ACCIDENT SUMMARY

See Accident Summary in a separate docket entry.

D. DETAILS OF THE INVESTIGATION

1. *Show of Support, Military Hunt Inc. Information*
2. *Details of the Parade*
3. *Parade Routes (Present and Historical)*
4. *Parade Ordinance and Practice (Including Railroad Notifications)*
5. *Motor Carrier Information (Smith Industries)*
6. *Accident Driver Information*
7. *Second Smith Industries Driver Information*
8. *All Aboard America Bus Company Information*

1. Show of Support, Military Hunt, Inc.

Show of Support, Military Hunt Incorporated (Show of Support) was a 501(c) 3¹ nonprofit organization founded in 2004, located and incorporated in Midland TX. Their stated purpose is to "...demonstrate public support for the men and women of the military by providing outdoor opportunities to those injured in service to our country."² The company showed their support by conducting various events including dinners, hunts, and parades throughout Texas and other states.

This event began in 2004 and was generally scheduled during the week prior to Thanksgiving every year. The event included a selection of military veterans wounded in the course of the US military interventions in the war against terrorism. Wounded veterans wanting to participate in this event complete an on-line application. This year the organization received about 120 applications and selected³ 24 veterans to participate. Those selected veterans and their spouses were brought to Midland TX (usually on a commercial air craft) at the organization's expense and housed at a local hotel for four days (Thursday – Sunday). Several activities (tours, meals, etc.) were conducted on Thursday and Friday morning.

¹ To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an *action organization*, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. Organizations described in section 501(c) (3) are commonly referred to as *charitable organizations*. Organizations described in section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Code section 170. The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual. If the organization engages in an excess benefit transaction with a person having substantial influence over the organization, an excise tax may be imposed on the person and any organization managers agreeing to the transaction. Section 501(c) (3) organizations are restricted in how much political and legislative (*lobbying*) activities they may conduct. For a detailed discussion, see Political and Lobbying Activities. For more information about lobbying activities by charities, see the article Lobbying Issues; for more information about political activities of charities, see the FY-2002 CPE topic Election Year Issues. [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements---Section-501\(c\)\(3\)-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exemption-Requirements---Section-501(c)(3)-Organizations)

² www.showofsupport.org/

³ Selection is made by the Board of Directors of the organization based on a set of internal criteria and personal interviews.

The founder and one paid assistant conducted business at their office; all other participants in this event were volunteers. The Board of Directors has six members from various backgrounds and it is they who make the selection which applicants will participate.

On Thursday afternoon November 15, a parade through the streets of Midland was conducted and was scheduled to culminate at the Horseshoe, the local convention center. The veterans were to be recognized and honored at this event. Supporters could purchase 8-seat tables for contributions ranging from \$750 to \$5000. Those contributing \$5000 per table would be seated with one of the veterans and their spouse and would be able to present each veteran with a special hunting rifle (Ruger Mark II 25/06) supplied by the Show of Support organization. Approximately 2000 to 2500 persons historically attend this event.

At the end of the dinner the veterans and their spouses were scheduled to be transported back to their hotel via a contracted motorcoach.⁴

2. Parade

A parade was traditionally scheduled as part of the 4-day event on the Thursday before Thanksgiving and involved several community organizations volunteering their time and vehicles including high school bands, car and motorcycle clubs, fire and police vehicles, emergency medical vehicles, and other participants. The first event occurred in 2004 and included only a few vehicles and the selectees were transported in limousines. In the intervening years the number of volunteer participants increased until 2011 when there were approximately 100 separate vehicles and many individual groups.⁵ In this parade (11/15/2012) the number of vehicles and groups participating was about half the number that participated in the previous year, as estimated by the police Lieutenant who had the responsibility of organizing the event for the police department from 2004 to 2011. The organizations participating in the 2012 parade included the following:⁶

1. Police and Sheriff vehicles
2. Midland Christian High School Band (21 members) replaced by the Patriot Guard motorcycle group – 30 – 35 motorcycles on Garfield St. at the Dennis the Menace Park.
3. A volunteer woman with two children throwing candy to the crowd from a motorized golf cart
4. One North East Volunteer Fire Department fire truck
5. One City of Midland Battalion Fire Department SUV
6. Gold Star Mother's Group (civic organization) - 3 vehicles
7. Two tractor-semitrailer combination vehicles carrying the veterans and their spouses donated by Smith Industries.
8. National Honor Society participants in a pick-up truck

⁴ See Section 8 – All Aboard American Bus Company – of this report.

⁵The exact number of voluntary groups participating in the event is not known due to the lack of a planning document by the police department or Show of Support Military Hunt Inc. listing those groups. See Attachment #1 – Midland Police Department's Parade Document.

⁶ Participating groups were identified by the NTSB from photographs taken by a photographer hired by the Show of Support organization. See Photographs #1 - #13.

