

Mr. R. Karl Terwick, P.E.
Project Resident Engineer
HNTB
887 Lake Myrtle Road
Auburndale, Florida 33823

September 8, 1999

Ref: Polk County Parkway Section 7
FDOT Project #97160-3312
Contract No. 20002
Clarification of Disputes Review Board Recommendation concerning Pond 9

Dear Mr. Terwick:

In a letter dated August 19, 1999 the Department has requested clarification of the Disputes Review Board Recommendation concerning Issue No. 2 "Differing Site Condition at Pond #9". The Department specifically asked the Board to provide clarification concerning the following:

1. Which Contract Articles did the Board use to derive entitlement.
2. Which Contract Documents (i.e. plans and specifications) were considered in determining entitlement.
3. And lastly, the Board was asked to elaborate on what components of the Contractor's claim the Board felt were compensable relative to the Board's entitlement recommendation.

In answer to your request, the Board must go to the Department's position as outlined in their request for a hearing letter of July 2, 1999. For the record that paragraph is presented below:

"The dispute is over a Summary of Quantity Table shown on the Plans, which states that at Pond No. 9, there are 33,464 cubic yards of A-6 material excavation, and 62,715 cubic yards of A-3 material excavation. Soil borings shown on the Cross-Section Sheet indicate that the material is a mixture of A-3, A-2-4, and A-6. As a result of the different materials encountered, approximately plus or minus 40,000 cubic yards of A-2-4, Hubbard is requesting payment for excavation and compaction of the A-2-4 material, as the A-2-4 material was harder to compact than the anticipated 62,715 cubic yard total of the A-3 material.

The Department contends that although the material shown on the Summary of Quantity Sheet is different from what was shown on the Cross-Section Sheet and what was actually excavated, that the delays which occurred were due to the Contractor's methods of compaction and the weather, which the Department has no control over, and that therefore, no (sic) the Department bears no responsibility for the delays". (Emphasis added)

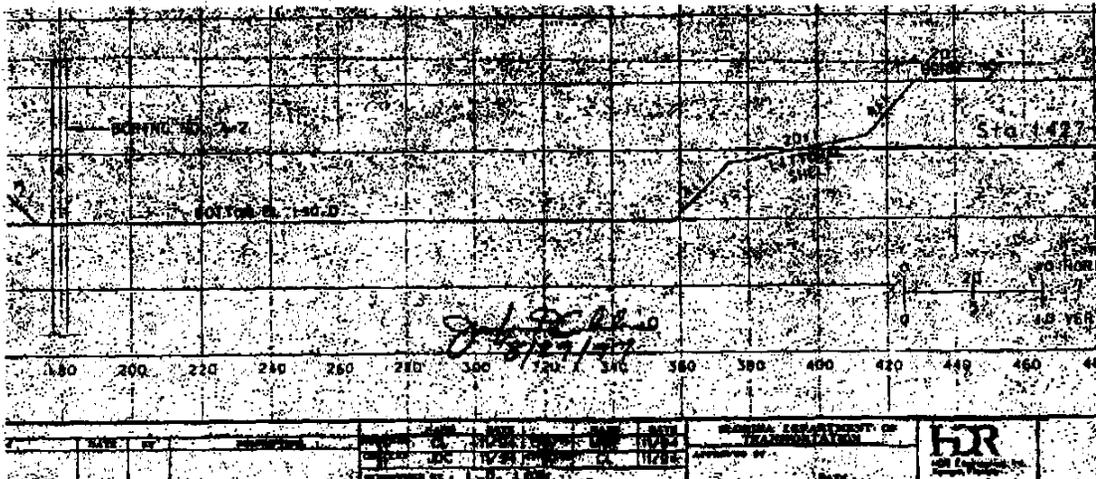
In answer to the first clarification requested, the Board examined the 1994 FDOT Specifications, Section 4-3.4 Differing Site Conditions, which states in part:

"During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract... are encountered at the site, the party discovering such condition shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected work is performed."

