Ohio Department of Transportation

1980 West Broad Street, Columbus, Ohio 43223-1102

December 27, 2005

Mr. Dan Compston, Senior Vice President
Kokosing Construction Company, Inc.
886 McKinley Avenue
Columbus, OH 43222

Re: ODOT Project 9077(04) MRW/RIC I-71
Dispute 03-049077-01 Joint Repairs

Dear Mr. Compston:

Enclosed is the Deputy Directors' Board decision on the above-referenced dispute heard on November 3, 2005.

Under the terms of the contract for project 9077(04), the Step 3 Deputy Directors' Board decision on disputes of less than $100,000 is the final step of the process and may not be appealed within the Department. You must either accept or reject this decision in writing within 30 calendar days of receipt.

Please contact me at (614) 466-3957 with any questions.

Respectfully,

Megan Blackford, P.E., Esq.
Secretary
Deputy Directors' Board

copies sent via e-mail and post mail:
Robert C. VanGorder, Kokosing Construction Company
Deputy Directors' Board: Bill Lindenbaum, Mark Kelsey, Tom O'Leary
District 3: Perry Ricciardi
Dispute File

Deputy Directors' Board
ODOT Project 9077(04)

Dispute 03-049077-01
"Partial Depth Joint Repairs"

Decided December 27, 2005

On Thursday, November 3, 2005 at ODOT's Central Office in room 3A, the Deputy Directors' Board (Board) heard oral presentations of both parties relative to the subject issue. Prior to the oral presentations and in accordance with the Dispute Resolution and Administrative Claim Process, the Board received written documentation first from the Contractor and then from the district, neither party issued rebuttal statements prior to the hearing.

The District 3 representatives at the hearing were Perry Ricciardi, John Adamski, Jeff Labaki, Brian Hickey, and Matt Dailey. Dave Powers and Doug Burke of Central Office were present to serve as the District's subject matter expert witnesses in the areas of asphalt materials and snow plowing equipment operations respectively.

Kokosing Construction Company, Inc.'s (Kokosing) representatives at the hearing were Dan Compston, Rob VanGorder, and Wayne Brassell.

Megan Blackford of ODOT served as the Secretary of the Board.

PROJECT DESCRIPTION:

This project was located in northern Morrow and Richland counties on Interstate Route 71. The work consisted of the repair of approximately six and one half (6 ½) miles of existing pavement and shoulders. Work included rebuilding the outside shoulders, partial depth pavement repair of joints, and the purchase of steel for a subsequent add lane project which began in March 2005.

DISPUTE BACKGROUND:

This project was originally bid as a Type B Emergency project in August 2004. All bids exceeded the estimate and were rejected. Due to the impending add lane project, the Department and Kokosing, who was the low bidder on the Type B Emergency project, entered into a Type A Emergency contract.

At the outset of the project, both parties agreed to utilize the plans and Kokosing's previously bid unit prices. The work was performed between September 2004 and October 2004.

The plans specified 975 cubic yards of Item 253 Pavement Repair. The plans also included a note on sheet 6/9 which reads as follows:

ITEM 253-PAVEMENT REPAIR

THIS WORK SHALL ONLY BE PERFORMED IN THE OUTSIDE (RIGHT) LANES. THE TYPICAL REMOVAL SHALL EXTEND TO SOUND CONCRETE BASE. THE TYPICAL REPAIR WIDTH SHALL BE 3' WIDE. NARROWER OR WIDER REPAIR WIDTHS SHALL BE AS DIRECTED BY THE ENGINEER. FOR ESTIMATING PURPOSES, THE REPAIR DEPTH IS ASSUMED TO BE 6". IT IS ESTIMATED THAT 1462 JOINTS SHALL BE REPAIRED.

3' X 12' X 6" /12"/FT X 1462 LOCATIONS / 27 C.F. /C.Y. = 975 C.Y.

THE FOLLOWING ESTIMATED QUANTITY HAS BEEN CARRIED TO THE GENERAL SUMMARY:

ITEM 253, PAVEMENT REPAIR 975 C.Y.

Item 253 of ODOT's 2002 Construction and Material Specifications (C&MS) reads as follows:

253.01 Description. This work consists of removing existing asphalt concrete, brick, portland cement concrete, or aggregate pavement courses; shaping and compacting the exposed material; and placing new asphalt concrete pavement or aggregate and asphalt concrete pavement courses.

The plans show details about the repairs and replacement material.

253.02 Removal of Existing Pavement. The Engineer will designate the location and limits of areas to be repaired. Provide the Engineer with aerosol spray paint to outline those areas for repairs. Repair the full depth of the pavement, unless otherwise shown on the plans.

Cut the existing pavement at these limits as specified and as necessary to prevent disturbing or undermining the remaining pavement during removal. Completely remove pavement in the repair area to the specified depth without displacing, undermining, or otherwise damaging the remaining pavement. Dispose of removed pavement according to 203.01.

253.03 Placement of Asphalt Concrete. Shape and compact the exposed underlying material as the Engineer directs. Before placing asphalt concrete, clean all vertical faces of the existing pavement and coat them with asphalt material according to 401.14. Place the replacement material in lifts as the Engineer directs. Thoroughly and uniformly compact each lift using suitable compaction equipment as the Engineer directs. Finish the final lift flush with the existing pavement surface.

Maintain the repairs flush with the existing pavement surface by adding and compacting or by removing asphalt concrete in a manner satisfactory to the Engineer. If the Contract includes the resurfacing of the existing pavement, maintain the repairs flush with the existing pavement surface until the pavement is resurfaced.

After completing repairs, restore the existing shoulders to the condition that existed prior to the repair work.

The partial depth joint repairs were completed in early October 2004. The District began noticing failures on December 30, 2004.

The District notified Kokosing that corrective work was necessary and that the Contractor would be responsible for performing the work at its own expense. The Contractor agreed that the joint repairs had failed and advised that time and material records would be kept. The corrective work was performed between January and March 2005.

In mid-April 2005, Kokosing requested "all costs associated with repair, maintenance, and

preparation for further work per your direction that Kokosing has incurred" and stated that if the District disagrees with the request to escalate the issue to Step 2. The District disagreed with Kokosing's request and conducted a Step 2 Administrative Level meeting on April 20, 2005. The District again denied Kokosing's request and Kokosing escalated the dispute to the Deputy Directors' Board by route of the Dispute Resolution and Administrative Claims Process.

The District issued final acceptance of the project on October 17, 2005 after the steel had been procured for the add-lane project. The District expressly noted the pending claim on the Report of Final Inspection and Acceptance.

