

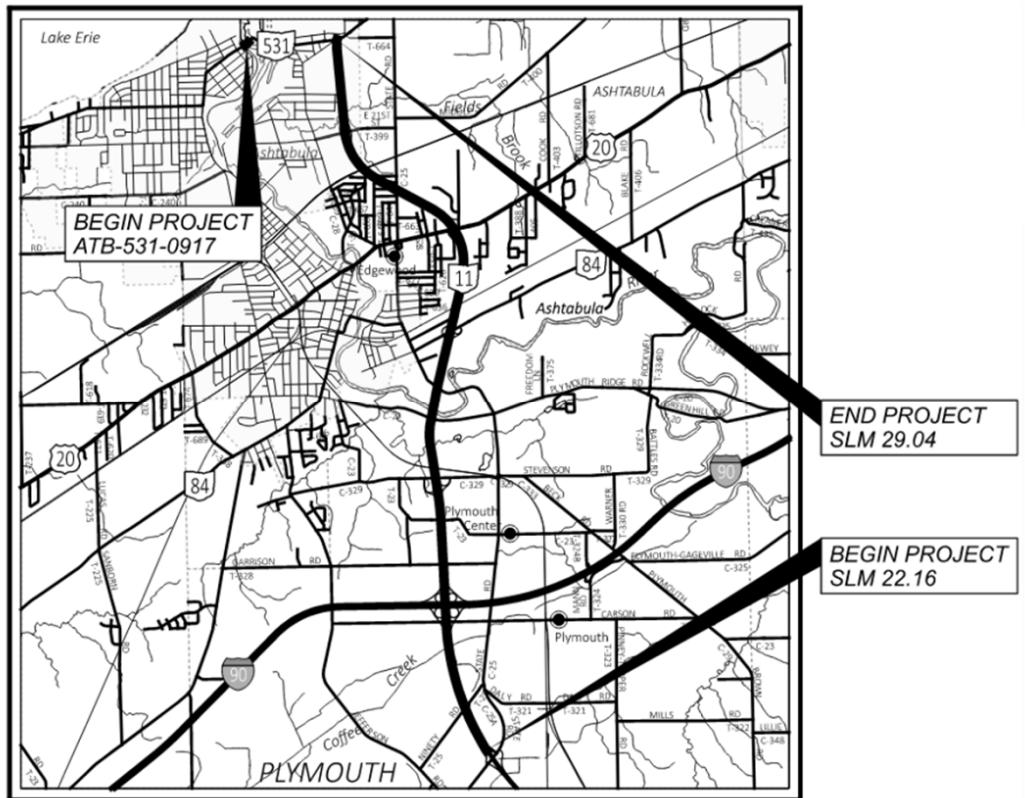


**Department of
Transportation**
transportation.ohio.gov

ODOT D04 STEP 3 RESPONSE DISPUTE 04-230484-01

PROJECT OVERVIEW

- This project resurfaced SR-11 from SLM 22.16 to SLM 29.04 in Ashtabula County. The project also included minor work to eighteen structures and one culvert on SR-11 and one structure on SR-531.



ITEMS INCLUDED IN DISPUTE

- Proposal Note 420 Dated 1/20/2023
- 2019 ODOT Construction and Material Specifications
 - Supplemental Specification 800 Dated 4/21/2023

DISPUTE OVERVIEW

- Contractor Karvo
 - Deteriorated pavement subgrade and lack of pavement repairs contributed to poor rideability
 - PN 420 should not apply
- ODOT
 - Pavement subgrade similar to projects in area and repairs made as needed
 - PN 420 applies as bid