The Board made the determination of a differing site condition based upon the contract drawings Sheets No. 131 - 270 and specifically Sheets No. 123 & 131 as partially reproduced below which classifies the type of material to be expected

SUMMARY OF EARTHWORK POND NO. 9			STATE PROJ. NO. 97160-2323 123	
A-6 EXC.	A-3 EXC.	A-3 FILL	CUT AND FILL	
53464 CY	62716 CY	0 CY		

SHEET NO. 123 (UPPER RIGHT CORNER)



SHEET NO. 123 (BOTTOM CENTER STA. 1427+00)

Note that Sheet No. 123 indicates in both the Summary of Earthwork for pond 9 and in the cut and fill tabulation in the upper right corner of that sheet that pond 9 consists of two materials, A-3 and A-6. At the bottom of Sheet No. 123, on the Cross-Section of pond 9, boring No. A-2 indicates the material as belonging to Stratum 4. The table on Sheet No. 131 (See next page) indicates that the material in Stratum 4 can be either A-3 or A-2- 4. However, in the preparation of the contract drawings the Department made the determination that the material was A-3 and so noted

120-3 Preliminary Soils Investigations: When the plans contain the results of a soil survey, such data is not to be construed as a guarantee of the depth, or extent or character of material present. It is the responsibility of the Contractor to make such examination of the site of the work, and any material sources indicated in the plans, as may be necessary to inform himself of the conditions under which the work is to be performed.

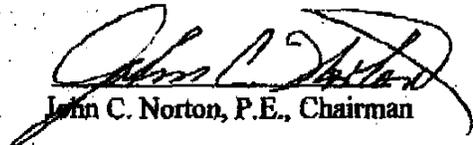
5-4 Errors or Omissions in Plans or Specification: The Contractor shall take no advantage of any apparent error or omission which he might discover in the plans or specifications but shall forthwith notify the Engineer of such discovery, who will then make such corrections and interpretations as he deems necessary for reflecting the actual spirit and intent of the plans and specifications.

The Board considered these sections of the specifications and found them not applicable for the following reasons, Section 120-3 due to the overwhelming evidence concerning the type of material shown in the plans and Section 5-4 because Hubbard notified the Department of the plan difference in a letter of August 4, 1998.

As to the third request for clarification the Board was originally requested to determine entitlement, not quantum, or components of quantum which appears to be the direction of the third request. The Board did consider the Departments position that the difficulties experienced by Hubbard were the result of Hubbard's means and methods and the wet weather experienced during the time when the material was being placed in the embankment. However, had the material been the A-3 material expected the wet weather would have had little, or no, effect on placement of the material in the embankment.

The Board determined entitlement as outlined in our recommendation of August 12, 1999 based upon the Departments summary of the dispute in their letter of July 2, 1999 requesting a hearing as, "entitlement for Hubbard Construction Company's claim for different materials found during the excavation of pond #9 and the associated additional work required to use those materials in the embankment." The Board hopes, that with these clarifications, the Department would accept the recommendation of the Board and begin negotiations with Hubbard toward a mutually agreeable settlement of the dispute over the material found in pond 9. If a settlement can not be reached between the parties on quantum the Board stands ready to assist both parties in reaching a settlement.

Signed for the Disputes Review Board with concurrence of all members.



John C. Norton, P.E., Chairman

cc. C.B. Wegman
Shane Cox
Neal Penny

DISPUTES REVIEW BOARD RECOMMENDATION

March 6, 2000

Mr. Karl Terwick, P.E.
Project Resident Engineer
HNTB
5850 T.G. Lee Blvd., Suite 600
Orlando, Florida 32822

Mr. Shane Cox
Project Manager
Hubbard Construction Company
105 N Falkenburg Road, Suite D
Tampa, Florida 33619

Ref: Polk Parkway - Section 7, State Project No.: 97160-3312, WPI No. 1157812, Contract No. 20002, Turnpike District, Disputes Review Board Hearing Concerning: Hurricane Floyd, Tropical Storm Harvey and quantum for the additional work associated with Pond 9.

