

STATE ARBITRATION BOARD

1022 LOTHIAN DRIVE

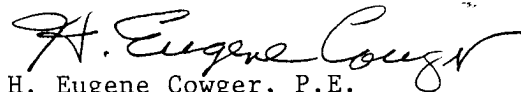
TALLAHASSEE, FL 32312-2837

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SAB 5-95

NOTICE

In the case of Weekley Asphalt Paving, Inc. versus the Florida Department of Transportation on Project Nos. 86060-3500 and 86060-3504 in Dade/Broward Counties, Florida, both parties are advised that State Arbitration Board Order No. 5-95 has been properly filed on October 25, 1995.


H. Eugene Cowger, P.E.
Chairman & Clerk, S.A.B.

S.A.B. CLERK

OCT 25 1995

FILED

Copies of Order & Transcript to:

J.B. Lairscey, Jr., P.E., Director, Office of Construction/FDOT
Daniel D. Weekley, President/Weekley Asphalt Paving, Inc.

STATE ARBITRATION BOARD

ORDER NO. 5-95

RE:

Request for Arbitration by
Weekly Asphalt Paving, Inc. on
Job No. 86060-3500 & 3504 in
Broward County

The following members of the State Arbitration Board
participated in the disposition of this matter:

H. Eugene Cowger, P. E. Chairman
Bill Deyo, P. E. Member
John Roebuck, Member

Pursuant to a written notice, a hearing was held on a
request for arbitration commencing at 9:10 a.m., on Thursday,
August 31, 1995.

The Board Members, having fully considered the evidence
presented at the hearing, now enter their order No. 5-95 in
this cause.

ORDER

The Contractor presented a request for arbitration of
a claim for additional compensation of \$81,542.54, the amount
of the reduction in payment for Type S-1 Asphaltic Concrete
caused by the Department of Transportation applying pay
factors to Lots 2 and 3. These factors were calculated on
either excessive asphalt content or excessive material
passing the No. 200 sieve.

The Contractor presented the following information in
support of his claim:

1. The bid package included a Composition of Existing
Pavement Report showing the gradation of the pavement to be

milled from the existing pavement. Relying on this information and applying the gradation conversion factors furnished by DOT we based our bid on an asphalt design mix containing 40 percent RAP material. These gradation conversion factors were developed by DOT from a large base of historical data on changes to existing asphalt pavement during milling.

2. When we began production using the asphalt design mix developed for this project, we immediately encountered problems with excessive minus No. 200 material. This was due to an excessive amount of minus No. 200 material in the RAP.

3. We could not afford the time or the remobilization costs associated with redesigning the asphalt mix, so were forced to solve the problem by reducing the percentage of RAP in the mix from 40 to 25 percent.

4. Because of the limited storage space at our asphalt plant, we could not store the resulting surplus RAP milled from the job there and had to haul it a considerable distance to another storage site. The cost of this haul offset any value to us of the surplus RAP when we used it later on other work.

5. Because of the above circumstances we incurred additional costs due to having to purchase additional asphalt cement and virgin aggregates. These costs were due to erroneous information furnished to us by DOT in the bid package.

The Department of Transportation rebutted the Contractor's statements as follows:

1. It was necessary to require the Contractor to adjust his design mix because the high percentage of minus No. 200 material was causing the as-produced mix to have a borderline low air void content. A low air void content makes a mix susceptible to rutting.
2. The Composition of Existing Pavement Report contains a note stating "The gradation values will become finer during processing of the existing pavement material".
3. The gradation conversion factors are contained in the DOT Asphalt Plan Technician Manual which is not a part of the contract documents.
4. From a comparison of the gradation for Milled Material shown in the Design Mix prepared by the Contractor to the average gradation shown in Composition of Existing Pavement Report it appears the Contractor used the wrong gradation conversion factors from the table in the Manual. He used the factors for "Intermediate" mixes (Type II, Type III, etc.) when it should have been apparent to him that the factors for "Coarse" mixes (Type 1, Binder, Type S, etc.) were to be used. Had the Contractor applied the correct conversion factor when analyzing the Composition of Existing Pavement Report as he prepared his bid he would have realized that he could not use 40 percent RAP.
5. The as-milled gradation of RAP is a function of a number of processing factors such as the condition of the milling

teeth, depth and direction of milling, speed of the milling operation and the manner in which the RAP is handled and stockpiled.

6. The Contractor had the opportunity to determine the gradation of the RAP as it was brought to his plant, but did not do so. The Specifications require the Contractor to determine the gradation and asphalt content of the RAP being used at a minimum frequency of one sample per 1,000 tons. An Independent Assurance Observation indicated that only one test was run on the RAP during the entire job.

7. Article 6-8, Subarticle 330-6.5 and Subarticle 331-2.2.4 of the Standard Specifications (1991) make the Contractor responsible for mix design and process control.

8. Reducing the percentage of RAP in the mix was one of three options offered to the Contractor by the District Bituminous Engineer to correct the problem of too much minus No. 200 material in the as-produced mix. He could have attempted to redesign the mix or use another design mix approved for use with a stockpile of crushed RAP.

9. Reduced pay factors included in the Specifications were applied to Lots 2 and 3, because the Contractor failed to control the mix production process as required.

The Board in considering the testimony and exhibits presented found the following points to be of particular significance:

1. It appears that the Contractor could have prevented reduced pay for Lots 2 and 3 by sampling and testing the

milled RAP prior to beginning production using this material.

2. It is apparent that the Contractor used incorrect gradation conversion factors for milled material when he was preparing his bid.

From the foregoing and in light of the testimony and exhibits presented, the State Arbitration Board finds as follows:

The Department of Transportation is ordered to reimburse the Contractor nothing for his claim.

The Contractor is directed to reimburse the State Arbitration Board the sum of \$232.40 for Court Reporting Costs.

S.A.B. CLERK
OCT 25 1995
FILED

Tallahassee, Florida

Dated: 25 October 1995

H. Eugene Cowger
H. Eugene Cowger, P. E.
Chairman & Clerk

Certified Copy:

Bill Deyo
Bill Deyo, P. E.
Member

H. Eugene Cowger
H. Eugene Cowger, P. E.
Chairman & Clerk, S.A.B.

John P. Roebuck
John P. Roebuck
Member

25 October 1995
Date

STATE ARBITRATION BOARD
STATE OF FLORIDA

WEEKLEY ASPHALT PAVING, INC.)
)
)
)
)
) PROJECT NO. 86060-3500 &
- and -) 3504
)
) LOCATION: Dade/Broward
) County, Florida
)
)
)
DEPARTMENT OF TRANSPORTATION)
_____)

ORIGINAL

RE: Arbitration In The Above Matter

DATE: Thursday, August 31, 1995

PLACE: Florida Transportation Center
1007 Desoto Park Drive
Tallahassee, Florida

TIME: Commenced at 9:10 a.m.
Concluded at 10:05 a.m.