9. Corvette Club – 6 vehicles
10. Antique Car Club – 5 vehicles

The Show of Support organization accepted volunteer organizations offers to participate in the parade, most of whom they knew because they were local to Midland TX. Some were ‘vetted’⁷ by the organization if the volunteering organization was not familiar with them. A volunteer committee of about 28 persons, each with their own area of responsibility, planned the various details of the parade. However, there was never an overall written operations plan that included a detailed listing of groups, participants, positions in the parade, or other specific activity. In general, a police department representative would co-ordinate the participants at the staging area. The Safety Board requested documentation related to the conduct of the parade but the police department did not provide any written information on that part of the event.

The vehicles and drivers transporting the veterans and their wives in this parade were donated without charge by the Smith Industries Inc., a local manufacturing company of metal tanks for the oil industry. The drivers volunteered their time and were not compensated. Each vehicle was escorted in the parade by two Sheriff’s vehicles, one on each side, while sounding their sirens and activating their overhead emergency red and blue lights. The company vehicles consisted of:⁸

First Vehicle:

- 2000 Peterbilt Truck Tractor
- 2005 Transcraft Drop Deck Semitrailer

Second (accident) Vehicle:

- 2006 Peterbilt Truck Tractor
- 2005 Transcraft Drop Deck Semitrailer

Metal frame chairs, with fabric seat cushions and seat backs, were secured to the flatbed portion of the semitrailers by synthetic webbing binders to hold them securely in place. The passengers were not secured to the chairs by seatbelts or other devices. The names of the occupants were placed on either side of the semitrailer corresponding to the veterans seating positions. Three American flags were placed in the stake pockets of the outside rub rail of the semitrailers.

3. Parade Route ⁹

3.1 Accident Parade Route – 2009 - 2012

The current route began about 2 years ago. It was changed when Garfield St. was extended to the Horseshoe convention center at the intersection of Garfield and the I-20 frontage road. Details of the changed routes are listed below.

⁷ “Vetting” – the process was not detailed by the organization.

⁸ See Photographs #7 and # 8.

⁹ Parade route distances were determined by both driving the route and cross-referencing with Map Quest @ www.mapquest.com

The parade originated in from the Double Tree hotel (housing the veterans) at 117 W. Wall St. at about 4:02 p.m.¹⁰ The parade processed west on Wall St. to Garfield St. a distance of 1.4 miles. The speed of the parade was “walking speed” due to the marching band at the front of the parade.

The parade then turned south on Garfield St. for two blocks where the marching band turned west on Brunson St. (at the Dennis the Menace Park) and left the parade. The band was replaced with a community motorcycle group – The Patriot Guard.¹¹ The Patriot Guard group consisted of about 30 – 35 motorcycles that remained near the front of the parade. The organizer for the Patriot Guard said that the motorcycles did not move next to or between the trucks, because it was too dangerous and speeding-up and then slowing down in a short time frame was detrimental to the motorcycle clutches.

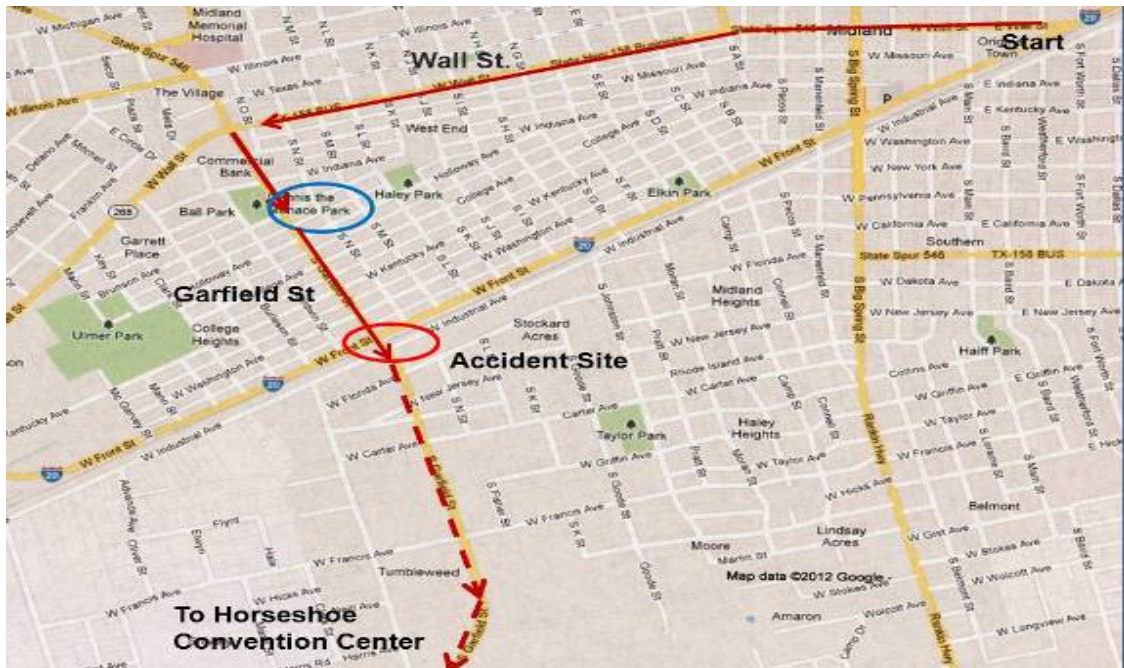
The parade continued south on Garfield St. to the intersection with Front St. and the highway-railroad grade crossing, a distance of 0.6 mile. The speed was approximately 9-11 miles per hour. The Show of Support Organization indicated that it was their understanding that the parade ended at the Dennis the Menace Park, and the continuation of the event was then termed (by the police and parade organizer) an “escort” to the Horseshoe convention center. However the essential characteristics of the procession did not change.

