

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Thursday, May 5, 2022 at 9:30 a.m.

VOLUME 8

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, May 5, 2022

3 at 9:30 a.m.

4 MR. LEWIS: Good morning,
5 Commissioner. Good morning, counsel. May we
6 proceed, Commissioner?

7 JUSTICE WILTON-SIEGEL: Please
8 do. Good morning, Mr. Oddi.

9 THE WITNESS: Good morning,
10 Commissioner.

11 MR. LEWIS: And I believe that
12 Ms. McIvor for the MTO is starting off today. Is
13 that correct?

14 MS. MCIVOR: That is correct,
15 yes.

16 MR. LEWIS: Thank you.

17 MS. MCIVOR: Thank you,
18 commission counsel.

19 MARCO ODDI; RESUMED

20 EXAMINATION BY MS. MCIVOR:

21 Q. Good morning, Mr. Oddi.
22 How are you?

23 A. Good. Thank you.

24 Q. My name is Heather McIvor
25 and I'm counsel for the MTO. I just have a few

1 questions to ask you this morning, mostly
2 regarding the testimony that you gave yesterday.

3 My first question concerns
4 your conversations you referred to yesterday with
5 MTO personnel in the field. I believe you said
6 you had conversations with MTO personnel in which
7 they told you about their experience with SMA on
8 provincial roads, and you mentioned that
9 contractors were taking the credit to switch.

10 Did you mean to refer to a
11 credit from MTO?

12 A. No. Perhaps I can
13 clarify.

14 Q. Sure.

15 A. It was the CA firm that
16 was doing the contract administration for the -- I
17 can't remember. 2005-2008, I think, was the
18 contract number for the Red Hill Valley QEW
19 interchange. And they had heard, so they hadn't
20 done it on their road, they had heard and that
21 basically the MTO on their contracts, because
22 both -- they would have had prices for both SMA
23 and 12.5 FC2, so they were saying, you know, SP
24 12.5, FC2, basically there's only two asphalts you
25 can use for high-volume roads. It's 12.5 FC2 or

1 SMA. And, again, that's what they had heard.

2 Q. And so, you referred to a
3 credit, though?

4 A. No. It's a credit on
5 whatever MTO contract, so it wasn't for the
6 2005-2008 contract they were doing.

7 Q. Right. And so, that
8 contract aside, because I appreciate this was
9 before the paving of that contract, it was still
10 in the discussions sort of phase, but you
11 mentioned that it was a credit for a switch. So,
12 by that, are you referring to a credit provided to
13 switch from SMA to another aggregate? Is that --

14 A. No. Sorry, I should let
15 you finish speaking. I'm sorry.

16 Q. No. If you could just
17 explain, I guess, what you intended to say by a
18 credit to switch, that would be helpful.

19 A. Okay. When you have a
20 unit price contract and you have unit prices
21 within the contract, you can say, you know, you're
22 allowed to go -- if they're major items, there's
23 other special provisions that deal with overruns
24 and underruns. And so, when I mean a credit, I
25 meant, okay, instead of paying the contractor,

1 let's say, \$100 a tonne to put down SMA, he has a
2 unit price of \$90 in the contract for 12.5 FC2.
3 Ergo, you get a credit of \$10 a tonne. It's not
4 really a credit. You're just paying the
5 appropriate item to do the work.

6 Q. Right. And so, I guess I
7 find that interesting because around that time, I
8 expect MTO witnesses will confirm that credits
9 were being offered to their contractors to switch
10 from using SMA. And so, are you saying that's not
11 what you were referencing when you made those
12 comments yesterday?

13 A. No, it wasn't that.
14 Again, this is what they had heard. And I said,
15 again, you look at my contract for the Red Hill
16 Valley Parkway paving, we had both items, you
17 know, because I was like, wow, \$10 difference. I
18 said, you know, we only had a dollar difference,
19 is what the contractor bid on ours, so, you know,
20 it was those kind of things. Again, they hadn't
21 done it. Again, this just is what they've heard,
22 you know. Is it because other CAs were their firm
23 on those other MTO contracts? I can't recall the
24 details of the conversation, but it was -- so,
25 when I say credit, I am going on that assumption

1 that I just said, you know, that yes, they had
2 prices for both and you say, no, do one or the
3 other.

4 Q. Okay. And so, you're not
5 referring to switching to another after a contract
6 is already in place for SMA?

7 A. Correct. I'm not
8 referring to that, no.

9 Q. You're saying choosing
10 how to bid on certain projects?

11 A. Yeah. Again, in the
12 conversations, there was never that details of,
13 yes, did they have unit prices for both? What
14 other kind of asphalt? It was just, oh, they were
15 getting a credit. So, again, how my tender was
16 set up, there wasn't probing questions. It was
17 like, okay, wow, \$10. You know, you go back and
18 look, I say we only had a dollar tonne difference.
19 That's all.

20 Q. Okay. And so, that's
21 something you would refer to as a credit, although
22 you're really just talking about the unit price
23 for --

24 A. Correct.

25 Q. -- bidding on work?

1 A. Correct. But if you look
2 at it, you know, I just saved \$10 a tonne. If you
3 have unit prices, yeah, you're paying the
4 appropriate and you saved, you know, or got a
5 credit if you want to say it. So, I wasn't aware
6 of what you were saying, that they were actually
7 asking to say put down 12.5 FC2. I wasn't aware
8 of that. In the conversations, I assumed --
9 again, I can't recall the details, but it was --
10 and it was more of the, yeah, SMA is a really
11 tricky mix, finicky, you know. I get my
12 geotechnical saying the same thing. But again,
13 you said when it goes down right, it's a great
14 mix. So...

15 Q. Okay. And you mentioned
16 that you had the conversation shortly before
17 paving. And, again, I expect MTO evidence will be
18 that at that time, on our already bid and awarded
19 contracts that haven't been paved, we were
20 offering credits to switch from SMA, but you're
21 saying you had no knowledge of that?

22 A. That's correct.

23 Q. And so, what was your
24 interpretation of why the contract administrator
25 was bringing this up at that time to you? What

1 was the purpose of this discussion?

2 A. I can't recall how it
3 came up. I really can't recall. We were probably
4 talk about a lot of other things as well and this
5 just came up in the conversation about asphalt,
6 you know. So, nothing -- again, I wasn't aware of
7 what the MTO -- of the early friction problems the
8 MTO was experiencing at that point in time, before
9 we -- I didn't find out -- you know, to the best
10 of my recollection, it was around just after the
11 friction testing was done in October of 2007 on
12 the Red Hill Valley Parkway.

13 Q. Okay. I believe you said
14 yesterday that you then went to Dr. Uzarowski and
15 suggested perhaps going to Superpave because
16 that's what the MTO guys are doing. Do you recall
17 making that statement?

18 A. Yes, yes.

19 Q. Okay.

20 A. And that was before we
21 were paving. Again, no knowledge of the early
22 friction issues, just, you know, in my mind I said
23 they're both good asphalts, but, you know, you
24 realize the SMA has the superior rut resistance,
25 so it made sense to do it. As well, it did have

1 that other benefit of being quieter. But that was
2 an added bonus, if you want to look at it like
3 that, especially within our valley, you know,
4 because it was very hard to provide noise
5 protection to those existing homes along there.

6 Q. Right. Okay. Sure. I
7 believe you said that Dr. Uzarowski said he
8 wanted -- he touted the SMA benefits of course and
9 then mentioned that he wanted to collect more
10 information because the MTO wasn't using it. What
11 did you mean by that? What was the additional
12 information?

13 A. I can't recall saying
14 that the MTO wasn't using it. And was I making
15 that comment in reference to the friction testing
16 that was being done?

17 Q. No. I believe it was
18 around the same time that you mentioned having
19 discussions with the folks associated with
20 contract 2005-2008 for the interchange. I believe
21 you spoke about bringing that up with
22 Dr. Uzarowski. He touted the benefits and then
23 indicated that he wanted to collect more
24 information.

25 I could have that wrong and,

1 if that's not consistent with your recollection,
2 then that's fine and I can move on.

3 A. Yeah. I can't remember
4 what -- I thought I had made that comment about as
5 to why we were doing the friction testing and that
6 I assumed because he was writing papers, I think I
7 recall that's what I said yesterday, but I'm
8 speculating. I would have to actually see the
9 transcript, I guess.

10 Q. That's fair enough. But
11 in terms of in general, you mentioned the friction
12 testing now. Is your recollection that you
13 proceeded with the friction testing because of
14 something MTO did? Like, MTO wasn't using this
15 aggregate and that's why the friction testing was
16 carried out?

17 A. Again. I would be
18 speculating, but again, it could be, you know, I
19 knew Dufferin had wanted to get, you know, the
20 possibilities, said, you know, we're using it
21 here, we would like to maybe try and get it on the
22 DSM list, and that's, you know, a whole other
23 process. But this would be the test strip, I
24 guess, for that DSM process. So, I said, okay, I
25 don't know. Is it -- I didn't realize you needed

1 to do friction testing for DSM, so it's probably
2 not that. In my mind, it was more Ludomir wanting
3 to collect data for papers.

4 Q. Okay.

5 A. Because of the perpetual
6 pavement, you know, the whole thing that we were
7 doing. Apparently we were the first one in
8 Canada, but I think MTO beat us to the punch. But
9 I don't know. It doesn't really matter to me.

10 Q. In terms of what you just
11 said for the DSM purposes, so you're not referring
12 to a specific conversation with Dufferin in which
13 they wanted to proceed with friction testing
14 because --

15 A. Oh, no. Dufferin -- to
16 the best of my knowledge, Dufferin didn't ask
17 about the friction testing and I don't even
18 know -- I couldn't confirm if it was Golder or the
19 City asking for the friction testing. I don't
20 believe it was the City. I, you know, again, I
21 don't know. Was it MTO who asked Golder? Was it
22 Golder? From what I saw in the documents, it
23 looks like Golder approached MTO.

24 Q. That's fine.

25 A. But that's just after I

1 saw the information. Back in 2007, I didn't know
2 that.

3 Q. Okay. And so, is your
4 evidence that you were unaware that the friction
5 testing was going to be conducted on your roadway
6 in 2007?

7 A. Correct.

8 Q. We know that Golder
9 arranged it and you're saying you were unaware of
10 that?

11 A. Correct. I mean, from
12 what I recall yesterday, there was those -- it was
13 an e-mail in September where Ludomir was in
14 contact with the -- I believe it was the group
15 from MTO who would do the friction testing and he
16 had said everyone is away this week, including the
17 project manager, so I'm -- yeah. I wasn't aware
18 of it until just before it was going to happen.

19 Q. Okay. And so, your
20 evidence is that you became aware of it just
21 before it was going to happen. In what context?
22 How did you become aware of it?

23 A. Ludomir would have
24 contacted myself. I'm assuming he would -- again,
25 I'm speculating that he would have contacted Gary

1 Moore and then made the appropriate field
2 arrangements. And then the details of actually
3 when it happened was either done through Walter or
4 Andro. Walter with Philips, Andro with Golder. I
5 didn't know the purpose of the friction testing or
6 why they were doing it and I didn't question it
7 either.

8 Q. Okay. But you would have
9 known it would propose some sort of test results,
10 I'm sure?

11 A. Yes, and Ludomir shared
12 that information with us once it was done.

13 Q. Right. Okay. Registrar,
14 could we please pull up the overview document,
15 chapter 3, to image 55. Okay.

16 And so, Mr. Oddi, at
17 paragraph 111, we see the e-mail that
18 Dr. Uzarowski sent to you on July 31, 2007, which
19 you spoke about yesterday, and you indicated that
20 this was sent to you late in the day on July 31
21 and I believe paving was set to proceed August 1.
22 Is that correct?

23 A. Yes, that's correct.

24 Q. Okay. And I believe you
25 also said there was likely a discussion earlier in

1 the day about the issues that Dr. Uzarowski is
2 raising here, which probably makes sense because,
3 from this e-mail, it appears that the decision to
4 pave the following day had already been made. Is
5 that accurate?

6 A. The discussion, Ludomir,
7 I can't recall the exact details of the
8 conversation, but he had brought this to our
9 attention, so it was, I believe, myself, Philips
10 and Dufferin, on July 25, so it was the -- I don't
11 know if that would have been the Friday, but --
12 and then this was sent out the day before, yeah.
13 Because on August 1 -- yes, that's correct. So,
14 at that point, Dufferin was said that they were
15 going to pave, start paving, on August 1.

16 Q. Okay. And do you still
17 recall having a discussion with Dr. Uzarowski
18 earlier in the day on July 31?

19 A. No, no. Our conversation
20 would have been -- sorry, it would have been the
21 27th. Sorry. The 25th, I think, is when they did
22 the test strip, so the 27th is when we met onsite
23 and Ludomir made us aware of what's in this
24 e-mail, so now he was just putting it in writing
25 and we were -- and, again, this was the advice

1 that he gave to the City and, you know, we said
2 basically Dufferin -- Dufferin was proceeding,
3 they realized, at their risk to start the SMA
4 paving.

5 Q. Okay. I'm asking you
6 because we know that Dr. Uzarowski confirmed with
7 MTO on July 31 that MTO and the industry had
8 developed concern about the early age friction of
9 SMA, and, you know, he had framed it as a rumour
10 that he had learned of sometime in and around, you
11 know, the lead-up to July 31.

12 And so, I'm just wondering --
13 I appreciate that now you're saying there was not
14 likely a conversation during the day on July 31,
15 but is it possible that he raised the early age
16 friction issue with you in your discussions in and
17 around this time?

18 A. No, no. It was late in
19 the fall. It was close to the opening of the
20 road. Right? And from the best of my
21 recollection, I was -- Ludomir made me aware of
22 the early friction just after the getting those
23 results. I believe it was during the conversation
24 about the results themselves.

25 Q. Okay. And yesterday we

1 discussed the e-mails sent, including on July 23,
2 where there's reference to verbal discussions
3 about concerns with SMA, and I believe you
4 couldn't recall what those concerns were since,
5 you know, approvals had been previously granted or
6 whatnot.

7 Given the timing of at least
8 Dr. Uzarowski's knowledge of the early friction
9 issue, can you say for sure that these other
10 issues and problems weren't about the early age
11 friction of SMA?

12 A. To the best of my --

13 MR. CHEN: Can I interject for
14 a second there? Again, we're going down a path of
15 speculation here. He's already testified as to
16 his recollection of these events.

17 JUSTICE WILTON-SIEGEL: I'm
18 going to allow the question. I think it's
19 different from what was previously asked,
20 Mr. Chen.

21 MS. MCIVOR: Thank you,
22 Commissioner. And I'm happy to rephrase it.

23 BY MS. MCIVOR:

24 Q. I'm interested in whether
25 you recollect in that timeframe a discussion about

1 the early age friction issue given that that's
2 when it came to light, that's when Dr. Uzarowski
3 became aware of it?

4 A. To the best of my
5 knowledge, no. I recall being made aware of the
6 issue, you know, late before we were -- again, we
7 were going to be opening the road in a month.

8 Q. Right. And I appreciate
9 that you have a distinct recollection of
10 discussing the early age friction issue in October
11 while reviewing the test results, but would you
12 agree that it's possible there were also earlier
13 discussions about it?

14 A. To the best of my
15 recollection, there weren't.

16 Q. Okay.

17 A. And I say that because
18 when Ludomir informed me of it, it was, like, I
19 don't know. I don't know what the numbers mean.
20 Apparently the numbers, he said, were very good,
21 so there was no concern with friction. So, it was
22 like -- and, you know, in my mind, it was, like,
23 well, I don't know, like, we should have been made
24 aware of it. Because I'm opening the road in a
25 month. It would be kind of hard to delay it, but,

1 you know, if we had to, you would. But again,
2 given the friction numbers that they obtained, it
3 was good to open the road.

4 And did it just work out that
5 because I don't know how long it takes for that --
6 you know, for everyone's purpose, I call it a
7 sheen. It's kind of, you know, the asphalt
8 cement, you know, coating on top of the stone
9 mastic asphalt gets worn off because of all our
10 construction traffic that was happening, you know,
11 September, October. We were, you know, I guess
12 fortunate.

13 I don't know if it would have
14 been a concern with this aggregate because what
15 I've seen in other documentation, because of the
16 inquiry, is that it was a particular quarry that
17 the concern was over, not all the quarries. You
18 know, but I didn't know that at that time. But if
19 we had had a recommendation that we needed to do
20 something from Golder, we would have done it. So,
21 that's why I'm very comfortable saying I wasn't
22 aware of it back in July.

23 Q. Okay. And had you been
24 aware of it, would that be a relevant piece of
25 information in terms of deciding whether to

1 proceed with paving?

2 A. We would have had
3 discussions with the entire team, talked about the
4 risk, you know. And in the end, when you look at
5 our staging, it would have been, okay, measure it,
6 measure it, you know. So, if it had been brought
7 up, it definitely would have been discussed and
8 said how do we proceed with this and we all would
9 have collectively have made a decision with, you
10 know, the recommendations from Golder, definitely
11 with Gary Moore and the contractor. We would have
12 worked collectively to come up with a solution
13 because, you know, to the best of my knowledge MTO
14 kept paving SMA up until about 2008, I believe.

15 And then it went on a little
16 bit of a, you know -- I believe the MTO didn't do
17 it for a while. I'm not sure why. And then it
18 came up again and I found that out because, in
19 doing our resurfacing of the Red Hill Valley
20 Parkway, I had contacted the ACE, the area
21 construction engineer, who was on that 2005-2008
22 project just because I knew he was in the area
23 and, you know, which asphalt was placed, because I
24 knew the MTO had done stone mastic on the 403 from
25 the LINC interchange southerly, but I had believed

1 that the piece that was done through the
2 escarpment down to -- I can't remember where the
3 limits were, but I believe they went past King
4 Street. You know, it looked like that was SP 12.5
5 FC2. When you pull over on the road and you look
6 at it, you can definitely see the difference
7 between SMA and 12.5 FC2, so I was calling the MTO
8 representative because I knew he had all the data
9 or I knew he had the information, sorry, on what
10 was placed where because we were still --

11 Q. Okay.

12 A. Anyway.

13 Q. So, Mr. Oddi, are you
14 mentioning that in reference to when you became
15 aware of the MTO's moratorium on the use of SMA?

16 A. Yeah, correct. I found
17 out about that in early 2019. But it wasn't he
18 just, you know -- it was just, yeah, we stopped
19 using it for a while, don't really know why,
20 because but yeah, we're back to using it again and
21 we apply a grit to it now.

22 Q. So, your evidence is that
23 you did not know about MTO's moratorium on SMA
24 until early 2019?

25 A. Correct.

1 Q. And by that time, it had
2 been reinstated for five years, but that's when
3 you found out about it?

4 A. Yes, correct, because
5 within the City, once Red Hill was done, we never
6 specified SMA on any -- I'm not aware of us
7 specifying SMA on any other contracts. Otherwise,
8 we would have then found out about it.

9 But, you know, when we were
10 going to do the Red Hill resurfacing, basically
11 it's the two options. It's SMA or 12.5 FC2.

12 Q. Right. Okay. And so,
13 Red Hill being your first SMA project that you
14 worked on, you had no interest in following up on
15 other projects or other developments with SMA
16 moving forward?

17 A. No.

18 Q. Okay. Now, you said that
19 had the early age friction issue come to light
20 before paving, you would have discussed with the
21 various team members, with Gary Moore, the
22 contractors and made an informed decision.