SUMMARY OF CONTRACTOR'S POSITION:

Kokosing's central contention regarding entitlement is that it performed the partial depth joint repair work in accordance with the requirements set forth in the contract documents. Kokosing premised this theory of entitlement on a number of factors that it set forth in both its Dispute Documentation dated August 17, 2005 and its oral presentation during the Deputy Directors' Board hearing on November 3, 2005.

Kokosing's first assertion is that the information set forth in the project plans was lacking. In support of this argument, Kokosing cites the provisions in the contract documents pertaining to the subject work: Item 253 of ODOT's 2002 C&MS and the plan note on sheet 6/9 of the project plans. Specifically, Kokosing points out that Item 253 specifies the following:

- the plans will show details about the repairs and replacement material,
- the Engineer will designate the location and limits of repairs,
- the Contractor is to completely remove pavement to the specified depth, and
- the replacement material is to be compacted as the Engineer directs.

Kokosing then points out that the plan sheet "only gives some length, width, depth and quantity estimates. It does not give any details or information on replacement materials. The plan also does not specify any repair depths or add any additional compaction requirements." During the hearing, Kokosing clarified its statement that the plans did "not give any details" to mean the plans did not include a pictorial detail that showed vertical edges.

In regards to its theory as to the cause of the failures, Kokosing "strongly feels the failure of the joint repairs is due to weather and moisture that permeated the unsealed joints. The moisture endured a severe freeze/thaw cycle and a significant snow/ice event, including extensive snow/ice removal operations. We do not feel the failure is due to mix quality, compaction, placement temperature or tack coat issues." During the hearing, Kokosing elaborated on this theory by explaining that once the leading edge of the repairs had been damaged the snow plows exacerbated the failures during the snow removal operations.

Another factor cited by Kokosing as contributing to its entitlement is that "all joints specified were repaired under ODOT direction, inspection and observation." Kokosing reiterated this argument during the hearing with statements such as "ODOT never objected" or "we

were never stopped." Along these same lines, Kokosing also cited a few other projects, both in District 3 and other districts, where its crews allegedly performed the same work using the same construction methods.

Lastly, in support of its theory of entitlement, Kokosing repeatedly referenced a letter from Perry Ricciardi of ODOT dated 3/16/05 which stated "we do acknowledge that the Department shares a portion of the responsibility as will be discussed in the near future."

Kokosing determined its damages to be $35,907.56 for all costs associated with the repair, maintenance, and preparation for further work. A breakdown of these damages is as follows:

Labor	$18,696.32
Owned Equipment	$10,467.25
Material	$6,386.99
Third Party	$357.00
Total	$35,907.56

During the hearing Kokosing voluntarily eliminated a portion of the material cost attributable to joint sealer costs totaling $1,397.25 thereby reducing the amount of its claim to $34,510.31.

SUMMARY OF DISTRICT'S POSITION:

The District maintains that Kokosing is not entitled to compensation for the cost to repair the failed joints for several reasons.

The District's central contention is that Kokosing did not perform the partial depth joint repair work in accordance with the requirements set forth in the contract documents. Contrary to Kokosing's opinion, the District asserts that the information set forth in the project plans was sufficient for the purposes of Item 253 in that the plans included details about the repairs (e.g. length, width, and depth estimates). Further, the Engineer designated the location and limits of repairs in accordance with the specifications set forth in Item 253.

The District acknowledged that the materials to be used were not designated in the plans. However, since this project was not competitively bid, the District agreed to the materials and construction method proposed by Kokosing at the preconstruction meeting (i.e. ±4" 301 and ±1" 448 Type 1H).

Notwithstanding the lack of a pictorial detail in the plans illustrating vertical face, the District argued that the text of Item 253 requires vertical edges. The following excerpts of the specification indicate vertical edges: "completely remove pavement in the repair area to the specified depth without displacing, undermining, or otherwise damaging the remaining pavement..." and "clean all vertical faces of the existing pavement…"

The District determined that the cause of the failures was "the edges were tapered, and new asphalt was placed at night, at times under marginal temperature conditions, on a tapered wedge ranging from 0" to approximately a 5" depth." The aforementioned factors

all contributed to poor compaction resulting in an underdensified surface course. Accordingly, an underdensified surface course allows water to permeate the voids resulting in failures caused by freeze/thaw cycles.

In response to Kokosing's argument that the District accepted the joints by virtue that its inspector observed the entire operation and failed to stop the Contractor, the District references section 105.10 of the 2002 C&MS entitled "Inspection of Work" which reads as follows:

> The Department's failure to identify defective Work or material shall not, in any way, prevent later rejection when defective Work or material is discovered, or obligate the Department to grant acceptance under 109.11 or 109.12.

Therefore, the District concluded that the inspector's failure to identify the defective work or material does not constitute ODOT's acceptance of the work and material.

After discussing the construction method and resulting product with representatives from other ODOT District construction offices, it is the District's determination that milling the joint repairs in the transverse direction thereby resulting in vertical edges across the pavement transversely is the industry standard; especially when a surface course is not specified to be placed over the repair areas. Further, after researching the projects cited by Kokosing as comparable to the project at issue, the District noted significant dissimilarities including specification item, materials, lift thicknesses, surface course, etc.

The District also raised as an issue the Contractor's costs it refers to as "preparation for further work" which the District determined includes costs attributable to plant startup–heat, plant calibration, and mobilization which total $11,696.90 of Kokosing's damages. The District argued that these costs are not recoverable because the District neither requested nor authorized the activities that led to these costs. But for these "preparation for further work" costs, the District concurred with Kokosing's calculation of damages.

DEPUTY DIRECTOR BOARD'S FINDINGS:

I. Facts

In light of all the evidence presented, the Board concludes that the following facts are a true and accurate representation of the relevant events leading up to this dispute.

This project was originally bid as a Type B Emergency project in August 2004. All bids exceeded the estimate and were rejected. Due to the imminent add lane project, the Department and Kokosing, who was the low bidder on the Type B Emergency project, entered into a Type A Emergency contract. Due to the nature of the contract, both parties had the authority to negotiate and agreed upon the terms of the contract. Accordingly, both parties agreed to incorporate the plans and Kokosing's previously bid unit prices that had been prepared for the Type B Emergency project into the contract. The adequacy, or inadequacy of the plans and/or specifications, was not raised by either party at the time of contract execution.

