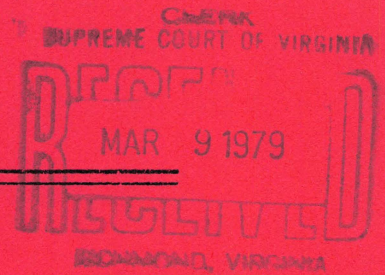


220VA661



IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 781597

SOLITE CORPORATION,

Appellant,

v.

COUNTY OF KING GEORGE, VIRGINIA,

Appellee.

APPENDIX

Carle E. Davis
Joseph C. Wool, Jr.

McGuire, Woods & Battle
1400 Ross Building
Richmond, Virginia 23219

Counsel for Appellant

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V I R G I N I A :

IN THE CIRCUIT COURT OF THE COUNTY OF KING GEORGE

SOLITE CORPORATION, a Virginia
corporation,

Applicant,

v.

COUNTY OF KING GEORGE, VIRGINIA,

Defendant.

APPLICATION FOR CORRECTION OF
ERRONEOUS TAX ASSESSMENT

Comes now the Applicant, Solite Corporation (Solite), by
counsel, pursuant to §58-1145 of the Code of Virginia, and on the
following grounds applies for relief from erroneous county tax
assessments:

(1) Within the boundaries of the County of King George, Solite
engages in the manufacture of the sand and gravel into various products
utilized principally in construction. In the course of such manufacturing
Solite extracts sand and gravel from real estate.

(2) Under the alleged authority of §1.27 of its Business, Professional
and Occupational Licensing Tax, the County of King George has assessed
license tax against Solite with respect to such activity within the County.

(3) The license taxes paid by Solite for 1973, 1974 and 1975 are
as follows:

<u>Year</u>	<u>Amount</u>	<u>Date of Payment</u>
1973	\$1,941.61	September 26, 1973
1974	6,699.06	May 22, 1974
1975	6,125.30	May 16, 1975

(4) The County of King George erroneously assessed license tax against Solite.

WHEREFORE, Solite moves the court as follows:

(a) To declare that the license tax assessments of the County of King George against Solite for 1973, 1974 and 1975 were, in whole or in part, erroneous;

(b) To order the County of King George to refund to Solite \$1,941.61, \$6,699.60 and \$6,125.30 with respect to the years 1973, 1974 and 1975, respectively.

(c) To grant Solite all other relief as its case may require in accordance with law.

SOLITE CORPORATION

By: Carle E. Davis

Of Counsel

Carle E. Davis
Joseph C. Wool, Jr.
McGUIRE, WOODS & BATTLE
1400 Ross Building
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

It is hereby certified that a true and exact copy of the foregoing Application for Correction of Erroneous Tax Assessment was mailed, postage prepaid, to James W. Haley, Jr., Esq., Commonwealth's Attorney, County of King George, 910 Princess Anne Street, Fredericksburg, Virginia on this the 30th day of December, 1975.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF KING GEORGE

SOLITE CORPORATION,

Applicant

V

COUNTY OF KING GEORGE, VIRGINIA,

Respondent

A N S W E R

The County of King George, Virginia, by its Commonwealth's Attorney,
in answer to the Application filed against it herein responds and says:

- (1) That it has no knowledge as to the truth of paragraph numbered one of the Application insofar as Applicants use of the sand and gravel and neither admits nor denies the allegations of paragraph one, calling for strict proof thereof, except that Respondent admits that the Applicant extracts sand and gravel from real estate.
- (2) That it admits the allegations of numbered paragraphs 2 and 3 of the Application.
- (3) That it denies the allegations of numbered paragraph four of the Application.

WHEREFORE, the County of King George, Virginia, respectfully moves the Court to dismiss the Application filed against it herein.

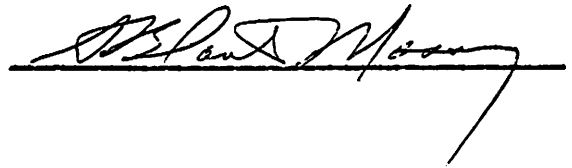
COUNTY OF KING GEORGE, VIRGINIA

By A. Blanton Massey
A. Blanton Massey
Commonwealth's Attorney

A. Blanton Massey
Massey and Fickett
P. O. Box 587
910 Princess Anne Street
King George, Virginia 22401

CERTIFICATE OF MAILING

It is hereby certified that a true and exact copy of the foregoing Answer was mailed, postage prepaid, to Carle E. Davis, 1400 Ross Building, Richmond, Virginia 23219, on this 21st day of January 1976.

A handwritten signature, likely "Robert M. Young", is written over a horizontal line. The signature is in cursive and extends below the line.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF KING GEORGE

SOLITE CORPORATION,

Applicant

v.

COUNTY OF KING GEORGE, VIRGINIA,

Respondent

MEMORANDUM OF OPINION

Solite Corporation (Applicant) filed an application pursuant to §58-1145 of the Code of Virginia for relief from allegedly erroneous county tax assessments by King George County (Respondent) for the years 1973, 1974 and 1975, in the amounts of \$1,941.61, \$6,699.06 and \$6,129.30, respectively. The ground on which the application is based is that Solite is exempt from such assessments because it is engaged in the manufacture of various products for the construction industry and that as a manufacturer it is exempt from such local taxation by virtue of the exemption granted in §58-266.1(4) of the Code of Virginia. The tax in question is sought to be charged and collected by authority of §1.27 of the Business Professional and Occupational Licensing Tax ordinance of King George County, effective September 1, 1973, which reads as follows:

"Every person conducting or engaging in the occupation or business of extracting by whatever means any mineral, stone, rock, bank gravel or sand in the County, shall pay for the privilege an annual license tax of \$1.00 for each \$100.00 of gross receipts of the preceding year. The minimum annual license tax shall be \$25.00. No license shall be required where gross receipts do not exceed \$2,500.00.

King George County's position is that the activity engaged in by Solite is not manufacturing but is the business of "extracting stone, rock, bank gravel or sand, and that there is no prohibition by the general law of Virginia against taxing the extracting of sand or gravel from the earth. Solite, of course, goes further in its description of its processing than merely extracting of gravel on the site in King George. It also, at the same location, "separates", "washes", "crushes" and "blends" sand and gravel. Respondent insists that this operation is not the "manufacturing and selling of goods, wares and merchandise", which is contemplated, and prohibited, by said §58-266.1(4) of the Code.

Solite holds that it is a manufacturing operation where raw material is transformed into a final product which in form, quality and adaptability is entirely different from the raw material. It cites Commonwealth v. Meyer, 180 Va. 466. Meyer was a meat packer and as such, for reasons given hereinbelow, was held to be a manufacturer. Meyer, in addition to slaughtering, transformed pork into hams, bacon, sausage and all of the other well-known pork products by giving to these materials new forms, qualities, properties or combinations.

On the other hand, in a case cited by both the Applicant and the Respondent, Prentice v. City of Richmond, 197 Va. 784, Prentice was engaged in the operation of processing poultry which were killed, plucked, dressed, chilled and packed for shipping. The Supreme Court held that such processing was not manufacturing because there was no change or transformation of the product of poultry by the above steps in processing it. As indicated by the Applicant, that opinion suggests a definition of the degree of change required for manufacturing in terms of "substantial, well-signalized transformation in form, quality and adaptability rendering the material more valuable for man's use". Applicant also cites the case of Henrico v. Commonwealth Sand and Gravel Corporation, an unpublished opinion by Judge Edmund W. Henning, Jr. of the Circuit Court of that county. Judge Henning held that the operation of Commonwealth Sand and Gravel was that of manufacturing. It is significant I believe, that this was a criminal case, charging Commonwealth Sand and Gravel with illegal operation of its plant without first obtaining its county license as required by the ordinance. Of course, the court there had to be certain beyond a reasonable doubt before upholding the defendants' conviction, whereas in the case at bar I believe it is agreed that the burden is upon the Applicant to show that the tax here was erroneously levied and collected.

Accordingly, the primary issue here is whether or not the Applicant, upon its evidence and exhibits, is engaged in manufacturing. What I determine to be a secondary issue will be discussed briefly below. The precise question of whether or not the excavation, washing, crushing and grading of gravel is manufacturing has never been decided by the Supreme Court of Virginia. It has, however, dealt with the same principle with respect to other products, i.e. pork and poultry, as indicated in the cases discussed above.