REPORTED BY: CATHERINE WILKINSON
CSR, CP
Notary Public in and for
the State of Florida at
Large

WILKINSON & ASSOCIATES
Certified Court Reporters
Post Office Box 13461
Tallahassee, Florida
(904) 224-0127

APPEARANCES:

MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. H. E. "Gene" Cowger, Chairman
 Mr. Jack Roebuck
 Mr. Bill Deyo

APPEARING ON BEHALF OF WEEKLEY ASPHALT PAVING, INC.:

Mr. Daniel Weekley

APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. David Wang
 Mr. James Musselman
 Mr. Scott Cushing

* * *

I N D E X

EXHIBITS	PAGE
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Exhibit No. 3 in evidence	6

CERTIFICATE OF REPORTER

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P R O C E E D I N G S

1
2 CHAIRMAN COWGER: This is a hearing of the State
3 Arbitration Board established in accordance with
4 Section 337.185 of the Florida Statutes.

5 Mr. Bill Deyo was appointed as a member of the
6 Board by the Secretary of the Department of
7 Transportation. Mr. John Roebuck was elected by the
8 construction companies under contract to the Department
9 of Transportation.

10 These two members chose me, H. Eugene Cowger, to
11 serve as the third member of the Board, and as the
12 Chairman.

13 Will the persons who will make oral presentations
14 during this hearing please raise your right hand and be
15 sworn in.

16 (Whereupon, all witnesses were duly sworn.)

17 CHAIRMAN COWGER: The documents which put this
18 arbitration hearing into being are hereby introduced as
19 Exhibit 1. This consists of the notice of arbitration
20 hearing, the request for arbitration submitted by the
21 contractor, and the attachments thereto.

22 Attachment number 2 is a package of information
23 submitted to the Board on July 25, 1995, in rebuttal to
24 the contractor's claim, and the information attached
25 thereto.

1 May we go off the record just a minute.

2 (Discussion off the record)

3 (Whereupon, Exhibit Nos. 1 and 2 were received in
4 evidence.)

5 CHAIRMAN COWGER: Back on the record. Does
6 either party have any other information it wishes to
7 put into the record as an exhibit?

8 MR. WEEKLEY: I don't know if you received --
9 I don't know what letters you have from me except for
10 the -- I guess you just have the --

11 MR. ROEBUCK: The claim.

12 MR. WEEKLEY: -- the claim letter. I do have
13 numerous other letters that were sent leading up to
14 that, but I don't know -- I would like to -- I don't
15 have extra copies of them. If I may refer to them.
16 I've never done this before. I've never been in
17 arbitration before. I will just refer to my letters,
18 and if you want to review them during the course --

19 CHAIRMAN COWGER: Why don't we do this. Are
20 these letters going back and forth between you and the
21 Department?

22 MR. WEEKLEY: Yes. I don't know if it would be
23 necessary to use them, but it is informing -- they are
24 all letters the Department has received back and forth
25 that were sent to me.

1 CHAIRMAN COWGER: The way we will handle that is
2 you go ahead and testify from them as you deem
3 necessary, and some of them may be in this package that
4 DOT submitted.

5 MR. ROEBUCK: He has some included in his.

6 MR. WEEKLEY: Right. So, I'm not that organized.
7 If it's necessary, I will --

8 CHAIRMAN COWGER: If it's necessary -- that
9 either we or the DOT thinks it is necessary to
10 introduce anything else as an exhibit as we go through,
11 we will tell you and if you will mark it, then after
12 the hearing is over we will have copies made for
13 everyone.

14 MR. WEEKLEY: Okay.

15 CHAIRMAN COWGER: I don't think it will be a big
16 issue.

17 MR. WEEKLEY: I don't think there's any letters
18 in this package that have not been submitted.

19 CHAIRMAN COWGER: Mr. Musselman?

20 MR. MUSSELMAN: We do have one additional
21 amendment to our submittal. We have adequate copies if
22 you want. We can distribute them.

23 CHAIRMAN COWGER: Let's go ahead and distribute
24 them. Mark your copy as Exhibit 3, if you will.
25 Everybody mark the top of this as Exhibit 3, if you

1 will, please.

2 (Whereupon, Exhibit No. 3 was received in evidence.)

3 CHAIRMAN COWGER: The only exhibit that everybody
4 hasn't seen is this exhibit we have just marked number
5 3. Mr. Weekley, do you care to have any time to
6 examine that?

7 MR. WEEKLEY: No.

8 CHAIRMAN COWGER: Then we will move on. During
9 this hearing the parties may offer such evidence and
10 testimony as is pertinent and material to the
11 controversy, and shall produce such additional evidence
12 as the Board may deem necessary to an understanding and
13 determination of the matter before it.

14 The Board shall be the sole judge of the
15 relevance and materiality of the evidence offered.

16 The parties are requested to assure that they
17 receive properly identified copies of each exhibit --
18 we have three -- submitted during the course of this
19 hearing, and to retain these exhibits. The Board will
20 furnish the parties a copy of the court reporter's
21 transcript of this hearing when we send the final
22 orders, but the parties will not be furnished copies of
23 the exhibits.

24 The hearing will be conducted in an informal
25 manner. First the contractor's representative will

1 elaborate on his claim and then the Department of
2 Transportation will offer rebuttal.

3 Either party may interrupt to bring out a
4 pertinent point by coming through the Chairman.
5 However, for the sake of order, I must instruct that
6 only one person speak at a time.

7 For Mr. Weekley's benefit, we do conduct these
8 things in a very informal manner. So, if you would
9 like to proceed with your presentation.

10 One thing the Board likes to have at the very
11 beginning is for you to state the total amount of your
12 claim.

13 MR. WEEKLEY: The total amount of my claim is
14 the -- is \$81,542.54 and also the -- I don't have the
15 exact amount of the penalties that was withheld on lots
16 2 and 3.

17 CHAIRMAN COWGER: Does DOT have that information
18 with them? Rather than looking for it -- rather than
19 trying to bring it out right now, would you look for it
20 and at some point in time let us know how much that
21 was.

22 MR. CUSHING: I don't have it with me.

23 CHAIRMAN COWGER: Was on two lots, though, right?

24 MR. WEEKLEY: Right, on lots 2 and 3.

25 CHAIRMAN COWGER: Let's proceed on then.

1 MR. WEEKLEY: Okay. Our claim is based on the
2 change on the material that was milled off of U.S. 27,
3 what was actually there and what was in the bid
4 documents when we bid the job.

5 In the bid package they give you a composition of
6 the existing mix, and it tells you that -- it also
7 states that the material will fine up, will get finer
8 as you mill it or truck it or handle it. That is
9 something that we are well aware of.

10 There is also the -- in designing all our mixes,
11 we take -- there is a -- we have the -- there is a
12 chart that people use in those calculations that we got
13 from Gainesville back years ago talking about the --
14 using the percentages, of what percentage the material
15 will grind up.