RELEVANT TIMELINE

- **May 14th, 2024**, On-Site: Mainline paving begins.
- **May 22nd, 2024**, Email: Karvo provides rideability reports for SR-11 northbound passing lane and requests that PN 420 be waived due to deteriorated subgrade.
- **June 3rd, 2024**, Meeting: On-site discussion between ODOT and Karvo about PN 420.
- **June 7th, 2024**, Email: Karvo states achieving requirements of PN 420 commercially impractical. Requests immediate Step 2 if ODOT not willing to waive PN 420. Provides possible mitigation of one diamond grinding shift northbound, and one diamond grinding shift southbound.
- **June 10th, 2024**, On-Site: ODOT and Karvo meet to discuss PN 420, considers the meeting to be Step 1 meeting
- **June 10th, 2024**, Email: ODOT states that the Department's Step 1 decision is that PN 420 applies as bid. ODOT references Karvo's 6/7/2024 email to elevate to Step 2 and formally requests elevation to Step 2. Cost of issue not yet known.
- **July 27th, 2024**, On-Site: Mainline paving completes.
- **July 29th, 2024**, On-Site: Ramp paving begins.
- **August 12th, 2024**, On-Site: Ramp paving completes. All pavement complete.
- **August 22nd, 2024**, Email: Karvo provides partial PN 420 profiler data.
- **September 18th, 2024**, Email: ODOT provides review of PN 420 with multiple comments that must be resolved by Karvo.
- **September 20th, 2024**, Email: ODOT states that the PN 420 submittal package is incomplete and is required for determination of a dollar cost. Concerns about the amount of time that it is taking, and that the project completion date is November 1st, 2024. No contract requirements have been waived and directs Karvo to proceed with all PN 420 related work per 108.02.
- **December 17th, 2024**, Email: ODOT provides C-85 Final Inspection with Punchlist. States that PN 420 work must be done by revised completion date of April 30th, 2025.
- **March 24th, 2025**, Email: ODOT notes receiving PN 420 files via USB stick.
- **April 24th, 2025**, On-Site: Subcontractors finish PN 420 corrective grinding.
- **June 4th, 2025**, Email: ODOT provided review of the post-grind data and calculated a disincentive of -\$435,731.46.
- **June 18th, 2025**, Email: Karvo requests formal escalation to Step 2.



RELEVANT TIMELINE – FIRST EMAIL NOTIFICATION

From: Joshua Fenstermaker <Joshua.Fenstermaker@karvocompanies.com>
Sent: Wednesday, May 22, 2024 12:47 PM
To: Dell, Brian <Brian.Dell@dot.ohio.gov>
Cc: Yianni Karvounides <Yianni.Karvounides@karvocompanies.com>
Subject: Rt 11 ODOT 230484

Brian,

We received the attached rideability reports. As predicted, there are issues with achieving the specified targets due to the undisclosed deteriorated nature of the subgrade, in addition to the design-related issues that were raised as part of our Step 1 process. We are requesting that you waive remediation for any alleged “deficiencies” reflected in this report. If not, we will be separately track and cost-code our costs associated with this remediation if directed to proceed with them and seek them as part of on-going dispute resolution proceedings. We raised this issue with you at the outset of the Project upon discovering the degraded subgrade condition and were directed to nevertheless proceed. As you already know, we have achieved excellent compaction results and this rideability analysis is further indication that this is not a Karvo performance issue, but the result of the subgrade and design problems that we had previously warned about.

Please let us know your decision as soon as possible, and I am writing without waiver and a full reservation of rights.

I appreciate your prompt attention to this request before further costs are incurred.

Thank you,



Joshua Fenstermaker
Superintendent
Karvo Companies, Inc.
4524 Hudson Drive
Stow, Ohio 44224



RELEVANT TIMELINE – JUNE 10TH, 2024

RE: PN 420



Dell, Brian
To: Yianni Karvounides
Cc: Joshua Fenstermaker; Dutt, Jonathan

ⓘ You forwarded this message on 10/16/2024 11:21 AM.



Mon 6/10/2024 12:40 PM

Yianni,

Following today's on-site meeting, the Department's written Step 1 decision is that PN 420 applies as bid, with some mitigation efforts after further field review.

You mentioned in your June 7th, 2024, email that if PN 420 was not waived, then Karvo Companies would like the dispute elevated to Step 2.

Jonathan – please consider this email notification of Karvo Companies' request for a Step 2 meeting.

Respectfully,
Brian Dell, Jr., P.E.
Project Engineer
ODOT District 4, Construction
2088 S. Arlington Rd.
Akron, OH 44306
330.786.6935



Department of
Transportation

RELEVANT TIMELINE – SEPTEMBER 20TH, 2024

FW: 23-0484 84625 ATB-11-22.16 Disputes



Dudit, Jonathan

To Yianni Karvounides (yianni.karvounides@karvocompanies.com)
Cc Dell, Brian; Josh Fenstermaker; Simpkins, Michael

Reply Reply All Forward ...

Fri 9/20/2024 12:07 PM

Yianni,

From speaking with Brian this week I understand that the 420 submittal package that he received is insufficient and has been returned for revisions prior to completing the review. The full data requirements of PN420 are needed to determine a dollar cost, so we can consider the potential impacts and begin the dispute process.

