

RED HILL VALLEY PARKWAY INQUIRY

AFFIDAVIT OF BOB GORMAN (affirmed on May 25, 2022)

I, **BOB GORMAN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I was employed by the Ministry of Transportation of Ontario ("MTO") from 1991 until my retirement on April 30, 2015. From 1991 to 2001, I held the position of Aggregate Resource Technician. Subsequently from 2001 until 2015 I held the position of Senior Aggregate Engineering Officer in the Soils & Aggregates Section of the Materials Engineering and Research Office ("MERO"). In or around 2001/2002, I worked briefly in the Bituminous Section at MERO, before rejoining the Soils & Aggregates Section. Prior to my employment at the MTO, I was employed by Ontario Geological Survey in the Engineering Geology section from 1980 to 1991. I am a trained geologist and received a Bachelor of Sciences degree in Geoscience from the University of Toronto in 1979.

2. I have knowledge of the matters set out below, except where this knowledge is based on information and belief, in which case I state the source of that information and verily believe it to be true.

Roles & Responsibilities as Senior Aggregate Engineering Officer

3. In my role as Senior Aggregate Engineering Office, I reported to the Head of the Soils and Aggregates Section: Chris Rogers, from 1991 until May 2008, and thereafter to Stephen Senior until my retirement.

4. Within the MTO, I was the primary person responsible for managing and overseeing the MTO's Designated Source for Materials ("DSM") List for premium surface course aggregates (DSM 3.05.25), in consultation with Mr. Rogers and Mr. Senior. I had several areas of responsibility in my role as Senior Aggregate Engineering Officer, but DSM management and oversight was the principal focus of my work. In relation to the DSM, my tasks included:

- (a) processing applications for inclusion on the DSM;
- (b) organizing laboratory and in-service testing of the aggregate(s), including but not limited to, Polished Stone Value ("PSV") testing, Aggregate Abrasion Value ("AAV") testing, and skid resistance testing using the ASTM E 274 locked wheel skid tester;
- (c) visiting and inspecting quarries and obtaining samples therefrom for testing; and
- (d) preparing letters to DSM applicants for signature from Mr. Rogers and Mr. Senior, including an initial response letter upon receipt of an application and subsequent correspondence regarding the status of the application.

5. With respect to the letters referred to in paragraph 4(d), the correspondence that I prepared was generally very similar in nature and did not deviate much in form or content, subject to the addition of applicant-specific information.

Requirements for Inclusion on the DSM

6. One of the components of the response letters referred to in paragraphs 4(d) and 5 was an Appendix that set out the requirements for an aggregate source to be listed on the DSM. The Appendix was sent to applicants or suppliers as part of the MTO's initial response to the application (see, for example, MTO0000043 at image 2). The requirements for inclusion included:

- (a) Submission of a letter of consideration to the Head of the Soils & Aggregates Section;
- (b) Geological examination by Soils & Aggregates staff to ensure satisfactory nature and consistency of the source;
- (c) Inspection of the production facilities by Soils & Aggregates staff to ensure suitability;
- (d) Sampling of 1,000-tonne stockpiles of coarse and fine aggregate by Soils & Aggregates staff;
- (e) Satisfactory quality of the aggregate, including an average PSV of 50 for most aggregates (with no value less than 48) and an average AAV of no more than 6.0;

- (f) Typically, construction of a 500m test strip containing the applicant aggregate source and satisfactory performance of the aggregate in the test strip during an initial two-year period, based on visual inspection by Soils & Aggregates staff and skid-resistance surveys conducted by Pavements & Foundations;
- (g) Registration with The Road Authority (a portal and database exhibiting products and services available for use in public works infrastructure); and
- (h) Payment of a registration fee for inclusion on the DSM.

7. In my experience, evaluating an application for inclusion on the DSM would, among other things, typically involve skid testing of a 500m asphalt test strip on a road owned, operated, and built by the MTO using the new aggregate, and a control section next to it using an already accepted aggregate on the DSM, for two years after placement (as reflected in paragraph 6(f)). The general practice within the Soils & Aggregates Section was to advise suppliers applying for inclusion of their aggregates on the DSM only that skid test results were satisfactory for DSM acceptance purposes, rather than providing the actual test results. Periodic skid testing would typically take place even after inclusion of an aggregate on the DSM.