23 When you learned of the early
24 age friction issue, let's say, when you had this
25 discussion with Dr. Uzarowski in October of 2007,

1 did you then flag the issue for Gary Moore or
2 anyone else on the team?

3 A. No, I didn't. No, I
4 didn't. Gary had received the results and, in my
5 conversation with Ludomir, he had indicated the
6 numbers were very good and that we didn't need to
7 do anything. Something -- I can't recall exact
8 details of the conversation, so it's like, oh,
9 okay, all right, good. You know, in my mind,
10 you're going, wow, it would have been nice to know
11 about this, but again, you know, so you would have
12 a plan to deal with it. But, you know, our
13 numbers were, he said, very good. I didn't know
14 what the numbers meant. I didn't realize the
15 friction testing the Ministry was doing.

16 Q. So, yesterday you
17 mentioned that Dr. Uzarowski framed the numbers as
18 very good for SMA, and so you would have been
19 aware that the MTO was conducting friction testing
20 on other SMA roadways at that time. Is that --

21 A. No, I wasn't aware of
22 that.

23 Q. Okay. You were aware of
24 the early age friction issue. You just weren't
25 aware of what the industry and MTO were doing in

1 terms of investigating or repairing it. Is that
2 what you're saying?

3 A. That's correct.

4 Q. And did you ever follow
5 up for information about all of the efforts that
6 the MTO and the industry put forward to deal with
7 this issue?

8 A. No, I did not, because,
9 again, our -- it was used on our road and it was
10 okay. No, I didn't have any concerns, I didn't
11 follow up, because it wasn't impacting any of the
12 City contracts or any of our proposed work.

13 Q. Okay.

14 A. Again, the first time we
15 start looking at it was in, you know, 2019 and
16 then the only reason, again, is because we were
17 looking at hot in-place recycling seemed to be a
18 very good economical alternative and it was,
19 well -- anyway. That's later on, I believe. So,
20 that's why we were looking at it in 2019, so I
21 said to our design guys, I'll contact the ACE,
22 find out, because I'm pretty sure we put 12.5.

23 Q. Okay. I understand. So,
24 just back to the test results, I understand that
25 from a technical perspective, you didn't, you

1 know, understand them, but from a practical
2 perspective, what I've heard is you were satisfied
3 that they were good results. Is that fair?

4 A. Yeah, and in my mind it
5 was safe to open the road. There were no concerns
6 expressed. If Ludomir had said, you know, we need
7 to do something, it was, okay, thanks for giving
8 me so much notice, but we'll do it, you know.
9 Let's get it going.

10 Q. Okay. And so, I would be
11 correct then, I assume, that you didn't directly
12 reach out to anyone at the MTO to discuss those
13 friction results?

14 A. No.

15 Q. And you wouldn't have
16 reached out to anyone at the MTO to discuss or
17 express concern about friction on the Red Hill in
18 general, aside from that test that was conducted?

19 A. That's correct.

20 Q. Okay. And I do
21 understand as well that you were satisfied with
22 the results. Yesterday you mentioned that the
23 City doesn't have, I believe you said, a friction
24 management program, but I assume that if you had
25 developed concerns about friction levels, is it

1 fair to say that you would have explored
2 additional friction tests, whether that's through
3 the MTO or a private vendor or what have you?

4 A. Again, the way our roads
5 are assessed is through our asset management
6 program section is they do a rating on the road
7 and it's a visual thing. I can't remember if
8 there's a machine that -- like a Lidar type thing
9 that takes information, but the way -- we don't
10 have a formal friction monitoring program. I'm
11 not aware of any municipality in Ontario that has
12 that. And everyone basically looks at top-down
13 cracking and how, you know, in a normal cycle of
14 asphalt, you place down asphalt, you're going to
15 get cracking probably within about year five, year
16 six, so you do a crack sealing program. This way,
17 the water doesn't get down into the cracks, create
18 potholes.

19 There's a whole management of
20 asphalt, so we don't ever -- to the best of my
21 knowledge, we never look at friction. We look at
22 the base failures, potholes. We get a road
23 condition index of it and then you -- and then our
24 asset management section is sort of like a
25 programming thing that says here is the condition

1 of the road and here is how much money we have in
2 the budgets, here is all our needs, you know, for
3 water, sewer, so there's a whole process of how
4 they try and spend the money that we have wisely
5 to make sure the assets, you know, are preserved
6 for as long as possible.

7 Q. Okay. And so, what I
8 asked was if you personally developed a concern
9 about friction on the Red Hill Valley Parkway,
10 what would you do? Would you arrange for further
11 testing, so I guess you're saying no?

12 A. Yeah. I did not have a
13 concern about friction on the Red Hill Valley
14 Parkway. You know, if it was within my -- if I
15 had that concern, I would have been reaching out
16 to Gary, you know, knowing that, okay, the
17 Ministry does testing. Should we be doing
18 testing? But there was no concern on my part
19 about friction on the Red Hill Valley Parkway.
20 All roads wear. As soon as you start putting
21 traffic on them, they wear. You get cracking.
22 So, you know, in a very simple form, to me, you
23 would say, well, yeah. The friction would
24 definitely wear down as, you know, traffic is on
25 it and it's polishing the surface of that roadway.

1 Q. Right.

2 A. We all drive. Everybody
3 in Ontario, we all drive highways, roads,
4 everywhere, every municipality. You know, I don't
5 have this concern that, gee, I wonder what the
6 friction is on the QEW or the 401. Maybe I'll
7 avoid that road. You know, so it's, you know, all
8 roads are slippery when wet and, you know, you
9 would hope that drivers would adjust their driving
10 to suit the weather conditions.

11 Q. Right. Okay. And so,
12 Mr. Oddi, yesterday commission counsel asked you
13 about a former MTO employee, Dennis Billings. You
14 e-mailed him in February of 2008 with information
15 about the Red Hill Valley Parkway and the SMA.

16 I don't think we need to go
17 there, although we can if you would like to see
18 it, but at that point in time do you recall
19 expressing any concerns to Mr. Billings about the
20 Red Hill Valley Parkway and its construction, how
21 it was being maintained, anything of that nature?

22 A. No, no. It was just to
23 provide him with information and to the best of
24 my -- you know, I was aware that Dufferin had told
25 me that they were going to try and put that Demix

1 aggregate or get it on to the DSM list, so, you
2 know, again, I'm speculating, but, you know, in my
3 mind it's just, yeah, they want the information on
4 that aggregate.

5 Q. Right.

6 A. I believe the e-mail was
7 about that aggregate and how, you know -- and I
8 outlined the quantities, everything, you know, all
9 that information so that you have it.

10 Q. Okay. And so, I
11 anticipate that MTO evidence will confirm that
12 Mr. Billings was a member of that industry SMA
13 task group that had been assembled to look into
14 friction issues with SMA and he was associated
15 with one of those subgroups. So, you don't recall
16 conversations about his work on the SMA task
17 group?

18 A. No. To the best of my
19 recollection, no, not at all. Nothing about
20 friction. It was -- and I believe it was that he
21 called me and left me a message that he was
22 looking for information on that Demix aggregate.
23 So, I do not recall any conversations about, you
24 know, his role at MTO or specifically what the
25 information was for.

1 Again, I'm speculating. So,
2 you know, in my mind, it was, oh, okay, this is
3 that followup, you know, because things take time
4 and it's not like it happens right away. There's
5 processes, you know, that the MTO follows and
6 sometimes, you know, they're a little longer than
7 people would think.

8 Q. Right. And so, just to
9 confirm, did you contact Dufferin at that time to
10 inform them that MTO was looking for information
11 about their aggregate?

12 A. To the best of my
13 recollection, I didn't.

14 Q. Okay. Thank you,
15 Mr. Oddi. Those are my questions.

16 A. Thank you.

17 MR. LEWIS: Commissioner, I
18 believe that Ms. Laurion for Dufferin is up next.

19 JUSTICE WILTON-SIEGEL: Okay.

20 EXAMINATION BY MS. LAURION:

21 Q. Good morning, Mr. Oddi.
22 Good morning, Commissioner.

23 JUSTICE WILTON-SIEGEL: Good
24 morning.

25 THE WITNESS: Good morning.

1 BY MS. LAURION:

2 Q. Mr. Oddi, Ms. McIvor just
3 took you to Dr. Uzarowski's e-mail from July 31,
4 so I don't think we need to pull it up again. But
5 yesterday afternoon Mr. Lewis asked you questions
6 about the test strip and, in particular, that
7 e-mail. Do you recall being asked questions about
8 that?

9 A. Yes.

10 Q. And in that e-mail it
11 said that Dufferin would be proceeding at their
12 entire risk. Do you remember reading that?

13 A. Yes.

14 Q. So, within that context,
15 I believe that your evidence was that if the test
16 strip didn't meet all of the specifications, then
17 you would have had Dufferin rip it out?

18 A. Sorry, can you repeat
19 that?

20 Q. Within that context,
21 talking about the test strip, I believe that your
22 evidence was that if it failed all of the
23 specifications, like if it was a horrible test
24 strip, you would have had Dufferin rip it out?

25 A. Oh, if that was Golder's

1 recommendation, yes. It would have been removed.

2 There wouldn't have been a question on that.

3 Q. Right. And that's
4 because the parties' relationship was one where if
5 it needed to be ripped out, then the City or
6 Philips or Golder would say so?

7 A. Oh, absolutely, yeah.

8 Q. And you would pick up the
9 phone and call Golder or Dufferin or Philips to
10 address issues right away?

11 A. Oh, yeah, definitely.

12 Q. And I take it that's
13 because the City, Golder, Philips and Dufferin all
14 had a collaborative working relationship on this
15 project?

16 A. Absolutely, yes.

17 Q. And then you also
18 mentioned that if there was something wrong with
19 the test strip or with the main line for that
20 matter, another option would have been to leave it
21 in place but to apply a penalty?

22 A. Yeah. That's an option
23 and I know, like, in the MTO's end result
24 specification that's the normal procedure. You
25 know, however, that's where you rely on your

1 geotechnical experts, you know, on both sides
2 because the contractors have theirs, you know, the
3 clients always have theirs and then there's always
4 those when there is disputes, because things can
5 go wrong just in even the testing, you go to your
6 referee samples. Right?

7 The only difference between
8 the Ministry and the City is the Ministry does
9 cores, random cores, wherever and they use the
10 cores to do the testing. We were using plate
11 samples, so there were samples set aside so that
12 if there was disagreements between the parties,
13 and the reason for using the same plate sample is
14 so that we're not -- you know, you're comparing
15 apples to apples.

16 And then if there was a
17 dispute, you would take that sample, send it to an
18 independent laboratory and, whatever the results
19 are, that's it. If the owner is right, great. Do
20 whatever you need to do. The contractor would pay
21 for the testing. If it's the reverse, you know,
22 it shows no, the contractor's QC results were
23 correct, then the owner would have to pay for it.
24 And to the best of my recollection, we never had
25 to go to that process on the Red Hill Valley

1 Parkway.

2 Q. I agree with your
3 recollection and I also believe that no penalty
4 was applied in this case. Is that right?

5 A. To the best of my
6 recollection, I do not recall applying a penalty.

7 Q. And Dufferin was paid for
8 the asphalt?

9 A. Yes, they were.

10 Q. Okay. Mr. Oddi, I'm now
11 going to briefly touch on the lines of
12 communication on this project. I believe that you
13 mentioned that a lot of things were agreed upon or
14 dealt with orally during the life of the project.
15 Am I correct on that?

16 A. Yes.

17 Q. And that's why, for
18 example, Dave Hainer's e-mail of May 17 -- and let
19 me know if you would like me to pull it up, but
20 that's the e-mail where he said that Dufferin
21 wouldn't warranty the asphalt that was placed,
22 which was constructed on material placed by
23 others. Do you remember that e-mail? Would you
24 like me to pull it up?

25 A. No. I remember the

1 e-mail, but I also, I do recall Dave either
2 calling me or telling me in person, I can't
3 remember which one it was, that, you know, I have
4 to send this letter and, you know what, it's a due
5 diligence letter that, you know, I don't know if
6 you were their lawyer at the time, but someone
7 said you better do this just in case something
8 happens in the future.

9 So, you know, I don't mean to
10 downplay it because in my mind there's not a
11 concern. We had internally, and, again, worked
12 with Dufferin and all our consultants to come up
13 with a solution with the problems with the
14 aggregate that was going in on top of the subgrade
15 under the asphalt that basically Dufferin was told
16 to put down. So, we all addressed it and said,
17 there's some risk here. We're going to -- City,
18 our maintenance guys are going to save \$2 million
19 over time and the project, we had enough funds
20 within contingencies to address it. Chris Murray
21 was very open, presented that to council, so it's
22 not like -- nothing was hidden and we proceeded.

23 And you know what? We
24 didn't -- anyway. It worked out collectively
25 together. I wasn't concerned about the letter

1 and, you know, I was pretty confident up through
2 that area, because it was mainly through rock,
3 that we wouldn't get any long-term settlements
4 with the crossings, because if that happened,
5 again, is it really fair to me to blame the paving
6 contractor because we had a long-term settlement
7 from someone else who had done the grading?
8 That's why I didn't discuss it with Gary and it
9 wasn't a real concern. So, it was like note to
10 file, no problem.

11 Q. So, if I could synthesize
12 your answer, is it fair to say that it wasn't a
13 big deal or it didn't concern you because the
14 parties had already discussed and addressed the
15 underlying issue and Mr. Hainer was merely
16 ensuring that there was a paper record after the
17 fact?

18 A. Correct, correct. And,
19 again, you know, the existing area that did have
20 granular, Walter and I asked Ludomir, can you
21 review this? This is what happened, you know.
22 Because if need be, we're going to remove that
23 granular, too. Right? Like, everyone wants this
24 to succeed and be done right. And the response
25 back was that, no, it's good. And it makes sense

1 because that granular came out, it was produced
2 from the dolomitic limestone.

3 The shale -- yesterday I had,
4 I call it a some-timer's moment. I think it's
5 really about having too many things on your plate,
6 but the shale was near the end of the blasting, at
7 the bottom, so as it got put on top of the piles,
8 the piles sat for years, that went into the
9 granular. Anyway.

10 Q. Okay. So, I'm going to
11 move on now.

12 A. Sorry. Yes.

13 Q. Mr. Registrar, if you
14 would please pull up overview document 3,
15 image 44, and paragraph 87. Thank you very much.

16 And so, Mr. Oddi, these are
17 Dr. Uzarowski's notes that he made on May 28, 2007
18 and I appreciate that they're not your notes, but
19 if you can see at the bottom there -- well, just
20 to read them, it starts -- like, in the middle of
21 it, it goes:

22 "RBM test strip.

23 Mix design - accepted."

24 And then it goes on to say:

25 "Field densities, air

1 voids, AC content, SP25."

2 And then it goes:

3 "Marco, letter to DCC."

4 And I assume that's Dufferin
5 Construction Company. Do you see that on the page
6 there?

7 A. Yes, I do.

8 Q. Okay. And so, my read of
9 that is that Golder accepted the RBM mix design
10 and that you would then provide the written
11 confirmation to Dufferin about the acceptance. Is
12 that your read of these notes?

13 A. No. I don't know what he
14 means by letter to DCC. I'm not -- I don't know
15 what that note means because, to the best of my
16 recollection, I did not provide a written
17 correspondence to Dufferin about the RBM. You
18 know, I don't recall.

19 Q. So you don't recall if
20 you did send a letter about the approval of the
21 mix design?

22 A. Yeah, and if it
23 wouldn't -- it would have been -- again,
24 speculating, it would have been an e-mail, so I
25 don't know what that note means, letter to DCC. I

1 don't know. Is it his letter to DCC? Is it my
2 letter to DCC? I don't know what that comment
3 means.

4 Q. Okay. Thank you,
5 Registrar. You can take that down. Because I
6 would put it to you, Mr. Oddi, that it wasn't
7 unusual for there to be an oral agreement and then
8 for someone, whether it be Philips or the City, to
9 paper that oral agreement after the fact. Do you
10 agree with that proposition?

11 A. Oh, yeah. Depending on
12 different project things, yes. And to the best of
13 my recollection, eventually the written
14 confirmation regarding asphalt would have come
15 from Golder, to the best of my recollection. But
16 lots of verbal. It's yes, you know, yeah, yeah,
17 yeah, good, good, we need to get going, okay, send
18 the approvals, you know, get it.

19 We had that trust built up
20 where, you know, if we had said this -- and again,
21 if it's only between two people, then it's okay,
22 what was the conversation? You know, you would
23 say there's always three sides to the story: The
24 two versions and then what actually happened.
25 When you have more than two people in the

1 conversation, then it's no.

2 And again, our philosophy, the
3 way we're operating, was that all the parties were
4 involved. So, if someone said, well, I never said
5 that, it would be like, no, I was there, this is
6 what you said. Right? So, there was that trust
7 that yes, we were given this, giddy up and go.

8 Q. Okay. And so, finally,
9 Mr. Lewis asked you a couple of questions about
10 the e-mail you sent on August 9, so I just have a
11 few follow-up questions about that. So,
12 Registrar, would you please pull up overview
13 document 3, image 58, paragraph 120. Thank you.

14 So, Mr. Oddi, I put it to you
15 that you would not have sent this e-mail if you
16 were not confident that the contents were true?

17 A. That's correct.

18 Q. And you were confident at
19 this time that the aggregates had been approved?

20 A. That's correct.

21 Q. And you were also
22 confident at this time that the mix design had
23 been approved?

24 A. No, I didn't say that. I
25 just said the aggregates were approved. The trial

1 batches for the mix designs met the specified
2 requirements.

3 Q. I see.

4 A. So, I can't really -- I
5 don't know if at that point the mix design had
6 gotten final approval, because you do trial
7 batches. Right? And the trial batches, more than
8 likely they were laying it down at the portable
9 plant or, you know, if you're doing a project, you
10 might say, hey, let's go put the trial batch on
11 this road, do the testing on it, that type of
12 thing, but I'm pretty sure our trial batches were
13 being done up where the portable plant was set up.

14 Q. Got it. So, the trial
15 batches for both mix designs had met the specified
16 requirements by this time?

17 A. Correct. And at this
18 point, the SMA mix, I can say, had been approved
19 for sure because we were placing it. I can't
20 recall if the verbal approval for the 12.5 FC2 had
21 been given for the mix. That's why it's stating
22 that, yes, the aggregates have been approved.
23 Right? But I didn't say anything about the mixes,
24 the mix design, the final mix design. Sorry.

25 Q. Okay. Mr. Oddi, you

1 froze a little bit there, but I caught your
2 answer. Mr. Commissioner, may I proceed with my
3 next question or do you want Mr. Oddi to repeat
4 what he said?

5 JUSTICE WILTON-SIEGEL: I
6 didn't have any problem with his answer. If you
7 didn't, then I would just proceed.

8 MS. LAURION: Okay. Great.
9 Thank you very much.

10 BY MS. LAURION:

11 Q. Okay. And, Mr. Oddi, I
12 take it that you would have been confident in the
13 contents of this e-mail because Golder would have
14 told you that they had approved the aggregates and
15 the trial batches for both mix designs before you
16 sent this e-mail. Is that right?

17 A. That's correct.

18 Q. It was suggested to you
19 by commission counsel yesterday that the most, I
20 believe the words were that the most logical
21 explanation for this e-mail having been sent was
22 that it related to Dufferin's application to have
23 the Demix aggregate placed on the DSM. And I take
24 it, however, that you have no recollection today
25 as to why you sent this e-mail?