In Prentice, supra, the court quotes with approval from Anheuser-Busch Brewing Association v. United States, 207 U.S. 556, as follows:

" * * * Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor, and manipulation. But something more is necessary, * * * . There must be transformation; a new and different article must emerge, 'having a distinctive name, character or use * * * ' ".

In Prentice, the Applicant "argues forcefully for a quantitative definition of manufacturing, that is, the same operational undertaking is or is not manufacturing depending on the relative importance of mechanical devices or machinery used in the process of turning out a particular finished product. Hence, size of plant, amount of investment, and production, and degree of mechanization plus the hope of earning a profit are the primary components of appellant's concept of manufacturing." In that

case, the City [of Richmond] argues on the other hand that "Prentice has overstressed the quantitative element in manufacturing and underemphasized the qualitative factor of change or transformation of the original ingredient as required by the Virginia cases. It contends that the central theme of the Virginia decisions is that an industrial or commercial operation is not manufacturing unless in the course of processing there is an essential change or transformation of the raw material into an article or product of substantially different character."

In Meyer, supra, the meat packer was engaged in the business of purchasing hogs and cattle on the hoof, slaughtering and processing them and selling the resulting but changed meat products. In the course of this operation the carcasses of the hogs were carved into hams, shoulders and middlings and what was left was made into sausage, lard, etc. The hams and shoulders were tenderized, salted, smoked and cured and after the expiration of about ten days they were wrapped for sale with their weight noted on the package. The middlings were sliced into breakfast bacon and packaged for sale. Continuing, the court quoted an earlier Virginia case when it said:

"A hog on the hoof put through plaintiffs' packing plant is no longer a hog. It comes out as hams, shoulders, middlings, sausage, souse, chitterlings and other articles of commerce fit for consumption.
* * * *"

The court, therefore, distinguishes between the product in Prentice and the product in Meyer. Although the poultry in

Prentice was killed, cleaned, plucked and carved into smaller pieces, it remained poultry. In the case of the pork, it was changed into different forms and products, each known by a different name, a narrow distinction, one might say, yet a real one, nevertheless.

In the case of gravel or sand, despite the fact that it is washed, crushed and graded by machinery, however complex, it is still gravel when it leaves King George County. No new product is created from raw materials in that county. I am convinced that if we are to rely upon Virginia cases only, the Prentice case is so closely analogous to the one at bar that I must hold that Solite's operations are not manufacturing. I would go further, however, and cite the interesting and well-reasoned North Carolina case of Duke Power Co. v. Clayton, 274 N. C., at Page 513, attached to Respondent's brief, in which the North Carolina court takes up the question of whether or not coal, after having been separated from the rock and slate mined with it and then crushed, remains in its "original or unmanufactured state" within the meaning of the North Carolina statute defining the latter quoted phrase.

"To make an article 'manufactured', the application of the labor must result in a new and different article with a distinctive name, character, or use * * *. Thus, the usual connotation of manufacturing is the making of a new product from raw or partly wrought materials. Carbonize coal in a coke oven and a new and different product, coke, has been manufactured. Crush coal, however, and it

is still merely coal * * * . Removing coal from underground and bringing it to the surface is mining; it does not constitute manufacturing. The first step in processing coal for sale is to separate it from the impurities which, of necessity, have been mined with it. This mechanical process, called cleaning, changes the coal no more than shucking does an ear of corn; the coal itself remains in its original or unmanufactured state - exactly as it came from the ground in chunks, or lumps, of varying sizes. Manufacturing is not involved in the first step. The second step is to reduce the size of the coal by crushing it. Is crushed coal manufactured coal? Neither our research nor that of counsel has produced a decision whether the crushing of coal constitutes manufacturing within the meaning of taxing statutes. Cases involving the crushing and screening of quarried rock, however, are analogous. The majority of jurisdictions which have decided the question hold that quarrying and crushing stone is not manufacturing." (citing numerous cases from various states)

And stating finally:

"We have considered these cases, and they do not persuade us that crushing coal is a manufacturing process as that term is generally understood."

Try as I might, I cannot reach any other conclusion concerning the extracting, washing and grading of gravel. The most well-considered cases that I have studied convince me that Solite's operation fails to bring it within the manufacturing prohibition of the Virginia statute. Plainly, the gravel is "excavated", or "extracted", or "severed", and after its washing, crushing and grading it is still gravel.

I must also agree with the cited opinion of the Attorney General that a county or city which taxes the extracting or excavating of a natural resource such as gravel is not prevented

by implication from levying such a tax merely because §58-266.1:1 chooses to include therein only the business "of severing coal or gases from the earth", and omits mention of gravel or other mineral. At first blush it might appear, as indicated by the Applicant, that limiting such mined resources to coal and gases could imply that a county or city is not authorized to tax the severing of any other mineral or product from the earth. Indeed, as pointed out by Mr. Davis, the General Assembly failed to pass House Bill No. 1890, offered on January 24, 1973, which would have added the authority to tax sand, gravel, stone and other minerals to §58-774. This bill failed of passage. I cannot agree, however, that either of these cited sections are exclusive of limitations upon each other; it was §58-774 which was sought Attorney General in his opinion of April 4, 1969, appended to Respondent's brief, asserts that he is unable to find any provision of the Virginia statute which would prohibit the levying of a license tax upon the process of extracting natural resources. Neither can I. Respondent also cites and appends the opinion of the Attorney General dated June 6, 1974, a somewhat more complete one, touching upon the very same points at issue here. Of course, this court is not bound by these opinions but they are certainly persuasive, and presumably arrived at only after extensive research; and in light of my own research it is difficult for me to disagree with them.

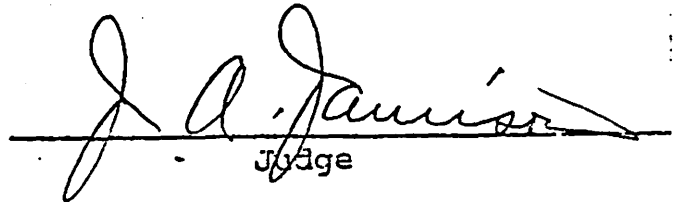
I must, therefore, hold that Solite is not engaged in manufacturing.

The other issue, referred to above as secondary, gives me some problem. It is that the ordinance allows the license tax to be charged at the rate of " \$1.00 per \$100.00 of gross receipts of the preceding year". There is evidence or a contention by the Applicant that a considerable portion of this gravel goes into manufacturing concrete at another of its locations. Certainly a gross receipts tax in King George could not be based upon the sale of manufactured products such as concrete which are produced by Solite in King George County or elsewhere.

It would, therefore, seem that the proper measure of the tax would be the gross receipts apportionable to the extraction, processing and sale of gravel and sand, and should not include any gross receipts calculated upon its sale, and manufacture of concrete or other different product which clearly entails a manufacturing process.

Counsel should attempt to agree upon a formula for such calculation which would be included in an order effectuating the holding in this opinion. If this cannot be done after a good faith effort, I will be glad to convene a brief hearing for the

purpose of constructing such a formula, at a mutually agreeable early date, and to consider any other appropriate points concerning mutual obligations of the parties to each other.


Judge

Date: August 12, 1977.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF KING GEORGE

SOLITE CORPORATION,

Applicant,

v.

COUNTY OF KING GEORGE, VIRGINIA,

Defendant.

ORDER

This cause having been regularly matured, been docketed and set for hearing, came on to be heard upon the application for correction of erroneous tax assessment, process having been duly served upon the Defendant, and upon the answer filed thereto and upon the evidence presented and upon argument of counsel and upon the trial briefs presented, the Court doth find that for 1973, 1974 and 1975, the activities of Solite Corporation involving the extraction and processing (crushing, washing and grading, etc.) of sand and gravel is not manufacturing and the Court further finds that Solite Corporation, in addition to extracting and processing sand and gravel which is not manufacturing, may be in the business of using sand and gravel which it extracts and processes to produce concrete and other manufactured products, the Court doth further find that the tax rate contained in §1.27 of the Business Professional and Occupational Licensing tax ordinance of King George County, effective September 1, 1973, shall be applied as to Solite Corporation in this case only to its gross receipts attributable to the extraction, processing and sale of sand and gravel which comes from

King George County and shall not apply to gross receipts attributable to any further process to which the sand and gravel is subjected which would constitute manufacturing; and the Court further finding that Solite Corporation has conceded that all of its gross receipts reported for 1973, 1974 and 1975 were attributable to the extraction, processing and sale of sand and gravel which comes from King George County, the Court doth ADJUDGE, ORDER and DECREE that judgment be and hereby is granted to the Defendant, County of King George, Virginia.

