

DOCKET NO. 601-00-0408

EAGLE CONSTRUCTION & ENVIRONMENTAL SERVICES INC., PETITIONER	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V. TEXAS DEPARTMENT OF TRANSPORTATION, RESPONDENT		

DECISION AND ORDER

I. INTRODUCTION

Eagle Construction and Environmental Services, Inc. (Eagle) seeks \$61,317.50, plus attorneys fees, from the Texas Department of Transportation (TXDOT) for work that it alleges it performed for TXDOT under a contract to remove an underground storage tank (UST) near El Paso. TXDOT argues that it only owed Eagle \$6,727.50 under the contract and that it has paid Eagle that amount.

As set out below, the ALJ agrees with TXDOT and denies Eagle's claim for relief.

II. PROCEDURAL HISTORY AND NOTICE

Eagle filed its petition with TXDOT on February 7, 2000. TXDOT referred this case to SOAH for contested case hearing on February 14, 2000.

A hearing in this matter was convened on February 8, 2001, at the Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Austin, Texas. Notice of the hearing was previously given in Order No. 3, which was issued on June 7, 2000. Elias V. Lorenzana, Jr. and Rodney D. Parrott, Office of the Attorney General, appeared on behalf of TXDOT. Russell D. Thomason and Marc W. Walraven appeared on behalf of Eagle. William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH, presided. The hearing concluded on February 8, and the record closed on March 9, 2001, after closing arguments and replies was filed.

III. BACKGROUND FACTS

An UST is any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of gasoline or other regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the

surface of the ground. The Texas Natural Resource Conservation Commission (TNRCC) regulates the use and removal of USTs.¹

TXDOT sought to have such an UST near El Paso removed and the site remediated in accordance with TNRCC requirements and other standards. TXDOT issued an invitation to bid on that job, and Eagle submitted a bid to perform the specified work. TXDOT accepted Eagle’s bid when it issued a purchase order (PO). Together that bid and purchase order constituted the parties’ written contract for the El Paso UST removal (the contract). State’s Exs. 1, 2, 3, & 26; Petitioner’s Ex. 2.

The contract specified several tasks that Eagle was obligated to perform that are necessary to remove an UST and remediate the site. The contract also specified the number of each of those tasks that Eagle would perform. However, the contract also specified that the removal and remediation would be done in accordance with TNRCC and other applicable legal standards. Eagle maintains that it needed to perform different quantities of certain tasks than was stated in the contract. State’s Exs. 1, 2, 3, & 26; Petitioner’s Exs. 2 & 4.

After completing work under the El Paso contract, Eagle sent TXDOT an invoice for \$68,045.00. It maintains that it invoiced TXDOT for its actual performance on each task on the unit cost basis set out in the contract, for some tasks more and for some tasks less. However, TXDOT only paid \$6,727.50. Petitioner’s Ex. 4; State’s Exs. 5, 6, & 7. The table below summarizes these differences between the number of tasks and their costs as set out in the PO and in Eagle’s invoice:

Task and Cost Dispute
(cuyd=cubic yards; sqyd=square yards)

Task	PO Unit cost	PO units	PO task total cost	Invoice unit cost	Invoice Units	Invoice task total cost
Removal and disposal of concrete pavement	\$10.00	90 sqyd	\$900.00	\$10.00	164 sqyd	\$1,640.00
Removal and disposal of UST and associated piping (0-3000 gal.)	\$20.00	2	\$40.00	\$20.00	1	\$20.00
removal and disposal of UST and associated piping (3001-6000 gal.)	\$25.00	5	\$125.00	\$25.00	5	\$125.00

¹ Texas Water Code § 26.342 (16) (West 2000).