16 We have done -- you have to base your bid -- we
17 base our bids on these calculations, for the amount of
18 RAP that can be put back into the mix. That's the
19 reason like on this particular job I think it was
20 evident we was over a hundred thousand dollars low on
21 the project. I'm sure that it was because of the --
22 using the 40 percent RAP into the mix.

23 Where everyone else was calculating the normal --
24 in south Florida the normal is 25 percent. It has been
25 stated that milling -- that asphalt contractors in

1 south Florida generally use 25 percent for RAP in the
2 mixes.

3 I think as a general statement that is true,
4 because when you crush materials -- that is just for a
5 standard, you know, standard procedure. In our case we
6 have done a lot of work in District 1 on U.S. 27, up in
7 Sebring, we've done work in Arcadia, Clewiston.

8 In Clewiston, I think we started -- one of our
9 mixes -- this was about 15 years ago -- was 52 percent.
10 We bid those -- we figured our bid based on the
11 composition of the mix that was in the book. I'm sure
12 that's how all contractors -- in south Florida bidding
13 against the south Florida contractors, because they do
14 this bid -- General, Pan American, all those people,
15 they just basically bid in south Florida. They are not
16 used to competing against the APAX and the different
17 people, Ajax on recycling projects.

18 As you know, the prices vary in those -- when you
19 get out of our district and into those districts people
20 really rely on putting more -- you know, as much as
21 they can into those mixes.

22 One reason why not many contractors use a high
23 percentage of that in our district is because you only
24 get 3,000 or 4,000 tons off the job on the average, so
25 it's not worth calculating and getting the different

1 liquids. It takes a different tank for the different
2 liquids.

3 So, that's the reason, in south Florida, we
4 normally only use 25 percent or thereabouts, because
5 you do have to get a different liquid. It's just not
6 worth redesigning.

7 On this particular project it was in close
8 proximity to the plan. It was a large project, a lot
9 larger than normal, as far as number of tons to come
10 off of the project.

11 And that's the reason we figured -- well, we
12 assumed everyone else would be, too, or I would not
13 have left over a hundred thousand dollars on the
14 project. I would have figured the 40 in that --
15 I would have figured 20,000 and tried to use the 40.
16 But that's a different story.

17 So, we based our -- we based our bid on recycling
18 what we felt the composition -- what the page said we
19 could, taking into consideration the finest, you know,
20 the mix fining up.

21 We have done this a number of times before in
22 District 1 and other districts where we have recycled
23 large amounts of asphalt. It happens all over the
24 state, in other districts, those same things. People
25 use that composition page to figure the finest.

1 This mix, the mix, what we found when we started
2 paving was it was real erratic, once we started milling
3 and producing.

4 Mr. Cushing was very fair to -- when this started
5 we found the problem -- the problem was found, we did
6 have three options that it states in this package: a
7 shutdown, a redesign or cutting back to 25 percent.
8 And I think there was one other one.

9 At that time, because of the time running on the
10 project, we didn't feel like we could redesign. You
11 know, reducing the mix to 25 percent was the only one
12 we had at that point because time was running on the
13 project. I would have had to pay a remobe -- paid my
14 milling contractor to mobe and remobe, all these
15 different things.

16 So, that was the option we chose, even though we
17 was damaged to the extent of over \$81,000. We felt
18 like that -- we still had to keep moving because of the
19 schedules on that job and other jobs.

20 We had -- as it ended up, one thing that we
21 did -- one thing that was brought up by I think it was
22 Bill Walsh, that the project -- we wasn't damaged
23 because even though we reduced it to 25 percent in this
24 mix, we used it on other DOT projects.

25 Well, our plant -- as Scott can say, we got a

1 very limited space at our asphalt plant, and we do have
2 one area, I guess from about here to Mr. Cummings'
3 office and so many feet wide that we stockpile our
4 milled asphalt so when we -- we have a bigger area
5 where we have other RAP that we crush, but I'm talking
6 about the milled asphalt. We only have a limited
7 space.

8 So, we did use this asphalt on other projects,
9 but the other milling jobs that we did, we had to
10 deadhead the asphalt out to and stockpile it -- we've
11 got a hundred acres out in west Broward. We had to
12 deadhead trucks there. That cost us a lot of money,
13 because there was no room to stockpile the other job
14 because this was not used up. If we had used the 40
15 percent on this project, we would have used it up.

16 I think I can safely say that we've got over --
17 like most asphalt contractors, in excess of over
18 150,000, 200,000 tons of recycled asphalt stockpiled.
19 So, we don't like to preserve it. With a job like
20 this, we wanted to get it into the mix, get it used.

21 I guess that's all I have to say at this time.
22 I don't know if I've forgot anything or not, but
23 I guess that explains --

24 CHAIRMAN COWGER: You will have the opportunity
25 to come back. Let me make sure I understand. The

1 thing you just stated about this surplus RAP, what this
2 caused you to do as I understand is you ended up with a
3 stockpile of milled RAP material at your plant. In
4 order to compensate for that, you had to haul some of
5 your other RAP off some distance to temporarily store
6 it?

7 MR. WEEKLEY: The other jobs that we went to had
8 to be hauled to -- we have a hundred acres out in west
9 Broward. We had to stockpile it there. RAP -- not
10 just for me, but I think it becomes a hindrance. Now
11 it is a hindrance, it really isn't a plus at this time.
12 Ten years ago it was, but now it isn't. All your
13 customers expect you to take it. It's just a
14 hindrance.

15 That was the -- like I say, that was a problem
16 there. And not only there, each job that you bid
17 stands on itself, to the bonding company and on our
18 financial records stands on its own.

19 When you have a loss on a project, when you have
20 to pay for more AC and more virgin materials, that is a
21 loss on that project. And the bonding company, your
22 financial statements, everyone looks at a job basis.

23 So, the job did -- that put that job to the tune
24 of over \$80,000.

25 MR. ROEBUCK: Mr. Weekley, reading your

1 documents, you said that DOT gave you the composition
2 of the existing mix. I presume they did extractions to
3 develop that?

4 MR. WEEKLEY: Yes, it's in the bid package. They
5 take cores.

6 MR. ROEBUCK: I don't know that we've got that.

7 CHAIRMAN COWGER: It's in DOT's package.

8 MR. ROEBUCK: It wasn't in your submittal, it's
9 in --

10 CHAIRMAN COWGER: It's in DOT's package. I made
11 a copy out of there for each of you all, the Board
12 members. Just to make it clear, all I did was copy
13 from the DOT's rebuttal package, attachment number 1,
14 page one and two of two, and then I think I also have
15 in that package the design mixes which are attachment
16 number 2.

17 MR. ROEBUCK: Right.

18 CHAIRMAN COWGER: So, all we are doing is looking
19 at something that was copied out of the DOT's rebuttal
20 package. This is nothing that everybody hasn't already
21 seen.

22 May I ask a couple of questions. You mentioned
23 an adjustment factor. I assume that that is in some
24 DOT document somewhere?