The parties conducted the preconstruction meeting for the project on September 7, 2004. It was during this meeting that Kokosing pointed out that the plans did not specify the materials to be incorporated in the joint repairs. Kokosing proposed the following materials and construction method: 1) mill, 2) tack exposed surface, 3) place Item 301 Asphalt Concrete Base in the repairs flush with the existing pavement surface, 4) compact, 5) place Item 448 Asphalt Concrete Surface Course, Type 1H in the repairs flush with the existing pavement surface, and 6) compact. The District agreed to proceed with Kokosing's recommended materials and construction method.

The plans designated that ODOT's 2002 C&MS govern the improvement and specified 975 cubic yards of Item 253 Pavement Repair. The plans also included a note on sheet 6/9 entitled "Item 253 - Pavement Repair."

The Contractor performed the partial depth joint repairs between September 19, 2004 and October 6, 2004. The Contractor's typical work schedule during this period was Monday thru Friday 7:30 pm to 6:30 am. The typical procedure for the partial depth joint repairs was as follows:

1) ODOT marked the areas to be repaired.
2) The Contractor used a milling machine to remove the existing pavement in the repair area down to the concrete base. The milling machine was driven in the longitudinal direction. The milling head was dropped vertically into the existing pavement and a plunge cut was made. The machine advanced longitudinally along the specified width of the repair and the milling head was removed vertically. Somewhat of a tapered edge along the transverse edges of the joint repair resulted.
3) Tack was applied to the exposed surface.
4) Item 301 Asphalt Concrete Base was placed in the repair area flush with the existing pavement surface.
5) A vibratory roller was used to compact the 301 material.
6) Item 448 Asphalt Concrete Surface Course, Type 1H was placed in the repair area flush with the existing pavement surface.
7) A vibratory roller was used to compact the 448 material.

The haul time from the plant to the project site was approximately 35 minutes. Kokosing utilized one or two trucks dedicated to the partial depth joint repair operation which hauled 20 tons of material each. The Type 1H surface course material was batched first since this material was being utilized in the shoulder reconstruction operation in another area of the project. The Type 1H material used in the pavement repairs was placed in the storage silo at the asphalt plant. The plant then began to produce 301 material for use in the pavement repairs and other construction on the project. The Type 1H material was later removed from the silo and transported to the project where it was utilized in the pavement repairs.

Jeff Labaki, ODOT's Project Engineer, and Rob VanGorder, Kokosing's Central Ohio Area Manager, discussed the adequacy of the compaction methods on the first night of work. As a result of this conversation, Kokosing changed from the roller it had initially planned on using for the repair operations to a smaller roller.

The Contractor performed approximately 40 partial depth joint repairs per night, on average, for a total of 566 repairs. According to the National Oceanic and Atmospheric

Administration's (NOAA) climatological records for the Mansfield, Ohio official weather station, the high and low temperatures on each of the 14 dates that the partial depth joint repairs were performed were as follows:

DATE	LOW TEMP	HIGH TEMP
9/19/2004	47	68
9/20/2004	45	75
9/21/2004	50	79
9/22/2004	53	83
9/23/2004	51	81
9/26/2004	48	68
9/27/2004	47	73
9/28/2004	52	71
9/29/2004	42	59
9/30/2004	39	68
10/3/2004	33	63
10/4/2004	41	61
10/5/2004	32	58
10/6/2004	38	68

Both parties are in agreement that the District had an inspector on the project site who observed the Contractor's partial depth joint repair operation without verbal objection or approval.

Item 105 of ODOT's 2002 C&MS reads as follows:

> **105.09 Authority and Duties of the Inspector.** Inspectors are authorized to inspect the Work and the preparation, fabrication, or manufacture of materials. Inspectors are not authorized to alter or waive requirements of the Contract Documents. Inspectors are authorized to notify the Contractor of Work that does not conform to the Contract; reject materials that do not conform to Specification requirements; and until the issue is decided by the Engineer, suspend portions of the Work if there is a question regarding the Contract Documents, use of unapproved material, or safety. Inspectors are not obligated or authorized to provide direction, superintendence, or guidance to the Contractor, its crew, its subcontractors, or suppliers to accomplish the Work.

NOAA's climatological records for the Mansfield, Ohio official weather station reveal the following weather data for the period between October 6, 2004, the date the partial depth joint repair work was completed, and December 30, 2004, the date ODOT first identified the failures: (see Exhibit A for detailed records)

- The daily low temperature fell below 33° F three days in October 2004, 11 days in November 2004, and 24 days in December 2004.
- On all of the days on which the low temperature fell below 33° F in October 2004 and November 2004, the high temperature rose to at least 40° F except for one day on which it rose to 37° F.
- The temperature remained equal to or below 40° F from December 11, 2004 to December 29, 2004.

The District began noticing failures on December 30, 2004 and immediately notified Kokosing of such. In a letter dated January 3, 2005, the District notified Kokosing that corrective work was necessary and that the Contractor would be responsible for performing the work at its own expense. The Contractor agreed that the joint repairs had failed and advised that time and material records would be kept. The Contractor performed cold mix patching on several days between December 30, 2004 and February 15, 2005.

Subsequently, on March 10, 2005, the District assessed the condition of all the repairs that had been performed as part of the subject project. This assessment resulted in a finding that 211 out of 566 (37%) repairs failed.

After evaluating the situation, the District determined that the failures that had occurred up to that date did not pose a risk to the traveling public. As such, the District determined that no additional joint repairs would be necessary within the limits of the reconstruction for the remainder of the year. This information was conveyed in a letter to Kokosing dated March 16, 2005.

The District acknowledged partial responsibility in this same letter with the statement "…we do acknowledge that the Department shares a portion of the responsibility as will be discussed in the near future."

The District issued final acceptance of the project on October 17, 2005 after the steel had been procured for the add-lane project. The District expressly noted the pending claim on the Report of Final Inspection and Acceptance.

II. Conclusions

After careful review of the submitted documents and with due consideration of the information provided at the hearing, the Board determined the following to be significant findings relevant to the issue of entitlement:

1. First of all, the Board would like to address the Contractor's references to a letter from Perry Ricciardi of ODOT dated 3/16/05 which contained an admission of partial liability with the statement "we do acknowledge that the Department shares a portion of the responsibility as will be discussed in the near future." Admissions of fact or settlement offers made by either party in the course of settlement negotiations are not to be used against either party in the event of any formal judicial proceedings. It is the Board's determination that this statement was made in the course of settlement negotiations; therefore, it is not to be used against the Department. Further, the Dispute Resolution and Administrative Claims Process proposal note specifically speaks to the Contractor's argument by stating "the Board is not bound by any offers of settlement or findings of entitlement made during Steps 1 and 2 of the Dispute Resolution Process." Therefore, Mr. Ricciardi's statement is not relevant at this step of the process and therefore was not considered by the Board in the rendering of this decision.