ENTER: _____

JUDGE: _____

DATE: _____

I ask for this:

Blair M. Murray
Counsel for Defendant

Seen and objected to:

W. E. Davis
Counsel for Applicant

A COPY TESTE:

W. Elwood Mason, Clerk

By *William H. B. Lane*
Deputy Clerk

16

IN THE
SUPREME COURT OF VIRGINIA

Record No. _____

SOLITE CORPORATION,

Appellant,

v.

COUNTY OF KING GEORGE, VIRGINIA,

Appellee.

ASSIGNMENT OF ERROR

AND

PETITION FOR APPEAL

Carle E. Davis
Joseph C. Wool, Jr.

McGuire, Woods & Battle
1400 Ross Building
Richmond, Virginia 23219

Counsel for Appellant

Assignment of Errors

1. The trial court erred in holding that Solite's activities of extracting and processing sand and gravel were not manufacturing and that therefore Solite was not exempted under §58-266.1(4) of the Code from license tax assessment under the Ordinance.

2. The trial court erred in denying the application of Solite for relief from erroneous tax assessment by the County under the Ordinance for the years 1973, 1974 and 1975.

Nature of the Case

This case involves the application of the licensing tax imposed by the Ordinance to a business conducted in the County by Solite. Solite initiated the action by availing itself of the provisions of §58-1145 of the Code for correction of erroneous assessment of County taxes in the amounts of \$1,941.61, \$6,699.06 and \$6,129.30 for 1973, 1974 and 1975, respectively.

Material Proceedings in Lower Court

The trial court heard the evidence in the case without jury and, following the filing of briefs by the parties, issued a memorandum of opinion which concluded that Solite was not engaged in manufacturing and therefore was not exempt from license tax assessment under the Ordinance.

If the Court had determined that Solite's activities in the

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF KING GEORGE

SOLITE CORPORATION,

Plaintiff

v.

COUNTY OF KING GEORGE,

Defendant

TRANSCRIPT OF HEARING

Before: HONORABLE JOHN A. JAMISON, Judge

2:15 p.m.

August 30, 1976

Fredericksburg, Virginia

C. Overton Lee

STENOGRAPH (R) SHORTHAND REPORTERS
MUTUAL BUILDING
RICHMOND, VIRGINIA 23219
AREA 703/648-3785

Reported by:
Dwayne M. Savik

Appearances:

McGUIRE, WOODS & BATTLE
By: CARLE E. DAVIS, ESQ.
JOSEPH C. WOOL, JR., ESQ.
attorneys, of counsel for plaintiff

A. BLANTON MASSEY, ESQ.
Commonwealth's Attorney for the County
of King George, of counsel for defendant

I N D E X

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Plaintiff rests in chief	40
Evidence adduced in behalf of Defendant	40
Testimony closed	42
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Certificate of Reporter	44

WITNESSES

PLAINTIFF:	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
Raymond F. Wingo, Jr.	10	25	34
Robert B. Milner, Jr.	35	37	
DEFENDANT:			
Raymond F. Wingo, Jr.	40		

continued . . .

	<u>EXHIBITS</u>		
	<u>No.</u>	<u>Description</u>	<u>For Ident.</u>
1	PLAINTIFF'S:		
2	1	Typed description of operations titled "Solite Corporation King George Sand & Gravel Plant operations"	4
3	2	Photo: Solite Corporation plant in King George County	4
4	3	Plastic bag: unprocessed earth	8
5	4	Seven bottles of "concrete sand" ingredients	
6	5	Five plastic bags of various sizes of gravel rock	
7	DEFENDANT'S:		
8	1	Copy of King George County Ordinance "Business, Professional and Occupational Licensing Tax" effective Sept. 1, 1973	
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P R O C E E D I N G S

1
2 THE COURT: All right, gentlemen, are you ready
3 to proceed?

4 MR. DAVIS: Yes, sir, Your Honor; Carle E.
5 Davis and Joseph C. Wool, Jr. for the plaintiff, Solite
6 Corporation.

7 THE COURT: All right, and A. Blanton Massey--

8 MR. MASSEY: Yes, Blanton Massey, Commonwealth's
9 Attorney for King George County representing the County of
10 King George.

11 THE COURT: All right, you may proceed.

12 MR. DAVIS: Solite Corporation operates a plant
13 in the County of King George where it extracts materials from
14 the earth which it manufactures into sand and gravel. Under
15 the alleged authority of Section 1.27 of its "Business,
16 Professional and Occupational Licensing Tax", the County of
17 King George has assessed license tax against Solite Corporation
18 for the years 1973, 1974 and 1975. Section 1.27 levies an
19 annual license tax of one dollar per each one hundred dollars
20 of gross receipts for the privilege of extracting mineral,
21 stone, rock, bank gravel and sand.

22 Solite contends that the County of King George
23 has no legal authority to impose a license tax on it under
24 the law of Virginia.

1 The County derives its authority to impose a
2 license tax under Section 58-266.1 of the Code of Virginia,
3 subject to certain limitations set forth in such section.
4 The section provides that no county shall levy a license tax
5 on a manufacturer. This restriction is in accordance with
6 the Commonwealth's announced purpose when such restriction
7 was enacted in 1964, to encourage new wealth through industrial
8 growth by eliminating local taxes impeding the growth of
9 manufacturing businesses in Virginia.

10 Solite's operation in King George is a manufac-
11 turing business and not a business of excavation. Excavation
12 is merely incidental to the business of manufacturing;
13 excavation is not a separate business.

14 Further, the Virginia law under Section 58-266.1:1
15 of the Code permits a county to levy an extraction tax only on
16 coal and gas, not on sand and gravel. However, for the
17 privilege of imposing an extraction tax on coal and gas, the
18 county must forego its privilege of imposing a severance
19 tax on coal and gas as permitted by Section 58-774 of the Code.

20 It is also Solite's position that even if the
21 Court should rule that the county has the authority to enact
22 a license tax on extraction of sand and gravel the tax should
23 be limited to the excavation activity and not extended to the
24 manufacturing operation.

1 It should be noted that the Commonwealth's
2 restriction on the imposition of a tax on a manufacturer has
3 been clearly recognized by the County of King George. King
4 George has not attempted in any instance to levy or impose
5 a license tax on a manufacturing operation.

6 Your Honor, it may be well, to save your time,
7 if I would have marked for identification the items that
8 I will introduce, exhibits I will introduce into evidence.
9 I have agreed that one page of a description of the operations
10 at King George plant would be retyped. With your permission,
11 I would like to introduce the description which you have
12 been furnished, with a correction of the page 6 typed and
13 sent from my office. I would request that that be identified
14 as Plaintiff's Exhibit 1.

15 THE COURT: All right, it shall be admitted.

16 MR. MASSEY: Your Honor, for clarification,
17 Mr. Davis, is that entire sentence going to be deleted, from
18 the bottom of page 6 to the top of page 7?

19 MR. DAVIS: That is correct, Your Honor.

20 MR. MASSEY: All right.

21 MR. DAVIS: As Plaintiff's Exhibit No. 2, I
22 thought it would be helpful for the Court to see a picture of
23 the actual plant at King George County, and attached to such
24 picture is a photograph from a magazine showing the same type

1 of plant that is in King George County.

2 MR. MASSEY: Your Honor, before Mr. Davis
3 proceeds to introduce any evidence I would like to make a
4 brief opening statement as to the County's position, so that
5 the Court will be aware of that as it hears the evidence
6 today. Is that acceptable?

7 THE COURT: Have you finished your opening
8 statement, Mr. Davis?

9 MR. DAVIS: Yes, sir.

10 (A typed one page 'description of the operations'
11 at Solite's King George County plant, was marked
12 Plaintiff's Exhibit 1 for identification.)
13

14 (A photo of Solite's King George County plant
15 with attached copy of magazine article with photo and
16 copy describing similar operating to that of Solite's
17 King George County plant were marked Plaintiff's
18 Exhibit 2 for identification.)
19

20 MR. MASSEY: The position of the County, Your
21 Honor, is that we agree as to the issues to be heard by the
22 Court today, as the issues themselves are expressed by Mr.
23 Davis, in that we are concerned with whether or not this
24 process or this what is taking place in King George by Solite

1 Corporation is in fact a manufacturing business, or if it is
2 just an integral part of the extraction process yielding sand
3 and gravel, and comes under the authority of that section
4 of the Code as quoted by Mr. Davis, 58-266.1.