Task	PO Unit cost	PO units	PO task total cost	Invoice unit cost	Invoice Units	Invoice task total cost
Removal, transportation and disposal of residue UST Fluids	\$0.50	25 gal	\$12.50	\$0.50	404 gal	\$202.00
Plastic sheeting	\$25.00	10 rolls	\$250.00	\$25.00	10 rolls	\$250.00
Excavation of tankhold, pipe chase and dispenser area backfill material and stockpile on site	\$57.00	60 cuyd	\$3,420.00	\$57.00	615 cuyd	\$35,055.00
Excavation of native soils impacted by petroleum produces	\$25.00	20 cuyd	\$500.00	\$25.00	0	\$0.00
Disposal of contaminated soil (<600 PPM tph)	\$5.00	20 cuyd	\$100.00	\$25.00	0	\$0.00
Disposal of contaminated soil (>600 PPM tph)	\$11.50	20 cuyd	\$230.00	\$25.00	0	\$0.00
Replace and compact excavated soil	\$47.00	20 cuyd	\$940.00	\$47.00	615 cuyd	\$28,905.00
Backfill and compact clean off-site soil	\$10.50	20 cuyd	\$210.00	\$10.50	176 cuyd	\$1,848.00
Total PO Cost			\$6,727.50			
Total Invoice Cost						\$68,045.00

State's Ex. 26; Petitioner's Ex. 4

IV. JURISDICTION

No party questions the sufficiency of the hearing notice or the ALJ's jurisdiction to hear this case. However, the parties do not agree on the legal source of that jurisdiction. This also leads them to disagree on the subject matter included within that jurisdiction and the claims that Eagle is entitled to bring.

Eagle argues that it is entitled to recover an additional \$61,317.50 from TXDOT under one of three alternate legal theories: breach of contract, quantum meruit,² and misrepresentation. It also argues that it is entitled to recover the attorney's fees that it was forced to spend to recover that amount. Eagle maintains that it entered into a highway improvement contract with TXDOT and that Texas Transportation Code (Transportation Code) § 201.112 (West 2000) allows it to so recover.

Before the hearing, TXDOT filed a motion for summary disposition denying all of Eagle's claims. It contended that its dispute with Eagle does not concern a highway improvement contract to which Transportation Code § 201.112 is applicable. Instead, TXDOT argued that this dispute is governed by Texas Government Code (Gov't Code) Chapter 2260 (West 2000), which precludes Eagle's quantum meruit, misrepresentation, and attorney's fees claims and limits any recovery for breach to the contract price. TXDOT maintained that it had paid the contract price, \$6,727.50, in full.

At the hearing, the ALJ granted TXDOT's motion for summary disposition in part. He agreed with TXDOT that the contract is not a "highway improvement contract" and that any dispute over it is governed by Gov't Code Chapter 2260, which precludes Eagle's quantum meruit, misrepresentation, and attorney's fees claims. But the ALJ denied the remainder of TXDOT's summary judgement motion because the parties were disputing what the contract price was.

A. Is This a Highway Improvement Contract?

Eagle argues that TXDOT entered into the contract as part of the construction of state highway. TXDOT contends that the contract is simply one to remove an UST and remediate the site and the fact that the UST was located on a highway right of way is not relevant.

Transportation Code § 201.112 (a) and (b) provide that a person dissatisfied with TXDOT's informal resolution of a claim arising out of a highway improvement contract, entered into under Transportation Code Chapter 223, may request a contested case hearing, under Government Code Chapter 2001, to resolve the claim. While Chapter 223 does not define either "highway" or "improvement," those terms are defined by and for other provisions of the Transportation Code. Though those definitions are not directly applicable to Chapter 223, it is reasonable to rely on them in interpreting the same words in Chapter 223. Statutes should be read in context and construed according to common usage. Words and phrases that have acquired a technical or particular

² This doctrine permits recovery by a party for services or materials provided despite the absence of an express contract when they were accepted and used by the defendant under circumstances which gave reasonable notice that the plaintiff expected to be paid for them. FIND LAW FOR LEGAL PROFESSIONAL, LEGAL DICTIONARY, <http://dictionary.lp.findlaw.com>

meaning, whether by legislative definition or otherwise, shall be construed accordingly.³

Transportation Code § 312.001 defines both “highway” and “improvement”:

- (1) "Highway" includes all or any part of a street, alley, or public place or square that is dedicated to public use.
- (2) "Improvement" means the:
 - (A) filling, grading, raising, or paving of a highway in a permanent manner;
 - (B) widening, narrowing, or straightening of a highway;
 - (C) constructing of a gutter, curb, or sidewalk; or
 - (D) constructing of necessary appurtenances to a highway, including sewers and drains.