Dear Sirs:

The Florida Department of Transportation (Department) and Hubbard Construction Company (Hubbard) requested a hearing concerning the above referenced items. Summaries of the Department's and Hubbard's positions were forwarded to the Disputes Review Board (Board), and a hearing was held at the Polk Parkway Office in Lakeland, Florida on January 28, 2000. Both parties were given a chance to present their case for each of the issues which were:

1. Catastrophic storms, Hurricane Floyd and Tropical Storm Harvey.
2. Compensation for the excavation and compaction of the A-6 materials and the reduced quantity of A-3 material within Pond 9.

Issue #1 Catastrophic storms Hurricane Floyd and Tropical Storm Harvey.

History of the Dispute:

This dispute results from a Hurricane and a Tropical Storm that happened over a two week period. A four day state of emergency was declared for the hurricane, and the tropical storm arrived following the hurricane. Hubbard prepared for the hurricane by preparing the maintenance of traffic so that the traveling public would not be affected, but continued to work with a small crew. During the hurricane Hubbard was unable to receive concrete on one day because the ready mix concrete supplier was shut down in anticipation of the hurricane. The Department has given Hubbard two non-compensable days for the hurricane and no time for the tropical storm. Hubbard is requesting 6 days and compensation for repair work they contend that they did following both storms.

DISPUTES REVIEW BOARD RECOMMENDATION

Hubbard's Position:

Hubbard's contention is that Hurricane Floyd caused damage to the completed work in the amount of \$24,219.50 and delayed the project completion by 4 calendar days. Tropical Storm Harvey caused damage to the completed work in the amount of \$18,164.62 and delayed the project completion by 2 calendar days. Their reasoning behind these claims is as follows:

1. A state of emergency was declared by the Governor, and it lasted four days.
2. Work in place, consisting of subgrade and slopes were damaged.
3. The Department has in the past paid contractors for the repair of damage caused by catastrophic storms.
4. This project is not a "bonus job" as referenced in the Department's memo of September 16, 1999.
5. The critical Schedule activity, placement of limerock, was impacted by both of these storms from September 13 through September 17 (Floyd) and from September 20 through September 22, 1999 (Harvey).

Hubbard backs up their claim for damages with cost estimates indicating the amount of labor and equipment used to repair damage caused by the back to back storms.

Department's Position:

The Department refutes Hubbard's claim for most of the delay damages caused by the catastrophic storms based upon the following:

1. Hubbard's cost spreadsheet states that this cost summary consists of the direct operations cost of preparing for the above referenced storms, as well as the cost to perform corrective work after the storms passed.
2. Hubbard's letter dated November 23, 1999 contradicts their claim letter, stating that the monies requested are for the direct cost of rework.
3. Special Provisions, Item 23 CONTRACT TIME EXTENSIONS - Weather, Subarticle 8-7.3.2 which states in part: "Allowance for delays caused by the effect of inclement weather will not be made. Delays caused by the affects of inclement weather will not be made. Delays caused by catastrophic occurrences such as hurricane, may be considered as a basis for contract time extension."
4. Based on the Subarticle 8-7.3.2 Hubbard has no entitlement for damages as a result of inclement weather.
5. Review of the Daily Reports of Construction for the two storm affected weeks do not indicate catastrophic damages or repairs made during the reported incidents.

DISPUTES REVIEW BOARD RECOMMENDATION

6. One inch of rainfall on September 16 and 19 with a small amount on September 20, 1999 for a total of approximately 2 and ½ inches of rain was not considered catastrophic.

Dispute Review Board Recommendation

The Board has reviewed the Inspectors Daily Report of Construction for the period of September 13 through September 26, 1999 and can only find one mention of slope repair. On September 17, 1999 Hubbard had 31 men working 9 hours each, and one of the items of work is Grade Lt. slope Sta 1277+00 to 1374+00 to repair washouts. Hubbard has included an estimate of 672 manhours as back up for these repairs, but did not produce any daily time reports or job diaries as back up. If all the men working on September 17, 1999, in the one crew that notes repairing washouts were doing nothing else that would amount to less than half of the claimed manhours.