1 A. Yeah. I can't confirm,
2 but yes, that's definitely, you know, a
3 possibility of why I would have sent this e-mail
4 at the time. But I can't -- again, it's
5 speculating. It could have been, yeah, it was
6 probably that. And I know Dufferin had a lot of
7 work with the Ministry. Was this part of the
8 process? Did they need it in writing from me, you
9 know, the owner, to say to the MTO? Right? So,
10 it's a very logical, but I can't recall and swear
11 that, yeah, that's definitely why I sent it.

12 Q. Right, so you're just
13 speculating?

14 A. Correct.

15 Q. And you really have no
16 idea, do you, as to why you sent it?

17 A. Correct.

18 Q. Those are my questions,
19 Mr. Oddi. Thank you, Commissioner.

20 MR. LEWIS: Mr. Chen is next
21 for the City. I just note that we're a running a
22 little longer than we expected, so I just ask
23 Mr. Chen to be mindful of that. Thank you.

24 MR. CHEN: Will do. Good
25 morning, Mr. Commissioner.

1 EXAMINATION BY MR. CHEN:

2 Q. Mr. Oddi, I have some
3 questions for you. Mr. Oddi, you discussed
4 yesterday with commission counsel the timing of
5 aggregate approval and I believe he only showed
6 you an excerpt of a document, which I would like
7 to bring up, and that's HAM7883.

8 THE REGISTRAR: Counsel, do
9 you mind repeating that doc ID for me?

10 MR. CHEN: No problem.
11 HAM7883.

12 THE REGISTRAR: Thank you.

13 BY MR. CHEN:

14 Q. So, Mr. Oddi, this is the
15 site meeting minutes from May 8, 2007. Do you
16 recognize this document?

17 A. Yes.

18 Q. And this document
19 reflects the date, the time and who attended the
20 site meeting. Do you see that?

21 A. That's correct.

22 Q. If we can move to the
23 next image, image 2, which starts with Matters
24 Discussed. In the heading number 2, Asphalt
25 Issues, it is followed by two paragraphs and then

1 bullets. Do you see that, Mr. Oddi?

2 A. Yes.

3 Q. Yesterday commission
4 counsel had asked you about the first sentence
5 from 2(a) that says:

6 "The physical properties
7 of the Quebec trap rock
8 are all acceptable."

9 And you testified that that
10 was the approval for the aggregate. Do you recall
11 that?

12 A. Yes.

13 Q. So, my question is in
14 relation to the first paragraph of this section,
15 if I can direct your attention there, which says:

16 "A detailed discussion
17 took place amongst all
18 parties in order to
19 resolve outstanding
20 issues pertaining to the
21 acceptance of the
22 applicable hot mix
23 asphalt specifications."

24 Do you see that?

25 A. Yes.

1 Q. Does that description
2 reflect how issues are addressed at these site
3 meetings?

4 A. Yes, absolutely.

5 Q. So, if there were any
6 issues, any concerns, respecting certain issues at
7 these site meetings, the parties would discuss it
8 openly and come to a resolution?

9 A. Yeah, if it can be
10 resolved at the meeting. Some things take a
11 little longer, but yes. So, any issues are, you
12 know, documented and noted. Yes.

13 Q. And the resolution would
14 then be recorded or the decision would be recorded
15 in the site minutes?

16 A. Yeah. If it was resolved
17 in this meeting, it would be in this one. If it
18 was something in between, it would be noted at the
19 next site meeting.

20 Q. Okay. Perfect.

21 A. And again, our -- we had
22 monthly site meetings. I just want to clarify. I
23 don't want to go too long, but it was we were
24 making decisions as we went. We weren't waiting
25 until the next site meeting so that basically when

1 you came to the site meeting, you're just now
2 summarizing what had been decided through the last
3 month.

4 Q. Understood. And looking
5 again at 2(a) where it says:

6 "The physical properties
7 of the trap rock are all
8 acceptable."

9 Would that be an example of a
10 decision made at this site meeting and agreed to
11 by all the parties?

12 A. Yeah, and that would have
13 been based -- yes, correct.

14 Q. And I understand that
15 there were subsequent site meetings. Is that
16 right?

17 A. Yes. Every month were
18 the regular site meetings. If they needed to meet
19 and talk about something else, we would meet
20 onsite, but those might not necessarily get
21 documented.

22 Q. And just on those
23 subsequent site meetings, did any of the parties
24 tell you that the aggregate was no longer
25 approved?

1 A. To the best of my
2 recollection, no.

3 Q. And what about outside of
4 the site meetings, did any of the parties tell you
5 that the aggregate was no longer approved?

6 A. To the best of my
7 recollection, no.

8 Q. And just so I understand,
9 is it normal course for the aggregate to be
10 approved before the mix design is approved?

11 A. Well, in this case, yes,
12 because we were bringing in an aggregate that
13 wasn't on the DSM list or that the City had
14 specified the contractor could use.

15 Q. Okay. So, I would ask
16 that GOL1617 be brought up on to the screen.
17 Thank you, Mr. Registrar.

18 This is the minutes of the
19 site meeting number 9, which you are in
20 attendance, along with representatives of Dufferin
21 and Golder. Do you see that?

22 A. Yes.

23 Q. And during your
24 discussion with commission counsel yesterday on
25 aggregate approval and his proposed summary of the

1 events, this was not a document that you were
2 taken to by him, so I would just like to ask you a
3 couple of questions about it.

4 So, if we can bring up the
5 second image of this document under the heading
6 Asphalt Issues, bullet (a), and you see here it
7 says:

8 "Golder indicates that
9 after only a quick
10 glance, the SMA mix
11 design appears to be
12 satisfactory."

13 So, what I want to know is if
14 the discussion now at the site meeting has moved
15 on to the SMA mix design and whether the mix
16 design is satisfactory, it's your expectation that
17 the aggregate would have been already approved
18 well before this?

19 A. That's correct.

20 Q. Thank you, Mr. Registrar.

21 We can take that down.

22 Just moving on to a different
23 topic, Mr. Oddi, yesterday you were asked about an
24 e-mail from yourself to Dennis Billings of the MTO
25 back in February of 2008 and MTO counsel had

1 referred to it in examination earlier today, so
2 can we please bring up MTO38567.

3 Yesterday commission counsel
4 asked whether you know Dennis Billings and you
5 testified that you did not know him. Do you
6 recall that?

7 A. Yes.

8 Q. And then commission
9 counsel asked whether Mr. Billings asked you to
10 send this February 2008 e-mail and you had to
11 guess that would be the only reason you sent it.
12 Do you recall that?

13 A. Yes.

14 Q. And then you had a back
15 and forth with commission counsel on the reference
16 to the test strip, which is the third paragraph in
17 that e-mail. Do you recall that?

18 A. Yes.

19 Q. Now, commission counsel
20 suggested to you that your response to
21 Mr. Billings was not honest because your e-mail
22 doesn't say that the test strip failed, and you
23 testified, and I'm summarizing here, that you
24 believe the test strip didn't fail and that it was
25 left in place. Do you recall that?

1 A. Yes.

2 Q. Now, can you just tell us
3 whether you stood to gain any benefit by being
4 dishonest in any way in your communication with
5 Mr. Billings?

6 A. No, not at all. And I
7 don't believe that I was being dishonest
8 because -- you know, I would have to read
9 Ludomir's e-mail. He said it wasn't acceptable
10 and he recommended another test strip. And you
11 know, again, I went through in a lot of detail
12 yesterday about, you know, not everything meeting
13 100 percent of all the specifications on every
14 single test. So, in my mind, yes, six to seven
15 months later, it generally met specifications, is
16 what I meant to say. And given Mr. Billings'
17 position in the MTO, I would believe he would be
18 aware that not all parameters are passed.

19 Q. Understood. And
20 similarly -- this is a slightly different
21 question -- would the City benefit in any way by
22 misrepresenting anything about the test strip in
23 your communications with Mr. Billings?

24 A. No, not at all.

25 Q. Okay. Can you also tell

1 us whether you stood to benefit in any way by
2 being inaccurate about the test strip in your
3 communication with Mr. Billings?

4 A. To the best of my
5 knowledge, no.

6 Q. Again, can you tell us
7 whether the City stood to benefit in any way from
8 an inaccuracy in the e-mail about the test strip
9 to Mr. Billings?

10 A. To the best of my
11 ability, no.

12 Q. Did you receive a
13 response from Mr. Billings?

14 A. No. I don't recall.
15 Like, you mean like a thank you, thanks for the
16 info or looking for more info? No. I don't
17 recall.

18 Q. Okay. Did anyone else at
19 the MTO follow up with you in respect of that
20 e-mail?

21 A. No. To the best of my
22 knowledge, no.

23 Q. To your knowledge, did
24 your e-mail have any impact on any steps taken by
25 Mr. Billings in relation to his enquiries about

1 the Red Hill?

2 A. I'm not aware. I'm again
3 speculating that this was about getting the
4 aggregate on the DSM list. I wasn't aware of what
5 was going on with the -- sorry, I was aware of
6 early friction but not the concern about this
7 aggregate or if there was a concern.

8 Q. Okay. Thank you. So,
9 now I want to go back to your discussion with
10 commission counsel regarding the drawings of the
11 Red Hill. Mr. Registrar, if we could turn up
12 OD3.1, image 8, I believe.

13 So, yesterday commission
14 counsel had asked about drawings and you had a
15 discussion with him about the for-tender,
16 for-construction and as-built drawings. Do you
17 recall that?

18 A. Yes.

19 Q. And you were asked by
20 commission counsel whether there were as-built
21 drawings. Do you recall that?

22 A. Yes.

23 Q. So, I just want to make
24 sure I understand that part off of your evidence.
25 Do you know if there are as-built or

1 as-constructed drawings that were created after
2 the Red Hill was paved?

3 A. To the best of my
4 knowledge, they weren't. I know I had asked the
5 consultant to send us the CAD versions of the
6 drawings so we could have it for the future and,
7 again, there were no changes to the road. There
8 were guide rail changes, but any information I
9 would have gotten from the consultants would have
10 been given to our geomatics section to place in
11 our -- it's our SPIDER system, which stands for
12 spatially -- anyway. Sorry, now I forget what
13 it's called. Spatially indexed engineering
14 records, so that's where we store all the
15 information. The information, this program brings
16 is up and it's all stored on corporate drives.

17 So, if there were any as-built
18 drawings that I asked the consultants to do, they
19 would have then been taken and put into SPIDER.

20 Q. Okay. And then just to
21 touch on a point you just raised, which was that
22 there were, I think, some minor changes to the
23 guard rail, if I have that right, now, if there
24 were effectively only minor changes between the
25 for-construction drawings and what was built,

1 would there still be a need to separately create
2 as-built drawings?

3 A. No. From my perspective,
4 especially with guide rail, guide rail is, you
5 know, continuously being hit and replaced. You
6 know, I don't believe you could go in and update
7 that inventory, but I do know there was definitely
8 an e-mail chain that I had that I would have
9 passed on to our road operations people when they
10 took over so that -- but again, guide rail, as you
11 can see it, it's out there, so do you really need
12 an as-built drawing to show you that the guide
13 rail was extended or that the guide rail was added
14 here? You know, so, in my mind, so, we wouldn't
15 require an as-built drawing for that.

16 Q. Commission counsel also
17 showed you a drawing of the LINC, if we can pull
18 up HAM62769, Mr. Registrar. This document was
19 shown to you yesterday and it has the notation
20 as-constructed, which you were asked about?

21 A. Yep.

22 Q. Do you know why there
23 would be an as-constructed drawing in this
24 particular case?

25 A. I don't know. I know we

1 did that project. Maybe we were just more
2 thorough back then. But I did also note that
3 there was a part B to this contract, plus the
4 other contract was the paving from 403 to upper
5 Wellington, I believe it was contract 97-225SPO.
6 SPO stands for special projects office.

7 So, did we do them for those
8 other sections? I can't recall. So, I can't
9 really give an explanation of why we did it here
10 and then why it wasn't done -- because I know
11 through all the phases, through the -- we started
12 in 2003. To the best of my recollection, I didn't
13 get as-built drawings for any of those contracts
14 as we went through them.

15 Q. Now, just to touch on a
16 point we made before and see if it applies here,
17 do you know if there were changes between the
18 for-construction drawings in this case and what
19 was built?

20 JUSTICE WILTON-SIEGEL: Are
21 you talking about the Red Hill Valley or the LINC?

22 THE WITNESS: To the best of
23 my knowledge, there were no changes to the
24 contract. So, you know, I would have to check
25 them, but more or less if you look through these

1 drawings, it's just another thing in the revision
2 that says as-constructed. In terms of the
3 pavement, interchange locations, nothing was
4 changed. And I don't believe on this contract we
5 did any guide rail additions. So, again, really
6 there would have been -- it would have just been
7 more of a formality where you're just paying a
8 consultant to put a line in the revision table
9 that says as-constructed and now you have it for
10 the records.

11 BY MR. CHEN:

12 Q. Thank you for that
13 clarification. I'll just note here that
14 commission counsel asked yesterday whether this
15 as-constructed document was located on ProjectWise
16 or SPIDER and, unless my team jumps at me, the
17 answer is SPIDER?

18 A. Yeah. It would be -- you
19 would access it through SPIDER and SPIDER stores
20 this information in a corporate drive. It's
21 stored in our Mariner [ph] vault, is the name of
22 the drive.

23 Q. Just one last issue that
24 I would like to discuss. Yesterday, Mr. Oddi,
25 Ms. Roberts, Golder's counsel, asked you questions

1 about the design of the Red Hill and there was a
2 discussion about Philips and Stantec. Do you
3 recall that?

4 A. Yes.

5 Q. Mr. Registrar, if we can
6 turn up OD3.1, image 8. I just want to make sure
7 I understand which consulting firms were
8 responsible for the design of the Red Hill. If
9 you look at paragraph 17, just have a read of
10 that.

11 A. Sorry, I have to shrink
12 something down on my page here. Yes, I've read it
13 now.

14 Q. So, it says that Stantec
15 was responsible for the design of part A. Do you
16 agree with that?

17 A. Yes.

18 Q. And in terms of the
19 design, this is not an exhaustive list, but I take
20 it that would include design aspects such as
21 ramps, tangents and superelevation?

22 A. Correct.

23 Q. And same question for the
24 next sentence, "Philips designed part B." Do you
25 agree with that?

1 A. Yeah. It's the same for
2 part B and part C.

3 Q. Same for part B and part
4 C and that includes design criteria like ramps,
5 tangents and superelevation?

6 A. Yeah. Well, everyone was
7 using the same design criteria because the design
8 criteria was established back in the preliminary
9 design report of either 89 or 90. If the IADP
10 process updated those design standards, then that
11 would have -- you know, it would have been
12 reflective in these designs.

13 The one thing that, just a
14 note, see where it says, "Stantec also designed
15 part D"?

16 Q. Yes.

17 A. Really, they assembled
18 part D. They would have done the design for
19 whatever they were responsible, the pavement
20 markings in A. Philips would have done the
21 pavement markings for that portion of the road and
22 McCormick for their part of the road, the
23 landscaping details. Stormwater management would
24 have been done by Philips because they were the
25 stormwater and they did all the creek design on

1 previous contracts and the landscaping would have
2 been one consultant doing the landscaping for the
3 entire section from Mud Street to the QEW.

4 Q. Thank you. Those are all
5 the questions I have for you today.

6 MR. LEWIS: Thank you. I just
7 have a couple of areas to cover. I'll be
8 hopefully quite brief.

9 FURTHER EXAMINATION BY MR. LEWIS:

10 Q. The first is just to
11 clarify something or follow up on something
12 Ms. Laurion asked you about. Do you recall a few
13 minutes ago she asked you about the RBM mix design
14 approval and whether you did it and referred to
15 Dr. Uzarowski's note. Do you recall that?

16 A. Yes.

17 Q. Okay. And if we could go
18 to OD3, images 43 and 44. In paragraph 86,
19 straddling the two images, it references to a
20 May 22, 2007 communication from Dr. Uzarowski to
21 you, Philips, Mr. Janicas and others at Dufferin,
22 and you'll see in the last sentence in the first
23 paragraph, which is at the top of the image 44, it
24 states:

25 "The mix design for the

1 SP19 RBM mix is
2 acceptable."

3 Do you see that?

4 A. Yes.

5 Q. Okay. And is that
6 approval of the RBM mix design?

7 A. I would believe so, but,
8 you know, now that I'm looking and going, mm-hmm,
9 I thought the RBM was a 12.5. I didn't think it
10 was the 19.

11 Q. Right. Fair enough. And
12 then if we could go to image 46, paragraph 93,
13 these are the June 12 minutes, so jumping ahead
14 two or three weeks, it refers to paving
15 construction meeting number 8, the recorded
16 discussions regarding mix design, material testing
17 and pavement progress, among other things. Then
18 under number A, Mix Designs, it says:

19 "Golder has approved
20 Dufferin's RBM and SP25
21 asphalt mix designs."

22 So, regardless -- first, did
23 you approve the RBM mix design or was it
24 Dr. Uzarowski?

25 A. To the best of my

1 recollection, it would have been Dr. Uzarowski or
2 Golder approving it.

3 Q. Thank you. You can take
4 that down, Registrar. Thank you. Then the other
5 issue, I just want to make sure we're clear on
6 your understanding of the relationship between
7 design speed and curve radius that Ms. Roberts was
8 discussing with you yesterday.

9 And so, you spoke about,
10 yesterday in answering her questions, that the
11 minimum radius on the Red Hill was 420 metres for
12 a 100 kilometre per hour design speed. Do you
13 recall that?

14 A. Yes.

15 Q. Okay. And does that mean
16 in your understanding correlatively that the
17 design speed could not be higher than 100
18 kilometres an hour for a curve radius of 420
19 metres?

20 A. Sorry, can you repeat the
21 question?

22 Q. Sorry, the design speed
23 could not be higher than 100 kilometres an hour
24 for that curve radius. Is that the --

25 A. Yeah. Like

1 geometrically, you know, physically, that's the
2 minimum, the smallest radius you can go to for 100
3 kilometre design speed.

4 Q. Okay. And does that mean
5 you can have a posted speed of 100 kilometres an
6 hour or does it need to be lower?

7 A. Oh, it needs to be lower.

8 Q. Okay. And the posted
9 speed at that time, on opening, was 90 kilometres
10 an hour. Correct?

11 A. Correct. If you look at
12 the original 1990 PDR, preliminary design report,
13 which gave the design criteria, and again I can't
14 recall if that was updated with the IADP, but it
15 would have told you, here, here is your design
16 speed, here is your posted speed.

17 Q. Okay. And just with
18 respect to your understanding about the minimum
19 curve radius at that design speed, does the
20 superelevation of the curve have any effect on
21 that?

22 A. No.

23 Q. Okay. So, that does
24 not --

25 A. To the best of my

1 knowledge, no.

2 Q. I'm just asking for your
3 understanding. Thank you. Those are my
4 questions.

5 JUSTICE WILTON-SIEGEL: Okay.
6 So, would this be the appropriate time to take our
7 break?

8 MR. LEWIS: I wonder if we
9 could excuse Mr. Oddi.

10 JUSTICE WILTON-SIEGEL: Well,
11 I wanted to do that. So, Mr. Oddi, you're
12 excused, but with thanks for your attendance here
13 both today and yesterday.