Clearly the contract in dispute did not obligate Eagle to do most of these things. But is the removal of an UST and remediating the site on a highway right of way part of the widening of that highway? The ALJ thinks that it is not.

Nothing that Eagle did was particularly associated with the widening of the highway. It certainly did not actually widen anything. Moreover, the UST could have been located anywhere. Though the UST was removed from on a right of way, TXDOT could have later chosen not to carry through and actually widen the highway.

Eagle also argues that this must be a highway improvement contract because it was paid from the State Highway Fund and Transportation Code § 222.001 prohibits using that fund to pay for other than highway improvements. But the very next statute, Transportation Code § 222.002, provides that, “Money in the state highway fund that is not required to be spent for public roadways by the Texas Constitution or federal law may be used for any function performed by the department.”

Based on the above, the ALJ concludes that an UST removal and remediation is not a highway improvement, even if it occurs on a highway right of way, and the resolution of a dispute concerning a contract for such an UST job is not governed by Transportation Code § 201.112.

B. Limitation on Gov’t Code Chapter 2260 Claims

But the law does not leave Eagle without a remedy if TXDOT breached their contract. The parties agree that Eagle may bring a claim under Government Code 2260.051 (a), which provides:

A contractor may make a claim against a unit of state government for breach of a contract between the unit of state government and the contractor. . . .

³ Gov’t Code § 311.011

If a contractor is not satisfied with the results of negotiation with a unit of state government, the contractor may request a hearing on the claim before a SOAH ALJ, who may render a decision on the claim. Gov't Code §§ 2260.102 and 2260.104.

However, Gov't Code § 2260.003 limits the claims that the contractor can bring. It states:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed the balance due and owing on the contract price, including orders for additional work.

* * *

(c) Any award of damages under this chapter may not include:

(1) consequential or similar damages;

* * *

(3) any damages based on an unjust enrichment theory;

(4) attorney's fees; or

* * *

Thus Eagle's quantum meruit claim, which amounts to an unjust enrichment claim, as well as its claim for attorney's fees are specifically barred. Moreover, Eagle's claim based on TXDOT's alleged misrepresentation of the nature of the contract is also barred. Even if such misrepresentation occurred, Gov't Code § 2260.003(a) does not allow Eagle to recover more than the contract price, including orders for additional work.

Based on the above, the ALJ granted TXDOT's motion for summary disposition of Eagle's quantum meruit, misrepresentation, and attorney's fees claims. But he denied TXDOT's motion for summary disposition of the entire case, since Gov't Code §§ 2260.102 and 2260.104 give the ALJ jurisdiction to consider Eagle's claim that TXDOT has not paid Eagle the contract price, including orders for additional work, in full.

C. Did TXDOT Order Additional Work?

Eagle argues that the TXDOT did order additional work. TXDOT does not agree.

Eagle witness Jeff West testified that it is never possible to know the amount of excavation that will be required to remove an UST until excavation begins and the full extent of the job can be understood. In this case, Mr. West testified that it appeared that at some earlier time someone had closed the UST in place by emptying it of all petroleum products and filling it with sand as is allowed by the TNRCC in certain circumstances. However, this meant that additional cubic yards of material,

i.e. the sand in the tank, had to be excavated and then replaced with compacted soil. Together, these additional tasks account for the virtually all of the amount in dispute. Tr. 186, and 199-202.

The parties agree that TXDOT did not issue a written order for additional work. However,

Mr. West testified that he obtained verbal authorization for the extra excavation and other work from a TXDOT representative. He stated that he contacted Isabel Alarcon, the TXDOT representative designated in the PO, and that she referred Mr. West to Gilbert Avalos, who had been listed as TXDOT's representative in TXDOT's invitation to bid. Mr. West also stated that during a subsequent phone conversation he asked Avalos to approve a change order, contending that Eagle could not have known prior to excavation that the tanks contained sand, which would require a greater amount of excavation than Eagle could have foreseen when it entered into the contract. According to Mr. West, Mr. Avalos stated that Eagle should have known that the tanks contained sand and that no change order was appropriate. Mr. West then asked if Eagle would be compensated on a unit basis if it excavated the sand, to which Avalos replied, according to Mr. West, that the contract was a unit rate one and that Eagle would be compensated for the extra excavation. State's Ex. 26; Petitioner's Exs. 2 and 30; Tr. 188-200.