5 It is the County's position that general authority
6 is granted the counties, including King George, to levy a tax
7 of this nature, a business, professional and occupational
8 licensing tax, on sand and gravel operations such as are
9 taking place by Solite Corporation. And in particular, in
10 King George County, this comes under Section 1.27 of their
11 County Ordinance on Business, Professional and Occupational
12 Licensing Tax, as enacted or effective September 1, 1973.

13 With Mr. Davis' permission, I would ask that a
14 copy of this ordinance be included in the record as initial
15 consideration, along with the statement that he has introduced
16 regarding the nature of that process.

17 MR. DAVIS: I concur with that suggestion.

18 MR. MASSEY: All right.

19 THE COURT: Do you want to introduce yours now?

20 MR. MASSEY: Your Honor, I believe I left--

21 THE COURT: I have a copy.

22 MR. MASSEY: Yes, sir, if that could serve as
23 the copy introduced.

24 THE COURT: If there is no objection, it will be

marked Defendant's Exhibit 1.

(A copy of King George County Ordinance Section 1.27 of "Business, Professional and Occupational Licensing Tax" effective Sept. 1. 1973 was received as Defendant's Exhibit 1.)

MR. MASSEY: Your Honor, it is the County's position, based on the authority of the State statute, general authority of 58-266.1, that even though the legislature may have enacted 58-266.1:1 specifying the tax on the severance of coal and gases, that this did not in any way affect the general authority for a county to enact a tax such as the one that has been imposed on Solite Corporation.

As the Court considers the evidence today, and from the record that is produced today, I would like the Court to keep in mind that the process, if that is what it should be called, that takes place in King George County by Solite Corporation is none other than what could be done by hand, but has been made much more sophisticated through the increased need for the product or the sand and gravel demands that are made on Solite Corporation; that what they do is basically change large pieces of rock or generally rough sand and gravel from King George into smaller gravel, and into what they call aggregate more or less. I believe the Court will

1 hear these specialized terms used in the industry, but it
2 refers to no more than various sizes and shapes of sand and
3 gravel. And that what Solite produces or processes in
4 King George County is none other than a convenient extraction
5 of sand and gravel and, if the Court will observe the
6 evidence, the Court will find that the result of their process
7 is still sand and gravel. a sand and rock; it is in fact the
8 same thing that they start with but of different sizes and
9 shapes and segregated in that nature.

10 And so I ask the Court to consider this and to
11 note particularly what I have pointed out as the various
12 witnesses come before you, and recognize that this process is
13 a process but is not manufacturing; that it is an integral
14 part of the extraction, it is in fact the extraction. That
15 the mere removal from the ground would be nothing, that
16 something has to be done with it, and it is merely a convenience
17 for the further distribution of that material. Thank you. Your
18 Honor.

19 THE COURT: Just as a matter of historical
20 information, is this ordinance which became effective on
21 September 1, 1973 the first they have had? Is this the first
22 time they have had such an ordinance with respect to gravel
23 operations in the County?

24 MR. MASSEY: Yes, that's correct, Your Honor.

1 THE COURT: Back in the days when Mr. Smoot was
2 making his you didn't tax him.

3 MR. MASSEY: No, Your Honor.

4 MR. DAVIS: Your Honor. continuing with the
5 plaintiff's exhibits, I would like to offer for identification
6 some earth removed and in its unprocessed state.

7 THE COURT: All right, do you have anything like
8 a tag for that? If we had a stapler we could staple it.

9 MR. DAVIS: That would be No. 3.

10 MR. MASSEY: Your Honor, it's my understanding
11 that Mr. Davis will attach to these exhibits numbers that
12 correspond to the stages of the process on the informational
13 sheets that have been introduced. Is that correct? Or will
14 you be able to do that?

15 MR. DAVIS: I'm not sure I can do this. We will
16 point out at which stage in the operation these items are
17 produced.

18 (A plastic bag containing unprocessed earth
19 from the Solite Corporation site in King George
20 County was marked as Plaintiff's Exhibit 3.)
21

22 MR. DAVIS: As Plaintiff's Exhibit No. 4--

23 THE COURT: I don't have the first one.

24 MR. DAVIS: The first one will be this description

1 that you have, that will be corrected, will be Plaintiff's
2 Exhibit No. 1. Then No. 2. Your Honor, I thought this
3 might be helpful--

4 MR. MASSEY: It's my understanding from Mr.
5 Davis that the piece of paper, the advertisement, I suppose
6 it is, that's been introduced and the photograph are
7 making reference to the exact--the photograph is the equip-
8 ment actually on location at the site in King George.

9 MR. DAVIS: That's right.

10 MR. MASSEY: And that the advertisement refers
11 to that piece of equipment. Although the photograph in the
12 advertisement is not of the King George equipment it is the
13 exact same equipment.

14 THE COURT: The photograph is not King George?

15 MR. DAVIS: The photograph is King George. and
16 this is similar to it in the advertisement.

17 This is Exhibit 3, unprocessed earth. No. 4
18 would be seven bottles of items comprising concrete sand;
19 seven vials comprising the makeup of concrete sand, different
20 sizes in each bottle.

21 THE COURT: Call that concrete sand.

22 MR. DAVIS: Concrete sand: the product that
23 results from the combination of those seven bottles.

24 THE COURT: It's used in concrete.

1 MR. DAVIS: In the making of concrete; yes.

2 THE COURT: That's 4, you say?

3 MR. DAVIS: Plaintiff's Exhibit 4.

4 (Seven bottles containing various sizes of
5 concrete sand ingredients were received
6 collectively as Plaintiff's Exhibit 4.)

7
8 MR. DAVIS: Plaintiff's Exhibit No. 5 will
9 be five plastic bags containing different sizes of rock
10 growing into gravel known as the product Gravel No. 63.

11 (Five plastic bags of various sizes of rock
12 were received as Plaintiff's Exhibit No. 5.)

13
14 MR. DAVIS At this time, Your Honor, I would
15 like to call Mr. Raymond Wingo to the stand.

16 RAYMOND F. WINGO, JR., was sworn, and testified
17 in behalf of plaintiff, as follows:

18 DIRECT EXAMINATION

19 BY MR. DAVIS:

20 Q. Would you please state your name, age and address?

21 A. My name is Raymond F. Wingo, Jr. I'm 57 years
22 old and I reside at 4330 Wakefield Road in Richmond, Virginia.

23 Q. What is your title at Solite Corporation?

24 A. I am the Division Manager of the Sand and Gravel

1 Division.

2 Q. What are your duties as Manager?

3 A. I am in complete charge of the operation at
4 King George which produces sand and gravel for the company.

5 Q. What is the principal operation of Solite
6 Corporation?

7 A. They are producers of light-weight aggregate.
8 sand and gravel and, in some instances, block and ready-mix
9 concrete.

10 Q. What operations are conducted in King George
11 County?

12 A. Those of sand and gravel production only.

13 Q. When did the operation commence?

14 The plant was built in '68 and the operation
15 began in '69.

16 Q. Where is the location of the plant?

17 A. It's about 11 miles east of Fredericks burg on
18 Route 3.

19 Q. Who owns the land from which the operation is
20 conducted?

21 A. Mr. and Mrs. Edward Taylor.

22 Q. What is the production capacity of the plant?

23 A. It's approximately 600 tons per hour maximum.

24 Q. The number of employees at the plant?

1 A. It varies from 16 to 20.

2 Q. What products are produced at the King George
3 plant?

4 A. Well, presently we are producing 68 Gravel and
5 concrete sand.

6 MR. MASSEY: Beg pardon?

7 A. 68 Gravel, No. 68 and concrete sand.

8 MR. MASSEY: Concrete sand.

9 BY MR. DAVIS:

10 Q. Who are the users of these products?

11 A. Well, mostly people in the ready-mix concrete
12 business in Northern Virginia.

13 Q. Where are your sales normally made?

14 A. In Arlington and Newington.

15 Q. Does this operation require any quality control?

16 A. Yes. it requires a substantial amount of control
17 at the plant, which is done daily by plant personnel, from
18 the standpoint of runing the gradation on the materials and
19 so forth. It's further checked at our laboratories in
20 Richmond; also by an independent testing laboratory, Froehling
21 and Robertson, who substantiate our results, of course on an
22 impartial basis.