14 THE WITNESS: Oh, no problem.
15 It was my pleasure. So, I can actually hit Leave
16 on the Zoom?

17 JUSTICE WILTON-SIEGEL: You
18 can hit Leave on the computer.

19 THE WITNESS: Thank you very
20 much, everyone. Have a great day. Happy Cinco de
21 Mayo.

22 MR. LEWIS: So, we could take
23 a break. I do understand, I don't know if it's
24 still the case, that Mr. Lederman had an issue
25 that he wanted to raise. We should do that, if

1 that's the case, prior to. But subject to your --

2 JUSTICE WILTON-SIEGEL: If

3 Mr. Lederman has an issue, let's hear that.

4 MR. LEDERMAN: Thank you,

5 Commissioner. I just wanted to raise one point

6 after hearing the evidence over the last couple of

7 days with you.

8 And this really relates to the

9 fact that the City obviously has a lot invested in

10 this inquiry and it wants to ensure that you have

11 all of the necessary information that you're going

12 to need in order to address the various terms of

13 reference here. And one of the concerns that I

14 have, just as I was listening to the evidence over

15 the last couple of days and somewhat over some of

16 the witnesses last week, is that witnesses are

17 being invited to speculate about matters, and

18 sometimes they're doing it voluntarily but other

19 times they're being invited to do so by the

20 questioning.

21 And I'm just raising it

22 because there's going to be a number of witnesses

23 called during the course of this inquiry and I

24 don't want to be objecting and I do want to ensure

25 that you've got a solid evidentiary foundation

1 upon which you can make determinations and
2 recommendations based on these terms of reference,
3 and I just sort of raise that as a concern that I
4 have, that otherwise we may wind up in a situation
5 where we have this dearth of evidence but in many
6 respects it's based on conjecture and speculation.

7 So, that's the only reason why
8 I raise that as a point that I don't want to
9 interrupt during the course of each witness
10 testimony to flag it. It was just something that
11 I thought I should raise with you before we carry
12 on with further witnesses in this process.

13 JUSTICE WILTON-SIEGEL: I
14 appreciate that, Mr. Lederman. Let me just make a
15 couple of remarks.

16 First of all, I appreciate
17 your saying that the City wants the inquiry to
18 have all the available evidence. It is a little
19 frustrating when the City witness comes in and
20 can't recall an awful lot of the important matters
21 when we do have some other witnesses from some of
22 the other parties who seem to be able to recall.
23 Now, that may just be one witness and we'll see
24 how that plays out in the future.

25 As for speculation, I think in

1 the circumstances, this is not litigation, and so
2 some greater latitude than would perhaps normally
3 be afforded commission counsel in court is
4 appropriate. But I accept that these are all
5 matters of balance. Speculation that has no
6 basis, for example, in any of the evidence,
7 particularly in any of the documentary evidence
8 but in any of the evidence, for example, that
9 other witnesses may have given would seem perhaps
10 to be inappropriate.

11 On the other hand, suggestions
12 or speculation to which the witness is invited to
13 respond that has some basis in the evidence
14 already before the inquiry would seem to be
15 appropriate. So, I think, you know, with those
16 sorts of ground rules, we ought to proceed and if
17 there are specific concerns, by all means raise
18 them. I appreciate you don't want to interrupt
19 the Commission any more than you would feel is
20 necessary.

21 MR. LEDERMAN: I appreciate
22 that, Mr. Commissioner, and that's really the only
23 point I wanted to raise. And I agree with you.
24 Obviously the rules of evidence are relaxed in
25 this setting, as they should be, but at the same

1 time I just wanted to make sure that the evidence
2 that you do have before you ultimately is based on
3 a solid foundation.

4 JUSTICE WILTON-SIEGEL: I
5 appreciate that, and I think you would appreciate
6 that it's worth saying at the end of the piece,
7 any determinations are not going to be made on
8 speculation but on the basis of facts that appear
9 to be supported by solid evidence before the
10 inquiry.

11 MR. LEDERMAN: That is
12 certainly our hope and expectation. I appreciate
13 that.

14 JUSTICE WILTON-SIEGEL: Okay.

15 MR. LEDERMAN: Okay. Thank
16 you.

17 JUSTICE WILTON-SIEGEL:
18 Mr. Lewis, how would you suggest we proceed?

19 MR. LEWIS: I could certainly
20 start with Mr. Janicas right now and we could take
21 our regular morning break, or if you prefer we
22 could take our morning break now and then get
23 started.

24 JUSTICE WILTON-SIEGEL: I
25 wonder if that would be more appropriate than

1 going for 15 minutes and then stopping.

2 MS. MCALEER: If I may, it
3 will take us about five minutes to set Mr. Janicas
4 up in the boardroom, so I echo the thought that
5 this might be a more appropriate time to take the
6 morning break.

7 JUSTICE WILTON-SIEGEL: Thank
8 you. Then why don't we adjourn until 11:15. Is
9 that appropriate?

10 MR. LEWIS: Thank you.

11 JUSTICE WILTON-SIEGEL: Okay.

12 --- Recess taken at 10:59 a.m.

13 --- Upon resuming at 11:16 a.m.

14 MR. LEWIS: May I proceed,
15 Mr. Commissioner?

16 JUSTICE WILTON-SIEGEL: Please
17 proceed.

18 MR. LEWIS: The next witness
19 is Mr. Paul Janicas, and if the court reporter
20 could affirm him.

21 PAUL JANICAS; AFFIRMED

22 EXAMINATION BY MR. LEWIS:

23 Q. So, Mr. Janicas, I
24 understand you were at Dufferin from 1999 to 2020.
25 Is that right?

1 A. That's correct.

2 Q. And where do you work

3 now? Is it Metrolinx?

4 A. Yes, I work at Metrolinx.

5 Q. Okay. And when did you
6 leave? Was it December 2020?

7 A. Yeah, it was December 31,
8 2020, was my last day at Dufferin.

9 Q. Okay. And am I correct
10 that you essentially went to work at Dufferin
11 straight out of college?

12 A. Yeah. I started
13 May 1999, in and around.

14 Q. Just pre-millennium?

15 A. Yeah.

16 Q. And you went to college
17 at, was it Mohawk College?

18 A. It was Mohawk College,
19 that's correct.

20 Q. In what program?

21 A. Both chemical and civil.

22 Q. Engineering?

23 A. Engineering, yes.

24 Q. And did you finish those
25 programs before you commenced working at Dufferin?

1 A. No, I did not.

2 Q. Okay. And, sorry, did
3 you finish them at all?

4 A. I didn't end up finishing
5 them, no.

6 Q. Okay. You went to work?

7 A. I went to work, yeah.

8 Q. Okay. So, I understand
9 that from 2005 to 2007, just to deal with sort of
10 the relevant time period, you were the senior
11 quality control lab supervisor. Is that right?

12 A. Yes.

13 Q. And then later in 2007,
14 you became the plant superintendant. Is that
15 correct?

16 A. No. It was spring 2007 I
17 became the quality control manager for bituminous,
18 and then early 2008 I became the superintendant.

19 Q. Early 2008. That's what
20 I was going to ask because I know at some point
21 you became the quality control manager for
22 bituminous. Sorry, when was that, do you think?

23 A. It was spring 2007 where
24 I transitioned from the laboratory team supervisor
25 to manager.

1 Q. Okay. So, let's start
2 with the senior quality control lab supervisor.
3 What was that position about? What did you do?

4 A. So, my main role, so we
5 had, I believe, at the time there was four
6 laboratories at Dufferin, so I was resource
7 management, making sure it was staffed properly,
8 ensuring the labs were certified and continued to
9 be certified through the audits, and also to make
10 sure testing was done and scheduled the testing,
11 schedule mix designs and the testing of mix
12 designs for both concrete asphalt, yeah. It was a
13 very full job.

14 Q. Okay. And then you
15 mentioned the transition to the quality control
16 manager of the bituminous department. So,
17 bituminous, that's asphalt. Right?

18 A. That's correct.

19 Q. And what was that
20 position about? How does that differ from the
21 prior position?

22 A. Yeah. So, in addition to
23 that, I would manage the quality control
24 administrators for various projects, mainly MTO,
25 and those administrators were oversight for

1 quality control on those projects, more than just
2 asphalt.

3 Q. All right. And the
4 bituminous role, who did you take that over from?

5 A. Wade O'Leary.

6 Q. And he moved on to
7 another position at that time within Dufferin?

8 A. He moved on to another
9 position within St. Lawrence Cement. I believe he
10 went on to the corporate office. I'm not sure
11 what he did there.

12 Q. But within the
13 organization?

14 A. Within the organization,
15 yes.

16 Q. All right. And when you
17 took on the role, did you report to Peter Gamble
18 in the bituminous role?

19 A. Yes, I did.

20 Q. Okay. And just to nail
21 down the timing, I'm not going to take you to the
22 documents just yet, but Vincent Gangaram wrote a
23 letter on March 20, 2007, which is the first one
24 about the approval of the Demix aggregates. Then
25 there's a letter from you on March 29 in which

1 you're writing to Philips asking that the RBM mix
2 design be approved, and your title on that date on
3 your letter is the quality control manager,
4 bituminous, so does that accord with your
5 recollection about generally the change from one
6 role to the other?

7 A. Yeah. I actually thought
8 it was a little bit later, but yeah, in and around
9 spring of 2007 would have been the transition.

10 Q. Okay. And so, if you
11 could just outline your duties in the bituminous
12 role. First of all, I understand you weren't
13 dedicated to the Red Hill project. Is that right?

14 A. No, I was not. No.
15 There was various projects.

16 Q. Okay. And so, if you
17 could just detail what your duties were, the kind
18 of things that you did in the bituminous role?

19 A. So, there was a
20 bituminous manager, there was a concrete manager,
21 and that delineation was typically I would be the
22 quality control manager for a job that was
23 predominantly asphalt, so it had many scopes but I
24 would be assigned the oversight function for the
25 quality control administrators. That would be on

1 a job like the Red Hill or had some sort of paving
2 on it, but the jobs didn't end with asphalt.
3 There was granulars, there was areas of bridge
4 construction, and that's how the jobs would be
5 divided among the two managers at the time. So,
6 if it was a concrete project, the concrete manager
7 would get the oversight of the administrator. If
8 it was an asphalt project, it would be me.

9 Q. I see, okay. And
10 including the granulars as well, if it was
11 predominantly an asphalt project. Is that --

12 A. It would include -- it
13 would encompass the entire contract.

14 Q. Right. Depending on what
15 was ultimately being paved?

16 A. That's correct.

17 Q. Okay. And what was your
18 relationship in that role to the labs?

19 A. So, the labs would report
20 to both the concrete manager and me and the
21 asphalt portion of the labs would be under my
22 oversight.

23 Q. Okay. And how many other
24 projects, approximately, I'm not asking for an
25 exact number, but how many other projects would

1 have been ongoing under your purview at the time
2 of the Red Hill project in 2007?

3 A. Well, I can do it this
4 way: We had about 35 administrators and it was
5 divvied up in half, so I would say about 15 to 20.

6 Q. Okay. And am I correct
7 that a principal role of yours on the Red Hill
8 project in the bituminous role was to seek
9 approval of the asphalt mix designs. Is that
10 right?

11 A. Amongst other things, but
12 yeah, I was involved in that, yeah.

13 Q. You had other things too,
14 as well, but that was one of them?

15 A. That was one of them,
16 yeah.

17 Q. Okay. And this wasn't on
18 the list. I mentioned it before and hopefully
19 counsel won't have a problem. This is just to
20 nail down the timing of the transition.

21 And so, if we could go to
22 DUF2118, this is a March 29, 2007 letter. At
23 least I hope it is. It's in OD3, image 37,
24 paragraph 71. It's actually the document that I
25 would like pulled up, please, DUF2118.01.

1 THE REGISTRAR: Sorry,
2 counsel.

3 MR. LEWIS: That's quite all
4 right. I did not elegantly request it.

5 THE WITNESS: Could we make it
6 a little bit bigger, please?

7 BY MR. LEWIS:

8 Q. Just so you know, at any
9 point we can expand any letter.

10 A. Yeah. Okay, perfect.
11 Thank you.

12 Q. And so, this is a
13 March 29, 2007 letter. The reference is SP19,
14 rich bottom mix, RBM, performance testing, and
15 it's a letter of yours dealing with a number of
16 issues: Fatigue, endurance and so forth.

17 If you go to the second page,
18 I believe it is, you're writing to Mr. Maranzan at
19 Philips. In the bottom there, maybe you can
20 expand the signature line for him, it says Paul
21 Janicas, quality control manager, bituminous and
22 administration.

23 So, by that point, had you
24 transitioned into the role or was it sort of an
25 over-a-period-of-time transition?

1 A. I think by the time Wade
2 left, there could have been an overlap with him,
3 but if I'm signing this at the bottom, I'm already
4 in the role.

5 Q. Okay. Thank you. All
6 right. Then you can take that down. Thank you,
7 Registrar. Then I understand there was also a
8 project team that was dedicated to the Red Hill
9 project and Dave Hainer was the project manager.
10 Is that right?

11 A. Yeah. The project
12 superintendant, yes.

13 Q. Okay. And then at some
14 point, I think you said in January 2008, early
15 2008, you became the plant superintendant?

16 A. January-February. It
17 would have been winter-spring 2008. It was
18 already in 2008. I just don't remember if it was
19 January or March or April. It was around that
20 time.

21 Q. In any event, after the
22 paving season was completed in 2007?

23 A. Yes.

24 Q. In the winter? Okay.
25 And what was your role in that?

1 A. As the superintendant for
2 asphalt, so I was assigned, I believe at the time,
3 it was five asphalt plants and three placement
4 crews. My main role was in the wintertime
5 ensuring winter maintenance of the plants was
6 conducted and finished in time for the spring
7 opening, usually in and around April and May.
8 During the construction season, provide assistance
9 to other project superintendents about paving
10 strategies. And also a big part of my job was
11 scheduling the crews, assigning to all the
12 projects and making sure equipment got to the
13 projects on time and provided support to both the
14 plant crews and the paving crews during the
15 construction season.

16 Q. Okay. And how long did
17 you occupy that role for?

18 A. I think I transitioned in
19 December 2011 to what's called the triple P
20 department, private public partnerships, so it
21 would have been in and around winter 2011-2012.

22 Q. All right. What was your
23 position when you left? What was your last
24 position at Dufferin?

25 A. I was the -- on the

1 triple P projects, I was a quality control manager
2 or quality manager. Not just quality control,
3 quality manager, quality management system
4 oversight.

5 Q. Thanks. And am I correct
6 that in MTO projects typically, first of all,
7 you've had experience doing MTO projects?

8 A. Yes.

9 Q. And that MTO contracts
10 typically would have a quality control
11 administrator. Is that right?

12 A. That's correct.

13 Q. Okay. And would that
14 differ in this situation on the Red Hill project?

15 A. I don't remember if we
16 had a full-time quality control administrator
17 dedicated to the Red Hill creek, but we did have
18 full-time technicians, quality control
19 technicians, dedicated to that project, including
20 the lab.

21 Q. Right. Okay. And mix
22 designs themselves, although you, as you
23 indicated, were involved in seeking approval for
24 the various mix designs, the mix designs
25 themselves were done by Dufferin's consultant

1 Trow. Is that right?

2 A. On this project, yes,
3 they were.

4 Q. I don't mean on all
5 projects. On this one?

6 A. On this project, yes.

7 Q. And then the approval of
8 aggregates, a component of the mix design, that
9 was a part of the process of mix design approval
10 in this project. Is that fair?

11 A. Yes, yes.

12 Q. And the Red Hill surface
13 course was stipulated to be SMA, stone mastic
14 asphalt. Is that an asphalt mix, stone mastic
15 asphalt, that you had been involved in before?

16 A. To that point, I had very
17 little exposure to stone mastic asphalt. It would
18 have been my first major project with that
19 product.

20 Q. Did you have another
21 project before that that involved SMA?

22 A. No, no. But we were
23 introduced to it, you know, through OHMPA and
24 things like that, so they talked about it through
25 the seminars. That's how I was exposed to it.

1 Q. Right. Okay. But not
2 the actual Dufferin placing it, but educational --

3 A. Not to my recollection,
4 no.

5 Q. Okay. And do you know if
6 the Red Hill was Dufferin's first SMA placement or
7 was there an earlier one? Do you have any
8 knowledge of that?

9 A. If I remember correctly,
10 I believe SMA was our first project or Red Hill
11 was our first project with SMA.

12 Q. Okay. Now, we know that,
13 and we've been talking about it, that Demix
14 aggregates from the Varennes Quarry in Quebec were
15 used for the SMA and Superpave 12.5 surface
16 courses for the Red Hill. And whose decision was
17 it to use those aggregates?

18 A. That would have been
19 Peter Gamble's decision to use the aggregates.

20 Q. And when did you learn of
21 that decision? Do you recall?

22 A. It would have been in the
23 early spring of 2007.

24 Q. Okay. And if we could go
25 to overview document 3, image 33, paragraph 66.

1 Actually, I guess it should be 33 and 34. So, at
2 the bottom of 33 and going on to 34, this is
3 referring to a March 20, 2007 letter from Vincent
4 Gangaram to Philips, Walter Maranzan, and we'll
5 expand the part on the top of 34 just as
6 reference, approval of Demix Varennes Trap Rock
7 aggregate to Mr. Maranzan. And then, Registrar,
8 if you could expand the text at the top of
9 image 34.

10 And so, this is on the 20th
11 and you said sometime in the early spring. Was
12 this the first time that you learned it, right
13 when the approval was made, or do you think it was
14 sometime before that? It's just occurring to me
15 the first official day of spring would have been
16 the day of this letter.

17 A. So, if it wasn't this
18 day, it would have been a day or two before this
19 that we found out.

20 Q. Okay. And did Mr. Gamble
21 inform you of the reason for selecting Demix
22 aggregates or did he just tell you that's what
23 we're using?

24 A. So, he would just tell
25 me. I don't remember him giving me a specific

1 reason why we would be using Demix at this time.
2 He would have just -- because we would have
3 meetings not just for this project, but he would
4 give me the list of aggregates for all the mix
5 designs for all of the focus of Dufferin's, and
6 this would have been one on the list.

7 Q. Just one of the many for
8 the many projects you were involved in?

9 A. That's correct.

10 Q. Okay. And then had you,
11 prior to the Red Hill project, been involved in a
12 project using the Demix aggregates or no?

13 A. Not to my recollection.

14 Q. All right. And now,
15 Mr. Gangaram sent this letter and then I already
16 brought your attention to the one several days
17 later where you're in the bituminous position.
18 Was Mr. Gangaram in that role before you took it?

19 A. The manager position?

20 Q. Yeah. He wasn't, was he?

21 A. No. Mr. Gangaram, to my
22 recollection, took over my senior laboratory
23 supervisor role, so he would have been reporting
24 to me.

25 Q. Okay. So, when you

1 switched positions, he transitioned as well?

2 A. That's correct.

3 Q. You can take that down,

4 Registrar. Thank you.

5 And if we could go to OD3,

6 image 39. So, paragraph 74 at the top there, as a

7 matter of course, would you like us to expand this

8 for you to see?