2. The Contractor argued that the information set forth in the project plans was lacking. It is the Board's determination that due to the nature of the project (i.e. Type A

Emergency) the parties were able to mutually overcome any issues there may have been with the plans and specifications (e.g. materials, build up, etc.).

3. The Contractor's argument that that "all joints specified were repaired under ODOT direction, inspection and observation" is unfounded for two reasons. First, the ODOT representative who would have routinely observed the majority of Kokosing's performance of the work on each of the 14 nights would have been the Inspector. C&MS 105.09 clearly delineates the Inspector's authority. Specifically, this specification states "Inspectors are not authorized to alter or waive requirements of the Contract Documents" and "Inspectors are not obligated or authorized to provide direction, superintendence, or guidance to the Contractor, its crew, its subcontractors, or suppliers to accomplish the Work." Therefore, if in fact the Inspector did direct the Contractor's work, Kokosing had actual knowledge that the Inspector did not have the authority to waive contract requirements nor to direct the Contractor. Kokosing also reiterated its argument during the hearing with statements such as "ODOT never objected" or "we were never stopped." The Board would like to direct Kokosing to C&MS section 105.03 Conformity with Contract Documents which states "perform all Work and furnish all Materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements as shown on the Plans and as specified." Further, C&MS 105.10 Inspection of Work stipulates that "the Department's failure to identify defective work or material shall not, in any way, prevent later rejection when defective work or material is discovered…" Therefore, it is the Board's conclusion that the Department did not accept the work, either expressly or impliedly until the District issued final acceptance of the project on October 17, 2005.

4. The Contractor has a legal duty to provide workmanlike construction and materials. Further, C&MS 105.03 requires that the Contractor "perform all work and furnish all materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements as shown on the Plans and as specified."

5. In accordance with C&MS 107.15 the Contractor is responsible for the project and must repair all damages to any portion of the work before final acceptance and must bear the expense of the repairs except when damage to the work was due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor. Further, C&MS 107.10 requires the Contractor to be responsible for all damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, defective work or materials, or misconduct in the manner or method of executing the work until the project or portions of the work are accepted.

6. Based on the aforementioned legal and contractual requirements, the Contractor bears the risk of damages to the work before final acceptance; in this case October 17, 2005. Therefore, once the District satisfies its burden of proving that the joint repairs failed, the Contractor then has the burden of proving that the damage was due to unforeseeable causes and beyond the control of and without the fault or negligence of the Contractor. In other words, the District does not have to prove <u>why</u> the joints failed, only that they <u>did</u> fail. As stated above, since both the

Contractor and District agreed that a significant quantity of the joint repairs failed the burden of proof shifted to the Contractor.

7. The Contractor's first theory as to the cause of the failures is that the edges of the repairs were not sealed. Specifically, Kokosing argued that the weather and moisture that permeated the unsealed joints endured a severe freeze/thaw cycle and a significant snow/ice event, including extensive snow/ice removal operations. Kokosing also argued that the snow plows exacerbated the failures by shattering the leading edge of the repairs. In support of its argument, the Contractor presented the opinions of those representatives present at the hearing based on their extensive experience and knowledge in regards to this work.

8. Kokosing also cited a few other projects, both in District 3 and other districts, on which its crews allegedly performed the same work using the same construction methods. It is the Board's determination that this information is neither relevant nor probative to the case at hand.

9. On the other hand, the District countered the Contractor's position by producing a number of pictures of the failures which it used to illustrate that the mode of the failures was the cracking of the surface course and also raveling along the edges. The District also had Dave Powers of Central Office serve as its subject matter expert witness in the area of asphalt materials. Mr. Powers testified that although there are many factors that could contribute to failures, in his opinion from looking at the pictures "the failures started in areas where the surface course was underdensified, the water would go in, and it would pop." He also testified that factors such as wind, temperatures (e.g. air and material), and the thickness of the asphalt course increase in significance when dealing with thin lifts of asphalt such as the surface course for the joint repairs on this project.

10. Utilizing the Board's expertise and experience in its observations of the pictures of the failures submitted by the District, it is the Board's determination that the failures and subsequent corrective work are generally limited to the Type 1H surface course material. There appeared to be little to no distress to the 301 material rendering the arguments about lack of vertical edges in the pavement repair areas irrelevant. Further, the obvious cracking throughout the entire surface course is indicative of asphaltic concrete material which was too cold when placed to achieve the proper density. This determination is corroborated by the actual sequence of construction. The Type 1H material used in the pavement repairs was batched first and placed in a small quantity into the storage silo. The silo is insulated; however, it is not heated. The relatively small quantity of Type 1H material used in the approximately 40 pavement repairs per shift was either in the silo or the bed of a dump truck for most of the shift during cooler nighttime temperatures and most likely cooled to the extent that it could not be properly compacted resulting in the failures.

11. Therefore, based on the preponderance of the evidence, it is the Board's determination that the Contractor has not sustained its burden of proving that the failures were beyond the control of and without the fault or negligence of the Contractor. Further, the best evidence adduced from the parties' submissions and

the testimony at the hearing indicates the joint repairs would not have failed had they been free of faulty construction and/or materials.

DAMAGES:

Based upon the findings above the Contractor is not entitled to reimbursement for any damages.

Submitted this 27th day of December, 2005.

William Lindenbaum, P.E., P.S.
Deputy Director, Division of Construction Management

Mark Kelsey, Esq.
Deputy Director, Division of Contract Administration

Thomas O'Leary
District Deputy Director, District 3

EXHIBIT A

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6)

STATION: MANSFIELD
MONTH: SEPTEMBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