25 MR. WEEKLEY: I'm not -- I can't answer -- I know

1 we've got it, we got it some years ago through
2 Gainesville. It's a percentage of fineness that they
3 figured. It's a document that we received, yes.

4 CHAIRMAN COWGER: Okay. I will ask that of DOT.
5 Well, let me ask you now, Mr. Musselman --

6 MR. WEEKLEY: Well, let me say we have never had
7 this problem before. We have never in District 1 --
8 I think we've had a few design mixes down there in this
9 district for over 25 percent, but not many. In all the
10 jobs we have had in District 1 we have used these
11 packages and were successful using them and didn't have
12 any problem.

13 If this was a job that you did, like I was doing
14 in District 1, it would have been devastating because
15 the contractor would only have one project to do, he
16 mobilizes to do one project, using that scenario, you
17 would be in big trouble.

18 Now I'm -- what would you do if you were Ajax or
19 someone going out to do a project in the middle of the
20 state, you know, in the middle of nowhere and had all
21 this asphalt left over and no place to take it to, no
22 job to use it on.

23 CHAIRMAN COWGER: Mr. Musselman, I don't want you
24 to get into your rebuttal now, but what document is he
25 referring to?

1 MR. MUSSELMAN: Let me say up front it's not a
2 contract document. It was not included in the
3 contract, nor in the plans nor in the standard
4 specifications.

5 It basically comes from the Department's asphalt
6 plant technician manual in which are some factors, call
7 them milling factors, if you like, that will give you a
8 general, ballpark idea on what the gradation of the
9 milled material is after you apply the factor to the
10 cores, whether it comes from composition or from cores
11 that he may have taken himself.

12 CHAIRMAN COWGER: You have answered the question.
13 If you will retain the rest of that until the rebuttal
14 I think that's the appropriate thing to do.

15 MR. MUSSELMAN: Sure.

16 CHAIRMAN COWGER: Another question. What does
17 the contract say about the -- about what reliance the
18 contractor should place on this data that's provided
19 for him in regard to the composition of the mix?

20 In other words, there is a report called the
21 composition of existing pavement that's included in the
22 contract as I understand it. I note, and I think
23 Mr. Weekley testified to this, under composition of
24 existing pavement where they give you the data, there
25 is a note down at the bottom, gradation values will

1 become finer during processing of the existing pavement
2 material.

3 I think you were aware of that, Mr. Weekley?

4 MR. WEEKLEY: Yes, we were aware.

5 CHAIRMAN COWGER: It is a matter of how much
6 finer it became.

7 MR. WEEKLEY: That's the reason we used the
8 factor to factor that fineness.

9 CHAIRMAN COWGER: So, your claim is based on that
10 the material either was not as represented or it was
11 unique from the standpoint that it broke down more than
12 typically?

13 MR. WEEKLEY: Yes. I think it was just a matter
14 that the asphalt wasn't -- in some cases -- it
15 fluctuated so much.

16 MR. ROEBUCK: You said it was erratic?

17 MR. WEEKLEY: Erratic is what we found.

18 MR. ROEBUCK: Is it customary to get this
19 composition of existing pavement on all your
20 resurfacing work?

21 MR. WEEKLEY: On milling recycling jobs, yes.

22 CHAIRMAN COWGER: In developing the design mix
23 for this job that became the mix you used, as
24 I understand it, on day one you used an approved mix
25 from using some other RAP until you had enough material

1 to start on the second day using the material from this
2 particular project.

3 In developing a design mix, at the point the
4 design mix was developed, as I understand, you had
5 milled no material off of this job at that time?

6 MR. WEEKLEY: No. We designed the mix through
7 the coring system. We sent it -- we designed it. We
8 sent all this out to Gainesville. I'm not totally sure
9 where we sent it.

10 They approved the mix. They look over what we --
11 from all the data we have, and it takes approximately a
12 couple of weeks to get that. Then they send it back to
13 us, either approving it, denying it or asking for a
14 change.

15 CHAIRMAN COWGER: In the mix, though, that you
16 submitted and used on this project, and ultimately had
17 trouble with, with the 40 percent RAP, I guess really
18 what I want to know is where did you get the gradation
19 values that are shown for the RAP material in that
20 design mix?

21 You did not mill, so you didn't have any mill
22 material. Did you take any additional cores to get
23 that, or did you rely on the cores that were in the
24 contract?

25 MR. WEEKLEY: I cannot state that. I'm not

1 totally -- I've got to assume -- I'm not the expert on
2 testing. I'm more in the production and laying. I pay
3 people to do that. I'm sure we took cores from the
4 project. I'm looking down there, we take cores from
5 the project, send men out there, and they take those
6 and develop the design mix.

7 And in this case with the 40 percent we had to
8 get a -- using a recycling agent. It wasn't normal AC
9 to be able to use the 40 percent. But, yes, we do take
10 cores and send them off.

11 CHAIRMAN COWGER: Do you mind if I ask
12 Mr. Cushing that question? Do you happen to know how
13 it was done?

14 MR. CUSHING: I know they got the cores and
15 that's as far as it goes.

16 CHAIRMAN COWGER: Did they take their own cores
17 or did they use your cores?

18 MR. CUSHING: They took their own cores for the
19 design.

20 CHAIRMAN COWGER: That's what I needed to know.

21 MR. CUSHING: They may have used the gradation
22 out of the contract document.

23 MR. ROEBUCK: Out of this composition
24 (indicating)?

25 MR. CUSHING: It appears that they used the

1 gradation that was in the contract document, not any of
2 their results from running their cores.

3 CHAIRMAN COWGER: Okay. We will get into that a
4 little later. That's all the questions I have.

5 Did either one of the other Board members have
6 any questions?

7 MR. ROEBUCK: In that market in Broward County,
8 you rarely ever use more than 25 percent RAP, you or
9 any of your companies?

10 MR. WEEKLEY: Not in DOT mixes, and again it's
11 because this is so -- the jobs are too small. As a
12 matter of fact, the ex-vice-president of our company,
13 Roy Smith, a couple of our jobs he based our bids on
14 30, 35 percent.

15 And I would rely on him to tell me whatever. And
16 I would say, Roy, we can't do that on a job that only
17 has 2,000 or 3,000 tons of asphalt because we can't
18 keep it separated. We don't have the stockpiling room.

19 Roy had the -- from bidding around the state, in
20 our case, he started using that because it is a -- it
21 would be a competitive edge, but you can't use it
22 because of the -- there's no place to stockpile all of
23 this.

24 In south Florida land is so expensive, it's not
25 like in other parts where you can buy it for 5,000 or

1 6,000 an acre, it's 50,000 or 100,000 an acre.

2 But, yes, to answer your question, very seldom is
3 over 25 percent used. There are no jobs big enough,
4 basically, not many of them.

