

Corporate Compliance Programs and Extended Warranties



**Ethical Responsibility in
Quality Control
Programs of Asphalt
Providers and Paving
Companies**

USA vs. APAC-ATLANTIC

- Confidential Informant alleged false asphalt testing
- APAC conducted internal investigation
- Identifies problem; does not alert State DOT
- DOT/OIG conducts investigation
- Six technicians admit to false testing and were fired by APAC
- DOT/OIG investigation indicated false testing was widespread and management had knowledge and participated

The Settlement

- APAC negotiates with the US Attorney's Office and FHWA to settle liability and avoid suspension and debarment.
- Settlement included:
 1. \$2.25 million
 2. Compliance program
 3. Warranty program on all roads built during time of false tests

Key Components to a Strong Quality Control Compliance Program

- Establish and reiterate a written policy of zero tolerance-falsification of tests or documentation will not be tolerated and testing of asphalt quality is INDEPENDENT to plant production or productivity!! Employees sign and it is retained in the employee file and discussed with each employee and posted at each facility
- A clear and distinct separation with the Corporation between asphalt production and quality control
- Establish and reinforce procedures for handling rejected mix, results outside of the specifications, stopping production, and implementing changes due to QC test results

Key Components to a Strong Quality Control Compliance Program

- Minimum of a 4-year record retention program from the payment of the final estimate
- A telephone hotline for anonymous reporting to an INDEPENDENT monitor. This third-party monitor will notify the Co., the State DOT, and FHWA simultaneously of the allegation, investigate the allegation, and simultaneously release a written report to the above parties
- After receiving the report, the Co. shall disclose a complete plan to address any findings detailed by the third-party monitor

Key Components to a Strong Quality Control Compliance Program

- In-house ethics training program - at a minimum of every 2 years
- All managers and supervisors shall attend an independent ethics training seminar
- Attendance should be documented
- Reiteration and discussion of zero tolerance policy at monthly employee meetings

Key Components to a Strong Quality Control Compliance Program

- Salaries, bonuses, or pay incentives for quality control personnel completely separated from asphalt production or plant productivity
- COMPLETE disclosure to the State DOT of any improprieties discovered within the quality control operations

Key Components to a Strong Quality Control Compliance Program

- Company shall for a period of 3 years retain an independent professional engineering and/or testing firm, which must be approved by the state and is independent from the company or its parent company
- Perform semi annual asphalt laboratory evaluations, one on one interviews with every quality control employee and report those findings simultaneously to the State, co, and FHWA

Key Components to a Strong Quality Control Compliance Program

- Corporate compliance program is binding on all successors, transferees and assigns as long as such successor, transferee and/or assign continues to own the plant facilities which are the subject of the agreement

WARRANTY

- Identify affected projects
- Eight year period on interstate projects
- Any asphalt mixture or associated component found to deviate from the requirements of the contract under which they were produced or supplied will be defined as an "Asphalt Defect"

WARRANTY

- If any asphalt defect is determined by the State DOT to exist, the co. shall take the necessary action throughout the warranty duration, to repair, replace, or correct any such Asphalt Defect to the satisfaction of the State DOT

WARRANTY- Performance Standards

- Characteristics that will be used to evaluate the asphalt materials are: alligator cracking, bleeding/flushing, block cracking, delamination, spalling, raveling, rutting, weathering, shoving, potholes, longitudinal cracking or distortion, and transverse cracking or distortion

WARRANTY

- Failure to perform any repairs may result in removal from the State DOT's pre-qualified bidder's list
- Failure to perform will prevent the co. from bidding as well as prohibit subcontracting work

WARRANTY

- State DOT and co. jointly evaluate the surface characteristics parameters on a periodic basis and 60 calendar days prior to the warranty period expiration
- Notify the co. in writing
- Within X period of time, the co. will submit a detailed plan for completing the work and commence to undertake the warranty work

WARRANTY

- If the co. fails to take such action, the State DOT may complete the work and the co. will be responsible for the total cost associated with such warranty work to include traffic control and admin/engineering costs. Preclude from bidding
- If the co. contends corrective work is outside the terms of the agreement, the co. may appeal to the State DOT Division engineer's decision to the State Highway Administrator whose decision will be final.

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