It is hard to know whether to completely believe Mr. West's version of these conversations. Mr. Avalos did not testify, and Ms. Alarcon denied that she ever spoke with Mr. West. However, Mr. West's long distance telephone service provider's log does show that he called Ms. Alarcon's phone number on or about the dates in question. During her testimony, Ms. Alarcon confirmed that her number appears on the log but still denied that she ever spoke to Mr. West. In fact, she denied that she had ever heard of Mr. West. She also testified that she daily visited the UST removal site and saw no evidence of sand-filled tanks. Ms. Alarcon also testified that to the best of her knowledge there were no changes ordered on this contract. Petitioner's Ex. 30; Tr. 305-308, 311-312, and 320.

The telephone log showing that Mr. West repeatedly called Ms. Alarcon's number suggests that Ms. Alarcon, while testifying to the best of her recollection, has simply forgotten the conversations. That also, at least to some extent, throws into question her testimony that there was no sand at the UST site. However, Ms. Alarcon generally appeared to the ALJ as a truthful witness. But even assuming that Ms. Alarcon has completely failed to remember all the details to which Mr. West testified would not lead the ALJ to find that TXDOT ordered additional work.

It is far from clear that Mr. Avalos had the authority to order additional work on behalf of TXDOT. TXDOT Director of Purchasing Silvio Romero testified as to the detailed bidding process that TXDOT must go through under state law to order services, including a prohibition on TXDOT contracting for anything over \$15,000 without going through the General Services Commission and a requirement that any procurement over \$25,000 be made through bidding after notice to the centralized bid list. Tr. 23-33.

Also, Mr. West's version of Mr. Avalos' statements is not completely convincing. The ALJ admitted them as admissions of a party opponent, *i.e.* admissions of TXDOT through its agent. But Mr. Avalos did not testify, and no other evidence corroborated Mr. West's quotes of Mr. Avalos.

Even putting all the above problems aside, however, Mr. West never testified that Mr. Avalos ordered additional work. In fact, Mr. West quoted Avalos as denying that any change order for

additional work was appropriate. Instead, according to Mr. West, Avalos interpreted the contract and concluded it was a “unit price” contract. That, like all other evidence of the parties’ intent that is not contained in the written contract, can only be considered if the contract is ambiguous as to price.

Beyond Mr. West’s testimony concerning Avalos, there is no other evidence purporting to show that TXDOT ordered additional work or agreed to pay for it. The ALJ concludes that TXDOT did not order additional work from Eagle beyond that provided for in their written contract.

D. Is the Contract Price Clear from the Written Contract?

If a written contract is so worded that it can be given a certain or definite legal meaning or interpretation, it is not ambiguous and parol evidence is not admissible to render a contract ambiguous, which, on its face, is capable of being given a definite legal meaning. *Lewis v. East Texas Finance Co.*, 136 Tex. 149, 146 S.W.2d 977, 980 (1941). A contract is ambiguous only when the application of pertinent rules of interpretation to the face of the instrument leaves it genuinely uncertain which one of two or more meanings is the proper meaning. *C.I.T. Credit Corp. v. Daniel*, 150 Tex. 513, 243 S.W.2d 154, 157 (1951).

TXDOT argues that the full contract price, \$6,727.50, is clearly stated in the contract. Eagle argues that the written contract is ambiguous, since the contract also contained unit prices for the tasks to be performed, the number of tasks were approximations, and the contract did not clearly state that Eagle was to be paid a fixed price. Given that, Eagle argues that other evidence must be looked at to determine the contract price.

Erring on the side of caution and to give Eagle a full opportunity to make its case, the ALJ preliminarily found at the hearing that the contract price was ambiguous. The ALJ has reconsidered the contract after the hearing, however, and does not find that it is sufficiently ambiguous to allow parol evidence to be considered in interpreting it. Instead, he finds that it is a fixed price contract for \$6,727.50, which TXDOT has paid.