23 Q. What is the commercial use of earth in its
24 unprocessed state?

A. It has no use to us as such. It could be used

1 as fill in certain cases on a local close-by property.

2 Q. Would Solite Corporation excavate any material
3 in the county without its manufacturing operation?

4 A. It wouldn't be economically feasible for it
5 to do so.

6 Q. Is the corporation subject to any governmental
7 control in its operations?

8 A. Subject to several. We have to file annual
9 permits, apply for them; file plans for reclamation of the
10 property. We have to furnish a bond per acre to restore the
11 property; we have to take care of our drainage by circulating
12 water through our settling basins before it returns to the
13 river, and that water has to be of equal quality or better
14 than that which we take from the river.

15 Q. Mr. Wingo, what use is made of the reclaimed land?

16 A. Well, a number of uses. It can be left as lakes
17 and can be turned into nice residential areas. It can be
18 turned into agriculture again. We are about to turn back to
19 Mr. and Mrs. Taylor now--I think we told them the middle of
20 October--about six acres fronting on Route 3 which right now
21 is growing a beautiful crop of weeds.

22 Q. Mr. Wingo, I ask you to look at this statement
23 that is headed "Solite Corporation King George Sand & Gravel
24 Plant". Would you look at this and tell me what this purports

1 to represent?

2 A. This represents the equipment that we use to
3 produce the material and the description of the process of
4 the sand plant, the specifications of the different screens
5 that the material is required to pass, some other descriptions--

6 Q. In other words a general description of your
7 operation, which we have furnished to Your Honor

8 A. That's right.

9 MR. DAVIS: I ask this be marked as Plaintiff's
10 Exhibit 1.

11 MR. MASSEY: No objection, as we have agreed to
12 have the sentence at the bottom of page 6-top of page 7
13 deleted, Your Honor.

14 THE COURT: Received.

15 (Plaintiff's Exhibit 1 for identification was
16 received as Plaintiff's Exhibit 1.)

17
18 BY MR. DAVIS:

19 Q. Mr. Wingo, I hand you a photograph and a copy of
20 an advertisement from a magazine attached to the photograph.
21 Would you identify this, please?

22 A. Well, the photograph is one that I took myself a
23 couple weeks ago. The advertisement is from the Eagle Iron
24 Works, which I believe we bought that plant from them initially.

1 MR. DAVIS: Your Honor, I introduce this as
2 Plaintiff's Exhibit No. 2.

3 MR. MASSEY: Your Honor, I would like to ask Mr.
4 Wingo just one or two questions regarding that. Per-
5 haps I could do that now, prior to its introduction.
6 Would that be all right?

7 THE COURT: In respect to the photograph; yes.

8 MR. MASSEY: Mr. Wingo, have you read that
9 advertisement?

10 THE WITNESS: Not that particular one; no, sir.

11 MR. MASSEY: Could I have him read it?

12 MR. DAVIS: Mr. Massey, I would be happy just
13 to introduce the picture or the photographs.

14 MR. MASSEY: Perhaps that would be best; otherwise
15 I would like to be sure he has read it.

16 MR. DAVIS: I request permission to detach the
17 attachment.

18 THE WITNESS: I might say, the only reason I
19 haven't read it is because I'm probably quite familiar
20 with it; it's much the same stuff you have been looking
21 at.

22 MR. MASSEY: I have no objections if you read it
23 and find it represents it, but, until then, Your Honor,
24 I would object.

1 THE COURT: Well, have him look at it, he says
2 it has some relevancy to this particular operation.
3 I will allow it to remain attached to the photograph
4 in this case.

5 MR. DAVIS: Your Honor, I don't think it's
6 necessary for our case; it was just a larger photograph,
7 and I'm perfectly willing to have it removed.

8 THE COURT: All right.

9 (The photograph previously marked as Plaintiff's
10 Exhibit 2 for identification was received as
11 Plaintiff's Exhibit 2.)

12 BY MR. DAVIS:

13 Q. Mr. Wingo, I now hand you a bag containing
14 certain material; would you describe this, please?

15 A. This material is essentially that material which
16 lies beneath the overburden which we strip from the property
17 before we dig it.

18 MR. DAVIS: Your Honor, I now ask that this be
19 introduced as Plaintiff's Exhibit No. 3, unprocessed
20 earth.

21 THE COURT: All right, if you have no objection
22 it will be so admitted and marked.

23 MR. MASSEY: No objection, Your Honor.
24

1 BY MR. DAVIS:

2 Q. Mr. Wingo, would you start at the beginning and
3 describe the operation of Solite Corporation in King George
4 County?

5 A. That's a tall order. Well, after we strip the
6 overburden from the property, which runs from about three to
7 six feet deep, we pile this material, stockpile it or windrow
8 it, so we can use it later on in reclaiming the land, wherein
9 we would taper the earth back down to the lake or leave it in
10 such condition it could be used by Mr. and Mrs. Taylor.

11 After that we use two large Northwest draglines
12 to dig the material and load it into heavy off-highway hauling
13 units that haul from about 15 to 40 tons. We truck this to
14 our plant, which is some little distance away, go up a lengthy
15 ramp, dump it into about a 50 ton or 60 ton hopper. At
16 the bottom of this hopper is a vibrating feeder--it's called
17 F-800 Centron Feeder--which distributes the material evenly
18 on the belt feeding the plant, so at all times you are feeding
19 about the maximum amount of material that that plant can
20 process to it, which helps you in processing material. This
21 conveyor is about 170 feet long and it empties over our primary
22 screens, which separates the plus-three inch material, which
23 consists mainly of the clay lumps and the big rocks, it shunts
24 these aside into a waste pile. The three-inch material

1 down to about a quarter inch material goes onto another
2 deck of screens where it is preliminarily washed, then it is
3 shunted across to another conveyor which takes it over to the
4 surge pile prior to its being processed into gravel.

5 The material from quarter inch down goes over
6 a series of screens where it is washed thoroughly by different
7 sizes. We have spray bars over these screens with high water
8 pressure, about 125 pounds per square inch, which cleans this
9 sand up pretty thoroughly. After it leaves these screens it
10 goes into a classification tank; this is the most important
11 part of our process. It requires about 6,000 gallons of water
12 a minute to hydraulically classify this sand, to float out
13 the impurities such as lignite or coal or mica, or other flaky
14 material that would remain in suspension, and to settle out
15 over the 11 stations that are up and down the 40 foot length
16 of this tank it requires this amount of water.

17 Now, over each one of these stations is a long
18 rod that goes down into the water, and this water is about
19 four, five feet deep with all of its--it's laden heavily with
20 sand. There is a little thing like a weather vane that spins
21 with the turbulence of the water and, as the sand goes down the
22 length of the tank, the coarser particles settle out first
23 over each of the stations until you get down to the fine silty
24 size material that is in that last bottle up there.

1 Q. Pardon me for interrupting you, but we have seven
2 bottles that you have identified as concrete sand; in your
3 classifying tank do I understand that these items are being
4 separated, the different sizes are being separated in the
5 classifying tank?

6 A. In general those sizes there are being separated
7 over the 11 different stations. Now some of those sizes of
8 material are not, there is not as much of it in the product
9 as you need, so when you adjust these little vanes over these
10 different stations your electronic control panel tells that
11 station how much of that material to dump so that you can get
12 the percentage that is in that bottle.

13 Q. Do I understand that after separation that there
14 is a blending again of these seven different items here
15 contained in the separate bottles?

16 A. Well, as these materials leave the classification
17 tank they are blended by a control panel which actuates the
18 11 stations. That thing works just like a player piano; it
19 calls for exactly the size of material that is needed to meet the
20 specs to produce the concrete sand.

21 Q. And I understand that the product sold is not
22 the separate items contained in each of these bottles, but
23 a combination of different weights and sizes of all seven
24 bottles; is that correct?

1 A. That's correct. That sample of material there
2 was taken directly from the stockpile, in a bag just like you
3 have here. sampled according to specification requirements,
4 with a shovel. It was separated and run through a nest of
5 sieves at which the different percentages were determined to
6 see if the sand met the specifications; I'm sure that it did.
7 I did not read, I don't believe, the percentages it was
8 passing, but it met the specs.