5 CHAIRMAN COWGER: Mr. Deyo or Mr. Roebuck, do you
6 have any other questions before we turn it over to DOT?

7 MR. ROEBUCK: No.

8 MR. DEYO: I'm okay.

9 CHAIRMAN COWGER: I would suggest to DOT that you
10 kind of follow from your summary of rebuttal that you
11 submitted. It would appear to me that it might be more
12 appropriate to discuss item number 2 and then come back
13 and discuss item number 1. It just seems to flow
14 better.

15 MR. MUSSELMAN: Certainly. Let me, if I could,
16 just give you a little background on what the intent of
17 the composition report is.

18 Mr. Roebuck, as you asked earlier, the
19 composition is included in every contract where the
20 milling is included. It's not included to tell you to
21 recycle it. You don't have to use it. You're going to
22 be taking this material off the pavement, you're going
23 to be stockpiling it, doing whatever you want to. This
24 is giving you some basic information of what it is in
25 the roadway.

1 I'm not certain if Mr. Weekley's contention is
2 that the composition was incorrect or if the material
3 just fined up more than anticipated based on the
4 milling factors that he used.

5 Again, I'm not certain whether he's saying that
6 the composition was wrong, that those gradation values
7 are in place, because we feel pretty comfortable with
8 those.

9 Again, once the material is milled out, we don't
10 have any way of predicting how much that gradation is
11 going to change. A lot of it is a factor of the
12 construction. It could be the speed of the milling
13 operation, condition of the milling teeth, how he
14 handles it. Maybe he takes it to the stockpile and
15 runs over it with a bulldozer. Certainly there is no
16 way DOT can predict that.

17 So, based on that, we put the information in the
18 contract with a note that says -- and let me quote
19 directly. "The gradation values will become finer
20 during the processing of the existing pavement
21 material," because we have no way of -- no way of
22 anticipating how much finer it will become.

23 We have some general ideas, but obviously if
24 you're milling in north Florida where you're using
25 perhaps granite or river gravel versus south Florida or

1 even Brooksville, wherever you are in the state, it
2 would make a little difference.

3 A number of contractors, when they get the
4 composition information, they will use, based on their
5 own experience, they know typically how much it's going
6 to degrade during the milling and the handling. Other
7 contractors tend to take it back and stockpile it and
8 reprocess it further.

9 Again, a little bit of experience comes into play
10 here, based on how much material is going to fine up.

11 Again, our perspective is that it's the
12 contractor's responsibility -- all we are saying is
13 this is going to become your material. This is not
14 necessarily what it's going to be -- we don't give you
15 gradation efforts milled. It's your responsibility to
16 determine the gradation.

17 There are some basic quality control requirements
18 during the first couple of days of milling. Obviously
19 the contractor had the opportunity to determine the
20 gradation of the incoming RAP. Apparently that wasn't
21 done.

22 The same thing during the design of the mix. The
23 contractor by his specification -- I'm not certain if
24 this was actually -- I don't know if it was actually
25 done or not. I know we received cores in our

1 laboratories to verify the mix design.

2 The contractor when he designed the mix had the
3 opportunity to run extractions to determine was the
4 composition correct or not.

5 Again, our data indicates that there is no -- we
6 stand by the composition, there's no problem with that.
7 We wouldn't doubt that there is a variation in
8 gradation that might have occurred in milling. I would
9 be very shocked if we applied any factor that anyone
10 came up with that hit the gradation directly.

11 The other thing I would like to point out is what
12 we did, we reviewed the milling factors that are
13 typically used. We applied the gradation that is shown
14 in the composition and applied all the different
15 milling factors.

16 From looking at the gradation that's given in
17 your composition, if you plug that in, that basically
18 fits in as an S-1 mix.

19 If you go into our plant menu, which again
20 I would like to remind you it is not a contract
21 document, it would recommend a coarser mix, for
22 example, S-1, to use a coarse milling factor. What I'm
23 getting to the material as it's coarser in place will
24 tend to degrade more so. The sand/asphalt top mix in
25 the roadway is not going to degrade as much as an S-1

1 would.

2 As such, we would recommend for Type S-1 the
3 coarse factor be applied. In this instance it appears
4 the contractor applied the intermediate milling factor
5 incorrectly. What this would amount to is the minus
6 200 that he anticipated his calculations would show
7 8.1. That's what is shown on the actual mix design.

8 Calculations using the coarse milling factor
9 would have put it up to 10.5, which is an increase in
10 minus 200 of 2.4 percent.

11 I think that by itself had the contractor used
12 the correct milling factor, he would have realized,
13 hey, I can't run 40 percent RAP in this mix.

14 So, number one, the milling factors are not a
15 contract document. The factor that was used, number
16 two, was applied incorrectly.

17 Let me see. The other -- again, the contractor
18 had the opportunity during the initial milling
19 processes to determine as far as the penalties go, the
20 first day of milling he could have easily determined
21 what the gradation of the actual milled material was.
22 That's the purpose that we have the quality control
23 program for the contractor to follow is so they don't
24 get into these sort of situations.

25 Again, even during the coring of the project by

1 the contractor, gradations could have been run on the
2 materials themselves just to verify the accuracy of the
3 data included in the composition.

4 CHAIRMAN COWGER: May I ask one question,
5 I think.

6 MR. MUSSELMAN: Certainly.

7 CHAIRMAN COWGER: When you were talking about
8 applying the milling factors, you looked at the design
9 mix. You looked at the composition of the existing
10 pavement for the RAP.

11 MR. MUSSELMAN: Uh-huh.

12 CHAIRMAN COWGER: You applied the milling factors
13 I guess for the coarse and the intermediate size to all
14 of the strings?

15 MR. MUSSELMAN: Yes, sir.

16 CHAIRMAN COWGER: You drew the conclusion that it
17 appears like the contractor used the wrong set of
18 milling factors.

19 MR. MUSSELMAN: Yes, sir.

20 CHAIRMAN COWGER: Now, did that apply only to the
21 number 200 sieve or did that fit all the sieves?

22 MR. MUSSELMAN: I believe it applied to all the
23 sieves. So, from reviewing the data, applying that
24 factor, it appears the design was based on the
25 composition gradation, multiplied by the intermediate

1 milling factor gave you the proposed design gradation.

2 CHAIRMAN COWGER: Or somewhere in that vicinity,
3 is that true?

4 MR. MUSSELMAN: Yes, sir.

5 CHAIRMAN COWGER: Okay. Mr. Weekley, you had
6 something you wanted to say?

7 MR. WEEKLEY: But this design mix was sent to
8 Gainesville and approved. So, we acted under the --
9 what the -- our experience on numerous jobs and
10 evidently -- I will assume that Gainesville must have
11 agreed with us if they sent the design mix back
12 approved when the factors were used.

13 MR. MUSSELMAN: Don't mis -- when we verify a mix
14 design, that is not an endorsement that your gradation
15 is going to be -- for example, we don't require you to
16 send stockpile gradations to verify that the gradation
17 on the mix design is right.