Hubbard worked the following men on the days in contention, and on only two of those days did they work any of the people less than eight hours, Saturday and the second Tuesday:

September 13, Monday	52 men
September 14 Tuesday	48 men
September 15 Wednesday	22 men
September 16 Thursday	52 men
September 17 Friday	52 men
September 18 Saturday	33 men
September 20 Monday	55 men
September 21 Tuesday	52 men
September 22 Wednesday	55 men
September 23 Thursday	63 men

Based upon the above the Board finds no entitlement for any additional time beyond what the Department has granted nor any monetary compensation for damage repairs.

Issue #2 Pond 9 Costs

History of the Dispute

Hubbard filed a claim for the additional costs associated with the excavation and compaction of the unanticipated misclassified materials encountered in Pond 9. At a hearing before this Board on June 28, 1999, a recommendation for entitlement was provided both parties which suggested that the parties meet and negotiate a settlement. The parties did meet and could not come to an agreement as to compensation for this issue and have now requested that the Board determine the quantum due Hubbard for the additional work required.

quantum due Hubbard for the additional work required.

DISPUTES REVIEW BOARD RECOMMENDATION

Contractor's Position

Hubbard has revised their claim using the measured mile approach from an original request of \$202,521.34 to a request for \$146,679. This is less than the amount given at the hearing \$155,539. Apparently this comes about because Hubbard made some changes after reviewing the Boards questions at the hearing. Hubbard has furnished the Board with all of the items requested at the hearing by the Board. The information requested at the hearing was received in a letter from Hubbard dated February 9, 2000. That information is attached in summary form as **Exhibit A** to this recommendation.

The damages, as presented by Hubbard, are the additional cost to excavate the material coming from Pond 9, Hubbard's work code 23470, and the spread and compact that material, Hubbard's work code 23640. Labor and equipment hours for these two codes were extracted from Hubbard's electronic accounting system. The accounting system receives the data from Hubbard's daily labor and equipment time sheets. The equipment hours were multiplied by the rates determined using the Rental Rate Blue Book for Construction Equipment (Blue Book) and weekly costs were calculated. Hubbard explains the method in their claim so we will not go into great detail here. A check of their calculations was made to determine if the correct rates were arrived at using the Blue Book.

Hubbard's benchmark calculations use 54% of the total excavation and 58% of the total spread and compact as the basis for their claim (See **Exhibit A**).

Department's Position

The Department disputes Hubbard's contention that the misclassified material is more difficult to excavate than the A-3 materials since the only difference, according to the Department, is the amount of material passing the 200 sieve. The Department calculates a cost for the total excavation, placement and compaction of the material to be \$275,968.48 and Hubbard's claim (\$146,679) to be 53.2 % of the total cost. The Department calculates the damages by two different methods. The first is as a percentage of the time to complete compaction and the second as a factor of weather. The first method calculates damages to be \$ 20,484.51, and the second to be \$12,882.18. The position taken by the Department is that if there is a claim it would be between the above two figures.

Dispute Review Board Recommendation

The Board has reviewed the information presented by both parties and determined that Hubbard is due the increased cost of excavation and the increased cost of compaction of the unsuitable material. The contract plans indicate 62,715 CY of A-3 material, less 20,905 CY of A-3 material actually excavated equals 41,810 CY of misclassified materials. The Board has reviewed

DISPUTES REVIEW BOARD RECOMMENDATION

the calculations prepared by Hubbard and recommends that Hubbard be compensated for the 41,810 CY of misclassified materials in the following manner:

Labor Cost Excavation 41,810 x (0.328-0.293) =	\$ 1,463.35
Labor Cost Spread & Compact 41,810 x (0.388-0.273) =	\$ 4,808.15
Equipment Cost Excavation 41810 x (1.609-1.408) =	\$ 8,403.81
Equipment Cost of Spread & Compact 41,810 x (0.975-0.591) =	\$16,055.04

	<u>Labor</u>	<u>Equipment</u>
Excavation (23470)	\$ 1,463.35	\$ 8,403.81
Spread & Compact (23640)	<u>\$ 4,808.15</u>	<u>\$16,055.04</u>
Subtotal	\$ 6,271.50	\$24,458.85
Labor Markup 25%	<u>\$ 1,567.88</u>	
Equipment Markup 7.5%		<u>\$ 1,834.14</u>
Subtotal	\$7,839.38	\$26,292.99
Subtotal	\$ 34,132.37	
Bond @ 1.5%	<u>\$ 511.99</u>	
Total Damages	\$ 34,644.36	