Sheriff and City Police vehicles were used to block intersections along the route, by changing locations as the parade continued to the Horseshoe. At the intersection of S. Garfield St. and West Front Ave. (north [approach] side of the grade crossing) and at the intersection of S. Garfield St. and West Industrial Ave. (south [departure] side of the grade crossing) four Sheriff vehicles, two at each intersection, blocked east\west traffic so that the procession of vehicles could continue without stopping at the intersections. The lead (1st) truck carrying the veterans had cleared the West Front Ave. intersection was traversing the grade crossing as the following (2nd) truck began to traverse the West Front Ave. intersection the grade crossing warning lights and bells activated. As the truck traversed the grade crossing, the grade crossing gates began to lower. Before the truck could clear the tracks, the eastbound Union Pacific freight train, traveling approximately 64 miles per hour, struck the right side of the semitrailer at the rear axles.

The distance from the accident grade crossing to the Horseshoe convention center was 1.1 miles. The total distance of the procession was approximately 3.1 miles

¹⁰ See Video Group Chairman’s Factual Report for exact times of the parade’s progression.

¹¹ The Patriot Guard is a national volunteer motorcycle organization whose purpose is to honor military veterans and “wounded warriors”. The group in Midland was organized in Texas in 2006 and participates in several events throughout the year. They started their participation in the Show of Support parade in 2006. They escorted the veterans (along with the Sheriff’s and City Police vehicles) to and from the airport and several of the associated events. See www.patriotguard.org



Accident Parade Route

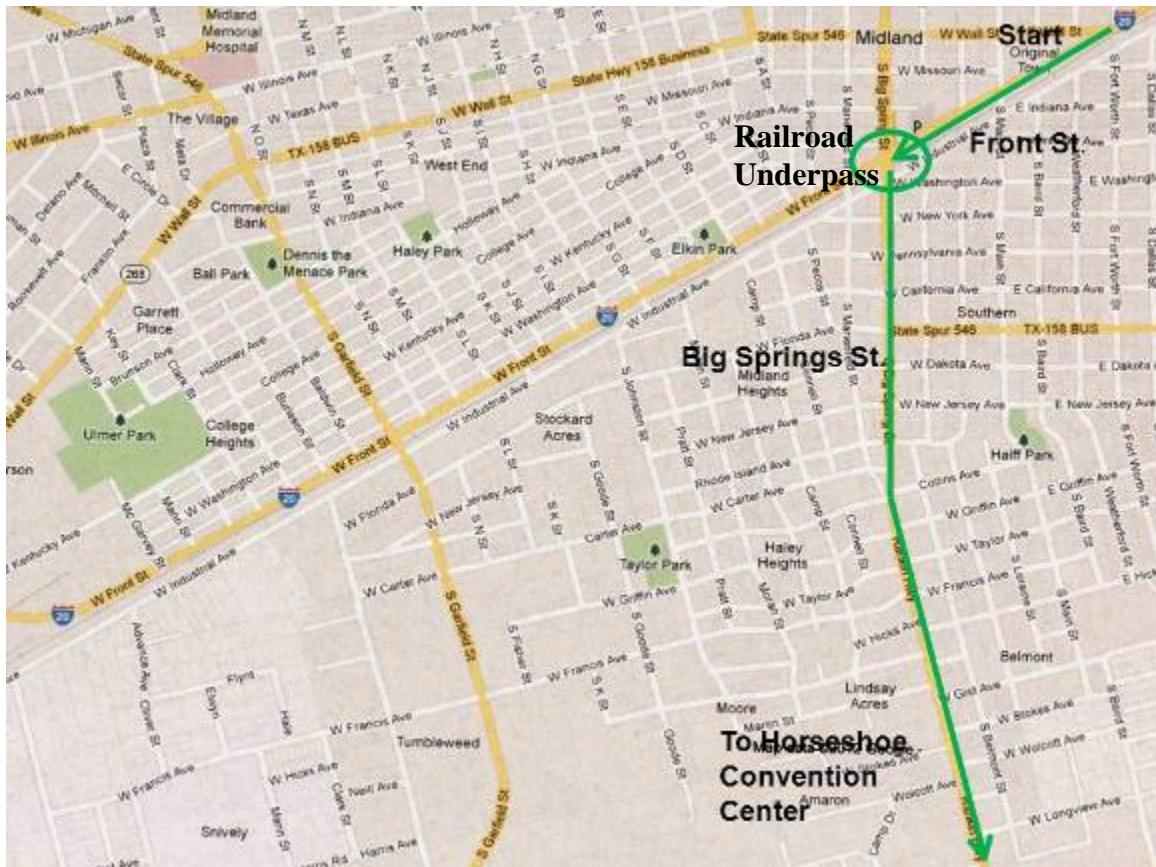
3.2 – Original Parade Route – 2004 - 2005

