

## Statewide Dispute Resolution Board Decision

Mr. Kevin F. Sosinsky  
Ranger Construction – South  
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Fort Lauderdale, Florida 33309

Mr. Miguel A. Parlade, P.E.  
Florida Department of Transportation  
3400 West Commercial  
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Subject: Contract T4074  
FIN 231737-1-5201  
I-95/SR 9 from Sample Rd. to Palm Beach County Line  
**Value Added Asphalt Pavement Specification 338 Dispute**

Gentlemen:

As provided in 338-4 of Supplemental Specification Section 338 “Value Added Asphalt Pavement,” (VAAP) the contractor and Responsible Party, Ranger Construction - South (Ranger), requested the Statewide Disputes Review Board (Board) to resolve a dispute between Ranger and the Florida Department of Transportation (FDOT) regarding part of the VAAP Specification Section 338. The dispute centers on the parties’ differing interpretations of “*Threshold values and associated required remedial work for Category I Value Added Asphalt Pavement specified in Table 338-1*” for “Ride” distress in Table 338-1. Meetings to resolve this dispute were unsuccessful.

Both parties timely submitted their position statements to the Board prior to the April 28, 2010 DRB hearing held at FDOT’s Fort Pierce Operations Center. Neither party submitted a written rebuttal. Each party orally argued its positions and rebuttals, answered questions from Board members, and actively engaged in debating the issue until neither party nor any Board member had any further questions or comments. The dispute issues and parties’ positions were fully vetted. Following the hearing, the Board re-convened for deliberations in this matter. Statewide DRB members Cloyce Darnell, Dr. Rey Roque, and Dave Donofrio participated.

### CONTRACTOR’S POSITION

Ranger claims the Contract, Table 338-1 and its “Ride<sup>(3)</sup>” superscript note (3) requires that remedial work for lots with “Ride” numbers RN<3.5 (as determined by FDOT laser profilograph) be performed as described in Amended sub-article 330-12.6 and its Table 330-3. Amended 330-12.6 was incorporated into the contract by Work Order 999-25-07 prior to initial completion and acceptance of the project in February, 2007. Ranger claims Amended 330-12.6 only requires it to “*correct all deficiencies in excess of 3/16 inch [5mm] in accordance with 330-12.4 as identified by the 15 foot [4.572 m] rolling straight edge.*” Ranger disagrees with FDOT’s position that Ranger is required to remove and replace the entire laser-identified RN<3.5 lots as directed by FDOT and based only on the laser profilograph RN.

## FDOT's POSITION

FDOT asserts Table 338-1 and its "Ride<sup>(3)</sup>" distress row requires Ranger to *"Remove and replace the friction course for the full length and the full lane width of the distressed LOT(s)"* for Lots having RN<3.5. FDOT disagrees with Ranger's position that Amended 330-12.6 and its Table 330-3 applies to VAAP remedial work for "Ride."

## DISCUSSION

FDOT stated the Threshold Value for Each Lot (0.1Mile) per Lane RN<3.70 shown in Table 338-1 for remedial action was reduced to RN<3.5 but acknowledged Table 338-1 was not contractually amended to implement the RN<3.5. When asked where the RN<3.5 originated, FDOT did not have a clear answer. However, the original 330-12.6 (Special Provision) specifically stated *"Note 2: For all LOTS with a RN less than 3.70, remove and replace the entire LOT in accordance with 330-12.4."* This is consistent with the Table 338-1 language. Conversely, Amended 330-12.6 does not contain any such "remove and replace the entire LOT..." language; rather, it only requires evaluation for corrective action for *"(RN<3.5 in 0.01 mile interval)"* by the 15' rolling straight-edge to identify deficiencies exceeding 3/16 inch. The only contract document in which RN<3.5 occurs is Amended 330-12.6, and only to one decimal place, not the two as in the original RN<3.70.

