

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re:)
)
AQ15-002)
)

SPECIAL ORDER DIRECTED TO TEREX SOUTH DAKOTA, INC.

To:

Jim Olson
Terex South Dakota, Inc.
500 Oakwood Road
Watertown, SD 57201
Jim.olson@terex.com

This Special Order¹ is issued by the Secretary of Transportation pursuant to 49 U.S.C. § 30166(g)(1)(A) and 49 C.F.R. §§ 510.7 and 510.8, and pursuant to a delegation of authority to the Chief Counsel of the National Highway Traffic Safety Administration ("NHTSA"), an Operating Administration of the United States Department of Transportation. 49 C.F.R. §§ 1.95, 501.8(d).

NHTSA has opened an Audit Query, AQ15-002, to investigate the timing and scope of Terex's defect determination and reporting of the safety defect to NHTSA regarding NHTSA Recall 15V-353, as well as Terex's compliance with reporting requirements under the National Traffic and Motor Vehicle Safety Act.

Terex's response to this Special Order must be provided no later than **September 18, 2015**. Terex's response must be signed under oath, i.e., accompanied by an affidavit, signed by a responsible officer of Terex, stating that he/she has undertaken and directed an inquiry

¹ Pursuant to 49 U.S.C. § 30166(g), this Special Order is equivalent to a subpoena.

reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Terex to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order. 49 U.S.C. § 30166(g)(1)(A); 49 C.F.R. § 510.7.

Failure to respond fully or truthfully to this Special Order may result in a referral to the United States Department of Justice for a civil action to compel responses, and may subject Terex to civil penalties of up to \$7,000 per day, up to a maximum penalty of \$35,000,000 for a related series of daily violations. 49 U.S.C. §§ 30163(a)(1), 30165(a)(3); 49 C.F.R. § 578.6(a)(3). Falsifying or withholding information in response to this Special Order may also lead to criminal penalties of a fine or imprisonment of up to 15 years, or both. 49 U.S.C. § 30170(a)(1).

DEFINITIONS

To the extent used in this Special Order, the following definitions apply:

1. **“Affiliate”** means a corporation, business organization, or entity that is related to another corporation or business organization (such as a subsidiary, parent, or sibling corporation) by shareholdings or other means of control.
2. **“Agent”** means an individual, such as a representative, who is authorized to act for or in place of another.
3. **“Document(s)”** is used in the broadest sense of the word under Rule 34 of the Federal Rules of Civil Procedure, and includes all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, electronic communications (existing in hard copy

and/or in electronic storage), invoices, contracts, agreements, manuals, publications, photographs of all types, and all mechanical, magnetic, and electronic records or recordings of any kind. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by the manufacturer or not. If a document is not in the English language, provide both the original document and an English translation of the document.

4. **“Employee”** means a person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.

5. **“Officer”** means a person who holds an office of trust, authority, or command, such as a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer.

6. **“Terex”** means Terex South Dakota, Inc. and its parent company; all of their past and present officers and employees, whether assigned to their principal offices or any of their field or other locations; all of their divisions, subsidiaries (whether or not incorporated), affiliates, and affiliated enterprises, business organizations, or entities, and all of their headquarters, regional, zone and other offices and their employees; and all agents, contractors, consultants, attorneys and law firms, and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Terex (including all business units and persons previously referred to).

7. **“XT booms”** refers to the aerial boom arms for the Terex South Dakota, Inc. XT line of bucket truck booms including, but not limited to, the Terex Hi-Ranger XT52, XT55, XT58, and XT60, manufactured from 1996 to present. Unless otherwise referenced or delineated,

this refers to entire aerial boom arm as opposed to a specific section of or location on the aerial boom arm.

8. **“Preventative welding reinforcement”** refers to the proposed remedy for cracking as described in the Defect Information Report filed by Terex in Recall No. 13V-417.

9. The definitions of **“consumer complaint,” “customer satisfaction campaign,” “consumer advisory,” “recall,” “field report,”** and **“dealer field report”** can be found in 49 C.F.R. § 579.4.

INSTRUCTIONS

1. Your response to the Special Order shall be sent to Office of the Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590.

2. Please repeat the applicable request verbatim above your response. After your response to each request, identify the source of the information and indicate the last date the information was gathered.

3. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. Please also be reminded that where a document responsive to a request is not in the English language, both the original document and an English translation of the document must be produced.