In a statement to the Safety Board the police Lieutenant previously in charge of the parade permit indicated that the parade route had changed 2 times since its inception. The original route began at the Double Tree Hotel and proceeded east on Wall St. four blocks to Front St. The procession turned southwest on Front St. to Big Spring St. (TX 158 Business), a distance of approximately 0.4 mile. The procession then turned south on Big Spring St. for about 1.6 miles to the Interstate Highway 20 frontage road. The process then turned west for approximately 1.28 miles to the Horseshoe convention center.

The Big Spring St. route was on an underpass¹² where the roadway went underneath the railroad tracks.

The total distance of the procession was approximately 3.38 miles.

¹² A passage underneath something, especially a section of road that passes under another road or a railroad.



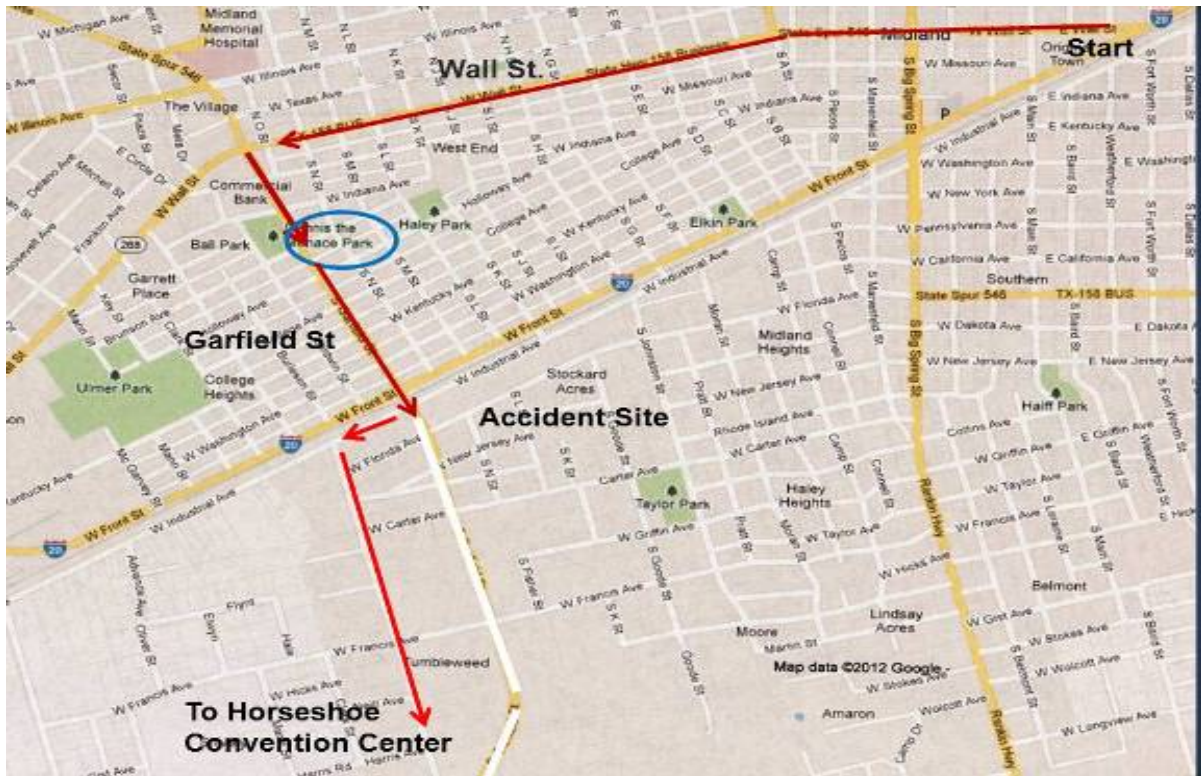
Original Parade Route

3.3 – Second Route – 2006 - 2008

The organizers changed the route about 6 years ago because the number of participants had grown and a new route provided additional visual opportunity for the community to see the parade.

The new route proceeded from the Double Tree Hotel west on Wall St. to Garfield St. and then south on Garfield St. to the highway-railroad grade crossing. The procession crossed over the railroad tracks and turned west on Industrial St. (on the south side of the railroad tracks) for two blocks. This was because at that time Garfield St. ended about 2 blocks south of the grade crossing. The procession then turned south on Cotton Flat Rd. (CR 1200) for about 1.12 miles to the Horseshoe convention center.

The total distance of the procession was approximately 3.4 miles.