18 MR. WEEKLEY: You assume the material --

19 MR. MUSSELMAN: We are going to fabricate it
20 exactly as shown on that mix design. We don't do an
21 analysis and say hey, this RAP is coarser or finer.
22 Again, we're basing it on data you submit. It's the
23 contractor's responsibility under the quality assurance
24 specifications to do the design and quality control of
25 the asphalt mix.

1 In this case he designed the mix, using the data
2 that he came up with, which again was based on the
3 milling factor applied to the composition of gradation.

4 MR. DEYO: Did you confirm that his mix design is
5 supported by the materials that he submitted to the
6 lab, what he's got in there as far as gradations?

7 MR. MUSSELMAN: No, sir, we don't verify the
8 gradations. What we do is --

9 MR. DEYO: You verified his mix design. If he
10 said it was 6.8 percent --

11 MR. MUSSELMAN: If he said there was 2 percent
12 minus 200, then we would have put it together at 2
13 percent.

14 Maybe he's got a way of wasting minus 200 at the
15 plant that we're unaware of, maybe he's running the RAP
16 material over a scalping screen and separated the
17 coarse RAP from the fine. Again, there's no way the
18 Department can verify that from Gainesville to know
19 what the contractor is actually doing during
20 construction.

21 MR. ROEBUCK: Clarify a little confusion for me.
22 Sometimes it looks to me like a little knowledge is a
23 dangerous thing.

24 This composition, you say it is based on an
25 extraction of every mile of pavement. Back when some

1 of this asphalt was laid, we didn't have the
2 sophisticated asphalt control procedures in effect.
3 Mr. Weekley is saying the asphalt that he milled was
4 very erratic, that the gradations were varying, he
5 assumed, through the course of the job.

6 And your information was based on limited amounts
7 of pours.

8 Are you doing this to keep the various bidders
9 from going out prior to turning in a bid and drilling
10 that pavement?

11 MR. MUSSELMAN: Yes, sir. We could have --
12 potentially have a project with 15 contractors bidding
13 and we would be closing down -- imagine I-95 with these
14 people out there.

15 MR. ROEBUCK: You provide them with this general
16 information. Maybe there is not enough caution in the
17 notes. Then you say go out and take your own cores
18 after you get the job and develop your mix from
19 whatever the uniformity or lack thereof is in the
20 actual cores that they would be extracting? That's the
21 way it works?

22 MR. MUSSELMAN: Yes, sir, there is a
23 specification requirement that basically tells you to
24 cut ten six-inch diameter cores and this is how you're
25 going to do your mix design based on your ten six-inch

1 diameter cores.

2 CHAIRMAN COWGER: Let me, since I did a little
3 research on this thing, let me read you what it says in
4 the specifications so we will have it in the record.
5 Now this is for use of reclaimed asphalt pavement where
6 the contractor is using material milled from the
7 project in the mix.

8 "Procedures for obtaining representative samples
9 for the mix design" -- this is by the contractor --
10 "shall be as follows."

11 The key one is, "The contractor shall cut ten
12 six-inch cores approved by the materials office" --
13 talks about refilling the core holes.

14 And that's basically, I think, what happened on
15 this project, from what the testimony says, the
16 contractor did cut his own cores, because that's what
17 the specs required of him. He cannot rely totally on
18 the cores that are shown in the document, in the bid
19 documents.

20 Now, go back just a minute to Mr. Weekley's
21 testimony, though, where he says that he bid the job
22 based on the core data that was shown in the contract
23 documents and there was no reason to core the material,
24 to core the pavement prior to bidding. Just so we all
25 understand.

1 MR. ROEBUCK: That's why the State says they
2 provide this information to prevent the --

3 CHAIRMAN COWGER: Right.

4 MR. WEEKLEY: There are jobs that we know we
5 can't even recycle. When we look at them, we know
6 there are jobs we can't even use it and some of them we
7 know we can't even use it back in State work.

8 In south Florida we was the first company to
9 recycle. We started with the drum plants, crushing
10 plants and doing recycling, first down there. And so
11 I mean we are all well familiar with the -- we don't
12 figure every job on the same amounts. Some jobs we
13 know we can't even use the milling material in and we
14 bid them accordingly. Our prices fluctuate according
15 to the amount we figure we can recycle.

16 MR. MUSSELMAN: One other thing I would like to
17 point out. On Exhibit 3 -- I will let Scott Cushing
18 address this, but this is a finding from some of our
19 independent assurance observations.

20 MR. CUSHING: Well, I would like to go back to
21 what Jim said, that the contractor gets his ten cores.
22 Of course, he can run his own gradation off those ten
23 cores. A lot of contractors have got 20 cores where
24 they can do their own testing. Some contractors wait
25 until they mill some of the material and then they

1 design off the milled material.

2 However, that delays something for like two or
3 three weeks. If they're handicapped for space, that
4 can interfere with that.

5 We did go out at the end of March. We did an
6 independent observation at the plant. We made, under
7 our remarks on this report, that the QC technician was
8 supposed to run a test for every thousand tons of
9 milled material used, but his records show only one
10 test for the entire job, which is far below the number
11 of tests needed.

12 On his quality control plan that is submitted for
13 approval, he states that he will run a gradation test
14 for every thousand tons of incoming material, including
15 the RAP material. And our records indicated that he
16 did not do it on this material that was coming in.

17 MR. WEEKLEY: But that is after the mix --
18 whether that's true or not, that's after the -- after
19 we cut back to 25 percent. So it had no bearing on
20 whether we could do 40.

21 MR. CUSHING: That's correct.

22 CHAIRMAN COWGER: This report is based on an
23 inspection, though, made, as I understand it, a couple
24 of months or more after the mix in dispute here was
25 produced, right?

1 MR. CUSHING: Yes.

2 CHAIRMAN COWGER: Wasn't this mix produced in
3 early February?

4 MR. ROEBUCK: Yes.

5 CHAIRMAN COWGER: This report is done in April.
6 We understand what you're saying.

7 MR. CUSHING: Yes.

8 CHAIRMAN COWGER: Okay. DOT, what else do you
9 have to say about your issue number one or number two,
10 I mean? Because I think issue number one we can deal
11 with rather quickly.

12 Your number two point about the composition of
13 the pavement, of the existing pavement, do you have
14 anything further to say on that?

15 MR. MUSSELMAN: Again, we feel our data in the
16 composition is accurate. Again, there is -- as
17 David Wang points out to me up in section 2, the bidder
18 is expected to examine carefully the site of the
19 proposed work and the proposal plans, specifications
20 and contract forms that are contemplated before
21 submitting a proposal.

22 So, again I would expect that representatives of
23 Mr. Weekley's company would have reviewed the project,
24 would have looked at the composition, and at that point
25 made a determination that, yes, knowing the age of the

1 project, saying yes, this is more than likely a Type
2 S-1 and gone in -- if they chose to use the milling
3 factors that came from the asphalt plant technician
4 manual, again had they used the correct milling factor,
5 I think we wouldn't be here today. I don't think they
6 would have bid it at 40 percent.