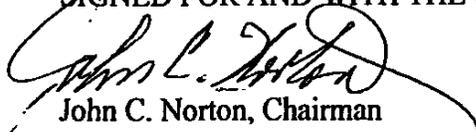
The Board believes the above recommendation properly compensates Hubbard for the excavation, spreading and compacting of the misclassified materials from Pond 9. The Board appreciates the cooperation by all parties involved and the information provided to make this recommendation. Please remember that failure to respond to the Board and the other party concerning your acceptance or rejection of the Board's recommendation within 15 days will be considered acceptance of the recommendation.

I certify that I participated in all of the meetings of the Board regarding the disputes indicated above and concur with the findings and recommendations.

Submitted by the Disputes Review Board,

John C. Norton, Chairman, John H. Duke, Member, Keith Richardson, Member

SIGNED FOR AND WITH THE CONCURRENCE OF ALL MEMBERS:


John C. Norton, Chairman

cc: David Dempsey, Hubbard Construction Company, & Charles B. Wegman, P.E. FDOT

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Code 23470 Excavation
Hubbard Benchmark Calculation

Date	Labor	Equipment	Total	Weekly Unit Cost
04/11/98	2474	2800	5274	1.152
04/18/98	961	10679	11640	1.297
04/25/98	991	5533	6524	0.879
05/02/98	2039	7087	9126	0.989
05/09/98	2471	9059	11530	1.612
05/16/98	1331	7312	8643	0.000
05/23/98	0	2349	2349	0.587
05/30/98	0	1910	1910	0.000
06/06/98	0	0	0	0.000
06/13/98	3632	19499	23131	2.675
06/20/98	4995	20721	25716	1.376
06/27/98	4381	15192	19573	0.729
07/04/98	2348	15252	18000	2.262
07/11/98	3551	15768	19319	4.893
07/18/98	3662	19869	23931	6.822
07/25/98	1328	5100	6428	0.000
Totals	32816	157904	190720	112166
On 54% of Total				Unit Cost
				1.700

Date	Labor	Equipment	Total	Weekly Unit Cost
08/01/98	1816	0.000	1816	0.000
08/08/98	9620	11902	21522	1.278
08/15/98	2462	14997	17459	1.356
08/22/98	2898	11824	14722	1.561
08/29/98	3149	15770	18919	1.620
09/05/98	1763	10980	12743	1.563
09/12/98	2614	16190	18804	1.840
09/19/98	1448	7625	9073	6758
09/26/98	0	0	0	0
10/03/98	0	0	0	0
10/10/98	14790	18325	33115	3.364
10/17/98	5902	24554	30456	3.022
10/24/98	3019	16119	19138	2.560
10/31/98	2521	14413	16934	1.800
Totals	31563	154711	186274	96179
On 46% of Total				Unit Cost
				1.937

Equip Cost (1.609 - 1.408) x 96,179 = \$19,313.03
 Labor Cost (0.328 - 0.293) x 96,179 = \$3,454.26
 Total Damages = (1.937 - 1.700) x 96179 = \$22,767.29

Excavation (23470)	\$3,454.26
Spread & Compact (23640)	\$24,798.96
Subtotal	\$28,253.22
Labor Markup 25%	\$7,063.30
Equipment Markup 7.5%	\$7,628.20
Subtotal	\$42,944.72

Subtotal \$144,654.09
 Bond @ 1.5% \$2,169.81
 Total Damages = \$146,823.90
 Computer difference