Parade Route 2006 - 2008

4. Parade Permit¹³

Midland City Ordinance 10-1-2 reads:

“No procession, excepting the forces of the United States Army or Navy, the military forces of this state, and the forces of the police and fire departments shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth in this Title which may apply. The above does not apply to funeral processions.”

The Midland City administration (through the City Attorney) issued the following news release on Wednesday November 21, 2012 that read:

“The City of Midland did not issue a permit nor did the city receive a permit application from the Show of Support organization. Because of the pending investigation of the tragic incident that occurred on Thursday November 15th, 2012, the city of Midland will not be making any further statements at this time.”

¹³ See Attachment #3 – Midland Parade Permit Information.

According to the Midland City Attorney and the Midland City Manager this ordinance applied to the Show of Support parade. The Safety Board attempted to ascertain what, if any, other city ordinances were applicable to the permit process, but was unable to find any and the city attorney indicated that none existed, except for the requirements on the permit. The requirements for the completion of the permit process were found in the instruction on the permit form itself. These requirements included:

1. Verifying if a Temporary Land Use Permit was required.
2. Submit an event map indicating the location or route of the event.
3. Obtain the required city officials signatures (City Manager, City Attorney, Transportation Supervisor, Police Department representative (i.e. Traffic Lieutenant), Health Department representative, Fire Department representative, and Solid Waste Services representative).
4. Obtain insurance indemnifying the city and obtaining a \$1 million insurance policy covering the conduct of the event.

Events were prohibited if such a permit was not completed and submitted to the city at least 30 days prior to the event. The fine for violating the parade permit ordinance was \$500.¹⁴

The parade was originally conceived and organized by the founder of the Show of Support organization and the Midland Police Lieutenant in charge of traffic enforcement in 2004. The first event consisted of a few vehicles, including two limousines that transported a few selected wounded veterans from a hotel to the Horseshoe for a dining event. The Lieutenant assumed the responsibility for initiating the permit process on behalf of Show of Support. The Police Department's responsibilities were to coordinate activities with the Sheriff's Department for law enforcement participation, to monitor the permit process through various stages of city department approval, and coordinate participant activities with the Show of Support event committee. The Transportation Department's responsibility included ensuring streets were properly blocked and there was sufficient traffic control along the parade route.

There was no requirement for highway-railroad grade crossing safety, i.e. notifying the railroad that a stream of vehicles would be crossing the railroad tracks.¹⁵ The Lieutenant originally planning this event did notify the railroad during the first two years the parade crossed the highway-railroad grade crossing at Garfield St. and Front St. Thereafter, he posted a police officer at the grade crossing to monitor train activity. The sight distance both to the east and west of the crossing exceeded 1 mile. However, when he retired in March 2012 his replacement did not notify the railroad or place an officer at the crossing. Neither Lieutenant initiated or required a permit for or on behalf of Show of Support for 4 years (2009 through 2012).

¹⁴ See Midland TX City Ordinance 1-3-1 – General Penalty

¹⁵ The Safety Board reviewed the permit requirements for the Texas cities of Odessa, Plano, Dallas, Killeen, and Fort Worth and found more extensive requirements, however none of them had a requirement to notify the railroad when an event crossed railroad tracks. See Attachment #4 – Additional Texas Cities Parade Ordinances.

The Safety Board contacted the Union Pacific Railroad to determine if the City of Midland or the event sponsor had contacted them regarding this event crossing the railroad tracks. If such a notification is made by an organization or agency the Union Pacific's procedure is to complete a Form C indicating where and when traffic would be crossing the railroad tracks. An appropriate train speed would then be determined to avoid a collision with crossing vehicles or persons and kept on record and with the train Engineer. The Union Pacific Railroad produced the Form C for this district for the time of this event. The form showed there had been no notification.

The Safety Board then requested a list of such notifications from the Union Pacific District that included the City of Midland.¹⁶ The statistics showed that from January 2012 to the mid-point of November 2012 there were 117 notifications for general safe crossing events (including parades, funeral processions, and other event crossings), 130 high\wide vehicle crossing notifications, and 468 livestock crossing notifications, for a total of 715 notifications.

The Safety Board requested from the Union Pacific Railroad any notifications of railroad crossing that could possible cause a hazard (from 2004 – 2011) from the Midland Police Department. The Union Pacific Railroad supplied the following notifications:

1. 11/26/2012 (post-accident) – [funeral procession] – begin 10:24 a.m., end 11:15 a.m.
2. 10/12/2005 – [funeral procession] – begins 3:38 p.m., end 3:38 p.m.
3. 06/18/2005 – [parade] – begins 8:22 a.m., end 11:05 a.m.
4. 12/14/2003 – [parade] – begin 2:53 p.m., end - time not listed.

The Safety Board also contacted the small town of Stanton TX (pop. 2556) located about 20 miles east of Midland that conducted several large events during the year where vehicles and pedestrians would cross the railroad tracks causing a potential hazard. For each of these events the Chief of Police said that he notified the railroad in advance of the event. He indicated that the track speed was 70 miles per hour, but when the event was occurring and after notification the trains slowed to about 15 miles per hour and sounded their horns and bells on the approach to the crossing even though the crossing was signalized and the section of track was designated as a "quite zone".