None of the contract documents states that it is a “fixed price contract,” or a contract for a “price not to exceed.” The PO does state that the “P.O. Total” is \$6,727.50, hence TXDOT’s reliance on that as the fixed price. State’s Ex. 26, p. 7.

Eagle argues that other parts of the contract could be interpreted to indicate that it is a unit-price contract. The PO lists each task, the quantity of units of each task that Eagle was to perform, a unit cost for each task unit, and the extended cost for each task; *i.e.* the number of unit tasks times the unit cost. Additionally, Eagle’s bid schedule, which is also part of the contract, repeats the unit quantities of each task that TXDOT had listed in the bid invitation, but labels each as an “Approx. Quantity.” Even TXDOT concedes that the quantity of units needed to complete the task was an early estimate of what would be required. However, neither these nor any other contract provision indicates that TXDOT would pay Eagle more than \$6,727.50 if Eagle performed a greater number of units than stated in the contract.

Granted, the contract is somewhat ambiguous about the exact quantity of each task to be performed. For example, one of the tasks that Eagle agreed to perform was “Excavation of tankhold, pipe chase and dispenser area backfill material and stockpile on site” and the contract states that 60 cubic yards would be excavated. But the contract specifications required Eagle to conduct that excavation in accordance with TNRCC, US EPA, and other requirements. State’s Ex. 1, p. 1-9, 2-9, 6-9, and 8-9. Eagle and TXDOT agree that those specifications required Eagle to excavate more and perform more of the other tasks than the numbers mentioned in the contract if necessary to comply with the environmental and other requirements. Nothing in the contract, however, said that TXDOT would pay Eagle more if it had to perform more work.

One specification stated that Eagle would, “Bear all costs of unauthorized excavation.” State’s Ex. 1, p. 4-9. The parties differ on what this means. To TXDOT it means that Eagle is not entitled to be paid for more work unless that work was authorized by TXDOT, which authorization TXDOT argues never occurred. Eagle more reasonably argues that the extra excavation that the TNRCC rules required was also authorized. But Eagle then argues that it is entitled to be paid more for that extra authorized work. The ALJ disagrees. The contract’s bear-all-costs-of-unauthorized-excavation clause does not say that Eagle would be paid more on a unit, or any other, basis if more than 60 cubic yards had to be excavated or more of other tasks were required. Neither does any other contract provision.

The listing of units and unit costs in the contract makes the contract somewhat confusing. But absent a more specific provision, that unit-cost language cannot plausibly be interpreted as a TXDOT promise to pay Eagle more for each additional cubic yard it excavated and thereafter filled. Since a unit-cost interpretation is not plausible, the ALJ concludes that under the contract TXDOT promised to pay Eagle only \$6,727.50 for the UST removal and remediation. Since there is no ambiguity as to the contract price, the ALJ may not consider outside-the-contract evidence of the parties’ intent as to the contract price.

E. Summary

The ALJ concludes that TXDOT has paid Eagle the contract price of \$6,727.50 and that Eagle’s claim should be denied for lack of merit.

V. FINDINGS OF FACT

1. On February 7, 2000, Eagle filed a petition seeking \$61,317.50, plus attorneys fees, from TXDOT for work that it alleges it performed for TXDOT under a contract to remove an underground storage tank (UST) near El Paso.
2. TXDOT referred this case to SOAH for contested case hearing on February 14, 2000.