4. You are required to respond to every request listed in this Special Order. If you cannot respond to any specific request or subpart(s) thereof, please state the reason why you are unable to do so. If you are unable to respond because you do not have all or any of the precise information needed to respond, provide an estimate. You are instructed and cautioned not to

assert privilege in connection with any information you submit to NHTSA. Should you anticipate doing so for any reason (and NHTSA can contemplate none), you are instructed to contact Kara Fischer at (202) 366-8726 to discuss why any information you submit would constitute privileged information.

5. The response to this Special Order, including the document requests, must be submitted in duplicate to this office by the deadline stated above.

6. We expect that you will not claim that materials we request contain confidential business information. If you claim that any of the information or documents provided in response to this Special Order constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, then you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, West Building, W41-326, 1200 New Jersey Avenue, SE, Washington, DC 20590. You are required to submit two copies of the documents containing allegedly confidential information and one copy of the documents from which information claimed to be confidential has been deleted. Failure to adhere to the requirements of 49 C.F.R. Part 512 will result in a rejection of your request for confidential treatment.

7. All documents shall be produced electronically, as described below, and accompanied by a Concordance-format load file.

a. Hard copy documents shall be imaged in TIFF format. They shall be provided as multi-page TIFFs with document level OCR. The following metadata fields shall be provided for each document:

- i. Custodian—Name of person or division (if the document is from a file shared by multiple employees) from which the file is being produced;
- ii. Bates Begin—Beginning Production Number;
- iii. Bates End—Ending Production Number;
- iv. Attach Begin—Beginning Attachment Range Number;
- v. Attach End—Ending Attachment Range Number (i.e. parentage is maintained); and
- vi. Page Count.

b. Electronically Stored Information (ESI) shall be converted to multi-page

TIFF images and produced along with document level OCR/extracted text. The following

metadata fields will be provided for non-email ESI:

- i. Custodian (name of custodian from which file is being produced);
- ii. Other Custodian(s) (name of other custodian(s) who had a copy of the file);
- iii. Doc Title (title of file from properties);
- iv. Doc Subject (subject of file from properties);
- v. Created Date (date the file was created);
- vi. Created Time (time the file was created);
- vii. Last Modified Date (date the file was last modified);
- viii. Last Modified Time (time the file was last modified);
- ix. Last Saved By (name of user who last saved the file);
- x. Doc Type (attachment or loose file);
- xi. File Type (Microsoft Word, Microsoft Excel, etc.);
- xii. File Name (names of the file);
- xiii. Full Path (full path location to where the file resided);
- xiv. File Ext (extension for the file);
- xv. MD5 Hash (or equivalent);
- xvi. Bates Begin (beginning production number);
- xvii. Bates End (ending production number);
- xviii. Attach Begin (beginning attachment range number);
- xix. Attach End—Ending Attachment Range Number (i.e. parentage is maintained);
- xx. Page Count; and
- xxi. Native link (path to the native file as included in the production, e.g., d:\PROD001\Natives\ABC00015.xls).

The following metadata fields will be provided for electronic mail:

- i. Custodian (name of custodian from which file is being produced);
- ii. Other Custodian(s) (name of other custodian(s) who had a copy of the file prior to de-duplication);
- iii. Author (FROM filed);

- iv. CC;
- v. BCC;
- vi. Recipient (TO field);
- vii. MD5 Hash Value (or equivalent);
- viii. Date Sent (date the email was sent);
- ix. Date Received (date the email was received);
- x. Time Sent (time the email was sent);
- xi. Time Received (time the email was received);
- xii. File Ext (extension for the file);
- xiii. Email Folder (the folder within the mailbox where the message resided);
- xiv. Body Text (extracted text);
- xv. Bates Begin (beginning production number);
- xvi. Bates End (ending production number);
- xvii. Attach Begin (beginning attachment range number);
- xviii. Attach End—Ending Attachment Range Number (i.e. parentage is maintained);
- xix. Page Count;
- xx. Subject; and
- xxi. Native link (path to the native file as included in the production, e.g., d\PROD001\Natives\ABC00015.xls).

For all date fields, please produce them in either YYYYMMDD or MM/DD/YYYY format. Do not include the time in any date fields. Electronic mail shall be produced along with attachments to the extent the message or any attachment is responsive, relevant, and not privileged. As a general matter, subject to specific review, a message and its attachments shall not be withheld from production based on the fact that one or more attachments are privileged, irrelevant, or non-responsive.

c. Excel spreadsheets, PowerPoint files (or like presentations), photographs, and brochures shall be produced both in native and TIFF formats. For Excel documents or any documents with embedded links to other files or documents, any linked files should be sequentially numbered and produced after the source file and the Attach Beg/Attach End fields be used to denote the parent/child relationship.

d. If a particular file is not provided in a common format (e.g. Word or PDF) and requires the use of special software that is not readily available, you must provide a copy of that software with its submission.

