

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
In the Matter of Contract Controversy of:)
)
SC Department of Transportation)
)
v.)
)
Stepp Manufacturing Co., Inc.)
SCDOT)
Contract No. SB 8798-11.27/01)
Purchase of Asphalt Trailer, 5,000 Gallon)

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2005-115

POSTING DATE:

September 19, 2005

This matter is before the Chief Procurement Officer (CPO) pursuant to a request for resolution of a contract controversy dated December 1, 2004 from the South Carolina Department of Transportation (SCDOT). With this contract, the SCDOT procured a 5,000 gallon asphalt trailer from Stepp Manufacturing Co., Inc. (Stepp). The asphalt trailer is a rather large tank wagon trailer equipped with spray nozzles that is used to “chip-seal” roads for maintenance purposes. The chip seal process involves spraying asphalt emulsion on the surface of the road and then rolling rock or stone into the asphalt.

In its request for resolution, SCDOT alleged that the equipment that it received from and paid Stepp for “has never worked properly, and it continues to malfunction.” SCDOT requests return of its original purchase price of \$74,575.

After attempts to settle this matter failed, the CPO conducted a hearing on February 16, 2005. Present before the CPO were SCDOT, represented by Amanda Taylor, Esq. and Stepp, represented by Shane Stepp. At that hearing, the parties agreed to attempt to settle the matter. The CPO authorized such an attempt and instructed the parties to report back within ninety days. .

The parties reported to the CPO that they had been unsuccessful in their attempt to settle the matter and asked the CPO to reconvene the hearing. The hearing was reconvened on June 30, 2005.

Stepp was represented by Michael H. Montgomery, Esq. During the hearing, once again, the parties asked the CPO for time to attempt a resolution, which the CPO allowed. Over the proceeding two months, the parties attempted to resolve the matter to no avail and submitted after-argument briefs to the CPO.

NATURE OF THE CONTRACT CONTROVERSY

The request for resolution is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates¹ are relevant to the contract controversy:

1. On October 26, 2001, SCDOT issued the invitation for bids (IFB). (Ex. 1.)
2. On November 13, 2001, SCDOT issued an amendment to the IFB. (Ex. 2.)
3. On November 27, 2001, SCDOT opened the two bids received, as follows:

<u>Bidder</u>	<u>Amount</u>
Stepp	\$74,675
A.E. Finley & Associates (Ex. 3.)	89,144

4. On December 28, 2001, SCDOT issued an award by purchase order (PO) to Stepp. (Ex. 4.)
5. On September 19, 2002, SCDOT issued an amendment to its purchase order allowing a change in the size of the axle and deducting \$100 from the PO making the purchase price \$74,575. (Ex. 4.)
6. On October 9, 2002, Stepp delivered the trailer to SCDOT's Equipment Depot in Columbia. According to SCDOT, an inspection report indicated that the unit had no serial number affixed and some bolts were missing from the landing gear bracing. Stepp forwarded the serial number tag; SCDOT installed the tag and corrected the problems.
7. On November 5, 2002, SCDOT authorized issuance of the equipment to Orangeburg and payment to Stepp.
8. On December 4, 2002, SCDOT transferred the equipment to Orangeburg.

¹ Events taken, in part, from the Timeline for Work on Stepp Asphalt Distributor, Ex. 11.

9. On February 19, 2003, a Stepp representative conducted training for the SCDOT technicians in Orangeburg on the use of the unit.
10. On March 14, 19, and 26, 2003, SCDOT tested the equipment, which leaked.
11. On April 15-18, 2003, Stepp/SCDOT mechanics worked on the equipment on Orangeburg.
12. On April 28 – May 7, 2003, an SCDOT mechanic worked on the equipment.
13. On May 8, 2003, SCDOT officials discussed problems with the unit and photographed what they believed to be defects.
14. On May 12, 2003, SCDOT transferred the equipment back to the Equipment Depot in Columbia for SCDOT technicians to coordinate repairs with Stepp. SCDOT technicians began repairs on the equipment.
15. On July 16, 2003, SCDOT and Stepp finalized dates for Stepp to conduct repairs on site and retrofit a burner thermostat the week of August 4-8, 2003.
16. On August 4 -5, 2003, Stepp representative, Ted Nemetz, worked with SCDOT technicians on the computer controller, electrical/solenoid relays, spray bar and valves, and installation of the burner thermostat controls.
17. On August 26, 2003, James Feda, Director of Maintenance, SCDOT, sent a letter to Shane Stepp writing, in part, “the unit has not been functional”, “staff have lost confidence in the unit’s design”, and “the department proposes that STEPP Manufacturing Company, Inc. accept the unit back and refund the original purchase price of \$74,575.00 to the SCDOT.” (Ex. 8.)
18. On October 15, 2003, Shane Stepp responded to Norma Hall, SCDOT Procurement Director, writing, in part, the following:

I have two ideas to correct the situation:

- Stepp will take the unit back to our facility and remove all computerized controlling systems and replace them with a less complicated control. This will not meet the requirements in the original specifications. I feel the operators will be more comfortable with the manual style controls than they were with the computer style.
- The second idea would be to repair the unit and keep the computer in place. After repairs, send the unit to a different district within the State of South Carolina and train the operators accordingly.

Unfortunately, neither of the above scenarios can be executed by Stepp Manufacturing Company without some aid in compensation.

19. On November 19, 2003, Norma Hall, SCDOT Procurement Director, mailed a cure letter to Shane Stepp writing, in part, “we feel that it is appropriate to revoke acceptance of this piece of machinery

and seek a refund of the full purchase price of \$78,303.75 paid for the equipment.” She also wrote, in part:

In your letter, you identified two options for our continuing to use the tanker. The first suggestion was to remove the computerized controlling systems and replace them with more manual devices. This process will not solve our problems with the equipment. The issue is not the computer controls, but the fact that the tanker’s sprayer will not work. Computer controls are irrelevant to the defects. The second suggestion of repairing the tanker and transferring it to another district for use is also inappropriate because no other district in our state uses this particular product. Moreover, as I mentioned above, we feel that we have given you ample opportunity to repair this product and you have been unable to do so.

Remedy: Arrange for pick up/delivery of Asphalt Distributor and reimburse SCDOT for the full purchase price.

Please contact me by December 3, 2003 so that we may discuss the return of the tanker and reimbursement of the \$78,303.75 purchase price.

After the Cure Letter, Ms. Hall and Mr. Stepp had several telephone conversations, and ultimately, SCDOT agreed to let Stepp take the asphalt tanker back to Stepp’s facilities in Minnesota and re-work it so that SCDOT might be able to use it at the Orangeburg Maintenance site. Ms. Hall and Mr. Stepp further agreed that, when the equipment was re-delivered and accepted as working properly, the one-year warranty period would start over. (SCDOT after Argument Brief, p. 3.)

20. On January 8, 2004, Stepp picked up the equipment and took it to Minnesota for repair.

21. On March 15, 2004, Stepp returned the equipment to Orangeburg. Over the period of March 15 – 17, 2004, Mr. Stepp and SCDOT officials met in Orangeburg to conduct tests of the re-worked equipment. According to SCDOT, “[t]he results did not provide adequate or consistent coverage on the ground.” (Ex. 11, p. 3.)

22. On March 18 and 19, 2004, SCDOT took the tanker to Manning and attempted to use it. According to SCDOT, the “[a]irlines and pump not working.” (Ex. 11, p.3.)

23. On March 22 – 26, the SCDOT mechanic worked on the tanker. (Ex. 11, p. 3.)

24. On March 29 – 30, 2004, a Stepp mechanic repaired the equipment in Orangeburg. (Ex. 11, p. 3.)

25. On April 5, 2004, an SCDOT mechanic worked on the equipment and sent it to the SCDOT Equipment Depot in Columbia, SC.

26. On April 14 – 16 and 19, 2004, a Stepp technician (according to SCDOT, the technician arrived unannounced) worked on the sprayer in Columbia. (Ex. 11, p. 3.)

27. On December 1, 2004, SCDOT filed its request for resolution with the CPO.

SCDOT'S CLAIMS AND STEPP'S RESPONSES

The CPO has received the following claims by SCDOT and responses by Stepp²:

1) SCDOT has revoked its acceptance of the equipment and is entitled to reimbursement of the purchase price.