9 A. That would be fantastic.

10 Yes, please.

11 Q. No problem. There we go.

12 So, this is an April 23, 2007 e-mail from you to

13 Dr. Uzarowski at Golder, which indicates it's

14 following up on an April 13 meeting, and you're

15 attaching a letter with SMA and other asphalt

16 aggregate test results by Trow. And you indicate

17 that:

18 "The results conform to

19 all requirements of the

20 contract and that

21 Dufferin requests these

22 aggregates be approved

23 for use in the SMA and

24 12.5 FC2 mixes."

25 And you're talking about the

1 Demix aggregates. Then you say:

2 "Dufferin also requests
3 that the fine aggregate
4 used in both the SMA and
5 12.5 FC2 be obtained from
6 different sources from
7 the coarse aggregates."

8 So, just before we get into
9 the content of this, is this during the project
10 and in the context of your seeking approval of mix
11 designs and aggregates? Is this the regular line
12 of communication on this project, you
13 communicating with Golder and specifically
14 Dr. Uzarowski on those issues?

15 A. Yes, yes. Me or Vince.
16 Me or Vince. Vince would have been involved as
17 well at one point, which he was.

18 Q. He was, but he wrote to
19 Philips in that instance and I think you also did
20 but then it seemed to switch to Dr. Uzarowski, but
21 we'll go through a few other wrinkles with that.

22 So, then in the second part it
23 indicates:

24 "Dufferin also requests
25 that the fine aggregate

1 used in both the SMA and
2 12.5 FC2 be obtained from
3 different sources from
4 the coarse aggregates."

5 So, with that thought, if we
6 could go ahead to OD3, 77 there, and I guess it's
7 77 -- I guess we should pull up image 40 as well.
8 Sorry, it should be images 39 and 40.

9 So, there's a lot in there.
10 This is a long e-mail on April 30 from you to
11 Dr. Uzarowski with respect to Dufferin's quality
12 plan for physical testing of the Demix aggregates.
13 And if we can just expand the image on 39 from
14 paragraph 77 so he can see it. So, you're talking
15 about your phone conversation and then you want to
16 clarify the quality plan for testing of the Demix
17 aggregates. We can take that down.

18 And on the next page, I won't
19 expand the whole thing. It's quite a lot of
20 things you're talking about in there, but if we
21 could expand the part from the last big bullet
22 point where it says "also as requested" and then
23 the numbers 1, 2, 3, 4 down to the end of that
24 e-mail. Yes. And this follows up on the prior
25 e-mail we were looking at from April 23. You say:

1 "As requested, below is a
2 list of the proposed
3 aggregates for SMA and
4 12.5 FC2."

5 As I read it, you're
6 requesting that the coarse aggregates be from the
7 Demix Varennes and the fine screenings, if
8 required, be from the Aecon Marmora Quarry. Is
9 that right?

10 A. That's correct.

11 Q. Rather than them all be
12 from Demix?

13 A. Correct.

14 Q. Okay. And then moving
15 forward to OD3, image 40 and 41, I guess, right
16 below there, at the bottom of image 40, if you
17 could expand that, please, Registrar,
18 paragraph 78, on May 2, a couple of days later,
19 you write again to Dr. Uzarowski asking to retract
20 or stating that you're retracting the request to
21 blend the premium sources and that Dufferin
22 intends to use both the coarse and fine aggregates
23 from the same source but the quality plan still
24 applies per your previous e-mail.

25 So, do you know why this back

1 and forth occurred, you first asking to use the
2 fine aggregates from Aecon Marmora rather than
3 Demix and then switching back? Do you recall why
4 that was?

5 A. It would be typical.
6 It's logistics. Peter would have instructed me,
7 look, we're going to use these aggregates, and it
8 was his original plan. And based on many factors,
9 most likely logistics, supply, cost, things like
10 that, it made more sense for him to switch
11 everything to the Demix.

12 Q. Okay. So, I can tell you
13 that Mr. Gamble testified that it was always his
14 intention to source both the coarse and fine
15 aggregates for the SMA and SP12.5 from Demix and
16 that he did not direct the changes, and he
17 actually said you would have to ask Paul and the
18 fellow who did the mix design about this. And I
19 appreciate that you said that you didn't have -- I
20 think you said you didn't have a specific
21 recollection, but it would have been the
22 following.

23 Do you disagree with that or
24 do you have any further insight about it?

25 A. In my position at the

1 time, I would not have direct control of where we
2 source the aggregates, so I don't know what his
3 recollection is but -- the change in the
4 aggregates, the source, the mix designs that I
5 use, the materials I use in the mix designs, would
6 come from the list that he provided, so I'm not
7 sure why there's a difference there.

8 Q. Okay. You think it would
9 have been, as you said, originally that you would
10 have gotten the direction from him. Is that fair?

11 A. That's correct.

12 Q. Okay. And I understand
13 that the requirement in the contract was that --
14 and Dr. Uzarowski testified to this -- the
15 contract referencing the OPSS specifications
16 required that the aggregates be from the same
17 source. Do you have any knowledge of that?

18 A. Sorry, you cut out there
19 a little bit for me. Can you repeat the question?

20 Q. Yes. Dr. Uzarowski
21 testified that the requirement in the OPSS, the
22 relevant OPSS provision, was that sourcing the
23 aggregates from the same source was a requirement
24 for the SMA, for SMA in particular, but do you
25 have any recollection of that or did you have any

1 knowledge of that issue?

2 A. Yeah. It was in the
3 OPSS. Yes, I do have a recollection of that. But
4 it was not uncommon for us to request different
5 sources on other projects and my recollection we
6 were successful and, when we asked the MTO to
7 switch sources, they didn't have any issues. It
8 was a part of the OPSS, yes.

9 Q. Okay. So, you're aware
10 of it, asked for the change, then retracted it,
11 but you were aware of that fact at the time, okay.
12 Thank you. You can take that down. Thank you,
13 Registrar.

14 And if you can go to OD3, 41,
15 42, and in paragraph 80 at the bottom of 41, it's
16 referring to the minutes of a May 8, 2007 paving
17 construction meeting number 7, which set out
18 agreements on numerous pavement issues. The
19 minutes indicate that you attended at that -- that
20 you were in attendance at that meeting. Did you
21 typically go to the site meetings on the project?

22 A. I didn't go to all of
23 them. I would go when there was issues that
24 needed to be discussed that I was dealing with.

25 Q. Okay. And at the top of

1 42, there, if you could expand that, please, one
2 of the references in the minutes is that, A:

3 "The physical properties
4 of the Quebec trap rock
5 are all acceptable.
6 Dufferin is to test the
7 physical properties for
8 all granulars in the SMA
9 and FC2 every
10 5,000 tonnes. Dufferin
11 will carry out trials to
12 determine the best rock
13 chip size for the asphalt
14 design in the report
15 which will be used."

16 So, it's indicating that the
17 physical properties of the Quebec trap rock are
18 all acceptable. That's referring to the Demix
19 aggregates?

20 A. Yes.

21 Q. Okay. And so, what does
22 this mean? It then goes on to say, though, that
23 Dufferin will test the physical properties for all
24 the granulars for every 5,000 tonnes. What's that
25 talking about?

1 A. So, that's during
2 production and as you deliver samples to ensure
3 that the physical properties are still within the
4 envelope of the contract.

5 Q. Okay. And so, is this
6 reference in the site meeting minutes, does that
7 mean that the aggregates are approved at that time
8 or is this requiring -- like, they're acceptable
9 now but they have to maintain the physical
10 properties?

11 A. Yeah. It's acceptable at
12 this time and check it every 5,000 tonnes to make
13 sure they maintain that acceptance. And again, it
14 wouldn't -- it's for all aggregates used in all
15 asphalt would have a typical quality program like
16 this where you're checking during production and
17 delivery of the raw materials of the asphalt to
18 ensure compliance.

19 Q. Okay. And we'll get to
20 it. We know later on, in July, there's a lot of
21 back and forth and you're involved in it --

22 A. Excuse me.

23 Q. No problem. In July,
24 there's a lot of back and forth about the Demix
25 aggregates that you're involved in and whether

1 they're acceptable for use or not, including
2 e-mails from you and others at Dufferin trying to
3 address questions of suitability of the
4 aggregates, which we'll get to.

5 So, what was your view of the
6 status of aggregate approval at this stage, in
7 May?

8 A. In the meeting, this is
9 an approval saying the aggregates are acceptable
10 for use and test it every 5,000 tonnes when you
11 produce the asphalt.

12 Q. Okay. Now if we could go
13 to image 48, actually, it should be 48 and 49 so
14 we have the entire e-mail in paragraph 97. So, on
15 June 22, 2007 -- and I should say, just to anchor
16 you, the paving began with the rich bottom layer
17 at the end of May and then this is in June and the
18 SMA paving ultimately started on August 1, just to
19 sort of place you in the timing.

20 And so, you're e-mailing here
21 the SMA mix design to a large number of people,
22 including directly to Dr. Uzarowski, sending the
23 SMA mix design for the surface course. And you
24 indicate what the mix design includes on the first
25 part of it. Then expand the second part.

1 So, again, the mix design was
2 done by Trow, as we know. And could you just
3 describe what goes into a mix design generally?
4 It doesn't have to be specifically with this, but
5 what are the components of a mix design?

6 A. Well, the raw materials
7 would be about typically 95 percent aggregate
8 mixed between coarse and fine, stone and sand,
9 5 percent asphalt cement typically, whatever
10 range. In this one, those other products are
11 fillers. I think there was some fibers there.
12 But that's specific for the SMA.

13 Q. Right. There's filler
14 and cellulose fibre?

15 A. Right.

16 Q. In addition to the
17 asphalt cement and the aggregates? Okay.

18 And you indicate in the second
19 paragraph that:

20 "The mix design does not
21 include the dynamic
22 modulus testing. This
23 testing will be completed
24 within the next few
25 weeks."

1 What's dynamic modulus
2 testing?

3 A. I don't remember
4 specifically what it tests for.

5 Q. Okay. But is your point
6 here that that's not a requirement? Say, there's
7 no specification limits for this testing?

8 A. No. What I'm saying
9 here, it's not yet done. It's probably a test
10 that goes through a lot of cycles, and to keep the
11 project going and to keep everything going, we'll
12 give you these results at a later date when
13 they're ready.

14 Q. Right. You say that in
15 the second paragraph, but in the third paragraph
16 you say there's no specification limits for this
17 testing?

18 A. Right. There must not
19 have been a specification limit for this testing
20 but they must have been asking for this test for
21 information purposes.

22 Q. Right, but it's not a
23 contractual requirement. Is that what you're
24 saying?

25 A. Yeah. Do the test, give

1 us the results, but there's no limits.

2 Q. Right. Then you ask:
3 "Notify if there's any
4 issues as any delays in
5 the approval of this mix
6 will impact the project
7 schedule."

8 Okay. And this is 40 days
9 before we know that the ultimate SMA paving
10 started. Is the timing of delivering the mix
11 design in that timeframe, is that within the
12 normal range of time before paving commences?

13 A. Yeah. About a month
14 before, yeah. I would say yeah, it's typical.

15 Q. All right. And do you
16 typically have some back and forth with the
17 owner's quality assurance consultant about mix
18 designs, approval, all of that sort of stuff? Is
19 that a common issue?

20 A. Yes. It was a very
21 common practice to have back and forth and clarify
22 concerns from any quality assurance laboratory or
23 any laboratory. Yes, very, very common.

24 Q. Okay. You can take that
25 down, Registrar. Thank you. Image 50, please.

1 And so, this is July 17, 2007. You e-mail
2 Dr. Uzarowski and Mr. Oddi about ignition test
3 results, physical property testing and Micro-Deval
4 test results. Registrar, if you could expand the
5 e-mail for us, please. If you could give that a
6 review and let me know when you're done.

7 A. Okay.

8 Q. Just a few things. We've
9 heard about ignition oven testing as a general
10 matter and I just want to make sure we all have
11 the same understanding. That involves burning off
12 the asphalt cement at high temperatures in an
13 ignition oven to burn off the asphalt cement and
14 it allows you to determine the percentage of the
15 asphalt cement in a sample and to conduct
16 gradation tests on the aggregates to determine the
17 aggregate size. Is that right?

18 A. That's correct.

19 Q. Okay. And on the
20 gradation testing, a certain amount, depending on
21 the mix design, has to pass through each size
22 sieve. Right?

23 A. Yeah. It's determination
24 of particle sizes throughout the spectrum of all
25 the particle sizes that are required for that

1 particular mix.

2 Q. Okay. And in this e-mail
3 you describe the breakdown in aggregates during
4 the ignition oven testing. We've heard some
5 evidence about that. Could you tell us from your
6 perspective what had happened?

7 A. Yeah. If I remember
8 correctly, the ignition oven testing is set to
9 500 degrees plus Celsius, which aggregates would
10 not see during any production of asphalt. It's
11 the ignition point of AC, so it can move the AC.
12 There was an observation that at that temperature,
13 which again is not typical of asphalt, there was a
14 breakdown of aggregates. Most likely, and I don't
15 remember 100 percent, but most likely being the
16 stone.

17 Q. Right. And this is
18 Golder's tests that they were conducting.
19 Correct?

20 A. Yes. Dufferin
21 Construction was still using solvent testing at
22 the time, trichloroethylene. We didn't use
23 ignition oven testing that much, only when we had
24 to as a requirement of the contract.

25 Q. Okay. And is this the --

1 this was what the SMA samples. Had this occurred
2 with the other lifts, this problem?

3 A. I don't remember.

4 Q. Okay.

5 A. But I do remember on
6 other projects, yeah, you would typically see some
7 breakdown regardless of the aggregates.

8 Q. So, on other projects,
9 you've seen breakdown using the ignition oven?

10 A. Which is why we didn't
11 like using ignition ovens for that reason on other
12 projects because then the gradation would change
13 because of that breakdown. Again, very high
14 temperatures. Again, 500 degrees plus Celsius,
15 this oven would be set at.

16 Q. Right. And the
17 trichloroethylene method, that's the solvent
18 extraction method where you're using the solvent
19 for the same purpose, which is to remove the
20 asphalt cement so you can then conduct the same
21 types of tests. Is that right?

22 A. That's correct. You soak
23 the asphalt in the solvent and the DAC dissolves
24 within that solvent and then you extract the
25 aggregate.

1 Q. And then you indicate in
2 the fourth paragraph that:

3 "Also, aggregates are
4 currently being tested at
5 Golder for Micro-Deval.
6 Please forward these
7 results as soon as they
8 become available."

9 And so, is it your
10 understanding that Golder, then, was taking the
11 aggregates or taking the samples to their lab to
12 use the solvent extraction method?

13 A. They would be doing --
14 Micro-Deval is one of the physical properties, so
15 based upon this, Golder is checking for the
16 Micro-Deval physical properties.

17 Q. Were you aware, though,
18 that Golder is then, following the ignition oven
19 issues, was then going to use the solvent
20 extraction method? Was that something you recall?

21 A. I'm sorry, let me clarify
22 the question. Are you asking me if I understood
23 from here going forward they're going to use the
24 solvent method?

25 Q. Yes.

1 A. I don't recall at this
2 moment if that's when they decided to do that. I
3 don't know.

4 Q. Okay. Because there were
5 correlation issues, right, when you were using the
6 different tests and I understand an issue was
7 using the two different methods, if you were
8 having the breakdown in the ignition oven method,
9 that could cause correlation issues between
10 Dufferin's results and Golder's results. Correct?

11 A. That's correct, and it's
12 not the first time we've seen those correlation
13 issues. We've seen it on other projects as well.

14 Q. Right. Okay. Between
15 the two methods?

16 A. Between the two methods,
17 correct.

18 Q. All right. And you use
19 the number in the second paragraph, percent
20 breakdown discovered in the ignition oven testing
21 at 30 percent. 30 percent of what? Do you recall
22 what the 30 percent is that you're referring to?

23 A. The context of that would
24 be that one of the sieve sizes, we have a
25 reduction of 30 percent of where we would see it.

1 I don't know which -- it doesn't say exactly which
2 one, but that's what that would mean.

3 Q. Talking about a reduction
4 of the amount of aggregate at a particular sieve
5 size of 30 percent?

6 A. Yeah, or maybe a
7 variation of two or three sieves.

8 Q. Okay.

9 A. Accumulation, sorry.

10 Q. And you're not sure which
11 of the two that was?

12 A. Yeah. I don't remember
13 specifically what the 30 percent -- which sieve
14 size it's speaking about.

15 Q. Okay. And in that
16 paragraph it indicates a concern was expressed
17 over the percent breakdown discovered during the
18 ignition oven testing at 30 percent. Do you
19 recall who had expressed that concern?

20 A. It must have been Golder
21 because they're the ones that were testing with
22 the ignition oven and it looks like they were
23 seeking clarification.

24 Q. Was that concern
25 expressed to you? You're writing this e-mail

1 back, but do you recall if that --

2 A. It must have been, yeah.

3 Q. Okay. And do you recall
4 who at Golder?

5 A. I don't recall
6 specifically, but if the correspondence is between
7 me and Ludomir, it must have been Ludomir.

8 Q. Okay. Did you typically
9 deal also directly, like in person or on the
10 phone, with Mr. Delos Reyes or did you typically
11 deal with Dr. Uzarowski? Do you recall?

12 A. I believe it would have
13 been with Ludomir. It was very collaborative
14 between us and Golder, so we had a very open
15 relationship. I don't remember speaking too much
16 to that second individual you referred to. It was
17 always more Ludomir.

18 Q. Okay. Andro Delos Reyes.
19 And I take it the lack of familiarity with the
20 name is indicative of who you were dealing with.
21 Is that fair?

22 A. That's fair.

23 Q. Okay. And in the second
24 last paragraph, you indicate:

25 "It is DCC's

1 understanding that if the
2 aggregates continue to
3 meet the physical
4 requirements of contract,
5 that the SMA mix design
6 will be approved for
7 production on the City of
8 Hamilton project,
9 PW-06-243."

10 And does this then refer back
11 to what we were talking about before, the
12 continuing meeting with the physical requirements
13 for the aggregates, that requirement that we were
14 talking about going back to May 8?

15 A. You mean every
16 5,000 tonnes?

17 Q. Yes. Is that related to
18 that?

19 A. Partially, but this is
20 referring to -- so, DCC's understands the Golder
21 Micro-Deval test as well.

22 Q. Right. Okay. So,
23 referring to that that are being tested at that
24 time for Micro-Deval?

25 A. Yeah.

1 Q. Okay. And so, just to be
2 clear, though, it's if the aggregates, so it's
3 conditional, if the aggregates continue to meet
4 the physical requirements, that's number one, then
5 your understanding is that the mix design of which
6 the aggregates are a component will be approved.
7 Is that right?

8 A. Yes.

9 Q. And at this point, am I
10 correct that the issue about mix design approval
11 was the aggregates, at this point in time? Is
12 that fair?

13 A. Can you repeat the
14 question?

15 Q. Yes. At this point in
16 time, is the issue, the existing issue for mix
17 design approval, the aggregates?

18 A. It's the concerns that
19 Golder are seeing with the breakdown in this
20 particular case, because the approval was given
21 earlier on, so we're addressing their concerns
22 here. You know, they saw the breakdown in the
23 ignition oven, they asked a few questions and then
24 that triggered this back and forth.

25 Q. Okay. So, if we could go

1 to 51, image 51, and paragraph 102 is an e-mail
2 the same day, July 18, you writing to
3 Dr. Uzarowski to provide the physical test
4 results, and if you could expand that, please,
5 Registrar. If you could please read it, but
6 you're attaching physical property test results
7 for Demix aggregates.