Code 23640 Spread & Compact
Hubbard Benchmark Calculation

Date	Labor	Equipment	Total	Weekly Unit Cost
04/11/98	439	1166	1605	0.000
04/18/98	1631	6917	8548	0.757
04/25/98	2220	5328	7548	1.017
05/02/98	4208	11031	15239	9225
05/09/98	3251	8447	11698	1.652
05/16/98	6219	13625	19844	0.891
05/23/98	4460	13849	18309	0.000
05/30/98	6850	12438	19288	0.330
06/06/98	5666	12958	18624	0.683
06/13/98	6395	13731	20126	0.835
06/20/98	7151	13697	20848	0.746
06/27/98	6891	11954	18845	0.802
07/04/98	6228	10005	16233	1.064
07/11/98	8262	12374	20636	1.085
07/18/98	6968	15422	22390	0.886
07/25/98	5017	12457	17474	2.020
Totals	61056	175399	236455	296817
On 58% of Total				Unit Cost
				0.273

Date	Labor	Equipment	Total	Weekly Unit Cost
08/01/98	6213	15560	21773	1.792
08/08/98	5171	15629	20800	1.450
08/15/98	6409	17346	23755	1.426
08/22/98	4545	17125	21670	1.849
08/29/98	6867	21294	28161	2.511
09/05/98	5741	15107	20848	1.155
09/12/98	5865	19136	25001	1.229
09/19/98	9378	21292	30670	1.281
09/26/98	6106	14047	20153	2.381
10/03/98	8166	11565	19761	3.285
10/10/98	3649	9411	13060	0.556
10/17/98	4604	10900	15504	0.633
10/24/98	4492	6116	10608	0.910
10/31/98	6173	14696	20869	1.109
Totals	83409	208224	291633	214885
On 42% of Total				Unit Cost
				0.975

Equip Cost (0.388 - 0.273) x 214,895 = \$24,798.96
 Labor Cost (0.975 - 0.864) x 214,895 = \$24,396.34
 Total Damages = (1.363 - 0.864) x 214,895 = \$107,195.30

Labor	\$19,313.03
Equipment	\$82,396.34
Subtotal	\$101,709.37
Labor Markup 25%	\$25,427.34
Equipment Markup 7.5%	\$7,628.20
Subtotal	\$134,764.91

Subtotal \$144,654.09
 Bond @ 1.5% \$2,169.81
 Total Damages = \$146,823.90
 Computer difference

Mr. Karl Trewick, P.E.
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Polk Parkway Section 7
State Project No. 97160-3312
WPI No. 1157812
Contract No. 20002

Dear Sirs:

The following sections address the hearing requested by both parties on the Repairs to I-4, Differing Site Conditions - Pond 9 and Pond 4A/4B Water table. The DRB held hearings on all three disputes on the morning of July 28, 1999 and our recommendations follow. Please remember that failure to respond to the DRB and the other party concerning your acceptance or rejection of these recommendations within 15 days will be considered acceptance of the recommendations.

I-4 REPAIR

The question before the Disputes Review Board (DRB) is whether Hubbard Construction Company (Hubbard) is entitled to the cost of repairs to the I-4 roadway and shoulder due to damage caused by the driving and removing of temporary sheet pile for the construction of the pile caps on Piers number 2 and 3.

History of the dispute

Hubbard requested a change to the planned MOT shown in the drawings and the Department granted the change because Hubbard had experience constructing bridges under similar conditions. Hubbard's plan required relocation of the temporary sheet piling closer to the I-4 pavement than the original MOT plan, but also eliminated the cost of the of the planned detours and the inconvenience to the traveling public. During the installation of the sheet piling settlement and cracking was experienced on the shoulder and in the roadway pavement on I-4. When the settlement and cracking were discovered during the driving of the sheet piling in June of 1998 the Department executed and paid S.A. #5 for an emergency repair in the amount of \$10,556.77. During the removal of the sheet piling additional cracking appeared and the Department executed and paid W.O. #18 for crack repair. The Department ordered temporary leveling of the roadway surface under W.O. #20, but then refused to pay W.O. #20. Hubbard has since made repairs to the I-4 roadway and requested payment for this work, which is the subject of this dispute.