¹⁶ See Attachment #5 – Railroad Grade Crossing Notifications

The Safety Board interviewed the current Midland Traffic Lieutenant in an attempt to determine why no permit had been issued. He responded by saying the Show of Support event was a “city sponsored” event and therefore did not require a permit. He and the Transportation supervisor produced an insurance form listing 11 different organizations¹⁷ and said that this form indicated the Show of Support event was covered by city insurance and therefore qualified as a “city sponsored event”.

The Safety Board contacted the Midland City Attorney to determine if there existed any written documentation indicating such an exemption. The City Attorney said that no such exemption existed and that the Show of Support event (parade) required the issuance of a city permit. He said he had not seen any such permit for two years. The City Manager, who also participated during the Safety Board’s interview with the City Attorney, confirmed what the City Attorney had said. He also indicated he had not seen a permit for the previous two years.

The Safety Board showed the City Attorney the list of organizations given to them by the current Traffic Lieutenant and inquired what was covered by the insurance. He said that the list were names of organizations for which that the City had taken out supplemental insurance covering injuries to persons along the parade route that might be injured from incidental activity (i.e. the throwing of candy by parade participants) and not from the conduct of the parade itself. All organizations sponsoring parades must submit their own insurance coverage in the amount of \$1 million.

The police Lieutenant previously in charge of the Traffic Unit told the Safety Board that he had procured a permit for the Show of Support event from 2004 to 2009. He said that in 2010 he circulated the permit for city official signatures. (The Safety Board determined this was actually done in November 2009.) It was returned to him by an assistant to the director of the city’s Transportation Department who told him that the event no longer needed a permit because it qualified as a “city sponsored” event. The lieutenant questioned the decision and attempted to verify the decision with the director of the city’s Safety and Risk Department.¹⁸ That department manager confirmed the decision. The Lieutenant then verified the decision with either the City Manager or the City Attorney (he could not remember which one).

When the Safety Board asked the City Attorney if the Safety and Risk Director had the independent authority to make such a determination he said he did not. Neither the City Attorney nor City Manager recalled making any such determination and that there was decidedly no City Council action on such a determination.

¹⁷ See Attachment #6 – Supplemental Insurance Form. The 11 organizations included: the Martin Luther King Jr. event, National Day Out, Annual Run from the COPS, Annual Star Spangled Salute, Homecoming Parade (Lee High School), Homecoming Parade (Midland High School), Toys for Tots, [City] Christmas Parade, Race for Wishes (Make a Wish), Show of Support, and Juneteenth Celebration. An additional two organizations were added in 2012; 4th of July Children’s Sidewalk Event and Miracle on Tyler’s Street Event. A total of 13 organization events are currently listed on the insurance form. Also see Attachment #6A – Parade Permits for Some of Organizations on the Supplemental Insurance Form.

¹⁸ The Midland City officials said that the Safety and Risk Management Director had been fired in 2011 from his position due to his personal conduct, not related to the Show of Support event and no longer works for the city. The former Safety and Risk Manager indicated to the Safety Board that he quit and was not fired.

The Safety Board requested a copy of any previous Show of Support parade permits from the City Attorney and City Manager. They indicated they did not know if any past permit was kept, but they would make inquiries. After 3 weeks they determined that they had no such permits. However, the City Transportation Manager provided the incomplete 2009 permit application.

An incomplete parade permit was also obtained from the City's insurance agent for the parade scheduled for November 19, 2009.¹⁹ The permit was signed by the Traffic Lieutenant at that time, but contained no other city officials' names. It indicated an estimated number of participants at 1,000. The route was the same as noted in section 3.2 (above) of this report. This permit was initiated concurrent with the issuance of the supplemental insurance coverage initiated by the City of Midland for this event.

5. Motor Carrier

The motor carrier in this event was Smith Industries Inc. located in Midland TX. They are registered with Federal Motor Safety Administration (FMCSA) as a private carrier of oil field equipment. They were issued USDOT #1424309. No MC# was issued because they are a private carrier. They manufacture metal tanks of various sizes for use in the oil drilling and processing industry. Many of their loads require special transportation permits because they transport oversize or over weight loads. They generally make deliveries within a 75-mile radius from the terminal however occasionally travel to New Mexico for deliveries. The company has been in business since 2003.

The General Manager of the company indicated they employ 15 full time drivers and utilize 29 trucks (including straight trucks and truck tractors) and 29 semitrailers. The accident truck tractor is not a "working" truck and was only used 3 – 4 times per year for special events such as the Show of Support parade.