TEMPERATURE IN F:							:PCPN:		SNOW:	WIND			:SUNSHINE:		SKY		:PK WND	
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18
DY	MAX	MIN	AVG	DEP	HDD	CDD	WTR	SNW	DPTH	AVG SPD	MX SPD	2MIN DIR	MIN	PSBL	S-S	WX	SPD	DR
1	79	54	67	1	0	2	0.00	0.0	0	3.7	10	20	M	M	1	18	14	10
2	81	59	70	4	0	5	0.00	0.0	0	7.3	14	120	M	M	0	18	17	120
3	78	64	71	5	0	6	T	0.0	0	8.0	13	170	M	M	1	18	16	170
4	81	65	73	7	0	8	0.02	0.0	0	4.3	12	240	M	M	5	18	14	240
5	84	61	73	7	0	8	0.00	0.0	0	7.3	14	150	M	M	1	18	18	140
6	84	63	74	9	0	9	0.00	0.0	0	11.9	22	170	M	M	1	18	26	200
7	71	64	68	3	0	3	T	0.0	0	7.6	14	10	M	M	7	1	17	180
8	66	61	64	-1	1	0	1.94	0.0	0	12.7	21	10	M	M	10	1	30	30
9	64	60	62	-3	3	0	0.02	0.0	0	9.7	22	340	M	M	10	1	31	330
10	73	50	62	-2	3	0	0.00	0.0	0	3.9	9	50	M	M	2	12	12	70
11	75	51	63	-1	2	0	0.00	0.0	0	4.0	9	80	M	M	0	1	12	80
12	80	53	67	3	0	2	0.00	0.0	0	3.9	8	200	M	M	0	18	12	270
13	80	54	67	3	0	2	0.00	0.0	0	5.3	10	120	M	M	0	18	15	140
14	79	60	70	6	0	5	0.00	0.0	0	8.1	15	150	M	M	0	18	17	160
15	79	60	70	7	0	5	0.00	0.0	0	9.8	15	160	M	M	1	18	22	200
16	81	66	74	11	0	9	0.67	0.0	0	8.1	20	240	M	M	4	138	25	250
17	66	55	61	-1	4	0	0.26	0.0	0	14.9	24	30	M	M	8	1	31	30
18	66	50	58	-4	7	0	0.00	0.0	0	9.7	21	10	M	M	2		26	10
19	68	47	58	-4	7	0	0.00	0.0	0	7.6	16	40	M	M	0		18	20
20	75	45	60	-1	5	0	0.00	0.0	0	6.8	13	170	M	M	0		15	150
21	79	50	65	4	0	0	0.00	0.0	0	3.7	9	280	M	M	0		12	270
22	83	53	68	7	0	3	0.00	0.0	0	4.0	9	270	M	M	0	1	10	350
23	81	51	66	5	0	1	0.00	0.0	0	5.0	9	130	M	M	0	18	12	110
24	80	55	68	7	0	3	0.00	0.0	0	5.0	12	200	M	M	0	18	14	210
25	70	50	60	0	5	0	0.00	0.0	0	6.1	14	340	M	M	1	18	16	30
26	68	48	58	-1	7	0	0.00	0.0	0	3.5	13	70	M	M	7	1	14	70
27	73	47	60	1	5	0	0.00	0.0	0	3.3	9	100	M	M	0	1	12	120
28	71	52	62	4	3	0	0.00	0.0	0	9.8	20	10	M	M	5	128	24	10
29	59	42	51	-7	14	0	0.01	0.0	0	5.2	13	340	M	M	7	1	15	20
30	68	39	54	-4	11	0	0.00	0.0	0	2.9	10	50	M	M	0	12	13	50
SM	2242	1629			77	71	2.92		0.0	203.1			M		73			
AV	74.7	54.3								6.8	FASTST		PSBL	%	2		MAX(MPH)	
								MISC ---->		24	30				# 31		30	

NOTES:
LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: MANSFIELD
MONTH: SEPTEMBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

[TEMPERATURE DATA] [PRECIPITATION DATA] SYMBOLS USED IN COLUMN 16

AVERAGE MONTHLY: 64.5 TOTAL FOR MONTH: 2.92 1 = FOG

DPTR FM NORMAL: 1.9
HIGHEST: 84 ON 6, 5
LOWEST: 39 ON 30

DPTR FM NORMAL: -0.52
GRTST 24HR 1.95 ON 8- 9

SNOW, ICE PELLETS, HAIL
TOTAL MONTH: 0.0 INCH
GRTST 24HR 0.0
GRTST DEPTH: 0

2 = FOG REDUCING VISIBILITY TO 1/4 MILE OR LESS
3 = THUNDER
4 = ICE PELLETS
5 = HAIL
6 = GLAZE OR RIME
7 = BLOWING DUST OR SAND: VSBY 1/2 MILE OR LESS
8 = SMOKE OR HAZE
9 = BLOWING SNOW
X = TORNADO

[NO. OF DAYS WITH]

MAX 32 OR BELOW: 0
MAX 90 OR ABOVE: 0
MIN 32 OR BELOW: 0
MIN 0 OR BELOW: 0

[WEATHER - DAYS WITH]

0.01 INCH OR MORE: 6
0.10 INCH OR MORE: 3
0.50 INCH OR MORE: 2
1.00 INCH OR MORE: 1

[HDD (BASE 65)]
TOTAL THIS MO. 77
DPTR FM NORMAL -33
SEASONAL TOTAL 137
DPTR FM NORMAL 7

CLEAR (SCALE 0-3) 21
PTCLDY (SCALE 4-7) 6
CLOUDY (SCALE 8-10) 3

[CDD (BASE 65)]
TOTAL THIS MO. 71
DPTR FM NORMAL -2
SEASONAL TOTAL 528
DPTR FM NORMAL -137

[PRESSURE DATA]
HIGHEST SLP M ON M
LOWEST SLP 29.89 ON 28

[REMARKS]

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6)

STATION: MANSFIELD
MONTH: OCTOBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