We have some concerns with the amount of time it is taking to get through this process and it should be noted that the completion date for this project is 11/01/2024. While we have a potentially ongoing dispute, no Contract requirements have been waived at this time. It is imperative that the project proceeds with all Contract work including PN 420 submittals, potentially grinding or remove and replace if necessary, and especially the installation of all safety items including striping and RPM's prior to the completion date.

Per 108.02 for all work potentially under dispute:

The Engineer and Contractor shall maintain records of labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Such records will begin when early notice is received by the Engineer. Tracking such information is not an acknowledgement that the Department accepts responsibility for payment for this disputed work.



RELEVANT TIMELINE – MARCH 13TH, 2025

From: Brian.Dell@dot.ohio.gov <Brian.Dell@dot.ohio.gov>

Sent: Thursday, March 13, 2025 10:42 AM

To: John Jacobs <john.jacobs@karvocompanies.com>

Cc: Jonathan.Dudt@dot.ohio.gov <Jonathan.Dudt@dot.ohio.gov>; Yianni Karvounides <Yianni.Karvounides@karvocompanies.com>

Subject: Re: 230484 Final Inspection - Punchlist Work

John,

As of today, I have not received a complete submittal as required per Supplement 1110 (attached) . The requirements for the submittal are detailed in 1110.06. Since this information is part of a dispute, it is important that we have one complete submittal for review.

This work is also included on the C-85 Final Inspection, with a required completion date of April 30th, 2025. If this work is not completed by the revised completion date, liquidated damages will be assessed per 108.07.

Please let me know if you have any questions.



RELEVANT TIMELINE – APRIL 17TH, 2025

RE: 230484 PN 420 Submittal Review



Dell, Brian

To 'John Jacobs'

Cc Dudit, Jonathan; 'Yianni Karvounides'

[\(i\) Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.](#)



Thu 4/17/2025 2:02 PM

John,

Following up with our conversation earlier – please let ACM know to collect post-grind profile data as soon as possible. By doing this, it is the best representation of the roadway following the corrective work.

Let me know if you have any questions.



RELEVANT TIMELINE – JUNE 4TH, 2025

From: Brian.Dell@dot.ohio.gov <Brian.Dell@dot.ohio.gov>
Sent: Wednesday, June 4, 2025 9:44 AM
To: Yianni Karvounides <yianni.karvounides@karvocompanies.com>
Cc: Jonathan.Dudt@dot.ohio.gov <Jonathan.Dudt@dot.ohio.gov>; John Jacobs <John.Jacobs@karvocompanies.com>
Subject: 230484 PN 420 Post Grind Analysis

Yianni,

The Department has reviewed the post grind data per PN 420 dated 1/20/2023 – please see attachments.

A total disincentive of -\$435,731.46 was calculated using these attachments and is summarized in "230484 PN 420 Summary.xlsx". Please note that identified areas of remove and replace were taken at maximum disincentive since remove and replace was not performed; all other disincentives were calculated per the Proposal Note.

Please let me know if you have any questions.



DEPARTMENT'S POSITION

- PN 420 was present at the time of bid and is contractually part of the project, and has been used over 1,000 times since 2015 including the following projects on SR-11 within the vicinity of project 230484
 - 150426 ATB83037 (2 lifts of asphalt)
 - ATB-SR 11-08.04
 - 180192 ATB88933 (1 lift of asphalt)
 - ATB-SR 11/SR 45-13.94/24.07
 - 200579 TRU83046 (1 lift of asphalt)
 - TRU-SR 11-19.02
 - Prime Contractor was Karvo
 - 210293 ATB91877 (1 lift of asphalt)
 - ATB-SR 11-00.00



DEPARTMENT'S POSITION

- Per 102.05, the Contractor is required to perform a site investigation before submitting a bid. None of the contractors provided any prebid questions about surface pavement condition because of deteriorated subgrade or that alleged deteriorated subgrade would affect PN 420
- Karvo did not bring the issue of pavement condition to attention at the preconstruction meeting held on December 18th, 2023
- Karvo is a paving contractor who is familiar with PN 420 and its requirements
- Density requirements were met, FHWA Technical Brief FHWA-HIF-21-022
 - Change Order 0002
 - Percent Within Limits = \$120,506.15 Bonus
 - Joint Density = \$103,295.40 Bonus