The Safety Board reviewed their FMCSA statistical information on the SAFER website²⁰ and on the FMCSA Safety Management System (SMS) website. SAFER indicated that the carrier had been subject to 15 total roadside inspections in the 24 months prior to 11/16/2012. The inspections results indicated that the carrier had received 10 Vehicle inspections with 5 out-of-service violations for a total of 50 percent compared to the national average of 20.72 percent. They had been subject to 15 Driver roadside inspections with 1 out-of-service violation for a 6.7 per cent rate as compared to the national average of 5.51 percent. There were no hazardous materials inspections. In this same time frame that company had been involved in 1 reportable accident, a tow away and no fatal or injury accidents. The current (as of 11/16/2012) SMS statistics showed that the carrier had a score over the threshold in the Cargo-Related Behavior Analysis and Safety Improvement Category (BASIC) and received a warning letter from the FMCSA on May 6, 2011.

¹⁹ See Attachment #7 - 2009 Show of Support Parade Permit

²⁰ See Attachment #8 - Safety and Fitness Electronic Records (SAFER) System. See www.safersys.org Safety Management System (SMS). See <http://ai.fmcsa.dot.gov/sms>

The carrier had successfully passed the new entrant safety audit on 09/21/2009. The carrier had not been subject to an FMCSA compliance review prior to the accident. An FMCSA inspector conducted a compliance review 4 days after the accident and the result was a “Satisfactory” rating.²¹

The owner of Smith Industries and the founder of the Show of Support organization are friends. As the parade grew in size the founder of the Show of Support group asked the owner of Smith Industries if he would donate vehicles to transport the veterans and their spouses during the parade so that they could have a larger exposure to the public as the paraded processed down the streets. He agreed and donated two truck tractors and drop deck semitrailers. Employees (drivers) of Smith volunteered to drive the vehicles, as did the accident driver. The drivers and the owner of Smith Industries were not compensated for the vehicle use or their time.

On the day of the parade the two truck drivers reported to work at 7:00 a.m. (accident driver) and 8:00 a.m. (second driver). They conducted a pre-trip inspection of their vehicles and washed them. They secured the chairs that had been supplied by the police department the day before the parade, to the bed of the semitrailers. They arrived at the parade staging area about 2:30 p.m. and the parade began about 4:00 p.m. Volunteers placed the 3 – 4 American flags in the stake pockets of the rub rails on both sides of the semitrailers at the parade staging point, the Double Tree Hotel. Both drivers were familiar with the truck tractors and the route they were going to drive.

6. Accident Driver²²

The 50-year-old male truck driver held a valid Texas Class “A” Commercial Driver’s License (CDL), most recently issued on 02/21/2012 with an expiration date of 01/26/2017, with a restriction for wearing corrective lenses while driving and an endorsement for tank vehicles. His medical examination card indicated that it was due to expire on 11/16/2012 (the day after the accident). He also held an “M” driver license for operating motorcycles.

A check of his driving history indicated:

- That he had been involved in an accident in Midland TX on 07/03/2011. The record indicated that no citation was issued indicating the driver was not at fault.
- He was involved in another accident on 07/20/2007 in Midland County (city not specified). No citation was issued indicating that the driver was not at fault.
- He was issued a speeding citation (conviction) on 04/10/2006 while in a commercial vehicle (speed not indicated).²³

²¹ See Attachment #9 – New Entrant Safety Audit and Post-accident Compliance Review

²² See Attachment #10 - Excerpts From Accident Driver’s Qualification File

²³ See Attachment #11- Accident Driver’s Driving History and Roadside Inspection Record

A check of the driver's roadside inspection history indicated two inspections:

11/15/2012 – Five violations noted, no out-of-service violations

12/13/2011 – Two violations noted one out-of-service violation for insufficient tie-downs w/o header board/blocking.²⁴

The driving history also indicted that the driver had previously held a driver's license in Oklahoma that was surrendered to Texas in 2006. The Board requested a driver's history from Oklahoma and they indicted their records showed "No Record Found".

He was hired by Smith Industries in September 2011 as a truck driver. The company used a private background investigation company to research the driver's background (driving history and other relevant history) prior to hiring him. The record returned by the company showed none of the violations listed above and no criminal history.

The driver's previous employment listed on his Smith Industries job application was as follows:

- Smith Industries from April 2007 to February 2008 as a forklift operator driver.
- J&S Pipe from February 2008 to February 2009.
- US Army from September 2009 to September 2010 as a Squad Leader and Movement NCO.
- Hughes Oilfield Transportation from November 2010 to February 2011 as a 'driver'.

A review of the driver's log book entries from September 1, 2012 to the day of the accident showed no violations of the hours of service regulations. The driver generally worked Monday through Friday between 10 – 11 hours per day. His duty shift generally started about 7:00 a.m. The driver was paid by the hour with some overtime. He would conduct a pre-trip inspection of this vehicle²⁵ prior to departing the terminal with a load. His duties included driving to specified locations and unloading the cargo using an on-board crane. He would then assist in assembling the delivered units.²⁶

The accident driver's log books indicated he had gone off-duty the day before the accident at 4:00 p.m. and had reported to work the day of the accident at 7:00 a.m. The lead truck driver (in front of the accident driver) had gone off –duty the day before the accident at 5:00 p.m. and had reported to work the day of the accident at 8:00 a.m.