8. On an annual basis, I sent a memorandum to the Head of the Pavements & Foundations Section, on behalf of Soils & Aggregates, requesting skid-resistance surveys be conducted on certain trial section pavements that year. Soils & Aggregates requested the skid testing information for DSM purposes – specifically to assess whether an aggregate had suitable frictional qualities to be included on the DSM and once included,

to remain on the DSM. The friction testing was carried out by Frank Marciello (Pavement Evaluation Supervisor) using the ASTM E 274 locked wheel skid tester. Mr. Marciello's practice was typically to only send the friction test results to myself, the Head of Soils & Aggregates (Mr. Rogers and then Mr. Senior), and the Head of Pavements & Foundations, whom Mr. Marciello reported to.

Application by Demix Agrégats for DSM Inclusion

9. On December 10, 2007, I received an email from Mr. Rogers forwarding an email on December 7, 2007 from Paul Janicas at Dufferin enclosing Demix Agrégats' application for inclusion of the Demix Varennes quarry on the DSM (MTO0000039 attaching MTO0000040). I reviewed Demix Agrégats' application sometime in/around December 10, 2007. Mr. Rogers' request that I prepare a response letter was consistent with our normal practices upon receipt of an application.

10. On December 11, 2007, Mr. Marciello emailed the October 16, 2007 skid testing results for the Red Hill Valley Parkway ("RHVP") to me and Mr. Rogers (MTO0003601 attaching MTO0003602, MTO0003603). I do not have a specific recollection of requesting these test results from Mr. Marciello, or of speaking with Mr. Marciello about the skid testing he conducted on the RHVP, prior to receiving the results. My understanding was that the RHVP skid testing results were acceptable, particularly because the RHVP was a newly placed stone mastic asphalt ("SMA") surface that had not been opened to traffic at the time of the testing. I did not share the test results with anyone outside of the MTO.

11. I prepared the letter that Mr. Rogers sent to Demix Agrégats on December 13, 2007 (MTO0000042 attaching MTO0000043). The letter attached the MTO's 1992 Demix

Agrégats test results and a copy of the Requirement Guidelines, which set out the process and requirements for inclusion on the DSM. The MTO's 1992 test results showed that the PSV of the Demix aggregate tested in 1992 was 45, which is lower than the minimum PSV required for DSM inclusion. Demix Agrégats' 2007 application was not declined on the basis of the 1992 results. The Demix application was considered anew, for reasons that include:

- (a) Demix Varennes was a large quarry, and so could have been producing different rock in 2007 than what was produced in 1992; and
- (b) MTO's procedure was to visit the quarry and take current samples for testing.

12. The December 13, 2007 letter that I prepared stated the following with respect to the nature of the application: *"This response is acknowledgement of your application to have your quarry placed on the ministry's Designated Sources for Materials List (DSM #3.05.25) for SP 12.5 FC1 and 2."* (MTO0000039). Although SMA is not specifically referred to in the letter, a DSM application is for use of the aggregate, and its inclusion pertains to all purposes, including use of the aggregate in SMA surface courses.

13. At the time I prepared the December 13, 2007 letter, I was aware that RHVP was going to be used as a de facto test strip for Demix Agrégats' DSM application. I did not have any communication with staff at the City of Hamilton or at Golder Associates Ltd. in 2007 or any time thereafter, about Demix Agrégats' application or that the RHVP was being evaluated to assess the qualities of the Demix Varennes aggregate for inclusion on the DSM. Nor, to the best of my knowledge and recollection, did anyone else in the Soils

& Aggregates Section. This was standard procedure because, typically, the Soils & Aggregates Section only dealt with the applicant in respect of DSM applications. An applicant would be assumed to have the requisite authorization from the owner to propose or agree to a test site at the heart of its application.

14. The Soils & Aggregates Section practice is not to share skid testing results with paving contractors. To the best of my knowledge and recollection, neither Demix Agrégats nor Dufferin Construction Company requested the RHVP skid test results in the years following this letter. I have no knowledge of whether or not anyone else at MTO shared the MTO's skid testing with Dufferin or Demix, but to the best of my recollection I did not do so.