9 Q. In producing concrete sand it's necessary to put
10 different amounts of each of these commodities?

11 A. You have to have different amounts in order
12 to meet the specs; that's right.

13 Q. The classifying tank that you have been
14 describing, is that a separation and then a blending operation?

15 A. It is.

16 Q. Would you continue your description of the
17 plant after the sand classifier that you have described?

18 A. Well, the sand classifier discharges from these
19 different stations through a central point down into a
20 dewatering tank in which there are twin screws in this tank
21 that interlap, and they feed up about a 30 degree incline,
22 and they feed this sand on up this incline and, as it does so,
23 it dewateres it. The sand has already been put together in
24 the classifying tank, that part of the sand which is good

1 solid sand particles, like are in those bottles, settles
2 out in this dewatering tank and all the other stuff that is
3 unsound is floated off and goes to waste in our settling ponds.

4 Q. The dewatering operation also then acts as a
5 purifier?

6 A. To a great extent, it purifies further whatever
7 may not have been scalped off in the classifying tank.

8 Q. What happens at the operation after the sand
9 goes through the dewatering screens?

10 A. Well, the dewatering screw--

11 Q. Screws.

12 A. It goes on out the end of the tank onto a conveyor
13 belt to the stockpile. and some of it is stockpiled over a
14 tunnel where it's loaded directly on rail cars for shipment.
15 The sand that goes into the stockpile is picked up by a
16 front-end loader and loaded in cars.

17 Q. Now that's a description of the sand plant.
18 How does that differ from and would you describe the gravel
19 plant operation?

20 A. Well, we start off very similarly at the gravel
21 plant with a front-end loader picking up the material from the
22 surge pile, which is strictly an inventory of material that
23 has been placed there so that we can feed that plant uniformly
24 at all times. It's necessary to keep the material on that

1 belt in order to make or produce the right sizes of material.
2 This material is really very very rough, it's got a lot of
3 clay in it. It goes through a hopper, again over a vibrating
4 feeder which feeds it into what is called a log washer,
5 which is a tank about 40 feet long. Then I guess this tank
6 is about eight feet wide or better, it has two big cylindrical
7 tubes in it running the length of the tank, and from it
8 are coming, from these tubes, wide paddles about maybe six
9 inches by ten inches, real hard surfaced steel paddles.
10 There are about 362, I think, of these paddles--it looks like
11 a lady's head in hair curlers the way these things are in
12 there. And it tumbles this gravel and beats it up pretty
13 good, so that there are no soft fragments or anything left
14 when it goes out the other end.

15 This log washer, these paddles, are also on a 30
16 degree incline, roughly. and the soft stuff, some of the
17 same size material maybe that may have been recaptured here,
18 is bled back down into the waste water. So that essentially
19 the good stuff that's going up goes on up the conveyor and
20 over to the gravel plant where it goes over our primary screens,
21 and the stuff that will go on through the screens goes on
22 through, but the oversize material, say three inches down,
23 will make a circuit over to our crusher and it will do this,
24 make this circuit, several times until it has been crushed to

1 the right size, as the screens have been set to produce
2 whatever product we might be producing on that particular day
3 or at that time.

4 Essentially the sizes in this bag here are the
5 sizes that we produce, and are separated by these screens.
6 The gravel goes on into bins then and goes on a conveyor
7 and into the rail cars for shipment. At times it's hauled
8 by truck from under the bin and stockpiled until we have
9 a sale for it.

10 Q. Mr. Wingo, there are five bags here that contain
11 different size rocks; is gravel sold individually, as to
12 these different sizes, or are they blended into one product?

13 A. They are blended into one product, just like the
14 sand. These are separated so that we know what percentage
15 of each size is in there, because we have to meet that gravel
16 specification.

17 Q. What specification are you referring to?

18 A. I believe that one there is probably American
19 Society for Testing Materials or the Virginia Department of
20 Highways; they both are very close together. I think this
21 is ASTM spec here.

22 Q. You are saying in the specification that means
23 blending a certain percentage of each of these seven vials
24 to produce concrete sand?

1 A. That's right, you have to have--you can say
2 either a certain amount passing, passing through a three-
3 quarter inch screen, a half inch screen, a three-eighths
4 and a quarter, or you can say that there have to be certain
5 amounts retained on those screens. So the three-quarter
6 material that you have here, which would be this one here,
7 this three-quarter material, is what is retained on the
8 three-quarter mesh sieve. That half inch stuff is what goes
9 through it and is retained on the half; so that's the way
10 that it's determined as to whether or not you are meeting
11 the specs. And if you are not, if your material is too
12 coarse, then you have to adjust your crusher and you have to
13 change your screens, and I'm not an expert at this, but our
14 Plant Manager is; he has got 17 years experience and when this
15 stuff gets out he knows how to get it back in. You can get
16 a hole in a screen--

17 Q. Are you again saying there is a combination of
18 these five different sizes to produce Gravel 68?

19 A. Yes, sir, this is 68 Gravel if you put it all
20 together, reran it through a nest of sieves, it would come
21 out just like these percentages here, which are required in
22 order to meet the spec.

23 Q. Mr. Wingo, it has been suggested that it's
24 possible to produce from unprocessed earth sand and gravel

1 by hand; are you familiar with any such operation?

2 A. No, I'm not.

3 Q. Would it meet any specifications that are laid
4 down on blending?

5 A. I don't believe you could get all of the clay
6 out of any sand commercially, unless you had--

7 Q. And it would not be possible by hand to blend
8 this in a commercial and industrial operation?

9 A. It would be highly impractical.

10 MR. DAVIS: Your Honor, I have no further
11 questions.

12 THE COURT: You may cross-examine.

13 CROSS-EXAMINATION

14 BY MR. MASSEY:

15 Q. Mr. Wingo, how did this separation of sand and
16 gravel get done back before this piece of machinery that you
17 use came along?

18 A. Well, I'm not up to date on what happened maybe
19 40 or 50 years ago, but they used to pan gold, I used to
20 pan gold, and I guess maybe they do that differently now too.

21 Q. At some point the big pieces of rock were probably
22 broken up with a sledge hammer and the sand was cleaned with
23 some sort of a sloughway and water; isn't that probably true?

24 A. I expect it could be done that way.

1 Q. Is it also true that while it may not have
2 been as pure as what you now make to meet the State and
3 other specifications that it was still sand and gravel?

4 A. Well, it was still sand and gravel, but, if I
5 might add to your question, the specifications of today are
6 far different than they were years ago. You have even for
7 home building you have codes that you have to comply with
8 now; perhaps your own County has one. You have got to produce
9 a real high quality material now, moreso than ever before,
10 for the types of buildings and structures into which it's
11 going.

12 Q. Why is that?

13 A. Well, the main reason is that the strength of
14 materials has come to be a real study in itself, and engineers
15 and architects have become more sophisticated and require
16 higher strengths now in concrete; they almost are requiring
17 such high strength today that the inherent strength in a
18 piece of gravel is almost exceeded by the pounds per square
19 inch that they require in concrete.

20 For example, 3,000 pound concrete when I started
21 in this business, in 1949, was considered a top grade of
22 concrete; today they think nothing of specifying 6,000 pound
23 concrete, and in excess of that, and you could get to the point
24 where you couldn't use this gravel, you would have to use a

Wingo-cross

1 crushed stone because of its angularity and its hardness
2 per particle. They have a test for that called Los Angeles
3 Abrasion, which did not used to be part of the old spec
4 either, where they tumble this material in a steel ball mill
5 and they watch it and take the residue and measure the
6 residue with a machine.

7 Q. You don't do this.

8 A. Oh, yeah, our gravel is subject to the Los
9 Angeles Abrasion Test and done by our lab.

10 Q. In King George?

11 A. No, in Richmond by Froehling and Robertson.

12 Q. You don't do this in King George?

13 A. No, sir. This has to be done once a year,
14 because the gravel in a deposit is so much of a similar nature
15 you don't have to do this test every week.

16 Q. Aren't you saying the classification of the sizes
17 of these particles has gotten more sophisticated because they
18 know more about the strength of these particles in the concrete
19 and the other processes or construction materials in which
20 they are used? Is that true?