8 A. Okay.

9 Q. All right. So, you're
10 setting out the issues about the Micro-Deval and
11 then assert that the contract requirements are met
12 and ask whether the SMA and 12.5 FC2 mixes are
13 approved for production. Then you ask:

14 "If, after reviewing the
15 results, there is still a
16 question of the
17 suitability of the
18 aggregates, please advise
19 Dufferin immediately and
20 a meeting with all the
21 stakeholders involved
22 will be convened at the
23 earliest possibility
24 opportunity."

25 So, what is the question at

1 that point regarding suitability of the
2 aggregates?

3 A. This is all leading back
4 to the ignition oven breakdown that they saw.
5 They had concerns and this is addressing those
6 concerns that they saw from the ignition oven
7 breakdown. We got a lab to double check and the
8 physical properties met.

9 Q. Right. And, again, am I
10 correct from your prior answer, it was Golder
11 questioning it, number one?

12 A. Yes, Golder.

13 Q. And then likely
14 Dr. Uzarowski, given who you were communicating
15 with?

16 A. Yes.

17 Q. And I take it at this
18 point, on the 18th, it's starting to get close to
19 the intended date of commencing paving, so you're
20 trying to move it along at this point?

21 A. That's correct.

22 Q. All right. And then if
23 we could move to image 52, this is about a couple
24 of e-mails on July 23. So, if we could go to the
25 actual document, it's Dufferin 1965.01. And so,

1 why don't we start at the bottom. If you could
2 highlight the bottom e-mail or call up the bottom
3 e-mail. Actually, also including the -- yeah.
4 No, including the date stamp and Mr. Janicas' name
5 for the bottom e-mail. That's fine. Okay.

6 So, on the 20th of July, a
7 couple days after the e-mails that we were just
8 discussing, you send an e-mail to Dave Hainer,
9 copying Peter Gamble, about the Demix aggregates
10 and you indicate:

11 "Attached is the package
12 discussing the Demix
13 aggregates issue."

14 And you'll see there's four
15 PDF attachments or images of four PDF attachments
16 and we do not have those and have been unable to
17 locate a copy with the attachments. So, there's
18 four of them and the first, the title of the PDF
19 is "Skid Resistance Report," the second is "Mix
20 Design Examples," the third is "Red Hill Valley
21 Aggregates Physicals Comments, Trow, 20th of
22 July 2007," and the fourth is "Demix Aggregates,
23 July 20, Dufferin Cover Letter."

24 And then if we could go to the
25 top e-mail and expand it, Mr. Hainer, on the 23rd

1 of July, forwards your e-mail to Philips, the
2 e-mail is just the Philips e-mail but it's
3 addressed to Walter Maranzan, copying Marco Oddi
4 and James Wharrie and Rick Triemstra of Dufferin.
5 And if you could just read this and let me know
6 when you have done so?

7 A. I've read it.

8 Q. Okay. Thank you. So,
9 he's forwarding yours. Now, you weren't copied on
10 Mr. Hainer's e-mail, but I take it you were aware
11 of the issues given that you were sending him and
12 Mr. Gamble your e-mail below a few days before
13 with the package of materials. Is that fair?

14 A. That's fair.

15 Q. All right. And do you
16 recall what those attached documents were,
17 apparently attached documents?

18 A. They would have been
19 additional information to address the concerns
20 they saw from the ignition oven breakdown, and
21 this is an exchange between Dave Hainer and
22 Walter, so it must have been an internal
23 conversation Walter would have had with, I don't
24 know who, looking for as much information as
25 possible, so it's us providing that information

1 and addressing that concern.

2 Q. Okay. And one of them
3 apparently is labelled as Skid Resistance Report.
4 Do you have any recollection of a skid resistance
5 report respecting Demix aggregates?

6 A. I don't have direct
7 recollection. I sent an e-mail about the report,
8 so I must have seen it, but I don't have a direct
9 recollection of what the contents of that report
10 were.

11 Q. Okay. And we've heard
12 from Mr. Gamble that Demix aggregates had not been
13 used in Ontario prior to that time, so presumably
14 this would have been a skid resistance report from
15 a project or projects in Quebec. Does that sound
16 right?

17 A. That makes sense, yes.

18 Q. Okay. And so, then if we
19 could take that down and keep that document up and
20 if you could pull up the second document, which is
21 Dufferin 1964.01. And this is an e-mail that you
22 sent about four and a half hours later on the same
23 day, July 23, to Philips and Mr. Oddi, copied to
24 Mr. Hainer, Mr. Gamble and Mr. Triemstra at
25 Dufferin. If we can expand the e-mail for ease of

1 the eyes.

2 You write that:

3 "In addition to the
4 information submitted
5 this morning -- "

6 So, you're referencing the
7 other e-mail. Is that right?

8 A. Yes.

9 Q.

10 " -- below are examples
11 of Ministry of
12 Transportation of Quebec
13 contracts where the
14 Varennes Quarry trap rock
15 were used in asphalt
16 surface paving."

17 And you give three examples.

18 And:

19 "Please do not hesitate
20 to contact us if you have
21 any questions."

22 So, do you recall if there was
23 a request for the information provided in these
24 two e-mails and, if so, from whom?

25 A. Well, if I'm addressing

1 it -- I don't recall specifically, but if I'm
2 writing this e-mail shortly after, there must have
3 been a request for examples from Walter or from
4 someone at Philips.

5 Q. Okay. And you refer to:
6 "Dave, attached is the
7 package --"

8 Sorry, this is going back to
9 the other one. If you could take that down for a
10 minute. In the e-mail internally at Dufferin on
11 the 20th of July to Mr. Hainer, you write:

12 "Attached is the package
13 discussing the Demix
14 aggregates issue."

15 Do you recall what the Demix
16 aggregates issue was?

17 A. Just the concerns that
18 Ludomir is having over the ignition oven testing.

19 Q. Okay. And if it's
20 addressing that issue, presumably the information
21 that you're sending is intended to address
22 whatever the concerns were that were raised. Is
23 that fair?

24 A. That's fair.

25 Q. Okay. And since one of

1 the attachments appears to be about skid
2 resistance, is it reasonable to assume that the
3 package was intended to address a question that
4 had been raised about skid resistance?

5 A. Based on everything I see
6 here, it's all available information I had on the
7 aggregates. I don't remember specifically there
8 being concerns about that at the time. It would
9 just be this is the information we have available
10 about these aggregates. We're sharing everything
11 we have.

12 Q. Okay. And we can take
13 that down, Registrar. In Mr. Hainer's e-mail, if
14 you could highlight that, in each of the three
15 paragraphs -- thank you -- his e-mail on the 23rd
16 at 8:10 a.m., three times he refers to concerns,
17 so concerns of the aggregate in the first
18 paragraph. It says:

19 "Please see attached
20 correspondence regarding
21 concerns of the
22 aggregate."

23 In the second paragraph, he
24 refers to:

25 "We trust that the

1 documents below will
2 satisfy the concerns
3 verbally identified."

4 And then in the third
5 paragraph:

6 "Should there still be
7 concerns on this matter
8 after reviewing this
9 information, please call
10 me at your earliest
11 convenience."

12 And, again, it seems to be in
13 Mr. Hainer's e-mail that he is suggesting that the
14 attached package is addressing the specific
15 concerns that were raised. And so, again, am I
16 correct that your understanding, however, is that
17 this was all of the information available on the
18 aggregates rather than addressing specifically a
19 skid resistance concern that has been raised?

20 A. That's correct. And to
21 my recollection, the concerns he's talking about
22 are the ignition oven testing breakdown that we
23 were talking about earlier.

24 Q. Okay. You can take that
25 down, please. Thank you. And do you know why

1 this information is being provided not to
2 Dr. Uzarowski at Golder but rather to Philips and
3 Mr. Oddi, particularly in light of the lines of
4 communication previously?

5 A. I don't remember
6 specifically why. It must have been an internal
7 conversation, so Dave was addressing a
8 conversation he was having with Walter.

9 Q. Okay. And we know that,
10 you know, for example, on July 18, in one of the
11 e-mails we already looked at, you're talking about
12 to Dr. Uzarowski, you're writing to him about the
13 suitability of the aggregates:

14 "If there's still a
15 question of the
16 suitability of the
17 aggregates, please advise
18 Dufferin."

19 And so forth. And so, do you
20 have any information beyond what you said about
21 why this was not -- why these were not sent to
22 Dr. Uzarowski, who I will advise you has testified
23 that he did not receive these e-mails and nor was
24 he told about them?

25 A. I don't have any

1 additional information on why he wasn't copied
2 here. No, I do not.

3 Q. Okay. Do you recall if
4 there was any discussion? Do you have a specific
5 recollection of any discussion about sending or
6 not sending the information to Dr. Uzarowski?

7 A. This information?

8 Q. Yes.

9 A. I don't recall if I ever
10 sent it to him or not. I just don't remember.
11 This is an e-mail addressing a conversation Dave
12 is having with Philips and specifically Walter.

13 Q. Right. Well, he doesn't
14 say that, to be fair. So, am I correct that when
15 you say that, that's what you're inferring from
16 this, but you don't actually know?

17 A. That's what it looks
18 like, yes. That's what I'm inferring.

19 Q. Okay. So, what I'm
20 asking, and I think I badly put it, was do you
21 recall, though, any conversation, whether it's
22 between you and Mr. Hainer or Mr. Gamble or with
23 Philips, Mr. Oddi, anyone, was there any
24 discussion about not sending it to Dr. Uzarowski?

25 A. Not to my recollection,

1 not at all. There's no intent not to send it to
2 Dr. Uzarowski. It could have been an oversight,
3 too, that he wasn't included.

4 Q. Okay. Now, we know that
5 Dufferin placed the SMA test strip a couple of
6 days later, on July 25. And were you present at
7 the placement of the test strip?

8 A. I must have been. If I
9 wasn't there right in the morning, I must have
10 been there shortly after. I don't remember 100
11 percent the timing of my participation. I would
12 have been there sometime that day. I don't
13 remember if I was there first thing or not.

14 Q. Okay. And so, I think
15 you said I must have been or would have been. I'm
16 not sure of the word.

17 A. Yeah.

18 Q. Do you have a specific
19 recollection of actually being there or is it just
20 that was your typical --

21 A. That would be my typical
22 activity, so I would have been involved in the
23 test strip in one way, shape or form. We would
24 have had a technician with a nuclear density gauge
25 doing compaction checks behind the paver and I

1 would have been there supporting him at one point.
2 Again, I don't have a specific recollection of
3 being there right at the beginning.

4 Q. Okay. And do you recall
5 anything noteworthy at all from the placement
6 during your time there?

7 A. Of the test strip?

8 Q. Yes.

9 A. It's like anything else,
10 any other placement of asphalt. It's the first
11 crack at it, trying to pave it, trial and error
12 process, trying to teach yourself how to place
13 this particular mix with the crew and the plant.
14 I don't recall anything special about it, if
15 that's what you're asking.

16 Q. Anything that sticks out
17 in your mind, and I think your answer is --

18 A. No.

19 Q. Okay. And do you recall
20 if the vibration mode was used on the rollers?

21 A. On that day?

22 Q. Yes.

23 A. I don't recall
24 specifically that day if vibration was used on the
25 rollers.

1 Q. And am I correct in
2 understanding that typically that is Dufferin's
3 practice, to use the vibration mode on its
4 rollers. Is that right?

5 A. Yes, it's very typical.

6 Q. Okay. And what about
7 with SMA? Is there any difference with that?

8 A. Again, it's a trial and
9 error process, so you try to get a rolling
10 pattern. So, you go through the trial and error
11 to see where you're getting your compaction and
12 you would have gone through many iterations of
13 that rolling pattern which may or may not include
14 vibration and/or static without vibration, so you
15 would go through that trial and error process to
16 get the optimum compaction effort.

17 Q. Right. When you refer to
18 a rolling pattern, could you just describe for our
19 non-pavers what you mean?

20 A. No problem. A rolling
21 pattern is just, you know, we call it a rolling
22 pattern because copy this pattern on every piece
23 of asphalt while you're paving it so that the same
24 compaction effort is consistent throughout the
25 paving operation for that day or that placement of

1 that asphalt.

2 Q. So, you're doing the same
3 approach?

4 A. Over and over again.

5 Q. Okay. And the idea of
6 using the vibratory as opposed to static mode is
7 to obtain greater compaction. Is that fair?

8 A. Vibration provides a
9 greater compaction effort. It compresses the
10 asphalt more than just static. The static is just
11 the weight of the equipment. The vibration
12 provides that additional compaction effort.

13 Q. And if you over compact
14 by whatever means, that can cause the fracture or
15 cracking of aggregates. Is that correct?

16 A. It could, yes.

17 Q. Okay. Now, there was a
18 meeting on July 27 onsite at the test strip
19 between Golder and the City and Dufferin to
20 inspect the test strip. And you're not indicated
21 in Dr. Uzarowski's notes as being there. Do you
22 have any recollection if you were there?

23 A. There at the test strip?

24 Q. Yes. There was a meeting
25 two days later at the test strip.

1 A. Oh, I see.

2 Q. And you're not indicated
3 in Dr. Uzarowski's notes as being there. I just
4 want to see if that accords --

5 A. I don't have any
6 recollection specifically if I was there or not.

7 Q. Okay. Nevertheless, we
8 understand that at the meeting Dr. Uzarowski
9 informed the attendees that the test strip had
10 failed and gave reasons for it. Do you recall if
11 you were informed about that? There was a later
12 e-mail about it, but do you recall being informed
13 about it in the --

14 A. Yeah. I would have been
15 involved in the conversation at one point in time
16 shortly after the test strip.

17 Q. Okay. Do you have any
18 specific recollection of that?

19 A. No. It would just be
20 typical to be informed of something of that
21 nature.

22 Q. Okay. And then if we
23 could go to OD3, image 55. And in paragraph 111,
24 this is on July 31, 2007, Dr. Uzarowski e-mailed
25 you, Mr. Oddi, Philips and also, it's not listed

1 there, Mr. Hainer attaching some SMA test results
2 and about the test strip. And if you could expand
3 that, please. If you could read that and let me
4 know when you're done?

5 A. Okay.

6 Q. And so, obviously you
7 received this e-mail. Do you recall receiving it,
8 other than --

9 A. Specifically, no. Yeah,
10 I don't recall specifically receiving the e-mail.
11 No, I do not.

12 Q. Okay. Nonetheless, you
13 did receive it?

14 A. I did, yeah, obviously.

15 Q. All right. And just the
16 next day, a correction, Dr. Uzarowski sends a
17 correction about the material passing the 0.75
18 millimetre sieve. He clarifies it's the 4.75
19 millimetre sieve that he was talking about, just
20 to cover that. He corrects that the next day.

21 A. Okay.

22 Q. But he indicates after
23 indicating that the test strip, that the mix
24 didn't meet the specified requirements, he speaks
25 to the air voids, percentage of the material

1 passing through the -- corrected to be the 4.75
2 millimetre sieve, those being in the rejectable
3 zones and:

4 "The Superpave gyratory
5 cylinders prepared with
6 this mix were presented
7 at the meeting; they look
8 much richer and finer
9 than the cylinders
10 prepared with the SMA
11 trial batch that met the
12 specified requirements."

13 And the compaction results
14 were in the rejectable zone:

15 "The test strip is not
16 acceptable. We recommend
17 a new test strip be
18 completed."

19 Then he says:

20 "We understand that
21 Dufferin Construction
22 intends to place the SMA
23 mix on the main line
24 tomorrow. Dufferin
25 Construction should be

1 aware that the test strip
2 has not been approved and
3 the paving will be at
4 their entire risk."

5 Do you recall if there was any
6 discussion about this following receipt of this
7 e-mail?

8 A. Discussion with whom?
9 Just in general?

10 Q. Yeah, internally, with
11 Golder --

12 A. I don't have a specific
13 recollection, but I'm sure we would have a
14 follow-up conversation, Peter and myself, amongst
15 others, on next steps. And it should be noted --
16 so, a test strip is just a point in time. You
17 know, it's the contractual test strip. The trial
18 and error process doesn't end with the test strip.
19 It's the first crack at making the asphalt. As
20 you learn, you place the asphalt. Even the next
21 day you place it, you'll take what you've learned
22 the first time and make adjustments at the plant
23 and make adjustments to the rolling pattern, and
24 the thickness, whatever the case may be, to ensure
25 that the mix being placed is within the envelope

1 of the contract. So, this is just one snapshot in
2 time.

3 The discussion, I think we
4 ended up paving on August 1, is yeah, let's take
5 what we've learned, let's adjust the plant, let's
6 adjust the rolling pattern. Again, let's take
7 what we've learned and make sure it's going to be
8 in the envelope. I think it was 250 tonnes. It
9 would have been eight loads of asphalt. Right?
10 Give or take. And sometimes eight loads of
11 asphalt is not enough time to establish all those
12 lessons learned to apply those adjustments to put
13 the asphalt on the envelopes of the contract.

14 Q. So, you're talking about
15 the test strip?

16 A. Yeah.

17 Q. Okay. Now, you were
18 talking about the -- am I correct from the way you
19 described it that you're saying that you believe
20 you would have had those kind of discussions but
21 you don't have a specific recollection of those
22 discussions. Is that --

23 A. No, I don't have a
24 specific recollection. No. Sorry, I didn't let
25 you finish. I don't have a specific recollection,

1 but it would be typical to have that conversation.

2 Q. Okay. Now, do you have a
3 specific recollection of any discussion about the
4 contractual requirement if a test strip did not
5 meet the requirements, the contractual
6 requirements, that the test strip would have to be
7 redone? Do you recall any discussion about that?

8 A. Again, no specific
9 recollection, but it is very typical to have those
10 conversations based on test strips, trial batches,
11 whatever the case may be and what adjustments need
12 to be made to bring the asphalt back into
13 specifications.

14 Q. Okay. And whose decision
15 was it to proceed not by completing a new test
16 strip as recommended by Dr. Uzarowski but
17 proceeding in any event? Whose decision was that?

18 A. It would have been Peter
19 Gamble's decision to proceed. It's the crew and
20 the plant, so it would have been Peter Gamble's
21 decision or the superintendant at the time, which
22 I don't remember who that was, but it would
23 ultimately have been Peter Gamble's decision to
24 proceed. But he would have discussions with us
25 and we would talk it through. That would be

1 typical. Again, I don't have any specific
2 recollection of having a conversation based on
3 this e-mail, but it would be typical to have those
4 conversations.

5 Q. I think Jake Sudac, is
6 that the superintendent that you're talking about?

7 A. No. Jake Sudac would
8 have been the district manager, I believe, yes.

9 Q. What about Dave Hainer?

10 A. Dave Hainer would have
11 been the project superintendent.

12 Q. Right. Sorry, is that
13 who you were talking about?

14 A. There would also be an
15 asphalt superintendent and I don't remember who
16 that would have been working underneath Peter.

17 Q. All right. Would Dave
18 Hainer have been involved in that decision?

19 A. He may have been. I'm
20 sure he was involved in discussions.

21 Q. So, do I understand
22 correctly that it wasn't your decision, but you
23 would have been involved in the discussions about
24 it?

25 A. That would be very

1 typical, yes. Yeah.

2 Q. Okay. Now, you did
3 indicate, at least to your knowledge, this was
4 Dufferin's first SMA placement and you've
5 described, you know, what I would call an
6 iterative process about making adjustments as
7 things proceed.