TEMPERATURE IN F:							:PCPN:		SNOW:	WIND			:SUNSHINE:		SKY		:PK WND	
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18
DY	MAX	MIN	AVG	DEP	HDD	CDD	WTR	SNW	DPTH	AVG SPD	MX SPD	2MIN DIR	MIN	PSBL	S-S	WX	SPD	DR
1	73	42	58	1	7	0	0.00	0.0	0	7.8	16	190	M	M	0	8	20	210
2	64	40	52	-5	13	0	0.09	0.0	0	9.2	22	320	M	M	6	18	26	330
3	63	33	48	-8	17	0	0.00	0.0	0	6.3	15	230	M	M	0		18	220
4	61	41	51	-5	14	0	0.00	0.0	0	10.2	23	230	M	M	2		29	320
5	58	32	45	-11	20	0	0.00	0.0	0	3.1	10	320	M	M	1		16	310
6	68	38	53	-2	12	0	0.00	0.0	0	7.6	14	240	M	M	0		21	220
7	74	41	58	3	7	0	0.00	0.0	0	7.3	15	160	M	M	0	8	17	160
8	74	49	62	8	3	0	0.00	0.0	0	11.5	21	200	M	M	0	8	25	200
9	70	47	59	5	6	0	0.00	0.0	0	10.2	18	220	M	M	3	8	22	250
10	64	39	52	-2	13	0	0.00	0.0	0	7.4	13	30	M	M	1		18	30
11	63	38	51	-2	14	0	0.00	0.0	0	4.7	14	20	M	M	2	12	16	20
12	63	35	49	-4	16	0	0.00	0.0	0	5.6	10	90	M	M	2	18	14	100
13	53	47	50	-3	15	0	0.35	0.0	0	3.8	9	50	M	M	8	18	10	50
14	59	49	54	2	11	0	0.00	0.0	0	7.6	14	220	M	M	9	18	15	220
15	52	43	48	-4	17	0	0.43	0.0	0	12.7	24	220	M	M	9	13	33	230
16	47	38	43	-8	22	0	0.01	0.0	0	15.4	26	240	M	M	10	1	35	270
17	49	31	40	-11	25	0	0.00	0.0	0	10.1	21	250	M	M	6	1	28	270
18	42	31	37	-14	28	0	0.54	0.0	0	7.6	17	110	M	M	6	13	20	80
19	56	42	49	-1	16	0	0.01	0.0	0	3.6	9	40	M	M	10	12	12	30
20	57	50	54	4	11	0	0.01	0.0	0	6.3	12	20	M	M	10	12	15	20
21	58	45	52	2	13	0	0.00	0.0	0	6.4	14	10	M	M	10	12	17	40
22	58	40	49	0	16	0	0.00	0.0	0	6.9	14	120	M	M	4	1	15	140
23	60	44	52	3	13	0	0.33	0.0	0	12.0	18	180	M	M	6	18	23	180
24	63	46	55	6	10	0	0.00	0.0	0	7.3	16	200	M	M	6	1	20	270
25	67	40	54	6	11	0	0.00	0.0	0	2.3	9	310	M	M	0	18	13	320
26	66	40	53	5	12	0	0.00	0.0	0	5.4	12	120	M	M	0	18	14	120
27	68	47	58	10	7	0	T	0.0	0	6.3	13	40	M	M	5	18	17	40
28	66	44	55	8	10	0	0.00	M	0	5.2	12	120	M	M	4	128	15	110
29	68	55	62	15	3	0	0.69	0.0	0	10.1	17	210	M	M	8	123	24	200
30	75	55	65	19	0	0	0.03	0.0	0	19.5	38	220	M	M	3	18	48	250
31	61	42	52	6	13	0	0.00	0.0	0	12.0	26	260	M	M	0		33	240
SM	1920	1304		395	0	2.49		0.0	251.4				M		131			
AV	61.9	42.1								8.1	FASTST		PSBL	%	4		MAX(MPH)	
							MISC ---->			38	220						48	250

NOTES:
LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: MANSFIELD
MONTH: OCTOBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

[TEMPERATURE DATA] [PRECIPITATION DATA] SYMBOLS USED IN COLUMN 16

AVERAGE MONTHLY: 52.0
DPTR FM NORMAL: 0.5
HIGHEST: 75 ON 30
LOWEST: 31 ON 18,17

TOTAL FOR MONTH: 2.49
DPTR FM NORMAL: -0.19
GRTST 24HR 0.69 ON 29-29

SNOW, ICE PELLETS, HAIL
TOTAL MONTH: 0.0 INCH
GRTST 24HR 0.0
GRTST DEPTH: 0

1 = FOG
2 = FOG REDUCING VISIBILITY TO 1/4 MILE OR LESS
3 = THUNDER
4 = ICE PELLETS
5 = HAIL
6 = GLAZE OR RIME
7 = BLOWING DUST OR SAND: VSBY 1/2 MILE OR LESS
8 = SMOKE OR HAZE
9 = BLOWING SNOW
X = TORNADO

[NO. OF DAYS WITH]

MAX 32 OR BELOW: 0
MAX 90 OR ABOVE: 0
MIN 32 OR BELOW: 3
MIN 0 OR BELOW: 0

[WEATHER - DAYS WITH]

0.01 INCH OR MORE: 10
0.10 INCH OR MORE: 5
0.50 INCH OR MORE: 2
1.00 INCH OR MORE: 0

[HDD (BASE 65)]
TOTAL THIS MO. 395
DPTR FM NORMAL -1
SEASONAL TOTAL 532
DPTR FM NORMAL 6

CLEAR (SCALE 0-3) 15
PTCLDY (SCALE 4-7) 8
CLOUDY (SCALE 8-10) 8

[CDD (BASE 65)]
TOTAL THIS MO. 0
DPTR FM NORMAL -7
SEASONAL TOTAL 528
DPTR FM NORMAL -144

[PRESSURE DATA]
HIGHEST SLP M ON M
LOWEST SLP 29.31 ON 15

[REMARKS]

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6)

STATION: MANSFIELD
MONTH: NOVEMBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

TEMPERATURE IN F:							:PCPN:		SNOW:	WIND			:SUNSHINE:		SKY		:PK WND	
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18
DY	MAX	MIN	AVG	DEP	HDD	CDD	WTR	SNW	DPTH	AVG SPD	MX SPD	2MIN DIR	MIN	PSBL	S-S	WX	SPD	DR
1	57	39	48	2	17	0	T	0.0	0	8.3	17	140	M	M	6	1	18	160
2	66	44	55	10	10	0	0.91	0.0	0	11.6	26	340	M	M	10	1	32	350
3	50	38	44	-1	21	0	T	0.0	0	7.9	17	350	M	M	6	1	23	350
4	56	41	49	4	16	0	0.30	0.0	0	15.9	28	250	M	M	9	1	38	250
5	48	36	42	-2	23	0	0.00	0.0	0	12.1	21	230	M	M	1		29	240
6	60	40	50	6	15	0	0.00	0.0	0	13.3	21	230	M	M	0		29	240
7	62	36	49	5	16	0	0.00	0.0	0	11.8	17	340	M	M	0		22	340
8	43	29	36	-7	29	0	0.00	0.0	0	7.7	17	330	M	M	0		21	330
9	42	23	33	-10	32	0	0.00	0.0	0	4.3	10	330	M	M	1		13	320
10	59	30	45	2	20	0	0.00	0.0	0	13.6	21	210	M	M	0		24	210
11	53	37	45	3	20	0	0.07	0.0	0	11.0	18	18	M	M	6	1	26	40
12	47	32	40	-2	25	0	0.00	0.0	0	13.4	23	30	M	M	2		31	20
13	44	27	36	-6	29	0	0.00	0.0	0	8.6	17	70	M	M	0		21	80
14	50	21	36	-5	29	0	0.00	0.0	0	5.6	12	130	M	M	0		13	120
15	49	25	37	-4	28	0	0.00	0.0	0	4.6	10	180	M	M	0		12	180
16	48	41	45	5	20	0	T	0.0	0	6.8	14	200	M	M	9	1	16	260
17	52	46	49	9	16	0	0.32	0.0	0	8.5	17	200	M	M	10	128	20	210
18	58	52	55	15	10	0	0.03	0.0	0	4.6	10	270	M	M	10	12	13	280
19	58	53	56	17	9	0	0.58	0.0	0	6.1	12	190	M	M	10	12	14	190
20	56	49	53	14	12	0	0.05	0.0	0	9.0	17	290	M	M	10	1	21	300
21	49	35	42	4	23	0	T	0.0	0	4.1	12	340	M	M	10	1	15	260
22	44	34	39	1	26	0	T	0.0	0	3.2	9	170	M	M	7	128	12	170
23	52	39	46	8	19	0	T	0.0	0	5.6	13	180	M	M	10	1	14	180
24	51	37	44	7	21	0	0.58	0.0	0	8.6	23	320	M	M	10	12	28	330
25	37	22	30	-7	35	0	0.08	0.8	T	11.6	24	330	M	M	8	12	30	320
26	40	22	31	-6	34	0	T	T	0	10.8	17	170	M	M	7	8	21	180
27	51	40	46	10	19	0	0.10	0.0	0	16.5	33	190	M	M	6	1	45	180
28	42	29	36	0	29	0	0.10	0.0	0	12.4	24	250	M	M	8	1	32	250
29	42	25	34	-1	31	0	0.01	0.0	0	4.2	14	160	M	M	8	18	16	140
30	46	37	42	7	23	0	0.42	0.0	0	8.8	15	170	M	M	10	18	23	170
SM	1512	1059		657	0	3.55		0.8	270.5				M		174			
AV	50.4	35.3								9.0	FASTST		PSBL	%	6		MAX(MPH)	
							MISC ---->			33	190						45	180