21 A. I'm saying that is true, and also the man who
22 is down on his hands and knees with the trowel has to finish
23 this concrete and close it up and make a hard dust-free
24 surface; these sizes of material are now known and required to

Wingo-cross

1 be in the concrete to make it dense, so he can close up that
2 surface good and hard.

3 Q. Now is there anything in this process that
4 you have introduced or shown, is there anything that you
5 in your King George plant have patented?

6 A. I don't know whether we have any Rube Goldberg
7 things in there or not. I think most of our process is
8 pretty much like an engineer, say from the Eagle Iron Works
9 would recommend. I think we are pretty sophisticated..

10 Q. Now, in the process that you use, is anything mixed
11 with this material other than water?

12 A. No, water is all that is mixed with it.

13 Q. Now do I basically understand that the process
14 of separation of the various materials involves three major
15 factors: the crushing, the screening, the screening process,
16 and the application of water? Is that correct?

17 A. That's right.

18 Q. What is the percentage of clay found in the soil
19 on your King George property?

20 A. I think we have about maybe six or eight percent
21 clay; it could be more than that. We count on somewhere
22 between 10 and 15 percent of the product going to waste, which
23 is an awful lot of waste. The specifications say, I think,
24 that you can't have any more than three percent of material

1 passing a hundred mesh sieve, whatever that limitation is.
2 I don't recall exactly, but--

3 Q. Do you sell any ungraded product, any ungraded
4 sand and gravel?

5 A. No, sir, everything we produce there is the best
6 we can make it.

7 Q. Now is there any process or procedure you apply
8 to the materials that have been presented into evidence that
9 alter the rock or the sand, other than to separate it, to
10 clean it and separate it into sizes?

11 A. No, I don't think so.

12 Q. Is this sample now that you have introduced
13 is that a typical soil sample found in King George County?

14 A. It's probably better than a lot of soil samples
15 found in King George property.

16 Q. I mean on your property now, is this typical?

17 A. If it wasn't the quality that it is we would
18 probably not be in there digging it.

19 Q. Are you saying then that that bag is a typical bag
20 you would end up with if you got down in the middle of your
21 operation and dug?

22 A. I would say it's fairly representative; it's on
23 the good side and not really the bad side. If you want to
24 see some bad material go down there and look in the surge

1 pile, just before we produce gravel, you will see some lumps
2 there that are as big as my head, that are almost just as
3 hard. It's just a conglomerate mass; it had enough water
4 on it so it's congealed it so it's sort of set up almost.
5 You have to take a loader to break that up and that's why
6 you need a log washer to break it down.

7 Q. Do the rocks in that bag represent the larger
8 size rocks?

9 A. There are some larger size rocks. I tried to put
10 in this sample the stuff we were actually processing in the
11 plant; the three-inch-plus stuff has already been bled off
12 at the top of the plant.

13 Q. You say you don't produce anything larger?

14 A. Our crusher will take anything from three inch
15 down; the three inch rock up captures the big clay lumps,
16 with some as big as your fist to a little larger. When they
17 get through that hopper bottom, which feeds that feeder, there
18 is some right good size stuff that can go up there.

19 Q. What do you do with that?

20 A. We use that in reclaiming the land. A lot of
21 that stuff is hauled back out to an area that we are digging,
22 to put down as a base material before we bring back the
23 overburden that would be suitable to raising a crop.

24 THE COURT: Do you put topsoil back on there once

1 you actually turn it back, so you can raise good quality
2 crops on it? That's just curiosity.

3 THE WITNESS: You know, in some cases I think
4 it could be marginal, and in others it could be quite
5 good, it depends on the depth of the overburden that
6 you have. And I would like to point out now that we
7 have been in this place oh, eight years roughly, and
8 we haven't had time enough really to dig up a good part
9 of it, but that part that we have reclaimed seems to be
10 lending itself adequately to the growth of weeds; there
11 is some there as high as your desk right now by Route 3,
12 and this six acres by the big lake. between Route 3 and
13 the lake as you enter our plant, is going to be turned
14 back to Mr. and Mrs. Taylor October 15th, I believe,
15 and he is planning on farming that. He told us not
16 long ago he felt he could take any given piece of
17 property there that we were restoring, in the manner that
18 we were, and with proper fertilization and tilling he
19 could have it as highly productive again in about four
20 years as he had it in the first place. That's a
21 comment he made to me.

22 THE COURT: That's just one thing I was wondering
23 about. All right, sir, go ahead. Do you have anything
24 further?

1 MR. MASSEY: I have a few more questions.

2 BY MR. MASSEY:

3 Q. Mr. Wingo, is the Company going to refill the
4 area where you now have about 10 to 15 feet of water?

5 A. There are no plans to refill that area and,
6 over the long pull, it's a little hard to say just what the
7 periphery of that lake might be; it could change as we dig
8 the property, and we have to do it in accordance with the
9 wishes of the Taylors and their attorney. We go over our
10 plans every year with them, as to what we are going to
11 disturb and what we are going to try to restore, so that he will
12 know how to farm it.

13 Q. All right, Mr. Wingo, other than what your
14 Company does in King George would it be possible to process
15 this sand and gravel in a less sophisticated manner? Let
16 me rephrase that before you answer, by asking another question:
17 Do other companies, to your knowledge, sell a less-broken-down
18 or less-tested product than this?

19 A. Well, I think so. I think you can buy most
20 anything you want to on the market. If you get a good
21 quality product you generally have got to pay a right good
22 price for it, but there are other products that are either
23 too coarse, you haven't put these fines back into the material;
24 so you could sell them to a ready-mix concrete producer

1 as long, say, as it was clean sharp sand, but it would not
2 meet the specs. But what this guy will do, he will take
3 our sand and blend it with this other guy's sand and use it
4 in his operation; we call that prostituting the product.

5 Q. But it is done?

6 A. It is done.

7 Q. All right sir, are there some sand and gravel--
8 is there some sand and gravel being used on the market, that
9 you know of, that is not segregated at all, just cleaned?

10 A. I don't know.

11 Q. And sold as either sand or gravel?

12 A. Every sand and gravel operation, really. that
13 I know of, is using a method pretty similar to ours.

14 Q. All right, do you know of any user of sand and
15 gravel, any of the products that you produce or anyone
16 else that uses sand and gravel that does not require that
17 his sand and gravel meet certain specifications?

18 A. I don't know. I don't know offhand of anyone.
19 The marketing area that we serve requires us to supply the
20 product pretty much the way we produce it.

21 Q. All right. is that marketing area mostly state
22 or federal contracts?

23 A. Well, not directly, but indirectly the concrete
24 goes to those buildings, those projects, furnished through our

1 customers.

2 Q. And it also is required to meet county and city
3 building codes?

4 And State Highway Department; that's right. They
5 are very strong on specs and they quite often test your
6 material at the plant before it is shipped and you have got--it's
7 got to be there then. If you don't have the fine in it you
8 don't ship it.

9 Q. Has the Virginia Department of Highways actually
10 come onto your property and tested it for the percentages?

11 A. They have tested it at our end stations up at
12 Arlington and Newington. I'm happy to say it's been all
13 right up there, because we haven't had to ship any of it
14 back.

15 MR. MASSEY: I have no other questions.

16 REDIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. Mr. Wingo, are contractors your customers
19 then of Solite, contractors and builders?

20 A. Indirectly they are.

21 Q. You sell to a contractor who builds for a
22 government or someone else?

23 We have sold to a contractor who has built part
24 of Interstate 95 near Springfield, Virginia; he is a roadbuilder.

1 Q. So you sell generally to the user of the
2 commodity or the product; to the user?

3 A. Not all the time. We sell to, say, a company
4 like Virginia Concrete Company in Arlington and Northern
5 Virginia, who have six or eight concrete plants and they
6 come into our distribution terminal and haul this bulk sand
7 and gravel to these plants, where in turn they process it
8 into ready-mix concrete and haul it to the various projects.

9 MR. DAVIS: Thank you. No further questions,
10 Your Honor.

11 THE COURT: You may step down, Mr. Wingo.

12 (Witness stood aside.)
13

14 ROBERT B. MILNER, JR. was sworn, and testified
15 in behalf of plaintiff, as follows:

16 DIRECT EXAMINATION

17 BY MR. DAVIS:

18 Q. Would you please state your name, age and
19 address?

20 A. I'm Robert B. Milner, Jr., I'm 48; 212 Fulham
21 Circle, Richmond, Virginia.

22 Q. What is your title in Solite Corporation?

23 A. Treasurer.

24 Q. What are your duties?

1 A. I'm responsible for the accounting functions
2 and the handling of cash, and the administration of costs,
3 distribution of financial statements, financial data,
4 insurance. data processing.