8 Given that it was the first
9 SMA placement, was consideration given that
10 perhaps another test strip should have been done
11 for that reason?

12 A. I don't remember.

13 Q. Okay. Then we know
14 Dufferin commenced the main line SMA paving the
15 next day, August 1, and Golder conducted
16 compaction testing on August 1 and 3 and other
17 dates following that. So, were you onsite during
18 the SMA paving on some days, no days or all days?

19 A. Again, I wasn't only
20 assigned to the Red Hill creek, so I would have
21 popped in and out. I highly doubt I would spend
22 the entire -- I don't remember 100 percent for
23 sure, but it would be very unlikely that I would
24 spend an entire day there. You know, the Red Hill
25 creek was close to my job, so I would probably

1 start the morning there or finished the day there,
2 but I wouldn't have been there the entire time,
3 no.

4 Q. Okay. And as you said,
5 you had other projects that were ongoing?

6 A. Yeah.

7 Q. So, would you have been
8 there even if it was only for a brief time or part
9 of the morning or at the end of the day, would you
10 have been there every day or maybe not?

11 A. I don't remember. I
12 don't remember if I was there every day.

13 Q. Okay. May or may not
14 have been?

15 A. I may or may not have
16 been.

17 Q. Okay. And so, do you
18 know, do you have any knowledge, of Dufferin's use
19 or not use of vibration mode on their rollers on
20 the SMA placement? There's an indication on
21 August 1 in the Golder nuclear density compaction
22 records that indicate it was used for part of the
23 placement on that day but not on subsequent days,
24 but did you have any knowledge of it one way or
25 the other?

1 A. So, again, like I said
2 before, establishing the rolling pattern would be
3 something that would be done every morning. So, I
4 don't have a specific recollection on when
5 vibration was used versus when it wasn't used, but
6 there's a technician assigned to the project with
7 the paving crew checking, possibly checking
8 compaction from a quality control perspective, so
9 from a Dufferin perspective, and he would
10 establish those rolling patterns and adjust based
11 on what he's getting results, to get the optimal
12 compaction effort. But to answer your question, I
13 don't have any specific knowledge of when it was
14 used and when it wasn't used.

15 Q. But that's the typical
16 process that you're describing?

17 A. Yeah, for any asphalt,
18 not just SMA.

19 Q. And so, in that typical
20 process, if I understand it correctly, if the
21 compaction is low in the first part of the day,
22 one of the ways one might address is it by moving
23 to the vibration mode. Is that correct? To
24 obtain --

25 A. It's an option, yes.

1 It's an option.

2 Q. What are the other
3 options?

4 A. More passes, making
5 adjustments to the mix based on the results you're
6 getting, many options. So, again, that trial and
7 error process to make sure that the production of
8 the mix itself is within the envelope and that the
9 compaction effort and the paving is also within
10 the envelope of the contract.

11 Q. If we could go to
12 image 58 in OD3, paragraph 119, August 8. This is
13 an e-mail from Dr. Uzarowski to Mr. Oddi, Philips
14 and Mr. Delos Reyes at Golder about his -- and
15 this is on the 8th and it's talking about prior
16 compaction and he's indicating quite a few
17 locations where the SMA compaction is low, some
18 are even below 91 percent:

19 "We're concerned about
20 locations and low
21 compaction is almost a
22 constant issue with SMA
23 paving."

24 Do you recall if this was
25 something that was brought to your attention at

1 that time?

2 A. Specifically, no. I
3 would have been involved in an issue like this,
4 though. That would be typical. I don't have a
5 specific recollection.

6 Q. All right. I think we've
7 heard that measures were taken in respect of
8 moving the -- using more rollers and moving the
9 rollers closer up to the paver, things like that.
10 Does that ring a bell at all about this particular
11 instance?

12 A. Not specific for this
13 instance, but that's typical for any asphalt
14 placement. You would make those sort of
15 adjustments, add equipment, take away equipment,
16 depending on the results you're seeing to increase
17 the compaction effort or, in some cases, maybe
18 there was too much compaction effort and you have
19 to back off a bit, but that's typical. You would
20 make those adjustments to get that to optimal
21 compaction zone.

22 Q. Right. But, again, you
23 don't specifically recall what it was in this
24 instance or what your particular involvement was
25 in those discussions. Is that right?

1 A. I don't recall.

2 Q. And you're aware that
3 that being an adjustment made in particular about
4 -- you described generally that that's a way of
5 addressing low compaction issues, about moving the
6 rollers closer to the pavers and more rollers, but
7 did you have an awareness about particular issues
8 about SMA and the temperature, that it has to be
9 rolled while very hot in order to obtain the
10 appropriate compaction? Is that something you
11 were cognizant of at the time?

12 A. It wouldn't just be SMA.
13 It's any asphalt. You're increasing the
14 temperature, you're going to get better compaction
15 results, so that's typical of all asphalt, not
16 just SMA.

17 Q. Okay. So, it's not
18 something you were thinking of as being SMA
19 specific?

20 A. No, that's not SMA
21 specific. Any asphalt would benefit with an
22 additional compaction effort with hotter asphalt.

23 Q. Okay. And then the next
24 paragraph, Registrar, 120. So, this is an e-mail
25 on August 9 that Mr. Oddi sent to Mr. Hainer,

1 Mr. Gamble and Mr. Wharrie respecting, he says:
2 "This correspondence
3 confirms the Varennes
4 Demix aggregates have
5 been approved for use in
6 the SMA and Superpave
7 12.5 FC2 surface course
8 asphalt mixes on the Red
9 Hill Valley main line
10 paving project. The
11 trial batches for both
12 mix designs met the
13 specified requirements."

14 You weren't copied on this
15 e-mail. Do you recall being made aware of this
16 e-mail at any time before this inquiry?

17 A. I do not recall before
18 reading it as part of this inquiry.

19 Q. And so, do you have any
20 recollection, apart from this e-mail, of the City
21 directly approving the aggregates?

22 A. No. Again, I don't
23 remember the e-mail before reading it here, so no.

24 Q. Okay. And do you agree
25 with me that it wasn't typical in the course of

1 the Red Hill project for Mr. Oddi to be
2 communicating directly by e-mail on this kind of
3 issue with Dufferin? Is that fair?

4 A. I don't think Mr. Oddi
5 provided too much correspondence, but it wasn't
6 uncommon for him to provide correspondence.

7 Q. Fair enough, but we just
8 looked at the course of correspondence on issues
9 respecting mix design approval and aggregate
10 issues and so forth and Mr. Oddi is not
11 communicating directly with you, Dufferin
12 generally and so forth, except on the 23rd of July
13 where the e-mails go from Mr. Hainer and you to
14 Philips and Mr. Oddi, but there's nothing coming
15 from Mr. Oddi, so would you agree that this is out
16 of the ordinary, given the topic?

17 A. I don't think he did very
18 often, but I wouldn't say it's uncommon that
19 Mr. Oddi would communicate with the team. To my
20 recollection, Marco was there quite often on the
21 project, maybe even more than me. I don't know
22 that for sure, but --

23 Q. I'm talking about e-mail
24 communications. I'm aware that he was typically
25 very often onsite, if not daily, near daily and so

1 forth, so there would have been a lot of oral
2 communications and so forth. But in terms of
3 e-mail or memo traffic, our paper record is what
4 it is, but I'll put it to you one more time that
5 this is not the normal line of communication on
6 issues respecting approval of mix designs and
7 aggregates. Do you agree with that?

8 A. Again, it's the same
9 answer. I don't think that's uncommon for
10 Mr. Oddi to communicate with the team, whether it
11 be about mix designs, whether it be about even
12 other parts of the project because it's not just
13 asphalt on the job. Right?

14 Q. I'm getting a feedback
15 message.

16 A. I'm getting it as well.

17 Q. I think that was from
18 Lenczners.

19 THE REGISTRAR: Sorry,
20 counsel, they're muted now so it should be okay.

21 MR. LEWIS: As long as they're
22 not trying to talk and are muted. Okay. Thank
23 you.

24 BY MR. LEWIS:

25 Q. Okay. We have your

1 evidence on that. Thank you. All right. If we
2 could go to OD3, image 60, and these are the site
3 meeting minutes from the meeting on August 21,
4 2007 and you aren't listed as attending this
5 meeting, so I just want to ask you if you have any
6 knowledge of something.

7 The fifth bullet down there in
8 this section --

9 A. Can you blow it up? I
10 can't see it.

11 Q. Sorry. Of course.

12 A. Yeah.

13 Q. Thank you for reminding
14 me. The fifth bullet down under point one says:

15 "Golder had completed
16 their analysis and
17 provided written
18 confirmation indicating
19 SMA mix design is
20 satisfactory."

21 And so, I'm just wondering if
22 you know of any written confirmation. We haven't
23 been provided with that and if you have any
24 personal knowledge of written communication by
25 Golder that the mix design is satisfactory for

1 SMA?

2 A. Other than seeing what
3 I'm seeing here, I don't have any specific
4 recollection of anything.

5 Q. Okay. Thank you. And
6 then -- take that down, please, Registrar --
7 image 61 and 62, I guess. In this paragraph 127,
8 there's a series of internal e-mails at Golder
9 following that site meeting on the 21st of August.
10 These aren't e-mails that you're copied on. It's
11 just a number of e-mails internally about asphalt
12 test results on the SMA and that concerns about
13 rejectable SMA samples and then potentially that
14 there are errors in samples being marked as SMA
15 that are definitely SP12.5 FC2. That's one of the
16 e-mails at subparagraph (e) on image 55. Again,
17 you didn't see these e-mails.

18 Is this something, this issue,
19 that you recall being made aware of, first of all,
20 about rejectable test results at this point in
21 time?

22 A. What specifically are you
23 talking about? You're talking about point (e)
24 there? Again, if we could blow that up, that
25 would be fantastic.

1 Q. Look at paragraph (d), as
2 in Dave.

3 A. Yeah.

4 Q. So, he's indicating there
5 that nine of 28 SMA samples are rejectable and
6 he's talking about:

7 "Why is it so fine on 9.5
8 and 4.75 sieves? Is
9 there a sampling error?"

10 And so forth, so that's the
11 first piece.

12 Then you can take that down
13 and the next paragraph, (e), Dr. Uzarowski says:

14 "Please double check the
15 results before sending.
16 There are a number of
17 errors and the samples
18 marked as SMA are
19 definitely SP12.5 FC2."

20 You can take that down. We've
21 received some evidence from Dr. Uzarowski and
22 Mr. Delos Reyes about some errors on labelling and
23 so forth, but I'm wondering if you recall being
24 advised of any issues around that time period with
25 respect to rejectable samples and mislabelling

1 samples?

2 A. I don't recall
3 specifically. The only thing I recall is that the
4 asphalt, the SMA and the FC2, were eventually
5 accepted on to the project and paid for. The back
6 and forth about specific samples, I don't recall
7 anything specific.

8 Q. Okay. So, they were paid
9 for and there was no payment reduction?

10 A. Not to my recollection.
11 It was paid for, yeah.

12 Q. Okay. I want to talk
13 about the MTO skid testing on the Red Hill Valley
14 Parkway and the application by Dufferin and Demix
15 for inclusion on the MTO's Designated Sources for
16 Materials list. And just to place it for you, we
17 know that the MTO skid testing took place on the
18 Red Hill on October 16, 2007.

19 And if we could go to OD4,
20 we're on to OD4 now, Registrar, image 59 and
21 paragraph 136, actually, 59 and 60, I guess.
22 Okay. And so, paragraph 136 says:

23 "Also, on October 17,
24 2007, regarding the RHVP
25 friction testing

1 conducted by the MTO the
2 previous day,
3 Mr. Delos Reyes e-mailed
4 Mr. Marciello stating,
5 'Just a reminder to
6 please e-mail test
7 results as discussed.
8 Dufferin and Philips
9 Engineering are highly
10 interested.'"

11 Mr. Marciello is the MTO
12 person who operated the skid trailer and
13 Mr. Delos Reyes is at Golder, as we already
14 mentioned.

15 So, he has this reference to
16 Philips and Dufferin being highly interested. Do
17 you recall if Dufferin was highly interested in
18 the friction test, skid test results?

19 A. I don't recall.

20 Q. Okay. Do you recall if
21 you were?

22 A. No, I don't recall me or
23 anyone else at Dufferin.

24 Q. Okay. So, then if we
25 could go to image 57 in OD4, this is a couple of

1 days prior to that, October 15. Sorry, image 57.

2 And this is paragraph 131. If you could expand

3 that, please. So, this is two days before that

4 reference that I just took you to and one day

5 prior to the MTO skid testing on the Red Hill.

6 You sent a letter to Jim Theodore, the contract

7 administrator on an MTO contract, 2007-20-31.

8 He's at Morrison Hershfield. Under the reference

9 line Trial Section:

10 "SP12.5 FC2 using
11 aggregate from Varennes
12 Quarry Demix."

13 And attached to your letter
14 was the mix design package prepared by Trow for
15 the SP12.5 FC2 layer and the aggregate and hot mix
16 test results for the Red Hill mix design for that
17 asphalt.

18 And then there's your letter.

19 Have you reviewed that?

20 A. Yeah, I read it.

21 Q. Okay. And so, I
22 understand that this MTO contract that's referred
23 to, am I correct that's a Dufferin paving contract
24 with the MTO for which Morrison Hershfield was the
25 contract administrator?

1 A. I don't remember the
2 specific contract, but it must be.

3 Q. Okay. So, I'll back up
4 and we'll ask you the questions. Other than this
5 letter, do you have any recollection of the
6 circumstances around it or do you just -- is your
7 only recollection as set out in this letter?

8 A. I'm not sure I understand
9 the question. Are you asking --

10 Q. I'll rephrase it. Do you
11 have any independent recollection of the
12 circumstances around the sending of this letter,
13 beyond the content of the letter itself?

14 A. I don't have any specific
15 recollection. I'm reading it now, so --

16 Q. So, you know you sent a
17 letter --

18 A. I don't remember writing
19 it -- sorry.

20 Q. Okay. Do you remember
21 sending the letter?

22 A. I do not remember
23 specifically sending the letter, no. No, I don't.

24 Q. Okay. And do you recall
25 about Jim Theodore and that MTO contract and that

1 Morrison Hershfield was the contract administrator
2 on that project that Dufferin was executing? Do
3 you recall that?

4 A. Do I recall -- I remember
5 who Jim Theodore is. I remember who is he.
6 Again, I don't recall specifically what contract
7 this is.

8 Q. Okay. And do you recall
9 why you were sending this rather than it coming
10 directly from Demix? I know Dufferin is
11 affiliated with Demix obviously. Do you recall
12 how you came to write this letter?

13 A. Based on what I'm seeing
14 here, Demix is based out of Quebec. This is an
15 MTO contract in Ontario. They're a sister
16 company, so I would be writing it on behalf of
17 them.

18 Q. Okay. Do you recall who
19 instructed you to write this letter?

20 A. It must have been Peter
21 Gamble. I can't imagine who else would have
22 instructed me, unless it was Peter Gamble who
23 would instruct me to write this letter.

24 Q. And you say "it must have
25 been." And I take from that, again, you're saying

1 that because he was your person that you were
2 reporting to at the time and you can't imagine
3 that it came from anyone else, but you don't,
4 again, have a specific recollection of Peter
5 saying send this. Is that right?

6 A. Not at this moment, but
7 yeah, it's based on my reporting to Peter.

8 Q. And is the idea here that
9 you are seeking to have a test strip of the SP12.5
10 asphalt placed on this MTO contract to be used as
11 a test strip for the application to the MTO's
12 Designated Sources for Materials list? Is that
13 what's going on here?

14 A. That would be part of it.
15 That would be part of the process and this is a
16 chance for the MTO to evaluate the product on one
17 of their own projects.

18 Q. Right. And did you have
19 an understanding at the time what the requirements
20 were for an aggregate being listed on the MTO's
21 DSM?

22 A. No. No. I still don't
23 know what all the requirements are.

24 Q. Okay. So, specifically
25 were you aware that the friction testing was

1 something that the MTO conducted in respect of
2 evaluating aggregates that would go on the DSM?

3 A. No. I don't have any
4 recollection of the specific requirements of what
5 needed to happen to get on the DSM or not, so no,
6 so, I don't know specifically -- I didn't know
7 specifically that skid resistance was one of the
8 requirements.

9 Q. Okay. Sorry, I realize
10 that the letter continues on the next page. Thank
11 you. If you could expand the last one. I thought
12 that was up on the -- that we put up. The last
13 paragraph:

14 "Also, please note the
15 Ministry is currently
16 performing 'skid
17 resistance' testing on
18 the SMA from the Red Hill
19 Valley project, which
20 uses these aggregates.
21 By allowing this trial
22 section, it would
23 facilitate a full
24 evaluation of this
25 product."

1 Sorry we didn't put that up
2 for you before. So, you are mentioning the fact
3 that the Red Hill is having skid resistance
4 testing done by the Ministry at that time and it
5 was the next day that they were doing it. So, is
6 it fair to say you must have thought there was
7 some significance to that information to let the
8 MTO know this was going on?

9 A. If I wrote it, I must
10 have, yeah. Obviously I don't have any specific
11 recollection of it because I just said I don't
12 remember skid resistance being part of the
13 requirements, but if I wrote it, I must have.

14 Q. Okay. And could that
15 have a bearing on interest being expressed by
16 Dufferin? Just coming back to the question I
17 asked you at the outset of this topic about
18 Dufferin being highly interested. Dufferin, I
19 would take it, would have been interested in the
20 results, in the friction testing results, if this
21 application is being or this letter is being
22 submitted and you're referencing specifically the
23 MTO performing the test strip?

24 A. Again, if I wrote it,
25 then yeah. Again, speaking to you now, I don't

1 have any specific recollection.

2 Q. Okay. Fair enough. We
3 can take that down and then the second last
4 paragraph on the previous page, starting "the
5 design was completed," on image 57. You wrote:

6 "The design was completed
7 by Trow Associates and
8 does not have third-party
9 verification as it was
10 not a requirement of the
11 above-mentioned project."

12 What's third-party
13 verification in this context?

14 A. If my recollection serves
15 me right, third-party verification on an MTO job
16 would have been -- so, you would have had the
17 designer of the asphalt, you would have had the QA
18 and then you would have had an additional party
19 verify the mix design.

20 Q. I see. And, sorry, to
21 verify what?

22 A. To verify the mix design
23 itself.

24 Q. That it was appropriate
25 and that it met the contract requirements?

1 A. That it met the contract
2 requirements.

3 Q. Okay. And not something
4 required on the Red Hill, so you're just letting
5 them know that that was the case?

6 A. Yes.

7 Q. Okay. Now, the mix
8 design that you attach, you're submitting, is for
9 the SP12.5 FC2 mix design and that is one of the
10 two mixes that contained the Demix aggregates that
11 you're asking for this trial section to be
12 conducted for.

13 Do you recall at all if there
14 was any discussion about which mix design to
15 submit?

16 A. One specifically?

17 Q. Well, this is the Red
18 Hill SP12.5 mix design and the other one was the
19 SMA mix design from the Red Hill that contained
20 the Demix aggregates. I'm just wondering if there
21 was any discussion about which one to submit.

22 A. I don't have any specific
23 recollection, but it must be that this project was
24 using SP12.5 FC2 and not SMA.

25 Q. Okay. And so, if you're

1 going to do a trial section, you would want it to
2 be the same surface mix as is being used on that
3 project?