7 Again, every project in the state, the milling,
8 natural mill gradation is going to be different than
9 how it's predicted, whether it's predicted based on the
10 contractor's experience or if he draws dice out of a
11 black hat or -- regardless of how it's done, it's going
12 to be different. And every single time the Department
13 will find itself with a claim if the gradation did
14 vary.

15 Again, I think we have done all that we can do,
16 is basically give them the general information of what
17 is on the roadway and then let the contractor determine
18 from then what it is actually going to be after his
19 milling operations.

20 I don't think I have anything else to add to
21 that.

22 CHAIRMAN COWGER: Let me ask Mr. Cushing a
23 question or two. Somewhere in the documentation that
24 you submitted you talked about the plant technician
25 recalibrated the plant. You ran lot number 2, you had

1 a problem with dust or asphalt content, then you
2 skipped a day, and then they ran lot number 3 and had a
3 similar type problem.

4 What is -- in this case, what does recalibrating
5 the plant consist of?

6 MR. CUSHING: On the first day, they ran the -- a
7 different mix. In other words, to give them time to --
8 for the milling machine to supply them some material
9 in there. When we started the second lot on
10 February 1, they ran 542 tons and it was an automatic
11 shut-down because of the asphalt content. And at that
12 time it was noted that the minus 200 was extremely
13 high, but was not in the automatic shut-down mode.

14 After the plant was shut down and then we
15 informed the contractor -- and it's kind of standard
16 practice, that we expect them to run some calibrations
17 and found out why was your AC high, why did you have
18 this shut-down.

19 So, normally they recalibrate their asphalt
20 plant. Their quality control technician will go out
21 there and get another test and run an extraction test
22 to prove to the acceptance technician there at the
23 plant that the AC content is right and that the
24 gradation looks decent enough to start on again. And
25 based on that information, then they were allowed to

1 start on lot 3.

2 Then on lot 3, we had the automatic shut-down on
3 the minus 200 material. It exceeded the design
4 specifications by enough to require the shut-down.

5 CHAIRMAN COWGER: In both cases the air content
6 was not failing but close to it?

7 MR. CUSHING: I didn't understand the question.

8 CHAIRMAN COWGER: The air voids, I'm sorry.

9 MR. CUSHING: The air voids were on the low side
10 but not to shut down.

11 CHAIRMAN COWGER: Let me go back and ask my
12 question about recalibration. I understand what you're
13 saying is in that day that they were working on this
14 thing they did something and then they ran some more
15 mix, and you ran -- they ran extractions on that, and
16 the -- you or the project people were satisfied that
17 they could start again.

18 Now, what did he do to recalibrate the plant?
19 I mean did he change the mix design? Was there a
20 concern that maybe the gates were set wrong or
21 something in the plant?

22 MR. CUSHING: I think that was their concern is
23 they had to check the gate settings to make sure the
24 RAP material was at the proper percentage because
25 normally you would assume that with a high AC content

1 and with a high dust content that maybe the calibration
2 of the RAP material was not correct.

3 But again, that's an assumption and that's the
4 reason we tell the quality control technician,
5 Weekley's person, check all your calibrations, you may
6 want to check it out and see what you have and run an
7 extraction on it before you can start again.

8 CHAIRMAN COWGER: As best you know, there was no
9 change in the design mix that he was targeting for?

10 MR. CUSHING: No, not at that point. No.

11 CHAIRMAN COWGER: Between lots 2 and 3 is all I'm
12 asking for.

13 MR. CUSHING: No change.

14 MR. WEEKLEY: Doesn't sometimes dust act as AC?
15 Doesn't sometimes dust -- I'm asking. My limited
16 knowledge about mixes, sometimes dust will act as AC.

17 MR. MUSSELMAN: It will act almost as the same,
18 if you had too much asphalt, you get the same --

19 MR. WEEKLEY: I'm saying what is assumed to be
20 too much AC content, the dust could also have been a
21 factor there. The second time it was the dust that was
22 determined.

23 MR. MUSSELMAN: The dust will come out as a
24 minimal aggregate. It won't show up physically as
25 asphalt, but it may affect the characteristics of the

1 flow and other characteristics.

2 MR. DEYO: The question we had on the asphalt
3 gradation penalties on lots 2 and 3, did they in effect
4 withhold payment for all material produced under those
5 two lots?

6 MR. CUSHING: There was a 20 percent penalty on
7 the AC, on lot number 2. And I have not done a
8 calculation. I think that was the only penalty -- that
9 was the only penalty that was in place on lot 2 as far
10 as I know. That's the only one the referee was done on
11 was on the AC content. It was verified by Gainesville.
12 It would be 20 percent of the 542 tons that were
13 produced.

14 On lot 3, there was a penalty -- well, I take
15 that back.

16 There was also a penalty on the 200 for lot 2.
17 There was a penalty for the AC and there was a penalty
18 for the 200. I don't know the degree of the penalty on
19 the 200, the percentage.

20 On lot 3 there was a 20 percent penalty on the
21 minus 200 material. And that would have involved
22 1253.10 tons.

23 MR. MUSSELMAN: Mr. Cowger, I would like to point
24 out had the contractor been keeping up with his quality
25 control requirements as stated in the contract, he

1 probably would have avoided these penalties.

2 That may not have affected how he based his bid,
3 but certainly he would have known the gradation, had
4 the materials coming to his plant. Part of his quality
5 control plan was to take a sample in every thousand
6 tons of incoming RAP material and test it.

7 Certainly at that point of the penalty part,
8 regardless of what your findings are, I don't think
9 there's any way to get out of the penalties. Again,
10 the material is coming in. He could have seen the dust
11 is running considerably higher than we anticipated and
12 could have solved the problem earlier.

13 MR. DEYO: Your contention is lack of testing at
14 the plant more or less led to the penalty assessment?

15 MR. MUSSELMAN: Yes, lack of quality control
16 testing, not necessarily by the Department.

17 MR. WEEKLEY: I don't totally agree with that.
18 We probably had -- milling a thousand tons when we
19 started producing it, and on the first day we did shut
20 down when it became obvious. We did shut down, we
21 didn't say the hell with you, we are keeping running.
22 We shut down. We acknowledged it.

23 So, I'm not totally -- I don't totally agree --
24 I would like to go on record saying I don't totally
25 agree with that record.

1 MR. MUSSELMAN: If you were getting aggregate
2 from a new quarry that you had never gotten from
3 before, and they told you this was the gradation at the
4 quarry, wouldn't you test when it got to your yard,
5 probably the first truckload that came in?

6 MR. WEEKLEY: I don't think that has a direct
7 bearing on what our test showed. I don't agree that
8 this problem might have necessarily shown, arisen
9 itself from that testing.

10 MR. MUSSELMAN: Again, I do think --

11 MR. WEEKLEY: The adjustments -- that's the
12 reason -- it's also stated that we could have made
13 adjustments to design mix. That is not true because
14 the recycling agent, you can only change -- we have no
15 RAP to change it. Scott can only change it in 5
16 percent with that recycling agent.