5 Q. What percentage of cost of the finished product
6 is represented by mining costs?

7 Digging cost runs about 20 percent of the total
8 cost.

9 Q. The royalty or land cost represents how much of
10 the total cost?

11 A. Approximately 10 percent.

12 Q. The manufacturing cost represents how much of
13 the total?

14 THE COURT: Let me get the first one. What--

15 THE WITNESS: Digging is 20 percent.

16 THE COURT: Land cost is 10?

17 THE WITNESS: Well, I can't say, I really don't
18 know right off what the land cost was--oh, yes, sir,
19 the royalty, about 10 percent.

20 THE COURT: What you call royalty?

21 THE WITNESS: Yes, sir, and the manufacturing
22 cost is 70 percent.

23 THE COURT: All right.

1 BY MR. DAVIS:

2 Q. What percentage of sales of Solite are represented
3 in the sand sales?

4 A. You mean sand as opposed to gravel.

5 Q. Yes.

6 A. Well, that varies; the gravel runs about 10
7 to 20 percent of the sand sales, of the total sales out of
8 this deposit.

9 Q. Sand would then represent 80 or 90 percent?

10 A. That's right.

11 MR. DAVIS: I have no further questions, Your
12 Honor.

13 THE COURT: All right.

14 CROSS-EXAMINATION

15 BY MR. MASSEY:

16 Q. Now you have been asked a question by Mr. Carle
17 Davis, and that question was what is the manufacturing cost.
18 Since that's the primary issue we are here for today, perhaps
19 you could clarify for the record--

20 THE COURT: I put that in quotes.

21 Q. Do you mean by "manufacturing process" or
22 manufacturing cost, this process that is being testified to here
23 today?

24 A. As Mr. Wingo described.

1 Q. Okay, now and of the product from this process
2 you are saying gravel sales were 10 to 20 percent?

3 A. That's correct.

4 Q. Now what are you basing your payment of the
5 taxes here in question today on? That would go on your gross
6 sales?

7 A. That's correct.

8 Q. Is that from the total operation?

9 A. That is correct.

10 Q. Now your process or, as you call it, your
11 "manufacturing" cost is, you say, what percent?

12 A. Seventy.

13 Q. Seventy. All right, now of your employees--
14 I understand there are between 16 and 20--could you break
15 them down in terms of your three categories? I guess there
16 is none of course, for the royalty on the land, but between
17 the digging and your processing cost where are your employees
18 allocated?

19 A. I don't know; I'm not that close to the plant
20 operation.

21 Q. All right, in the digging process how many
22 pieces of equipment are being used?

23 A. As treasurer. I'm involved with the financial
24 end of the business, and I frankly know very little about the

production end.

Q. Now as treasurer are you involved with depreciating your equipment?

Yes.

Q. All right, now do you just know what is depreciated and not know where it's used within the process? What I'm saying is, you just don't know the breakdown between what piece of equipment goes into what part of the process.

A. No, I really don't. Before coming, I looked up, to be sure that I had it straight in my mind, because this was '73 and '74, and of course we are in '76 now--

Q. Are you saying these figures you have given today: the digging at 20 percent, the processing at 70 percent, you have come up with just for the purposes of this hearing this afternoon then?

A. That is correct.

Q. Would Mr. Wingo be familiar with the allocation or location of the equipment and in what part of the process it's used?

A. He probably would, the location of the equipment and the processing?

Q. I mean at what part whether it's in the digging process or in the separation, sand and gravel separation process.

A. I'm sure he would be.

MR. MASSEY: He should know. All right, I have no other questions.

MR. DAVIS: Your Honor, I have no further witnesses.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: All right, sir.

(Witness stood aside.)

THE COURT: All right then, is there anything further?

MR. MASSEY: Your Honor, I would like to just ask Mr. Wingo the questions that Mr. Milner couldn't answer.

THE COURT: You can just remain seated there, Mr. Wingo.

RAYMOND F. WINGO, JR., was called as a witness in behalf of defendant and testified further on oath, as follows:

DIRECT EXAMINATION

BY MR. MASSEY:

Q. Mr. Wingo, are you familiar with how many employees are involved in the digging process, the extraction

1 process?

2 A. There are two cranes.

3 Q. Two cranes?

4 A. Two crane operators, and that's it with the--

5 Q. When you said 16 to 20 now you are not referring
6 to management, other than what is right there?

7 A. Total number of people involved, from digging
8 all the way through cleaning out the cars that come in.

9 Q. How many would you say are directly involved
10 in the actual processing cost, what you consider the
11 "manufacturing" cost?

12 A. I believe about eight.

13 Q. Now could you give us an idea of the cost of the
14 digging equipment compared to the cost of the equipment used
15 in your separation of sand and gravel and cleaning operations?
16 Rough figure, or the best you could.

17 A. I don't have any idea.

18 Q. Do you know the total value, book value, of
19 your equipment?

20 A. No, sir.

21 Q. Would it be safe to say that the majority then
22 of your equipment is used in the processing: separation of
23 sand and gravel and cleaning?

24 A. Yes, I would say so.

MR. MASSEY: I don't have anything else.

THE COURT: All right, do you have any witnesses you would like to call?

MR. MASSEY: No, Your Honor.

THE COURT: Anything further then?

MR. MASSEY: I don't believe so.

THE COURT: Anything further?

MR. DAVIS: Nothing further.

THE COURT: All right, gentlemen, I will await the arrival of your briefs then. Now do you care to argue after that then? I assume you do after you have submitted your briefs. Did I give you a date on that yet?

MR. DAVIS: October 11th, Your Honor.

THE COURT: Let me double-check that.

MR. MASSEY: Your Honor, I would ask if the record is going to be prepared prior to that time how soon we could have that?

THE COURT: Well, I don't know whether you are going to have time. The record would be helpful, I'm sure, to all concerned; particularly it would be helpful to me after I read your briefs, but I'm sure it would be helpful to counsel.

MR. MASSEY: Your Honor, not being very familiar with that process--

1 THE COURT: I understand it pretty well, the
2 process, from a layman's standpoint, after having read the
3 outline given to me, and having heard Mr. Wingo; I'm not
4 too concerned about that. There is a possibility sometimes
5 you want to refresh your memory or refer to some part of the
6 process. I assume you did not plan to have the record
7 transcribed here.

8 MR. DAVIS: I'm sorry, Your Honor, I did not
9 hear--

10 THE COURT: I assume you had not planned to have
11 your record transcribed prior to argument or preparation
12 of your brief; did you?

13 MR. DAVIS: I had not assumed we would, unless
14 Mr. Massey feels it's necessary.

15 MR. MASSEY: It would be very helpful to me,
16 Your Honor. Before coming here I didn't know exactly what
17 sort of information would come forth--

18 THE COURT: How long do you think it would
19 take you to write this up?

20 THE REPORTER: Ten days, Your Honor.

21 (Discussion held off the record.)
22

23 THE COURT: I'm sure Mr. Davis understands the
24 process far better than the rest of us do. It would be

1 helpful. I don't usually like to require counsel to do
2 that, but this is a rather technical thing; I think it would
be helpful if we have the record.

MR. DAVIS: I concur with you then, and change
my thoughts on it.

THE COURT: Well, then I would like to have one,
and I assume, Mr. Davis, you and Mr. Massey can get together
on that.

MR. MASSEY: The County, I hope, will go along
with the price of a copy, Your Honor.

(Adjournment.)

REPORTER'S CERTIFICATE

15 I, Dwayne M. Savik the official shorthand
16 reporter designate, in the foregoing hearing on Solite
17 Corporation, plaintiff v. County of King George, defendant,
18 heard in the Circuit Court for the City of Fredericksburg,
19 Virginia before Honorable John A. Jamison, Judge, do certify
20 that the foregoing is a true and correct transcript of my
21 shorthand notes taken at Fredericksburg, Virginia on August
22 30, 1976.

23 Given under my hand at Richmond, Virginia this
24 9th day of September, 1976.

(Original signed:)

DWAYNE M. SAVIK

Dwayne M. Savik