# British Precast Drainage Association

Publications from the British Precast Drainage Association (BPDA):

BPDA was formed in 2017 from the integration of the Concrete Pipeline Systems Association (CPSA) and the Box Culvert Association (BCA).

Information published by both CPSA and BCA will be rebranded and replaced as BPDA in due course.  New material will be branded BPDA.

All CPSA and BCA web traffic will be redirected to the new BPDA web site at www.precastdrainage.co.uk

You Should Know

American Concrete Pipe Association

A Message from the American Concrete Pipe Association Bulletin No. 139

# Defending the Right to Choose Concrete Pipe: ADS vs. Portland

Every public works engineer knows the pressure vendors can exert on a city to approve its products for public works. For more than 15 years, Advanced Drainage Systems ("ADS"), a manufacturer of corrugated high density polyethylene pipe ("HDPE"), pressured the City of Portland, Oregon to approve its pipe for city projects. Throughout that time, the city repeatedly defended its choice of reinforced concrete pipe, citing concerns about the structural integrity and lifespan of HDPE as compared to concrete. In 2004, ADS took an unprecedented step, and sued the city in order to force the approval of HDPE. Again unbowed, the City fought back, and won, successfully defending its engineers' resistance to pressure from the plastic pipe industry to use HDPE rather than concrete pipe. Here's the story.

Portland's Bureau of Environmental Services ("BES") is in charge of writing specifications for city projects. The BES, staffed by civil engineers and others experienced in underground construction, recommends specifications to the City Council for use in city projects. BES' recommendations are voted on by the City Council, and if approved, become city policy.

Since 1989, ADS has, through a series of submittals, discussions and reviews, pushed Portland to include HDPE pipe as an approved product for storm sewer and culvert applications in the City's Standard Specifications. Since 1989, BES has declined to approve HDPE, due to concerns about HDPE's resin compliance, development of internal stresses, and additional and costly installation procedures.

In May 2004, ADS actually filed a lawsuit against the city, asking a trial judge to review the city's actions and to order Portland to approve its pipe. ADS claimed that it had been deprived of opportunities to sell its products on City projects, and that the city's actions stigmatized ADS' pipe throughout the country, perhaps preventing other municipalities from using HDPE. ADS hoped to have the court make a judicial ruling that HDPE pipe was as good as concrete pipe, and ordered the city to change its specifications so as to include HDPE pipe.

The city, which has long used reinforced concrete pipe in its public projects, vigorously defended its actions. In depositions taken by ADS' lawyers, city officials noted the following concerns about HDPE:

- its resin is not stress rated, perhaps leading to cracking and buckling over time;
- the corrugations of the pipe may not be resistant to earth pressures over a period of time;

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- the thinness of the pipe walls may cause it to be susceptible to punctures during installation;
- additional labor, materials and equipment required at installation make HDPE more costly than reinforced concrete pipe;
- unlike concrete, HDPE would likely not meet the city's 100-year design service life expectation.

Despite the relentless pressure on the city to approve its product, ADS' chief engineer Jim Goddard, conceded that ADS' current pipe is radically different than that made several years ago – making it an entirely different product than that used in the late '80's. According to Goddard, ADS has structurally changed its pipe walls and joints several times over the last 15 years, and that the composition of its resin was changed as recently as six years ago.

After more than a year of fact-finding and legal wrangling, in April of 2005 the city moved to have the case thrown out via summary judgment. In its motion, the city requested that the Court not intrude upon Portland's decision-making process, because that process was legislative, rather than judicial. If the judge agreed that the city's actions were legislative, then the only means by which ADS could express its dissatisfaction would be at the polling place. If the court were to find that the determination of what products to use were a judicial function, then the court could review the city's actions, and possibly provide ADS its requested relief.

Blatantly ridiculing ADS' argument that it should have been chosen for the simple fact that it might cost less, the City pointed out to the Court that Portland's "Least Cost" statute "does not require the City to buy the cheapest available product. If it did, storm culverts would be made out of corrugated cardboard, because it costs less than ADS's pipe. Similarly, the County is not required to install pine paneling in the courtrooms of its judges instead of oak simply because pine costs less than oak."

The court upheld Portland's right to make its own decisions, recognizing that Portland has a duty to its citizens to choose quality products for its public works. Yet despite a judgment in favor of the city, ADS still did not quit. The case was appealed in June, 2005 to Oregon's Court of Appeals, and is currently in a mandatory mediation program.

This is an important lawsuit, if only for the fact that it highlights the extreme measures some pipe manufacturers will take in order to coerce approval of their products. We all know that the volume of projects in large cities can be enticing. By not bowing to ADS' pressure for more than 15 years, Portland defended its right to make its own choices, based on its own analysis. Cities must be allowed to decide for themselves which pipe should be approved for public projects, taking into account structural integrity, the overall cost of the product over the project's design life, and whether the pipe in question has stood the test of time, without bowing to corporate pressure. We're pleased that Portland so ably defended its right to choose, and that its choice is reinforced concrete pipe.

 