KERSHAW
a division of Progress Rail Services

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24 January 2014

Via Email Only
Cynthia Glass
Office of Defects Investigation
National Highway Traffic Administration
1200 New Jersey Avenue SE
Washington, DC 20590
cynthia.glass@dot.gov
rmd.odi@dot.gov

RE: EQ 14-002

Dear Ms. Glass,

I am writing in response to the National Highway Traffic Safety Administration's (NHTSA) letter to Kershaw regarding EQ 14-002, which Kershaw received on January 22, 2014. In that letter, NHTSA states that Sure Power Inc. reported that it sold 25 defective battery equalizers and DC-DC converters to Kershaw "for possible installation into buses" and requests Kershaw to take various actions under NTSA's regulations regarding defects in motor vehicles and motor vehicle equipment. However, Sure Power Inc. was incorrect with respect to the use of the battery equalizers and DC-DC converters sold to Kershaw. Kershaw does not manufacture buses or other motor vehicles, and did not install the Sure Power Inc. battery equalizers and DC-DC converters in buses or any other type of motor vehicle, as defined under the Motor Vehicle Safety Act, 49 USC § 30101 et seq. (the Act).

Kershaw, a Division of Progress Rail Services, manufactures and sells railroad maintenance of way equipment (e.g. ballast regulators, tie cranes, etc.) and vegetation control equipment (e.g., brush cutters and tree trimmers). The Sure Power Inc. battery equalizers and DC-DC converters at issue were installed in certain model (46-1, 46-2, and 46-6) ballast regulators. A ballast regulator is a piece of equipment operated on rail and used to maintain the ballast under and around rail tracks. The enclosed brochure provides representative pictures of our ballast regulators, as well as a description of them. As you can see from the brochure, these products are operated exclusively on rail and are thus explicitly excluded from the definition of "motor vehicle" under the Act:

> 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line.

49 USC §30102(a)(6) (emphasis added).

Because Kershaw ballast regulators are not motor vehicles under the Act, Kershaw is not required to and does not intend to submit a Defect and Noncompliance Information Report or quarterly recall reports to NHTSA under 49 CFR Part 573, or to submit a customer notification letter or otherwise meet the requirements under 49 CFR Part 577.

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If you should require additional information or have additional questions for Kershaw, please contact me at mplyler@progressrail.com or (334) 387-9302.

Sincerely,

Mark T. Plyler
Engineering Manager
Kershaw, a Division of Progress Rail Services

cc: Kathleen M. Monge