Amended 330-12.6 requires RN's to be reported to one decimal place but two decimal places were reported in FDOT profilograph data. FDOT stated the profilograph software had not been updated and cited cost as a possible reason. The RN numbers FDOT relied on would be different if reported to one decimal place. There was no contract amendment found or cited allowing FDOT to report its profilograph data using two decimal places.

Significantly, FDOT's laser profilograph data did not include any RN for 0.01 mile interval as required by Amended 330-12.6, but did provide it in 0.1 mile intervals. FDOT could not explain why its profilograph data did not contain any 0.01 mile interval RN's. FDOT based its directive to remove and replace on the 0.1 mile data.

FDOT "RN" data shows, at two of four locations which it claims require removal and replacement, the "Average RN" of less than 3.5 appears to be mathematically incorrect. R4 at 22.481-22.581 shows Average RN of 3.39 but the actual average of R1 3.90 and R2 3.07, if reported to the nearest one decimal place (as required) would be 3.5 and not subject to corrective action. Similarly, L1 at 24.685-24.585 shows Average RN of 3.45 but the actual average of the shown R1 3.82 and R2 3.19 is 3.50 and not subject to corrective action. RN's at these two locations may not have triggered removal and replacement or evaluation for other corrective action if reported to one decimal place.

FDOT agreed that Amended 330-12.6 was applicable to the original acceptance criteria in February, 2007 and allowed Ranger to determine correction areas using the same 15' rolling straight-edge identifying method Ranger now wishes to use in the project's final acceptance. Ranger claimed disallowing the rolling straight-edge in the final project acceptance criteria and relying solely on laser profilograph numbers creates a higher standard of acceptance than the original acceptance criteria.

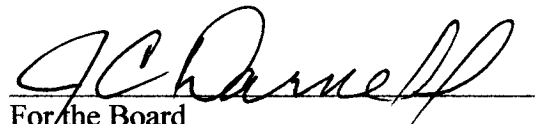
When asked, FDOT could not reasonably explain why the superscript (3) and its note were attached to "Ride" and included in "remedial work" Table 338-1 if it were only applicable to initial acceptance three years ago. Note (3) contains the following: "*Ride: Ride Number (RN) to be established by Laser Profiler in accordance with FM 5-549. As a condition of **project final acceptance** in accordance with 5-11, correct all deficiencies in accordance with acceptance criteria for pavement smoothness in accordance with 330-12.6*" Sub-article Amended 330-12.6.3 contains the identical language in the last sentence above Table 330-3: "*The acceptance criteria for pavement smoothness are shown in Table 330-3.*" (Emphases added) Table 330-3 requires use of the 15' rolling straight-edge to identify deficiencies in Lots of "significant roughness."

### RECOMMENDATION

The Board unanimously finds the VAAP contract specification language in Table 338-1, its associated Note (3), and its referenced 330-12.6 to be conflicting, ambiguous, and inconsistent. These specifications are of uncertain meaning and can reasonably be interpreted in more than one way. As shown in the hearing and described herein, two persons with similar experience, education, and training can, and in this matter do, reasonably interpret the specifications differently. Each can make a good-faith argument for its position. The Board strongly suggests the FDOT address, in detail and with reference to this report, the VAAP Section 338 and 330-12.6 specifications to provide clarity of its intent and correct the defects contained therein to avoid future similar situations.

### DECISION

The Board acknowledges the responsibility and gravity of this decision as stated in 338-4, in that the Board's decision in this dispute "*...will be binding on both the Responsible Party and the Department, with no right of appeal by either party.*" Accordingly, based on the parties' written position statements, the documents submitted, the contract provisions cited and reviewed, the oral arguments and rebuttals, and its private deliberations, this Board finds that Ranger is entitled, and required, to comply with Amended 330-12.6 and its provision for use of the rolling straight-edge to identify potential areas for corrective action based on laser profilograph-generated data complying with contract provisions.

  
For the Board  
May 3, 2010

Cloyce Darnell, P.E., Chairman  
Statewide DRB for Warranted Asphalt Pavements

David Donofrio, Statewide DRB Member

Reynaldo Roque, Ph.D., P.E., Statewide DRB Member