²⁴ A header board is metal or wooden partition at the leading edge of the semitrailer or mounted on the truck-tractor immediately behind the cab to prevent (or reduce) penetration of the cab by a shifting load. "Blocking" is securement of the load by wood or other material secured at the base of load to prevent the load from shifting forward or rearward with the normal movement of the vehicle.

²⁵ Each driver a Smith Industries is assigned one specific truck that they drive exclusively.

²⁶ See Attachment #12 - Accident Driver's Log Book Pages.

No statement has been obtained from the accident driver because he was under a doctor's care and was not able to provide a statement during the on-scene portion of the investigation

The driver was required to submit to a post-accident alcohol and drug screening per 49 CFR 382.303.²⁷ The regulation required the driver to be tested as soon as possible after the accident. Records obtained by the NTSB indicated that he provided a urine sample for drug testing to Starr On-Sight Services, Midland TX at 8:27 p.m. and a breath sample for blood-alcohol testing using a Lifeloc Technologies breath analyzer at 8:11 p.m. The accident occurred at 4:35 p.m.

The results of the tests were negative.²⁸

7. Lead Smith Industry Driver

The 52-year-old male driver held a valid Texas class "A" CDL with no endorsements or restrictions. His medical examination certification was current.

He was hired by Smith Brothers Pipe Inc.²⁹ in January 1990 as a truck driver. When Smith Industries began business he applied to them and began employment with Smith Industries in September 2009.

The driver's previous employment listed on his Smith Industries job application consisted of:

- Smith Pipe Company 02/1990 through 03/2005
- EMI company 03/2005 to 09/2005

The Safety Board reviewed the driver's log book entries from 09/01/2012 through 12/15/2012 and found no violation of the hours of service regulations.

²⁷ 49 CFR 382.303 – (a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each of its surviving drivers:(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or(2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers: (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or (2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

²⁸ See Attachment #13 – Post-Accident Drug and Alcohol Tests

²⁹ The owners of Smith Brothers Pipe Inc. and Smith Industries are brothers. Smith Industries began operation in 2005.

His work shift generally began at 8:00 a.m. and ended at 5:00 p.m. His duties included driving trucks and yard (terminal) work. On days he would be driving he would conduct a pre-trip inspection of this vehicle prior to departing the terminal with a load. His duties included driving to specified locations and unloading the cargo using an on-board crane. He would then assist in assembling the delivered units.

This was the fourth year that this driver had volunteered to drive one of the trucks in the parade.

8. All Aboard America Bus Company³⁰

The All Aboard America Bus Company (Legal name - Industrial Bus Lines Inc.) was contracted by the Show of Support organization to provide transportation to the various venues for the veterans during the 4-day event.

The company is an interstate for-hire passenger carrier registered with the FMCSA with a USDOT#27402 and an MC# 133171. The terminal in Midland is one of four divisional terminals owned by the company that was headquartered in Mesa Arizona. They operate with a total of 97 vehicles; 14 motorcoaches, and one 15-passenger van in the Midland division. The company employs a total of 175 drivers.

Their most recent FMCSA compliance review was conducted on 08/28/2012 and they received a "Satisfactory" rating. The Safety Board obtained the following information from the FMCSA SAFER and SMS web sites.

- In the 24 months prior to 11/22/2012 the company was subject to 272 roadside inspections. There were 244 Vehicle inspections with 4 OOS violations for a rate of 1.6% as compared to the national average of 20.72%. They were also subject to 90 Driver inspections with 0 OOS violations with a rate 0% as compared to the national average of 5.51%. They had 3 total reportable³¹ accidents in the same time period including 1 injury accident and 2 tow away accidents.
- There were no "Alerts" on the SMS website.

END OF REPORT

³⁰ See Attachment #14 - All-Aboard American Bus Company Information.

³¹ A recordable accident is defined in 49 Code of Federal Regulations (49CFR390.5) as (1) an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in: (i) A fatality; (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

Attachment #1	Midland Police Parade Documents
Attachment #2	Midland Sheriff's Department's Deputy Statements
Attachment #3	Midland Parade Permit Information
Attachment #4	Additional Texas Cities Parade Permit Information
Attachment #5	Railroad Grade Crossing Notifications
Attachment #6	Supplemental Insurance Forms
Attachment #6A	Permit Documentation from Other Organizations Conducting Parades in Midland
Attachment #7	2009 Show of Support Parade Permit Application – Incomplete
Attachment #8	Smith Industries SAFER and SMS Information
Attachment #9	Smith Industries New Entrant Safety Audit and Post-Accident Compliance Review
Attachment #10	Excerpts from Accident Driver's Qualification File
Attachment #11	Accident Driver's Driving History and Roadside Inspections
Attachment #12	Accident Driver's Log Book Pages
Attachment #13	Post-Accident Drug and Alcohol Tests
Attachment #14	All Aboard America Bus Company Information