3. A hearing in this matter was convened on February 8, 2001, at the Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Austin, Texas. Notice of the hearing was previously given in Order No. 3, which was issued on June 7, 2000.
4. Elias V. Lorenzana, Jr. and Rodney D. Parrott, Office of the Attorney General, appeared on behalf of TXDOT. Russell D. Thomason and Marc W. Walraven appeared on behalf of Eagle.
5. William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH, presided.
6. The hearing concluded on February 8, and the record closed on March 9, 2001, after closing arguments and replies was filed.
7. An UST is any one or a combination of underground tanks and any connecting underground pipes used to contain an accumulation of gasoline or other regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground. The Texas Natural Resource Conservation Commission (TNRCC) regulates the use and removal of USTs.⁴
8. TXDOT sought to have such an UST near El Paso removed and the site remediated in accordance with TNRCC requirements and other standards.
9. TXDOT issued an invitation to bid on that job, and Eagle submitted a bid to perform the specified work. TXDOT accepted Eagle's bid when it issued a purchase order (PO). Together Eagle's bid and TXDOT's purchase order constituted the parties' written contract for the El Paso UST removal (the contract).
10. The contract specified several tasks that Eagle was obligated to perform that were necessary to remove the UST and remediate the site. The contract also specified the number of each of those tasks that Eagle would perform. However, the contract also specified that the removal and remediation would be done in accordance with TNRCC and other applicable legal standards.
11. Eagle performed more of several of the tasks than was stated in the PO.
12. After completing work under the contract, Eagle sent TXDOT an invoice for \$68,045.00. However, TXDOT only paid \$6,727.50.
13. TXDOT did not order additional work from Eagle beyond that provided for in their written contract.

⁴ Texas Water Code § 26.342 (16) (West 2000).

14. The written contract is not a single document. It includes Eagle's offer, a bid schedule that includes the bid specifications that TXDOT had earlier included in the invitation to bid, and TXDOT's acceptance, a purchase order (PO).
15. None of these documents state that it is a "fixed price contract," or a contract for a "price not to exceed."
16. The PO states that the "P.O. Total" is \$6,727.50.
17. The PO lists each task, the quantity of units of each task that Eagle was to perform, a unit cost for each task unit, and the extended cost for each task; *i.e.* the number of unit tasks times the unit cost.
18. Additionally, Eagle's bid schedule, which is also part of the contract, repeats the unit quantities of each task that TXDOT had listed in the bid invitation, but labels each as an "Approx. Quantity."
19. The contract specifications required Eagle to remove the UST and remediate the site in accordance with TNRCC, US EPA, and other requirements.
20. These specifications required Eagle to perform more task units than mentioned in the contract if necessary to comply with the environmental and other requirements.
21. Nothing in the contract, however, said that TXDOT would pay Eagle more if it had to perform more than the quantities of task units stated in the contract.

VI. CONCLUSIONS OF LAW

1. Respondent was provided with proper notice of the hearing pursuant to TEX. GOV'T CODE ANN. (Gov't Code) §§ 2001.051 - 2001.052 (West 2000) and 1 TEX. ADMIN CODE (TAC) § 155.27.
2. Gov't Code § 2260.051 (a) provides:

A contractor may make a claim against a unit of state government for breach of a contract between the unit of state government and the contractor. . . .
3. If a contractor is not satisfied with the results of negotiation with a unit of state government, the contractor may request a hearing on the claim before a SOAH ALJ. Gov't Code § 2260.102.

4. Under Gov't Code § 2260.104, the ALJ has jurisdiction to consider and render a decision on Eagle's claim.
5. Gov't Code § 2260.003 limits the claims that the contractor can bring. It states:
 - (a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed the balance due and owing on the contract price, including orders for additional work.
* * *
 - (c) Any award of damages under this chapter may not include:
 - (1) consequential or similar damages;
* * *
 - (3) any damages based on an unjust enrichment theory;
 - (4) attorney's fees; or
* * *
6. Eagle's quantum meruit, misrepresentation, and attorney's fees claims should be dismissed.
7. If a written contract is so worded that it can be given a certain or definite legal meaning or interpretation, it is not ambiguous and parol evidence is not admissible to render a contract ambiguous, which, on its face, is capable of being given a definite legal meaning. *Lewis v. East Texas Finance Co.*, 136 Tex . 149, 146 S.W.2d 977, 980 (Tex. 1941).
8. A contract is ambiguous only when the application of pertinent rules of interpretation to the face of the instrument leaves it genuinely uncertain which one of two or more meanings is the proper meaning. *C.I.T. Credit Corp. v. Daniel*, 150 Tex. 513, 243 S.W.2d 154, 157 (Tex. 1951).
9. Based on the above Findings of Fact and Conclusions of Law, TXDOT has paid Eagle the full contract price of \$6,727.50.

ORDER

IT IS, THEREFORE, ORDERED, that Eagle's claim should be denied for lack of merit.

Signed April 3,2001.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**