DEPARTMENT'S POSITION – CONDITION OF MILLED SURFACE



DEPARTMENT'S POSITION – CONDITION OF MILLED SURFACE



DEPARTMENT'S POSITION – CONDITION OF MILLED SURFACE



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DEPARTMENT'S POSITION – CONDITION OF MILLED SURFACE



DEPARTMENT'S POSITION – CONDITION OF MILLED SURFACE



DEPARTMENT'S POSITION – CONDITION OF MILLED SURFACE



DEPARTMENT'S POSITION

- Pavement repairs were performed per plan notes and specifications at the direction of the Project Engineer

Cont Alt Id 230484

Cont Line Nbr	Proj Nbr	Proj Line Nbr	Item	Description	Unit Price	Unit	Bid Qty	Bid Amt	Actual Qty	Actual Amt	Percent
0005	ATB84625-1	0005	203E10000	EXCAVATION	\$40.00	CY	250.00	\$10,000.00	0.00	\$0.00	0.00%
0025	ATB84625-1	0025	251E01000	PRTL DEPTH PVMT REPAIR (441)	\$60.00	SY	2000.00	\$120,000.00	5,796.15	\$347,769.00	289.81%
0028	ATB84625-1	0028	255E10010	FULL DTPH RMVL & REPL, CL QC1	\$125.00	SY	1500.00	\$187,500.00	751.04	\$93,880.00	50.07%
0300	ATB84625-1	0256	251E01000	PRTL DEPTH PVMT REPAIR (441) - (TRANSVERSE)	\$105.00	SY	2000.00	\$210,000.00	649.00	\$68,145.00	32.45%
						Total		\$527,500.00	Total	\$509,794.00	
							Percent Performed	96.64%			



DEPARTMENT'S POSITION

ITEM 255 - FULL DEPTH REMOVAL AND RIGID REPLACEMENT; CLASS QC1

A QUANTITY OF THIS ITEM SHALL BE PROVIDED FOR USE AS DIRECTED BY THE ENGINEER. THIS ITEM SHALL CONSIST OF CUTTING AND REMOVING DETERIORATED PAVEMENT FULL DEPTH AND PLACING 12" +/- 0.5" OF CLASS QC1 CONCRETE.

**IT IS NOT THE INTENT TO REPAIR EVERY DETERIORATED AREA
WITHIN THE PROJECT.**

THE ENGINEER SHALL DETERMINE WHICH AREAS ARE TO BE REPAIRED. PAYMENT SHALL BE BASED ON THE ACTUAL NUMBER OF SQUARE YARDS OF PAVEMENT REMOVED AND REPLACED TO THE LIMITS DESIGNATED BY THE ENGINEER. THE REPAIR LOCATIONS MUST BE DOCUMENTED FOR FUTURE REFERENCE. EXISTING ASPHALT PATCHES SHALL ALSO BE CONSIDERED AREAS THAT NEED REPAIRED.

THE FOLLOWING ESTIMATED QUANTITIES HAVE BEEN CARRIED TO THE GENERAL SUMMARY:

255, FULL DEPTH REMOVAL AND RIGID REPLACEMENT,
CLASS QC1, 1,500 SY

ITEM 255 - FULL DEPTH PAVEMENT SAWING, 9,000 FT

ITEM 251 - PARTIAL DEPTH PAVEMENT REPAIR (441) (LONGITUDINAL)

A QUANTITY OF THIS ITEM SHALL BE PROVIDED FOR USE AS DIRECTED BY THE ENGINEER TO REPAIR PAVEMENT IN THE LONGITUDINAL DIRECTION. THE ITEM SHALL CONSIST OF REPAIRING EXISTING LOCATIONS EXHIBITING SURFACE DETERIORATION AND PLACING ITEM 441 ASPHALT CONCRETE, TYPE 2. THE ASPHALT CONCRETE SHALL BE COMPACTED WITH A TYPE I PNEUMATIC TIRE ROLLER AND A STEEL WHEEL ROLLER AS PER 401.13. **IT IS NOT THE INTENT TO REPAIR EVERY DETERIORATED AREA WITHIN THE PROJECT.**

PAVEMENT REPAIRS WILL BE MARKED IN THE FIELD BY THE PROJECT ENGINEER ACCORDING TO CMS 251.02. SHOULD THE CONTRACTOR ELECT TO REPAIR OUTSIDE OF THE MARKED AREAS THE CONTRACTOR SHALL NOT BE PAID FOR THE ADDITIONAL AREA. MINIMUM WIDTH IS 2'. UNLESS OTHERWISE DIRECTED BY THE ENGINEER, THIS ITEM SHALL BE PERFORMED AFTER THE COMPLETION OF MAINLINE PAVEMENT PLANING AND PRIOR TO THE PLACEMENT OF ASPHALT ON THE MILLED SURFACE. PAYMENT SHALL BE BASED ON THE ACTUAL NUMBER OF SQUARE YARDS OF PAVEMENT REPAIR.

