

## RECENT LOUISIANA LAWSUIT GIVES DOTD AND ENGINEERS THE AUTHORITY TO SPECIFY PROPER MATERIALS ON PROJECTS

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*The Louisiana Supreme Court Denies Asphalt Company's Lawsuit. The lawsuit was aimed at allowing all competing products to be considered equal.*

**Baton Rouge, January 21, 2000**

A Louisiana asphalt paving contractor filed a lawsuit in the East Baton Rouge District Court (Suit No. 468,578 Division A) against the Louisiana Department of Transportation and Development (DOTD), in which the contractor alleged that the DOTD violated the closed specification law by specifying a concrete pavement for a roadway and excluding an asphalt pavement alternate.

### **The DOTD Wins Their Case**

The recent lawsuit filed by an asphalt contractor against the DOTD will have positive national significance for the concrete industry and engineers. The contractor's petition claimed that "other products, including asphaltic concrete, of equal quality and utility which would not detract from the utility of the highway" should be allowed to be included in the project specifications. While this seems like a fair idea to allow other alternates, the project conditions should determine what product is specified since not all products are equal! The DOTD determined that a concrete pavement was the product needed on this project due to its superior strength and life expectancy.

In a very clear decision, the District Judge ruled in favor of the DOTD and stated: "DOTD's failure to include alternative designs in its bid documents is not a violation of the closed specification statues". The contractor appealed this ruling and was denied by the First Circuit Court of Appeals and the Louisiana Supreme Court.

This case is of utmost importance to the engineers who specify products based on their qualities, not simply on a product's basic characteristics. Engineers are sometimes pushed to choose a product because it will save money on the project and is claimed to be just as good as concrete. As is the case with the asphalt industry, the alternates to concrete pipe products such as metal, PVC, and HDPE

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promote their product as "equal" to concrete. This lawsuit provides a basis for the claim that sound engineering principles and methods take precedent in deciding what material shall be used on a project. More specifically, the ruling demonstrates that just because two products may provide similar purposes (such as conveying water, as is the case for piping products or providing a paved road surface, as is the case for roadway paving materials) they are not necessarily "of equal quality and utility".

The bottom line is *the engineer* is the only professional who is qualified to specify the products used on the projects that he or she is designing. Ultimately, the engineer who stamps the project plans is the one who is liable for its design. The law has spoken and it says very clearly - all products were **not** created equally. Therefore, the engineer must decide which product will best serve a project today and tomorrow and shall not be required to add an alternate product to the specifications when it is not considered an equal product.