NOTES:
LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: MANSFIELD
MONTH: NOVEMBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

[TEMPERATURE DATA] [PRECIPITATION DATA] SYMBOLS USED IN COLUMN 16

AVERAGE MONTHLY: 42.8 TOTAL FOR MONTH: 3.55 1 = FOG

DPTR FM NORMAL: 2.3
HIGHEST: 66 ON 2
LOWEST: 21 ON 14

DPTR FM NORMAL: -0.21
GRTST 24HR 0.91 ON 2- 2

SNOW, ICE PELLETS, HAIL
TOTAL MONTH: 0.8 INCH
GRTST 24HR 0.8 ON 25-25
GRTST DEPTH: 0

2 = FOG REDUCING VISIBILITY TO 1/4 MILE OR LESS
3 = THUNDER
4 = ICE PELLETS
5 = HAIL
6 = GLAZE OR RIME
7 = BLOWING DUST OR SAND: VSBY 1/2 MILE OR LESS
8 = SMOKE OR HAZE
9 = BLOWING SNOW
X = TORNADO

[NO. OF DAYS WITH]

MAX 32 OR BELOW: 0
MAX 90 OR ABOVE: 0
MIN 32 OR BELOW: 11
MIN 0 OR BELOW: 0

[WEATHER - DAYS WITH]

0.01 INCH OR MORE: 13
0.10 INCH OR MORE: 8
0.50 INCH OR MORE: 3
1.00 INCH OR MORE: 0

[HDD (BASE 65)]
TOTAL THIS MO. 657
DPTR FM NORMAL -45
SEASONAL TOTAL 1189
DPTR FM NORMAL -39

CLEAR (SCALE 0-3) 10
PTCLDY (SCALE 4-7) 6
CLOUDY (SCALE 8-10) 14

[CDD (BASE 65)]
TOTAL THIS MO. 0
DPTR FM NORMAL 0
SEASONAL TOTAL 528
DPTR FM NORMAL -144

[PRESSURE DATA]
HIGHEST SLP 30.82 ON 14
LOWEST SLP 29.22 ON 24

[REMARKS]

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6)

STATION: MANSFIELD
MONTH: DECEMBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

TEMPERATURE IN F:							:PCPN:		SNOW:	WIND			:SUNSHINE:		SKY		:PK WND	
1	2	3	4	5	6A	6B	7	8	9	10	11	12	13	14	15	16	17	18
DY	MAX	MIN	AVG	DEP	HDD	CDD	WTR	SNW	DPTH	AVG SPD	MX SPD	2MIN DIR	MIN	PSBL	S-S	WX	SPD	DR
1	50	32	41	6	24	0	0.14	0.1	0	17.3	33	240	M	M	5	1	45	240
2	41	29	35	1	30	0	T	0.0	0	8.1	18	250	M	M	6	18	24	250
3	34	23	29	-5	36	0	0.00	0.0	0	8.7	18	250	M	M	5	18	22	270
4	45	23	34	1	31	0	0.00	0.0	0	14.7	28	210	M	M	0	8	37	200
5	45	29	37	4	28	0	0.00	0.0	0	7.6	13	120	M	M	1	18	16	120
6	49	37	43	10	22	0	0.06	0.0	0	8.2	15	120	M	M	9	12	18	120
7	62	43	53	21	12	0	0.29	0.0	0	18.2	44	240	M	M	M		54	250
8	43	32	38	6	27	0	0.01	0.0	0	7.5	21	260	M	M	7	1	29	260
9	44	33	39	7	26	0	0.17	0.0	0	9.4	18	130	M	M	4	1	23	120
10	46	35	41	10	24	0	0.02	0.0	0	6.8	15	330	M	M	10	12	18	320
11	35	30	33	2	32	0	0.07	0.7	T	11.3	17	320	M	M	10	1	22	320
12	40	30	35	4	30	0	T	0.1	0	16.7	26	270	M	M	10	1	35	270
13	36	22	29	-1	36	0	0.23	2.3	T	15.9	25	250	M	M	10	18	36	260
14	23	16	20	-10	45	0	0.03	0.7	3	10.2	21	320	M	M	9	1	25	330
15	28	13	21	-9	44	0	T	T	2	11.5	20	200	M	M	3	1	24	210
16	36	24	30	1	35	0	T	T	2	16.5	25	250	M	M	4		32	250
17	33	19	26	-3	39	0	0.00	0.0	1	5.8	17	340	M	M	4		21	330
18	39	22	31	2	34	0	0.01	T	T	12.0	23	190	M	M	7	18	26	210
19	33	-2	16	-12	49	0	0.06	1.2	2	10.3	24	360	M	M	8	1	30	330
20	14	-4	5	-23	60	0	0.00	0.0	2	2.7	17	140	M	M	2		25	140
21	40	14	27	-1	38	0	0.00	0.0	2	10.4	21	220	M	M	2	1	35	230
22	34	20	27	-1	38	0	1.00	15.2	T	6.7	14	20	M	M	10	12	17	30
23	30	11	21	-6	44	0	0.79	7.8	15	11.6	25	30	M	M	8	126	29	40
24	11	-8	2	-25	63	0	0.00	0.0	12	6.7	12	240	M	M	2	1	14	250
25	17	-15	1	-26	64	0	0.00	0.0	12	5.9	10	160	M	M	7	18	13	160
26	20	14	17	-10	48	0	0.03	0.6	12	7.7	16	320	M	M	10	18	18	330
27	18	6	12	-14	53	0	0.00	0.0	12	3.8	12	330	M	M	5	12	13	340
28	38	16	27	1	38	0	0.00	0.0	12	15.8	24	220	M	M	6		32	240
29	40	35	38	12	27	0	0.00	0.0	10	9.5	21	230	M	M	8	18	26	240
30	46	36	41	15	24	0	T	0.0	6	10.9	23	180	M	M	10	12	29	180
31	51	46	49	23	16	0	0.10	0.0	3	21.1	32	200	M	M	10	1	39	210
SM	1121	661		1117		0	3.01		28.7	329.5			M		192			
AV	36.2	21.3								10.6	FASTST		PSBL	%	6		MAX(MPH)	
								MISC ---->		44	240						54	250