8. Provide all documents requested in this Special Order, even if such documents have been previously produced.

9. The singular includes the plural; the plural includes the singular. The masculine gender includes the feminine and neuter genders; and the neuter gender includes the masculine and feminine genders. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this Special Order all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any." The use of a verb in any tense shall be construed as the use of the verb in a past or present tense, whenever necessary to bring within the scope of the document requests all responses which might otherwise be construed to be outside its scope.

10. Terex's response to this Special Order must be under oath, i.e., accompanied by an affidavit, signed by a responsible officer of Terex, stating that he/she has undertaken and directed an inquiry reasonably calculated to assure that the answers and production of documents are complete and correct, that he/she has caused the documents of Terex to be searched diligently for information and documents responsive to this Special Order and produced them to NHTSA, and that the answers to the inquiries provided to NHTSA respond completely and correctly to this Special Order.

REQUESTS

1. Provide a detailed explanation of the circumstances surrounding Terex's decision to recall the subject vehicles for the defect identified in the Part 573 Report for NHTSA Recall No. 15V-353. Your response must include the date that the safety-related defect decision was made, who made that decision, what information was relied on in making that decision, when the information that was relied on in making that decision was received and how it was received, and the date that Terex first filed a Part 573 Report with NHTSA relating to the defect in the subject vehicles.
2. Provide all documents referring or relating to Terex's decision to recall the subject vehicles for the defect identified in the Part 573 Report for NHTSA Recall No. 15V-353 and any notifications made thereunder.
3. Provide all documents that were relied upon, referenced, or reviewed in formulating Terex's decision to recall the subject vehicles for the defect identified in the Part 573 Report for NHTSA Recall No. 15V-353.
4. Explain, in detail, Terex's reasoning and rationale for limiting the scope of Recall No. 15V-353 to 2002 model year vehicles only.
5. Explain, in detail, Terex's reasoning and rationale for listing the estimated percentage of vehicles with a defect as 0 in Recall No. 15V-353. If you did not list the percentage as "0," indicate what if anything you entered in that field and explain the rationale behind that entry.
6. Identify and describe all incidences of cracking in XT booms that Terex is aware of, including those that are not within the scope of NHTSA Recall No. 15V-353, and including those that may be within the scope of any prior recalls. For each such incidence, provide any and

all related documentation, including but not limited to: consumer complaints; field reports, including retailer or dealer field reports; initial claims or notice documents notifying Terex of the incidence; and any police or accident report concerning the incidence. To the extent not otherwise indicated by the documents, for each such incidence state:

- a) The make and model year of the affected aerial boom arm;
- b) The location of the reported cracking;
- c) The date on which Terex became aware of such information;
- d) The manner in which Terex became aware of the information;
- e) Terex's assessment of the circumstances that led to the incidence;
- f) Any actions Terex took as a result of receiving said information; and
- g) Whether the incidence of cracking is or was included under any Part 573 Report submitted to NHTSA, and if so the applicable Recall Number.

7. State the total population of XT booms manufactured by Terex from 1996-present, delineated by make and model year. For each make and model year, indicate how many reports of cracking in the aerial boom arms Terex has received or is aware of, and any recalls that may cover that make and model year. Your response should follow a format similar to the following:

Model Year	Model	Total # Manufactured	# Reports of Cracking	Applicable Recalls

8. Describe in detail all investigations or inquiries Terex has conducted, or had conducted on its behalf, to determine the root cause of cracking in its XT booms, regardless of if that investigation or inquiry was directed to those XT booms included in Recall No. 15V-353 or any other prior recalls. For each such investigation or inquiry, provide all relevant documentation

thereto. To the extent not otherwise indicated by the documents, for each investigation or inquiry state:

- a) The scope of the investigation, including number of incidents reviewed in or related to the investigation;
- b) The models and model years for each such incident;
- c) Terex's assessment(s) of root cause; and
- d) Any actions Terex took as a result of the investigation or inquiry.

9. Identify and describe all studies and testing conducted or commissioned by Terex regarding or related to cracking in Terex's XT booms. For each such incidence, provide: the date on which the study or testing began; the date on which the study or testing ended; the name of the study or testing; the Terex official(s) or employee(s) requesting the study or testing; the laboratory or entity conducting the study or testing; the objective of the study or testing; the population involved in or affected by the study or testing, including make and model year; the result(s) of the study or testing; and all documentation related to any such study or testing.