SCDOT argues that it has lawfully revoked acceptance of the sprayer and should be reimbursed the full amount because the sprayer never worked properly. Stepp responded, in part, "SCDOT has failed to revoke acceptance and revocation of acceptance is not an available remedy to SCDOT in this circumstance." Stepp responded further,

SCDOT is unable to revoke acceptance in this circumstance to two reasons in addition to the fact that no such relief has been requested and no prior attempt in writing has been made to revoke acceptance. First, SCDOT has failed to revoke acceptance within a reasonable time as required by law. If the assertions by SCDOT are credible the facts are "after the arrival at the Orangeburg Maintenance Shop in December 2002, the equipment failed to work properly." Thus is it impossible that SCDOT could revoke acceptance, under the terms of its own contract, under section 32-6-208(1)(b) because it has no obligation to pay until it accepted the distributor (spreader) and such acceptance took place without difficulty of discovery of the alleged defects and with no assurance from the seller that Stepp would remedy such alleged defects.

SCDOT accepted the property after having ample opportunity to assure itself that the equipment was satisfactory prior to having an obligation to make payment.

Stepp wrote further, "[r]evocation of acceptance is not an available remedy where modifications to the equipment have been made. It is undisputed that SCDOT modified the original equipment by adding a spray gun and that it made further modifications during its ownership of the applicator."

CONCLUSIONS OF LAW

SCDOT has revoked its acceptance of the equipment and is entitled to reimbursement of the purchase price.

Stepp delivered the spreader to SCDOT on October 9, 2002. SCDOT approved payment on November 5, 2002.

SCDOT now seeks to revoke its acceptance of the equipment. Although once a buyer has accepted goods he is precluded from rejecting them, in some cases the buyer can revoke his acceptance of the goods, cancel the contract, and compel a refund of the purchased price. "A buyer may revoke its acceptance of a commercial unit when its nonconformity substantially impairs its value to the buyer, if the buyer accepted it . . . without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by seller's assurances." [S. C. Code Ann. Section 36-2-608(1).]

Clearly, SCDOT accepted the equipment. SCDOT has not argued otherwise, and its payment reflects acceptance. Clearly, the defects cataloged above substantially impaired the value of this equipment to SCDOT; the equipment is virtually unusable for its intended purpose. In addition, SCDOT apparently accepted the equipment without discovering the defects. The only real question is whether DOT's acceptance was reasonably induced by the difficulty of discovery. Based on the evidence presented, the CPO concludes that the DOT's acceptance was reasonably induced by the difficulty of discovery. DOT purchased a complex piece of equipment. The overall context reflects that only testing would reflect whether the equipment would function properly, and both parties knew that testing could not occur until months after delivery. Nothing in the evidence suggests that the defects were readily apparent; rather, the evidence suggests just the opposite.

² Source: After-Argument Briefs from SCDOT and Stepp.

Section 36-2-608(2) provides that “[r]evocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before substantial change in condition of the goods which is not caused by their own defects.” Stepp argued that SCDOT did not timely notify Stepp that it was revoking acceptance of the spreader. DOT first raised revocation in August 2003, approximately nine months after payment and acceptance. On August 26, 2003, James Fedra, Director of Maintenance, SCDOT, sent a letter to Shane Stepp writing, in part, “the unit has not been functional” and “the department proposes that STEPP Manufacturing Company, Inc. accept the unit back and refund the original purchase price of \$74,575.00 to the SCDOT.” (Ex. 8.) Approximately three months later, DOT took a very definitive step. On November 19, 2003, Norma Hall, SCDOT Procurement Director, mailed a cure letter to Shane Stepp writing, in part, “we feel that it is appropriate to **revoke acceptance** of this piece of machinery and seek a refund of the full purchase price of \$78,303.75 paid for the equipment.” (Ex. 10.) (Emphasis added.) She also wrote, in part:

Remedy: Arrange for pick up/delivery of Asphalt Distributor and reimburse SCDOT for the full purchase price.