NOTES:
LAST OF SEVERAL OCCURRENCES

COLUMN 17 PEAK WIND IN M.P.H.

PRELIMINARY LOCAL CLIMATOLOGICAL DATA (WS FORM: F-6) , PAGE 2

STATION: MANSFIELD
MONTH: DECEMBER
YEAR: 2004
LATITUDE: 40 49 N
LONGITUDE: 82 31 W

[TEMPERATURE DATA] [PRECIPITATION DATA] SYMBOLS USED IN COLUMN 16

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AVERAGE MONTHLY: 28.7   TOTAL FOR MONTH:   3.01    1 = FOG
DPTR FM NORMAL:  -0.9   DPTR FM NORMAL:   -0.25    2 = FOG REDUCING VISIBILITY
HIGHEST:    62 ON  7    GRTST 24HR  1.50 ON 22-23      TO 1/4 MILE OR LESS
LOWEST:    -15 ON 25                               3 = THUNDER
                       SNOW, ICE PELLETS, HAIL     4 = ICE PELLETS
                       TOTAL MONTH:  28.7 INCHES   5 = HAIL
                       GRTST 24HR  15.2 ON 22-22   6 = GLAZE OR RIME
                       GRTST DEPTH:  15 ON 23      7 = BLOWING DUST OR SAND:
                                                      VSBY 1/2 MILE OR LESS
                                                   8 = SMOKE OR HAZE
[NO. OF DAYS WITH]     [WEATHER - DAYS WITH]       9 = BLOWING SNOW
                                                   X = TORNADO
MAX 32 OR BELOW:   8   0.01 INCH OR MORE:  15
MAX 90 OR ABOVE:   0   0.10 INCH OR MORE:   7
MIN 32 OR BELOW:  24   0.50 INCH OR MORE:   2
MIN  0 OR BELOW:   4   1.00 INCH OR MORE:   1

[HDD (BASE 65) ]
TOTAL THIS MO.  1117   CLEAR  (SCALE 0-3)   6
DPTR FM NORMAL    26   PTCLDY (SCALE 4-7)  11
SEASONAL TOTAL  2306   CLOUDY (SCALE 8-10) 13
DPTR FM NORMAL   -13

[CDD (BASE 65) ]
TOTAL THIS MO.     0
DPTR FM NORMAL     0   [PRESSURE DATA]
SEASONAL TOTAL   528   HIGHEST SLP M ON M
DPTR FM NORMAL  -144   LOWEST  SLP 29.34 ON  1

[REMARKS]
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Ohio Department of Transportation

1980 West Broad Street, Columbus, Ohio 43223-1102

February 24, 2006

Mr. Dan Compston, Senior Vice President
Kokosing Construction Company, Inc.
886 McKinley Avenue
Columbus, OH 43222

Re: ODOT Project 9077(04) MRW/RIC I-71
Dispute 03-049077-01 Joint Repairs

Dear Mr. Compston:

This letter is provided as further clarification to address issues raised by Kokosing in its January 25, 2006 letter regarding the Deputy Directors Board's decision dated December 27, 2005. Please note that the clarification provided herein is primarily intended to address the last paragraph on the first page of Kokosing's letter as that paragraph provides a synopsis of all the issues raised in the balance of that letter and reveals what may be a misunderstanding of the Board's authority and role in the dispute resolution process.

The letter appears to question the Board's exercise of discretion in rendering its decision. Please be assured that the Board did not abuse its discretion. It is an accepted and necessary practice for neutrals in alternative dispute resolution methods, such as the Board, to exercise their independent judgment in their determination of the findings of fact and conclusions of law. In exercising their independent judgment neutrals must utilize their legal and/or technical expertise, experience, research capabilities to either prove or disprove facts asserted but not proven by a party, research capabilities to determine legal principles, etc. This discretion, of course, is limited only by their duty to follow the applicable law and render a just decision.

In the case at hand, the Board employed its experiential and engineering judgment in determining that the issue pertaining to vertical edges was irrelevant and that the cause of the failures was most likely that the Type 1H material had "cooled to the extent that it could not be properly compacted resulting in the failures." The Board arrived at this determination after weighing all the evidence to establish the facts and applying the facts to the law while exercising the members' independent judgment.

The Board also found it necessary to investigate the weather conditions since the Contractor asserted, as part of its case in chief, that specific weather conditions existed during a specific time period yet failed to provide any evidence of such weather conditions.

Be assured that the Board arrived at its decision in accordance with the process and in a manner consistent with commonly accepted alternative dispute resolution practices. The

Board also determined that the issues and/or errors cited in your letter, whether correct or incorrect, do not require further discussion as they would have no bearing on the Board's decision as issued.

Please be reminded that under the terms of the contract for project 9077(04), the Step 3 Deputy Directors' Board decision on disputes of less than $100,000 is the final step of the process and may not be appealed within the Department. The Board's decision cover letter dated December 27, 2005 provided that you must either accept or reject the Board's decision in writing within 30 calendar days of receipt. The Board hereby grants you another 30 calendar days from receipt of this letter to accept or reject the decision in writing.

Please contact me at (614) 466-3957 with any questions.

Respectfully,

Megan Blackford, P.E., Esq.
Secretary
Deputy Directors' Board

cc: Deputy Directors' Board: Bill Lindenbaum, Mark Kelsey, Tom O'Leary
District 3: Perry Ricciardi
Dispute File