Contractors Position

Hubbard maintains that the original Maintenance of Traffic plan (MOT) required constructing detours between the abutment and the first bridge pier to divert traffic away from the area while constructing the bridge over I-4. Hubbard contends that their plan saved the Florida Department of Transportation (Department) approximately \$160,000 at the time the project was bid and created a less disruptive environment to the traveling public. Hubbard also states that the settlement of the roadway could not be anticipated and that Hubbard built the piers in accordance with the plans. Therefore, Hubbard feels that not paying for repairs caused by driving and removing the sheet pile is penalizing them. Hubbard agreed during the hearing that damage to the shoulder was expected and that cost should be removed from their claim.

Department Position

The Department contends that Hubbard changed the MOT plan to facilitate their own construction method and that it should have been obvious that damage would occur to the roadway shoulder and Hubbard should have anticipated repairs. The Department also contends that although the settlement of I-4 was not expected, Hubbard stated that any damages resulting from the MOT change would be the responsibility of Hubbard Construction Company.

DRB Recommendation

The DRB has reviewed all the information provided by both parties to this dispute and recommends that there is no entitlement to Hubbard for the cost of repairs to the I-4 roadway. Our recommendation is based on Hubbard's option of moving the temporary sheet pile next to I-4 and the previous Project Manager, Mr. Mike Hill's, proposal for the revised MOT plan which states: "All work will be paid by the existing contract item. There will be no additional cost to the Department for acceptance of this proposal."

DIFFERING SITE CONDITIONS - POND 9

The question before the Disputes Review Board (DRB) is whether Hubbard Construction Company, (Hubbard) could rely on the soil classification shown on cross-section sheets 121, 122 and 123 and the Summary of Earthwork Pond No. 9, shown on sheet number 123 of the contract plans to determine the amount and type of material available in pond #9.

History of the dispute

During the excavation of pond #9 Hubbard encountered less than expected of the A-3 materials. Sheet 123 of the contract drawings contains a Summary of Earthwork Pond No. 9 table

which gives the following breakdown of materials expected to be found during the excavation of pond #9, 33,464 CY of A-6 material and 62,715 CY of A-3 material. A review of the plans indicates that the type of materials depicted in the borings taken in pond #9 would be soil strata 4, 3, or 2. These types of soils are shown to be, strata 4 (A-3, A-2-4), strata 3 (A-6, A-2-7, A-2-6) and finally, strata 2 (A-3, A-2-4). However, the soil classifications shown on the cross section sheets for pond #9 clearly indicate soil types as A-6 unsuitable excavation and A-3 pond excavation and pond fill. The remainder of the cross section sheets, with the exception of pond #5, indicate A-2, A-3 material as subsoil excavation, roadway excavation and fill. The Department admits that there is an apparent error in the quantity of the A-3 material available from pond #9. Both the Department and Hubbard agree on the approximate quantities of A-6 material (33,464 CY) and A-3 material (20,905 CY) that were excavated from the pond. The dispute is over what type of material Hubbard should have expected in the remaining 41,810 CY.

Departments Position

The Department contends that although the material shown on the Summary of Quantity Sheet is different than what was expected from the quantity sheet description, and what was actually excavated, the delays which occurred were due to Hubbard's methods of compaction and the weather. The Department contends that they have no control over Hubbard's means and methods of construction, nor are they able to control the weather, and therefore, have no responsibility for the delays. The Department also made the statement that Hubbard is in violation of the Specification Section 5.4 Errors or Omissions in Plans or Specifications. The Department points to the note on Plan Sheet 131, Standard Specifications 120-3 Preliminary Soils Investigations and the responsibility of the contractor to examine the site of the work as reasons why the contractor could not rely upon the soil data presented.

Contractors Position

Hubbard contends that the summary table for pond #9 along with the quantities shown on cross section sheets 121, 122 and 123 are a clear indication that the material is either A-3 or A-6. Hubbard had planed on using the A-3 material as backfill behind the MSE wall and to mix with the A-6 material in the embankment to produce a workable mix of embankment material. Hubbard notified the Department of an apparent changed condition in pond #9 on August 4, 1998 which should have put the Department on notice that something was wrong with the soil borings. Even if Hubbard had notified the Department of an error this would not change the material and the problem would have remained. Hubbard indicated that they had made an examination of the site, but relied upon the soil classifications shown on the drawings.