Please contact me by December 3, 2003 so that we may discuss the return of the tanker and reimbursement of the \$78,303.75 purchase price.

By this letter, SCDOT clearly revoked its acceptance of the spreader. The question is, did that revocation “occur within a reasonable time after the buyer discovers or should have discovered the ground for it.” According to SCDOT, due to seasonal effects that prevented it from fully testing the spreader when Stepp delivered it, it did not know of the defects when it processed payment. SCDOT did not learn of the defects until it tested the equipment March 14, 19, and 26, 2003 – around five months before its first letter. According to the testimony of SCDOT and Stepp, both parties attempted

to make repairs to the spreader throughout 2003³. Since Stepp was cooperating with SCDOT to remedy the problems, it is reasonable that SCDOT did not attempt to revoke acceptance from the date the equipment was first tested (March 14, 2003) until Ms. Hall's revocation of acceptance (November 19, 2003).

However, Stepp continued its discussions with Ms. Hall verbally and received permission to try again to fix the spreader. According to undisputed evidence in the record, "Ms. Hall agrees to allow Stepp another chance to fix unit at the factory." (Ex. 11, p. 3). Also, although not in writing, according to undisputed evidence in the record, Stepp agreed to restart the one-year warranty period on January 8, 2004. (Ex. 11, p. 3)

Stepp picked up the spreader on January 8, 2004 and took it back to Minnesota for repairs. Stepp returned it to SCDOT on or about March 15 and proceeded with testing with SCDOT and Stepp representatives present on March 15-19, 2004. They experienced problems with the unit not working properly. During field testing in Manning on March 18 and 19, 2004, the airlines and pump did not work properly. Stepp continued to work on the equipment until April 19, the last recorded date of repairs on the spreader.

The CPO is concerned about SCDOT's decision to allow Stepp to continue its attempts to fix the spreader after Ms. Hall had formally revoke acceptance on November 19, 2003. Moreover, the CPO is concerned about SCDOT's lack of correspondence affirming its November 19, 2003 revocation of

³ At least, the following times:

- On April 15-18, 2003, Stepp/SCDOT mechanics worked on the equipment on Orangeburg.
- On April 28 – May 7, 2003, an SCDOT mechanic worked on the equipment.
- On May 8, 2003, SCDOT officials discussed problems with the unit and photographed what they believed to be defects.
- On May 12, 2003, SCDOT transferred the equipment back to the Equipment Depot in Columbia for SCDOT technicians to coordinate repairs with Stepp. SCDOT technicians began repairs on the equipment.
- On July 16, 2003, SCDOT and Stepp finalized dates for Stepp to conduct repairs on site and retrofit a burner thermostat the week of August 4-8, 2003.
- On August 4 -5, 2003, Stepp representative, Ted Nemetz, worked with SCDOT technicians on the computer controller, electrical/solenoid relays, spray bar and valves, and installation of the burner thermostat controls.

acceptance after Stepp was allowed to attempt to repair the equipment in 2004. SCDOT's next correspondence was dated December 1, 2004 to the CPO requesting resolution of the controversy. Nevertheless, the CPO believes, given the two letters sent by DOT and the repeated attempts by Stepp to make the equipment work, that DOT's revocation of acceptance was timely.

Stepp further argues that SCDOT's revocation of acceptance occurred after SCDOT made substantial changes in the goods not caused by their own defects. Admittedly, SCDOT added a spray wand to the equipment to spray emulsified asphalt onto areas not covered by the spreader. However, no evidence was submitted to show that the addition of the spray wand materially affected the value or performance of the spreader positively or negatively. The relative value of the spray wand to the spreader would certainly be small.

Once acceptance is properly revoked, the law allows a buyer to recover the price paid, plus damages. Section 36-2-711 states "[w]here . . . the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved . . . the buyer may cancel . . . and whether or not he has done so may in addition to recovering so much of the price as has been paid [recover certain damages]."