15. On June 12, 2008, Mr. Marciello conducted skid testing on the RHVP. This testing was carried out at the request of the Soils & Aggregates Section for DSM evaluation purposes. I think that I accompanied Mr. Marciello when he conducted the testing on the RHVP on June 12, 2008, and that I took photographs of the RHVP during the testing.¹ I do not have a clear recollection as to why I attended with Mr. Marciello on that date, but based on my practices, I believe I may have done so to ensure that there was a satisfactory trial area and take photographs of the job. It was my typical practice to make best efforts to visit DSM applicant test strips, particularly test strips that were located in

¹ MTO0016866 attaching MTO0016867, MTO0016868, MTO0016869, MTO0016870, MTO0016871, MTO0016872, MTO0016873, MTO0016874, MTO0016875, MTO0016876, MTO0016877, MTO0016878, MTO0016879, MTO0016880, MTO0016881, MTO0016882, MTO0016883, MTO0016884, MTO0016885, MTO0016886, MTO0016887, MTO0016888, MTO0016889, MTO0016890, MTO0016891, MTO0016892, MTO0016893, MTO0016894, MTO0016895, MTO0016896, MTO0016897, MTO0016898, MTO0016899, MTO0016900, MTO0016901, MTO0016902, MTO0016903

the Greater Toronto Area. To the best of my recollection, June 12, 2008 was the first time I visited or drove on the RHVP.

16. I received the results of the RHVP skid testing conducted on June 12, 2008 from Mr. Marciello via email on June 18, 2008 (MTO0024001 attaching MTO0024002, MTO0024003, MTO0024004, MTO0024005). As was the typical practice, Mr. Marciello also sent the results to Mr. Senior and Joseph Ponniah (then the Acting Head of Pavements & Foundations). In my view, based upon my experience, the 2008 friction testing results were acceptable for evaluation purposes pertaining to potential DSM List inclusion.

17. On July 17, 2008, Carole Anne MacDonald and I visited the Demix Varennes quarry (MTO0012826, MTO0012828). Ms. MacDonald was a petrographer in the Soils & Aggregates Section. The visit to the Demix quarry was part of the normal procedure and process for DSM evaluation purposes. During the visit, Ms. MacDonald and I met with Estel Gagnon and another Demix staff member, and visited the quarry. While at the quarry, we followed the usual procedures with respect to inspection and taking samples for testing, which included looking at the crushing operation, inspecting the rock face and inspecting for homogeneity of rock type, and obtaining samples from the stockpile and hand samples for subsequent testing by Ms. MacDonald.

18. I prepared the letter that Mr. Senior signed and sent to Ms. Gagnon at Demix Agrégats on December 4, 2008, which attached the MTO's test results respecting the DSM application for the Demix aggregate (MT0000044 attaching MTO0000045). The December 4, 2008 letter followed the standard template used by Soils & Aggregates for

responding letters, with modifications to include information specific to the Demix aggregate. Based on testing conducted, Ms. MacDonald classified the Demix aggregate as a syenite rock, which is a type of igneous intrusive rock in the traprock family. With respect to the results, my view was that the bulk relative density of the Demix aggregate (2.518 and 2.568) was lower than I would expect in a traprock, which is typically approximately 3, and the PSV of 52 was in line with expected results for a traprock. The PSV value of 52 was above the MTO's required value for DSM inclusion. Overall, my view of the Demix results was they were consistent with what I would expect for a traprock.

19. The approach taken with respect to assessing Demix Agrégats' DSM application did not entirely follow normal procedure as it pertained to the requirement of skid testing of a 500m asphalt test strip of the applicant aggregate. As is set out in the December 8, 2008 letter, the Soils & Aggregates Section allowed the RHVP to be used as the trial section (MTO0000044). The RHVP pavement did not include a control section using an already approved, DSM-listed aggregate, and as such skid testing was conducted only on the test section (being a 3 km section of the RHVP SMA pavement that contained the Demix aggregate). Although this deviated from normal procedure, there have been instances where skid testing was conducted for the purpose of a DSM application only on a test section and without an adjacent control section.

20. It was standard practice to monitor the aggregate for a two-winter period prior to including the aggregate on the DSM List and, in my experience, the length of the initial monitoring sometimes increased depending on the aggregate. Although the letter did not

specify what the “desirable level of friction” was, it is my understanding that normally a test strip would achieve FN30 to have a “desirable level of friction”.