10. Identify all studies and testing conducted or commissioned by an entity or individual other than Terex regarding or related to cracking in Terex's XT booms. For each such incidence, provide: the date on which the study or testing began; the date on which the study or testing ended; the name of the study or testing; the individual or entity requesting the study or testing; the laboratory or entity conducting the study or testing; the objective of the study or testing; the population involved in or affected by the study or testing, including make and model year; the result(s) of the study or testing; all documentation related to any such study or testing; and an explanation of how Terex came to possess that information.

11. Describe in detail the overall process used by Terex to make a defect determination.

12. For all recalls addressing cracking in XT booms, produce a copy of all notices, bulletins, dealer notifications, and other communications that relate to the recall, including a copy of the final owner notification letter and any subsequent owner follow-up notification letter(s) sent to more than one manufacturer, distributor, dealer, or purchaser/owner provided to NHTSA's Recall Management Division, along with any documentation of NHTSA's receipt of such communications.

13. State the number of each of the following received by Terex, or of which Terex is otherwise aware, which relate to, or may relate to, cracking in Terex's XT booms:

- a) Third-party arbitration proceedings where Terex is or was a party to the arbitration; and
- b) Lawsuits, both pending and closed, in which Terex is or was a defendant or codefendant.

For all of the items provided, identify the parties to the action, the caption, court, docket number, date on which the complaint or other document initiating the action was filed, the allegation(s) against Terex, and the current procedural posture of the case. If the matter has been settled, state the terms of the settlement and the date on which the settlement was reached.

14. Explain Terex's decision to change the design of the XT booms in 2004, including the underlying rationale and the purpose of said design change. Your response should identify who participated in the decision to change the design; when the decision to change the design was made; the objectives in implementing said design change; and any follow-up study or testing that was conducted, by Terex or any other entity or individual, to determine whether the

design change accomplished or otherwise met these objectives.

15. Identify and describe any design changes contemplated, proposed, or implemented by Terex to address cracking in XT booms other than that identified in your response to Request No. 14. For each such instance, identify who participated in the decision to change the design; when the decision to change the design was made; the objectives in implementing said design change; and any follow-up study or testing that was conducted, by Terex or any other entity or individual, to determine whether the design change accomplished or otherwise met these objectives.

16. For each instance where Terex enacted a design change that was intended in whole or in part to address cracking in XT booms, provide a copy of all related documentation, including, but not limited to: testing requests or results that were conducted in anticipation of, as a result of, or to support said design change; documentation pertaining to any investigation or inquiry addressing the design change; and notification to consumers, customers, and dealers of the design change. To the extent not indicated by the documents, state whether Terex enacted a recall or safety campaign, or other related proceeding following the design change, and the underlying basis for proceeding in that fashion; and any follow-up investigation, inquiry, study, or testing that was conducted to ensure the design change accomplished or otherwise met the objectives of the change.

17. Describe in detail the “preventative welding reinforcement” you describe in the Defect Information Report filed by Terex in Recall No. 13V-417 as the proposed remedy for cracking in XT booms, and provide any documents thereto. To the extent not otherwise indicated by the documents, your response should state:

- a) The scope of vehicles the preventative welding reinforcement is meant to address;

- b) Whether the preventative welding reinforcement was designed for use in more than one area on the aerial boom arm;
- c) When the preventative welding reinforcement was finalized;
- d) Whether any testing or investigation was conducted to determine the effectiveness of the preventative welding reinforcement; and
- e) When notification was provided to consumers of the preventative welding reinforcement.

18. For each instance where Terex opted to utilize a preventative welding reinforcement, explain Terex's basis for utilizing such a remedy instead of initiating a full recall.

Your response should include:

- a) Who participated in the decision to utilize a preventative welding reinforcement;
- b) What information formed the basis for the decision to utilize a preventative welding reinforcement;
- c) When Terex first determined they should utilize a preventative welding reinforcement as a remedy;
- d) When the preventative welding reinforcement was finalized;
- e) Whether any testing or investigation was conducted to determine the effectiveness of the preventative welding reinforcement; and

19. State how many preventative welding reinforcements were created; how many preventative welding reinforcements have been implemented or utilized on any XT booms, and how many of those XT booms were subject to Recall No. 13V-417; and how many vehicles remain under Recall No. 13V-417 that have not received or utilized preventative welding reinforcements. Your response should also include supporting and relevant documentation to this

effect.