DETERMINATION

According to testimony and documentary evidence, SCDOT has experienced continuous problems with Stepp's spreader including malfunctions in the controller console cable connections, controller spray bar switches, spray bar valves and nozzles, electric/air valves controlling the spray bar valves, air line manifolds, and spray bar winch motor solenoids/relays. Additionally, welds have separated, a spray bar has refused to collapse, and a spray bar has even fallen off onto the highway. Certainly, those nonconformities have "substantially impaired the value of the goods to the buyer."

[36-2-608] SCDOT formally rightfully revoked acceptance of the sprayer in November 2003. The fact that SCDOT agreed to allow Stepp one last attempt to fix the spreader approaches, but does not amount to reacceptance of the equipment by SCDOT.

SCDOT requests reimbursement from Stepp of its purchase price of \$74,575. The SC Code of Laws offers, where the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, the buyer may cancel recover its purchase price and other costs incurred. [36-2-711] SCDOT has not requested other costs incurred. Accordingly, the CPO directs that Stepp pay SCDOT the amount of \$74,575, its original purchase price for the equipment.⁴



R. Voight Shealy
Chief Procurement Officer
for Goods and Services

September 19, 2005

Date

Columbia, S.C.

⁴ Having concluded that DOT is entitled to revocation of acceptance, DOT's alternate request for breach of warranty is moot.

STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4230, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten calendar days of posting of the decision in accordance with Section 11-35-4230(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the Panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:

<http://www.state.sc.us/mmo/legal/lawmenu.htm>

FILING FEE: Pursuant to Proviso 66.1 of the 2004 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2004 S.C. Act No. 248, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. Protest of Lighting Services, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and Protest of The Kardon Corporation, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



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December 1, 2004

Mr. Voight Shealy
 Chief Procurement Officer
 Materials Management Office
 1201 Main Street, Suite 600
 Columbia, South Carolina 29201

RECEIVED
 MATERIALS MANAGEMENT
 OFFICE
 2004 DEC 6 AM 11 01

RE: Request for Resolution – Asphalt Distributor, 500 Gallon, Trailer Mounted, Stepp Model SST-5M, VIN #009STST5M215T0233, Purchase Order #302418, dated 12/28/2001

Dear Mr. Shealy:

On October 26, 2001, the South Carolina Department of Transportation (SCDOT) issued a Bid Invitation for a 5,000-gallon capacity asphalt trailer to be delivered to Columbia, South Carolina. On November 27, 2001, SCDOT awarded the bid to Stepp Manufacturing Co., Inc. (Stepp), the lowest bidder. SCDOT received the equipment in October 2002 and issued it to the field for use in December 2002.

After its arrival at the Orangeburg Maintenance shop in December 2002, the equipment failed to work properly. Specifically, malfunctions occurred in the controller console cable connections, controller spray bar switches, spray bar valves and nozzles, electric/air valves controlling the spray bar valves, air lines to air manifolds, and spray bar winch motor solenoids/relays. SCDOT invested over 200 man-hours and nearly \$8,000 in labor and materials in efforts to get the new equipment in working order, but was unsuccessful. Prior to August 4, 2003, Stepp's technicians visited SCDOT to work on the equipment and attempt to get it operational.

During the week of August 4, 2003, Mr. Ted Nemetz of Stepp spent 2 days in South Carolina assisting SCDOT employees in repairing the equipment. After the repairs were completed and the equipment was being demonstrated at the Orangeburg Maintenance shop, the lower burner solenoid malfunctioned, shorting out the igniter; some of the spray bar valves/nozzles operated inconsistently; and the spray bar winch solenoids/relays malfunctioned, preventing the spray valves from being extended or retracted. Also, as the equipment was being taken back to Columbia from Orangeburg, the street side spray bar support bracket weld separated and the bar collapsed onto the

highway. As a result of the occurrences prior to and during the week of August 4, 2003, James J. Fedra, Jr., SCDOT's Director of Maintenance, wrote a letter to Stepp on August 26, 2003, and requested that Stepp take back the equipment and refund the original purchase price to SCDOT.

Stepp responded to Mr. Fedra's request on October 15, 2003, and instead of agreeing to take back the equipment and refund the purchase price, Stepp made two suggestions. The first was that Stepp take back the equipment, remove all the computerized controls, replace them with less complicated controls, and return the equipment to Orangeburg. The second suggestion was that Stepp take back the equipment, make only the necessary repairs, and send the equipment to another SCDOT district facility where the operators would be trained accordingly.