21. In 2009, I submitted a request to the Pavements & Foundations Section, on behalf of the Soils & Aggregates Section, that skid testing be conducted on the RHVP for DSM-evaluation purposes (MTO0021224). I received the results of the RHVP skid testing conducted on May 7, 2009 from Mr. Marciello via email on May 8, 2009 (MTO0005228 attaching MTO0005229 MTO0005230 MTO0005231 MTO0005232). As was the typical practice, Mr. Marciello also sent the results to Mr. Senior and Becca Lane (then the Head of Pavements & Foundations).

22. I prepared the letter that Mr. Senior signed and sent on May 20, 2009 to Ms. Gagnon at Demix Agrégats advising that the Demix Varennes quarry aggregate had been “conditionally approved” for inclusion on the DSM (MTO0000046 attaching MTO0000047). In my view, this letter appears consistent with the standard approval letters I prepared. The language of ‘conditional approval’ was standard language to include; all DSM approvals are conditional on continued satisfactory aggregate performance. It was my understanding that the word ‘conditional’ in the approval letter allowed the MTO to take action if something went wrong with an approved aggregate’s performance in the future. Soils & Aggregates’ practice was not to advise applicants of the friction numbers achieved during MTO skid testing and, in my experience, it was standard practice to advise applicants that their aggregate had “satisfactory frictional properties”, as was done in the May 20, 2009 letter to Demix Agrégats.

Inclusion of Demix Agrégats on the DSM

23. The Demix Varennes aggregate was placed on the DSM in the summer of 2009.
24. Thereafter, I requested skid testing of the RHVP and received the results thereof from Mr. Marciello in each of the following years:
- (a) 2010 (MTO00126869; MTO0034018 attaching MTO0034019, MTO0034020, MTO0034021, MTO0034022);
 - (b) 2011 (MTO0012884; MTO0034404 attaching MTO0034405, MTO0034406, MTO0034407, MTO0034408);
 - (c) 2012 (MTO0012900; MTO0007828 attaching MTO0007829, MTO0007830, MTO0007831, MTO0007832); and
 - (d) 2014 (MTO0012945; MTO0022942 attaching MTO0022943, MTO0022944, MTO0022945, MTO0022046).

The purpose of the testing in each of 2010, 2011, 2012, and 2014 was for continued evaluation and monitoring of the suitability of Demix Agrégats as a premium aggregate on the DSM. This was standard procedure for monitoring newly approved DSM aggregates.

25. I received the 2014 RHVP skid testing results from Mr. Marciello on July 25, 2014, as did Mr. Senior and Stephen Lee (who had become Head of the Pavements & Foundations Section) (MTO0022942 attaching MTO0022943, MTO0022944, MTO0022945, MTO0022046). Following my review of the results, I sent an email to Mr.

Senior later that day, in which I wrote: "*I was hoping it would of stabilized at 35.*" My hope was that the FN for the Demix aggregate would have stabilized at an average of FN35 by that time. The Demix aggregate was an igneous intrusive traprock and, in my experience, stabilization or 'flatlining' of the skid resistance results would typically be expected for this type of rock. In 2014, the results for the RHVP remained above FN30 on average, which was acceptable for continued inclusion on the DSM.

26. I do not recall having a discussion with Becca Lane, Mr. Senior, and Mr. Marciello regarding the 2014 RHVP skid testing results and the status of the Demix aggregate on the DSM as it pertained to the 2014 results.

27. I understood that there would be additional monitoring of the Demix aggregate for continued inclusion on the DSM List beyond 2014. To the best of my recollection, I believe I submitted the standard memorandum to the Pavements & Foundations Section, on behalf of the Soils & Aggregates Section, requesting skid testing prior to my retirement in April 2015 and that the RHVP was included as one of the many roads on the request list. I understand that a 2015 request memorandum has not been located.

28. Demix Agrégats was listed on the DSM as of the date of my retirement from the MTO on April 30, 2015.

29. I make this affidavit for use in the Red Hill Valley Parkway Inquiry.

Sworn or (Affirmed) before me at the
City of Toronto, on May 25, 2022.

Michael Saad

A Commissioner for Taking Affidavits

LSO#: 815660

Michael Saad

Bob Gorman

Bob Gorman