17 So, you know, anyhow, I don't totally agree with
18 that statement.

19 CHAIRMAN COWGER: When you went -- Mr. Musselman,
20 what you are saying, just so I can sum it up, on the
21 first day of production while he was working on lot 1
22 with this other design mix, they were milling material
23 and bringing it to the plant?

24 MR. MUSSELMAN: Yes, sir.

25 CHAIRMAN COWGER: Your testimony is that he could

1 have, as that material arrived and began to build a
2 stockpile, he could have sampled and tested that
3 material to determine what particularly the P-200
4 content of that material was?

5 MR. MUSSELMAN: That's right.

6 CHAIRMAN COWGER: There's no evidence that was
7 done? Is that what you are saying?

8 MR. MUSSELMAN: The independent insurance report
9 says there was only one test for the entire project,
10 one test. So, I don't know when that one test was run.

11 MR. WEEKLEY: We should know. Scott, did you
12 bring that, when that test was run?

13 MR. CUSHING: No, it was your records.

14 MR. WEEKLEY: After we reduced it to 25 percent,
15 I mean whatever, I still think that that one test,
16 whether it was one test or two, I don't -- I'm going by
17 what you're saying because I have no knowledge.

18 MR. MUSSELMAN: Again, getting back to the
19 penalties, had you run tests on the incoming RAP
20 material as you would do, or you should do on incoming
21 virgin aggregate materials, you would see that the
22 gradation here in the RAP is different than what we
23 designed and maybe you could increase your testing
24 frequency.

25 That's the whole purpose of having the quality

1 control program is to monitor your product. That is
2 the contractor's requirement to do that.

3 MR. ROEBUCK: Did I miss anything? Did you
4 submit us a sheaf of extraction data that you
5 performed?

6 MR. WEEKLEY: No, I didn't submit any of that.

7 MR. ROEBUCK: I didn't see any. I thought it
8 might have been in your other documents there.

9 MR. WEEKLEY: We didn't feel like it was
10 necessary.

11 MR. ROEBUCK: You made the statement the material
12 you were milling was erratic in gradation or whatever.

13 MR. WEEKLEY: The bottom line is -- what this is
14 all about is not even what was done at the plant,
15 whatever -- it's what the job was bid on. Using the
16 information, we are getting up to me -- I think we are
17 getting off a little bit into the case was what the bid
18 documents showed and what we relied on and we
19 submitted. That's really what we are talking about.

20 I mean I don't mind discussing about testing
21 procedures or whatever, but I don't really feel like
22 it's relevant. We did some -- as these gentlemen know,
23 we have made some changes in our testing procedures.
24 I don't think that's really relevant here.

25 CHAIRMAN COWGER: Gentlemen, I think, unless

1 somebody has got something else to say, we need to
2 leave the issue of the composition of the material and
3 what happened.

4 Do either one of the Board members have any
5 questions? Mr. Wang?

6 MR. WANG: I would like to emphasize on the
7 general specifications 2-4, the bidder -- and during
8 the submission of proposal, he should -- in other
9 words, he is responsible to examine all the information
10 provided by the contract document. And also, that
11 contract document is just a general indication of the
12 materials. And he should make his examinations and to
13 make sure that his proposal will support his
14 examination.

15 So, our gradations, which we just discussed, is
16 just a general indication of the materials. He is
17 responsible to examine, to check, to do whatever he
18 should to support his proposal and view before the
19 bidding.

20 CHAIRMAN COWGER: Okay. Mr. Weekley, do you have
21 anything else to say on that issue?

22 MR. WEEKLEY: No.

23 CHAIRMAN COWGER: I do want to give DOT the
24 opportunity, and I think we can handle this pretty
25 briefly, to talk about whether or not DOT required the

1 contractor to reduce the percent RAP from 40 to 25.

2 MR. MUSSELMAN: We will let Scott handle that.

3 MR. CUSHING: I think Mr. Weekley indicated in
4 his opening statement that we gave him the opportunity
5 of three choices: either redesign the mix, switch back
6 to the original mix that he used on day one, or we
7 contact the State materials office and see if we could
8 reduce the RAP material.

9 I'm only allowed to go down 5 percent. It was
10 pretty well indicative of the results we had that a 5
11 percent reduction in the milled materials wouldn't
12 solve the problem.

13 At that time Weekley took the option to reduce
14 the milled material to 25 percent.

15 We contacted the State materials office with
16 proposed gradation, with the proposed percentage
17 changes, and they thought they would work.

18 We went out there the next day. Weekley made the
19 mix up with the new percentages of RAP and the new
20 percentages on the virgin aggregates. We made Marshall
21 fills, took extractions and indicated that the mix
22 would meet our specification requirements and we
23 started back up.

24 I think they lost one day while we were doing
25 that retest to get him started again, rather than have

1 to go through the two-week design process.

2 CHAIRMAN COWGER: I assume the P-200 in that new
3 mix with the 25 percent RAP then came out okay?

4 MR. CUSHING: Yes, sir.

5 CHAIRMAN COWGER: Mr. Weekley, do you have
6 anything to say about that? He's saying just about
7 what you said.

8 MR. WEEKLEY: No, he gave us the three choices,
9 but that was the only choice, even though we wanted --
10 that was the only choice we really felt like we had
11 because had it been deducted to 28 percent or
12 redesigned. So, that was the choice.

13 CHAIRMAN COWGER: That's what you said earlier
14 on.

15 MR. WEEKLEY: Yes, he acted very fairly in
16 allowing us to keep going -- acted quickly to keep
17 going.

18 CHAIRMAN COWGER: We are getting very close to
19 the point we are going to close out, but I do want to
20 give anyone who has any further statements, DOT, the
21 contractor, the opportunity to make a statement.

22 Hearing nothing, Mr. Roebuck, do you have any
23 questions?

24 MR. ROEBUCK: No, sir.

25 CHAIRMAN COWGER: Mr. Deyo?

1 MR. DEYO: No, I don't.

2 CHAIRMAN COWGER: This hearing is hereby closed.

3 The Board will meet to deliberate on this claim
4 sometime probably in the next six weeks and you will
5 have our final order shortly thereafter.

6 (Whereupon, the hearing was concluded at 10:05 a.m.)

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STATE OF FLORIDA)
 COUNTY OF LEON)

I, CATHERINE WILKINSON, Court Reporter, do hereby
 certify that I was authorized to and did stenographically
 report the foregoing hearing; and that the transcript is a
 true record of the testimony given.

I FURTHER CERTIFY that I am not a relative, employee,
 attorney or counsel of any of the parties, nor am I a
 relative or employee of any of the parties' attorney or
 counsel in connection with the action, nor am I financially
 interested in the action.

Dated this 22nd day of September, 1995.

Catherine Wilkinson

CATHERINE WILKINSON
 CSR, CP, CCR
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 Tallahassee, Florida 32317