Norma Hall, SCDOT's Director of Procurement, responded to Mr. Stepp on November 19, 2003, with a "Cure Letter." Ms. Hall indicated that neither of Mr. Stepp's suggestions was feasible for SCDOT. The first suggestion of replacing the computerized controls would not satisfy SCDOT because the control system was not what was causing the problem; it was the fact that the sprayer would not work. The second suggestion of returning the repaired equipment to another SCDOT district also was not appropriate because no other district within the SCDOT has a use for that particular piece of equipment. The equipment was purchased specifically for the Orangeburg Maintenance shop. Ms. Hall reiterated SCDOT's request that Stepp take back the defective equipment and return the original purchase price to SCDOT.

After the Cure Letter, Ms. Hall and Mr. Stepp had several conversations, and ultimately, SCDOT agreed to let Stepp take the equipment back to Stepp's facilities and re-work it so that SCDOT might be able to use it at the Orangeburg Maintenance site. Ms. Hall and Mr. Stepp further agreed that, when the equipment was re-delivered, the one-year warranty period would start over. Stepp made some changes to the equipment's spray bar, controller, and control system. Various SCDOT employees and Mr. Shane Stepp met in Orangeburg on March 15, 2004, to conduct a test of the re-worked equipment. When SCDOT personnel inspected the equipment upon their arrival, it was leaking diesel fuel and the SCDOT personnel had to contain the fluid with drip pans. Later, while Mr. Stepp was demonstrating the spray bar, the bar would not retract and had to be re-welded.

The testing continued on March 16, 2004, and at the start-up at approximately 8:00 a.m., the spray nozzles were not functioning properly. When the group attempted to spray plain water, some nozzles sprayed properly, some streamed fluid, and some did nothing at all. Mr. Stepp made further adjustments to the equipment. At approximately 2:30 p.m., the SCDOT personnel and Mr. Stepp attempted to transfer emulsion fluid from the tanker to the spray unit (subject equipment). They were unsuccessful because setting the parking brake on the equipment caused the equipment to fail to maintain the proper air pressure for the transfer. They corrected this problem and the transfer was complete at approximately 3:30 p.m. At 4:25 p.m., the group attempted to use the equipment to

Mr. Voight Shealy
Page 3
December 1, 2004

make the first spray with emulsion fluid. The results did not provide adequate or consistent coverage on the ground. Mr. Stepp changed the nozzles to use smaller orifices.

On March 17, 2004, the testing continued. The first spray of the day was at approximately 9:30 a.m., and the curbside section of the spray bar would not spray emulsion. Apparently, no heat was circulating to that side of the equipment because emulsion had leaked into the spray bar and solidified. Mr. Stepp claimed this happened because the equipment was not properly cleaned, and he used a hand torch to heat the spray bar. When he attempted to spray, an air line to a nozzle on the curbside broke. Mr. Stepp made the necessary repairs. At approximately 10:55 a.m., the equipment began to spray properly; however, the next morning, the group again had difficulties getting the equipment to function properly because the circulator pump froze.

Stepp last worked on this piece of equipment on April 19, 2004. SCDOT believes it has given Stepp ample opportunity to repair this piece of equipment, but Stepp has been unable, after numerous attempts, to do so. This equipment has never worked properly, and it continues to malfunction after all of Stepp's efforts to repair it. At this time, SCDOT would respectfully request, pursuant to §11-35-4230 of the *Code of Laws of South Carolina*, as amended, and the South Carolina Procurement Code, resolution of this matter. SCDOT requests that Stepp take back this piece of defective equipment and return the original purchase price of \$74,575.00. It is expected that Stepp will be timely in retrieving the equipment and that SCDOT will be reimbursed within 15 days of that retrieval.

Thank you for your careful consideration of this matter. Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,



Amanda Turbeville Taylor
Assistant Chief Counsel

/att

cc: Jim Feda, Director of Maintenance
Norma J. Hall, Director of Procurement
Jim Brooks, Supply and Equipment Depot