DRB Recommendation

The DRB finds entitlement for Hubbard Construction Company's claim for the different materials found during the excavation of pond #9 and the associated additional work required to use those materials in the embankment.

POND 4A/4B WATER TABLE

The question before the Disputes Review Board (DRB) is whether Hubbard Construction Company is entitled to be paid for the dewatering required to place the drainage structures and pipe between pond 4A and 4B.

History of the dispute

In a letter dated April 13, 1998 Hubbard notified the Department that they were experiencing a high water table in the rim ditch of pond 4B, specifically elevation 157.30. The Department suggested that the high water table was the result of recent rains and suggested Hubbard continue the excavation of pond 4A and the installation of structures S-91, S-92, S-93, S-24, S-25 and S-26. Hubbard responds that the high water table is not perched water as suggested by the Department and claims a differing site condition. Hubbard did dewater the line of pipe and structures S-24, S-25 and S-26 and requests compensation for the additional dewatering they contend this required.

Contractors Position

Hubbard contends that there should have been very little or no dewatering required to place the drainage structures S-24, S-25 and S-26 and the connecting drainage pipes. Hubbard points out that the nearest soil boring, approximately 200' away (See sheet 148 of the contract plans) indicates a water table elevation of 145.00 and that the plans (Sheets 93 & 94) show these ponds to be a dry bottom ponds. These same sheets also show a seasonal high water (S.H.W.) at elevation of 141.00 and a designed high water (D.H.W.) at elevation 150.1. The storm drainage invert is also located at elevation 145.00. Hubbard contends that all this information lead them to believe that the designer had sufficient information to determine that the ponds would be dry and therefore they could expect very little, or no dewatering required to place these structures and connecting pipe. Hubbard requests that the Florida Department of Transportation (Department) pay for the de-watering required to place these structures and the connecting drainage pipes.

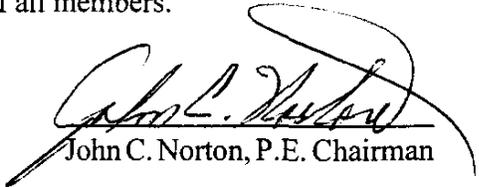
Departments Position

The Department contends that the soil borings showed a water table elevation that was relatively close to what was encountered in the field. The Department feels that a review of the borings makes it quite clear that dewatering should have been anticipated for the installation of these structures. In addition the Department accepts no responsibility for the scheduling of the pipe installation crew. and therefore, is not responsible for costs associated with dewatering during the installation of the drainage structures S-24, S-25 and S-26.

DRB Recommendation

A review of borings throughout the project and those for the bridge at Spring Road indicated water elevations approaching those found in the pond 4A and 4B area. The DRB finds that the plans contained sufficient detail and closely represented the conditions encountered during construction. Therefore, the DRB finds no entitlement for dewatering costs in the vicinity of pond 4A and 4B and specifically at structures S-24, S-25 and S-26 with their connecting pipes.

Signed for the Disputes Review Board with the concurrence of all members.



John C. Norton, P.E. Chairman

Dated: August 12, 1999

Mr. W. Neal Penny
Construction Project Manager
Florida Department of Transportation
Turnpike Construction
3520 U.S. Highway 98 South
Lakeland, Florida 33803

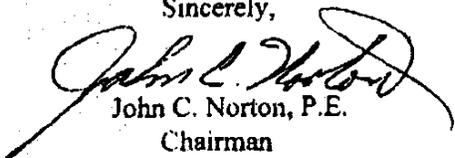
March 20, 2000

Ref: Polk Parkway Section 7, S.P.N.: 97160-3312, W.P.I. No.: 1157813, F.I.N. No.:
20131115201. Pond #9 Recommendation

Dear Mr. Penny:

The Board has looked at your concerns and notes that the 41,810 CY is the amount of misclassified material removed from Pond #9. The Board has reviewed the recommended quantum and finds that the amount of \$34,644.36 is correct.

Sincerely,



John C. Norton, P.E.
Chairman

Cc: C.B. Wegman, K. Trewick, S. Cox (Hubbard)