20. Identify and describe all incidences of XT booms requiring more than one preventative welding reinforcement that Terex is aware of, whether the preventative welding reinforcement was utilized in the same or different locations on the aerial boom arm. For each such incidence, state: how and when Terex became aware of such incidence; the location of the preventative welding reinforcements on the aerial boom arm; and the make and model of the aerial boom arm.

21. Identify and describe all incidences of cracking in XT booms that occurred after a preventative welding reinforcement was utilized, or any other similar attempt to weld or repair the cracking was undertaken. For each such incidence, state:

- a) How and when Terex became aware of such incidence;
- b) The location of the cracking as compared to the location of the preventative welding reinforcement; and
- c) If applicable, whether the subject aerial boom arm had been subject to more than one recall or received more than one preventative welding reinforcement.

22. Provide a corporate organizational chart(s) identifying the employees, by name, division and title, who are responsible for collecting and reporting information to NHTSA pursuant to 49 C.F.R. Part 579.

23. Provide all written company policies, memoranda and/or directives for reporting information to NHTSA under 49 C.F.R. Part 579.

24. Describe the procedures that Terex employs to ensure that all information required under 49 C.F.R. Part 579 is timely and accurately reported to NHTSA.

25. Provide all documents that refer to, relate to, discuss, or concern any investigation

into, or audit of, Terex's reporting processes and procedures, regardless of whether the investigation was conducted by Terex or a third party, or formally or informally, conducted at any time between July 2009 and the present.

26. State how and when Terex first became aware that it had not been reporting all information required under 49 C.F.R. Part 579 to NHTSA. Include in your answer a summary of events leading up to Terex's discovery of this issue.

27. Provide all chronologies, timelines and/or summaries of events, previously prepared by Terex or any third party, that refer to, relate to, discuss or concern Terex's discovery that it had not been reporting all information required under 49 C.F.R. part 579 to NHTSA.

28. Provide all documents that refer to, relate to, evidence or concern the reporting issue described in Request No. 26 to the extent not otherwise provided in response to any other Request.

29. Describe any and all efforts undertaken by Terex to correct the reporting issue identified in Request No. 26, and provide all documents that refer to, relate to, evidence or concern Terex's efforts to correct the issue.

30. Provide copies of all notices, bulletins, and other communications described in 49 C.F.R. § 579.5 that Terex sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States since July 1, 2009.

31. Describe in detail Terex's process for collecting notices, bulletins, and other communications described in 49 C.F.R. § 579.5 that Terex sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States and providing those communications to NHTSA pursuant to 49 C.F.R. § 579.5. State whether Terex has made any changes to that process during the prior six years and, if yes, describe the changes.

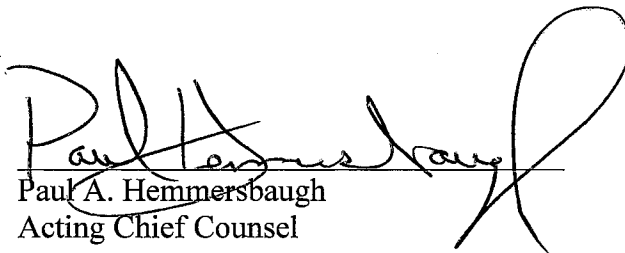
32. For a period of six years prior to the date of this Order, provide a copy of all notices, bulletins, and other communications as specified by 49 C.F.R. § 579.5 that Terex has not previously provided to NHTSA from July 1, 2009 to the present. To the extent not indicated on the document, provide the date that each notice, bulletin, or other communication responsive to this request was issued and how it was disseminated.

33. To the extent it is not included in your previous answer, for all notices, bulletins, and communications as specified by 49 C.F.R. § 579.5 that Terex did not provide to NHTSA but has since provided to NHTSA since May 2015, provide the date that each notice, bulletin, or other communication was issued, the date on which it was provided to NHTSA, and confirmation or documentation of NHTSA's receipt of such communications.

34. For each communication identified in Response to Request Nos. 32 and 33, provide an explanation for Terex's failure to report to NHTSA as required by 49 C.F.R. Part 579.5.

35. Describe in detail any changes Terex anticipates making to its process for collecting notices, bulletins, and other communications described in 49 C.F.R. § 579.5 and providing those communications to NHTSA. Your response should include an anticipated timeline for implementing any such changes.

Dated: August 11, 2015


Paul A. Hemmersbaugh
Acting Chief Counsel