THE FOLLOWING ESTIMATED QUANTITY HAS BEEN CARRIED TO THE GENERAL SUMMARY:
251, PARTIAL DEPTH PAVEMENT REPAIR (441) (LONGITUDINAL), 2000 SQ. YD.

ITEM 251 - PARTIAL DEPTH PAVEMENT REPAIR (441) (TRANSVERSE)

A QUANTITY OF THIS ITEM SHALL BE PROVIDED FOR USE AS DIRECTED BY THE ENGINEER TO REPAIR PAVEMENT IN THE TRANSVERSE DIRECTION. THE ITEM SHALL CONSIST OF REPAIRING EXISTING LOCATIONS EXHIBITING SURFACE DETERIORATION AND PLACING ITEM 441 ASPHALT CONCRETE, TYPE 2. THE ASPHALT CONCRETE SHALL BE COMPACTED WITH A TYPE I PNEUMATIC TIRE ROLLER AND A STEEL WHEEL ROLLER AS PER 401.13. **IT IS NOT THE INTENT TO REPAIR EVERY DETERIORATED AREA WITHIN THE PROJECT.**

PAVEMENT REPAIRS WILL BE MARKED IN THE FIELD BY THE PROJECT ENGINEER ACCORDING TO CMS 251.02. SHOULD THE CONTRACTOR ELECT TO REPAIR OUTSIDE OF THE MARKED AREAS THE CONTRACTOR SHALL NOT BE PAID FOR THE ADDITIONAL AREA. MINIMUM WIDTH IS 2'. UNLESS OTHERWISE DIRECTED BY THE ENGINEER, THIS ITEM SHALL BE PERFORMED AFTER THE COMPLETION OF MAINLINE PAVEMENT PLANING AND PRIOR TO THE PLACEMENT OF ASPHALT ON THE MILLED SURFACE. PAYMENT SHALL BE BASED ON THE ACTUAL NUMBER OF SQUARE YARDS OF PAVEMENT REPAIR.

THE FOLLOWING ESTIMATED QUANTITY HAS BEEN CARRIED TO THE GENERAL SUMMARY:
251, PARTIAL DEPTH PAVEMENT REPAIR (441) (TRANSVERSE), 2000 SQ. YD.



REPAIRS PERFORMED – PARTIAL DEPTH



REPAIRS PERFORMED – FULL DEPTH



REPAIRS PERFORMED – FULL DEPTH



REPAIRS PERFORMED – REFLECTION THROUGH SURFACE



FHWA TECHNICAL BRIEF (FHWA-HIF-21-022)

Obstacles to Achieving Higher In-Place Density

The following are seven primary obstacles to achieving higher in-place density observed during construction of the experimental sections throughout the three phases of the demonstration project. Other obstacles not observed during the demonstration project could arise. The primary obstacles encountered were:

- Stiff Mixture.
- Tender Mixture.
- Aggregate Degradation.
- Weak Subgrade and/or Base.
- Break Point Density Control.
- Smoothness.
- “Roll Until Meets” Philosophy.

- States that when trying to achieve specified densities, weak subgrade and/or base can be an issue preventing higher numbers from being achieved
 - Project had high density results
- Over compaction could lead to smoothness issues
 - Project noted “shadowing” of pavement repairs, general smoothness issues



DEPARTMENT'S POSITION

- Proposal Note 420 and the condition of the existing roadway were both bid conditions
- Density was achieved, with bonus paid for Percent Within Limits and joint requirements
- Multiple attempts were made by the Department to receive the required information so that the smoothness grinding could be performed in construction year 2024 as this would potentially yield better results for the contractor, but was not completed until mid-April 2025
- It is the Department's opinion that Karvo should be assessed the total disincentive amount, and compensation for the smoothness grinding operation is incidental to the contract



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THANK YOU