4 A. That's correct.

5 Q. Okay. And do you ever
6 recall receiving the results of the MTO's skid
7 test results on the Red Hill Valley Parkway?

8 A. I don't have a specific
9 recollection of receiving those results, no.

10 Q. I am going to push you
11 further on that one. Do you think you did or did
12 not receive them? We don't have any e-mail that
13 goes to you, but --

14 A. I'm not going to
15 speculate because I don't remember if I did or
16 didn't. I don't remember.

17 Q. All right. Do you recall
18 if you were ever told the results orally?

19 A. Again, I don't remember.

20 Q. Okay. And do you know if
21 anyone else at Dufferin received the results or
22 was told about the results?

23 A. I do not recall.

24 Q. Commissioner, I just have
25 a couple more questions, so I'll probably be about

1 another five to ten minutes. It's 1:00, but then
2 I'll be done.

3 JUSTICE WILTON-SIEGEL: I
4 think we should complete Mr. Janicas' submissions
5 or interview at this point and then you can
6 discuss with counsel over the break how much time
7 you have left.

8 MR. LEWIS: Okay.

9 BY MR. LEWIS:

10 Q. We know that in early
11 2006 the MTO formed an industry MTO joint task
12 group to deal with concerns about SMA early age
13 low friction. Do you recall when you became, you
14 first became, aware of the SMA early age low
15 friction issue or the task group that was convened
16 to deal with it?

17 A. I don't recall. I don't
18 recall if I ever became aware, to be honest. I
19 don't recall.

20 Q. Okay, so you don't have
21 any recollection of being made aware of it?

22 A. I don't, not speaking to
23 you at this point. I don't have any recollection
24 of being made aware of -- you said early skid
25 resistance issues?

1 Q. Yes, that shortly after
2 placement that SMA had lower friction than perhaps
3 other pavements did and that the MTO had concerns
4 about it and had convened a task group to deal
5 with it?

6 A. I don't recall.

7 Q. Okay. Do you recall if
8 you knew about the early age low friction issues
9 prior to the completion of the Red Hill project?

10 A. I don't recall.

11 Q. Okay. If we go to OD4,
12 image 78 and actually 79 as well. So, this jumps
13 forward to December 7, 2007 and then you e-mailed
14 Mr. Chris Rogers at the MTO requesting to begin
15 the process to place the Varennes Quarry, the
16 Demix Varennes Quarry, aggregate used on the Red
17 Hill on the Designated Sources for Materials list.
18 If you could expand that for him, please. And you
19 indicate a letter is attached from Demix to begin
20 the approval process to be placed on the DSM list
21 for the Varennes Quarry aggregate, that it's
22 already been used in Ontario and that it was
23 placed on the Red Hill in the form of SP12.5 and
24 12.5 SMA and asked to advise the next step in the
25 process.

1 Now, do you recall how you
2 came to send this letter following the one before
3 sent to the contract administrator on the MTO
4 project?

5 A. I do have a vague
6 recollection of sending this.

7 Q. Okay. Do you recall how
8 you got from the first letter to this one?

9 A. No, no. I don't remember
10 the in-between steps, no.

11 Q. Okay. Is this also
12 Mr. Gamble instructed you to send this letter?

13 A. It must have been or
14 senior management at Dufferin. I don't know
15 specifically if it was Peter Gamble on this one,
16 but it would have been my superiors at Dufferin.

17 Q. Okay. And do you recall
18 when Dufferin first talked about, first discussed,
19 applying for listing on the DSM for the Demix
20 aggregates? We're now --

21 A. When we had the first --

22 Q. Yeah. We're now in
23 December and the first letter was in the middle of
24 October, so at some point prior to that there must
25 have been discussion about doing this. Do you

1 recall when you were first aware of discussions
2 about applying for inclusion on the DSM for Demix?

3 A. I don't recall the exact
4 date when we started talking about Varennes going
5 on the DSM. No, I do not.

6 Q. Okay. So, if you don't
7 recall the exact date, could you give me an
8 approximate date, whether it's season or month?

9 A. Based on what I'm seeing,
10 I don't recall -- again, I don't like to speculate
11 here, but based on what I'm seeing, it would have
12 been in October/November of that year, having
13 those discussions.

14 Q. At least that's when you
15 were first -- well, it wouldn't have been in
16 November when you first did. If you sent a letter
17 on October 15, it must have been at some point
18 prior to you sending that letter. Okay. But are
19 you saying you don't recall any discussion prior
20 to October of 2007 about applying for inclusion on
21 the DSM?

22 A. I don't recall.

23 Q. Okay. Do you recall if
24 anyone informed you about prior discussions or
25 when the decision was made?

1 A. I do not recall.

2 Q. Okay. That concludes my
3 questions, Commissioner.

4 JUSTICE WILTON-SIEGEL: Okay.
5 Thank you. So, it's now almost ten past. Let's
6 adjourn until 2:25 and you can discuss with
7 counsel how much time they require for further
8 examination of Mr. Janicas.

9 MR. LEWIS: We will do that.
10 Registrar, if we could go to an all counsel room
11 to discuss. Thank you.

12 JUSTICE WILTON-SIEGEL:
13 Otherwise, we'll stand adjourned until 2:25.
14 --- Luncheon recess taken at 1:08 p.m.
15 --- Upon resuming at 2:24 p.m.

16 MR. LEWIS: Good afternoon,
17 Commissioner, counsel, Mr. Janicas. The
18 participants' counsel, we've conferred about their
19 timing and so forth, so I think it will be a
20 fairly short afternoon. Mr. Chen, counsel for the
21 City, is going to go first, followed by
22 Mr. Bourrier for the MTO and Ms. McAleer for
23 Dufferin.

24 EXAMINATION BY MR. CHEN:

25 Q. Commissioner,

1 Mr. Janicas, good afternoon. I have a small
2 number of questions for you.

3 You testified about ignition
4 oven testing and the concerns around that earlier
5 today and I just want to clarify a point in one of
6 your e-mails.

7 Can we please bring up
8 DUF1966. This is an e-mail from you to
9 Dr. Uzarowski on July 17, 2007 and copying others.
10 In the second paragraph, if we can just zoom in on
11 that for the benefit of Mr. Janicas, it starts
12 with "a concern." So, here, you talk about
13 ignition oven testing results and Dufferin's
14 understanding. Is that correct?

15 A. I see what's written,
16 yeah.

17 Q. And you go on to make a
18 reference in the third sentence:

19 "However, it is not a
20 requirement of the
21 contract."

22 I take it that means that the
23 aggregate here, the Demix, did not have to pass
24 the ignition oven test to be acceptable. Is that
25 fair?

1 A. It means that the percent
2 breakdown of aggregate in the ignition oven
3 testing is not a requirement of the contract.

4 Q. Okay. Understood. Thank
5 you. But since, as I understand it, Golder had
6 raised this issue with ignition oven testing,
7 Dufferin went ahead to specifically address or
8 resolve that concern?

9 A. Yes.

10 Q. Okay. So now, if we can
11 pull up a different document, GOL1763. Okay. So,
12 with respect to the concern arising from the
13 ignition oven testing, I understand that the
14 attribute in question was the breakdown discovered
15 in the ignition oven testing at high temperatures.
16 Is that fair?

17 A. Yes.

18 Q. And the Micro-Deval
19 testing measures breakdown of the aggregate
20 through abrasion. Is that correct?

21 A. I'm sorry, can you blow
22 that up for me, please? Thank you.

23 Q. The key paragraphs are
24 the first three. Thank you.

25 A. Sorry, what was your

1 question?

2 Q. It's the Micro-Deval
3 testing that measures the breakdown of the
4 aggregate through abrasion. Is that correct?

5 A. Yes, yeah. That's
6 correct.

7 Q. And as I understand from
8 what is being said in the e-mail, it's the
9 positive Micro-Deval results that resolved any
10 issues with the breakdown that was discovered in
11 the ignition oven testing?

12 A. Yeah. It's the
13 affirmation that the Micro-Deval for this
14 particular aggregate is a positive result and
15 Micro-Deval -- and because they were seeing
16 breakdown in the ignition oven, this is just,
17 again, confirmation that it meets the physical
18 requirement.

19 Q. Okay. Thank you. Those
20 are my questions.

21 MR. LEWIS: I believe
22 Mr. Bourrier is next for the MTO.

23 EXAMINATION BY MR. BOURRIER:

24 Q. Good afternoon,
25 Commissioner. Hello, Mr. Janicas. My name is

1 Colin Bourrier and I'm counsel for the Ministry of
2 Transportation. I have some questions that I
3 would like to ask you about the evidence you gave
4 this morning. First I want to ask you about your
5 knowledge of early age friction issues with SMA.

6 We heard from you this morning
7 that you worked closely with Mr. Gamble and we've
8 also heard from Mr. Gamble that he was on the
9 board of OHMPA for about a decade. Would it be
10 fair to say that you heard about SMA early age
11 friction concerns at some point through him?

12 A. I don't want to
13 speculate, but I don't recall. I don't recall.
14 Is it possible that I heard about it? Yes, it's
15 possible, but that would be speculation.

16 Q. And so, when you say it's
17 possible, is there a certain timeframe where it's
18 possible you heard about it in 2008-2009?

19 A. I don't know. I have no
20 idea. I don't recall.

21 Q. And just so I have that
22 clear, you say you don't recall. Does that mean
23 you did hear about the issue at some point before
24 reviewing documents for this inquiry and you just
25 don't remember the date, or is it possible that

1 you never heard about early age friction issues
2 with SMA?

3 A. I don't recall ever
4 hearing about it back then in detail. Could I
5 have known through seminars? Yes, I could have.
6 I wouldn't have been involved heavily. I don't
7 recall ever teaching myself about any of that, so
8 that, I do remember. And then when reviewing for
9 this inquiry, you know, I did hear about it here.

10 Q. Okay. And based on what
11 you've said to me now, I take it, then, that you
12 never contacted anyone at the MTO to collect more
13 information about early age friction concerns for
14 SMA. Is that right?

15 A. I don't recall, but I
16 don't think I ever did.

17 Q. And after 2007, I take
18 it, then, that you also never contacted anyone at
19 MTO to discuss any friction issues with the Red
20 Hill pavement. Is that right?

21 A. I would not have called
22 the MTO about the Red Hill. If I was making any
23 phone calls, it would be with the City and I don't
24 recall ever making any phone calls to the City on
25 that issue.

1 Q. Okay. The other issue I
2 want to ask you a couple questions about is the
3 Demix aggregates DSM approval request that you
4 submitted. Do you remember talking about that
5 with Mr. Lewis this morning?

6 A. I do.

7 Q. I understand your
8 evidence is that you submitted the DSM request at
9 Mr. Gamble's direction. Is that right?

10 A. It would have been -- I
11 think what I said was it was most likely
12 Mr. Gamble, but it would have been senior
13 management at Dufferin. Was it specifically
14 Mr. Gamble, I don't recall, but it would have been
15 the senior management at Dufferin that would have
16 instructed me to do so.

17 Q. And apart from that 2007
18 correspondence, the December 7 correspondence we
19 looked at this morning, after the Red Hill project
20 opened to the public, I take it you didn't follow
21 up on the status of the DSM application?

22 A. Yeah. I think I said I
23 had a vague recollection of the e-mail. It was
24 more of an introductory e-mail for our sister
25 company, which is Demix, and then they follow

1 through on the process. I think I eventually
2 heard it did get placed on the DSM, but other than
3 that I wasn't involved in the day to day with the
4 DSM process.

5 Q. Do you know when you
6 heard about it being --

7 A. I don't. I don't
8 remember. I don't remember the exact time.

9 Q. And do you remember how
10 you found out? Who told you?

11 A. No, I don't. It was most
12 likely a conversation.

13 Q. Okay. And so, just so
14 I'm clear, you did find out about it at some
15 point, but apart from that December 7, 2007
16 correspondence that we looked at this morning, you
17 personally didn't have any further involvement in
18 the actual DSM application. Correct?

19 A. No. I was not involved
20 in the day to day or any of it from that point
21 forward, to my recollection.

22 Q. Okay. Those are my
23 questions, Commissioner.

24 JUSTICE WILTON-SIEGEL: Okay.

25 MR. LEWIS: And Ms. Roberts

1 doesn't have any questions, so Ms. McAleer for
2 Dufferin is next.

3 MS. MCALEER: Thank you,
4 Mr. Lewis. Good afternoon, Mr. Commissioner.

5 EXAMINATION BY MS. MCALEER:

6 Q. Mr. Janicas, can you hear
7 me okay?

8 A. I can hear you.

9 Q. Great. Just two areas I
10 wanted to cover off with you. What quality
11 control procedures would Dufferin have conducted
12 on the Red Hill during the paving process? Once
13 you start paving on August 1, what quality control
14 procedures is Dufferin conducting?

15 A. For the asphalt, so, you
16 know, at the asphalt plant we had a laboratory.
17 They would be taking, in the morning, they would
18 be taking plant samples to check the mix right as
19 it starts up in the morning. And some days, they
20 would be taking samples of stockpiles for the
21 individual aggregates just for process control and
22 quality control to make sure that what we're
23 getting in, because things are coming in day to
24 day, still meet the requirements, and it did.

25 We're also testing the field

1 samples that are coming in for the place, hot mix,
2 and testing them for mix properties. We also have
3 a nuclear densometer onsite checking the rolling
4 pattern and checking compaction. And then you're
5 also doing thickness checks from time to time
6 making sure that the pavement thickness is where
7 it needs to be.

8 I think that pretty much
9 covers it. You're doing temperature checks, the
10 back of the paver to make sure that the mix coming
11 onto the site is the appropriate temperature.
12 You're also making adjustments should you find,
13 like even in the morning sample, if it's slightly
14 off or you see it going to a trend, you would make
15 an adjustment at the plant to bring it back in, so
16 that control is in place. As well as the field
17 samples, any of the field samples that you would
18 get from the hot mix, you would be making similar
19 adjustments.

20 Q. Okay. So, that was quite
21 a bit, so let me just see if I could get a little
22 more information on each. So, the plant samples
23 that are taken in the morning, is that done every
24 day?

25 A. Yeah, every day of

1 production.

2 Q. And how quickly do you
3 get the results from those plant samples?

4 A. It could take anywhere
5 from three to four hours. Like, you're checking,
6 but you get results throughout the course of those
7 three or four hours. The complete set of results
8 comes after three or four hours, but things like
9 percent AC or gradation is much quicker. That's
10 within an hour. And density checks through the
11 MRD, that's typically within two hours just to
12 make sure that the plant is still producing the
13 product within the parameters of the contract and
14 that you need to make adjustments. So, in the
15 course of that three or four hours, you're getting
16 results, gradation, sorry, percent AC first,
17 gradation and then density and then finally air
18 voids.

19 Q. And, sorry, just where is
20 the plant in relation to the project?

21 A. The plant is very close
22 to the project. Where was it? Was it on
23 (indiscernible)? It was around that area, so it
24 was within 10-15 kilometres to the end of the
25 project.

1 Q. And you mentioned
2 stockpile testing. What does that involve?

3 A. Gradation, so you're
4 checking the aggregates for gradation and percent
5 moisture as well. So, as part of one of the
6 parameters of producing asphalt, if you know what
7 the moisture content of the aggregates going in,
8 you can plug that in as a parameter for producing
9 asphalt, so it can compensate for the water that's
10 evaporated through the production of asphalt in
11 that process.

12 Q. And you mentioned the
13 nuclear density testing. Was that the compaction
14 testing?

15 A. Yes.

16 Q. And how often is that
17 checked?

18 A. It's consistent
19 throughout the day. It's --

20 Q. And what -- sorry, I
21 didn't mean to interrupt you. Finish your answer.

22 A. I was going to say it's
23 consistent, so you're checking every five-ten
24 minutes. Sometimes after you establish the
25 rolling pattern, you might not be as frequent

1 because you've already established a rolling
2 pattern and you're just doing spot checks from
3 time to time, but it's a very constant process
4 throughout the entire day.

5 Q. And what happens to those
6 test results, the compaction test results?

7 A. You don't record all of
8 them because you're literally doing hundreds of
9 test results, and I believe on this project it was
10 QA for acceptance, not QC, so it's all internal.
11 Those results may have been placed in a diary for
12 the technician doing the testing itself and
13 writing down the rolling pattern, but other than
14 that it's not recorded. Like I said, it's a
15 constant process and you're constantly using it
16 for adjustments, not necessarily for accepting the
17 asphalt.

18 Q. So, can you explain that?
19 Because you said this was a QA for acceptance.
20 What does that mean?

21 A. My recollection is so
22 Golder would be doing parallel compaction testing
23 with their own nuclear densometer, so that's QA
24 and those results would be the ones used for final
25 acceptance of the product.

1 Q. And do I understand that
2 you do your own testing to make sure you're paving
3 correct, but also in the event that there's a
4 dispute between you and Golder, you each have your
5 tests. Is that correct?

6 A. That's part of it, but
7 the main focus there is just to make sure and to
8 ensure that the product being placed is within the
9 confines and the envelopes of the contract.

10 Q. And then you mentioned
11 thickness tests. How often are those typically
12 conducted?

13 A. That would actually be
14 done by the foreman, so that's behind the screen,
15 but it's also part of the quality control process.
16 He would check probably every 100 metres or so.

17 Q. Checking the thickness of
18 the mat. Is that correct?

19 A. That's correct, yeah.

20 Q. And then finally you
21 mentioned temperature checks. Can you tell us a
22 little bit more about what a temperature check
23 entails?

24 A. Simply checking the
25 temperature of the asphalt as it's being placed.

1 Q. Is that something you do
2 once or is that something you do more than once
3 throughout the day?

4 A. It's consistent
5 throughout the day.

6 Q. All right. Then the only
7 other thing I wanted to ask you is that you were
8 asked some questions about the MTO skid tests that
9 were done in October of 2007 and, in particular,
10 Mr. Lewis asked you whether or not those results
11 were sent to you and I believe your answer was you
12 had no specific recollection of receiving them.
13 Do you remember those questions and the answer you
14 gave?

15 A. Yeah.

16 Q. All right. Do you know
17 if skid tests that were conducted by the MTO were
18 typically sent to Dufferin on MTO projects that
19 you did?

20 A. The results of the skid
21 tests, you mean?

22 Q. Correct.

23 A. That's not a typical
24 piece of information we get from MTO projects.
25 No, it's not.

1 Q. Thank you. Those are all
2 of my questions, Mr. Commissioner.

3 JUSTICE WILTON-SIEGEL: Okay.

4 MR. LEWIS: I don't have any
5 follow-up questions.

6 JUSTICE WILTON-SIEGEL: Okay.
7 So, I take it we don't have anything else we have
8 to deal with this afternoon. Is that correct?

9 MR. LEWIS: That's correct.

10 JUSTICE WILTON-SIEGEL: And
11 Mr. Murray is unavailable this afternoon and,
12 therefore, is making himself available tomorrow.
13 Is that correct?

14 MR. LEWIS: Yes.

15 JUSTICE WILTON-SIEGEL: Okay,
16 so I expect it will be a longer day tomorrow. In
17 the meantime, there being nothing else to do this
18 afternoon, we'll stand adjourned until 9:30
19 tomorrow morning. Thank you.

20 --- Whereupon the proceedings adjourned at
21 2:43 p.m. until Friday, May 6 2022
22 at 9:30 a.m.

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